

Appendix Four

Proposed Statutory/Guidance Policy Changes to Statement of Licensing Policy

Reference	Area of change and reason	Proposal
Background and Context page 2	Remove: A Safe and Supportive Community. A Healthy and Supportive Community Policy Update	A Safe and Cohesive Community A Healthy and Supportive Community
Policy page 3	Policy review period Legal Update	Policy is to be reviewed every five years
Consultation page 3	Publishing date of Policy – remove 2011 Contextual Update	Policy will be published in 2013
Consultation page 3	Removal of Crime and Reduction Partnership Contextual Update	Community Safety Partnership
Main Principles of the Licensing Policy: Section 4.6 page 4	Delete due to change in the law Legal Update	The Police Reform and Social Responsibility Act introduced the provision for the licensing authority to make representations. The licensing authority will not make representations that should be made by another responsible authority. The licensing authority may wish to make representations on its own account when they could include bringing together a number of minor unconnected complaints that in themselves do not require another responsible authority to make a representation, but when taken together may constitute a public nuisance, represent breaches of licence conditions only observed by licensing officers or which undermines the licensing objectives.
Main Principles of Licensing Policy page 4	Expansion of items covered under objectives Contextual Update	Addition:

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		<ul style="list-style-type: none"> • <i>The prevention of crime and disorder</i> <p>Consideration, among other things, a prescribed capacity; door supervisors; an appropriate ratio of tables and chairs to customers; and a requirement that security staff holding the appropriate SIA licence or exemption are present to control entry for the purpose of compliance with the capacity limit and to deny entry to individuals who appear drunk or disorderly or both.</p> <ul style="list-style-type: none"> • <i>Public safety</i> <p>Consideration of requiring specific types of training for a DPS or security staff, including awareness of first aid or initiatives to protect women and vulnerable customers; provision and storage of CCTV footage; and ensuring safe departure of those using the premises.</p> <ul style="list-style-type: none"> • <i>The prevention of public nuisance</i> <p>Consideration the prevention of irresponsible promotions, methods of preventing and managing noise and light pollution; and ways of managing litter.</p> <ul style="list-style-type: none"> • <i>The protection of children from harm</i> <p>Consideration of age verification schemes; test purchasing policies; and restrictions on the hours when children may be present.</p>
Health as a responsible authority	Addition due to change in law Legal Update	Addition: the Directors of Public Health is also now a responsible authority. It is expected that the PCT/DPH will be particularly useful in providing evidence of alcohol-related health harms when the licensing authority revises

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		its policy, (perhaps in relation to cumulative impact policies or early morning restriction orders). PCTs/DPHs may also be useful in providing evidence such as alcohol-related A & E admissions or ambulance service data that might be directly relevant to an application under the Act.
Licensing Authority as a Responsible Authority	Addition due to a change in law Legal Update	<p>The Council as a licensing authority is now included in the list of responsible authorities under the Licensing Act 2003.</p> <p>The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes.</p> <p>The Council as a Licensing authority is not expected to act as responsible authorities on behalf of other parties (for example, local residents, local Councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these bodies have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.</p> <p>It is also reasonable for the Council as a licensing authority to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act</p>

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		<p>independently without waiting for representations from any other responsible authority.</p> <p>The 2003 Act enables the Council as a licensing authorities to act as a responsible authority as a means of early intervention; it may do so where it considers it appropriate without having to wait for representations from other responsible authorities. For example, the licensing authority may (in a case where it has applied a cumulative impact policy) consider that granting a new licence application will add to the cumulative impact of licensed premises in its area and therefore decide to make representations to that effect, without waiting for any other person to do so.</p> <p>The Council recognises that in cases where it as the licensing authority is also acting as responsible authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest.</p> <p>The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different individual to the officer who is acting for the responsible authority.</p> <p>The officer acting for responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, must be made in writing.</p>

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		<p>At the outset, of an application, or another licensing process a Licensing Officer in the Licensing Team will be allocated to act as the Licensing authority acting as a responsible authority. This licensing officer is not involved in the application process but sets up a separate record to consider the application for the authority in its capacity as responsible authority, engaging with other responsible authorities where appropriate and determining whether the authority acting as a responsible authority wants to make a representation. In certain circumstances the officer acting for the Licensing Authority as a Responsible Authority will be an officer from another team.</p>
Main Principles of the Licensing Policy; Section 4.15	Delete Licensing Service Manager Contextual Update	Add; Trading Standards and Licensing Manager
Main Principles of the Licensing Policy; Section 4.17	The Councils voluntary consultation process Contextual Update	<p>Members Licensing Committee.</p> <p>The statutory consultation period will not be extended providing the Council has been given a full application by the applicant. The voluntary consultation carried out by the Licensing Team, detailed in para 4.15 and 4.16 will be carried out at the determination of the Trading Standards and Licensing Manager. If the licensing authority in the unlikely event fails to carry out the voluntary consultation within the statutory consultation period, this will not be grounds for refusing or delaying any application.</p>
Crime and Disorder Section 5	Addition of control of illicit goods. Inclusion of conditions Contextual Update	<p>Illicit Goods: alcohol and tobacco</p> <p>The Licensing Authority will consider licence review applications where there is evidence that illicit alcohol has been offered for sale on the premises. Where other illicit goods, such as tobacco, have been found this may be considered by the Licensing Authority as evidence of poor management and have the potential to undermine the licensing objectives.</p> <p>Illicit alcohol means alcohol that is, counterfeit, bears counterfeit duty stamps</p>

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		<p>and or smuggled</p> <p>Illicit tobacco means, counterfeit, and/or non UK duty paid tobacco products”.</p> <p>Illicit goods mean articles that are counterfeit, that do not comply with the classification and labelling requirements of the Video Recordings Acts and/or that breach other Trading Standards legislation such as consumer safety and unfair commercial practices.</p> <p>In particular the Licensing Authority is mindful of the advice provided in the guidance issued by the Home Office under section 182 of the Act “Reviews arising in connection with crime”.</p> <p>The Licensing Authority will exercise its discretion to add a standard condition as follows:-</p> <p>Smuggled goods</p> <p>1) The premises licence holder and any other persons responsible for the purchase of stock shall not purchase any goods from door-to-door sellers other than from established traders who provide full receipts at the time of delivery.</p> <p>2) The premises licence holder shall ensure that all receipts for goods bought include the following details:</p> <ol style="list-style-type: none"> I. Seller’s name and address II. Seller’s company details, if applicable III. Seller’s VAT details, if applicable

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		<p>IV. Vehicle registration detail, if applicable</p> <p>3) Legible copies of the documents referred to in 2) shall be retained on the premises and made available to officers on request.</p> <p>4) The trader shall obtain and use a UV detection device to verify that duty stamps are valid.</p> <p>5) Where the trader becomes aware that any alcohol may be not duty paid they shall inform the Police of this immediately.</p>
Touting section 5.7	Provision of touting conditions Contextual Update	<p>5.7 Touting - The Council has had a significant number of complaints relating to premises which are substantially or mainly restaurants where "touting" is a problem. Touting is soliciting for custom. Consequently, in relation to such premises the Licensing Authority, where its discretion is engaged will insert a standard condition that prohibits "touting as follows:-</p> <p>No person shall be employed to solicit for custom or be permitted to solicit for custom for business for the premises in any public place within a 500 metres radius of the premises as shown edged red on the attached plan.(marked as Appendix -)</p> <p>Clear Signage to be placed in the restaurant windows stating that the premises supports the Council's 'No Touting' policy.</p>
Cumulative Effect: page 8	Currently consulting on a Cumulative Impact Zone in the west of the Borough Delete 6.7 Policy Update	Addition at 6.7 After public consultation which concludes on the 22 nd March 2013, the western part of the Borough may be declared as a Cumulative impact zone. If this is adopted it will be included as part of the Licensing Policy, when the Licensing Policy is presented to full Council. The effect of adopting such a policy is to create a rebuttable presumption that a licence application which is likely to add to the existing cumulative impact will normally

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		be refused following relevant representations. The cumulative impact zone will have an effect on alcohol on sales, alcohol off sales and late night refreshment licence applications.
Cumulative Effect para 6.8 page 9	Review period for a cumulative impact zones Legal Update	Change from 3 years to 5 years to fit in with the licensing policy.
Cumulative Effect para 6.12 and 6.13	Effects of a cumulative impact zone Policy Update	Deletion of para 6.12 and 6.13 – this has been covered with the introduction of the cumulative impact zone (currently out for consultation).
Health Considerations page 13	Insertion of health considerations Policy Update	<ul style="list-style-type: none"> • <u>Health Considerations of Licencing</u> <p>Excess alcohol consumption can lead to a wide range of personal health related harms which are well documented in both the Alcohol Joint Strategic Needs Assessment factsheet and Tower Hamlets Substance Misuse Strategy. The short-term negative health effects of hazardous drinking can include impaired senses, mood or personality changes, loss of consciousness and an increased risk of injury and accidents, while regular alcohol consumption can lead to heart disease, stroke, liver disease, stomach damage and certain types of cancerⁱ. Although these are important personal health related harms they, by and large, fall outside the scope of the four licensing objectives as defined in the Licencing Act.</p> <p>However the consequences of drinking go far beyond the individual drinker's health and well-being. They include harm to the unborn foetus, acts of drunken violence, vandalism, sexual assault and child abuse, and a huge health burden carried by both the NHS and friends and family who care for those damaged by alcohol. Many of these affects are relevant to the licencing regimeⁱⁱ. The short-term negative health effects of harmful drinking can include impaired senses, mood or personality changes, loss of consciousness and an increased risk of injury and accidentsⁱⁱⁱ.</p>

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Strategies page16	Late Night Levy consideration Legal Update	<p>Addition: The legislative provisions relating to the late night levy are not part of the Licensing Act 2003 but are contained in Sections 125 to 139 of the Police Reform and Social Responsibility Act 2011. The provisions came into force on 31st October 2012.</p> <p>Regulations have been brought into force setting out the way in which the levy must be applied and administered, and arrangements for expenses, exemptions and reductions.</p> <p>Guidance has also been introduced in relation to:</p> <ul style="list-style-type: none"> • implementing the levy and the consultation process • the design of the levy • exemptions from the levy • reductions in levy charges • how revenue raised from the levy may be spent • the levy charges • the levy collection process <p>With regard to exemptions, the licensing authority will have discretion whether to exempt certain premises or not.</p> <p>Licensing Authorities also have discretion whether to reduce the amount of the levy by 30% for premises which participate in business-led best practice schemes.</p> <p>Any revenue from the levy must be split between the licensing authority and the Police, with at least 70% of the 'net' levy (after expenses) paid to the Police. The Late Night Levy Guidance, at paragraph 1.40 suggests that licensing authorities may wish to use existing partnership arrangements with</p>

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		<p>the Police to ensure that the police intentions for the share of the levy revenue paid to them are genuine.</p> <p>These new powers enable licensing authorities to charge a levy in relation to persons who are licensed to sell or supply alcohol late at night as a means of raising a contribution towards the costs of policing the night-time economy. It is a 'local' power that licensing authorities can choose whether or not to exercise.</p> <p>This is a new provision open to the Council and it may wish to consider consulting on this issue at a later date. Initial views are sought from stakeholders during this consultation.</p>
Early Morning Restriction Orders	Addition due to change in legislation Legal Update	<p>Addition: The power for licensing authorities to introduce an EMRO is specified in sections 172A to 172E of the 2003 Act which was amended by Section 119 of the Police Reform and Social Responsibility Act 2011. These provisions came into force on 31st October 2012.</p> <p>Regulations prescribing the requirements in relation to the process for making an early morning restriction order (EMRO) were brought in force on 31st October 2012.</p> <p>Guidance has been introduced in relation to:</p> <ul style="list-style-type: none"> • the EMRO process • the evidence base • introducing an EMRO • advertising an EMRO • dealing with representations

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		<ul style="list-style-type: none"> • hearings • implementation • limitations • enforcement <p>The legislation gives licensing authorities discretion to restrict sales of alcohol by introducing an EMRO to restrict the sale or supply of alcohol to tackle high levels of alcohol related crime and disorder, nuisance and anti-social behaviour. The order may be applied to the whole or part of the licensing authority area and if relevant on specific days and at specific times. The licensing authority must be satisfied that such an order would be appropriate to promote the licensing objectives.</p> <p>The only exemptions relating to EMROs are New Years Eve and the provision of alcohol to residents in premises with overnight accommodation by means of mini bars and room service.</p> <p>The decision to implement an EMRO should be evidence based and licensing authorities may wish to outline in the policy the grounds which they will take into consideration when considering implementation of an EMRO. This should include consideration of the potential burden imposed as well as the potential benefits. The Licensing Authority reserves the right to introduce an EMRO if it so desires and consultation and evidence from responsible authorities demonstrates the need.</p> <p>The function of making, varying or revoking an EMRO is specifically excluded from the statutory delegation of functions to the Licensing Committee.</p> <p>This is a new provision open to the Council and it may wish to consider</p>

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		consulting on this issue at a later date. Initial views are sought from stakeholders during this consultation.
Duplication page 17	Duplication of legislation Contextual Update	Addition at 14.9: The responsible authorities are committed to avoid duplication with other regulatory regimes and the control measures contained in any conditions which are provided for in other legislation. This Policy does not intend to duplicate existing legislation and regulatory regimes that are already places obligations on employers and operators.
Striptease page17	Change of heading Contextual Update	The Licensing Policy does not deal with Sexual Entertainment Venues. These can be dealt with by a separate legislative regime if the Council adopts amendments to the Local Government (Miscellaneous Provision) Act 1982 schedule 3 which requires the development of a separate policy as required by that statute. Until this is adopted the following will apply.
Striptease page 17	Deletion of old consultations Contextual Update	Delete para 15.10 and 15.11
Enforcement page 19	Enforcement update Legal Update	Addition at 16.4 ‘ In relation to enforcement the Council will abide by the Regulators Compliance Code and the Enforcement Concordat and the Council’s Enforcement Policy. A copy of this policy is available on the Councils website. In most cases a graduated form of response will be used to resolve issues of non-compliance although it is recognised that in serious cases a prosecution or a review application are appropriate means of disposal. The Council will use test purchases as a legitimate way to determine compliance to the license conditions. Failed test purchases will be disposed with by reference to the Council Enforcement Policy.
Conditions	Addition on the clarification on the use of conditions	Add: Conditions (other than the statutory mandatory conditions) may only be attached to a licence or club premises certificate if relevant representations are received (except for conditions drawn from the applicant’s operating schedule

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	Contextual Update	<p>since these are voluntary propositions). Any such conditions will be tailored to the individual style and characteristics of the premises and events concerned.</p> <p>Conditions should be:</p> <ul style="list-style-type: none"> • clear • enforceable • evidenced • proportionate • relevant • be expressed in plain language capable of being understood by those expected to comply with them. <p>Conditions must be attached at a hearing; unless the authority, the premises user, and the relevant responsible authority have agreed a hearing is unnecessary.</p> <p>Licensing authority cannot impose blanket standard conditions. A pool of conditions is included in the appendix.</p> <p>Conditions can only be carried forward from a premises licence or club premises certificate onto a TEN where relevant objections have been made by the police or Environmental Health.</p>
Live Music	Deletion of open spaces report Contextual Update	Delete para 17.4 and 17.5
Live Music Act 2012	Addition of new legislation	Addition: The Live Music Act came into force on 1 st October 2012 and is

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	Legal Update	<p>designed to encourage more performances of 'live' music. The Act :</p> <ul style="list-style-type: none"> • Removes the licensing requirement for unamplified live music taking place between 8am and 11pm in all venues, subject to the right of a licensing authority to impose conditions about live music following a review of a premises licence relating to premises authorised to supply alcohol for consumption on the premises. • Removes the licensing requirement for amplified live music taking place between 8am and 11pm before audiences of no more than 200 persons on premises authorised to supply alcohol for consumption on the premises, subject to the right of a licensing authority to impose conditions about live music following a review of a premises licence. • Removes the licensing requirement for amplified live music taking place between 8am and 11pm before audiences of no more than 200 persons in workplaces (but not necessarily for workers) not otherwise licensed under the 2003 Act (or licensed only for the provision of late night refreshment). • Removes the licensing requirement for the provision of entertainment facilities and widens the licensing exemption for live music integral to a performance of Morris dancing or dancing of a similar type, so that the exemption applies to live or recorded music instead of unamplified live music.
Risk assessments	Update of Police details page 20 Contextual Update	Delete 'email site at (please insert hyperlink)
Temporary Event Notices	Addition about late Tens	Addition. Late TENS are limited in number and can be prevented by a single

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Process	page 22 Legal Update	objection from a responsible authority. The maximum time period of a TEN is 168 hours. A Cumulative Impact policy is designed to reduce crime. Disorder and nuisance from a concentration of licensed premises. If a Cumulative Impact Policy is adopted it is possible that objections will be made by the police or Environmental Health on the grounds that the giving of a TEN would undermine the licensing objectives in the designated zone.
Licence Suspensions	New legislation Legal Update	<p>Addition: This is a power brought as part of the amendments brought about by the Police Reform and Social Responsibility Act 2011. The council must suspend premises licences and club premises certificates on the non-payment of annual fees.</p> <p>The regulations state that the premises licence holder will be given notice of a suspension that is at least 2 working days before the suspension is to take place.</p> <p>A single request for payment will be sent and the licensing Authority will then take measures to suspend the licence if payment is not received within 28 days.</p> <p>Income recovery procedures will be commenced along with enforcement visits to ensure that the suspension is maintained until payment or licence surrendered</p>
Table of delegation	Update for new powers Legal Update	<ul style="list-style-type: none"> • Determination of minor variation application-all cases Officers • Determination of application to vary premises licence at community premises to include alternative licence condition. If a police objection Sub Committee and all cases Officers • Power to suspend a premises licence (S.55A (1) LA2003) or club

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		<p>premises certificate (S.92A (1) LA2003) for non payment of annual fees all cases Officers</p> <ul style="list-style-type: none"> • Power to specify the date on which suspension takes effect. This must be at least 2 working days after the day the Authority gives notice - all cases Officers • Power to impose existing conditions on a premises licence, club premises certificate and Temporary Event Notice where all parties agree that a Hearing is unnecessary – see S.106A LA2003 - All cases Officers • Power to make representations as responsible authority - all cases Officers
Advice and Guidance	Additional guidance Contextual Update	<p>Add: Application forms, fees, and details regarding each type of application, including the minor variations process can be obtained from the Councils website or by contacting the Licensing Team on 0207 364 5008 or licensing@towerhamlets.gov.uk.</p> <p>The Licensing Authority encourages informal discussion before the application process in order to resolve potential problems and avoid unnecessary hearings and appeals.</p>
Appendix One	Update on health as a responsible authority Legal Update	<p>Add; Director of Public Health London Borough of Tower Hamlets Mulberry Place Clove Crescent London E14 1BY</p>

