

### STREET TRADING AND MARKETS CONSTITUTIONAL CHANGES

#### BACKGROUND INFORMATION

1. On 21 September 2010 the Cabinet agreed the Markets and Street Trading Strategy that sets out the vision for the future of Southwark's Markets. The aim of the Strategy is to chart the way forward to revitalizing markets and street trading so that they play a full part in the regeneration of Southwark, maximise their economic and employment benefits, promote and sustain independent and small businesses, provide access to high quality affordable food and other commodities and contribute to a vibrant public realm.
2. On 25 January 2011 Cabinet agreed that a report be submitted to Council Assembly on the changing the legislative framework from London Local Authorities Act 1990 as amended to Part III of the Food Act 1984, with the assurance that all their current terms and conditions contained within the LLA 1990, are protected and enshrined in a new Byelaw and Terms and Conditions schedule.
3. The Market strategy sets out the clear and significant issues arising from the current regulatory/legislative framework that are having a deleterious effect on the markets and the strategy suggested changing the legal basis on which the Council operates markets and street trading.
4. It is considered necessary to put this legislative change in place to ensure that Southwark Markets are able to compete with private markets and protect the existing markets from further private encroachment. This is the case whatever longer term option is chosen for the future operation of the Markets service.
5. Like the majority of London Boroughs the market and street trading operation of Southwark Council is governed by the provisions of the London Local Authorities Act 1990 (as amended). The focus of the London legislation is street trading, which does not fall within the definition of a market that gives rise to market rights.
6. London Boroughs can operate markets on the same basis as local authorities throughout England and Wales. In addition to the various powers available under charter, letters patent, prescription, custom and practice and local legislation it is possible to utilise the provisions of Part III of the Food Act 1984.
7. On 21 September 2010 Cabinet agreed that officers seek the views of Southwark Association of Street Traders (SAST) on moving to the Food Act 1984. SAST have been intensively consulted on this issue and they fully recognise that the markets must change and are willing to accept the move to Food Act provisions, with the proviso that they have similar protections as under the previous legislation.

8. Further discussions took place during January and February with agreement reached on a new set of terms and conditions that would operate under the new legislative framework.

### **Consultation**

9. Consultation was undertaken with Traders, Private Operators, and other key stakeholders on legislative change. Some conclusions drawn were:
  - SAST are willing to accept a change in the Legislative framework, as long as they were involved in future decision taking.
  - Private Operators would not be interested in a Licence to operate unless there was a slackening of Local Authority control, and changes to current legislation, moving to the Food Act 1984
  - Borough Market were interested in commencing discussions in relation to the possibility of extending their Trust arrangement to cover Southwark Markets once the change in legislation was agreed.
  - They would also be available to advise Southwark Traders, if they wished to consider setting themselves up as a Trust to manage Southwark Markets

### **Legal implications (DC/1210)**

#### **Legislation**

10. Currently Southwark manages street trading under the provisions of Part III of the London Local Authorities Act 1990 (“the 1990 Act”). By section 24 of the 1990 Act Southwark has designated certain streets as licence streets. This enables applications for street trading licences to be made. Part III of the 1990 Act also allows street to have their designations removed following the procedures in Section 24.
11. This removal will require a resolution by Council Assembly, following consultation with the licence holders or a body or bodies representing them. In addition statutory advertisements have to precede such a resolution pursuant to section 24(4).
12. It is likely that a street trading licence is a ‘possession’ within the meaning of article 1 of the first protocol to the European Convention on Human Rights. Therefore we must be mindful that any interference is proportionate.
13. By section 50(1) of the Food Act 1984, as amended, (“the 1984 Act”) a local authority, such as the Southwark, may establish a market within their area. Part III of the 1984 Act thereafter provides for certain other matters, which enable such markets to operate and be properly regulated. The local authority establishing a market can appoint an authorised market officer to run it and fix the charges.

#### **Regulation and Operation**

14. Once a market has been established under the 1984 Act the public at large will have a right to enter and use the market for the purpose of selling and buying goods. However there is no right to take exclusive occupation of any part of the market, for example by erecting a stall.

15. Under s.60 of the 1984 Act the Council can make byelaws setting out how the market is to be used and also making other provisions such as for preventing nuisances and fires.
16. The byelaw may make provision that no person shall occupy or use any stall without the permission of the Council or a Market Officer. It is a matter for the Council, what form this permission is to take. As the owner of the market the Council can let stalls or spaces for stalls, by way of a contractual licence to occupy land in the market. The Council can set the terms and conditions of any such licence agreement.