

Committee/Meeting: Cabinet	Date: 13 March 2013	Classification: Unrestricted	Report No: CAB 80/123
Report of: Corporate Director / Head of Paid Service Stephen Halsey Originating officer(s) David Tolley – Head of Consumer and Business Regulations		Title: Licensing Policy Review Wards Affected: All	

Lead Member	Deputy Mayor Cllr Ohid Ahmed
Community Plan Theme	A Safe and Cohesive Community
Strategic Priority	Focusing on Crime and ASB

1. **SUMMARY**

- 1.1 All local authorities have to review their existing Statement of Licensing Policy and adopt a new policy by the end of 2013, as one of their responsibilities that they have to administer licences under the Licensing Act 2003.
- 1.2. The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered.
- 1.3. A statutory consultation process will take place. In addition there will be the opportunity for the local community to comment if they wish.
- 1.4. Following consultation the reviewed policy will ultimately go to Cabinet and to full Council for adoption.

2. **DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:-

- 2.1 Agree the forward programme for consulting on the Statement of Licensing Policy.
- 2.2 Agree, if appropriate, that the consultation should be based on the existing Policy as detailed in Appendix One and the proposed changes detailed in Appendix Two.

- 2.3 Agree that the Council should consult on whether or not to adopt the sexual entertainment licensing regime under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

3. REASONS FOR THE DECISIONS

- 3.1 The Council is statutorily required to review its Statement of Licensing Policy every three years. As part of the review a statutory consultation must take place.
- 3.2 The Statement of Licensing Policy consultation will be based on the proposed changes outlined in Appendix Two. This will enable the new statutory provisions to be reflected in the reviewed Statement of Licensing Policy.

4. ALTERNATIVE OPTIONS

- 4.1 Cabinet does have the option not to review its Statement of Licensing Policy but the Council will be open to legal challenge for not having a properly consulted and adopted Policy.

5. BACKGROUND

- 5.1 The Council's current Statement of Licensing Policy was adopted by Full Council in December 2010. The Policy is set out in Appendix One.
- 5.2 Tower Hamlets Council is defined as a Licensing Authority under the Licensing Act 2003. As a Licensing Authority the Council must review its Licensing Policy every three years and publish the outcome of that review.
- 5.3 The Licensing Authority, must, as a minimum carry out the statutory consultation laid down in the Act.
- 5.4 Following consultation, Cabinet must consider and approve the policy. The Statement of Licensing Policy has to be adopted by the Full Council. It is intended this will occur in November 2013.
- 5.5 The Government revised its guidance on the Licensing Act 2003 issued under Section 182 of the Licensing Act 2003 on the 31st October 2012. The consultation will include the opportunity for commentary on the new optional legislative provisions.
- 5.6 The Licencing consultation should not be confused with the public consultation on Sexual Entertainment Venues which is the subject of a separate consultation and review process. A separate report on the outcome of that process with policy recommendations will be presented to Cabinet shortly. The policies in the licencing policy document specific to strip tease will be adapted following the outcome of the Sexual Entertainment Venue policy deliberations.

6. BODY OF REPORT

6.1 The Licensing Act 2003 gives local authorities a range of responsibilities relating to licensing. The Policy states how the Council will exercise its authority.

6.2 This policy covers the following:

- How the Licensing Authority will use its regulatory powers in relation to applications and reviews of the activities it regulates, to the extent it is allowed by statute.
- The main licensing objectives for the authority is set by legislative requirements.
- The Licensing Authority approach to regulation
- The scheme of delegation

6.3 When exercising its licensing functions, the Council is required to have regard to and guidance issued by the Secretary of State under section 182 of the Licensing Act 2003. The current policy is compatible with this the statutory advice and guidance which has been published.

6.4 The Statement of Licensing Policy covers the same issues as those set out in neighbouring boroughs, along with incorporating the Local Government Association's Licensing Forum best practice advice. Thus the policy document will reflect best practice in the Local Authority licensing regime

6.5 Under the Licensing Act 2003, the Council as the Borough's licensing authority must review its licensing policy and publish the outcome of that review. The policy must be informed by a statutory consultation process.

6.6 The current review considers legislative changes made subsequent to adoption by the Council of the current policy. The changes respond in the main to guidance and regulatory change from central government during the course of the last three years. The proposals, which are set out in Appendix Two address the following –

- Relaxation in the licensing regime arising from the Live Music Act 2012
- Administration of Late temporary events notices
- Role of the licensing authority as a responsible authority
- Licence suspensions where fees have not been paid
- The arrangements for liaison with Public Health and Environmental Health as responsible authorities
- Late Night Levy consideration (Appendix 3)
- Early Morning Restriction Orders (Appendix 4)
- Cumulative Impacts are being consulted on separately but will eventually be included in the Licensing Policy

6.7 The Statutory Consultation requirements consist of:-

- The Chief Officer of Police for the Licensing Authority 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
- The consultation will be publicized and open to all residents and businesses.

6.8 As part of the consultation, the draft policy for consultation will be presented to the Licensing Committee and noted by them for consideration.

6.9 At the conclusion of the consultation process a resource analysis will be undertaken to estimate any additional cost to the Licensing Service when implementing the new policy.

6.10 The programme leading to consultation is as follows:-

Date	Committee / Action
30 th January 2013	MAB
27 th February 2013	PAP
13 th March 2013	Cabinet
March	Consultation Starts (6 weeks)
Indicative Time scales	
May	DMT
June	CMT
July	MAB
September	Licensing Committee
September	Overview and Scrutiny Committee
September	Cabinet
November	Full Council

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

7.1 This report sets out details of the review of the Council's Licensing Policy and seeks agreement for the forward programme on the consultation. A resource analysis will be undertaken on completion of the consultation. It is anticipated that any additional costs as a result of the consultation will not be significant and can be met from the Licensing Service budget when implementing the new policy.

8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 8.1 The Council is a licensing authority under the Licensing Act 2003. Section 5(1) of the Licensing Act requires the Council to determine and publish its policy with respect to the exercise of its licensing functions. Since 25 April 2012, the requirement is for the Council to prepare and publish its statement of licensing policy in respect of each 5 year period. Once the licensing policy is in place, the Council is required to have regard to the policy in the exercise of its licensing functions.
- 8.2 The Licensing Act specifies a minimum level of consultation which the Council must carry out before determining its licensing policy for a 5 year period. This requires specified persons to be consulted, as referred to in the body of the briefing paper.
- 8.3 When determining its licensing policy, the Council is required to have regard to the following –
- Promoting the four licensing objectives, namely: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.
 - Statutory guidance issued by the Secretary of State.
- 8.4 When preparing and determining its statement of licensing policy, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. This will require equality analysis, which should be carried out in conjunction with any consultation.
- 8.5 It is proposed to introduce a special policy to deal with cumulative impact. On 5 December 2012, the Mayor in Cabinet agreed that consultation may be carried out in relation to such a policy. The consultation is currently being carried out and is due to conclude on 22 March 2013. Following the consultation, recommendations may be made to the Mayor in Cabinet and Full Council to amend the statement of licensing policy. It is intended to reference the cumulative impact consultation in the consultation on the new licensing policy.
- 8.6 Pursuant to the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the determination of the statement of licensing policy under section 5 of the Licensing Act 2003 cannot be a function of the council's executive. Consistent with this requirement, the Council's Constitution makes the licensing policy part of the budget and policy framework. The preparation of the policy must thus comply with the Budget and Policy Framework Procedure Rules.
- 8.7 It is proposed that the licensing policy should include reference to the Council's approach to sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act"). At

present, the licensing regime in Schedule 3 to the 1982 Act does not apply in Tower Hamlets in relation to sexual entertainment venues. The procedure for deciding that Schedule 3 of the 1982 Act should apply in Tower Hamlets is as follows –

- The Council must consult local people about whether or not to apply the sexual entertainment venue (“SEV”) licensing regime in Tower Hamlets.
- The Council must pass a resolution specifying that the Schedule shall apply in Tower Hamlets. The resolution must specify the day on which the Schedule shall come into force (“the Specified Day”), which must be more than one month after the day on which the resolution is passed.
- The Council must then publish a notice that it is adopting the Schedule 3 regime. This must be published for two consecutive weeks in a local newspaper which is circulated in Tower Hamlets. The first publication of the notice must be at least 28 days before the Specified Day. The notice must state the general effect of Schedule 3.

8.8 This procedure is separate from that which is being followed to revise the licensing policy. If reference to the SEV licensing regime is to be included in the licensing policy, then the adoption of that regime should be completed prior to, or at the same time as, adoption of the revised licensing policy.

8.9 It is proposed that at the same time as consulting on the licensing policy, there should be preliminary consultation on whether the Council should apply the late night levy in Tower Hamlets and whether it should make early morning alcohol restriction orders (“EMROs”). If the Council were minded, following preliminary consultation, to proceed further with either the late night levy or with one or more EMROs, then it would have to follow the prescribed statutory procedures. As summary of each procedure is set out below.

8.10 The late night levy is a charge on persons licensed to sell alcohol late at night, which is a means of raising a contribution towards the costs of policing the late-night economy. Section 125 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) empowers the Council to decide that the late night levy is to apply in Tower Hamlets. The 2011 Act specifies matters which the Council must consider at the time of making that decision. The procedure to be followed in relation to a proposal to apply the late night levy is specified in the Late Night Levy (Application and Administration) Regulations 2012. The Council must consult with the relevant local policing body, the relevant chief officer of police, and holders of relevant late night authorisations. The Council must publish notice of its proposal to apply the late night levy. This procedure is separate from that which is being followed to revise the licensing policy. If reference to the late night levy is to be included in the licensing policy, then the decision to apply the levy should be completed prior to, or at the same time as, adoption of the revised licensing policy.

- 8.11 Section 172A of the Licensing Act 2003 permits the Council to make an order effectively preventing the sale of alcohol in a specified period between midnight and 6 am (an early morning alcohol restriction order, or EMRO). Section 172B of the Licensing Act and the Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012 set out procedural requirements to be followed when making an early morning alcohol restriction order. The proposal must be advertised. If relevant representations are made, the Council must hold a hearing to consider the representations, unless all parties agree that a hearing isn't necessary. There are prescriptions as to the content of EMROs and as to the manner and form in which they are to be made.

9. ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 An initial equalities analysis has been undertaken and no adverse impacts have been identified.

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 10.1 There are no adverse impacts identified.

11. RISK MANAGEMENT IMPLICATIONS

- 11.1 The Council will be at risk of legal challenge if a properly consulted and adopted Statement of Licensing Policy is not in place by the end of 2013.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 12.1 One of the key licensing objectives is to prevent licensed premises from being a source of crime and disorder. The policy supports and assists with crime and disorder reduction by controlling those who manage premises open to members of the public and imposing conditions on relevant premises licences.

13. EFFICIENCY STATEMENT

- 13.1 There are no efficiency issues relating to this report.

14. APPENDICES

Appendix 1 – Current Statement of Licensing Policy
Appendix 2 - Proposed Changes to the Statement of Licensing Policy
Appendix 3 – Home Office Guidance on Early Morning Restriction Orders
Appendix 4 – Home Office Guidance on the Late Night Levy
Appendix 5 – Equalities analysis

Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012

List of “Background Papers” used in the preparation of this report

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
None	N/A