

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

RECOMMENDATIONS

1. That licensing committee makes 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:
 1. Anticipated areas of revision to existing constitution
 2. Size of committee
 3. Proportionality
 4. Sub-committees
 5. Reserves
 6. Election of chair/vice-chair
 7. Workload issues
 8. Impact on community councils and other committees
2. That, in light of recommendation 1, officers be given the authority to make any consequential changes to the constitution to ensure consistency, including any necessary corrections to spelling, grammar and punctuation, without changing the substantive content.
3. That officers recommend that after the first year of operation the new arrangements be reviewed.

BACKGROUND INFORMATION

4. The standards committee has a duty to monitor and review the operation of the Constitution. The Monitoring Officer has a key role in this process and for making recommendations for amendments to the constitution. Any changes to the constitution have to be approved by council assembly after consideration by the standards Committee.
5. The Licensing Act received Royal Assent in July 2003. The main provisions of the act include:
 - The transfer of liquor licensing to local authorities,
 - Introduction of a new licensing regime dealing with the sale and supply of alcohol; the provision of regulated entertainment, and the provision of late night refreshment (comprising of personal licences, premises licenses, club premises certificates and temporary event notices)
 - The introduction of four licensing objectives:
 - The prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm.

The draft guidance for local authorities was published in October 2004 and officers used this guidance to prepare the options set out in this report. Standards committee is asked to consider the options and make recommendations to council assembly. The proposals will impact on community councils and other committees and these are included in paragraphs xx. The key themes are:

- Membership and constitution of licensing committee
- The relationship between licensing committee and community councils
- Review of licensing protocols

Timetable

Date	Activity
9 September to 15 October 2004	Public consultation on Licensing Statement (includes all 8 Community Councils)
6 October 2004	Environment & Community Support Scrutiny Sub-Committee
11 November 2004	Licensing Committee
18 November 2004	Standards Committee
8 December 2004	Council Assembly
7 February 2005	First appointed date from which applications can be made.
November 2005	Second appointed date from which all licences become valid.

KEY ISSUES FOR CONSIDERATION

6. There are eight strands for the constitutional changes arising from the Licensing Act 2003 are as follows:
 1. Anticipated areas of revision to existing constitution
 2. Size of committee
 3. Proportionality
 4. Sub-committees
 5. Reserves
 6. Election of chair/vice-chair
 7. Workload issues
 8. Impact on community councils and other committees

A introduction to each area and recommendations are set out below.

Anticipated areas of revision to existing constitution

The role of the committee

7. The committee has sole responsibility for all of the authority's licensing functions. This committee can arrange for the discharge of any of its functions by a sub-committee established by it or by an officer of the licensing authority. The licensing committee is and will continue under the new arrangements to be a quasi-judicial body which means that it must use procedures similar to a court hearing to ensure that all parties – e.g. council licensing officers, applicant and objectors - all have the same rights to speak and question each other. This ensures that there is a fair hearing and all relevant issues are considered.

8. The secretary of state has reserved powers to make future regulations on:
 - (a) the proceedings of licensing committees and their sub-committees (including provisions about the validity of proceedings and the quorum for meetings)
 - (b) public access to committees and sub-committees
 - (c) publicity
 - (d) agendas and records
 - (e) public access to agendas and records and other meeting information.
9. The department for culture, media and sport issued further draft regulations for consultation in September 2004. These regulations require 10 working days notice to be given for most hearings and have access, publicity and record keeping requirements broadly comparable to existing arrangements. The consultation period on these regulations ends on November 10 2004. Should finalised regulations differ substantially from the draft regulations and render any of the proposals in this report redundant, revised proposals will be placed before a further meeting of the standards committee and council assembly.
10. The draft regulations make no directions as to the division of responsibilities within a framework of committee, sub-committee and officer decision-making (there is no provision for individual member decision making). However draft guidance issued by department for culture, media and sport (DCMS) in July 2004 under section 182 of the Licensing Act 2003 specifies all applications attracting relevant representations should be subject to member decision. The council is obliged to have regard to this guidance by paragraph 4(3) of part 2 of the Licensing Act 2003. Subject to that important principle, the council will be able to determine roles and responsibilities within a constitutional review e.g. the central committee could be given policy responsibility, powers to manage and appoint its sub-committees, the ability to determine major applications; while sub-committees would determine the majority of opposed applications and officers could be empowered to determine all unopposed applications.
11. Licensing responsibilities within Southwark are currently shared between a central licensing committee and the eight community councils. The Licensing Act 2003 introduces a single regime for alcohol, entertainment and late night refreshment licensing. The constitution will therefore need to be revised in order to conform with the new legal requirements. Draft revisions to the constitution indicating a new division of responsibilities are attached as appendix 1.
12. These draft revisions also include modified provisions for the future consideration of street trading matters. Street trading matters are a current responsibility of the licensing committee. However there is no legal requirement under the relevant legislation, the London Local Authorities Act 1994, that street trading matters be considered by a licensing committee. Given the anticipated heavy workload arising from the Licensing Act 2003, it is suggested all future street trading revocations should be considered by an Officer Panel. The Officer Panel would also be asked to deal with street trading licences grants, refusals and variations currently delegated to the Street Trading Manager. Thus no decisions on street trading matters would henceforth be taken by any individual officer. A bench marking exercise conducted by the Street Trading section in August 2004 with seven boroughs with intensive street market activity namely Camden, Lambeth, Westminster, Kensington & Chelsea, Waltham Forests, Newham and Lewisham found six already had officer delegation for all street trading matters in place.

The areas of the constitution affected by the changes are summarised below:

CAPR	Page No.	Title	Action Required
Article 8	18	Regulatory and other Committees:Licensing Committee.	Allocation of all licensing activities to a Licensing Committee.
Article 10	24	Community Councils:Licensing functions (non-executive)	Deletion of functions.
Part 3G	55	Matters reserved to the Licensing Committee, Community Councils and the 1st tier officer and officer panel exercising licensing functions.	Allocation of all licensing activities to a Licensing Committee.
Part 3H	59	Matters reserved to Community Councils: Licensing functions (non-executive)	Deletion of functions.

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
- (ii) Street Trading functions

Size of Committee

12. Section 6 of Licensing Act 2003 mandates a licensing committee of 10 to 15 members. The existing licensing committee consists of 8 members (quorum 2) and has an average attendance of 3/4 members. There are six possible future options as follows:

- | | |
|---------|-------------------------|
| Options | 10 members (quorum 3) |
| | 11 members (quorum 3) |
| | 12 members (quorum 3/4) |
| | 13 members (quorum 3/4) |
| | 14 members (quorum 3/4) |
| | 15 members (quorum 3/4) |

Note: The figures given for the quorum are an estimate as confirmation is required from the secretary of state.

13. Nominations to the new centralised licensing committee could either be made as follows:

No.	Option																						
Option 1	All places appointed by council assembly																						
Option 2	<p>One place allocated to each community council with council assembly determining remaining nominations to ensure proportionality eg assuming a 15 person committee nominations could be as follows:</p> <table border="0"> <tr> <td>Borough & Bankside CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Bermondsey CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Rotherhithe CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Walworth CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Peckham CC</td> <td>1 Liberal Democrat</td> </tr> <tr> <td>Camberwell CC</td> <td>1 Labour</td> </tr> <tr> <td>Nunhead & Peckham Rye CC</td> <td>1 Labour</td> </tr> <tr> <td>Dulwich CC</td> <td>1 Conservative</td> </tr> <tr> <td>Council Assembly</td> <td>2 Liberal Democrat</td> </tr> <tr> <td></td> <td>4 Labour</td> </tr> <tr> <td></td> <td>1 Conservative</td> </tr> </table> <p>This could ensure a continuing link with community councils.</p>	Borough & Bankside CC	1 Liberal Democrat	Bermondsey CC	1 Liberal Democrat	Rotherhithe CC	1 Liberal Democrat	Walworth CC	1 Liberal Democrat	Peckham CC	1 Liberal Democrat	Camberwell CC	1 Labour	Nunhead & Peckham Rye CC	1 Labour	Dulwich CC	1 Conservative	Council Assembly	2 Liberal Democrat		4 Labour		1 Conservative
Borough & Bankside CC	1 Liberal Democrat																						
Bermondsey CC	1 Liberal Democrat																						
Rotherhithe CC	1 Liberal Democrat																						
Walworth CC	1 Liberal Democrat																						
Peckham CC	1 Liberal Democrat																						
Camberwell CC	1 Labour																						
Nunhead & Peckham Rye CC	1 Labour																						
Dulwich CC	1 Conservative																						
Council Assembly	2 Liberal Democrat																						
	4 Labour																						
	1 Conservative																						

14. Although the Licensing Act 2003 allows a committee to regulate its own procedures generally, the secretary of state has reserved powers to determine committee and sub-committee quorums. Setting the quorum at the lowest statutory point when known would give a slightly greater degree of flexibility. This could be an important consideration given the projected need to convene multiple quorate committee meetings especially in the initial eight month period.
15. In terms of the size of the committee, opting for the maximum size of 15 would increase the pool of members deputed to deal with the very heavy workload predicted to accompany the onset of new licensing arrangements. Opting for a larger size would also allow flexibility in nominating particularly if direct nominations from the eight community councils to ensure an ongoing link and continuity with past arrangements are deemed appropriate.

Recommendation 2

That in order to achieve maximum flexibility a committee of 15 members is formed (option 1).

Proportionality

16. The existing licensing committee was established under the proportionality arrangements of Local Government & Housing Act 1989 as 4 Labour, 3 Liberal Democrat, 1 Conservative. There was a slight Labour bias on this committee to ensure that the totality of the council's committees were proportionate. There is no requirement in the Licensing Act 2003 that the new licensing committee exercising all licensing functions should be proportionate. However it is assumed members will wish to establish a committee that is broadly proportionate. Any proportionate committee created would not be part of the formula used by council assembly at constitutional council to allocate places to all committees subject to the Local

Government & Housing Act 1989 arrangements.

17. If based on existing council wide proportionality, licensing committee composition would be on the basis of one of the following six options:

- 10 members (LD 5 LAB 4 CON1)
- 11 members (LD 5 LAB 5 CON 1)
- 12 members (LD 6 LAB 5 CON 1)
- 13 members (LD 6 LAB 6 CON 1)
- 14 members (LD 7 LAB 6 CON 1)
- 15 members (LD 7 LAB 6 CON 2)

Recommendation 3

That a proportional committee of 7 Liberal Democrat, 6 Labour and 2 Conservative members be formed.

Sub-Committees

18. The Licensing Act 2003 allows licensing committee to establish a sub-committee or sub-committees of exactly 3 members of the main committee. Membership of the sub-committees is limited by the Licensing Act requirement that all members of sub-committees be also members of the 10-15 person main committee.
19. There are no specific regulations covering operation of sub-committees, or the appointment of reserves, it is possible, and given the anticipated works, in officers view advisable, that sub-committees deal with the majority of applications. There are a number of options depending on the structure of the main committee. These are set out below:

Option 1

This is a simple proportional model of 5 sub-committees based on a committee appointed by council assembly:

- Sub Committee A (LAB 2 LD 1)
- Sub Committee B (LD 2 LAB 1)
- Sub Committee C (LD 2 LAB 1)
- Sub Committee D (LAB 1 LD 1 CON 1)
- Sub Committee E (LAB 1 LD 1 CON 1)

This format would allow applications to be allocated on a 'taxi-rank' basis allocating the workload evenly.

Option 2

This option includes variations to reflect geospatial requirements (eg community council areas).

This option ensures each sub-committee equates to two community council areas and assuming a maximum committee size of 15 is used, would allow the three remaining members to serve on a special sub-committee determining applications affecting two or more of the other sub-committee areas; act in cases where another of the sub-committees could not establish a quorum owing to member conflict of interests; or handle applications remitted to it by any sub-committee

facing volume pressures.

Sub Committee North (LD 3) CC	Rotherhithe CC, Bermondsey
Sub Committee East (LAB 2 LD 1)	Peckham CC, Nunhead / Peckham Rye CC
Sub Committee West (LD 2 LAB 1)	Borough & Bankside CC, Walworth CC
Sub Committee South (CON 1 LAB 2)	Dulwich CC, Camberwell CC
Special Sub-Committee (LD1 LAB 1 CON 1)	Borough wide

20. Option 2 would allow applications to be allocated on a geographic basis. However this option reduces flexibility to be able to deal with cases within the tight timescales set by the government. This is because it may not always be easy to predict which applications will be objected to and hence which local sub-committee should be convened.

Recommendation 4

1. That option 1 be adopted.

Reserves

21. The use of reserves on council committee's is an established constitutional arrangement on other committees which seeks to increase flexibility and ensure quorate meetings. The following options depending on the model for the committee (discussed in paragraphs 12-15 above) are set out below:

Option 1

A status quo option in accordance with existing committee procedure rules on the appointment of reserves/substitutes whereby each political group appoints one fewer reserve seats than it has ordinary seats. If a 15 member committee option is used there would be 12 named reserves (6 Lib-Dem, 5 Labour and 1 Conservative). A variant would be that used for scrutiny sub-committees whereby each full committee member would have 1 named reserve (7 Lib-Dem, 6 Labour and 2 Conservatives).

Option 2

If the Licensing Committee is established partly from community council nominations and partly from general council assembly nominations a hybrid scheme using options one and two could be considered. Members appointed from community council areas would have reserves from the same party and community council area while members appointed at large would have a pool of named reserves one fewer than its number of at large seats.

Option 3

Given that a proposed licensing committee of 15 members would become the council's largest committee comprising almost a quarter of the entire membership and that there is no explicit provision in the Licensing Act 2003 allowing the appointment of reserves, a cogent case could be advanced to say the appointment of reserves was unnecessary in these circumstances.

Recommendation 5

That members consider if it would be appropriate to appoint reserves, and if it required which option pertaining to reserves should be adopted.

Election of chair/vice chair

22. Council assembly currently elects the chair and vice-chair of the licensing committee. The Licensing Act 2003 would allow licensing committee to elect its own chair, but does not make it mandatory to do so.

Recommendation 6

That in accordance with current practice, council assembly appoints the chair and vice-chair and the committee determines its sub-committee memberships and elects the chairs and vice-chairs of its sub-committees.

Workload Issues

23. There are 1200 licensed premises in the Borough and on average there will be 2 applications for personal licenses per premises. 60% of premises (c.720) are likely to apply for variations of current consents and will go out to public consultation.
24. The number of committee meetings required will depend on the level of public objection as summarised in the table below:

Level of objections	No of applications	Objected frequency	application
5%	36	1 per week	
10%	72	2 per week	
15%	108	3 per week	
20%	144	4 per week	
25%	180	5 per week	

25. DCMS predicts a 6% objection rate. The council's environment and leisure department are working on a 10% objection rate. However it would be advisable to prepare for a much higher objection rate.
26. These hearings will all fall between the first and the second operative dates ie the 8 month period between March and November 2005. The council is however obliged to determine applications within either 8 or 12 weeks of receipt. Therefore the council does not have the absolute ability to ensure there will be an even throughput of applications in this eight-month period.
27. It is legal requirement that hearings take place within either an 8 or 12 week period from the receipt of an application, dependent on the type of application made. If this deadline is not complied with, dependent on the type of application, it will be deemed to have been either agreed or refused. Objections will become apparent in a number of ways: first licensing officers proactively forecasting and assessing likely objected cases based on their local knowledge, and second, the receipt of objections themselves. These objections will not be received until after the formal consultation period of 4 weeks (in most cases). This leaves only about 3 weeks to prepare the report, provide notice of the meeting (10 clear working days in most

cases), issues the agenda, hold the hearing and publish the decision, which is a tight timetable for dealing with these matters. For this reason, officers have had to review the arrangements for meetings in order to manage such a workload. In practice, it is officers recommendation that this is the only possible by utilising the following:

- a) Day (either full or part) and evening meetings.
- b) Multiple sub-committees meetings on the same day.
- c) Utilisation of maximum speaking limits as provided for in draft Regulations (September 2004) to ensure more than one application can be heard at a single meeting. This approach has been piloted in some community councils.
- d) Linked to (c), requiring parties to make as much as possible of their case/objection in writing prior to the meeting.

28. A copy of the draft guidance for use at hearings based on current practice in community councils is set out in Appendix 2. Officers will examine this and other options for rationalising contributions once final regulations are received.

29. The increased workload will require a major new commitment from members. At present only the chair of the licensing committee receives a responsibility allowance. Given the exceptional potential heavy additional requirement the standards committee may wish to consider recommending a band 1 special responsibility allowance to all other members, with the chair receiving a band 2 allowance. The table below sets out the cost of allowances at this level:

Position	Proposed Allowances		No of members	Annual Cost	Additional resources	Comments
	Band	£/annum				
1. Chair	Band 2	£7,942	1	£7,942	No	Already paid at this level
2. All other licensing committee members	Band 1	£2,686	14	£37,604	Yes	-
Total 1+ 2				£45,546	£37,604	

Note: The allowances shown in the table are at 2004/05 levels.

30. As the Licensing Act 2003 introduces an entirely new regime for decision making on licensing matters, it is felt imperative that all committee members receive training prior to the consideration of any application. The Borough Solicitor is preparing a relevant training programme based on the requirements of the Licensing Act with an expected delivery in January 2005. Best operating practice would require all members of the new committee to be fully trained and it is suggested membership of any committee or sub-committee determining applications and the receipt of any special responsibility allowance be contingent on the satisfactory completion of the training provided.

Recommendation 7

1. That the chair receives a band 2 special responsibility allowance.
2. That all other members receive a band 1 special responsibility allowance.
3. That these special responsibility allowances be additional to any other special responsibility allowance received.
4. That all members undertake a course of training approved by the Borough Solicitor prior to hearing any applications or receiving a special responsibility allowance.

Impact on Community Councils and other committees

31. The impact of community council of the constitutional changes is to remove decision-making on licensing matters from community council's terms of reference and matters reserved. The changes to put this in effect are set out in Appendix 1. The reason is that all licensing functions under the new act now must be the responsibility of the new licensing committee. Officers view is that for the first year a central committee should operate to deal with the anticipated workflow. Thereafter it might be possible to review future patterns of hearings and introduce a local element to decision-making.
32. There may be an impact on proportionality in respect of the other committee, planning and appointments. This is because the current licensing committee sits in a pool with these committees and proportionality is calculated across all 3 committees. As the new licensing committee will established under Licensing Act 2003, proportionality in respect of the planning and appointments committees has been recalculated.

As a result of the changes members should note that there is no change to the composition of these committees.

Recommendation 7

1. That the constitutional changes affecting community council terms of reference and matters reserved as set out in Appendix 1 be noted.
2. That the fact that there is no change in the proportionality of the planning and appointments committees be noted.

Future Reviews

33. Officers would recommend that after the first year of operation that the new arrangements be reviewed.

Effect Of Proposed Changes on those affected

34. In considering constitutional changes regard should be given to the impact on individuals and structures:
 - Not to erode officer delegations

- Have regard to the opportunity for individual members of the public and groups to make representations to decision-makers
- Taking account of access to information

Resource Implications

35. This report recommends the creation of new allowances for licensing committee members to reflect the increased workload. The allowances could apply from February 7 2005. The estimated annual costs are set out in the table in paragraph 28. There is funding in the 2004/05 year budget to cover this additional commitment for the remainder of this year. However for 2005/06 additional funding of £37,604 would need to be identified to fund the new allowances (see paragraph 29 above).
36. There are no specific financial implications within this report although additional staffing resources will need to be identified to support decision making in the first year.

Legal Implications

37. The Borough Solicitor and her staff have been involved in the preparation of this report and the legal implications are contained in the body of the report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark's Constitution	Constitutional Team Southwark Town Hall Peckham Rd, SE5 8UB	Ian Millichap 020 7525 7225
Standards Committee – Minutes – March 8 & April 27 2004	Ditto	Paula Thornton 020 7525 4395

APPENDICES

Appendix No.	Title
Appendix 1	Licensing Act 2003 - Revisions to the constitution
Appendix 2	Community council licensing procedure.

AUDIT TRAIL

Lead Officer	Deborah Holmes, Borough Solicitor	
Report Author	Ian Millichap, Constitutional Team Manager Kevin Flaherty	
Version	Final	
Dated	November 1 2004	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	No	No
Executive Member	No	No
Date final report sent to Constitutional Support Services	1/11/04	

Appendix 1