

Committee: Overview and Scrutiny	Date: 10 September 2013	Classification: Unrestricted	Report No:
Report of: Head of Paid Services and Corporate Director: Stephen Halsey Originating officer(s) David Tolley, Head of Consumer and Business Regulations		Title: Licensing Policy Review Wards Affected: All	

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. This is one of their responsibilities they have to enable the Council to administer licences under the Licensing Act 2003.
- 1.2 The purpose of the Statement of Licensing Policy is to define how the responsibilities under the Act are going to be exercised and administered.
- 1.3 A statutory consultation process has taken place between the 5th April and 10th May 2013.
- 1.4 The reviewed Statement of Licensing Policy will ultimately go to Cabinet for approval and full Council for adoption.
- 1.5 Cabinet also requested that a 'No Casino' resolution be consulted upon, that would amend the Gambling Policy 2013. The consultation showed a majority in favour of the resolution. If agreed, this will now go to Cabinet for approval and full Council for adoption.
- 1.6 The policy is now before Overview and Scrutiny for comment.

2. **RECOMMENDATIONS**

The Overview and Scrutiny Committee is recommended to:-

- 2.1 Review the Statement of Licensing Policy and provide any comments on the policy.

2.2 Review the 'No Casino' resolution and provide any comments.

3 **BACKGROUND**

3.1 The Council's current Statement of Licensing Policy was adopted by Full Council in December 2010.

3.2 Tower Hamlets Council is defined as a Licensing Authority under the Licensing Act 2003. As a Licensing Authority we must review our Licensing Policy every three years and publish the outcome of that review.

3.3 We must, as a minimum carry out the statutory consultation laid down in the Act.

3.4 Following consultation, full Council must adopt the Statement of Licensing Policy.

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

3.6 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 which are set by legislative requirements.
- The Licensing Authority approach to regulation
- The scheme of delegation

3.7 The Statement of Licensing Policy is prescribed by central government in its guidance to Local Authorities. The policy produced has to comply with guidance issued by central government. The current policy is compatible with this advice and guidance.

4. **BODY OF REPORT**

4.1 Under the Licensing Act 2003, the Council as the Borough's licensing authority must review its Statement of Licensing Policy and publish the outcome of that review.

4.2 The current review has taken into account the legislative changes that will affect the policy. The changes respond in the main to guidance and regulatory change from central government during the course of the last three years.

4.3 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

4.4 The full list of consultees is detailed in Appendix One. All licence holders were written to. General comments from groups and forums have been summarised in Appendix Two. The online submissions are summarised in Appendix Three.

4.5 The statutory changes are outlined in Appendix Four and the revised policy for adoption is detailed in Appendix Five.

4.6 The consultation documents have been presented to the Licensing Committee and noted by them.

4.7 The following are relevant issues that have been raised in the consultation process and will need to be determined by Members.

Late Night Levy: This enables a levy to be placed on businesses that operate past a set terminal hour past midnight. Some limited exemptions can be applied. The extra funds paid by businesses would require 70% net being paid into the Metropolitan Police at a regional level for use on Policing in the capital. The remaining 30% can be spent on the late night economy in Tower Hamlets. This has been estimated to be £74,000. A consultation exercise would need to be undertaken if this provision was to be used.

Early Morning Restriction Orders: This would enable the Council to determine if part or all off the Borough could be restricted in selling alcohol from midnight and 6am. An evidence base would need to be determined and a consultation exercise undertaken.

Framework Hours: The current framework hours in the Policy give an indication of the desired opening hours of premises, however each case is considered on its merits. The current hours are:

Sunday 0600hrs to 2230hrs
Monday to Thursday 0600hrs to 2330hrs
Friday and Saturday 0600hrs to midnight

Two of the groups that have responded have suggested a later start to the framework hour;

On licences	
Sundays	1200hrs
Monday to Thursday	1000hrs
Friday and Saturday	1000hrs

Off Licences	
Monday to Saturday	0800hrs
Sundays	1000hrs

Guidance has been published under section 182 of the Licensing Act 2003 that addresses the issue of framework hours. They should operate in such a way that does not restrict discretion and recognise that shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good, evidential reasons to restrict these hours. There must be a justification provided if change is considered appropriate. The current responses do not justify the change from a locality perspective but simply compare the hours to that of Westminster City Council.

Increase the consultation area: Three groups have responded that they would like to have a greater consultation area of more than 40 meters from the applicant premises. Only one group has stipulated a distance of 100 meters. There would be resource implications to run licensing consultations over larger areas.

Touting: There were some concerns regarding the Touting elements within the Policy and some businesses have expressed a desire to improve trade without compromising the Licensing Policy and the welfare of residents and visitors to the area. It is claimed that the touting policy is having a negative impact on business.

Some restaurateurs would like to introduce a 'Meeters and Greeters' scheme to regulate on street business promotion by;

- Developing a jointly agreed Code of behaviour and standards with Councilors, Businesses and local residents
- Ensure any on street staff wear identifiable badges making clear their name and the business (with contact details) they represent
- Restrict on street promoters or marketing staff to a certain number to avoid congestion
- Provide professional training so frontline workers and business owners/managers are clear on what is expected both in terms of customer engagement and dealing with other businesses/traders

- The need for a robust process of constant and effective monitoring to and police the scheme

A scheme of this type falls outside the scope of the Statement of Licensing Policy and can be instigated and managed by the restaurateurs. This scheme should not contravene the provisions detailed in the Statement of Licensing Policy.

Health Considerations: The Public Health Team has made recommendations for two conditions that relate back to the Licensing objective of Public Safety. Guidance made under section 182 of the Licensing Act 2003 states that blanket conditions on premises are not suitable and that such conditions should be considered as ‘pool conditions’

However, there are currently mandatory conditions that could cover the ‘pool conditions’ proposed by Public Health. The condition suggested by Public Health states:

For off licences, there shall be no promotional sales of alcoholic drinks at the premises at a price lower than normally sold at the premises. This will include offers that encourage the purchase of multiple alcoholic drinks products for a reduced price such as ‘two for the price of one’, ‘three for the price of two’, ‘buy-one-get-one-free’ & ‘buy six get x% off’

This is more detailed than the corresponding mandatory condition:

The responsible person must take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

The proposed condition from Public Health goes beyond irresponsible promotions and is seeking to stop any promotion at all. The condition cannot be applied to current licences retrospectively; therefore new premises would be put at a disadvantage.

The second condition relates to:

There shall be no sale of alcoholic drinks at a price lower than £0.50 per unit (where a unit of alcohol is defined as 10ml by volume or 8g by weight, of pure alcohol (ethanol)).

This condition does not retrospectively apply to all licences, thus this could put new premises at a disadvantage.

- 4.8 The consultation also covered the request from Cabinet to consider a ‘No Casino’ resolution that would form part of the revised Gambling Policy. This received

majority endorsement from those that completed the online consultation. Appendix Six sets out a suggested text for amendment to the Gambling Policy.

4.9 The justification for the 'no casino' policy can be drawn from the fact that the Borough already hosts 77 Betting Shops and 5 adult gaming centers. According to the NHS there is a link between gambling and alcohol abuse. Many gambling addicts are also addicted to alcohol. Rates of depression and attempted suicide among gambling addicts are around double the national average. Gambling addicts are also more likely to go to prison as a result of criminal activity. This is almost entirely through theft and fraud. (NHS Choices: Your health your choices)

4.10 The following recommendations are put forward for consideration in relation to the non-statutory changes to the Statement of Licensing Policy and are included in the draft Statement of Licensing Policy.

Proposed Change	Recommendation
Late Night Levy	The Council may impose a levy but is required to consult before doing so. The Statement of Licensing Policy should recognise this power but indicate that the Council would only carry out consultation if some justification for a levy is brought forward. Justification would probably come from a responsible authority.
Early Morning Restriction Orders	The Council may make an early morning restriction order but is required to consult before doing so. The Statement of Licensing Policy should recognize this power but indicate that the Council would only carry out consultation if some justification for an order is brought forward. Justification would probably come from a responsible authority. Restrictions on problem premises may presently be imposed via the current review process.
Framework hours	The supporters of moving the frame work hours to midday (Sunday only) and 10.00hrs for on licences and 10.00hrs (Sunday only) and 0800hrs for off licences has not been justified. It also will not be retrospective to current licence holders. The Licensing Sub Committee judges each case on its merits and is not bound by these hours.
Increase in the consultation area	The Council's statement of licensing policy presently provides that it will notify residents and businesses within a 40 meter radius of the premise the subject of the application. This is discretionary and considered to be good practice. If the area was to be extended this would create an administrative burden for the Licensing Team, which it would lack the resources to meet. It is

	proposed that the applications placed on the website for interested parties to review, along with retaining current arrangements
Touting	It is recommended that the work around Touting continues and that the conditions on current licences are maintained.
Health Considerations	<p>The Public Health condition concerning promotions goes further than the current mandatory condition and could not be retrospective, leading to inconsistency and unfairness. It is recommended that this condition is not adopted as a pool condition.</p> <p>The condition concerning the price per unit of alcohol would be contrary to Government guidance and lacks the required justification as to why this would be a proportionate means of achieving the licensing objectives. It is recommended that this condition is not adopted as a pool condition.</p>

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 There are no specific financial implications emanating from the amendments to the Statement of Licensing Policy.
- 7.2 There is however non statutory changes within the recommendations put forward for consideration. The proposed change that will have a financial impact is the introduction of a Late Night Levy for businesses operating past a set terminal hour after midnight. A limited number of exemptions will be applied. The anticipated income generated from the levy would be shared out 70% net to Metropolitan Police and the remaining 30% net to the Council estimated at £74,000.
- 7.3 The additional income generated from the levy will provide an opportunity for re investment into the late night economy in Tower Hamlets which will need to be considered alongside the Medium Term Financial Plan savings targets as part of the budget process.

6. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 6.1 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.

- 6.2 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.
- 6.3 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.
- 6.4 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 policy is to go forward to full council for adoption.
- 6.5 It is proposed that the statement of licensing policy refer to the fact that the Council may impose a late night levy or an early morning restriction order, but that in each case the Council would first have to carry out consultation which it will not undertake unless justification is first provided by a responsible authority. If the Council is not itself aware of a justification for either a late night levy or an early morning restriction order, then it seems reasonable to defer consultation until such time as a justification becomes apparent.
- 6.6 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.

- 6.7 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.
- 6.8 There was a suggestion during consultation that the Council might extend the framework hours referred to in its statement of licensing policy. This is not recommended in the report. The framework hours give a guide to the level of scrutiny the Council will apply in considering licence applications. Consistent with Government guidance, the framework hours are not in any sense "normal" or "usual" and every application has still to be considered on its merits. Any change to the framework hours would need to be considered by reference to the need to promote the licensing objectives, for which no justification has been provided.
- 6.9 There was a suggestion during consultation that the Council might notify people of licence applications in a wider area from the premises. The Council's statement of licensing policy presently provides that it will notify residents and businesses within a 40 metre radius of the premise the subject of the application. This is discretionary and not required by the Licensing Act 2003.
- 6.10 Representations were made during consultation regarding the Council's approach to enforcement action against touting. The Mayor has agreed an Enforcement Policy, which provides that the Council's approach to enforcement is founded on firm but fair regulation around the principles of :
- raising awareness of the law and its requirements;
 - proportionality in applying the law and securing compliance;
 - consistency of approach;
 - transparency about the actions of the Council and its officers; and
 - targeting of enforcement action.
- 6.11 There is no requirement for touting enforcement to be addressed within the Council's statement of licensing policy.
- 6.12 Two licensing conditions have been proposed by Public Health. The first concerns drink promotions. There is already a mandatory condition applying to

all licences, which is in the following terms: “The responsible person must take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange, or participate in any irresponsible promotions in relation to the premises.” The mandatory condition is targeted at irresponsible promotions. By contrast the condition proposed by Public Health seeks to stop all promotions. There is no indication of why such a condition would be a proportionate means of achieving the licensing objectives and in the absence of such a justification it should not be adopted as a pool condition.

- 6.13 The second condition proposed by Public Health seeks to impose a minimum price for alcoholic drinks. This is not consistent with Government guidance. There is no indication of why such a condition would be a proportionate means of achieving the licensing objectives and in the absence of such a justification it should not be adopted as a pool condition.
- 6.14 It is noted that it is intended to publish the Licensing Policy earlier than actually required so as to enable the proposed Special Policy in respect of Cumulative Impact to be brought into effect. At Cabinet on 31st July 2013, the Mayor agreed that the Special Policy in respect of Cumulative Impact being presented to Full Council on 18th September 2013 with the intention that such policy be agreed and published.
- 6.15 It is proposed that the Council makes a “no casino” resolution. Section 166(1) of the Gambling Act 2005 (“the 2005 Act”) permits the Council to resolve not to issue casino premises licences and section 166(2) provides that in passing a resolution under subsection (1) a licensing authority may have regard to any principle or matter. Any resolution: (a) must apply to the issue of casino premises licences generally, (b) must specify the date on which it takes effect, (c) may be revoked by a further resolution, and (d) shall lapse at the end of the period of three years beginning with the date on which it takes effect (without prejudice to the ability to pass a new resolution).
- 6.16 A resolution under section 166(1) is required to be published by being included in a revision of the Council’s three year statement of gambling policy. This is required by section 166(5) of the Gambling Act. The Council is required to consult before revising the gambling policy, which the report indicates has been carried out.
- 6.17 The making of a “no casino” resolution is a matter which may not be the responsibility of the Council’s executive, by virtue of regulation 2(1) and Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. The Council’s Constitution includes the making of such a resolution in the terms of reference of the Licensing Committee. Amendment or revision of the gambling policy is one of the functions which may not be the responsibility of the executive (see Regulation 4(4)). This would need to be taken to full council.

- 6.18 When preparing and determining its statement of licensing policy, or considering a “no casino” resolution, 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 is provided in Appendix 7 of the report.

7. ONE TOWER HAMLETS CONSIDERATIONS

- 7.1 An equalities impact assessment has been undertaken and no adverse impacts have been identified. (Appendix Seven)

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no environmental impacts with regards to this policy.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 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.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 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.

11. EFFICIENCY STATEMENT

- 11.1 There are no efficiency issues relating to this report

Local Government Act, 1972 Section 100D (As amended)
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.
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None

N/A

12. APPENDICES

Appendix One: List of Groups/Organisations Consulted

Appendix Two: Summary of Written Responses

Appendix Three: Summary of On Line Responses

Appendix Four: Proposed Changes to the Statement of Licensing Policy

Appendix Five: Draft Statement of Licensing Policy

Appendix Six: Proposed ‘No Casino’ Resolution

Appendix Seven: Equalities Impact Assessment
