

Item No. 7.	Classification: Open	Date: November 11 2004	Meeting Name: Licensing Committee
Report title:		Licensing Act 2003 - Constitutional Issues – Addendum Report	
Ward(s) or groups affected:		All	
From:		Chief Executive (Borough Solicitor)	

RECOMMENDATIONS

1. That licensing committee considers this addendum report and the revised recommendations in conjunction with the proposals set out in the report circulated on the main agenda. The committee is invited to make recommendations on the following areas to standards committee on the constitutional changes necessary to introduce the new decision-making structures required by the Licensing Act 2003:
 - Anticipated areas of revision to existing constitution
 - Sub-committees
 - Reserves
2. That it be noted sections 5 – 8 of the Licensing Act 2003 are to be subject to the provisions of the Local Government Act 2000 as indicated in paragraph 8 below.

BACKGROUND INFORMATION

3. The standards committee has a duty to monitor and review the operation of the Constitution. This report provides additional advice and some revised recommendations on the constitutional changes required by the Licensing Act 2003.

KEY ISSUES FOR CONSIDERATION

Anticipated areas of revision to existing constitution

4. Appendix 1 of the report on the main agenda set out the amendments to the terms of reference and matters reserved. This deleted some of the existing functions which are the licensing responsibilities arising from earlier legislation. Following the receipt of further advice, some of these need to be restored and it is recommended the following member responsibilities be added to the matters reserved (see page 15 of the report) as follows:
 - (13) any application for consent to provide striptease or hypnotism or like entertainment.
 - (14) any application for the grant of new amusement arcade/prize bingo permits.
 - (15) any application for the grant, renewal, variation or transfer of any sex establishment license.

5. Within the matters reserved the following current officer delegation was deleted and it is proposed that this is restored at page 17 of the report as follows:
- (j) any opposed application for the grant, renewal or transfer of a special treatments license.

Revised Recommendation 1

That Standards Committee recommends the constitutional proposal containing a division of responsibilities as indicated in Appendix 1 in respect of;

- (i) Licensing functions (subject to the inclusion in the matters reserved of the responsibilities set out in paragraphs 4 and 5 of this addendum report)
- (ii) Street Trading functions

Sub-committees

6. Political proportionality is not a requirement for the new licensing sub-committees. Generally speaking appointing a committee that reflects the council's political composition is good practice and is likely to be recommended unless there are reasons not to do so. In the case of licensing sub-committees there are arguments to increase the flexibility because of the anticipated workload issues. Therefore the current 'taxi-rank' system advanced in option 1 could be modified to a proposal that the licensing committee appoints sub-committees of three members without further specification. This would give maximum flexibility allowing sub-committees to be formed dependent on member availability.

Revised Recommendation 4

That the licensing committee appoints sub-committees of three members without further specification. This would allow the formation of sub-committees consisting of three members of the main committee to be convened on an as required basis.

Reserves

7. The Licensing Act 2003 designates all functions to the committee and its sub-committees; there is no provision for the use of substitutes or reserve members. Therefore it is advised the committee should adopt option 3 on page 7 and not attempt to appoint reserves.

Revised Recommendation 5

That the committee recommends option 3 and does not appoint reserves, in light of the officer advice.

Functions and responsibilities

8. Members should note the office of the deputy prime minister has indicated that the Functions and Responsibilities Regulations (SI 2000 No 2853 as amended) under the Local Government Act 2000, are to be amended for England, so as to include the licensing functions under Section 5 - 8 of the Licensing Act 2003 into schedule 1 of

the Regulations. The effect of this is to exclude these functions from being 'Executive Functions'. This therefore means that these functions (includes section 5 and section 6 of the Licensing Act 2003 which relates to the 'Determining Licensing Policy' and to 'Appointing a Licensing Committee') are functions of council assembly and cannot be undertaken by the executive or other committee.

REASON FOR URGENCY

9. The licensing committee needs to consider this addendum report and the revised recommendations in conjunction with the proposals set out in the report on the main agenda. Standards committee on November 18 2004 and council assembly in December will consider the comments from this committee. There is an indicative timetable set by government for the introduction of the new licensing arrangements which needs to be complied with.

REASON FOR LATENESS

10. This reports includes advice received after the date of despatch of the main agenda.

BACKGROUND DOCUMENT

Background Papers	Held At	Contact
Southwark's Constitution	Constitutional Team Southwark Town Hall Peckham Rd, SE5 8UB	Ian Millichap 020 7525 7225

AUDIT TRAIL

Lead Officer	Deborah Holmes, Borough Solicitor	
Report Author	Ian Millichap, Constitutional Team Manager Kevin Flaherty, Constitutional Officer	
Version	Final	
Dated	November 5 2004	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services	5/11/04	