

Item No. 8.	Classification: Open	Date: 3 November 2014	Meeting Name: Licensing Committee
Report title:		The Licensing Act 2003: review of statement of licensing policy 2015-2020	
Ward(s) or groups affected:		All wards	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

1. That the Committee:
 - a) Notes the draft revision of the Southwark statement of licensing policy 2015-2020 provided at Appendix A to this report.
 - b) Agrees the arrangements for public consultation on the draft revision of the policy document, as set out within this report (sections 38 to 46), including the basis for the public consultation questionnaire.
 - c) Considers whether to incorporate any additional areas within the public consultation, including that of recommended closing times for licensed premises based on premises type and area classification (considered within section 26 – 29 of this report).

BACKGROUND INFORMATION

2. The Licensing Act came into effect on 25 November 2005. The Act introduced a new regime for the licensing of alcohol, regulated entertainment and late night refreshment, to be administered by the local licensing authority (within Southwark, this council).
3. Section 5 of the Act requires each licensing authority to prepare and publish a statement of licensing policy every five years. The policy statement is expected to set out, for the benefit of applicants, responsible authorities and members of the local community, how the authority intends to approach its licensing responsibilities under the Act. Each authority is also required to keep the statement of policy under review throughout its term and make appropriate revisions as necessary.
4. The initial Southwark statement of licensing policy was considered and approved by the full council assembly on 6 December 2004. It was compiled with regard to the provisions of the Act itself, secondary regulations and Guidance then issued by the Department of Culture Media and Sport (DCMS). It has been kept under constant review since. The current version of the policy for 2011-2014 represents the third revision. The policy is now due for revision once more.
5. There have been a number of changes to the Licensing Act 2003 and also to the guidance issued for licensing authorities (current version from the Home Office in

June 2014) since the policy was last reviewed. In recognition of this, work has been undertaken to update the Southwark policy and make it consistent with the primary and secondary legislation and latest guidance. This latest draft revision is attached at Appendix A.

6. Every revision of the policy is required by law to be subject of full public consultation. Details of the proposals for public consultation on this revision are set out in sections 37 - 45 of this report.
7. The committee is asked to note the content of the draft policy revision and to agree the arrangements for public consultation on the draft policy accordingly. The committee is also asked whether it wishes for any additional matters to be incorporated into the public consultation, including whether to incorporate proposals for recommended closing times for licensed premises based on premises type and area classification.

KEY ISSUES FOR CONSIDERATION

The purpose of the policy

8. The purpose of the statement of policy is set out in section three of the document, as follows:
 - To reinforce to elected members on the licensing committee, the powers and constraints placed upon the local authority as licensing authority by the 2003 Act.
 - To set out, for the benefit of prospective applicants; responsible authorities; local residents; and licensed operators; the parameters under which this authority will make its licensing decisions.
 - To inform prospective licensees how a licensed premises is likely to be able to operate within its area.
 - To inform local residents and licensed operators how their needs will be addressed.
 - To minimise the number of licensing decisions that may be challenged in a court of law.

The licensing objectives

9. Central to the statement of policy is the promotion of the four licensing objectives established under the Act. These are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm.

Summary of the main amendments

10. Given the frequency of the revision of the policy since its initial formulation, there are no major policy changes. However, the draft statement of policy is revised

throughout to ensure consistency with the latest changes in legislation, guidance and case law and to reflect current best practice. A summary of some of the main changes follows.

Section 2 – All about Southwark

11. Section 2 provides background and context to the policy, including information on Southwark, the borough; this authority; the licensed trades; and alcohol harm impacts.

Section 3 – Purpose and scope of the policy

12. Section 3 deals with some of the general principles on which the policy is founded.

Section 4 – Administration, exercise and delegation of function

13. Section 4 deals with the administrative arrangements for processing and determining licence applications. This revision incorporates new references to:
 - The new facility provided in law for 'late' temporary events notices' to be submitted with only 5 working days notice of the event given.
 - The inclusion of the environmental protection team (incorporating noise nuisance) as responsible authority for the prevention of nuisance objective, able to intervene within the temporary events notice process.
 - The addition of the licensing authority and public health as responsible authorities under the Act.
 - The new legislative requirement for the automatic suspension of licences where the annual maintenance fee is not paid by the due payment date.

Section 5 – Determining applications for premises licences and club premises certificates

14. Section 5 sets out how the policy works. It confirms that, in accordance with the rules of natural justice, each application will be considered upon its own merits and with all relevant matters taken into account. It also confirms that where an application is submitted and is not subject to relevant representations the application will be granted in the terms requested, subject to the mandatory licence conditions and conditions consistent with the operating schedule.
15. It goes on to explain, however, that responsible authorities will carefully review each application made. They will expect an application to demonstrate that the applicant has compiled the operating schedule on the basis of a risk-assessment of the proposed business operation having regard to each of the four licensing objectives. They will expect the operating schedule to include positive proposals to manage any potential risks identified.
16. The policy later sets out, in each of the four sections dedicated to the licensing objectives, the expectations of the responsible authorities. Section 5 explains that an application which demonstrates that the risks have been properly considered and appropriate measures applied are less likely to be subject to representation.

17. This section also sets out the basis for fair, proportionate and consistent condition setting.

Section 6 – Other related legislation and strategies

18. Section 6 references other associated and complementary legislation and strategy. New references include:
- Anti-Social Behavior Crime and Policing Act 2014, which overhauls the system for dealing with anti-social behaviour, focussing on a citizen led approach and establishing a range of powers intended to support local authority and partner bodies deal with anti-social behaviour, including powers of premises closure in cases of nuisance or disorder.
 - The Southwark cultural strategy 2013-18, which considers the role the council has to play in the cultural life of the borough.
 - The revised Southwark enforcement policy (currently under preparation)

Section 7 – The first licensing objective: The prevention of crime and disorder

19. Section 7 sets out to provide best practice guidance to prospective licence applicants in pursuit of the prevention of crime and disorder objective, compiled in conjunction with the police and trading standards. Within this section the broad guide to potential crime and disorder controls provided in earlier versions of the policy has been overhauled and broken down into recommendations for all premises; for premises licensed for the sale and supply of alcohol for consumption on the premises; and for premises licensed for the sale and supply of alcohol and the provision of regulated entertainment operating in the night-time economy. New references include:
- The new mandatory licence condition which prohibits the sale of alcohol below the cost of VAT plus duty (all premises).
 - Promotion of a voluntary removal of low cost high strength alcohol from offer (general).
 - Installation of ID scanning and recording equipment (premises licensed for sale and supply of alcohol/regulated entertainment in the night-time economy).
 - An extended section on reducing theft of personal property.
 - This section of the policy includes this authority's current approach to cumulative impact and references the three current special policy areas in Borough and Bankside, Camberwell, and Peckham. Cumulative impact is considered elsewhere on this agenda in the light of the partnership analysis of alcohol related violence in Southwark in 2013. Any decisions taken on the back of this separate item will be reflected within the draft policy and public consultation.

Section 8 – The second licensing objective: Ensuring public safety

20. Section 8 sets out to provide best practice guidance to prospective licence applicants in pursuit of the public safety objective. Within this section the broad guide to public safety considerations given in earlier versions of the policy has been overhauled, in conjunction with the occupational health and safety team and the fire brigade. New references include:
- Highlighting the need to consider the potential for localised overcrowding when determining premises safe capacity.
 - An expanded section on a taking a proactive approach to customer safety.

Section 9 – The third licensing objective: The prevention of public nuisance

21. Section 9 sets out to provide best practice guidance to prospective licence applicants in pursuit of the prevention of public nuisance objective. Within this section the broad guide to sound containment and reduction measures given in earlier versions of the policy has been overhauled in conjunction with the environmental protection team and broken down into preventing nuisance outside of premises; within premises; and at outdoor events. New references include:
- An expanded section on preventing nuisance outside of premises, in recognition of the increased potential for nuisance and disturbance to be caused by patrons congregating outside of licensed premises since the introduction of the indoor smoking ban introduced under the Health Act 2006.

Section 10 – The fourth licensing objective: The protection of children from harm

22. Section 10 sets out to provide best practice guidance to prospective licence applicants in pursuit of the protection of children from harm objective. It has been prepared in conjunction with trading standards and the Southwark Safeguarding Children Board. While there is no new policy established by this revision the section is revised so as to be consistent with the presentation of the rest of the policy. The final version of this policy will also reference separate work taking place in conjunction with the council's Child Sexual Exploitation Group.

Section 11 – Enforcement

23. Section 11 sets out the approach to enforcement taken by the council and partner bodies. It explains how our services operate on the basis of risk-rated, intelligence led enforcement providing responsible business operators with light touch enforcement enabling resources to be directed toward high risk and problem premises.
24. In doing so this section demonstrates compliance with the new regulators compliance code established by the better regulation delivery office in April 2014.

Recommended closing times

25. In preparing the policy update, it is noted that the Home Office guidance now

includes that “with regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The Act gives the licensing authority power to make decisions regarding licensing hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application. Statements of licensing policy should set out the licensing authority’s approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of licensing objectives in its area...”

26. Currently, the Southwark statement of licensing policy is quiet on this matter other than stating that, while applications will be considered upon their own merits, where the authority’s discretion is engaged there will be no presumption in favour of later licensing hours.
27. The recently revised Lambeth licensing policy has come to our attention and it is noted that the policy provides suggested closing or ‘terminal hours’ for licensed premises based on the type of premises and the local area classification. A summary is provided in table 1 below.
28. The committee is asked whether it wishes to consult upon the inclusion of similar guidance within the Southwark policy revision. If so, for the purposes of consultation, members may wish to consider using the Lambeth position as its starting point.

Table 1 – Summary of London Borough of Lambeth Guidance on Closing Times of Licensed Premises or Terminal Licensing Hours

Type of Premises	Major town centres and strategic cultural area	District town centres	Local centres shopping parades	Residential
Restaurants and cafes	Friday to Saturday (01.00) Sunday to Thursday (00.00)	Friday to Saturday (01.00) Sunday to Thursday (00.00)	Friday to Saturday (00.00) Sunday to Thursday (23.00)	23.00 daily
Public houses, wine bars or other drinking establishments	Friday to Saturday (02.00) Monday to Thursday (01.00) Sunday (00.00)	Friday to Saturday (01.00) Sunday to Thursday (00.00)	Friday to Saturday (00.00) Sunday to Thursday (23.00)	23.00 daily
Hotel bars	No restrictions for residents	No restrictions for residents	No restrictions for residents	No restrictions for residents

Type of Premises	Major town centres and strategic cultural area	District town centres	Local centres shopping parades	Residential
Night clubs/High volume vertical drinking	Friday to Saturday (02.00) Monday to Thursday (01.00) Sunday (00.00)	Friday to Saturday (01.00) Sunday to Thursday (00.00)	Not considered appropriate	Not considered appropriate
Off-licences in areas with an identified problem with street drinkers it may be appropriate to set a locally suitable time for a licence	00.00 daily	00.00 daily	23.00 daily	23.00 daily
Take-aways	Friday to Saturday (02.00) Monday to Thursday (01.00) Sunday (00.00)	Friday to Saturday (01.00) Sunday to Thursday (00.00)	Friday to Saturday (00.00) Sunday to Thursday (23.00)	Not considered appropriate (licence only required between 23.00 – 05.00)
Other entertainment venues	02.00 daily	01.00 daily	00.00 daily	23.00 daily
Qualifying clubs	02.00 daily	01.00 daily	00.00 daily	23.00 daily

Southwark women's safety charter

29. It should also be noted that the draft policy revision currently includes reference to this authority's proposed Southwark women's safety charter, which is being developed alongside this policy revision and has been subject of separate public consultation. It is anticipated that future versions of the licensing policy will urge licensees, especially those that operate within the night-time economy, to sign up to the charter and support this council's drive to become the safest borough for women.

Community impact statement

30. The Southwark statement of licensing policy recognises that responsible business operators who run safe, well managed venues and facilities and are

prepared to work together with their local community will provide benefit to that community. The policy equally recognises that irresponsible business operators who fail to provide good management practices are likely to have negative impacts on the community.

31. As such, the statement of policy sets out to achieve a necessary balance between providing a platform upon which responsible business operators may contribute toward a thriving business and late night economy while ensuring that the quality of life of those who live and work in the borough is protected and enhanced through the licensing system.
32. Central to this, is a licensing process which aims to be inclusive and ensures that local community concerns are understood, debated and resolved. This is supported by offering broad support to licensees, through the range of involved authorities, to establish best practice management, and by a strong directed enforcement resource.
33. Furthermore, the council, as licensing authority, monitors the impacts of its licensing decisions through regular partnership analysis of statistical information on alcohol related crime and disorder; calls to the police regarding disorder and rowdiness; ambulance 'pick-up' statistics; and noise nuisance calls to the council.
34. Earlier versions of this policy have been subject to a full equalities impact assessment and it is intended that this will be revisited during the process of the revision of this policy. A new assessment will be made in advance of the confirmation of this policy.

Resource implications

35. The revision and update of the Southwark statement of licensing policy does not have any resource issues in itself. Where new initiatives referenced within the policy statement have resource implications these will have been dealt with at time of conception.
36. This is an update to the existing statement of licensing policy. This policy is mainly advisory / informative, providing guidance to the licensing committee, licence applicants, residents and businesses. Costs associated with implementing the existing policy are currently met from the licensing revenue budget.

Consultation

Process

37. The fourth revision of the Southwark statement of licensing policy is intended to be undertaken with public consultation in accordance with section 5(3) of the Licensing Act 2003. As such, it is proposed that consultation will take place as follows.
38. The policy will be introduced by circular letter sent to
 - The chief officer of the police
 - The fire authority

- Representatives of holders of premises licences, club premises certificate holders and personal licence holders
- Representatives of businesses and residents
- All responsible authorities specified under the Act.

39. The consultation will also be introduced on the council web site with the draft policy made available together with an online questionnaire for easy response.

40. A local meeting will be held in each community council area, intended to stimulate debate on the policy content.

41. The policy consultation and area meetings will be advertised in the local press.

Questionnaire

42. It is suggested that the following questions be posed under the public consultation exercise. The committee is asked to consider whether it wishes for any amendment of the proposals or addition made:

- Whether the policy is clear and easily understood?
- Whether the policy is balanced, fair and reasonable?
- Whether the authorities approach to the licensing objective of the prevention of crime and disorder is supported?
- Whether the authorities approach to the licensing objective of public safety is supported?
- Whether the authorities approach to the licensing objective of the prevention of nuisance is supported?
- Whether the authorities approach to the licensing objective of the protection of children from harm is supported?
- Whether the authorities approach to cumulative impact is supported?
- Whether the authorities approach to enforcement is considered to be proportionate, balanced, consistent and fair?

43. In each case, respondents will be offered the opportunity to expand on their answer and provision for general comments will be made.

44. In the event that members should wish to include a section in the policy consultation on recommended hours of licensed operation then specific questions will be raised on appropriate hours for business types and areas.

Consultation timetable

45. The following timetable for the public consultation on the draft policy revision and for final approval of the 2015-2020 policy document is proposed:

- Licensing committee 3 November 2014 – Consideration of the 2013 partnership analysis, cumulative impact policies, draft policy revisionband

consultation timetable.

- November 2014 – Final preparations for the public consultation.
- Public consultation to run from 1 December 2014 to 28 February 2015.
- March 2015: Consideration of consultation responses and further revision of the policy.
- Date to be confirmed (first available meeting after April 2015): Report back to licensing committee asking the committee to consider the further draft policy revision and make recommendation for adoption of a final policy by council assembly.
- Date to be confirmed: (first available meeting after licensing committee consideration): Council considers final policy revision for adoption

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

46. The Licensing Act 2003 (“the 2003 Act”) requires the council, as the licensing authority, to prepare and publish a statement of its licensing policy every three years.
47. In determining its policy, the council is exercising a licensing function and as such must have regard to the guidance issued by the Secretary of State under section 182 of the 2003 Act. It must also give appropriate weight to the views of those persons/bodies listed in section 5(3) of the Act which it is required to consult before determining its policy.
48. Although the guidance represents best practice, it is not binding on the council. As long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. In this event they will need to give full reasons for their decisions, which must be consistent with the objectives of the 2003 Act.
49. The council is required to have regard to the statement of licensing policy and make decisions in accordance with it. Licensing authorities may depart from their policy if the individual circumstances of any case merit such a decision in the interests of promoting the licensing objectives. In this event it is important that full reasons are given for departing from the published statement of licensing policy.
50. Members should note that the 2003 Act imposes a duty on the council, as the licensing authority, to carry out its functions under the Act with a view to promoting the four licensing objectives, namely:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of public nuisance
 - The protection of children from harm.

51. Each of these objectives is of paramount and equal importance. There are no other licensing objectives and therefore the Council cannot reject an application for a licence or impose conditions on a licence for any purpose unrelated to the promotion of these objectives. For example, whether or not there is a 'need' for another licensed premises in a given area is a matter for planning committees but is not a matter for a licensing authority in its statement of licensing policy or in discharging its licensing functions.
52. However, the cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for the Council to consider when adopting its statement of licensing policy. The Guidance explains 'cumulative impact' as the potential impact on the promotion of the licensing objectives – for example crime and disorder and/or public nuisance - of a significant number of licensed premises concentrated in one area.
53. The statement of licensing policy cannot seek to impose 'blanket' conditions. Each application must be considered on its own merits. Conditions can only be imposed on a licence if they are necessary to promote the licensing objectives in relation to the specific premises and are a proportionate response to the specific situation to be addressed. The Guidance provides that if the situation the condition is intended to address is already addressed by a provision in the 2003 Act or any other legislation then the condition cannot be said to be 'necessary'.
54. Licensing is about regulating the carrying on of licensable activities within the terms of the 2003 Act. The statement of licensing policy should make it clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business carrying on licensable activities. However, the Guidance also states that licensing law is a key aspect of such control and should always be part of a holistic approach to the management of the evening and night-time economy. It is therefore desirable that the statement of licensing policy is in line with the Council's wider objectives and consistent with other policies.
55. Members should note that the statement of licensing policy must not be inconsistent with the provisions of the 2003 Act and must not override the right/s of any individual as provided for in that Act. Nor must the statement of licensing policy be inconsistent with obligations placed on the Council under any other legislation, including human rights legislation. Members should also note that the Council has a duty under Section 17 of the Crime and Disorder Act 1998, when carrying out its functions as a licensing authority under the 2003 Act, to do all it reasonably can to prevent crime and disorder within the Borough.
56. Positive equalities obligations are placed on local authorities, 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. Gender equalities duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995.
57. Equality impact assessments are an essential tool to assist councils to comply with our equalities duties and to make decisions fairly and equalities and human rights impact assessments that are carried out should be mindful of the protected

characteristics under the Equality Act 2010.

58. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, decisions relating to licensing matters cannot be the responsibility of an authority's executive. The 2003 Act provides that whilst the majority of the functions of the licensing authority, are to be taken or carried out by its licensing committee, decisions relating to the statement of licensing policy cannot be delegated in such a way. The decision on whether to adopt the statement of licensing policy must therefore be taken by council assembly.

Strategic Director of Finance and Corporate Services

59. The strategic director of finance and corporate services notes the resource implications contained within the report and that there are no financial implications as a result of accepting the proposals. Officer time to effect recommendations will also be contained within existing budgeted revenue resources.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Licensing Act 2003 plus secondary regulations	The Licensing Service, C/O 160 Tooley Street, London, SE1	Name: Mrs Kirtikula Read Phone number: 020 7525 5748
The Home Office Guidance to the Act published June 2014		
Local Government (Miscellaneous Provisions) Act 1982		

APPENDICES

No.	Title
Appendix A	Draft Southwark Statement of Licensing Policy 2015-2020

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Richard Parkins, Licensing & Environmental Protection Unit Manager	
Version	Final	
Dated	21 October 2014	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Legal Services	Yes	Yes
Director of Finance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		22 October 2014