

THE ASSEMBLY

5 OCTOBER 2005

REPORT OF THE DIRECTOR OF CORPORATE STRATEGY

Title: The Licensing and Regulatory Board - Related Constitutional Issues	For Decision
<p>Summary:</p> <p>The Licensing and Regulatory Board (the Board) has now met 16 times and has dealt with 49 applications. Experience has shown that some changes are required to the Constitution to address certain issues and, in particular, to provide operational clarity. In summary these are:</p> <ul style="list-style-type: none">(a) to make provision (formally) for another Member of the Board to be appointed to chair a meeting in the absence of the Chair and Deputy Chair. This can usefully be a general provision for all meetings, not just the Board.(b) to take account of (a) and the fact that there might, in exceptional circumstances, be occasions when the official Chair and Deputy Chair are not in attendance, to remove the current requirement for the quorum to always include the Chair and/or the Deputy Chair.(c) to be more specific in the Article for the Board about public speaking referring to the number of interested parties who can speak in respect of any application, for how long and what notice they have to give and to who. The maximum number of people who can speak has previously been determined by the Board but not by the Assembly. Currently this is 4 in total (including the applicant or their representative). It is therefore suggested that the number of “public” speakers (i.e. residents, neighbours, interested groups etc) be limited to 3 with the Chair of the meeting having discretion to extend this if circumstances warrant such action. In practice, due to time constraints, it is hard to accommodate too many speakers although this would be preferred if possible to better enable the process to be as democratic and representative as possible. “Public” speakers will continue to be limited to 3 minutes each.(d) to mention separately that the applicant, or their representative, is allowed to present their case at the meeting provided they give notice, and to reply to any verbal objections made at the meeting, subject to a total speaking time of 5 minutes.(e) to be clear about additionally allowing Members of the Council, who are not Members of the Board, and the local Member of Parliament, to speak in support of, or against, a particular application should they wish. It is suggested that this be limited to 3 Members and 1 MP for each application and, like “public” speakers, to a maximum speaking time of 3 minutes each.	

(f) to be more specific about what is likely to constitute a Members' Interest in relation to a licensing application rather than relying solely on the general provision in Article 1 of the Constitution. The Assembly had previously determined when agreeing the Licensing Policy that a Member of the Board should not take part in any licensing decisions about premises "they have an interest in and will not be able to hear cases about premises in their ward". This wording is vague and will benefit from more clearly stating that a Member is regarded as having a prejudicial interest if they live near the premises in question, if the premises are located in the ward they represent, if they are a frequent visitor to the premises, or if they belong to a lobby group which may be impacted by the outcome of the application. This would be in line with recognised guidance for elected Members on licensing matters.

A summary of the proposed changes to the Constitution are attached at Appendix A.

In future all Members of the Council will receive an e-mail alert to the meetings with a copy of the agendas. Hard copies will be provided to Members not on line.

Wards Affected: All

Implications:

Financial:

There are no financial implications associated with these Constitutional changes – the operational costs of the Board are already included in existing budgets.

Legal:

A more specific definition of Members' Interests in relation to licensing applications accords with recognised guidance on licensing matters.

Risk Management:

The proposed changes to the way the Board operates and their inclusion in the Council's Constitution provides a more robust defence against any subsequent appeals through the Magistrates' Courts.

Social Inclusion and Diversity:

The Race Relations (Amendment) Act 2000 places a requirement on local authorities to make an assessment on the impact of new or revised policies in terms of race equality. This Authority has adopted an approach of extending the impact to cover gender, disability, sexuality, faith age and community cohesion. There are no specific adverse impacts insofar as this report is concerned.

Crime and Disorder:

Section 17 of the Crime and Disorder Act 1998 places a responsibility on local authorities to consider the crime and disorder implications of any proposals. There are no specific implications as far as this report is concerned.

Recommendation:		
The Assembly are asked to approve the changes to the Council's Constitution proposed in Appendix A.		
Reasons:		
To make sure that the Board's practices are clear and more robust.		
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Consultees

The Leader of the Council (portfolio Member for Members and Constitutional issues), Councillor L Smith (portfolio Member for Licensing), Councillor Dale (Chair of the Board), Paul Feild, Corporate Lawyer, Darren Henaghan, Head of Health and Consumer Services, John Dawe (Democratic Services), Lee Russell (Finance).

Background Papers:

Barking and Dagenham Licensing Policy; LACORS (Local Authorities Coordinators of Regulatory Services) "Elected Member Guidance on the Licensing Act 2003"

APPENDIX A

Proposed Constitutional Changes

Article (page)	Proposed Change
1 - Member Meetings General (page B3)	Add to paragraph 1: “In the event that the Chair and Deputy Chair are not in attendance at a meeting, another Member will be elected from the other Members present to chair that meeting.”
7C - Licensing & Regulatory Board (page B51)	Amend paragraph 6 “Quorum” by deleting the words: “, including the Chair and/or the Deputy Chair”
7C - Licensing & Regulatory Board (page B51)	Delete the current wording in paragraph 8: “Interested ... <i>through to</i> ... Board” and insert: “A maximum of 3 interested parties (for example, neighbours, local residents, interested organisations etc) will be allowed to speak in support of, or against, a particular application subject to a time limit of 3 minutes each and provided they have given notice of their intention to speak to Democratic Services by 12 noon on the day before the Board meeting. The Chair has discretion to allow more public speakers, or to extend the time limit, if he/she considers that this would be of benefit to the hearing.”
1 - Member Meetings General (page B8)	Amend paragraph 20.1 so that the second sentence is revised to read: “Unless otherwise stated or provided for in the Articles for particular meetings, they may, however, take part in the discussion ... <i>through to</i> ... minutes.”
7C - Licensing & Regulatory Board (page B51)	Add a new paragraph: “Speaking by Members of the Council and local Members of Parliament” ... “A maximum of 3 Members of the Council, who are not Members of the Board, and 1 local MP, may speak in support of, or against, any particular application subject to a time limit of 3 minutes each. The Chair has discretion to extend the number of Member or MP speakers, or to extend the time limit, if he/she considers that this would be of benefit to the hearing.”

Article (page)

Proposed Change

7C - Licensing & Regulatory Board
(page B51)

Add a new paragraph

“Members’ Interests”... ”Notwithstanding the general provisions in Article 1, Section 12, a Member of the Board is regarded as having a prejudicial interest in a licensing application if they live near the premises in question, if the premises are located in the ward they represent, if they are a frequent visitor to the premises, or if they belong to a lobby group which may be impacted by the outcome of the application.”

7C - Licensing & Regulatory Board
(page B51)

Add a new paragraph:

“Speaking by the applicant or their representative”...
“The applicant or their representative is entitled to present their case to the Board, provided they have given notice of their intention to speak to Democratic Services by 12 noon on the day before the meeting, and has a right of reply to any verbal objections made at the meeting, subject to a time limit of 5 minutes.”

Note – all new paragraphs for Article 7C to be inserted in the most relevant place and existing paragraph numbers altered accordingly where necessary.