

Item No. 9.1.	Classification: Open	Date: December 8 2004	Meeting Name: Council Assembly
Report title:		Licensing Act 2003 - The Licensing Statement of Policy	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

- 1 That the Council Assembly formally approves the Licensing Statement of Policy provided at Appendix C to this report to be published as of 1 January 2005.
- 2 Note: In considering this matter the Assembly may wish to consider matters addressed by the Council's Licensing Service at its meeting of 11 November 2004. These are dealt with from paragraph 24 onward within this report.

BACKGROUND INFORMATION

- 3 The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act introduces a completely new licensing regime covering the following
 - (a) The retail sale of alcohol;
 - (b) The provision of regulated entertainment;
 - (c) The supply of alcohol by or on behalf of a club, or to the order of a member of the club; and
 - (d) The provision of late night refreshments.
- 4 The Act establishes the Council as the relevant Licensing Authority for the Southwark area. In doing so it transfers responsibility for alcohol licensing from the Licensing Justices at the local Magistrates Courts to the Licensing Authority. It also brings an end to current restrictions on licensed hours.
- 5 Section 5 of the Act requires each licensing authority to prepare and publish a statement of its licensing policy prior to determining any applications for licences under the new licensing regime. The Statement of Licensing Policy is intended to provide the basis for all future licensing decisions by the licensing authority. The Statement of Policy is directed to be compiled with reference to the Licensing Act 2003 and the statutory Guidance issued by the Department of Culture Media and Sport under Section 182 of the Act. Further Guidance on formulating the Policy was issued by the Local Authority Co-Ordinating Body for Regulatory Services (LACORS). Each Policy is required to be formulated having regard to consultation and to be reviewed every three years.
- 6 After delays, the Department of Culture Media and Sport (DCMS) issued the said Guidance to the Act on 7 July 2004. Following the release of the Guidance licensing authorities were free to begin compiling the draft statement. The DCMS also announced that the "first appointed date" under the Act (upon which applications for licences could begin to be made to the licensing

authority) would be 7 February 2005. The Statement of Policy is required to be published one month prior to this - by 7 January 2005.

- 7 Consultation ran for some six weeks from 1 September 2004 through to 15 October 2004.
- 8 While it was for each licensing authority to determine the extent of consultation undertaken, consultation had to include the Police, the Fire Authority, representatives of local licensees; and representatives of local business and residents. Consultation undertaken by this Council was devised by the Licensing Service, in conjunction with the Corporate Communications Service, the Publicity Office, Community Involvement and Development Unit and the Southwark Alliance for Voluntary Organisations (SAVO). The consultation undertaken has extended beyond that specified under the Act.
- 9 The consultation exercise was launched with adverts in the South London Press and Southwark News; a flyer in the September SAVO newsletter; alerts in the Southwark internal bulletins; and information on the Southwark Licensing web site.
- 10 The launch was followed up with correspondence sent directly to all responsible authorities named under the Act; some 1200 current Justices, Public Entertainment and Night Café Licence holders; some 600 community representative bodies registered with the Council's Community Involvement and Development Unit and Housing Department and various other interested bodies.
- 11 Two days of presentations were held for the licensed trades at the Council's Learning and Development Centre at Cator Street on 6 / 7 September 2004. Arrangements were made for the consultation exercise to appear as an item on the agenda of each of the Council's eight Community Councils during the course of the consultation period. Outreach workers with SAVO were briefed on the intentions behind the consultation and used their contacts to urge known representative organisations to attend their relevant Community Councils.
- 12 The matter has also featured at opportune one-off occasions such as the Southwark Learning Fair and the Bankside Information Day. The Environment and Community Safety Sub-Committee considered the matter at its meeting of 6 October 2004.
- 13 In total around 70 responses were received as a result of the consultation exercise. The responses raised in excess of 200 comments.
- 14 A copy of the document entitled "A Brief Introduction to the Licensing Act 2003" (prepared as a supporting document for circulation during the consultation exercise) is attached as Appendix A to this report. Appendix B provides a summary of every respondent; an analysis of their comment(s); and an indication where amendments to the draft policy were made as a result of the issue raised. Appendix C provides the revised policy document.
- 15 On 11 November 2004, the draft policy and consultation analysis was reported to the Council's Licensing Committee. A number of specific issues were raised within the report upon which the Licensing Committee's specific views were sought. The views of the Licensing Committee are reported in Section 22 below.
- 16 The policy has also been scrutinised by Counsel for consistency with the Act and relevant Guidance.
- 17 The Policy was due to be reported to the Equalities and Diversity Panel (EDP) on 16 November 2004. Unfortunately this meeting has had to be re-arranged to a date in December 2004. The Licensing Service will work with the EDP on all relevant issues arising during the implementation of the Licensing Act 2003.

- 18 As stated the Policy must be published by 7 January 2005 – one month prior to the commencement of transitional arrangements. From 7 February 2005 existing licence holders have six months to 6 August 2004 to make “grandfather rights applications” by which they may transfer existing licensed consents previously granted to them across into the new licensing system. Those wishing to seek new or additional consents under the new system are anticipated to have nine months to an unannounced date in November 2005 before all licences and consents come into effect.
- 19 Council Assembly is asked to approve the document at Appendix C as the Council’s Statement of Licensing Policy for release as of 1 January 2005.
- 20 Meanwhile the process of establishing the fine detail of the new licensing process continues. Draft secondary regulations governing the forms of application, the application processes and the public hearings process were issued by the Secretary of State in September 2004. Confirmation of the final content of these documents is awaited. Furthermore, the DCMS issued a draft schedule of statutory fees and charges in November 2004 for consultation ending 23 December 2004. It is likely that full and final information will only be available days before the first applications may be made.

KEY ISSUES FOR CONSIDERATION

Responses Received to Consultation on the Draft Statement of Licensing Policy

- 21 As part of the consultation exercise a survey response form was prepared and circulated. In total 24 respondents chose to respond using the form provided. Other responses were received by a combination of letter, e-mail, and personal meeting. Of the 24 respondents who used the survey response form 11 responses were received from Southwark residents; 6 responses from current licence holders; 2 from community groups and 7 others.
- 22 Responses to specific questions asked are shown in the table provided below.

Question	Positive Responses	Negative Responses	Neither Positive nor Negative
1. Is the Policy clear and easy to understand?	92%	8%	N/a
2. Does the Policy achieve the correct balance between allowing the late night economy to thrive while offering safeguards to residents?	64%	36%	N/a
3. Do you agree or disagree that the Policy	62%	25%	13%

adequately promotes the prevention of crime and disorder?			
4. Do you agree or disagree that the Policy adequately promotes public safety?	70%	17%	13%
5. Do you agree or disagree that the Policy adequately promotes the prevention of nuisance?	65%	22%	13%
6. Do you agree or disagree that the Policy adequately promotes the protection of children from harm?	77%	9%	14%

- 23 As mentioned each of the 200 plus comments made during the consultation are recounted and responded to in Appendix B to this report.

The Views of the Council's Licensing Committee

- 24 On 11 November 2004, the Committee received a presentation on the Council's draft Statement of Licensing Policy from the Licensing Service. The Committee noted the analysis of responses received from the consultation exercise and also the proposed actions. The Committee went on to consider some of the main issues arising from the consultation exercise. These are recounted below in paragraphs 24 to 42. The decision of the Committee is given in each matter. The policy has been since revised in accordance with the Committee's directions.

Background Information on the Licensing Process

- 25 A number of respondents state that the policy would benefit from dealing in more depth with issues such as the different types of licences; the circumstances under which licences become necessary; the licensing process; and the licence review process. While this is accepted to a point, it has always been the intention to supplement the Policy with separate guidance notes on a range of issues including those raised. This approach is proposed so as to prevent the policy itself becoming unmanageable and to allow specific guidance to be provided on some of the more regularly raised aspects of licensing. It is accepted, however, that some additional information should be added to the policy to ensure that a better overview of the whole process is given, together with clear reference to the range of separate guidance that is available from the council.
- 26 *On 11 November 2004 the Council's Licensing Committee agreed that "the policy document be re-arranged so as to re-group the Sections on "Purpose and Scope of the Policy", "Administration, Exercise and Delegation of Function" and "Conditions" together early on in the document and expand these to provide a more complete overview of the whole licensing*

process. The revised sections should contain clear references to other supporting documentation that will be available from the Licensing Service”:

Condition Setting

- 27 Several respondents raise the point that under the Act and Guidance the Council as Licensing Authority may only set conditions on premises licences and club premises certificates that are consistent with those proposed under the applicant’s operating schedule unless the authority’s discretion is engaged by representations made by “responsible authorities” or “interested parties”. Even when the discretion of the licensing authority has been so engaged additional conditions may only be set that are necessary to secure the licensing objectives having considered those representations. The policy is not clear on this point and does, in its current form, give the impression that the council as licensing authority will set conditions that may not be consistent with the operating schedule and without representations having been received.
- 28 *On 11 November 2004 the Council’s Licensing Committee agreed that “the policy be amended throughout so as to properly reflect the position regarding the imposition of conditions on licences”;*

Guidance Given within the Policy on the Preparation of Operating Schedules

- 29 Particularly, within Section 5 dealing with “Crime and Disorder” and Section 7 dealing with “Nuisance” it has been attempted to help focus the minds of applicants upon the range of issues that it may be necessary to consider when preparing an “Operating Schedule”. As there are many types of premises affected by the Act and the range of issues raised are varied, the approach has been to include tables within the Policy which make suggestions as to the types of controls that it may be relevant to consider given the nature of the premises operation under consideration. This information is provided as a guide and it is not intended that every premises of a certain type must have every suggested control within that category applied to it. However, bodies such as the British Beer and Pub Association and the Association of Licensed Multiple Retailers and companies including J D Weatherspoon argue that this is tantamount to enforcing standard conditions, which the Council does not have the ability to do.
- 30 Despite the representations made, it is proposed to pursue this approach. Section 5.47 of the Guidance to the Act produced by the Department of Culture Media and Sport states that “applicants should be aware of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives...” and that “Licensing authorities and responsible authorities are therefore expected so far as possible to publish material about the promotion of the licensing objectives...”.
- 31 *On 11 November 2004 the Council’s Licensing Committee agreed that “where guidance is provided within the policy to the types of issues that might be considered during the preparation of an applicant’s operating schedule and the range of available control measures. It is made clear that this information is provided as guidance only and it will not be necessary for the range of control measures to be imposed in every circumstance”;*

The Stance Taken by the Policy

- 32 Dean Colin Slee of Southwark Cathedral, supported by London Bridge Hospital, has made direct comparison between the Southwark Draft Policy and that circulated by the City of Westminster. Points raised include that the City Council proposes “stress areas” “where there is a presumption of no new licences and no variation of existing licences” and also that the City Council sets a “presumption against the grant of any further licences” in respect of entertainment involving striptease and nudity. The representation ends “The over-riding concern is that the disparities between the two statements, the lack of detail in Southwark’s

statement and the onus on objectors to provide evidence, is completely at odds with that of Westminster. The effect of this and the reason for my writing to you is that prospective applicants, particularly those on the boundaries of licensing ... will be well advised to choose Southwark rather than Westminster.”

- 33 While the comments made are noted, it is the view of the Licensing Service that the Southwark Policy as proposed will be consistent with the Licensing Act 2003 and secondary regulations produced by the Secretary of State, together with the DCMS Guidance to the Act, and that the Policy will enable the Licensing Authority to fulfil its licensing responsibilities under the Act.
- 34 It is recognised, however, that to date the Council has always required that applications for licences involving the provision of striptease or similar entertainment be reported to the Licensing Committee for decision. While provision is not made within the Act or Guidance to the Act, members may wish to consider whether the Council as Licensing Authority should require that all applications for the provision of such entertainment be considered by the Licensing Committee so as to ensure consistency with the four licensing objectives.
- 35 *On 11 November 2004 the Council’s Licensing Committee agreed that “until such time that any “saturation policy” may be adopted by this Council then the policy continues to take the approach that each application will be considered upon its own merits with all relevant matters taken into account, but that applications which include the provision of “striptease and similar entertainment” should as a matter of course be considered by the Council’s Licensing Committee for the purpose of ensuring consistency with the licensing objectives”;*
- 36 *Note: In reaching this decision the Committee asked that all members be provided with further information on the situation relating to the licensing of entertainment involving striptease and nudity. This is provided in Appendix D to this report.*

Saturation Policies

- 37 No fully developed evidence for the consideration of localised cumulative impact under “saturation policies” has been submitted under the consultation. However, individual representations have suggested that the following areas should be considered –
- (a) The area formed by “Camberwell Green / Coldharbour Lane and Camberwell Church Street”;
 - (b) The area comprising Borough and Bankside; and
 - (c) The area comprising Gray Street and Webber Street in SE17.
- 38 The representation made in respect of Area (c) mentions nuisance generated by the current operation of one premises (which is situated across the Southwark boundary in Lambeth). This is considered to be an issue that is more appropriately dealt with under nuisance enforcement powers provided by the Environmental Protection Act 1990.
- 39 The representation made in respect of Area (b) is considered to be too broadly defined in its present state. Two representations are made in respect of Area (a), however, one deals with problems around off-licensed premises during the day which are not issues for consideration under “saturation”. It is intended that the author of representation (a) will be asked if they have any evidence to provide in support of their representation before other persons are consulted on this matter in accordance with the process set out in the DCMS Guidance. The author of representation (b) will be asked if they can precisely define the area that they wish to be considered for “saturation” and similarly asked whether they have any evidence to submit in support of the representations before other persons are consulted on this matter in accordance with the process set out in the DCMS Guidance.

- 40 *On 11 November 2004 the Council's Licensing Committee agreed that "the position relating to "saturation policies" outlined in (the policy) together with the proposed course of actions to be taken be noted. It should be understood that neither matter will be considered in time for inclusion in the initial policy set by the Council. However, the policy document may be reviewed and amended at any time".*

Circus and Street Entertainments

- 41 One of the intentions of the new law is to provide a base for enabling a broader range of leisure and cultural opportunities to the local community. The policy sets out general support for the need to encourage and promote a range of arts for the wider cultural benefit of the community and the Environment and Community Safety Scrutiny Sub-Committee has already stated that the policy should explicitly set out the Licensing Authority's support for live music. Bodies such as Independent Street Arts Network, the Arts Council of England, the Circus Arts Forum and Equity call for the Licensing Authority's support to be extended to circus and street entertainments. Such entertainment may fall within the remit of regulated entertainments under the Act but this will not always be the case. Equally the Royal Society for the Prevention of Cruelty to Animals urges Licensing Authority's to use the Act to ban circuses from using their land stating that legislation is inadequate to ensure the welfare of circus animals with no legally enforceable standards of housing care or training.
- 42 *On 11 November 2004 the Council's Licensing Committee agreed that "the Licensing Authority's general support for the arts contained within the policy be extended to circus and street arts which do not include the use of animals".*

Smoking Bans

- 43 Section 8 of the Policy on "The Prevention of Harm To Children" raises the issue of children and smoking bans. This matter has generated considerable debate. The DCMS Guidance is clear that licence conditions should not be used to impose smoking bans as this is primarily a health matter and health is not one of the licensing objectives. However, support has been received for keeping the matter within the Policy. If members support the retention of the encouragement to introduce smoking bans when children are admitted to the premises within the policy it should be made clear that this will not be imposed as a licence condition. Instead applicants will be asked to indicate whether a full or partial ban is being put in place in order for the Licensing Authority to monitor the situation and report to our colleagues in the health field.
- 44 *On 11 November 2004 the Council's Licensing Committee agreed that "the following proposals be endorsed*
- (1) Retaining the encouragement to introduce smoking ban where children admitted to the premises within the policy. The policy would need to make it clear that this could not be imposed as a licence condition; and*
 - (2) To ask applicants to indicate whether a full or partial ban is being put in place in order for the Licensing Authority to monitor the situation and report to our colleagues in the health field."*

EQUAL OPPORTUNITIES IMPLICATIONS

- 45 There are no specific equal opportunities implications contained in this report. The Licensing Statement of Policy is now due to be reported separately to the Equalities and Diversity Panel

for the purpose of an Equalities Impact Assessment in December 2004. Any issues arising from the implementation of the Act will receive appropriate attention.

RESOURCE IMPLICATIONS

46 Although there are a number of resource issues arising from the implementation of the Licensing Act 2003 these matters are not dealt with under this report.

CONCURRENT REPORT BY THE BOROUGH SOLICITOR

47 Members of the Council Assembly are asked to approve the Statement of Licensing Policy. In formulating its Licensing Policy the Council must have regard to guidance issued by the Secretary of State. Officers have taken this into account in drafting the policy, and have referred to it in the analysis of consultation responses.

48 The Secretary of State's guidance is subordinate to the Act. The Act is binding, the guidance is not, and provided the guidance is properly and carefully understood, and given due weight and consideration, licensing authorities may depart from it if they have reason to do so, provided the reasons are stated and provided they are consistent with the objectives of the Licensing Act itself. The usual requirements of reasonableness apply.

49 Once the policy is in place the Council will be required to have regard to its policy and make decisions in line with it. However, each case will still need to be heard on its own merits, and there is potential, albeit in a rare case, for the Council to depart from its own policy if the individual circumstances of the case merits such a decision in the interests of promoting one or more of the four licensing objectives.

50 In respect of the policy, the Council is under a duty to carry out its licensing functions with a view to promote the four licensing objectives. The objectives are

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

51 Members should note that each objective is of equal importance. It is important to note there are no other licensing objectives and that the Council cannot seek to impose conditions on licences for other purposes, however well meaning the intent.

52 Guidance notes that the licensing functions under the 2003 Act are only one means of promoting the delivery of the licensing objectives, and that although they can make a substantial contribution in respect of the premises affected, they cannot be regarded as a panacea for all community problems.

53 Members should note the policy cannot impose blanket conditions to apply to every type of premises. Conditions can only be imposed on a licence if they are necessary for those premises in question to promote one or more of the licensing objectives. Each case must be considered on its own merits. If the situation the condition is to address is already addressed by other legislation, or a specific offence or provision within the Act itself, then guidance is that the condition cannot be considered necessary.

54 However, it is possible for the Licensing policy to refer to other policies, and it is desirable that it is linked to the Council's other objectives. The policy can reflect the Council's

encouragement for certain behaviours, but where there is no power to impose a condition the policy needs to be clear that this is the case; that each case will be considered on its own merits, and that only conditions which are necessary to pursue one or more of the licensing objectives will be imposed.

Background Papers	Held at	Contact
The Licensing Act 2003 The DCMS Draft Guidance to the Act Draft Secondary Regulations	The Licensing Service, C/O Environmental Health and Trading Standards, Environment and Leisure Department, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Richard Parkins Tel: 020 7525 5767

List of Appendices	
Appendix A	"A Brief Introduction to the Licensing Act 2003"
Appendix B	"List of Respondents and Analysis of Comments Received During Consultation"
Appendix C	"The Draft Statement of Licensing Policy" (December 2004 Version)
Appendix D	"The Position Relating to the Licensing of Entertainment Involving Striptease and Nudity"

Lead Officer	Gill Davies, Strategic Director of Environment & Leisure	
Report Author	Richard Parkins, Licensing Service Manager	
Version	Final	
Dated	25 November 2004	
Key Decision?	Yes	
Consultation with Other Officers / Directorates / Executive Member		
Officer title	Comments Sought	Comments Included
Borough Solicitor and Secretary	Yes	Yes
Chief Finance Officer	No	No