

<b>Item No.:</b>	<b>Classification:</b>	<b>Date:</b>	<b>Meeting Name:</b>
2.	Open	14 July 2004	Environment & Community Support Scrutiny Sub-Committee
<b>Report title:</b>		The Implementation of the Licensing Act 2003	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATIONS

1. That the Environment and Community Support Scrutiny Sub-Committee:
2. Receive this report; and
3. Consider the scope of any review to be held by the Sub-Committee into the implementation of the new licensing regime under the Licensing Act 2003.

## BACKGROUND INFORMATION

4. The Licensing Act 2003 received Royal Assent on 10 July 2003. It represents a complete re-write of all current legislation governing the retail sale of alcohol; the supply of alcohol at club premises; the provision of regulated entertainment; and the provision of late night refreshments. Among its provisions, the Act makes the Council the sole licensing authority in its area by transferring the responsibility for alcohol licensing from the Licensing Justices to the Council.
5. The Act also sets four licensing objectives, being
  - The prevention of crime and disorder;
  - The assurance of public safety;
  - The prevention of nuisance; and
  - The prevention of harm to children.
6. The Act requires each licensing authority to publish a “Statement of Licensing Policy” directed at achieving the licensing objectives, and to review this every three years.
7. Of all its provisions the most publicly heralded aspect of the Act is that it brings an end to current restrictions on licensed hours and potentially provides for 24 hour drinking.
8. Although the Act reached the statute book in the summer of 2003, the implementation of the Act has since been subject to delay. This delay has occurred while the “Draft Guidance to the Act” compiled by the Department for Culture Media and Sport (DCMS) has passed through Parliament. The Guidance is expected to receive final approval any day. This approval is to be followed by a Government announcement on the timetable for the transitional arrangements. At the time of writing of this report the anticipated timetable is as follows:-

9. The “first appointed date” under the Act will be 7 February 2005. On this date applications for licences under the Act may be made to the Council. Applicants wishing only to transfer the consents they already hold under the current licensing systems may make “grandfather rights” applications and retain these consents subject to existing terms, conditions and restrictions. Applicants wishing to apply for anything other than their currently held consents will be required to make variation applications to the Council; and
10. The “second appointed date” under the Act will be nine months after the first – thereby expected to be in November 2005. On this date licences issued during this transitional period will come into effect and all applicants will have had to secure all relevant licences to be able to continue trading. Licences issued under the old licensing regimes will cease to be valid on this day.
11. Following the final approval of the Guidance to the Act the Council may commence with public consultation on its Licensing Statement of Policy. The Statement is to provide the basis for all future licensing decisions taken by the Council and will be referred to by the Courts in any future appeal cases relating to decisions of this Council. It has to be approved and published before any licence applications can take place.
12. While the Licensing Act 2003 provides the general framework for the new licensing regime, much of the fine detail of the processes is to be provided under secondary regulations. It is anticipated that the first drafts of the regulations will be published by the DCMS in August 2004 and that the consultation process will take a period of twelve weeks. The regulations will cover such matters as the applications process; the decision-making process; and the level of fees to be set under the Act.
13. A cross-departmental working group of officers is currently being put together to work on the changes involved. The programme of work involved in the preparations for the implementation of the Act will intend to have addressed all matters by December 2004, so as to allow the month of January 2005 to be free for the final implementation phase before the first licence applications are received.
14. Previous reports to the Licensing Committee have covered the content of the Alcohol and Entertainment Licensing Bill 2002 (4 February 2003) and the preparation of a Licensing Statement (23 April 2003). Short updates have been provided to the Licensing Committee on 29 July 2003 and 10 March 2004. This report outlines the main issues relating to the implementation of the Act at this point in time.

## KEY ISSUES FOR CONSIDERATION

### The Process for Establishing the Statement of Licensing Policy

15. As stated, the Statement of Licensing Policy must be established before the “first appointed date” under the Act, expected to be in February 2005. The Statement must be a full and comprehensive document that forms the basis for all future licensing decisions taken by the Council, which will be rigorous enough to stand test in the appeal courts. The Draft Guidance to the Act directs that before determining its policy each licensing authority must consult with persons listed below:-

The Chief Officer of Police for the area;

The London Fire and Civil Defence Authority;

Persons / bodies representative of local holders of premises licences;

Persons / bodies representative of local holders of club premises certificates;

Persons / bodies representative of local holders of personal licences; and

Persons / bodies representative of businesses and residents in its area.

16. Consultation may extend beyond these statutory consultees and it is considered that for purposes of completeness broader consultation should be carried out enabling all interested parties to contribute. The Licensing Service will work closely with the Community Involvement and Development Unit (CIDU) on a consultation strategy. This will include reference to each of the local Community Councils. Their feedback will be of particular interest, for while the Draft Guidance to the Act imposes many restrictions on the content of the Statement of Policy, provision is made for inclusion for such as local "saturation policies" which may address the cumulative impact of a significant number of licensed premises in one area on the promotion of the licensing objectives.

17. Furthermore, the process must ensure that the final Statement avoids duplication with other regulatory regimes but that its content is consistent with all other relevant national and local policy and strategy. As part of the process, links with other strategy and policy in the following areas are to be explored:-

Anti-social behaviour;

Crime and Disorder;

Community Safety;

Alcohol harm reduction;

Substance misuse;

Tourism and culture;

Transport; and

Planning.

18. The process will also ensure that the Statement complies with equal opportunities, disabilities, human rights and enforcement principles.

#### The Decision-Making Process

19. The Guidance to the Act establishes that non-contested applications should be granted at Officer level and that contested applications, which may not be successfully resolved by negotiation; together with licence reviews; and consideration of licence revocations, should be considered by elected members. For these purposes, the provisions of the Act provide for the establishment of a Licensing Committee and for Sub-Committees of the main Committee. However, logistically, the provisions do not allow for the Council's current structure for licence application determinations, primarily using local Community Councils, to continue.

20. The Act states that a Licensing Committee will be established comprising of a maximum pool of fifteen elected members. The Act further provides for the establishment of Sub-Committees of the main Committee comprising of three members but states that each of these members must be one of the fifteen members of the main Committee.

21. Thereby it will be necessary to decide whether it is wished to continue to make licensing decisions at as local a level as is possible or to revert back to the system of having licensing decisions taken centrally by the main Committee or Sub-Committees of it.
22. If the former option is chosen careful consideration will need to be given to the membership of the main Committee, so as to provide for an arrangement which allows Sub-Committees to be compiled from the main Committee membership, but with partial local representation from the local Community Council areas concerned in each case.
23. Furthermore, during transition at least, it is anticipated that there will be a considerable increase in the demand for hearings in front of the Committee / Sub-Committee. The Section on resource issues contained further on in this report outlines difficulties involved with projecting the precise volume of work that may be encountered. However, current information suggests that there will be at least 850 premises within the Borough that will require a premises licence. The Local Authorities Co-Ordinating Body on Regulatory Services (LACORS) has estimated that local authorities might anticipate two applications for personal licences for every application received for a premises licence. In all this would equate to some 2,500 applications being made to the Council across a nine-month period. LACORS has further estimated that 75% of licensees will wish to make variation applications under the new system. This would mean that some 600 applications go out to individual public consultation and are open to opposition. As many of the variation applications will concern extensions of operating hours it is likely that a considerable proportion will be opposed. However, if only 10% of applications are opposed through to public hearing stage this still equates to a considerable volume of member-time. It is clear, thereby, that whatever system for licence application determinations is devised, it will need to be able to sustain frequent regular meetings throughout transition to deal with the large quantity of applications likely to require consideration.

#### The Licence Applications Process

24. The new law will require a new licence applications process to be established. For purposes of ensuring consistency across the Country this is to be set down under secondary regulations. As mentioned earlier in this report the detail of this remains unknown at present but draft regulations are expected in August 2004 with the final versions published in November 2004.
25. Following the publication of the draft regulations work can commence to process map the new process; translate this into working practice; and imbed the practice throughout the Council by staff training and member development processes and in communication with our external partners.

#### Publicity

26. Alongside the public consultation to be undertaken on the establishment of the Statement of Licensing Policy a public awareness campaign will also need to be staged over the seven months leading up to the commencement of the transitional period.
27. The first stage of the campaign will need to establish a general awareness throughout the Southwark community of the new legislation and what it entails.
28. As the campaign progresses more detailed and focused information will need to be provided to the various sectors of the community. This will need to deal, in particular, with the mechanics of the licensing process - enabling applicants to

make full and proper applications for licences and the broader community to participate and have their views considered as necessary.

29. The new system of licensing does represent considerable change from the old. Under the new regime a dual system of licensing is established with the introduction of separate personal and premises licences. The new regime also places far greater responsibility on the prospective licensee. Applications for the new premises licences will have to be accompanied by an operating schedule which must not only detail what will be provided under the licence but when and how, with the measures to be taken to secure the four licensing objectives spelt out for approval.
30. Equally residents will need to understand that under the new legislation there will be no regular annual review of licences by way of a renewal process but that there is facility for the licences of "problem premises" to be reviewed at any time; and that this law provides, for the first time, new appeal rights for residents to the Magistrates Court.

#### Partnership Working

31. The Act provides for increased partnership working with several other agents. In particular, links between the Licensing Service and the Police are considerably strengthened.
32. These links are at their strongest in the area of enforcement. Although only the Police will have the ability to effect temporary premises closures, the Council and the Police will be joint-enforcement agencies. The Government strongly recommends that licensing authorities establish working protocols with the Police on enforcement issues providing for a more efficient deployment of staff commonly engaged in enforcing licensing law and the inspection of licensed premises. In particular, these protocols should provide for the targeting of agreed problem and high-risk premises which require greater attention, allowing for a lighter touch to be applied in respect of premises that are well run.
33. Elsewhere closer working arrangements between the Licensing Service and the London Fire and Civil Defence Authority will be necessary in securing the public safety objective; with the Council's Environmental Health Noise Team for securing the prevention of nuisance objective; and both the Council's Social Services and Trading Standards Services in the area of the prevention of harm to children. Here the Trading Standards Weights and Measures Officer are provided with new powers to deal with under-age sales. New working protocols are likely to be established with all of these partners.

#### Resources

34. The Act potentially has considerable resource implications for the Council. Exactly what these might be are difficult to quantify at this precise moment. Full information on the numbers and types of alcohol licences and consents have not been provided by the Licensing Justices; the percentage of applicants that will make "grandfather rights applications" and the percentage that will make new applications during the transitional period can only be guesstimated; and, importantly, the DCMS has not yet announced the fine detail of the licensing process nor level of fees that may be charged for licences.
35. What is known is that the numbers of applications received by the Council during the transitional year will increase greatly – as detailed earlier, by perhaps as much as an additional 2,500 plus applications; that these applications will have to be determined within a set period of time as laid down in statute (two to three months depending on the type of application) or be automatically determined with some

referred automatically to the Magistrates Court; that during the transitional period the current licensing systems (which deal with some 800 applications a year) will continue to operate alongside the new; and that whatever level of fees is eventually set these are expected to be considerably lower than the fees currently charged by this Council for public entertainment licences. The Government has stated on more than one occasion that the income received by each Council should recover the cost of operating the licensing service but initial figures for fees and the lack of any pump-priming monies, make this position unlikely.

36. Estimates made on information available to date have projected that the Licensing Service alone will need around six to seven additional staff over the transitional period. Additional staff needs will also arise in both Legal Services and the Constitutional Support Division, particularly for servicing additional Committee meetings.
37. Aside from staffing resources there will also be additional support costs particularly relating to information technology needs. Discussions are currently ongoing with the Council's IT providers to develop web based capabilities as part of the Council's e-government programme which will facilitate on-line public registers; electronic applications and fee payments; and remote applications progress monitoring.
38. The Licensing Service budget for 2004-2005 has been boosted by around £100,000. This money will contribute toward the development and start-up costs of the new licensing process. The majority of the additional staffing costs will fall in 2005-2006. In 2006-2007 work volumes and the costs of running the Licensing Service are expected to fall (as there will be no licence renewals for 10 years, although new applications, transfers, variations and licence reviews will continue).

#### Training Needs

39. Consideration will also need to be given to training – both for staff involved in operating the new licensing system and for elected members who will be involved in licence application determinations. While all members have attended a licensing module in the past twelve months as part of the member training programme, additional training will be required covering the provisions of the new law. The local government representative bodies are currently considering training packages and developments in this are being monitored but it may be that specific Southwark tailored training is preferable.
40. Outside of this, it should not be overlooked that the business community, in particular, will have training needs, as covered in the Section of this report dealing with publicity.

#### Consultation

41. The preparation of this report has not been the subject of any consultations. As detailed herein the preparation of the Licensing Statement of Policy will be the subject of a major public consultation exercise during the second half of 2004, while a general public awareness campaign around the Licensing Act 2003 will run concurrently.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Licensing Act 2003 The Draft Guidance to the Act	Environment and Leisure Department, Street Scene and Public Protection Division, 151 Walworth Road	Des Waters 0207 525 2080

## Audit Trail

Lead Officer	<b><i>Gill Davies, Strategic Director of Environment &amp; Leisure</i></b>	
Report Author	<b><i>Des Waters, Head of Street Scene &amp; Public Protection.</i></b>	
Version	<b><i>Final</i></b>	
Dated		
Key Decision?	<b>Yes</b>	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
Officer Title	Comments Sought	<b>Comments included</b>
Borough Solicitor & Secretary	Yes	No
Chief Finance Officer	Yes	Yes
Director of Housing	Yes	Yes
Director of Regeneration	Yes	No
Assistant Chief Executive	Yes	<b>No</b>
Head of Marketing and Communications	Yes	Yes
<b>Executive Member</b>	Yes	No
<b>Date final report sent to Constitutional Support Services</b>		31 March 2004

## Appendix A

Implementation of the Licensing Act 2003 – Important Dates in the timetable	
First week in July 2004	Government expected to formally release final guidance to the Act and announce first and second appointed dates under the Act. Go ahead given for licensing authorities to commence public consultations on draft statements of licensing policy
First week in August 2004	Expected that draft secondary regulations governing process, practice and fees will be released by DCMS for consultation
End of October 2004	Consultation process on secondary regulations ends. Final process, practice and fees now evident/
End of December 2004	All preparations for implementation of the Act complete, including statement of policy agreed and published.
First week in February 2005	First appointed date under the Act. Applications for licences under the new licensing regime may be made to the Council. Old licensing regime still in place and operative
First week in November 2005	Second appointed date under the Act. All licences issued under new system now in force. All businesses required to be licensed so as to operate lawfully. Old licensing regime brought to an end.