

Licensing Committee

Thursday, 14th July, 2011
at 9.30 am

PLEASE NOTE TIME OF MEETING

Committee Rooms 1 and 2 -
Civic Centre

This meeting is open to the public

Members

Councillor Parnell (Chair)
Councillor Drake
Councillor McEwing
Councillor Osmond
Councillor Rayment
Councillor Thomas
Councillor Willacy
Councillor Mrs Blatchford
Councillor Cunio
Councillor Fuller
Councillor Holmes
Councillor B Harris
Councillor Vassiliou

Contacts

Democratic Support Officer
Sharon Pearson
Tel: 023 8083 4597
Email: sharon.pearson@southampton.gov.uk

Head of Legal and Democratic Services
Richard Ivory
Tel. 023 8083 2794
Email: richard.ivory@southampton.gov.uk

PUBLIC INFORMATION

Terms of Reference

The Committee publishes and implements a statement of licensing policy. It appoints Sub-Committees to deal with individual licensing applications and associated matters for which the Council as Licensing Authority is responsible.

Public Representations

At the discretion of the Chair, members of the public may address the meeting about any report on the agenda for the meeting in which they have a relevant interest.

Southampton City Council's Six Priorities

- Providing good value, high quality services
- Getting the City working
- Investing in education and training
- Keeping people safe
- Keeping the City clean and green
- Looking after people

Smoking policy – The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones – Please turn off your mobile telephone whilst in the meeting.

Fire Procedure – Should the fire alarm sound during the meeting leave the building by the nearest available exit and assemble in the Civic Centre forecourt car park.

Access – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2011/12

Meetings of the Committee are held as and when required.

CONDUCT OF MEETING

Terms of Reference

The terms of reference of the Licensing Committee are contained in Part 3 (Schedule 2) of the Council's Constitution.

Business to be discussed

Only those items listed on the attached agenda may be considered at this meeting.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 5.

Disclosure of Interests

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "personal" or "prejudicial" interests they may have in relation to matters for consideration on this Agenda.

Personal Interests

A Member must regard himself or herself as having a personal interest in any matter:

- (i) if the matter relates to an interest in the Member's register of interests; or
- (ii) if a decision upon a matter might reasonably be regarded as affecting to a greater extent than other Council Tax payers, ratepayers and inhabitants of the District, the wellbeing or financial position of himself or herself, a relative or a friend or:-
 - (a) any employment or business carried on by such person;
 - (b) any person who employs or has appointed such a person, any firm in which such a person is a partner, or any company of which such a person is a director;
 - (c) any corporate body in which such a person has a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in Article 14(a) to (e) in which such a person holds a position of general control or management.

A Member must disclose a personal interest.

Prejudicial Interests

Having identified a personal interest, a Member must consider whether a member of the public with knowledge of the relevant facts would reasonably think that the interest was so significant and particular that it could prejudice that Member's judgement of the public interest. If that is the case, the interest must be regarded as "prejudicial" and the Member must disclose the interest and withdraw from the meeting room during discussion on the item.

It should be noted that a prejudicial interest may apply to part or the whole of an item.

Where there are a series of inter-related financial or resource matters, with a limited resource available, under consideration a prejudicial interest in one matter relating to that resource may lead to a member being excluded from considering the other matters relating to that same limited resource.

There are some limited exceptions.

Note: Members are encouraged to seek advice from the Monitoring Officer or his staff in Democratic Services if they have any problems or concerns in relation to the above.

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the “rationality” or “taking leave of your senses” principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, ‘live now, pay later’ and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

Agendas and papers are available via the Council's website at
www.southampton.gov.uk/council/meeting-papers

1 **APOLOGIES**

To receive any apologies.

2 **ELECTION OF VICE CHAIR**

To elect a Vice-Chair for the 2011/2012 Municipal Year.

3 **DISCLOSURE OF PERSONAL AND PREJUDICIAL INTERESTS**

In accordance with the Local Government Act 2000, and the Council's Code of Conduct adopted on 16th May 2007, Members to disclose any personal or prejudicial interests in any matter included on the agenda for this meeting.

NOTE: Members are reminded that, where applicable, they must complete the appropriate form recording details of any such interests and hand it to the Committee Administrator prior to the commencement of this meeting.

4 **STATEMENT FROM THE CHAIR**

5 **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING) (**

To approve and sign as a correct record the Minutes of the meeting held on 15th December 2010 and to deal with any matters arising, attached.

6 **LICENSING OF SEXUAL ENTERTAINMENT VENUES**

Report of the Head of Legal and Democratic Services for the Licensing Committee to consider amendments to the Local Government (Miscellaneous Provisions) Act 1982, introducing a new category of sex establishment – “sexual entertainment venues” and to authorise consultation on whether to formally adopt the new statutory provisions, attached.

7 **LICENSING ENFORCEMENT POLICY**

Report of the Head of Legal and Democratic Services, for the Licensing Committee to consider and adopt the proposed licensing enforcement policy, attached.

8 DELEGATION OF UNOPPOSED SEX ESTABLISHMENT LICENCE RENEWAL APPLICATIONS

Report of the Head of Legal and Democratic Services requesting that the Licensing Committee delegate the renewal of unopposed sex establishment licence applications to the Head of Legal and Democratic Services, attached.

Wednesday, 6 July 2011

HEAD OF LEGAL AND DEMOCRATIC SERVICES

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 15 DECEMBER 2010

Present: Councillors Parnell (Chair), Drake, Fitzgerald, Harris, Norris, Odgers, Osmond, Thomas and Willacy

Apologies: Councillors Letts, McEwing, Rayment and Walker

13. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the Minutes of the meeting held on 4th November 2010 be approved and signed as a correct record.

14. **OBJECTION TO TRADE REQUEST FOR VARIATION OF HACKNEY CARRIAGE FARES**

The Committee considered the report of the Solicitor to the Council concerning the determination of an objection to the proposed variation of the table of fares for the hire of hackney carriages. (Copy of the minutes circulated with the agenda and appended to the signed minutes).

Mr Griffiths (Southampton UNITE Cab Branch), Mr Johnson (Southampton Taxi Association), Mr P McMillan (UNITE Southampton Cab Section SE 621), Mr Romsey (Southampton Hackney Carriage Association) and Mr Smith (Objector / Hackney Carriage driver) were present and with the consent of the Chair, addressed the meeting.

RESOLVED

- (i) that the objection to the request for a variation of the table of fares for the hire of Hackney Carriages in Southampton be not upheld;
- (ii) that the request for the variation of the table of fares for the hire of Hackney Carriages in Southampton from the Southampton Taxi Trade, be approved without amendment and to come into effect on 29th December 2010; and
- (iii) that the Solicitor to the Council be authorised to take any such action necessary to give effect to the Committee's decision.

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Agenda Item 6

DECISION-MAKER:	LICENSING COMMITTEE
SUBJECT:	LICENSING OF SEXUAL ENTERTAINMENT VENUES
DATE OF DECISION:	14 JULY 2011
REPORT OF:	HEAD OF LEGAL AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

The Licensing Committee is requested to consider amendments to the Local Government (Miscellaneous Provisions) Act 1982, introducing a new category of sex establishment - "sexual entertainment venues" and to authorise consultation on whether to formally adopt the new statutory provisions.

RECOMMENDATIONS:

- (i) That the Committee consider this report, and
- (ii) authorise the Head of Legal and Democratic Services to consult with interested parties on the adoption of the provisions and bring a further report prior to submission to full Council

REASONS FOR REPORT RECOMMENDATIONS

1. Although the amendments to the Local Government (Miscellaneous Provisions) Act 1982 (the "1982 Act") are adoptive, the Council is required by the recent Policing and Crime Act 2009 (the "2009 Act") to consult on the adoption of the provisions relating to "sexual entertainment venues" ("SEVs").

DETAIL (Including consultation carried out)

2. Following the implementation of Licensing Act 2003 (the "2003 Act") the Council, as Licensing Authority, has a statutory duty to licence premises for the sale or supply of alcohol, regulated entertainment and/or late night refreshment. Regulated entertainment includes music and performances of dance such as lap dancing but, under the 2003 Act, if no relevant representations relating to the licensing objectives are received from responsible authorities or interested parties, the Licensing Authority must grant the licence according to the terms of the application.
3. Conversely, if the provisions of Schedule 3 of the 1982 Act were formally adopted in relation to SEVs, licensing authorities would potentially be able to regulate such premises on wider grounds than the 2003 Act allows. In addition, the potential for comment on applications for SEVs from the community is not restricted by vicinity, as it is under the 2003 Act, where valid representations are restricted to persons or businesses in the vicinity of premises, bodies representing them or councillors.
4. However, it should be made clear that representations on moral grounds to the nature and type of premises are not legitimate grounds for objection.
5. The determination as to whether or not to adopt the SEV provisions is required to be made by Council.

6. It is proposed that the consultation will be with the proprietors of existing premises in Southampton identified as providing entertainment which the amended legislation seeks to regulate and with residents and businesses in the city.
7. It is intended that the consultation will be by correspondence with the identified premises, and a notice in the local press referring any interested parties to further detailed information on the City Council's web site
8. Southampton City Council originally adopted Schedule 3 of the 1982 Act in so far as they related to sex shops and sex cinemas in 1983 and readopted them with effect from 3rd July 1995.
9. Under the existing adopted provisions five licensed sex shops and no licensed sex cinemas currently have licences in Southampton.
10. Although the Council has discretion to adopt the new provisions relating the sexual entertainment venues, the legislation requires the Council to carry out an extensive public consultation annually and, if it determines that the new SEV provisions will *not* be adopted, publish detailed reasons why it does not intent to adopt those provisions on each occasion.
11. Such a recurring commitment would require considerable financial and staff resources, for which no budgetary provision is currently identified.

RESOURCE IMPLICATIONS

Capital/Revenue

12. If adopted, the additional officer workload should be relatively small, and any extra work and cost offset by additional fee income from applications. This will be kept under review. There is also the cost of advertising the proposal which will be met from fee income.
13. If the new provisions were not adopted, there would be an ongoing unfunded resource implication for the procedures outlined in paragraphs 8 and 9 above.

Property/Other

14. None.

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

15. The 2009 Act amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6th April 2010, by introducing a new category of sex establishment called "SEVs" enabling local licensing authorities to adopt provisions for the regulation of lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previously the power was limited to sex shops and sex cinemas.
16. If Council decides not to adopt the provisions within one year of them coming into force (i.e. before 6 April 2011), then the legislation requires that the Council must consult local people, as soon as is reasonably practicable after that date, in order to consider their views about whether it should make such a resolution.

Adoption Procedure:

17. The adoption procedure is by a Council resolution. In considering such a resolution, Council may have regard to any recommendation made by the Licensing Committee.
18. If Council decides to adopt the new provision it must state the date upon which the new regime is to come into effect which must be at least one month after the resolution is made. Council would be recommended to delegate to the Licensing Committee responsibility for establishing the detail of any policies and standard conditions, and thus sufficient time should be allowed for the Licensing Committee to determine these issues.
19. The licensing of SEVs is not a matter which can be determined by the Executive.
20. The notice must also state the general effect of the provisions adopted which will include:
 - That sexual entertainment venues will be required to apply for a licence;
 - That there will be an opportunity for objections to be made to the grant, renewal, variation and transfer of licences; and
 - That licences may be granted; granted with conditions or refused.

Sexual Entertainment venues:

21. Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a “sexual entertainment venue” and “relevant entertainment” for the purposes of the statutory provisions.

A sexual entertainment venue is defined as:
“Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer.”

Relevant entertainment is defined as:
“Any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).”

It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.

Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.
22. In terms of considering what constitutes “relevant entertainment” each case must be judged on its merits, but the informal guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:
 - Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows

- Live sex shows.
23. However, list above cannot be exhaustive and, as the understanding of the exact nature of these descriptions may vary, it should therefore merely be used as an indicator for certain types of entertainment. Ultimately, decisions on the licensing of individual premises as sexual entertainment venues will depend on the content of the entertainment provided and not on how it is described.
24. The relevant entertainment must be provided for the financial gain of the “organiser” or “entertainer”.
- “Organiser” means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most cases this definition will relate to the manager of the premises but there could be circumstances where it will relate to an individual who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
25. The 1982 Act also sets out those premises that are NOT sexual entertainment venues. These are:
- Sex shops and sex cinemas;
 - Premises which provide entertainment on an infrequent basis. These are defined as premises where –
 - (a) No relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - (b) No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - (c) No such occasion has lasted longer than 24 hours.
 - Other premises or types of performances or displays exempted by an order of the Secretary of State.
 - Private dwellings with no public admittance.

Transitional Provisions:

26. **Transitional period**

Should a local authority resolve that the new provisions will have effect in its area, the new legislation sets out a “transitional period” which will last for 12 months beginning with the date that the local authority resolves that the provisions will come into force in its area – this date would be known as “the first appointed day”. Six months following the first appointed day will be known as the “second appointed day” and the day on which the transitional period ends will be known as the “third appointed day”.

These dates will vary across individual authority areas as it will be dependent upon when local authorities resolve to adopt the new provisions.

27. **Existing operators**

In order to allow sufficient time for existing operators to comply with the new regime (i.e. those operators who, immediately before the first appointed day, have a licence under the 2003 Act and lawfully use premises as a SEV) they will be allowed to continue to provide relevant entertainment until the third appointed day or until the determination of any application submitted before

that time (including any appeal against the refusal to grant a licence), whichever is the later.

28. New applicants

New applicants are considered to be those persons who wish to use premises as a SEV after the first appointed day but do not already have a premises licence or club premises certificate under the 2003 Act or do have such a licence but have not taken any steps towards operating as such.

After the first appointed day, new applicants will not be able to operate as a SEV until they have been granted a sexual entertainment venue licence.

29. Determining applications received on or before the second appointed day

Applicants will be able to submit their application for a SEV from the first appointed day onwards.

However, as the local authority is able to refuse applications having regard to the number of sex establishments they consider appropriate for a particular locality, all applications made on or after the first appointed day and on or before the second appointed day shall be considered together. This is to ensure that applicants are given sufficient time to submit their application and that all applications received on or before the second appointed day are considered on their individual merit and not on a first come, first served basis.

No applications will be determined before the second appointed day. After this date the local authority must decide what, if any, licences should be granted.

If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the third appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

30. Determining applications received after the second appointed day

Applications made after the second appointed day shall be considered when they are made but only after all applications made before or on the second appointed date have been determined.

As in paragraph 23 above, licences granted to new applicants shall take effect immediately and licences granted to existing operators will take effect from the third appointed day or, if later, the date the application is determined

Licensing Policies:

31. Local licensing authorities are not required to publish a licensing policy relating to sex establishments but can do if it wishes so long as it does not prevent any individual application from being considered on its merits at the time the application is made.

A policy may include statements about where the local licensing authority considers a location for such venues to be appropriate or inappropriate. This could be set out in general terms by reference to a particular type of premises, such as a school or place of worship, or more specifically, by reference to a defined locality.

Equally, the policy could give an indication of how many sex establishments,

or sex establishments of a particular kind, they consider to be appropriate for a particular locality.

Different policies or separate sets of criteria may be applied in respect of different types of sex establishments. This may relate to distinctions between the operating requirements of different establishments for the fact that the location that the local authority considers appropriate for a sex shop may be different to that for a SEV.

At present, the policy of the Council relating to the licensing of sex establishments (shops and cinemas) is to consider each case on its individual merits.

Licensing Conditions:

32. If a local licensing authority has decided to grant a licence it has power to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual premises concerned or standard conditions applicable to all sex establishments, or particular types of sex establishments.

Examples of the matters that standard conditions may address can include, but are not restricted to:

- The hours of opening and closing
- Displays and advertisements on or in sex establishments
- The visibility of the interior of a sex establishment to passers-by
- Any change of use from one kind of sex establishment to another.

If such standard conditions are introduced by the local authority, they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

Consultation Regarding the New Provisions

33. Whilst there is no statutory requirement for the local authority to consult with local people as regards making a resolution to adopt these provisions prior to 6 April 2011 (See paragraph 4.4 above), the licensing team has informally consulted the following parties and sought their views on the new provisions to assist the Committee and Council when considering the adoption of the provisions:

- Existing operators of premises which are within the definition of SEVs
- The Chief Officer of Police
- Community Safety

Where responses have been received, they are attached as Appendix A to this report.

Consideration of Adoption of New Powers by Council

34. It is intended that Council will consider the recent amendments and consider as to whether or not to adopt the new licensing provisions at a future meeting.

Should Council resolve to adopt the provisions then further recommendations will be made in respect of the following matters:

- The date that the new regime will come into effect;
- Delegation of the statutory function (to include the setting of fees) to

- the Licensing Committee;
- Delegation of powers to officers to approve applications where no valid objections have been received;
- Arrangements for publication of statutory notices;
- Preparation of proposed policy and standard conditions for consideration and approval by the Licensing Committee.

Other Legal Implications

35. Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
36. The Human Rights Act 1998 Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person’s Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another’s rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

POLICY FRAMEWORK IMPLICATIONS

37. None.

AUTHOR:	Name:	John Burke	Tel:	023 8083 3002
	E-mail:	licensing.policy@southampton.gov.uk		

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members’ Rooms and can be accessed on-line

Appendices

1.	
2.	

Documents In Members’ Rooms

1.	None
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out?	Yes/No
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Other Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	Home Office Guidance relating to Sexual Entertainment Venues	
2.		

Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:	Not applicable
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DECISION-MAKER:	LICENSING COMMITTEE
SUBJECT:	LICENSING ENFORCEMENT POLICY
DATE OF DECISION:	14 JULY 2011
REPORT OF:	HEAD OF LEGAL AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

The Licensing Committee is requested to consider the proposed licensing enforcement policy and to adopt it.

RECOMMENDATIONS:

- (i) That the Committee adopt the proposed licensing enforcement policy, attached as appendix 1, with immediate effect.

REASONS FOR REPORT RECOMMENDATIONS

1. In order to assist in demonstrating the consistency of approach in licensing enforcement, and ensure compliance with the available guidance, the City Council should adopt a formal licensing enforcement policy.

DETAIL (Including consultation carried out)

2. The licensing enforcement policy at appendix 1 sets out the approaches to enforcement of licensing matters and processes which the Licensing Team has followed and developed over several years and codifies that good practice.
3. It is important that the Licensing Authority is able to demonstrate that consistency of its approach to enforcement matters, especially when enforcement results in legal action being taken against individuals or corporate bodies
4. The policy only relates to those matters where the Licensing Authority is the enforcing authority, and will not bind other agencies, such as the Police, Fire and Rescue Service, Gambling Commission or Trading Standards, who will have their own enforcement policies and protocols.
5. The licensing enforcement policy is consistent with the corporate enforcement policy and the principals of good regulation: proportionality, accountability, consistency, transparency and targeting.
6. This is not to say that action outside of the framework of the policy cannot be taken, but there would need to be compelling reasons for such action dictated by the discrete circumstances of that matter.
7. Government advice such as the Regulators Compliance Code, Cabinet Office Enforcement Concordat, the Hampton Review and the Macrory report all inform this report.
8. Informal consultation has been carried out with Hampshire Constabulary as the major partner in licensing enforcement and their comments have been incorporated into the policy.

9. It may be necessary to amend the policy from time to time in the light of changes in the law and other circumstances, and this will be reported to the Committee as appropriate.

RESOURCE IMPLICATIONS

Capital/Revenue

10. None - the policy reflects current licensing enforcement practice and procedure.
11. In general terms, where possible, licensing fees are set at a level which provided for the administration, inspection and enforcement of each function. Where fees are chargeable, they are either set centrally, subject to maxima or there is local discretion.

Property/Other

12. None.

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

13. The policy rests in the legislation enforced by the Licensing Team, including the Town Police Clauses Act 1847, the Public Health Acts Amendment Act 1907, the Police, Factories (Miscellaneous Provisions) Act 1916, the House to House Collections Act 1939, the Hypnotism Act 1952, the Scrap Metal Dealers Act 1964, the Local Government (Miscellaneous Provisions) 1976, the Local Government (Miscellaneous Provisions) Act 1982, the Vehicles (Crime) Act 2001, the Licensing Act 2003 and the Gambling Act 2005.

Other Legal Implications

14. Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
15. The Human Rights Act 1998 Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matters set out in this report must be considered in light of the above obligations.
16. The adoption of the policy will assist the Licensing Authority in meeting its duty under section 6 of the Human Rights Act 1988 not to act in a way which is incompatible with a Convention right.

POLICY FRAMEWORK IMPLICATIONS

17. None.

AUTHOR:	Name:	John Burke	Tel:	023 8083 3002
	E-mail:	licensing.policy@southampton.gov.uk		

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Southampton Licensing Enforcement Policy
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Documents In Members' Rooms

1.	None
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out?	Yes/No
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Other Background Documents

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	The Regulators Compliance Code	
2.	Cabinet Office Enforcement Concordat	
3.	Hampton Review	
4.	Macrory Report (Penalties & Sanctions)	

Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:	ALL
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Licensing Enforcement Policy

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1. Statement of objectives

1.1 The Licensing service is committed to the Council's priorities. This policy gives detail on how the service contributes towards those priorities:

- Providing good value, high quality services
- Getting the city working
- Investing in education and training
- Keeping people safe
- Keeping the city clean and green
- Looking after people

and will inform the enforcement actions taken. Amendments to priorities will be embedded automatically.

1.2 This policy promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

1.3 In certain instances the service may conclude that a provision in the Code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

1.4 The service pursues a positive and proactive approach towards ensuring compliance by:

- Supporting the national Better Regulation agenda;
- Helping make prosperity and protection a reality for the City's community;
- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily;
- Responding proportionately to regulatory breaches; and

- Protecting and improving public health, community safety and the environment.

1.5 This policy is based on the seven “Hampton Principles” of:

- Economic Progress: Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection;
- Risk Assessment: Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most;
- Advice and Guidance: Regulators should provide authoritative, accessible advice easily and cheaply;
- Inspections and other visits: No inspection should take place without a reason;
- Information requirements: Businesses should not have to give unnecessary information or give the same information twice;
- Compliance and enforcement actions: The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions; and
- Accountability: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

1.6 The rights and freedoms given to an individual under the Human Rights Act 1998, particularly Article 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act 2000.

2. Scope of the policy

- 2.1 This policy supports and supplements specific guidance on enforcement action contained in the Statutory Code of Practice for Regulators, Southampton City Council’s Corporate Enforcement Policy, Statutory Codes of Practice and relevant guidance documents and guidelines issued by Government Departments and co-ordinating bodies.
- 2.2 This policy relates to actions taken to educate and enforce legislation where non-compliances have been identified or have a realistic potential to occur.
- 2.3 The policy is limited to those enforcement activities lead by the Licensing Team.

3. Training

Officers undertaking enforcement duties will be suitably trained, experienced and qualified so as to ensure they are fully competent to undertake their enforcement activities.

4. Management Systems

The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, so far as is reasonably practicable, uniformity and consistency.

5. Enforcement Options

- 5.1 The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government Departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.
- 5.2 Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards to ensure that individuals, public safety or the environment is adequately protected. The aims of sanctions and penalties are to:
- Protect the public
 - Change the behaviour of the offender;
 - Eliminate any financial gain or benefit from non-compliance;
 - Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - Proportionate to the nature of the offence and the harm or impact caused; and
 - To deter future non-compliance.
- 5.3 Criteria to be taken into account when considering the most appropriate enforcement option include:
- the potential of the offence to cause harm;
 - the previous history of the offender;
 - the consequences of non compliance;
 - the likely effectiveness of the various enforcement options.
- 5.4 Having considered all the relevant options the choices for action are:
- **Informal Warning:** All advice issued will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. An informal warning may be included with the advice, and may accompany higher-level actions, such as enforcement notices, suspension of a licence or voluntary surrender:
 - **Licence review:** The licence review powers in the Licensing Act 2003 and the Gambling Act 2005 will be used where an application for review relates to one or more of the licensing objectives
 - **Hackney carriage, private hire vehicle, driver or operator licences:** licence suspension or revocation will be used to protect public safety. Other sanctions such as driver testing will be used to protect public safety and in accordance with the adopted hackney carriage and private hire licensing policies.
 - **Caution:** The issue of a formal caution by an authorised officer may be undertaken as an alternative to prosecution where it is considered unnecessary to involve the Courts, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be issued where the offender makes a clear and honest admission of guilt and understands the significance of acceptance.

- Prosecution: A prosecution is appropriate where there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment or environmental amenity is adversely affected.
- Injunction: in severe cases where either a previous significant breach has occurred, conviction followed and the breach reoccurs a civil injunction may be appropriate. Equally, it may be that the breach is so significant in terms of protecting the public it is deemed necessary to issue an injunction without any other previous action having been taken

The Crown Prosecutor's code of evidential and public interest tests must be met in all cases. However, certain circumstances will normally justify prosecution to prevent the undermining of the service's enforcement responsibilities:

- Failure to comply with an enforcement notice
- Declining a caution
- Continued, reckless, negligent or pre-meditated non-compliance.
- Failure to pay a fixed penalty.
- Non-co-operation, acts of obstruction or threats of physical harm or abuse.
- Injunctions: Injunctive action as a means of preventing an activity or course of action likely to result in significant risk to public or community safety or economic wellbeing of consumers and businesses.
- If the Team is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be discussed with other authorities or any local co-ordinating body before any action is taken.

6. Informal warning

6.1 Informal action may be taken when:-

- the act or omission is not serious enough to warrant formal action, or
- from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance or
- confidence in the individual/enterprise's management or ability to
- resolve the matter is high or
- the consequences of non-compliance will not pose a significant risk to public health, public safety, or the environment.

When an informal approach is used to secure compliance with regulations, written documentation issued will:-

- contain all the information necessary to understand what is required and why;
- indicate the regulations contravened, measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen;
- clearly differentiate between legal requirements and recommendations of good practice. Such a differentiation will also be made when verbal advice is given.

7. Cautions

7.1 A caution may be issued as an alternative to a prosecution.

Cautions may be issued to:-

- a person who recognises his or her wrongdoing
- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;
- reduce the chances of repeat offences.

7.2 The following factors will be considered when deciding whether a Caution is appropriate:-

- evidence of the suspect's guilt
- has a clear and reliable admission of the offence been made either verbally or in writing
- is it in the public interest to use a caution as the appropriate means of disposal when taking into account the public interest principles set out in the Code for Crown Prosecutors.
- the suspected offender must understand the significance of a caution and give an informed consent to being cautioned.

7.3 No pressure will be applied to a person to accept a caution.

7.4 The “cautioning officer” will be the most appropriate officer from the Director of Corporate Services (Solicitor to the Council), Head of Legal and Democratic Services, Licensing Manager or Licensing Enforcement Officer. The cautioning officer must not have taken an active part in investigating the case.

7.5 Should a person decline the offer of a caution a prosecution will be recommended.

8. Prosecution

8.1 It is recognised that the decision to prosecute is significant and could have far reaching consequences on the offender.

8.2 The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the Council’s functions. The decision to proceed with a prosecution will only be taken following legal advice. The matters to be taken into account when deciding if the issue of proceedings is proportionate include:-

- the seriousness and nature of the alleged offence;
- the role of the suspect in the commission of the offence;
- any explanation by the suspect or any agent or third party acting on their behalf;
- was the suspect in a position of trust, responsibility or authority in relation to the commission of the offence;
- is there evidence of premeditation or disregard of a legal requirement for financial reward;
- risk of harm to the public, an individual or the environment;
- relevant previous history of compliance;

- reliability of evidence and witnesses
- any mitigating or aggravating circumstances or the likelihood that the suspect will be able to establish a defence;
- suspect's willingness to prevent a recurrence of the offence;
- the need to influence future behaviour of the suspect;
- the likely penalty to be imposed;

and a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

- 8.3 All relevant evidence and information will be considered before deciding whether to instigate proceedings in order to enable a consistent, fair and objective decision to be made.
- 8.4 Where an act or omission is capable of constituting both a summary and either way offence, when deciding which offence to charge the following will be considered:-
- the gravity of the offence;
 - the adequacy or otherwise of the powers of the summary court to punish the offence;
 - the record of the suspect;
 - the suspect's previous response to advice or other enforcement action;
 - the magnitude of the hazard;
 - any circumstances causing particularly great public alarm;
 - advice from the Solicitor to the Council.
- 8.5 As a general rule an individual or business will be given a reasonable opportunity to comply with the law although in some circumstances prosecution may be undertaken without giving prior warning e.g.
- the contravention is a particularly serious one;
 - the integrity of the licensing framework is threatened.

9. Government advice: Licensing Act 2003 - Problem premises on probation

The licensing authority supports the strategies of interventions and tough conditions to be assembled into packages released in 2008. The current version is appended (appendix A). This may be superseded by subsequent government advice.

10. Appeals

- 10.1 If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant service concerned and/or Legal Services as appropriate.
- 10.2 Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with corporate procedures and guidance, but this process cannot be used if the complaint is about a decision of the Council against which there is a formal right of appeal, including:

- Complaints where the complainant or another person has commenced or intends to commence legal proceedings against the council, in which case advice should be sought from Legal Services
- Complaints where the Council has commenced or intends to commence legal proceedings against the complainant or another person relating to the matter of complaint.

11. Action following conviction/caution

- 11.1 Following each conviction, caution or other enforcement action, the Council will consider whether the circumstances are such that the outcome of the enforcement action taken and other appropriate details should be publicised.
- 11.2 Such publicity may include all or any of the following:
- press release to the media by the City Council or partner agency involved in the enforcement action.
 - publicity on the City Council's web site at www.southampton.gov.uk

12. Costs

- 12.1 Should the Council take enforcement proceedings it will ordinarily seek the full costs of doing so from the person against whom the action is taken. It is the view of the Council that the citizens and businesses of the city should not have to subsidise those who choose not to abide by either the law or any conditions attached to a licence they may hold

Licensing Team
Legal and Democratic Services
Southampton City Council
PO Box 1344
Southampton
SO15 1WQ

June 2011

Appendix A

“Problem premises on probation” – Red and Yellow cards: How it would work

The problem

1. In many cases, revocation of a premises licence effectively kills any business which is focussed on retailing alcohol. This means that not only the business owner suffers, but most people working there will lose their livelihoods. Many of these workers will be entirely innocent of any wrong-doing. There is also an impact on those who rely indirectly on income from the premises – such as local food suppliers or cleaning contractors, and the closure of a premises can deprive some communities of their local shop or restrict local consumer choice. Enforcement agencies that apply for reviews and local councillors sitting on licensing committees are well aware of this potential impact and it can lead to reluctance to use the powers in the Act to revoke the licence instantly for any failure to promote the licensing objectives. This risks patchy enforcement and uneven solutions to alcohol-related problems around the country.
2. In addition, in many cases, enforcement agencies will prefer to negotiate additional voluntary conditions with problem premises against the threat of review as an immediate, pragmatic and less bureaucratic solution. While this may be a reasonable approach in many cases, there is a risk that some premises are not being dealt with as firmly as necessary, particularly given the level of test purchase failures. Nor are voluntary agreements particularly visible, lessening the deterrent effect on other premises.
3. Government wishes to support the enforcement agencies and licensing authorities by providing clear guidance on a “yellow card / red card” system, which would ensure a firm response to problems, but which gives premises an opportunity to reform. The intention is that such a system would be highly visible and send a clear message to alcohol retailers, and the public, that action will be taken against those who act contrary to the licensing objectives and the law.
4. The proposed interventions below would not prevent the giving of an instant red card in an appropriately serious case. It should be realised that a “test purchase” failure often masks multiple offences that have gone undetected.

Supporting enforcement agencies

5. The Government will encourage enforcement agencies – mainly the police, trading standards officers and environmental health officers – to seek more reviews in the knowledge of the yellow card/red card system described below. This will mean not giving informal warnings. It will mean that on identifying problem premises, the licensing authority will be engaged faster than it might have been in the past.
6. Enforcement agencies would be encouraged to seek reviews when local intelligence suggest that individual premises are selling to children or causing other crime problems or causing noise nuisance.
7. Under the law, the licensing authority must then hold a hearing so long as the application relates to one of the four licensing objectives and is made by a responsible authority or by an interested party like a local resident or another local business.

First Intervention

8. Responsible authorities will be encouraged to propose a package of tough new conditions to be added to the existing conditions which are designed to combat the identified problem. The kinds of conditions that we have in mind are set out in Annex A. These would not be appropriate for every premise and need to be tailored to the nature of the problem and the type of premises. Such action should be supplemented where appropriate by:
 - Removal of the designated premises supervisor and his/her replacement (the manager is removed);
 - Suspension of the licence for between 1 day and 3 months according to the circumstances.
 - Restriction on trading hours – cutting hours of trading in alcohol.
 - Clear warning that a further appearance will give rise to a presumption of revocation.
9. If appropriate, following the review, the licensing authority should consider these packages of conditions and actions to challenge problem premises more aggressively.
10. For example, requiring a major supermarket to make all alcohol sales through a single till manned by a person aged 25 years or older in order to tackle sales to underage. Over a year, this would potentially cost such a supermarket £millions. It would also make them reflect on their levels of supervision at other stores.
11. In addition, enforcement agencies should make the premises in question a priority for test purchase and more regular inspections.
12. The aim would be to put the premises on probation. Effectively, they are given a yellow card. They are put on notice that the next offence or breach would mean an automatic second intervention – a red card.

Second Intervention

13. In the absence of improvement, enforcement agencies should seek another review. The licensing authority again must grant a hearing.
14. If satisfied on the issue of the lack of improvement, the licensing authority should look to revoke the licence. The action should be publicised in the area as an example to other retailers.

Implementation

15. Requires:
 - Development with the Home Office of a toolkit and guidance for police, trading standards and ethos;
 - Initial letters to Leaders of local authorities and Chief Executives;
 - Ultimately, stronger statutory Guidance to be laid in Parliament for licensing authorities themselves.
16. Central Government cannot tell licensing authorities what to do. The review powers are devolved to them. Similarly, central Government cannot direct enforcement agencies how to enforce the law. It would remain their judgement when and how to act.

Annex A: Possible tough conditions to be assembled into packages

N.B. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises.

Greater control over sale

1. Designated checkout(s) for alcohol sales (supermarket). Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
2. Personal licence holder/DPS to be on site at all times during sales of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
3. Personal licence holder/DPS to supervise and authorise every individual sale of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
4. SIA registered security staff to be present at points of sales to support staff refusing sales to under 18s and drunks.
5. Alcohol sales only to be made only by person aged not less than 25 years. Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
6. CCTV installed at all points of sale and recorded. Recordings can be examined by a constable or trading standards officer to determine sales to minors or drunks.

Training

7. All staff to read and sign a declaration that they understand the law every time they start a shift.
8. Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and trading standards officers. Impact on all licensing objectives.

Alcohol sale banned at certain hours

9. No alcohol sales Monday to Friday between 16:00 and 20:30. Impact on protection of children from harm or targeted hours reflecting times when local intelligence indicates under 18s may be purchasing alcohol.
10. No alcohol sales Friday to Saturday. Impact on all four licensing objectives.

Alcohol displays

11. No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.
12. No alcohol stocks promoted alongside goods likely to appeal to children (e.g. confectionary, toys).

Cutting down on shop-lifting

13. SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.
14. Location of alcohol stocks/displays not to be sited near the entrance/exit to deter shoplifting.

15. No direct public access to alcohol products – like tobacco, alcohol to be kept behind a dedicated kiosk.

Naming and shaming

16. Display an external sign/yellow card to state which of the Licensing Act 2003 or Gambling Act 2005 objectives they have breached and what action has been taken against them.

Others

17. Maintain a log of all under attempted purchases from those who appear to be under 18 or drunk.
18. Children aged under (18 years) not to be present or (not more than one child at any one time) on the premises (other than children living on the premises or of the people working on the premises); or only children under 18 accompanied by an adult to be permitted on the premises during retailing hours. Impact on protection of children from harm.
19. Products to be labelled (a label stuck to the bottle or can) to show the details of the shop from which it was bought. Purpose would be to provide evidence of unlawful sales if product found commonly in possession of persons under 18.
20. Designated single items – beer, alcopops and cider – not to be sold to any person. Impact on protection of children from harm. Purpose would be to reduce sales to children and drunks. Alternative would be to prescribe sales of beer, alcopops and cider in quantities of less than four.
21. CCTV installed, monitored and 24 hour recordings kept for a week and made available to constables and persons authorised under the 2003 Act to help identify attempted proxy purchasing.

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DECISION-MAKER:	LICENSING COMMITTEE
SUBJECT:	DELEGATION OF UNOPPOSED SEX ESTABLISHMENT LICENCE RENEWAL APPLICATIONS
DATE OF DECISION:	14 JULY 2011
REPORT OF:	HEAD OF LEGAL AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

The Licensing Committee is requested to delegate the renewal of unopposed sex establishment licence applications to the Head of Legal and Democratic Services.

RECOMMENDATIONS:

That the Committee delegate the power to grant by way of renewal, (but not refuse, vary, or transfer) unopposed applications for sex establishment licences to the Head of Legal and Democratic Services with immediate effect.

REASONS FOR REPORT RECOMMENDATIONS

1. The recommendation is made in the interests of efficiency and cost-effectiveness.

DETAIL (Including consultation carried out)

2. Licences for sex establishments, defined as sex shops, sex cinemas and sexual entertainment venues are determined by the Council as Licensing Authority under part II and schedule 3 of the Local Government Miscellaneous Provisions Act 1982, as amended.
3. At present there is no delegation of the powers to determine applications for such licences to officers and thus all applications for grant, renewal, transfer of variation of sex establishment licences, whether opposed or not, are reported to the Licensing (General) Sub-Committee.
4. There are currently four premises in Southampton licensed as sex shops. Licences for each are renewable annually.
5. The Licensing Team's records indicate that no objections have been made to renewal of sex establishment licences since 2009. It is imperative that in light of reduced officer resources and budgets that all processes are reviewed to ensure they are as streamlined as in reasonably possible. There would appear to be no cogent reason why unopposed applications should come before the committee for in effect "rubber stamping"
6. Any objection to the renewal of a sex establishment licence would result in the matter being reported to the Sub-Committee, as at present.

RESOURCE IMPLICATIONS

Capital/Revenue

7. No adverse effects – the delegation would lead to better use of scarce officer resources and would be more cost-effective.

Property/Other

8. None.

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

9. The control of sex establishments is provided for by part II and schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. It is expressed to be a non-executive function by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended.

Other Legal Implications

10. Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
11. The Human Rights Act 1998 Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matters set out in this report must be considered in light of the above obligations.

POLICY FRAMEWORK IMPLICATIONS

12. None.

AUTHOR: Name: John Burke Tel: 023 8083 3002
Email licensing.policy@southampton.gov.uk

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	None
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Documents In Members' Rooms

1.	None
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out?	Yes/No
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Other Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None.	
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Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:	all
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