

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA**ADMINISTRATION COMMITTEE – 21 JUNE 2006****REFERENCE FROM THE REGULATION AND ENFORCEMENT REVIEW
COMMITTEE (7 MARCH 2006)**

This report recommends changes to the Constitution in respect of the terms of reference of the Regulation and Enforcement Review Committee, its sub-committee and the delegated powers of the Director of Waste Management and Leisure.

FOR DECISION

1 BACKGROUND

- 1.1 The Regulation and Enforcement Review Committee has been considering the text of a draft revised set of standard conditions for market trading in the Royal Borough. During this exercise it was alerted to unexpected features of the Council's Constitution that appeared to give the decision-making power on the standard conditions to the Director of Waste Management and Leisure, and not to the Committee.

2 THE DECISION-MAKER

- 2.1 The Council's Constitution delegates to the Director of Waste Management and Leisure the following important powers in relation to street trading:

- "(a) To attach and vary conditions (including non-standard conditions).*
- (b) To consent to the succession of a licence.
- (c) To consent to the transfer of established traders to other sites.*
- (d) To designate streets as prohibited or licence streets.
- (e) To grant, renew, revoke and vary street licences, in cases where the determination of the licence could not reasonably wait until the subsequent meeting of the Regulation and Enforcement Review Committee.*

- (f) To make regulations prescribing standard conditions to be attached to licences.”
- 2.2 The Constitution specifies the power of the Regulation and Enforcement Review Committee:
- ...
“4. To refuse to grant (or renew), vary or revoke a street trading licence.”
- 2.3 However, the Constitution is silent on the Committee’s powers in relation to conditions.
- 2.4 The Constitution provides terms of reference for the Street Trading Licences Sub-Committee as follows:
- “...To revoke a street trading licence where the determination of the licence could not wait until the subsequent meeting of the Regulation and Enforcement Review Committee.”
- 2.5 This power duplicates part of the delegated power given to the Director of Waste Management and Leisure.
- 2.6 This structure of powers and delegated authorities is not entirely coherent, and given the importance of getting the procedures right before the standard conditions for market trading are changed, it seems appropriate to make significant changes in these texts. The Constitution provides that “Cabinet members or committees may reserve to themselves decisions that have been delegated to officers by giving notice to the Director of Law and Administration and to the relevant director.” However, the Committee agreed that it would make more sense to change the wording of the Constitution itself, rather than rely on the Committee’s power to make exceptional arrangements.
- 2.7 The Committee wishes to reserve to itself all decisions that could materially affect the livelihood of a trader, except where the trader and officers have reached agreement about a proposed variation in a licence or conditions. (The London Local Authorities Act 1990 provides for licence holders to apply for a variation in the conditions governing their licence, and in such cases it might well be sensible for the Director to have the delegated power to agree such variations provided no other interests were adversely affected.) The following revised wordings may better capture that position.
- 2.8 Proposed revised delegation of authority to the Director of Waste Management and Leisure:

Delete the following:

“(a) To attach and vary conditions (including non-standard conditions).*

...

(d) To designate streets as prohibited or licence streets.

(e) To grant, renew, revoke and vary street licences, in cases where the determination of the licence could not reasonably wait until the subsequent meeting of the Regulation and Enforcement Review Committee.*

(f) To make regulations prescribing standard conditions to be attached to licences.”

Insert the following:

“(a) To grant and renew street trading licences.”

(b) To consent to the succession of a licence.

(c) To consent to the transfer of established traders to other sites.*

(d) To attach or vary conditions attached to street trading licences where the licence-holder has applied for such an attachment or variation.”

(All subsequent delegations to be re-numbered.)

2.9 Proposed revised powers of the Regulation and Enforcement Review Committee:

Delete the following, to eliminate a possible ambiguity (“refuse to ...revoke”):

“4. To refuse to grant (or renew), vary or revoke a street trading licence.”

Insert the following:

“4. To designate streets as prohibited or licence streets.

5. To revoke, to refuse to grant, and to refuse to renew a street trading licence.”

6. To make regulations prescribing standard conditions to be attached to licences.”

7. To make or to vary conditions (whether standard or non-standard conditions) to be attached to street trading licences.”

(All subsequent delegations to be re-numbered.)

2.10 Proposed revised terms of reference for the Street Trading Licences Sub-Committee:

Delete the following:

“...To revoke a street trading licence where the determination of the licence could not wait until the subsequent meeting of the Regulation and Enforcement Review Committee.”

Insert the following:

“...To revoke a street trading licence, and to make or vary the conditions attached to a licence, where the determination of the matter could not wait until the subsequent meeting of the Regulation and Enforcement Review Committee.”

3 RECOMMENDATIONS

- 3.1 The Administration Committee is **RECOMMENDED** to recommend to the Council that it makes the amendments to the Council’s Constitution set out in paragraphs 2.8 to 2.10 of this report.

FOR DECISION

GIFTY EDILA

Director of Law and Administration

Public background papers used in preparation of this report:

There were none.

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