

Item No. 6.	Classification: Open	Date: 4 November 2019	Meeting Name: Licensing Committee
Report title:		The Licensing Act 2003: Review of Statement of Licensing Policy 2021 – 2026	
Ward(s) or groups affected:		All Wards	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

1. That the Committee:
 - a) Considers the draft amendments of the Southwark statement of licensing policy 2021-2026 provided at Appendix A to this report for approval to undertake public consultation.
 - b) Agrees the arrangements for public consultation on the draft revision of the policy document, as set out within this report, including the basis for the public consultation questionnaire.
 - c) Considers whether to propose any additional areas within the public consultation, including that of recommended amendments to closing times for licensed premises (based on premises type and area classification) and the retention of cumulative impact areas in their current geographical state.

BACKGROUND INFORMATION

2. The Licensing Act 2003 came into effect on 25 November 2005. The Act introduced a regime for the licensing of alcohol, regulated entertainment and late night refreshment, to be administered by the local licensing authority
3. Section 5 of the 2003 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 (fifth) version of the policy for 2019 – 2021, was a mid-term revision and was adopted at council assembly on 27 March 2019. The Statement of licensing policy came into effect on 3 May 2019. The policy is now under a full review to make amendments to the policy.

5. Since the commencement of the current statement of licensing policy, there have been a number of issues that have arisen at licensing sub-committee meetings where members, responsible authorities and applicants have requested clarification. The amendments in this revision seek to clarify Southwark's position and are believed to be appropriate and necessary.
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 this report.
7. The committee is asked to consider and comment on 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.

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 AMENDMENTS

10. The majority of changes have been automatically incorporated into the policy document. Some are highlighted for the committee's consideration, before going to public consultation. A summary of some of the changes are listed below.

Section 2 – All about Southwark

11. Paragraphs 3, 5, 7 and 12 – Updated with borough statistics and council composition.
12. Paragraphs 18 to 25 updated with data statistics on alcohol-related violence.

Section 3 – Purpose and scope of the licensing policy

13. Paragraph 46 updated at the request of the Southwark anti-social behaviour unit (SASBU) as the joint enforcement teams (JETs) are no longer in place.

Section 4 – Administration, exercise and delegation of function

14. Paragraph 53 - The provision of scale plans is updated to make plans clearer by being supplied in their original size.
15. Paragraphs 59 and 60 - The policy on temporary event notices (TENs) is updated to clarify the notice period and additional information required by the police.
16. Paragraph 81 - Updated regarding the personal details of persons making representations in that their address will be supplied to Applicants.
17. Paragraph following 92 – Added to clarify how evidence supplied by a person bringing a review or making representation should be supplied to the authority.
18. Paragraph 100 – Updated to clarify the benefits of having planning permissions in place before a premises licence is applied for.

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

19. Paragraph 120 – Duplication of statutory requirements updated at the request of Trading Standards.
20. Paragraphs 121-128 - Section added on Shadow Licences.

Section 6 – Local cumulative impact policies (CIPs or CIAs)

21. Paragraphs 131 – Amended as resident questionnaires are no longer carried out due to financial restrictions.
22. Paragraph 144 – Added in regards to ‘monitoring areas’, which are not yet to become cumulative impact areas (CIAs).
23. Paragraphs 154-154 - Added to confirm that the current CIAs have been assessed and remain unchanged. As part of this assessment, detailed analysis has been carried out using anti-social behaviour crime data. This assessment is available in Appendix B. Members will need to agree if they are content that the CIAs remain the same, or if further clarification is required to support the Officer’s assertion that the status quo remains in force.

24. Paragraph 159 – ‘and / or in a designated area’ added.
25. Paragraph 164 – Added to clarify the rebuttable presumption of applications within a CIA.
26. Paragraphs 165 to 167 – to be updated, as there are no Early Morning Restriction Orders (EMROs) in the Borough.

Section 7 – Hours of operation

27. Paragraph 172 – Updated to include ‘or to disturbance and/or disorder in the area late at night’.
28. Paragraph 173 – Updated to provide clarity.
29. Paragraphs 175 – ‘or early morning’ added at the request of public health. Table 2 shows the suggested closing times of licensed premises. Licensing officers have concerns that some of these are not fit for purpose and therefore ask members to reconsider some of the policy recommendations. Members are given the option of retaining the existing hours, or in some cases, considering two other sets of hours. Members may also wish to consider providing up to 30 events a year, rather than extended hours. These will need to be decided before the policy document goes to public consultation.
30. Members may wish to consider if another category is added for shared work spaces that wish to supply alcohol.
31. Paragraph 183 is to be removed, following the introduction of the Late Night Levy in Southwark.

Section 8 – The first licensing objective – The prevention of crime and disorder

32. Paragraph 186 – Amended to remove ‘including so-called legal highs or ‘new psychoactive substances’ as legal highs are now classified as drugs.
33. Paragraph 195 – Added to CCTV ‘and a member of staff on duty that is able to operate the CCTV system’; and regarding high strength ‘any beers or ciders above 6.5% are considered high strength’ at the request of the police.
34. Paragraph 196 – Use of plastic containers updates to include recommendations on single use plastic receptacles. Also added ‘Off sales to be sold in sealed containers for consumption away from the premises to minimize public nuisance’.
35. Paragraph 197 – Added regarding SIA supervisors ‘A minimum of two SIA would be expected on most premises’. Drugs and weapons box ‘instructions’ to replace ‘code of practice’. Risk assessments updated and CCTV conditions added at the request of the police.
36. Paragraph 198 – Added to clarify the expectations of retention of consumer information captured by CCTV and ID scanners.
37. Paragraph 202 – ‘preferably in written form’ added.
38. Paragraphs 206 to 208 are updated in light of the cessation of 696 Forms.

39. Paragraph 209 to 214 to be replaced to provide clarity on adult entertainment.

Section 9 – The second licensing objective – The promotion of public safety

40. Paragraphs 232 to 234 are added to address road safety outside of licensed premises as requested by Highways.

41. Paragraph 235 – updated to address safe capacity limits.

42. Paragraph 239 – Added ‘or smaller venues RU SAFE? (2014): a guide to running small venues free download <http://www.abtt.org.uk/shop/guidance/ru-safe/>’

Section 10 – The third licensing objective - The prevention of public nuisance

43. Paragraph 247 – Amended to ‘between 22:00hrs and 08:00hrs’ and added ‘preventing odour from food preparation and have adequate kitchen extraction systems in place’ as requested by environmental protection.

44. Paragraph 248 – ‘EMAQ (2018)’ replaced with ‘(DEFRA)’. Added ‘Southwark’s environmental protection team’s technical guidance for noise (2017)’.

45. Paragraph 249 – Added ‘Where appropriate, an acoustic report / noise impact assessment can also be submitted to support an application.’

46. Paragraph 256 – Added ‘Management should ensure that there are sufficient toilet facilities on the premises’.

47. Paragraph 254 – ‘In residential areas’ has been deleted. ‘No drinks allowed outside after this time’ has been added. ‘All off sales to be sold in sealed containers for consumption away from the premises’ is added. ‘Ensuring any/all external plant (i.e. air conditioning units, kitchen extraction systems etc.) are maintained and serviced so as not to create any additional unnecessary noises.’ is added. ‘The time and number of people allowed to use shisha or similar pipes in any area’ is also added.

48. Paragraph 261 – Added ‘it is suggested a finishing time of 22:00hrs is appropriate, however and earlier finish time may be requested subject to local circumstances’.

Section 11 – The fourth Licensing Objective – The protection of children from harm

49. Paragraph 271 - Updated by public health to include the latest statistical data.

50. Paragraph 278 – Updated to include 2018-2019 test purchase figures.

51. Paragraph 279 – Updated by trading standards to highlight trends in statistical data.

52. Paragraphs 281 and 282 – Updated by trading standards in relation to age-restricted products.

53. Paragraph 285 – Updated to include the number of Southwark proof of age cards

that have been issued.

54. Paragraphs 296 to 299 – Updates in relation to film classifications.
55. Paragraphs 306 to 308 have been replaced to remove references to Operation Makesafe, to be replaced with information on child exploitation.

Appendix C – Other related legislation and strategies

56. Information on the Equalities Act 2010 has been updated to include information on the Public Sector Equality Duty.
57. The Children Act 2004 has been added for information.
58. Southwark's Alcohol Reduction Plan 2017-2020 has been added for information.
59. Under 'Guidance Documents', the following has been added 'The Public Health England's new guidance for alcohol commissioning 2019-20 identifies a number of population-level actions to reduce alcohol-related harms, including a role for Public Health divisions to actively contributing to the local vision for alcohol licensing'.

Resource implications

60. 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.
61. 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

62. The 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 set out below.
63. 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.
64. 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.

65. The policy consultation will be advertised in the local press.

Consultation questionnaire

66. 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 amendments to the policy are clear and easily understood?
- Whether the amendments to the policy are balanced, fair and reasonable?

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

Consultation timetable

68. The following timetable for the public consultation on the draft policy amendments and for final approval of the 2021 – 2026 policy document is proposed:

- Licensing Committee 4 November 2019 – Consideration of the draft policy revision; and consultation timetable
- November 2019 – Final preparations for the public consultation
- December 2019 – Consultation to be advertised in local press and at main Council buildings
- Statutory and public consultation to run from 13 January to 23 February 2020 (6 weeks)
- March to April 2020 – Consideration of consultation responses and further revision of the policy
- TBC (first available meeting in June 2020) – Report back to the licensing committee asking the committee to consider the further draft policy revision and make recommendation for adoption of a final policy by council assembly
- TBC (first available meeting after licensing committee consideration) – council assembly considers final policy revision for adoption

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

69. 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.

70. 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.

71. 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.
72. 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.
73. 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
74. 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.
75. 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.
76. 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'.
77. 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.

78. 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.
79. 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.
80. 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.

Public Sector Equality Duty

81. 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. An assessment was carried out before amendments were made to the draft policy. Members will need to consider whether there are any potential negative impacts on the protected characteristics as outlined in the assessment at the committee hearing. A further assessment will be carried out once the public and statutory consultation are complete. The current assessment is available in Appendix C.

Strategic Director of Finance and Governance

82. This report is requesting the licensing committee to consider recommendations a, b and c in paragraph 1 above. The strategic director of finance and governance notes the recommendations and that there are no identified additional resource implications as a result of these proposals.
83. The strategic director of finance and governance also notes that staffing and any other running costs connected with these recommendations are to be contained within existing departmental revenue budgets.

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 2021 – 2026
Appendix B	Crime data analysis for maintenance of cumulative impact areas
Appendix C	Equalities Analysis

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	22 October 2019	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Director of Law and Democracy	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		22 October 2019