

Item No. 6.3	Classification: Open	Date: 12 October 2011	Meeting Name: Council Assembly
Report title:		Adoption of byelaws under Part III of the Food Act 1984	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That council assembly agrees to the adoption of byelaws governing the operation of Southwark's markets under Part III of the Food Act 1984.

BACKGROUND INFORMATION

2. On 25 January 2011 the cabinet agreed that a report be submitted to council assembly changing the legislative framework from the London Local Authorities Act 1990 as amended to Part III of the Food Act 1984, with the assurance that all the current terms and conditions contained within the LLA 1990, be protected and enshrined in a new byelaw and terms and conditions schedule.
3. On 24 May 2011 council assembly agreed to the changing of the legislative framework governing Southwark's street trading activities with 5 or more pitches from the London Local Authorities Act 1990 as amended to Part III of the Food Act 1984. Council assembly also agreed that this change was to come into effect following implementation of necessary byelaws.
4. That delegated decisions in respect to market and street trading matters are amended to reflect the change to the legislative framework, but remain with the licensing committee.

KEY ISSUES FOR CONSIDERATION

5. Under s.60 of the 1984 Act the council can make byelaws setting out how markets can be used and also make other provisions such as preventing nuisances and fires.
6. The byelaws can make provision that no person can 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 takes. 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.
7. A byelaw is a local law which is made by a statutory body, such as the council, under an enabling power established by Food Act 1984. If there is general legislation to cover the subject causing concern, byelaws are not generally considered suitable. Since byelaws create criminal offences, they cannot come into effect unless they have been confirmed by a Secretary of State.
8. The byelaws under the 1984 Act attached at Appendix 1 have been approved by the Department for Communities and Local Government ("DCLG").

Policy implications

9. The markets and street trading strategy adopted in September 2010 supports the objectives and priorities of the sustainable community strategy (Southwark 2016) and the Council Plan. The strategy also makes links between markets and street trading and the Southwark Plan, the developing local development framework and the council's regeneration plan and policies, including the LDF and Southwark Employment and Enterprise Strategies.
10. The council is keen to work with the community to develop markets and street trading in Southwark to ensure that they fulfill their potential to:
 - Increase their pull to visitors and destination shoppers.
 - Become successful economic, social and cultural institutions.
 - Encourage more entrepreneurship, independence and innovation.
 - Support an extraordinary range and variety of businesses.
 - Promote distinctiveness and vibrancy in a well managed and maintained public realm.
 - Provide access to affordable, healthy and high quality food and other commodities including to those on low incomes.

Community impact statement

11. The markets and street trading strategy aims to ensure that markets are inclusive of all residents of the borough and meet all the criteria in the council's equalities policy. An equalities impact assessment was carried out in 2006 that identified gaps in equality of opportunity between black and minority ethnic communities and those with disabilities. There have been improvements introduced to promote markets as a fertile environment for black and minority ethnic entrepreneurs. A further review of the equalities impact assessment will be completed in 2011 to examine further progress in these areas. The strategy also seeks to change current street trading operational policies and practices that hinder the ability of some new traders to establish themselves on Southwark markets, to ensure that markets and street trading have a positive impact on the community.

Resource implications

12. There are no additional resource requirements other than additional legal advice if these byelaws are approved for implementation.
13. The fees and charges process would remain the same as at present with fee levels approved annually by the cabinet member through an individual decision maker (IDM).
14. Comments by the Finance Director and Strategic Director of Communities, Law & Governance are set out below.

Consultation

15. 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.
- As per consultation requirements set down the fire brigade have been consulted and have no objections to the change and adoption of these byelaws.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance (DC/1210)

Legislation

16. 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.
17. 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.

Regulation and operation

18. 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.
19. 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.
20. A byelaw is a local law which is made by a statutory body, such as the council, under an enabling power established by an Act of Parliament, in this case the 1984 Act. If there is general legislation to cover the subject causing concern, byelaws are not generally considered suitable. Since byelaws create criminal offences, they cannot come into effect unless they have been confirmed by a Secretary of State. Byelaws under the 1984 Act must be confirmed by the Department for Communities and Local Government (“DCLG”).
21. The procedure which the council must follow to make a byelaw is contained in s.236 of the Local Government Act 1972 (“the 1972 Act”). The Local Government and Public Involvement in Health Act 2007 amended the provisions in the 1972 Act relating to byelaws, including empowering the Secretary of State to make regulations specifying which types of byelaw might be made by an alternative procedure, however to date no such regulations have been made.

22. Under s.236 of the 1972 Act, once the council has resolved to adopt a byelaw it should then be made under the common seal of the council. The council must then apply to DCLG for the byelaw to be confirmed.
23. At least one month before an application for confirmation is made, notice of the intention to apply for confirmation must be given in one or more local newspapers circulating in the area to which the byelaw is to apply. For at least one month before the application is made, a copy of the byelaw must be deposited at the offices of the council, and must at all reasonable hours be open to public inspection without payment. The council must, on application, furnish to any person a copy of the byelaws, or of any part of them, on payment of such sum as the council may determine.
24. A failure to follow the correct procedure may invalidate the byelaw or lead to a refusal to confirm by DCLG. DCLG may confirm, or refuse to confirm, the byelaw, and may fix the date on which the byelaw is to come into operation. If no date is fixed the byelaw comes into operation at the expiration of one month from the date of its confirmation.
25. A copy of the byelaw, once confirmed, must be printed and deposited at the offices of the council, and must at all reasonable hours be open to public inspection without payment; and a copy must, on application, be furnished to any person on payment of such sum as the council may determine.
26. When exercising its functions positive equalities obligations are placed on the council, sometimes described as equalities duties with regard to race, disability and gender. Race equality duties were introduced by the Race Relations Amendment Act 2000 which amended the Race Relations Act 1976. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995. Gender equalities duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975.
27. Equality impact assessments are an essential tool to assist councils to comply with our equalities duties and to make decisions fairly. The Equality Act 2010 does not come into effect in relation to public sector equalities duties until the 6 April 2011. However in line with good practice equalities and human rights impact assessments that are carried out should be mindful of the protected characteristics.

Finance Director (NR/ENV/101210)

28. Any proposal to take the service under a licence or trust arrangement would require a clause that would make a yearly financial contribution to clear the outstanding deficit.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Markets & Street Trading Strategy 2010-13	160 Tooley Street, London SE1 2TZ	John McHenry 020 7525 2105
Cabinet Report 21 Sept 2010	160 Tooley Street, London SE1 2TZ	John McHenry 020 7525 2105
Southwark Markets and Street Trading in-house management arrangements and Legislative Operating framework – Cabinet 25/1/11	160 Tooley Street, London SE1 2TZ	John McHenry 020 7525 2105

APPENDICES

No.	Title
1	Draft Byelaws for markets

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment and Leisure	
Report Author	Des Waters, Head of Public Realm	
Version	Final	
Dated	27 September 2011	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Date final report sent to Constitutional Team		27 September 2011