

Committee : <b>Licensing Committee</b>	Date 2 <sup>nd</sup> November 2010	Classification Unclassified	Report No. LC 05/011	Agenda Item No.
---	---------------------------------------	--------------------------------	-------------------------	-----------------

Report of <b>Colin Perrins</b> <b>Head of Trading Standards and Commercial</b>	Title <b>Licensing Act 2003</b>
Originating Officer: <b>Jacqueline Randall</b>	<b>Three Year Review</b>
	Ward affected <b>All</b>

## 1.0 Summary

1.1 This report covers the following:

- The three year review of licensing policy under the Licensing Act

## 2.0 Recommendations

- 2.1 That the Licensing Committee note the key areas for consultation of the three year review of the Licensing Policy
- 2.2 That the Licensing Committee note the process of consultation in reviewing the Council's Licensing Policy under the Licensing Act 2003.

**LOCAL GOVERNMENT 2000 (Section 97)**  
**LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT**

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File Only

Jackie Randall  
020 7364 5109

### 3.0 **Background**

3.1 The Council's current Licensing Policy was adopted by the full Council in December 2007.

3.2 Under the Licensing act 2003, the licensing authority must review its licensing policy every three years and publish the outcome of that review.

3.3 It must, at a minimum carry out the statutory consultation laid down in the Act, namely:

- The chief officer of police for the licensing authorities area
- The fire authority for the area
- Such persons as the licensing authority consider to be representative of holders of existing licences
- Such persons as the licensing authority considers to be representative of holders of existing clubs
- Such other persons as the licensing authority considers to be representative of businesses and residents in its area

3.4 Ultimately following consultation, the licensing policy will be renewed by the Full Council.

3.5 The Licensing Authority must have regard to the Secretary of State's Guidance when reviewing or adopting its licensing policy. The timescale for the review of the Government's advice and final policy adoption of a three year licensing policy by the Borough are somewhat problematic, but the draft review does not address the most controversial aspects of the policy in any event.

3.6 The Policing and Crime Act came into effect on 6 April 2010. One of the effects of that Act is to enable local authorities to adopt powers in that act, including sex entertainment venues (SEVs). This Borough will adopt the powers that will provide a Sex Encounter Establishment Policy with the intention of banning all lap dancing premises within the Borough.

3.7 The consultation regarding the Sex Establishment Policy will run simultaneously to the Licensing Policy and cause this Licensing Policy to be reviewed again within the next 12 months is adopted.

3.8 If the Sex Establishment is adopted, the changes to the Licensing Policy will be with regards to Section 15, 'Striptease'.

3.7 The Government currently has a consultation paper out on suggested changes to the Licensing Act 2003, these changes will be substantial

and may be implemented within the next eighteen months influencing a review of the Licensing Policy sooner than the three year period.

- 3.8 To rebalance the licensing regime the Government is proposing the following measures:
- a) Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority.
  - b) Remove the need for licensing authorities to demonstrate their decisions on licences 'are necessary' for (rather than of benefit to) the promotion of the licensing objectives.
  - c) Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews.
  - d) . Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police. Simplify cumulative Impact Policies to allow licensing authorities to have more control over outlet density.
  - f.) Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises.
  - g) Enable more involvement of local health bodies in licensing decisions by designating health bodies as a responsible authority and seeking views on making health a licensing objective.
  - h) Amend the process of appeal to avoid the costly practice of a hearing licensing decisions.
  - i) Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.
  - j) Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.
  - k) Substantial overhaul of the system of Temporary Event Notices to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders.
  - l) Introduce tougher sentences for persistent underage sales.

- m) Trigger automatic licence reviews following persistent underage sales.
- n) Ban the sale of alcohol below cost price.
- o) Enable local authorities to increase licensing fees so that they are based on full cost recovery.
- p) Enable licensing authorities to revoke licences due to non-payment of fees.
- q) Consult on the impact of the Mandatory Licensing Conditions Order and whether the current conditions should be removed.

3.9 The Home Office document entitled ' Rebalancing the Licensing Act 2003 can be found by searching:  
[:http://www.homeoffice.gov.uk/publications/consultations/cons-2010-licensing-act/alcohol-consultation](http://www.homeoffice.gov.uk/publications/consultations/cons-2010-licensing-act/alcohol-consultation)

#### 4.0 **Consultation**

4.1.1 Clearly the licensing authority needs to ensure that its consultation meets the statutory requirements:

- The chief officer of police for the area
- The Fire and rescue authority for the area
- Person /bodies representative of local holders of premises licence holders and club certificates
- Persons representative of business and residents in the area

4.2 The consultation will be available on the Council's website.

#### 5.0 **Policy Changes**

5.1 There is little in the way of change to this current draft policy. There will be an opportunity for comments on any aspect of licensing through the consultation due to take place.

5.2 The changes include:

5.3 Hyperlinks added in Background and Context on page 3 of the draft policy

5.4 The **minor variations** process allows for licence holders to make certain variations to their premises licence or club premises certificate, subject to specific restrictions. This enables the licence holder to make relatively minor variations to their premises, and the licensable activities

they carry out, without being required to go through the full variation process which would be more time consuming and costly to the applicant. (Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates Order 2009') Minor Variations have been added to the delegation of functions on page 28.

- 5.5 Appendix 1 pages 29 & 30, now carry a full list of responsible authorities. The previous policy referred to the list in a web link.
- 5.6 On the 16<sup>th</sup> March 2010 the Government made, under the Licensing Act 2003 a Mandatory Condition Order 2010. This came into force on 6th April 2010 with the exception of paragraphs 4 & 5 of the Schedule which will come into force on 1st October 2010. The following conditions apply to existing and future premise licences and club premises certificates where the licence or certificate authorises the supply of alcohol on the premises. All premises with existing licences have been notified and the Licensing Authority are in the process of changing all the premises licence concerned.
- 5.7 A list of the Mandatory conditions are attached in **Appendix 10** and the Pool Conditions in the Policy, as suggested by the Licensing Act 2003 S.182 Guidance have been amended to reflect the Mandatory Conditions as follows;
- **Drinks Promotions** on pages 37 & 38
  - **Age Restrictions** on page 56
  - **Proof of Age Cards** on page 59
- 6.0 **Pool of Conditions**
- 6.1 Guidance issued under Section 182 of the Licensing Act 2003 outlines a requirement for Licensing Authorities to draw attention in their Statement of Licensing Policy to Pools of Conditions from which necessary and proportionate conditions may be drawn in particular circumstances.
- 7.0 **Legal Comments**
- 7.1 Pursuant to section 5(1) the Licensing Act 2003 Local Authorities are required to, on a 3 yearly basis, determine its policy with respect to the exercise of its licensing functions and publish a statement of that policy. Once determined, the Policy is then republished.
- 7.2 The determination of the policy is a matter for full Council. Prior to such determination, however, the Council must undertake statutory consultation. Prior to such statutory consultation, the Licensing Committee will be advised on the republishing of the policy and also the

key changes so that they are aware especially as in making decisions on applications Members of the Licensing Committee are required to have regard to the Licensing Policy. For that reason, a report is being put before the Licensing Committee for noting with regard to a matter for which they have no powers of determination.

- 7.3 The determination of the policy is a matter for full Council. Pursuant to section 7(2) of the 2003 Act the Licensing Committee can make no decision regarding the policy. The republishing of the Council's policy is also a matter that will fall within Article 4 of the Council's Constitution and therefore will form part of the Council's Policy Framework. As part of that framework, the Licensing Committee will be consulted on the republishing of the policy and hence the Licensing Committee being asked to consider report on a matter with regard to which they have no powers of determination.
- 7.4 As to the key policy areas, any proposed changes will have to be lawful and legal clarification on any proposed changes will be sought as part of the re-publishing process

## **8 Finance Comments**

- 8.1 No specific financial implications emanate from this report which sets out proposals for the review of the Council's Licensing Policy. The costs of carrying out necessary statutory consultation will be met from within existing Licensing Services Budgets.

## **Appendices**

**Appendix 1** Current Licensing Policy

**Appendix 2** Draft Licensing Policy

**Appendix 3** Section 182 Advice from the Department for Media, Culture and Sport on Planning

**Appendix 4** Current licensing policy statement for LBTH on planning

**Appendix 5** Licensing Authority Policy statement on striptease

**Appendix 6** Licensing Authority Policy statement on Hours

**Appendix 7** Licensing Authority Policy statement on Temporary Event Notices

**Appendix 8** Licensing Authority Policy statement on Reviews of Premises Licences

**Appendix 9** Mandatory Conditions