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## **LICENSING COMMITTEE**

A meeting of the Licensing Committee will be held in Committee Room 3, Civic Centre, Lampton Road, Hounslow on Tuesday, 8 March 2011 at 7:15 pm

## **MEMBERSHIP**

Councillor Tom Bruce - Chair

Councillors Mindu Bains, John Cooper, Poonam Dhillon, Bradley Fisher, Pamela Fisher, Matt Harmer, Paul Jabbal, Kamaljit Kaur, Adrian Lee, Liz Mammatt, Shantanu Rajawat, Barbara Reid, Balvir Sond and Peta Vaught.

## **AGENDA**

1. Apologies for absence, declarations of interest or any other communications from Members
2. Minutes of the meeting held on 23 November 2010 **(Pages 1 - 9)**
3. Sex Entertainment Venue Licensing - Local Government (Miscellaneous Provisions) Act 1982 **(Pages 10 - 28)**
4. London Local Authorities Act 1991 - Special Treatment Licensing Report to follow. **(Pages 29 - 64)**
5. London Local Authorities Act 1990 - Street Trading Licensing **(Pages 65 - 88)**
6. Urgent Business

Any business which the Chair agrees to accept on grounds of urgency.

## **DECLARING INTERESTS**

*Committee members are reminded that if they have a personal interest in any matter being discussed at the meeting they must declare the interest and if the interest is also a prejudicial interest then they may not take part in any discussion or vote on the matter.*

T.WELSH, Borough Solicitor  
London Borough of Hounslow, Civic Centre, Lampton Road, Hounslow TW3 4DN

28 February 2011

## Agenda Item 2

At a meeting of the Licensing Committee held on Tuesday, 23 November 2010 at 7:30 pm in Committee Room 3, Civic Centre, Lampton Road, Hounslow.

### **Present:**

Councillor Tom Bruce (Chair)

Councillors John Cooper, Bradley Fisher, Paul Jabbal, Adrian Lee, Liz Mammatt, Shantanu Rajawat, Barbara Reid, Balvir Sond and Peta Vaught.

### **Apologies for Absence**

Councillors Mindu Bains, Pamela Fisher and Matt Harmer.

### **27. Declarations of interest or any other communications from Members**

Councillor Barbara Reid declared an interest in Olympics 2012 preparations as a former employee and pensioner of the contractors ATOS Origin.

### **28. Minutes of the meeting held on 7 September 2010**

Councillor Barbara Reid wished it to be entered under "Declarations of Interest" that she was in receipt of a pension as a former employee of Olympics 2012 contractors Origin.

Legal Adviser Caroline Eaton pointed out an error on page 3, Item 26, Street Trading Conditions Report, to be corrected to record that she had confirmed that the London Local Authorities Act 2007 had been adopted by the Council but it was unclear as to whether its powers had been delegated to the Licensing Committee to make decisions. It was agreed that this would be checked.

The remainder of the minutes were agreed as an accurate record.

### **29. Licensing Act 2003 - Revised Statement of Licensing Policy**

See the report of the Director of Environment (Agenda Item 3)

Trading Standards and Licensing Manager Gary O'Shea announced that the consultation period had ended on 28 October.

Councillor Paul Jabbal stated that according to paragraph 4.3 Ward Councillors were among the relevant groups who should be consulted, and he had not been consulted. He asked for evidence that such consultation had been carried out.

Gary O'Shea replied that Ward Councillors should have been contacted by letter and email. The Licensing Officer responsible had since left the Council's employ, and there was no evidence that Councillors had received letters or emails, therefore it had to be concluded that no consultation with Ward Councillors had been conducted beyond the Members of the Licensing Committee.

Gary O'Shea proposed that the Committee make recommendations on any amendments to the Policy, which was to be published in November 2010. This would then be subject to consultation with all Borough Councillors over a two week period. Councillors should be invited to report their responses to this consultation back to the Licensing Committee.

Gary O'Shea drew Committee Members' attention to the proposed amendments to the draft Policy (highlighted in bold/red text) and asked that these suggestions be adopted. He stated that the wording in the representation drafted by the Greater London Authority (GLA) and a number of key authorities, and quoted in paragraph 5.3 of Agenda Item 3, was too strongly in favour of refusal of licence applications, and therefore contrary to the spirit of the Licensing Act 2003. He recommended that the wording used in paragraph 23.1 of the revised Statement of Licensing Policy be adopted.

With reference to the Chief Officer for Trading Standards' representations, Gary O'Shea asked that the additions to the Policy at Paragraphs 5.11 and 18.2 to 18.6 inclusive be adopted.

Councillor Jabbal stated that he had grave concerns regarding consultation with Ward Councillors, citing examples where such consultation had not taken place that had arisen in meetings of the Licensing Panel.

7.40pm: Councillor Balvir Sond arrived.

Councillor Barbara Reid pointed out that according to paragraph 2.3 of the Agenda Item the Policy had to be amended and revised by today's date (23 November). She asked how this would be possible.

Gary O'Shea replied that he had taken legal advice, and the policy could be published in its current form subject to consultation if the Committee agreed. Following consultation with all 60 Borough Councillors the Policy could be revised if necessary, with any changes being referred back to the Licensing Committee.

Councillor Reid referred to the differences between the recommendations regarding the Olympics contained in paragraph 23.1 of the draft Statement of Licensing Policy and those quoted in paragraph 5.3 of Agenda Item 3, which were drawn up by several authorities including several London Boroughs. She questioned whether these differences would leave Hounslow out on a limb, and asked if we should adopt the same wording.

Gary O'Shea responded that the GLA wanted the wording contained in paragraph 5.3 on every Borough's Policy. It was felt that the GLA's wording presumed refusal, and was therefore contrary to the spirit of the 2003 Licensing Act. Using the wording recommended in paragraph 23.1, Panels would still have the right to refuse if Police, Fire Authorities or other responsible authorities represented with problems, and it was felt that the application would fall foul of licensing conditions.

Councillor Peta Vaught asked what the procedure would be if the Committee were to agree on the Policy, but revisions were subsequently proposed by other Councillors following consultation.

Gary O'Shea explained that the Committee was obliged to review the Policy now, by law. The agreed revised Policy was to be published, and consultation with other Councillors would follow. All consultees were to email any suggested amendments to the Committee. The Chair, Councillor Tom Bruce, and Mr O'Shea could make revisions, or they could be brought before the Committee. The final decision would rest with the Licensing Committee.

Councillor Adrian Lee asked if the proposals regarding the 2012 Olympics set out in paragraph 5.3 of the report and 23.1 of the draft Policy were intended to apply if any athletes' training camps were set up in Hounslow, as the events themselves were to be held some distance from the Borough.

Gary O'Shea responded that the events were to be spread over a wide area, and whilst there were no proposals to establish training camps within the Borough, the policy was necessary as the emergency services would potentially be overstretched by covering the Games. He added that some managers in other Boroughs were in favour of the GLA's proposals and others wished to define their own policies.

Following questions from Councillor Liz Mammatt Gary O'Shea stated that the GLA had been consulted as a body, and so had both local MPs, but that individual GLA members had not, this not being a requirement of the legislation.

Councillor Mammatt stated that Hammersmith and Fulham had adopted the Local Government (Miscellaneous Provisions) Act 1982 and asked if Hounslow planned to give more say to residents over the establishment of Sex Entertainment Venues (SEVs)

Mr O'Shea replied that the Licensing Committee had decided to recommend that the Council did not adopt the 1982 Act at the 7 September meeting, on the grounds of potential issues caused by the exemptions given to pubs allowing up to 11 adult entertainment events per year. He pointed out that it was not possible to un-adopt the Act if problems arose, but that it could be adopted at any time, and so neighbouring Boroughs that did adopt could be monitored to see what problems, if any, arose.

Councillor John Cooper spoke in support of a policy in favour of temporary event licences during the 2012 Olympics, stating that as a gateway to London the Borough could expect a large number of visitors. Such licences would cover the setting up of large screens to cover the Games in areas such as Gunnersbury Park and the riverside parts of Chiswick.

Pointing out the controversial nature of SEVs, Councillor Cooper asked if it would be possible to remove delegated decision powers for such applications, and bring them all before the Licensing Panels.

Gary O'Shea responded that the Licensing Act 2003 only allowed for this is if there had been representations. The legislation also forbids an authority from appearing to incite representations, and therefore perhaps the Council's policy of writing to residents to inform them of applications may have to be reviewed. The Council would have to be very careful to be consistent and within the law in its approach, and be seen to be so.

Councillor Lee asked if there had been any applications for Gambling Licences. Gary O'Shea responded that there had, but that they would only come before a Panel if there were representations, adding that such applications were rare, and that there hadn't been any representations to date. He pointed out that Gambling Licences did not come under the 2003 Licensing Act and so were not covered in the Statement of Policy. Mr O'Shea stated that under Gambling Act 2005 there are three licensing objectives to be met, and more scope for representations, with a broader range of people permitted to object.

It was agreed that the Committee would discuss Gambling Licences at a future meeting.

In response to a question from Councillor Jabbal Gary O'Shea stated that the deadline to adopt the provisions of the Local Government Act 1982 regarding SEVs was April 2011. Therefore if the Council decided not to adopt at the 1 February meeting of the Borough Council, consultation would be compulsory and would have to be carried out by April. If the Council chose to adopt the provisions, consultation would be voluntary.

Councillor Shantanu Rajawat asked for clarification of the nature of the interviews to be conducted in the event of test purchase failures, referred to under paragraph 18.4 of the draft Policy. Gary O'Shea replied that such failures involving alcohol sales to minors were taken extremely seriously, and the interviews would inform offenders that a second offence would trigger a Licence review, and probable prosecution, as well as giving best practice advice.

Referring to paragraph 18.5 of the draft Policy Document, Councillor Reid asked if the line "The Licensing Authority will expect applicants and licence holders to take reasonable steps as may be necessary to prevent underage drinking" was sufficiently strongly worded, in particular the use of the word "reasonable." Councillor Vaught suggested that "reasonable steps" be replaced by "energetic steps."

Gary O'Shea replied that stronger wording would be difficult to enforce, particularly where it came to proxy sales, which were not always the fault of the vendor, and so the Council could only reasonably ask them to be vigilant. He stated that Licensing Officers gave best practice advice on visits to premises, but that he was open to suggestions on the wording of the paragraph.

Caroline Eaton, Legal Adviser, added that "reasonable" was a useful and standard term in legislature.

Councillor Mammatt pointed out spelling mistakes in paragraph 5.8, "who's", (should be "whose") and paragraph 18.1, "lead" (should be "led.")

Councillor Mammatt enquired what was proposed regarding the contents of the secure containers provided for confiscated weapons, drugs, etc, referred to in paragraph 6.3, bullet point 8. Mr O'Shea replied that the boxes should be emptied regularly, for example weekly, by the police.

**Resolved:** That the Revised Statement of Licensing Policy be agreed, subject to consultation with all Ward Councillors.

That paragraph 5.8, bullet point 6 shall be changed from "who's" to "whose".

That paragraph 18.1, bullet point 3 shall be changed from "Intelligence lead" to "intelligence led".

That paragraph 18.4, "public interest in perusing formal action" shall be changed to "public interest in pursuing formal action".

### **30. Licensing Act 2003 - Minor Variations Report**

See the report of the Director of Environment (Agenda Item 4)

The report was introduced by Trading Standards and Licensing Manager Gary O'Shea.

Gary referred to the decision of the then Licensing Committee in December 2009 that all decisions pertaining to Minor Variation (MV) applications should lie with the Chair of the Licensing Committee. He asked Members to consider the recommendations contained in paragraph 1.1, to authorise the Director of Environment to discharge this function, and to empower the Director of Environment to delegate the authority to Officers.

Answering queries from Members, Gary O'Shea confirmed that licensed hours could not be increased, nor could existing hours be rearranged to allow alcohol be sold between 11pm and 7am, under the terms of MVs.

Mr O'Shea stated that under delegated powers an Officer could not remove any conditions imposed by a Licensing Panel. Pointing out that some licences contained conditions which conflict with current legislation, having been imposed before the Licensing Act 2003 came into force, Gary asked Members to consider delegating the power to remove such conditions to Officers where their removal could be considered as an MV.

Gary O'Shea informed Councillor Barbara Reid that there was no commitment to inform Ward Councillors of MV applications, but that this could be added to the Policy.

Asked by Councillor Peta Vaught if Licensing Officers could suggest conditions, as they had no power to impose them, Gary O'Shea informed the Committee that Officers can only give advice on best practice. He added that MV applications can only be granted or refused, and that if any representations were received, there was an obligation to refuse.

Councillor Paul Jabbal stated that the issue of Officer delegation had been robustly debated at the December 2009 meeting, and asked why it was more expensive to bring an application before a Panel.

Gary O'Shea replied that the fee for a Full Variation application was calculated according to the rateable value of the business, and could exceed £600, but the fee for an MV application was flat, and set at £89.

Councillor Bradley Fisher referred to paragraph 3.6, bullet point 1; "minor changes to the structure or layout of the premises", and asked what might constitute "minor changes."

Gary O'Shea gave examples of enclosing a small outdoor area or moving small interior fittings, stating that moving a bar in a public house, for instance, would not be considered an MV.

Councillor Fisher asked if neighbours would be consulted about changes to opening hours, and Gary O'Shea replied that as there were only 15 days allowed to process applications that would not be possible, but that responsible authorities would be consulted, reiterating that the definition of MVs precluded extending licensed hours to allow the sale of alcohol between 11pm and 7am.

Councillor Liz Mammatt questioned whether the addition of live music should be considered an MV. Gary O'Shea stated that only unamplified music was so defined, and that this was intended to redress the fact that the 2003 Act did not allow for "two performers" to be permitted, as per the repealed Licensing Act 1964. He added that Ward Councillors would be notified and had the power to object, and that if any objections were received, Officers would not be permitted to determine the application, which would then

have to come before a Licensing Panel as a Full Variation application.

Councillor Fisher stated that live music would not be considered an MV by neighbours, and was inclined not to delegate decisions to Officers due to the subjective nature of the issue. He stated that he believed all such matters should be decided by the Chair, as an elected Member, and that this could be reviewed subsequently. Councillor John Cooper agreed, adding that Ward Councillors could be asked to consider applications carefully.

Gary O'Shea referred to paragraph 7.8, and asked Members to consider the guidelines as to what constitutes an MV.

Following a question from Councillor Reid, Gary O'Shea stated that the addition or subtraction of appropriate conditions would be decided by the Chair of the Licensing Committee, and would follow police requests. Caroline Eaton, Legal Adviser, added that embedded conditions would only be subtracted if they contradicted the Licensing Act 2003.

Councillors expressed concern over the issue of live music, and the possible abuse of the ability to vary licensed hours. Councillor Lee proposed that unamplified music should be confined to stringed instruments only, not including pianos. Councillor Vaught proposed that licensed hours should not be changed to commence more than one hour earlier, or conclude more than one hour later, than the licence's existing provisions, in addition to the prohibition on moving them before 7am or after 11pm.

**Resolved:** That the recommendations set out in Agenda Item 4 be adopted with the following amendments:

Paragraph 7.8.1 - "Unamplified musical entertainment" shall be changed to allow only unamplified music by stringed instruments, excluding pianos and any wind or percussion instruments.

Paragraph 7.8.4 - "minor alterations to licensing hours (other than to extend hours for the sale of alcohol or to move the hours for the sale of alcohol beyond 11pm)" shall be changed to exclude any changes of licensed hours which permit the premises to sell alcohol more than one hour earlier or one hour later than those currently permitted.

## **31. Urgent Business**

Under Urgent Business the Committee discussed the licensing of Sexual Entertainment Venues (SEVs) with particular regard to the lap-dancing club "Mist", recently licensed in Hounslow.

Referring to the recent (14 September) granting of a licence to a lap-dancing venue in Hounslow Central Ward, Trading Standards and Licensing Manager Gary O'Shea informed the Committee that he had granted the licence as no representations had been received, leaving him no choice but to grant the licence, as applied for, according to the terms of the Licensing Act 2003.

Mr O'Shea explained that the police had asked him to suggest conditions that could be placed on any licence to ensure that the premises were properly controlled. He drafted a list of approximately 50 conditions, known to be suitable, which were passed to the police. Following discussions with the police, the applicant submitted an application in August 2010 with all those conditions attached, and the police subsequently did not submit a representation.

Gary O'Shea stated that all responsible authorities, including the three Ward Councillors, were contacted and given a copy of the application with all conditions attached. Appropriate planning permission had been granted, an advertisement taken out in the local newspaper, and a notice displayed on the premises, which was checked on four occasions by a Licensing Officer.

A GIS search was made which showed that there were no residents living within a 50 metre radius of the premises. As a result, according to the terms of the Licensing Act 2003, no residents were contacted. There was no legal scope to expand the radius. Letters of notification were hand delivered to local business premises, and no objections were received. The Fire Service asked for a risk assessment, the results of which were satisfactory, and the Fire Brigade did not submit a representation.

The consultation period ended on 13 August, and a licence was granted on 14 September, as required by law.

Mr O'Shea informed Members that he and a Police Inspector would carry out regular monitoring of the premises to ensure that conditions were complied with. These visits would be unannounced, although the owner was aware that inspections were to take place. On occasion another enforcement Officer could be sent into the premises first as both Gary and the Police Inspector would become known by staff.

Councillor Bradley Fisher asked if Councillors from the neighbouring Wards of Hounslow Heath and Hounslow West had been consulted. Gary O'Shea replied that they had not, as the premises were not sufficiently close to those Wards.

Councillor Barbara Reid gave her opinion that if the other six Councillors had been notified they may have objected and caused the application to come before a Panel. She then asked why the conditions had been suggested before the application had been submitted.

Gary O'Shea replied that it was best practice to suggest conditions when requested by the police, and would be the same for any other application.

To a further question from Councillor Reid as to why the decision had not been published on the Council's website, Legal Adviser Caroline Eaton informed the Committee that delegated decisions made by Officers were operations of law, not Council decisions, and so were not published.

Councillor Adrian Lee stated that such clubs were sometimes associated with prostitution, which did not necessarily take place on the premises and was therefore extremely difficult to prove. He expressed concern that more clubs could apply for licences which would also have to be granted, and wondered what could be done to prevent this.

Gary O'Shea responded that the terms of the Licensing Act 2003 made it difficult to refuse, which was why change was considered. Objections could be considered if the



premises were in a residential area or near a school for example, but such representations had to be directly related to the application and pertinent to the four licensing objectives.

Councillor Fisher asked if the Committee could forbid further applications in the area, and Mr O'Shea replied that this would only be possible if the Council adopted the Local Government (Miscellaneous Provisions) Act 1982. (The 1982 Act). This would allow a restriction on the number of Sexual Entertainment Venues (SEVs), which was not possible under the Licensing Act 2003. He pointed out that adoption would, however, allow pubs to put on adult entertainment up to 11 times a year without special conditions, thereby creating more of a problem than it solved.

Councillor Lee asked what steps were to be taken to prevent prostitution from taking place at the premises. Caroline Eaton stated that no comment could be made on covert operations at a public meeting, while Gary O'Shea informed the Committee that both Licensing and the police were aware of a possible problem. Conditions to make it difficult for prostitutes to work from the premises had been imposed, including having all customers leave before staff, and having the performers escorted to taxis by door staff.

Councillor Peta Vaught stated her concern that underage girls could be exploited at such establishments, and called for everything possible to be done to prevent prostitution regardless of difficulties. She suggested that Ward Councillors be consulted on any future similar applications on the basis of a given radius from the premises, rather than only if the premises were in their Ward.

Gary O'Shea responded that it would be difficult to determine consultation on that basis, and suggested that in future the Councillors from neighbouring Wards be consulted irrespective of the exact location of the premises.

Making reference to the Statement of Licensing Policy, Councillor Paul Jabbal stated that paragraph 3.6, bullet point 8 said that "any other group the Council considers appropriate" should be consulted on licence applications, and said that this gave cause to consult more widely than had been the case. Councillor Fisher added that people would find it hard to understand why a street trader has to come before the Panel to change the type of goods he is permitted to sell, but these premises had changed from a snooker club to an SEV and did not. He asked why the clause referred to by Councillor Jabbal did not permit Residents' Associations to be consulted.

Caroline Eaton pointed out that the Council was bound to act within the law. As such, approaching a group that was likely to object to any particular application could be seen to be inciting representations, which is contrary to the Licensing Act 2003.

Councillor John Cooper suggested that Planning Committees could insert conditions mandating that premises were not to be used for adult entertainment in future. He conceded that this would not necessarily prevent a licence being granted under the Licensing Act 2003.

Councillor Liz Mammatt asked if it might not have been possible to consult other interested groups given the central location of the premises in question.

Gary O'Shea replied that the law allowed only residents living within 50 metres, and businesses in the immediate area, to be contacted, and also pointed out that the Act did

not consider moral objections to be valid.

Councillor Lee stated that the possibility of more SEVs opening in the area posed a threat to the regeneration of Hounslow town centre, and suggested that the Executive look into the problem.

The Chair, Councillor Tom Bruce, replied that the Licensing Committee could look at the issue again, and ask the Executive to consider it also. He added the importance of Ward Councillors being vigilant with regard to notification of licence applications of this nature.

Councillor Fisher enquired as to the opening hours of the snooker club that had been granted the original licence, and Gary O'Shea replied that it had had a 24 hour licence, meaning that the lap dancing club had not had to come before the panel for a variation of licensed hours application.

Gary O'Shea suggested that paragraph 3.6, bullet point 2 be amended to "Ward Councillors of adjoining Wards at all times." The Committee agreed.

Councillor Jabbal stated that the London Borough of Hammersmith and Fulham had reclassified pole dancing clubs as sexual entertainment when the new legislation was adopted and asked if the Executive could consider this option.

Gary O'Shea referred the Committee to the decision of the 7 September meeting which decided to recommend that the provisions of the Local Government Act 1982 should not be adopted. He stated that Licensing Officers would monitor the situation in Hammersmith and Fulham regarding the permission to hold up to 11 adult entertainment events per year under the 1982 Act to see if a problem developed.

Councillor Lee asked if there was a danger that if neighbouring Boroughs adopted the 1982 Act and Hounslow did not, the Borough may be flooded with displaced applications.

Mr O'Shea replied that it wasn't possible to be sure, but that if applicants refused elsewhere were coming to Hounslow, it would be possible for the Borough to adopt the 1982 Act. In the meantime Hounslow would monitor those Boroughs who had adopted it to see what problems, if any, arose.

**Resolved:** That paragraph 3.6, bullet point 2 be changed from "Ward Councillors of adjoining Wards if premises are adjacent to ward boundaries" to state that the Councillors of all adjacent Wards will be consulted.

**The meeting finished at 9.15pm.**

Contact Gary O'Shea - Licensing Manager  
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## **LICENSING COMMITTEE – 8 MARCH 2011**

### **Sex Entertainment Venue Licensing – Local Government (Miscellaneous Provisions) Act 1982**

**Report by: Director of Environment**

#### **Summary**

This report sets out the relevant facts and options of adoption by the Council of new powers available under the Local Government (Miscellaneous Provisions) Act 1982 with reference to certain types of adult entertainment. Members are asked to recommend to Borough Council whether or not the new provisions should be adopted by this Borough.

#### **1.0 RECOMMENDATIONS**

- 1.1 Members are requested to pass recommendation to Borough council on one of the following options:

That a resolution be passed that the provisions of the Local Government (Miscellaneous Provisions) Act 1982 in relation to the licensing of Sexual Entertainment Venues:

- i) are adopted by the Council;
- ii) are not adopted by the Council, with full consultation with the public to take place with immediate effect; or
- iii) that full consultation should take place prior to a decision on adoption, to gauge opinion of the public, the trade and other stakeholders prior to passing of a final resolution.

#### **2.0 DEFINITIONS**

- 2.1 A sexual entertainment venue is defined as any premises at which relevant entertainment is provided before a live audience for financial gain of the organiser or the entertainer.
- 2.2 Relevant entertainment is any live performance or any live display of nudity, which is of a nature that, ignoring financial gain must be reasonably assumed to be provided solely or principally for the purposes of sexually stimulating any member of the audience (whether by verbal or other means).

- 2.3 Regulations in the Policing and Crime Act 2009 enable local authorities to adopt new powers under the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act) to control lap/table dancing type activities under a new classification of 'sexual entertainment venue'. This would remove the licensing of such entertainment from provision of the Licensing Act 2003 Act in favour of stronger controls as identified in this report.

### **3.0 HISTORY**

- 3.1 On 7 September 2010, Licensing Committee resolved that:

A recommendation is made to Borough Council that the provisions of the 1982 Act relating to the regulation of sex establishments should not be adopted and that full consultation should take place by early April 2011.

- 3.2 On 14 September 2010 a licence was granted under due process of law on an unopposed application made under the Licensing Act 2003 (the 2003 Act) for a gentlemen's club. This was the first such application in the five years that the 2003 Act had been in force.
- 3.3 The grant of the licence (3.2 above) caused a number of concerns from various quarters, particularly relating to the limited power of representation under the provisions of the 2003 Act.
- 3.4 Whilst the licence in question is not a reason to revisit the decision, there has been a lapse in time since the original recommendation and it has become evident that the vast majority of London authorities are adopting the new legislation. To date there is one authority that has chosen not to adopt the legislation and some are undecided. Whilst the decision on adoption is a matter for this authority alone the chairman of the Licensing Committee has requested that the original decision should be re-examined in order to reaffirm or to reverse the original recommendation as appropriate.

### **4.0 BACKGROUND INFORMATION**

- 4.1 Currently all adult entertainment falls within the provisions of the Licensing Act 2003 as 'regulated entertainment' and is determined in the same manner as any other premises licence. A recent amendment in the 1982 Act, means that the Council now has the power to maintain greater control over the numbers and location of licensed sexual entertainment venues by adopting new provisions to license 'sexual entertainment venues'. The new provisions are adoptive and any decision in this regard does not affect the provisions already adopted in relation to sex shops and sex cinemas.
- 4.2 The 1982 Act, (which would permit activity such as lap, table or pole dancing under a SEV licence), contains a low frequency exemption that if satisfied, removes the requirement for a licence to conduct sexual entertainment. The exemption applies where sexual entertainment is provided on no more than 11 occasions per annum, provided it is for a period of less than 24 hours and a minimum of one month has elapsed between events. Such entertainment would effectively be unregulated save for any conditions applicable to the premises licence issued under the Licensing Act 2003. There is no power to attach additional conditions or to prevent any such activity in respect of any premises operating under and within the terms of the exemption.

- 4.3 A premise that holds a premises licence or a Temporary Event Notice (TEN) issued under the Licensing Act 2003 (provided that the licence authorises music and dancing) would not require a SEV if it operated in accordance with the parameters set out in paragraph 4.2 above. There would be no requirement for any future applicant for a premises licence to stipulate an intention to operate under the low frequency exemption in regard to sexual entertainment.
- 4.4 If the 1982 Act is adopted, any entertainment falling within the definitions identified at paragraphs 2.1 and 2.2 (above) would no longer be classified as regulated entertainment under the Licensing Act 2003. This means that subject to the exemption outlined in 4.2 of this report, no premises would be able to offer sexual entertainment unless they held a licence specifically issued under the new legislation. No applications could be accepted for any form of sexual entertainment under the Licensing Act 2003 from the date of adoption.
- 4.5 If the authority does not adopt the new provisions by early April 2011, it must consult on whether or not the Act should be adopted. The full adoption procedure is attached as **Appendix A**.
- 4.6 There is currently one licensed establishment within the Borough that fits the description of an SEV. If the Council chose not to adopt the provisions of the 1982 Act this premises will continue to operate by virtue of the licence issued under the Licensing Act 2003. If, however, the new provisions are adopted the current licensed premises will be subject to transitional provisions requiring re-application for an SEV licence within a period of one year from the date of adoption. There is no automatic grant and determination of the new application would be possible under the broader criteria afforded by the 1982 Act. The full transitional provisions are outlined in **Appendix B**.
- 4.7 There are a number of differences between the two licensing regimes; these have been highlighted for purpose of clarity in the table attached as **Appendix C**.
- 4.8 If adopted, the authority must publish a notice to the effect that a resolution adopting the provisions has been passed, which must appear for two consecutive weeks in a local newspaper which is circulated in the authority's area. The first publication must not be later than 28 days before the day specified in the resolution for the provisions to come into force.
- 4.9 The Government has issued guidance in relation to the new legislation and this has been considered in the drafting of this report.

## **5.0 CURRENT POSITION**

- 5.1 An application for a premises licence under the Licensing Act 2003 must be accompanied by an operating schedule, in which the applicant must state how they intend to promote the licensing objectives whilst operating their premises. Any detail contained within the operating schedule forms part of the consultation process and would be included as enforceable conditions on any licence issued.
- 5.2 Whilst applications under the Licensing Act 2003 must be considered on their individual merits, the only valid considerations in determination of the application are the four licensing objectives. Therefore, unless there are good substantiated reasons not to grant a licence, the licensing authority has a duty to grant the application subject to any terms and conditions deemed appropriate.

- 5.3 The application form contains a section that is required to be completed in relation to any adult entertainment that is intended. The Hounslow Licensing Policy requires that this section should be completed in respect of any intent to conduct any form of adult entertainment. No such entertainment is otherwise permitted under the terms of the policy.
- 5.4 Any application indicating that adult entertainment is intended will be considered in relation to the control measures proposed in the operating schedule and it would be expected that appropriate conditions would be proposed. Any responsible authority (as named under provision of the Licensing Act 2003) or interested party (a person living or operating a business in the vicinity) may make representations against the application if it is considered that one or more of the licensing objectives (prevention of crime and disorder, prevention of public nuisance, public safety and the protection of children from harm) will be affected.
- 5.5 Should the provisions of the 1982 Act be adopted, the current provisions under the Licensing Act 2003 will be replaced by the licensing of Sexual Entertainment Venues. Immediately upon adoption, the low frequency exemption as set out in paragraph 4.3 will take effect. In consequence, no licence would be required to carry out low frequency sexual entertainment under the Licensing Act 2003 unless other regulated activity was taking place (such as the sale of alcohol or music etc). If a premise has an existing premises licence or club certificate to cover the regulated activities, they would not be required to apply for any other licence (i.e. temporary event notice) to conduct sexual entertainment so long as they do not exceed the parameters set out in 4.3,

## **6.0 DETERMINATION UNDER THE 1982 ACT**

- 6.1 The Council is able to state as a matter of policy the number of SEV establishments that it will permit within the authority area or to designate areas where applications would not normally be considered. Whilst this would represent the normal position, the policy could not have the effect of removing somebody's right to make an application and to have the application considered on its individual merits.
- 6.2 Standard conditions may be imposed on any licence granted and are not restricted only to conditions that are necessary and appropriate in line with licensing objectives such as with the Licensing Act 2003. A list of potential standard conditions is attached as **Appendix D**.
- 6.3 Powers of determination are broader than those under the Licensing Act 2003. However, there is still no scope to consider moral objections. The grounds for refusal of an SEV application and a comparison with the grounds for refusal under the terms of the Licensing Act 2003 are attached as **Appendix E**.

## **7.0 COMMENTS OF THE DIRECTOR OF FINANCE**

- 7.1 The Director of Finance comments that any consultation costs, which are predominantly staffing costs, will be met from the current revenue budget. If the recommendation is adopted, the authority would then be able to set its own fees although the level of fees would be required to be set on a cost recovery basis under licensing legislation. At present there is no means of identifying how many, if any, applications would be received and, consequently, what level of income might be generated.

## **8.0    COMMENTS OF THE BOROUGH SOLICITOR**

8.1    The Borough Solicitor has been consulted in the drafting of this report and his comments have been included within it.

<b>List of Appendices:</b>
Appendix A - Adoption Procedures
Appendix B - Transitional Provisions
Appendix C - Comparison between licensing under the 1982 Act and the Licensing Act 2003
Appendix D - Sample SEV Conditions
Appendix E - Comparison between grounds of refusal
<b>Background Papers:</b>
e-mails
<b>This report has been or is due to be considered by:</b>
<b>Licensing Committee</b>
<b>This report is relevant to the following wards/areas:</b> All

## **Appendix A**

### **ADOPTION PROCEDURE**

Local authorities may resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their borough.

Even if the 1982 Act had already been adopted a further resolution is necessary before the provisions introduced by Section 27 will have effect in the local authority area.

The adoption procedure is as follows:

- the local authority must pass a resolution specifying that Schedule 3 or, in the case of an authority where Schedule 3 is already in force, the amendments made by section 27 to that Schedule, shall apply to their area and the day on which it or they shall come into force in the area.
- The specified day must be more than one month after the day on which the resolution was passed.
- The local authority shall publish notice that they have passed a resolution adopting the amendments made by section 27) paragraph 2(2) of Schedule 3 to the 2009 Act for two consecutive weeks in a local newspaper that is circulated in their area. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the local authority's area. The notice should state the general effect of Schedule 3.
- Local authorities may, as a matter of good practice, choose to seek the views of local people and businesses and are encouraged by the Secretary of State to engage with known sexual entertainment venues once a decision to adopt the provisions has been made, to ensure affected businesses are aware of what action they will need to take in order to comply with the new regime.



## **Appendix B**

### **TRANSITIONAL PROVISIONS**

#### **Transitional Period**

The 'transitional period' will last for 12 months beginning with the date that the local authority resolves that Schedule 3 as amended by the 2009 Act will come into force in their area ('the 1st appointed day'). 6 months following the 1st appointed day will be known as the '2nd appointed day' and the day on which the transitional period ends will be known as the '3rd appointed day'.

The appointed days will vary across local authority areas depending on when individual local authorities resolve that the provisions will come into force in their area.

#### **Existing Operators**

To allow time to comply with the new regime, existing operators, who, immediately before the 1st appointed day, have a 2003 Act licence and lawfully use premises as a sexual entertainment venue under that licence or are undertaking preparatory work to use the venue in that way will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time (including any appeal against the refusal to grant a licence), whichever is later.

"Preparatory work" refers to work carried out by an operator, such as a refurbishment or refit, in order that they can use the premises as a sexual entertainment venue in the future. The operator will have been granted a 2003 Act licence before the 1st appointed day but will not have used the premises as a sexual entertainment venue by that date. It is likely that such operators will be known to a local authority. However, where a dispute arises between a local authority and a licence-holder over whether the licence-holder qualifies as an existing operator by virtue of this provision, the local authority will need to seek evidence from the licence-holder to demonstrate that they clearly intended to operate a sexual entertainment venue in the future and work had been done to achieve this end.

For the purposes of the Transitional Order a "2003 Act Licence" means a premises licence or club premises certificate under which it is lawful to provide relevant entertainment.

## **New Applicants**

New applicants are people who wish to use premises as a sexual entertainment venue after the 1st appointed day but do not already have a premises licence or club premises certificate to operate as such under the 2003 Act or do have such a licence but have not taken any steps towards operating as such. After the 1st appointed day new applicants will not be able to operate as a sexual entertainment venue until they have been granted a sexual entertainment venue licence.

## **Determining Applications Received On or Before the 2nd Appointed Day**

Applicants will be able to submit their application for a sexual entertainment venue from the 1st appointed day onwards. As the appropriate 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 1st appointed day but on or before the 2nd appointed day shall be considered together. This will ensure that applicants are given sufficient time to submit their applications and all applications received on or before the 2nd appointed day are considered on their individual merit and not on a first come first served basis.

No applications shall be determined before the 2nd appointed day. After the 2nd appointed day the appropriate authority shall 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 3rd appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

## **Determining Applications Received After the 2nd Appointed Day**

Applications made after the 2nd appointed day shall be considered when they are made but only once all applications made on or before that date have been determined. However, reference to determination here does not include references to the determination of any appeal against the refusal of a licence.

As with applications received on or before the 2nd appointed day, licences granted to new applicants shall take effect immediately and licences granted to existing operators shall take effect from the 3rd appointed day or, if later, the date the application is determined.

## **Outstanding Applications**

Local authorities should attempt where possible to determine outstanding applications made under the 2003 Act, which include an application for the provision of relevant entertainment, before the date that Schedule 3 as amended by the 2009 Act comes into force in their area.

Where it has not been possible to determine application before the 1st appointed day, local authorities should advise applicants that they will need to submit an application for a sex establishment licence as set out in Schedule 3 if they wish to provide relevant entertainment. From the 1st appointed day onwards outstanding applicants shall be dealt with as though they are new applicants.

### **Existing Licence Conditions**

In many cases licences granted under the 2003 Act to existing operators will contain conditions that relate expressly and exclusively to the provision of relevant entertainment. Such a condition might prohibit contact between a performer and customer during a lap dance. In these cases, in order to avoid duplication, where conditions on premises licences or club premises certificates relate only to the provision of relevant entertainment, they shall be read as if they were deleted from the 3rd appointed day onwards.

In cases where conditions on a premises licence or clubs premises certificate are inconsistent with, and less onerous than, the conditions in the licence granted under the 1982 Act they shall likewise be read as though they have been deleted.

Where a local authority decides to grant a sex establishment licence to an existing operator, who is subject to conditions on their existing premises licence or club premises certificate that relate expressly to the provision of relevant entertainment, they may wish to replicate the existing conditions on the new sex establishment licence if they believe that the existing conditions are sufficient. However, they could equally decide to impose new conditions consistent with Schedule 3 if they believe that new or additional conditions are necessary.

Although the Transitional Order does not require redundant conditions to be physically removed from a premises licence or club premises certificate, operators and local authorities may agree that this is desirable in order to clarify the operator's legal obligations. Such changes can be made via the minor variations procedure under section 41A of the 2003 Act.

### **ECHR Considerations**

The Transitional Order allows local authorities to refuse applications, whether they are from existing operators or new applicants, on one or more grounds set out in paragraph 12 of Schedule 3. When making such decisions, local authorities must take into account any rights the existing operators may have under Article 1, Protocol 1 of the European Convention on Human Rights (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

In the light of the leading case of *Belfast City Council v Miss Behavin' Ltd* (Northern Ireland 2007) it would be prudent for local authorities to assume that freedom of expression includes the right to use particular premises as sexual entertainment venues and that a person who is denied the right to use his premises as a sexual entertainment venue where he already has a licence to do so under the 2003 Act (or in future under the 1982 Act) has been deprived of possessions. (Some Lords did not decide this point or disagreed that such rights were engaged and therefore it would still be open to local authorities to argue that such rights were not engaged in a particular case). However, in any event, the House of Lords were agreed that such rights would only be engaged at a low level. This led Lord Hoffman to say that if the local authority exercises its powers rationally and in accordance with the purposes of the statutory provisions, it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights.

Nevertheless, local authorities would be well advised to consider whether any interference with the applicant's rights under Article 10 or Article 1, Protocol 1 of the European Convention on Human Rights is necessary and proportionate for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, Protocol 1, can be justified in the general interest.

## COMPARISON OF APPLICATION AND DETERMINATION PROCEDURES

<b>Task/Activity</b>	<b>Current position under the Licensing Act 2003 and if the new legislation is not adopted</b>	<b>Position if the new legislation is adopted under the Local Government (Miscellaneous Provisions) Act 1982</b>
<b>Advertising of applications</b>	Yes. Newspaper and premises for a period of 28 days.	Yes. Newspaper and premises for a period of 28 days.
<b>Representations for and against</b>	Yes. 28 Days.	Yes. 28 Days.
<b>Geographical limitations on who may make representations</b>	Yes. Vicinity of application premises, interested parties and responsible authorities only.	None.
<b>Relevance of representations</b>	Yes. Must be related to the licensing objectives.	Yes. Must be relevant to the application and usually in accordance with policy but there is a wider discretion.
<b>Conditions on licence</b>	Yes. Conditions may only be Mandatory (required by the Act), imposed at a hearing where relevant and taken from the operating schedule. Conditions must be necessary, appropriate, and aimed at promotion of the licensing objectives. Standard conditions may not be imposed.	Yes. Wider discretion and standard conditions may be imposed.
<b>Maximum duration of licence</b>	In perpetuity unless suspended, revoked or surrendered.	Up to one year.
<b>Renewal requirement</b>	No – but may be reviewed.	Yes. Annually.
<b>Offer of SEV type activities</b>	Yes - but subject to licensing policy and considered on licensing objectives.	Yes.
<b>Can a limit be set on the number of SEV type premises</b>	No. Each application must be considered on its merits and refused only following representation if it does not conform to one or more of the licensing objectives.	Yes – but reasons must be stated to defend any challenge.
<b>If the appropriate number of SEV's is set at nil, can we refuse to consider an application</b>	N/A	No – the requirement to consider applications on their own merits does not alter.
<b>Determination of licence</b>	Consideration linked only to promotion of the licensing objectives, taking account of the licensing policy, statutory guidance and any relevant case law.	Mandatory and discretionary grounds are laid down in the legislation. Must take account of case law, policy, and any statutory guidance.
<b>Fee Level</b>	Statutory fee set based upon non domestic rateable value of the premises.	Locally set fee.

**SAMPLE CONDITIONS**

These are sample conditions and not necessarily indicative of any final set of standard conditions as may be imposed on any licence issued should the new provisions be adopted.

**Conduct and Management of the Premises**

Where the licence holders are a body corporate or unincorporated body any change in director, company secretary or other person responsible for management of the premises/company is to be notified to the licensing authority, in writing, within 14 days of such change. Such written details as the licensing authority may require in respect of any new director, secretary or manager are to be furnished within 14 days of a written request made by the licensing authority.

The name of the person responsible for the management of the premises shall be permanently displayed within the premises and shall be readily visible at all times.

The licence holder shall maintain a daily register. It must record the name and address of any person who is to be responsible for managing the premises in his/her absence and the names and addresses of all those employed at the premises. The register is to be completed each day within 1 hour of the premises opening for business and is to be available for inspection by the Police and by any authorised officer of the Council.

The premises licence holder shall retain control over all portions of the premises and shall not let, license or part with possession of any part of the premises at any time.

A dress code shall be implemented at the discretion of the licence holder, however, that code shall ensure that no hoodies, helmets or face coverings shall be permitted to be worn at any times whilst the premises is open to the public.

The premises must not be opened to the public at any time other than those stated on this licence.

A taxi firm is to be engaged to pick up patrons requiring taxis from the rear loading bay area. A record of the customers' name, destination and the taxi registration will be recorded and patrons must be shown to any waiting taxi by a steward.

A cloakroom policy shall be in place to ensure that all outdoor coats are handed

in upon entry

The licence holder or a responsible person nominated by the licence holder shall ensure that if a local pub watch is in operation these will be attended and feedback shall be addressed and treated accordingly.

No person under the age of 18 shall be admitted to the premises or employed in the premises at any time and notices shall be displayed in a conspicuous position at the entrance stating 'no person under the age of 18 shall be admitted to any part of these premises. Entertainment within these premises involves a form of nudity. If you are likely to be offended, please do not enter'.

All staff must undergo a strict policy of vetting to verify their age and a written record must be kept of their details, which must be made available to a Constable or authorised officer of the licensing authority upon request.

The licence holder, or responsible person in charge of the premises, shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.

No part of the premises shall be used by prostitutes (male or female) for the purpose of solicitation or otherwise exercising their calling.

Neither the licence holder nor any employee, nor any other person shall seek to obtain custom for the premises by means of personal solicitation anywhere in the London Borough of Hounslow area.

There shall be a personal licence holder contactable at all times in order to address any concerns at the earliest opportunity.

The summary (part B) of the premises licence and a certified copy of all conditions as provided by the premises licence shall be clearly displayed in a prominent position so as to be visible to employees and public alike. The full copy of the licence (or a certified copy) including all conditions must be retained on the premises and available on request.

No change of use of any portion of the premises from that approved by the licensing authority shall be made without the written consent of the licensing authority.

There shall be displayed at each entrance to the premises notices which clearly indicate the type of entertainment taking place therein.

There shall be no physical contact between any customer and performer before,

during, or after any performance. Notices outlining this shall be clearly displayed at the entrance of the premises, in each bar area and in the each private area, booth or similar.

Topless and/or nude entertainment shall be given only by the performer and/or entertainer(s). There shall be no audience participation.

### **Literature**

The licence holder shall, without charge, display and make available within the premises such free literature on counselling of matters relating to sexual problems as may be published by the Family Planning Association and by any other such organisations as may be specified by the licensing authority or the Police. Such literature is to be displayed in a prominent position approved by the licensing authority adjacent to all cash collection points within the premises.

### **External Appearance**

No display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except:

- i) any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any conditions of a licence granted by the Council;
- ii) such display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing or any other matter or thing as shall have been approved, in writing by the Council;
- iii) a retractable awning, canopy or similar to be affixed above the entrance to the premises in such a manner that it may be retracted at any time, and that in any event the awning, canopy or similar must be retracted at all times the premises is not open to the public. Such awning, canopy or similar may contain wording to identify the name of the premises and the type of premises as agreed in advance and in writing by the licensing authority.

The entrance to the premises shall be of a material, or covered with a material, which will render the interior of the premises invisible to passers by and shall be so provided with a partition as to ensure that the interior of the premises shall remain invisible to passers by when the entrance is open.



Windows and openings to the premises other than entrances shall not be obscured otherwise than with the consent of the licensing authority but shall have suspended behind them, in a position approved by the licensing authority, opaque screens or blinds of a type and size approved by the licensing authority.

### **State Condition and Layout of the Premises**

Save in the case of emergency, no access shall be allowed through the premises to any unlicensed premises adjoining or adjacent.

Suitable controlled access to any unlicensed premises shall be maintained. Any mechanical device will be maintained in good working order.

No fastenings of any description shall be fitted to any booth or cubicle within the premises (this does not apply to toilet cubicles).

### **CCTV and Security**

A suitable CCTV system shall be installed and maintained at the premises in accordance with the following:

The CCTV system is to record throughout the whole of each period the premises are open to the public.

The system will include coverage of all public entrances and exits from the premises, the outside frontage of the premises and all internal areas that are frequented or accessed by members of the public.

The system will be capable of recording for a minimum of 31 days.

Recordings must be stored and retained for a minimum of 31 days and made available to the Police or an authorised officer of the Council upon demand.

There is to be a trained and competent person on duty at all times the premises is open to the public who is able to produce data from the CCTV system upon the request of a Constable or authorised officer of the Local Authority.

A flood light (of a strength so as not to cause a public nuisance) shall be installed and maintained in full working order at all times of darkness when the premises is open to members of the public, at the rear of the premises, in accordance with the plans (attached as annex 4) so as to deter the congregation of persons, for any reason, in that area.

### **Access to the Premises**

A policy of requiring valid identification from any person attempting to gain entry shall be adopted so that the licence holder shall be aware of who is in attendance at the premises at all times.

The identification of customers upon entry shall be used to ensure that no minors (any person under the age of 18 years) are admitted to any part of the premises at any time.

A recognised and approved ID scheme, such as Challenge 21/PASS is to be operated at the premises and signage is to be prominently displayed to that effect.

Signage must be prominently displayed at the entrance and within the premises stating that patrons are liable to be searched as a condition of entry and at any time they are on the premises.

Fire escapes, service doors and loading bays etc are not to be used as a point of entry or exit to the premises by any patron at any time with the exception of a bona fide emergency and the nature of that emergency will be recorded in the incident log

A hand written bound (not loose leaf) incident book is to be maintained on the premises for a minimum of one year.

All incidents of crime are to be entered in the incident log.

All refusals of sales and ejections from the premises are to be entered into the incident log.

The incident log is to be produced upon request of a Constable or authorised officer of the Local Authority.

There is to be a roller shutter door (or similar non perforated door) fitted to the main entrance that is level with the building line. This door is to be lowered and locked fast at all times the premises is closed to the public.

All customers, with the exception of a bona fide emergency, such as a fire, are only to enter and exit the premises via the main entrance into the High Street.

All members and guest must provide photo ID

There are to be a minimum of 4 (four) SIA Door Supervisors on duty from 20.00hrs until the premises closes at all times the premises is open to the public.

In relation to the numbers of doorstaff, there shall be two sited at the entrance to the premises and a minimum of two within the premises at all times that the premises is open to the public.

There shall be one member of doorstaff personnel whose responsibility it is to monitor all private areas or booths at all times the premises are open to the public. In this condition the doorstaff member may be one of the two as required to be inside the premises and not an additional doorstaff member.

The premises are to operate a Hounslow Town Link Radio (or any subsequent replacement system).

A cash machine shall be made available for customer use within the premises.

A quick queuing policy will be employed at the entrance to the premises, with patrons searched and verified in the main entranceway.

Any person who is refused entry for whatever reason must be asked to leave immediately.

All dancers/performers must remain on the premises (save for exceptional circumstances) until all patrons have left and must then be escorted to their cars, taxis (or other appropriate means of transportation) by doorstaff in order to ensure their safety and that there is no contact with any member of the public.

## **Appendix E**

### **Comparison of Grounds for Refusal**

There are no grounds for the acceptance of moral objections under either licensing regime.

### **Licensing Act 2003**

The legislation is very prescriptive and provides that in all cases where no representations are received the Council must grant any premises licence as applied for.

A licence may be refused (or amended) by a licensing panel only if representations are received.

Any consideration by a licensing panel to amend or refuse a licence must be based upon concerns that relate specifically to the activities of the premises in question and may only be considered as relevant if they relate to one or more of the licensing objectives.

The licensing objectives carry equal importance and are:

- i) Prevention of crime and disorder
- ii) Prevention of public nuisance
- iii) Public Safety
- iv) Protection of children from harm

Particularly in relation to protection of children from harm, this relates specifically to children when on or using a licensed premises. As no children would be permitted on any premises where SEV type entertainment is being conducted it is unlikely that representations based on concerns over children could be considered to be relevant.

### **The Local Government (Miscellaneous Provisions Act) 1982**

There are more options for refusal, these are:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) if the licence were to be granted, renewed or transferred, the business to which it relates would be managed or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he were to make the application himself;

- (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that the grant or renewal of the licence would be inappropriate, having regard –
  - (i) to the character of the relevant locality; or
  - (ii) to the use to which any premises in the vicinity are put; or
  - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

A decision to refuse a licence must be relevant to one or more of the above grounds.

When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.<sup>7</sup>

The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds; it must provide the applicant with reasons for the decision in writing.

It should be noted that premises that traded legally under a Premises Licence as granted under the Licensing Act 2003 in the past will find the criteria for grant of an SEV licence is different and it was envisaged by Government that this may see some operators refused an SEV licence especially where they are located in residential areas.



**London Borough  
of Hounslow**

## **STANDARD LICENSING CONDITIONS FOR PREMISES OFFERING SPECIAL TREATMENTS**

**STANDARD CONDITIONS IN FORCE FROM 1 April 2011 FOR  
PREMISES OFFERING SPECIAL TREATMENTS LICENSED BY  
THE LONDON BOROUGH OF HOUNSLOW**

# **Standard Conditions For Premises Offering Special Treatments**

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## **STANDARD CONDITIONS FOR PREMISES OFFERING SPECIAL TREATMENT**

Revised conditions for premises licensed by the London Borough of Hounslow in force from 1 January 2005.

### **INTRODUCTION**

These Standard Conditions are applicable to all premises offering special treatments. Their application does not in any way however, replace or reduce the underlying statutory duty of employers and self employed persons to comply with the requirements of the Health and Safety at Work etc Act 1974 and any associated regulations and codes of practice which may be applicable to these premises.

### **Part 1 - GENERAL**

#### **Definitions**

1) In these rules, unless the context otherwise requires:

**Act** means Part II of the London Local Authorities Act 1991 (as amended).

**Approval of the Council or Consent of the Council** means the written approval or consent of the Council as Licensing Authority in writing.

**Approved, Accepted or Permitted** means approved, accepted or permitted by the Council in writing.

**Council** means the London Borough of Hounslow.

**Special Treatment** means nail treatments, massage, electric treatments, light treatments, water treatments, skin piercing, tattooing and other treatments of a like kind.

**Establishment for Special Treatment** has the meaning set out in section 4 of the London Local Authorities Act 1991 (as amended).

**Fire Authority** means the Chief Officer and Chief Executive of the London Fire and Emergency Planning Authority.

**Licence Holder/Authorised Person** means a person who is responsible for compliance with the standard conditions at all times that the premises are open for business.

**Licence** means a Special Treatment Licence granted under Section 6 of the London Local Authorities Act 1991 (as amended).

**Premises** means any premise within the Council's area licensed for special treatments and includes all installations, fittings etc.



**Operative** – the person carrying out the special treatment and, for tattooing and body piercing premises, is an approved operative as named on the licence.

**Authorised Officer** means an Officer appointed by the Council.

**Dispensation or Modification of Rules**

- 2) (a) These rules may be dispensed with or modified by the Council in any special case.
- (b) In accordance with the provision of paragraph 10 of the London Local Authorities Act 1991, the Council may, in granting a licence or giving any written approval or consent under these rules, impose such terms, conditions, or restrictions as it shall specify in writing.
- (c) If the licensee wishes any licence terms, conditions or restrictions to be varied, an application must be made to the Council, and if the Council so requires, the application must be advertised.

**PART II - Conditions applicable to all premises**

**1) The Licence**

- a) The current licence or a clear copy shall at all times be prominently exhibited at the premises in a position where it can easily be read by patrons.
- b) The licence is personal to its holder. The licence cannot be transferred to any other person unless the procedure prescribed in the Act has been followed, and the Council has granted the application.
- c) The licence is only valid in respect of the premises named on the licence.
- d) Licences are granted for a maximum period of 12 months.
- e) A licence will be issued in the name of the applicant and, for the purposes specified in Condition 2(e).

**2) Responsibility of the Licence Holder/Authorised Person**

- a) May authorise a responsible person to be in charge of the premises during opening hours.
- b) Shall take all reasonable precautions for the safety of all persons using the premises and ensure compliance at all times with the relevant provisions of the Health and Safety at Work etc Act 1974, and other associated legislation.

- c) Shall be in charge of the premises at all times.
- d) Shall take out employer's liability (where applicable) and public liability insurance cover to the minimum value of £2,000,000
- e) Shall ensure that all operatives carrying out 'special treatments' are suitably trained/qualified and evidence of such shall be submitted to the Council for approval.
- f) For tattooing and body piercing premises the Council shall list the names of all operatives on the licence following their approval. Trainee/Apprentices shall appear on the licence named as such.

No other persons other than those named on the licence are permitted to carry out body piercings or tattooing.

- g) Shall ensure that no nuisance arises from the business, e.g. odours, noise etc.
- h) Shall ensure that at least one operative present in the premises on a day to day basis carrying out special treatments is required to have an understanding of spoken and written English in order to satisfactorily discuss client records and aftercare advice.
- i) Shall be responsible for maintaining a fire risk assessment to include proper precautions against fire, the maintenance and proper order of means of escape in case of fire, and the means of fighting fire at the premises.
- j) Shall clearly display a tariff of all special treatments provided.
- k) Suitable heating, lighting and ventilation are required in all areas of the premises and this shall be maintained in a suitable and safe conditions.
- l) An accessible wash hand basin shall be fitted within the treatment area and provided with hot and cold running water, preferably by mixer taps and non-hand operated taps. Sanitising soap dispensary and disposable paper towels shall provided.
- m) A suitable equipped first aid kit shall be readily accessible at the premises.
- n) Supply of drinking water shall be provided for public use, close to the treatment areas.

### **3) Charge of Licensed Premises**

- a) The licence holder/authorised person shall be familiar with all the conditions contained in this document and take responsibility for any breaches of said conditions.

**4) Conduct of the Premises**

- a) No poster, advertisement etc shall be displayed which is unsuitable for general exhibition.
- b) The licence holder/authorised person shall ensure that no part of the premises is used by persons for soliciting or other immoral purposes.

**5) People with Disabilities**

It is the policy of the Council that access for disabled people should be provided at business premises licensed for special treatment. Licensees are, therefore strongly encouraged to provide such facilities so as to enable the admission of disabled people and are reminded of the duties imposed by the Equalities Act 2010.

**6) Authorised Officers**

Authorised Officers, on presentation of their written authorisations and proof of identity shall be admitted at all reasonable times to all parts of the premises.

**7) Electricity**

- a) The licensee shall ensure that all portable electrical appliances used within the licensed premises are maintained regularly in accordance with the Electricity at Work Regulations 1989. Records of this maintenance must be available at the premises at the time of the inspection or must be forwarded to the Council.
- b) The licensee shall ensure that the fixed electrical installation is inspected by a competent electrical engineer in accordance with the Electricity at Work Regulations 1989 and a copy of the current certificate is available at the premises at the time of the inspection or must be forwarded to the Council.

**8) Personal Hygiene**

Any person carrying out any special treatment must ensure that:

- a) any open boil, sore, cut or other open wound is effectively covered by an impermeable dressing;
- b) hands are kept clean and are washed immediately prior to carrying out any treatment;
- c) they refrain from consuming food and drink during the course of the treatment.

**9) Refuse**

Under the Controlled Waste Regulations 1992 and the Environmental Protection Act 1990 operatives/licence holders have a duty of care to ensure that all clinical waste i.e. used dressings, swabs etc (infected or not) and used needles are collected and disposed of by a licensed contractor. A waste transfer document shall be available at the premises for inspection.

The clinical waste bags shall be yellow and marked as 'Biohazard – clinical waste' and whilst awaiting collection should be stored in a secure area.

**10) Record Keeping**

All licensed premises will be required to keep records to include name, address, age, date and type of treatment received and shall be required to keep such records for all treatments of category B or higher (all treatments other than manicure, pedicure, ear and nose piercing), for a period of at least 3 years. For all category A treatments records should be kept for a period of 12 months.

Any contra-indications e.g. heart conditions, diabetes, epilepsy etc for each treatment will be discussed with the client prior to any treatment, and the client shall sign a record card to say that they have been made aware of the risks involved. This must also be kept on file for a period of 3 years.

**11) Maintenance**

All systems i.e. fire safety equipment, boilers, etc provided in the premises shall be maintained/serviced regularly by competent persons and records available on site for inspection.

All equipment used in connection with special treatments shall be serviced/maintained in accordance with the manufacturer's/supplier's recommendation, and records kept.

Bench top sterilisers shall be calibrated and maintained in accordance with the manufacturer's recommendations and records available on site.

**12) Training**

All persons carrying out special treatments shall have received suitable training in the treatments being undertaken and also use of any relevant equipment. Written evidence of all training shall be available on the premises for inspection.

**13) Anaesthetic**

Administration of local anaesthetic injections other than by medically qualified practitioners is an offence.

Under the Medicines Act 1968, local anaesthetic creams, sprays, gels etc. are prescription only medicines and pharmacy medicines which may only be sold

by pharmacists for medical application on the patient only. Their use prior to a body piercing is therefore an offence.

**14) Control of Substances Hazardous to Health Regulations 2002**

Substances which fall under the above Regulations e.g. barbiticide, bleach, nail monomers etc shall be assessed in accordance with the requirements of those Regulations and all the necessary precautions taken to ensure their safe use and storage.

**15) Aftercare**

Each client shall be provided with written aftercare advice for each treatment they receive, and confirmation of this should be recorded on their client record card.

**PART III - Additional conditions for specific treatments**

**1) Sauna**

- a) A thermometer shall be provided indicating the temperature inside the sauna.
- b) An emergency button shall be provided on the sauna, which is connected to a reception or other staffed area.
- c) A clock or timer shall be visible to users, from inside the sauna.
- d) The temperature control device shall not be accessible to users of the sauna.
- e) The hot coals in the sauna shall be protected by a guard rail or barrier.
- f) Shower facilities shall be provided close to the sauna.
- g) A supply of fresh drinking water shall be available close to the sauna.
- h) Safety guidelines on the use of the sauna shall be displayed nearby.

**2) Heated Spa Baths**

- a) Children under 15 are prohibited from a spa bath.
- b) The spa water shall be suitably treated to prevent the growth of legionella bacteria by means of automatic dosing equipment in accordance with the Approved Code of Practice L8 entitled 'Control of Legionella Bacteria in Water Systems' produced by the Health and Safety Executive.

- c) Water tests shall be carried out at 4 hourly intervals to ascertain the chlorine, pH etc levels of the water. Written records of the results shall be kept on the premises.
- d) The spa shall be fitted with an automatic close down device, which operates approx every 15 minutes for a period of 5 minutes.
- e) Safety guidelines on the use of the spa shall be displayed nearby.
- f) An emergency button shall be provided on the spa, which is connected to a reception or other staffed area.
- g) Shower facilities shall be provided close to the spa.
- h) A supply of fresh drinking water shall be available close to the spa.

**3) Flootation Tank**

- a) Shower facilities shall be provided close by the equipment.
- b) A supply of fresh drinking water shall be provided near to the equipment.
- c) The water shall be filtered and purified between clients.

**4) Ultra Violet Tanning Equipment**

- a) No persons under the age of 16 shall be permitted to use tanning equipment.
- b) Prior to the use of tanning equipment a record card shall be completed and signed by the user to acknowledge that they have been made aware of and understand the contra-indications associated with ultra violet radiation, particularly with regard to drugs and medical conditions. A record of the frequency of visits shall also be recorded.
- c) The length of time that a client uses the tanning equipment shall be controlled by the management and based on the user type of skin, power of the sunbed, and age of the tubes etc.
- d) Users of tanning equipment shall have access to an emergency assistance device, which is connected to the reception area.
- e) Each tanning unit shall be fitted with an emergency stop button, which is connected to a reception or other staffed area.
- f) All users shall be provided with protective eye equipment free of charge.
- g) Arrangements shall be made to ensure that the tanning equipment is cleaned between clients.

- h) HSE guidelines IND (G) 209 on UV tanning shall be displayed in each tanning cubicle, copies of this document can be obtained from HSE Website.
- i) Regular maintenance shall be carried out, to include replacement of tubes. Records of all maintenance visits shall be available at the premises at all times.
- j) The HSE recommend a maximum of 20 ultra violet tanning sessions per year, clients shall be advised when they have reached this number and made aware of this recommendation. If the client still wishes to continue with further exposure then their written consent shall be recorded on their client record card.

5) **Tattooing**

- a) No tattoo shall be carried out on a client who has not reached their 18<sup>th</sup> Birthday in accordance with the Tattooing of Minors Act 1969.
- b) A tattoo may only be performed by an approved person who is named on the licence, in accordance with Part II 2 (e) of these conditions.
- c) All walls, floors, surfaces, seating etc shall be made of washable material.
- d) Prior to treatment **every** client shall read and sign a consent form, which contains details of medical history, name, address, age etc. Photographic proof of age may be requested and details should be entered onto the consent form.
- e) An example of consent form is attached in **Appendix A2**. These forms shall be kept on the licensed premises for a period of at least 3 years, and be available for inspection at all times.
- f) Under the Controlled Waste Regulations 1992 and the Environmental Protection Act 1990 operatives/licence holders have a duty of care to ensure that all clinical waste i.e. used dressings, swabs etc (infected or not) and used needles are collected and disposed of by a licensed contractor. A waste transfer document shall be available at the premises for inspection.

The clinical waste bags shall be yellow and marked as 'Biohazard – clinical waste' and whilst awaiting collection should be stored in a secure area.

- g) Sharps containers shall comply with the British Standard BS7320 and UN3291 and carry the 'kitemark'. Sharps containers should be sited above floor level and below shoulder level.
- h) An accessible wash hand basin should be fitted within the operating area provided with hot and cold running water, preferably by mixer taps. Liquid soap and a paper towel dispenser should also be fitted in this area.

- i) In addition to the wash hand basin, a deep sink with hot and cold running water should be provided exclusively for washing used equipment, this should be fitted in a separate 'dirty' area away from the clean operating area.
- j) Used instruments should be manually cleaned in the sink before undergoing the ultrasonic process, cleaning should occur below water level rather than under running water. Staff should wear suitable aprons etc during this process if there is a risk of splashing.
- k) Following the manual cleaning the instruments should be put through a cycle in the ultrasonic cleaner; the lid should remain closed whilst the machine is in operation. Items should be rinsed thoroughly on completion of the cycle. The detergent solution should be renewed at least weekly.
- l) Instruments should then be sterilised in a bench top autoclave; if using a non-vacuum type then the instruments should be placed **UNWRAPPED** in the autoclave. On completion of the cycle the instruments should be placed in an airtight plastic container and if not used within 3 hours they must be re-sterilised.
- m) If a vacuum type autoclave is used then instruments should be wrapped/pouched prior to sterilisation. A drying cycle is required to ensure that the pouches etc are not left in a damp condition. The pouches remain sterile for up to 6 months.
- n) Autoclaves should be run daily on a test cycle to ensure the machine is working correctly, door seals etc should be checked weekly. The autoclave should be maintained/serviced in accordance with the manufacturer's recommendations and written evidence should be available on site.
- o) Needles, pigment caps, razors and wooden spatulas are single use only and must be disposed of as clinical waste after use.
- p) Any jewellery which contains more than 0.05% nickel shall not be used, as this may cause an allergic reaction.
- q) A written aftercare leaflet shall be given to each client in accordance with general condition 15.

**6) Electrolysis**

- a) Individual pre-wrapped sterilised needles shall be used and disposed of as clinical waste after each client.



**7) Semi-permanent make up/micropigmentation**

- a) A consultation with the client shall take place prior to the treatment, during which time a patch test shall be carried out for adverse reactions to the pigments intended to be used, and any contra-indications discussed.
- b) Disposable gloves should be worn throughout the procedure; these should be non-powdered nitrile or vinyl. They should be disposed of as clinical waste.
- c) Under the Controlled Waste Regulations 1992 and the Environmental Protection Act 1990 operatives/licence holders have a duty of care to ensure that all clinical waste i.e. used dressings, swabs etc (infected or not) and used needles are collected and disposed of by a licensed contractor. A waste transfer document shall be available at the premises for inspection.
- d) The clinical waste bags shall be yellow and marked as 'Biohazard – clinical waste' and whilst awaiting collection should be stored in a secure area.
- e) Sharps containers shall comply with the British Standard BS7320 and UN3291 and carry the 'kitemark'. Sharps containers should be sited above floor level and below shoulder level.
- f) Needles and other component parts should where possible be the single use disposable type. These must be disposed of as clinical waste.
- g) Re-usable instruments should be manually cleaned in the sink before undergoing the ultrasonic process, cleaning should occur below water level rather than under running water. Staff should wear suitable aprons etc during this process if there is a risk of splashing.

Following the manual cleaning the instruments should be put through a cycle in an ultrasonic cleaner; the lid should remain closed whilst the machine is in operation. Items should be rinsed thoroughly on completion of the cycle. The detergent solution should be renewed regularly.

- h) Instruments should then be sterilised in a bench top autoclave, if using a non-vacuum type then the instruments should be placed UNWRAPPED in the autoclave. On completion of the cycle the instruments should be placed in an airtight plastic container and if not used within 3 hours they must be resterilised.

If a vacuum type autoclave is used then instruments should be wrapped/pouched prior to sterilisation. A drying cycle is required to ensure that the pouches etc are not left in a damp condition. The pouches remain sterile for up to 6 months.

- i) Autoclaves should be run daily on a test cycle to ensure the machine is working correctly, door seals etc should be checked weekly. The autoclave should be maintained/serviced in accordance with the manufacturer's recommendations and written evidence should be available on site.
- j) A written aftercare leaflet shall be given to each client.

8) **Body Piercing**

- a) A piercing may only be performed by an approved operative who is named on the licence.
- b) Piercings with the exception of nipple and genital may be carried out with written parental consent under the age of 16.
- c) Piercings with the exception of the genitals may be carried out on 16-18 year olds with either parental consent or a valid photographic identification e.g. passport or driving licence.
- d) Any piercing may be carried out on anyone over 18 years of age with a valid photographic identification e.g. passport or driving licence.
- e) Prior to treatment **every** client or parent/guardian shall read and sign a consent form, which contains details of name, address, age etc. These records shall be kept for at least 3 years and be available for inspection at the premises. A specimen consent form is attached as **Appendix A2**.
- f) Single use disposable gloves which should be non-powdered and made from nitrile or vinyl must be worn during the procedure. These must be disposed of as clinical waste in accordance with general condition 9.
- g) The following guns are approved for ear piercing, **Inverness, Coren, Caress, Caflon, Studex, Tripps and Poly Dots Cassette**.
- h) The following guns are approved for nose piercing, **Studex**.
- i) Jewellery fitted with a stud shall not be used in nose piercing.
- j) A written aftercare leaflet for all piercings shall be given to each client.
- k) It is recommended that operatives are immunised against Hepatitis B.
- l) It is recommended that operatives hold a valid first aid certificate.
- m) Administration of local anaesthetic injections other than by medically qualified practitioners is an offence.
- n) Under the Medicines Act 1968, local anaesthetic creams, sprays, gels etc. are prescription only medicines and pharmacy medicines which may only be sold by pharmacists for medical application on the patient only. Their use prior to a body piercing is therefore an offence.

- o) All walls, floors, surfaces, seating etc shall be made of washable material.
- p) Under the Controlled Waste Regulations 1992 and the Environmental Protection Act 1990 operatives/licence holders have a duty of care to ensure that all clinical waste i.e. used dressings, swabs etc (infected or not) and used needles are collected and disposed of by a licensed contractor a waste transfer document shall be available for inspection.
- q) The bags shall be yellow and marked as 'Biohazard – clinical waste' and whilst awaiting collection should be stored in a secure area.
- r) Sharps containers shall comply with the British Standard BS7320 and UN3291 and carry the 'kitemark'. Sharps containers should be sited above floor level and below shoulder level.
- s) An accessible wash hand basin should be fitted within the operating area provided with hot and cold running water, preferably by mixer taps. Liquid soap and a paper towel dispenser should also be fitted in this area.
- t) In addition to the wash hand basin, a deep sink with hot and cold running water should be provided exclusively for washing used equipment; this should be fitted in a separate 'dirty' area away from the clean operating area.
- u) Used instruments should be manually cleaned in the sink before undergoing the ultrasonic process, cleaning should occur below water level rather than under running water. Staff should wear suitable aprons etc during this process if there is a risk of splashing.
- v) Following the manual washing, the instruments should be put through a cycle in the ultrasonic cleaner; the lid should remain closed whilst the machine is in operation. Items should be rinsed thoroughly on completion of the cycle. The detergent solution should be renewed at least weekly.
- w) Instruments should then be sterilised in a bench top autoclave, if using a non vacuum type then the instruments should be placed UNWRAPPED in the autoclave. On completion of the cycle the instruments should be placed in an airtight plastic container and if not used within 3 hours they must be re-sterilised.

If a vacuum type autoclave is used then instruments should be wrapped/pouched prior to sterilisation. A drying cycle is required to ensure that the pouches etc are not left in a damp condition. The pouches remain sterile for up to 6 months.

- x) Autoclaves should be run daily on a test cycle to ensure the machine is working correctly, door seals etc should be checked weekly. The autoclave should be maintained/serviced in accordance with the manufacturer's recommendations and written evidence should be available on site.

- y) Needles, gloves etc are single use only and must be disposed of as clinical waste after use.
- z) Any jewellery which contains more than 0.05% nickel shall not be used, as this may cause an allergic reaction.
- aa) All jewellery shall be sterilised in the autoclave prior to use in the piercing.

**9) Artificial Nails**

- a) Written records containing the client's name, address, telephone number, date of treatments and operative's name shall be kept for each client. These shall be kept for a period of at least 3 years and be available at the premises for inspection.
- b) The condition of the client's nails should be examined prior to any treatment and if there is any presence or suspicion of any infection etc they should be referred for medical treatment.
- c) All operatives shall be qualified to Level 3 Unit 19 NVQ standard or an acceptable equivalent which is approved by the Council. Copies of qualifications shall be available for inspection at the premises.
- d) An assessment shall be carried out of all products used in connection with the treatment e.g. Acetone, Ethyl Methacrylate etc under the Control of Substances Hazardous to Health Regulations 2002. Copies of safety data sheets for all products used shall be available on the premises.
- e) Products containing Methyl Methacrylate (MME) are subject to an occupational exposure limit and research has shown that regular exposure to them can cause respiratory etc sensitisation. The use of a suitable alternative product should be considered e.g. Ethyl Methacrylate (EMA).
- f) All products used in the premises should be stored in suitably labelled containers, specifying details of contents, supplier etc.
- g) Floor coverings shall be made of impervious material which can be easily cleaned.
- h) Any cotton wool etc which has come into contact with nail liquids should be disposed of in suitably covered receptacles.
- i) Dispensed nail liquids shall be kept in covered containers at all times when not in use.
- j) Electric drills may only be used by suitably trained operatives, written evidence of training should be available on site.
- k) Drill bits etc shall be cleaned between use on each client.

**10) Non Surgical Lasers/IPLS**

- a) The licence holder shall employ the services of an Expert Medical Practitioner (someone with verifiable qualifications in the use of laser equipment) to produce the 'treatment protocol' document which shall be kept on site. (**Appendix A3** outlines the information required in this document)
- b) The Licence holder shall employ the services of a certificated Laser Protection Advisor who will assist in the production of the 'local rules' document (A specimen laser local rules document is attached as **Appendix A4**).

The 'local rules' shall be updated if there are any changes made to the equipment in use, changes in procedure or treatment room, if these affect the safe use of the laser/IPLS.

- c) All authorised users of laser/IPLS shall be trained to at least the Core of Knowledge Certificate level and records of such training shall be kept on site with the local rules. Any training on the specific equipment in use at the premises shall also be recorded. Such training should be refreshed every 3-5 years.
- d) A suitably qualified member of staff on the premises shall be identified as the laser protection supervisor they will have day to day to responsibility of ensuring the local rules are followed.
- e) A treatment register shall be completed every time the laser/IPLS is operated, including the following information:
  - the name of the person treated (including a second means of identification);
  - the date and time of treatment;
  - the name and signature of the laser/IPLS operator;
  - the nature of the laser/IPLS treatment given;
  - the treatment parameters; and/or
  - any accidents or adverse effects.

**Laser/IPL Controlled Area**

- f) The area around working lasers/IPLS shall be controlled to protect other persons while treatment is in progress. The controlled area shall be clearly defined and not used for other purposes.

A suitable safety warning sign or light entry system which complies with current British Standards shall be in place on the door of the controlled area.

- g) All lasers/IPLS shall comply with current standards (BS EN 60601-2-22 for medical lasers and BS 60601-2-57 and shall display labels identifying them, their wavelength or range of wavelengths and the maximum output power of the radiation emitted. The labels shall be

clearly visible on the front or side of the machine.

- h) The door to the controlled area shall be fitted with a suitable device which can be operated from the outside in an emergency.
- i) Any windows in the controlled area shall be fitted with opaque blinds approved by the LPA.
- i) The controlled areas shall be kept clear of clutter, mirrors shall be avoided and jewellery shall not be worn.
- k) Surfaces within the controlled area shall be of a matt or eggshell finish.
- l) Protective eyewear shall be worn by everyone within the controlled area whenever there is a risk of exposure to laser/IPLS. All protective eyewear shall be marked with the wavelength range and protection offered as detailed in the local rules document. They shall be in a clean serviceable condition.
- m) The laser protection supervisor shall ensure that the key to any laser or IPLS equipment is kept in a secure and separate area when not in use and that only authorised users have access to the key.
- n) Lasers/IPLS shall be serviced annually and a record kept of servicing and repairs with the local rules document.
- o) Adequate first aid equipment should be kept on site and staff should be trained in the use of the equipment. Records of such training should be kept for a period of 3 years.

**APPENDIX A1**

**CERTIFICATION REQUIRED TO  
BE AVAILABLE AT THE LICENSED PREMISES**

**1) Electricity**

- All applicants and Licence Holders are required to hold valid documentation confirming the safety of the fixed wiring throughout the premises. All works must be carried out by a competent electrical engineer in accordance with the Electricity at Work Regulations 1989. e.g. NICEIC 'Periodic Inspection Report For An Electrical Installation'.

**2) Sterilisers**

- All applicants and Licence Holders are required to hold valid documentation confirming the safety/calibration of all sterilisers which are used in connection with the business e.g. autoclaves, ultrasonic cleaners, ultra violet cabinets etc. All works must be carried out by a competent engineer.

**3) Controlled Waste**

- All applicants and licence holders shall hold a copy of the licence of the contractor who is removing the controlled waste.
- Copies of transfer documents for the removal of controlled waste should also be held.

**4) Insurance**

- A copy of the employer's liability (where applicable) and public liability certificates should be available for inspection.

**5) Training**

- All certificates of qualification relevant to the licensed treatments shall be available for inspection.

**6) Fire Risk Assessment**

Where the Regulatory Reform (Fire Safety) Order 2005 applies to your premises you must carry out a FIRE RISK ASSESSMENT and make an EMERGENCY PLAN.

**APPENDIX A2****CONSENT FORM****(Name & Address of premises)**

I hereby declare that I give (piercer /tattoo artist's name) my full consent to (pierce / tattoo) me and that the information given below is true to the best of my knowledge.

I have /suffer from the following:

<b>Heart Condition /Pacemaker</b>	NO/YES
<b>Epilepsy</b>	NO/YES
<b>Haemophilia</b>	NO/YES
<b>HIV/Hepatitis</b>	NO/YES
<b>High Blood Pressure</b>	NO/YES
<b>Diabetes</b>	NO/YES
<b>Skin condition e.g. Psoriasis</b>	NO/YES
<b>Allergies i.e. plasters</b>	NO/YES
<b>Taking blood thinning medication e.g. aspirin</b>	NO/YES

I understand that no form of anaesthetic will be used in the procedure.

I understand that every care will be taken to ensure that the procedure is carried out in a hygienic way, which includes the use of disposable or pre-sterilised equipment.

I will follow the verbal and written aftercare instructions which have been given to me.

**I AM NOT UNDER THE INFLUENCE OF ALCOHOL OR DRUGS**

**I HAVE REQUESTED THIS PIERCING / TATTOO OF MY OWN FREE WILL**

Print Full Name.....

Address .....

.....

AGE ..... Date of Birth..... Type of ID .....

Signature of client .....Guardian if under 16 .....

Date..... Tattoo/piercing site .....

.....



**APPENDIX A3**

**Laser /IPLS Treatment Protocol Document**

A treatment protocol must be produced by an expert medical practitioner (EMP) in relation to the Licence Holder's equipment/premises.

The treatment protocol sets out the necessary pre-treatment checks and tests, the manner in which the laser/IPLS is to be applied, the acceptable variations in the settings used, and when to abort a treatment.

The treatment protocol should be signed and dated by the EMP to confirm authorisation, should be reviewed annually and include a projected date for review.

A separate treatment protocol should be in place for each laser/IPLS in use at the licensed premises.

The treatment protocol must include the following:

- name and technical specifications of the equipment
- contra-indications
- treatment technique – general
- treatment technique – hair reduction
- client consent prior to treatment
- cleanliness and infection control
- pre-treatment tests
- post-treatment care
- recognition of treatment-related problems
- emergency procedures
- permitted variation on machine variables
- procedure in the event of equipment failure

**APPENDIX A4**

**CONTENT OF LASER/IPLS LOCAL RULES DOCUMENT**

**1) Potential Hazards**

List all types of hazards including fire, skin and eye injuries, electrical etc.

**2) Device Description**

Description of all devices including output, serial numbers etc.

**3) Treatment Protocol**

Reference to separate document produced by the Expert Medical Practitioner.

**4) Written Procedures**

Supported by reference to user manual/training manual etc

**5) Adverse Incident Procedure**

a) Details of actions that shall be taken in cases of emergency e.g. eye exposure.

b) Name, address and telephone number of local accident and emergency department.

c) Any incidents must also be reported to the Council.

**6) Emergency Shutdown Procedure**

Instructions as set down in manufacturer's manual or treatment protocol.

**7) Register of Authorised Users**

Details of trained personnel with signed declarations of individuals.

**8) Laser Protection Advisor**

Contact details of the LPA.

**9) Laser Protection Supervisor**

a) One Authorised User shall be nominated Laser Protection Supervisor to ensure that the register is maintained and the local rules are adhered to.

b) Name of the Laser Protection Supervisor.

**10) Record of laser use**

A register shall be kept which will separately record the following information every time the IPLS is operated:

the name and date of birth of the person treated;  
date of treatment;  
the operator;  
the treatment given; and  
any accident or adverse effects.

### **11) Laser/IPLS Operator Training**

a) All laser/IPLS 'authorised users' shall hold the Core of Knowledge Training Certificate together with specific training on the use of on site equipment provided by the supplier of the Laser/IPLS.

b) Details of all training shall be recorded in the Register of Authorised Users or a separate Training Register.

### **12) Controlled Area designation and access**

a) The room in which the laser/IPLS is used shall be designated a 'Controlled Area' and the laser shall only be used in this area. Approved warning signs shall be fitted to the door i.e. 'Controlled Area', 'Eye Protection' etc

b). A notice should be fixed to the laser/IPLS indicating that its use is subject to the local rules.

### **13) Register of Authorised Users**

A register shall be kept of personnel authorised to operate the equipment.

### **14) Safe Operation of device**

a) No more than one laser/IPLS shall be switched on during the client treatment.

b). When the laser/IPLS is in operation the number of persons in the room shall be kept to a minimum.

c) The laser/IPLS shall not be enabled to fire unless it is directed towards the treatment site or a beam stop.

d) The Authorised User shall be careful to avoid reflections of the beam from instruments/equipment in close proximity to the beam path, matt/non reflective surfaces etc shall be provided.

e) Whenever the device is unattended by an Authorised User, the laser shall be switched off and the key withdrawn and placed in safe custody by the Authorised User.

### **15) Operator responsibility**

- a) It is the responsibility of the equipment Authorised User to be aware of the nature of the hazard involved and to be familiar with the manufacturer's operating instructions.
- b) During the operation of the laser (or IPLS) the Authorised User is responsible for the safety of all persons present, including the client and themselves.

#### **16) Protective eyewear**

Protective eyewear shall be provided and clearly marked for the laser. It is important that the correct goggles are used e.g. the use of a coloured sticker or other identifier on the goggles matches a similar identifier on the laser or IPLS. The Authorised User shall instruct all personnel in the Controlled Area to wear goggles suitable for the laser being used.

#### **17) Application of local rules**

- a) The laser shall only be used in accordance with these local rules.
- b) Authorised Persons shall sign statements that they have read and understood these local rules.
- c) The local rules shall be kept in the treatment room/s at all times.

**Special Treatment Premises**  
**Code of Practice**  
**Class 3B and Class 4 Lasers and Intense Light Systems**

## **1.0 PURPOSE**

The purpose of this Code of Practice (CoP) is to support the policy decisions and conditions of licence adopted by the Council in respect of Special Treatments Establishments.

## **2.0 SCOPE**

This CoP details specific requirements for Class 3B and 4 lasers and Intense Light Systems in addition to those laid down in the Regulations prescribing standard conditions applicable to all special treatment premises.

## **3.0 DEFINITIONS**

### **3.1 Laser**

This is an acronym of Light Amplification by Stimulated Emission of Radiation. In the beauty industry lasers are generally used for non-invasive cosmetic treatments, such as removal of hair, tattoos, birthmarks, acne scarring, and other blemishes, from the skin. The mode of emission of the radiation can be continuous, wave, or pulsed.

### **3.2 Class 3B lasers**

Radiation in this class is likely to be dangerous, maximum output into the eye must not exceed 500mW. The radiation can be hazardous to the eye or skin, but viewing of diffuse reflection is safe.

### **3.3 Class 4 laser**

Highest class of laser radiation, diffuse reflection is also hazardous. If used incorrectly it can cause serious skin and eye injuries and is capable of setting fire to material.

### **3.4 Intense Light Systems (ILS)**

Intense light systems are generally treated as class 4 lasers. Intense Pulsed light (IPL) systems fall into this category and are the intense light system generally used for non-invasive cosmetic treatments found in the beauty industry. IPL is pulsed or shuttered emission which gives tissues time to cool between pulses.

### **3.5 Expert Medical Practitioner – EMP**

The EMP is a qualified medical practitioner with verifiable clinical expertise in using laser/intense light systems to treat patients/clients.

### **3.6 Expert Dental Practitioner – EDP**

The EDP is a qualified Dental Practitioner with verifiable clinical expertise in using laser/intense light systems to treat patients/clients.

### **3.7 Laser Protection Advisor – LPA**

The LPA is the person providing expert advice on laser/ILS safety. The LPA will carry out hazard analysis and risk assessment for each laser/ILS installation and advise on training, protective eye wear and ensure local rules are produced, signed, dated and implemented for each installation. The LPA may be external to the business.

### **3.8 Local Rules**

The Local Rules are produced by the LPA and are a set of rules specific to each installation, detailing safe working practice and day-to-day safety management.

### **3.9 Laser Protection Supervisor – LPS**

The LPS is usually an employee of the business and is responsible for: supervising the work of all laser/ILS authorised users; the safety and security of all laser/ILS; ensuring all users are appropriately trained to operate the laser/ILS; and that the Local Rules document is followed on a day to day basis.

### **3.10 Authorised User**

The Authorised user is the individual who operates the laser/ILS equipment to treat clients.

## **4.0 ACCESS TO EXPERT ADVICE**

### **4.1**

The licence holder shall employ the services of an Expert Medical Practitioner (EMP) to produce the 'treatment protocol' document and to provide ongoing support and advice.

### **4.2**

The Licence Holder shall employ the services of a certificated Laser Protection Advisor (LPA) to produce local rules and provide ongoing support and advice.

### **4.3**

Both the Local Rules and the Treatment Protocol must be available for reference, next to each machine.

## **5.0 LOCAL RULES**

### **5.1**

A Local Rules document must be produced by a certified LPA in relation to the licence holder's equipment/premise.

## **5.2**

The Local Rules should be issued, signed and dated by both the employer and the LPA and should be reviewed annually and include a projected date for review. They must be retained on site.

## **5.3**

Local Rules must identify the named person authorised to operate the laser/ILS.

## **5.4**

The laser must only be used in accordance with these rules.

## **5.5**

Authorised users must sign to indicate they accept, understand and agree to work to the local rules procedure.

## **5.6**

Local Rules must be available for each installation even if they are being used on a trial basis and must include the following:

- Potential hazards associated with lasers and ILS
- Controlled and safe access
- Authorised users' responsibilities
- Methods of safe working
- Safety checks
- Normal operating procedures
- Personal protective equipment
- Prevention of use by unauthorised persons
- Adverse incident procedure
- Procedure to ensure that unauthorised persons do not operate the laser or ILS when the machine is left unattended by an authorised user.

## **6.0 CLIENT CONSULTATION/TREATMENT PROTOCOL**

### **6.1**

A treatment protocol must be produced by an Expert Medical Practitioner (EMP) in relation to the licence holder's equipment/premises.

### **6.2**

The treatment protocol should be signed and dated by the EMP to confirm authorisation, should be reviewed annually and include a projected date for review. The treatment protocol must be retained onsite.

### **6.3**

A separate treatment protocol should be in place for each laser/ILS in use at the licensed premises.

## **6.4**

The treatment protocol must include the following:

- name and technical specifications of the equipment
- contra-indications
- treatment technique – general
- treatment technique – hair reduction
- client consent prior to treatment - including checking skin type and pigmentation
- cleanliness and infection control
- pre-treatment tests and pre-treatment instructions
- post-treatment care
- recognition of treatment-related problems
- emergency procedures
- permitted variation on machine variables
- procedure in the event of equipment failure
- written aftercare advice must be provided after the first treatment

## **7.0 LASER PROTECTION SUPERVISOR**

### **7.1**

A person with onsite, overall responsibility for lasers/ILS must be appointed. This will be the Laser Protection Supervisor (LPS).

### **7.2**

The LPS will ensure the following:

- local rules are followed and kept
- have day-to-day responsibility for laser safety
- will inform the LPA if they consider that the existing rules require changing
- ensure that the LPA is advised as soon as possible in the event of an incident occurring.
- inform the Food Health and Safety Team London Borough of Hillingdon in the event of an incident occurring
- ensure all laser/ILS Authorised Operators are appropriately trained and that the training is documented.
- ensure a register of Authorised Operators is maintained
- ensure lasers are used only for treatments for which authorised users have been trained and are competent.

## **8.0 OPERATOR RESPONSIBILITY**

- While the equipment is being operated the Authorised User must be responsible for the safety of all persons in the controlled area, including the client.
- The Authorised User must ensure removal of reflective jewellery from self and client.



## **9.0 TREATMENT REGISTER**

### **9.1**

A treatment register must be maintained every time the laser/ILS is operated and must include:

- The name of the person treated
- The date and time of the treatment
- The name and signature of the laser/ILS operator
- The nature of the Laser/ILS treatment given
- The treatment parameters
- Any accidents or adverse effects

### **9.2**

The treatment register may be combined with the client consultation/treatment protocol document.

## **10.0 CONTROLLED TREATMENT AREA**

### **10.1**

The area around working lasers and intense light systems must be controlled to protect other persons while treatment is in progress.

### **10.2**

The controlled area must be clearly defined and the laser may only be used in this room.

### **10.3**

The controlled area must not be an access to other areas when laser/ILS treatments are being carried out.

### **10.4**

No other laser or ILS should be in use in the same controlled area at the same time.

### **10.5**

Suitable warning signs must be displayed on the outside of doors to the controlled area.

### **10.6**

All lasers and ILS must comply with current standards (BS EN 60601-2-22 for medical lasers and BS 60601-2-57 for ILS)

### **10.7**

Lasers must be clearly labelled on the front of the machine with the following information:

- Identification of the machine
- The wavelength or range of wavelength
- Maximum output power of the radiation emitted.

### **10.8**

For all laser and intense light sources with a key switch, formal arrangements must exist for the safe custody of the key, separate from the equipment.

### **10.9**

Only Authorised Users may have access to the key.

### **10.10**

The operating key must not be left unattended with the laser/ILS equipment.

### **10.11**

Equivalent arrangements must exist for equipment protected by password instead of key.

### **10.12**

Mirrors and other reflective surfaces must be avoided.

### **10.13**

All windows in the controlled area should be supplied with non-reflective window coverings such as blinds.

## **11.0 PROTECTIVE EYEWEAR**

### **11.1**

Protective eyewear shall be provided and clearly marked for the laser.

### **11.2**

All protective eyewear must be marked with the wavelength range and protection offered.

### **11.3**

The specification of the required eyewear must be indicated in the Local Rules.

### **11.4**

The Authorised User shall instruct all personnel in the Controlled Area to wear goggles suitable for the laser being used.

### **11.5**

Effective eyewear must be worn by everyone within the controlled area whenever there is a risk of exposure to hazardous levels of laser or ILS radiation.

### **11.6**

Protective eyewear must be adequately cleaned and disinfected between treatments.

## **12.0 QUALIFICATIONS**

### **12.1**

All Authorised Users must hold a qualification that meets National Occupational Standards (NOS) at level 3 in a relevant subject. In exceptional circumstances, where NOS qualifications are not available, an assessment will be carried out on an individual basis and further training required as appropriate.

### **12.1**

All Authorised Users and the LPS must be trained to at least the laser/ILS Core of Knowledge safety training. Records of training must be kept at the premise and available at all times by inspecting officers. Records must include the training curriculum.

## **12.2**

All Authorised Users and the LPS must receive further training on the specific laser/IPL in use. Records of this training must be kept on site and available at all times for inspecting officers. Records must include the training curriculum.

## **12.3**

Records of training must be kept with the local rules.

## **12.4**

All training must be refreshed every 3-5 years.

## **13.0 MAINTENANCE**

### **13.1**

The laser and ILS must be serviced and maintained according to the manufacturers' instructions to ensure they are operating within their design specification.

### **13.2**

A record of service and repairs must be kept on site and available for inspecting officers.

### **13.3**

Lasers and ILS must have an electrical safety test carried out annually.

## **14.0 REVIEW**

This Code of Practice will be reviewed regularly and updated in light of current industry guidance and legal opinion. Any changes will be notified to licensees and will be attached as conditions to your licence with effect from the date of the next renewal of your licence.

Up to date copies are available from our website at:

<http://www.Hounslow.gov.uk> or by phoning 020 8583 5555

## **15.0 FURTHER INFORMATION**

### **Independent Healthcare Advisory Service (IHAS)**

Centre Point

103 New Oxford Street

London WC1A 1DU

02073798598

[www.independenthealthcare.org.uk](http://www.independenthealthcare.org.uk)

### **Association of Laser Protection Healthcare Advisors (ALPHA)**

88 Noahs Ark Lane

Lindfield

Haywards Heath

West Sussex RH16 2LT

535153 125102

**Medicines and Healthcare Products Regulatory Agency (MHRA)**

Market Towers  
1 Nine Elms Lane  
London  
SW8 5NQ  
020 7084 2000  
[www.mhra.gov.uk](http://www.mhra.gov.uk)

Device bulletin MHRA DB 2008(03)

**Hair and Beauty Industry Authority (HABIA)**

Oxford House  
Sixth Avenue  
Sky business Park  
Robin Hood Airport  
Doncaster DN9 3GG  
0845 2306080  
[www.habia.org.uk](http://www.habia.org.uk)



## London Borough of Hounslow

### LONDON LOCAL AUTHORITIES ACT 1991 (AS AMENDED)

#### LIST OF BODIES OF HEALTH PRACTITIONERS GRANTED EXEMPTION UNDER SECTION 4 AS AT 8 MARCH 2011

By virtue of section 4c London Local Authorities Act 1991, anyone who is state registered does not require a licence. This includes Osteopaths, Physiotherapists, Chiropodists etc.

The Current List of exempt bodies and qualifying treatments are:

<b>Acupuncture</b>	
The British Acupuncture Council 63 Jeddo Road London W12 9HQ	Acupuncture Moxibustion Cupping Acupressure Tui Na Auricular Acupuncture Electro Acupuncture
The Acupuncture Society, 27 Cavendish Drive Edgware Middlesex HA8 7NR	Acupuncture Acupressure Moxibustion Cupping Auricular Acupuncture Electro Acupuncture
The Acupuncture Association of Chartered Physiotherapists Secretariat Portcullis Castle Street Mere Wiltshire BA12 6JE	Acupuncture Physiotherapy Acupressure Moxibustion Auricular Acupuncture
Association of Traditional Chinese Medicine inc Zhong Shan Chinese Medicine & Acupuncture Association 5a Grosvenor House 1 High Street Edgware London HA8 7TA	Acupuncture Qi Gong Tui Na

Federation of Traditional Chinese Medicine Practitioners 21 Devon Road Cheam Surrey SM2 7PE	Acupuncture Tui Na Reflexology
<b>Aromatherapy</b>	
International Federation of Professional Aromatherapists (inc the Register of Qualified Aromatherapists, The International Society of Professional Aromatherapists & Int Federation of Aromatherapists) 82 Ashby Road Hinckley Leicestershire LE10 1SN	Aromatherapy Massage
Aromatherapy & Allied Practitioners Association PO Box 36248 London SE19 3YD	Aromatherapy Massage
<b>Ear Piercing</b>	
Royal Pharmaceutical Society of GB (ear piercing only) 1 Lambeth High Street London SE1 7JN	Ear Piercing
<b>Reflexology</b>	
British Reflexology Association Monks Orchard Whitbourne Worcester WR6 5RB	Reflexology
Association of Reflexologists inc the International Institute of Reflexology 5 Fore Street Taunton Somerset TA1 1HX	Reflexology
International Federation of Reflexologists 8-9 Talbot Court London EC3V 0BP	Reflexology

<b>Shiatsu</b>	
Shiatsu International Maulak Chambers The Centre High Street Halstead Essex CO9 2AJ	Shiatsu
Shiatsu Society UK Eastlands Court St Peter's Road Rugby Warwickshire CV21 3QP	Shiatsu
Zen Shiatsu Society 1st Floor 68 Great Eastern St London EC2A 3JT	Shiatsu
<b>Sports Massage</b>	
Sports Massage Association 86 Nelson Road London SW19 IHX	Sports Massage
Institute of Sports & Remedial Massage Cottage 2c TGEC Town Hall Approach Rd London N15 4RX	Sports & Remedial Massage
BASRAT – British Association of Sport Rehabilitators and Trainers. Angela Cumine c/o St Marys University College Strawberry Hill, Twickenham YW1 4SX	Sports Massage
<b>Trichology</b>	
Institute of Trichologists 24 Longroyd Road London SW17 7PL	Trichology Head Massage

<b>Miscellaneous</b>	
Association of Naturopathic Practitioners Coombe Hurst Coombe Hill Road East Grinstead West Sussex RH19 4LZ	Acupuncture Holistic Massage
Complementary Medical Association Three Corners 49 Albany Road St Leonards on Sea East Sussex TN38 0LJ	Acupressure Aromatherapy Ayurveda Colour Therapy Qi Gong Reflexology Shiatsu Indian Head Massage
Complementary Therapists Association PO Box 6955 Towcester NN12 6WZ	Aromatherapy Bowen Therapy Manual Lymphatic Reflexology Shiatsu Sports, therapeutic & holistic massage
Federation of Holistic Therapists 18 Shakespeare Business Centre Hathaway Close Eastleigh Hampshire SO50 9XG	Acupressure Aromatherapy Bowen Therapy ML Drainage Reflexology Shiatsu ,Sports & Remedial massage Moxibustion Thai Massage & Foot Massage
Institute for Complementary Medicine also known as British Register of Complementary Practitioners PO Box 194 London SE16 7QZ	Acupuncture Acupressure Aromatherapy Bowen Technique M L Drainage Remedial, Sports, Holistic and Indian Head Massage Reflexology Shiatsu Tui Na Qi Gong



British Complementary Medicine Association PO Box 5122 Bournemouth Dorset BH8 OWG	Acupuncture Polarity Therapy Indian Head Massage Manual Lymphatic Drainage Aromatherapy
Association of Physical and Natural Therapists 27 Old Gloucester Street London WC1N 3XX	Therapeutic & sports massage Reflexology Aromatherapy Acupressure
LCSP Register of Remedial Masseurs & Manipulative Therapists 330 Lytham Road Blackpool Lancs FY4 1DW	Remedial Massage
Health Professionals Council (Members are automatically exempted by Section 4c of the LLA 1991 as State Registered)	Chiropody Physiotherapy
Independent Professional Therapists International PO Box 106 Retford DN22 7WN	Aromatherapy Bowen Technique Holistic, Therapeutic & Remedial Massage Lymphatic Drainage Shiatsu, Sports Massage, Acupressure Thermo Auricular Therapy, Metamorphic Technique, Polarity Therapy, Reflexology, Moxibustion, Rolfing
Massage Training Institute PO Box 44603 London N16 0XQ	Remedial & Therapeutic Massage

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### **LICENSING COMMITTEE – 8 MARCH 2011**

#### **London Local Authorities Act 1990 – Street Trading Policy**

**Report by:** Michael Jordan – Director of Environment

##### **Summary**

This report relates to street trading within the Borough and sets out a new policy, a new system of fixed penalty notices and details a review of licence fees.

### **1.0 RECOMMENDATIONS**

- 1.1** Members are requested to note the position in relation to fees and to agree in principle, subject to consultation:
- a) the new policy; and
  - b) fixed penalty notices and the level of penalty charges.

### **2.0 INTRODUCTION**

- 2.1** The Licensing of Street Trading within the Borough is governed by the London Local Authorities Act 1990 Part 3 as amended (the Act). This allows the Council to designate streets as 'Licence Streets' where street trading may take place, under either a permanent annually renewed licence or a temporary licence issued for a maximum of 6 months. The Act also makes provision to control street trading and to set fees and charges.
- 2.2** At the Licensing Committee meeting of 7 September 2010 it was agreed that the finalised Street Trading Policy would be presented at a future Licensing Committee meeting. If appropriate the Committee could then adopt this policy subject to consultation with affected bodies.

### **3.0 BACKGROUND INFORMATION**

- 3.1** There are three principal forms of street trading which take place in the Borough. Although they undergo the same process, for ease of reference they are referred to as Pavement Café, Shop Front Displays and Stalls, which may be either temporary or permanent pitches.

#### **3.2 Pavement Café Licences**

Pavement Café Licences allow cafes, restaurants and public houses to place tables and chairs outside the premises so that customers can eat and drink outside. These licences are issued on a temporary basis for 6 months at a time as they are

usually in areas that have not been designated as 'Licence Streets'.

### **3.3 Shop Front Display Licences**

A Shop Front Display Licence allows an existing retail premises to display and sell goods on the highway outside of the shop premises. A trader who wishes to trade in this way but does not enjoy the advantages of their own private forecourt applies to the Council for a licence to trade on the public highway. These are also issued on a temporary basis in the same manner and for the same reasons as Pavement Cafés.

### **3.4 Stalls**

Permanent street trading allows street trading to take place from what are termed designated sites. These are locations where the area has been designated as a 'Licence Street' and trading is permitted from a stall, barrow, trailer or similar. Currently there are 15 such sites within the Borough.

Temporary street trading does not have to take place in a designated area and as such applications may be accepted for any place subject to standard licensing and pre-licensing conditions. There are currently 31 temporary stalls within the Borough.

- 3.5** There have been occasions where problems have occurred in relation to the proliferation of traders applying in a certain area or with existing traders exceeding their allotted pitch or transgressing to other areas. Part of the solution to this problem would be to adopt a consistent Street Trading Policy which would then be adhered to across the Borough. The policy would provide clarity and contain the Council's intentions and guidelines for enforcing the provisions of the Act.

## **4.0 STREET TRADING POLICY**

- 4.1** The purpose of the Street Trading Policy is to create a street trading environment which complements premises based trading, is sensitive to the needs of residents, provides diversity and consumer choice and seeks to enhance the character, ambience and safety of local environments. It will also provide a basis upon which applications will normally be considered and whilst each application must be considered on its individual merits, a policy should ensure that in most cases an applicant has addressed key issues and requirements prior to submitting the application.

- 4.2** The policy has been devised in line with best practice guidance and is intended as far as possible to uphold the key principle of any licensing regime, namely that of public safety.

The Street Trading Policy is attached as **Appendix A**.

- 4.3** Whilst the Policy provides a framework for how the Authority will exercise its functions in relation to street trading and the normal expectation of licence holders and applicants, it is a requirement that the flexibility of assessing each application individually must be maintained. For example, if in the individual circumstances of any particular application members considered that the policy was not appropriate;

it would be acceptable to depart from it.

Fundamentally the Policy contains information on who may require a licence, the Council's considerations in determining application, information on fees and how to apply and sets out the process that the Council will adopt in relation to enforcement.

## **5.0 FIXED PENALTY NOTICES**

- 5.1** The London Local Authorities Act 2004 introduced provisions to enable certain street trading offences to be dealt with by way of fixed penalty notices as an alternative to summary prosecution. Details of the offences together with the amount of the fixed penalty are set out at **Appendix B**.
- 5.2** Section 17 of the London Local Authorities Act 2004 states it is the duty of the Borough Councils to set the levels of fixed penalties payable under the Act.
- 5.3** In setting the level of fixed penalties the Councils may take account of:
- (a) any reasonable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of the enactment under which the particular fixed penalty offence is created; and
  - (b) the cost or expected cost of enforcing the provisions of the relevant enactment.
- 5.4** Taking into account the criteria outlined above, the proposed level of penalty has been calculated in respect of each of five different offences as permitted under section 17 of the London Local Authorities Act 2004. This takes into account a variety of costs such as visits, enforcement and administration.
- 5.5** In accordance with recognised policy, enforcement activity commences with the provision of information so that traders know what is expected of them. This is followed by advice and guidance from enforcement officers who may issue either verbal or written warnings as to the consequences of non-compliance. Continuing non-compliance will result in the issue of a fixed penalty notice which if unpaid, (or if there are further breaches) will result in summary prosecution and consideration given to revocation of a licence (where applicable).
- 5.6** The use of fixed penalties for illegal street trading offers flexibility and responsiveness. It is a quicker and less costly route than summary prosecution. Moreover, in terms of impact on the environment and residents' perception that a matter has been handled quickly and efficiently, a fixed penalty offers good value for money.

## **6.0 REVIEW OF STREET TRADING FEES**

- 6.1** Section 32 of the Act requires the Authority to give notice of the proposed fees to licence holders and to publish them in a local newspaper. Following publication of the notice, traders and the public must be permitted a minimum period of 28 consecutive days during which they may make representation in respect of the charges.

- 6.2** The legislation stipulates that the council may only recover from street trading the costs of administration and the enforcement of the street trading activity. Administration includes buildings and amenity costs, telephone and postage costs. Enforcement includes staffing, travelling costs, cost of hearings, appeal costs and any other items associated with the issue and maintenance of the licence.
- 6.3** Fees were agreed in principle on 1 March by Borough Council as part of the overall budget for 2011/12. Following this, consultation has commenced in accordance with the requirements highlighted in 5.1. Following the consultation, the results will be reported back to Licensing Committee with a view to becoming formally adopted.
- 6.4** The scale of revised fees as agreed in principle by Borough Council on 1 March 2011 is attached as appendix **C**

## **7.0 COMMENTS OF THE DIRECTOR OF FINANCE**

- 7.1** The Director of Finance comments that any consultation costs, which are predominantly staffing and advertising costs, will be met from the current revenue budget. The proposed fees have been considered by Borough Council and are cost neutral assuming that the current number of applications remains fairly constant.

## **8.0 LEGAL CONSIDERATIONS**

- 8.1** The Borough Solicitor has been consulted in the drafting of this report and his comments have been included within it.

<b>List of Appendices:</b> Appendix A – Street Trading Policy Appendix B – Fixed Penalty Charges Appendix C - Scale of Fees
<b>Background Papers:</b> e-mails
<b>This report has been or is due to be considered by:</b> Licensing committee
<b>This report is relevant to the following wards/are:</b> All

# HOUNSLOW STREET TRADING POLICY

## Introduction

For the purposes of controlling street trading in the Borough, the London Borough of Hounslow (the “Council”) has previously adopted the relevant provisions of the London Local Authorities Act 1990 (as amended). This policy is intended to provide a framework for the Council’s approach to the licensing of street trading throughout the Borough. It should be read in conjunction with any specific policies that the Council may agree from time to time, for particular areas in the Borough.

### 1.0 Purpose

- 1.1 The Street Trading Policy is intended to create a street trading environment which complements premises based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character, ambience and safety of local environments.
- 1.2 The Policy sets out the framework by which street trading will be controlled across the Borough by means of a system of licensing in areas designated for the purpose (‘Licence Streets’) and a system of temporary licensing in areas that are not designated under the Act.
- 1.3 Trading from non designated areas is prohibited unless the trader has applied for and received a temporary licence from the Council. Any such licence will contain restrictions on the location and permitted times for the trading and type of goods sold together with clear rules which must be adhered to in order for the trader to obtain and retain the licence.
- 1.4 The conditions set out in the licence are designed to protect public health and safety and are clearly laid down in the Application and Guidance Pack given to applicants and attached to any Street Trading Licence awarded.
- 1.5 Through the Street Trading Policy the Council aims to regulate the location and number of street traders. The scheme also aims to prevent the obstruction of the streets of Hounslow by street trading activities. In doing so, it recognises the importance of licensed businesses to the local economy and the character of the area whilst trying to ensure that the activities do not cause nuisance or annoyance to the people in the area.
- 1.6 This document will guide the Licensing Authority when it considers applications for Street Trading Licences. It will inform applicants of the parameters in which the authority will make decisions and how their needs will be addressed.

- 1.7 It also highlights the Council's undertaking to avoid duplication with other statutory provisions and our commitment to work in partnership with other enforcement agencies.
- 2.0 **Legislation**
- 2.1 'Street trading' is defined as the selling, or exposing or the offering for sale of any article (including a living thing) or the supplying or offering to supply any service in a street for gain or reward.
- 2.2 'Street' is defined as any road, footway or any other area not being within permanently enclosed premises, within seven metres of any road or footway to which the public have access without payment.
- 2.3 Definitions for 'Street Trading' and 'Streets' can be found in the London Local Authorities Act 1990 (as amended) ("the Act").
- 2.4 Street trading can include the sale, display or offering of goods for sale outside a shop premises, street markets or pavement cafés. These activities are controlled by licences under the Act.
- 2.5 Under the Act the Council is responsible for granting, renewing, varying or revoking all Street Trading Licences. This function is generally undertaken by the Licensing Panel and officers within the Business Regulation Group under delegation from the Licensing Committee (the Committee).
- 2.6 Where street trading is to take place at a site for the first time, the street/area has to be designated (unless it is being done under a temporary licence). Applications for Street Designation Orders and applications for the grant/variation/revocation of a licence where there are objections (or any other matter requiring determination) are heard by the Licensing Committee.
- 2.7 **Reason why you may not need a licence**  
Traders may not need a licence if they are trading on private land seven metres from a public highway. If this is the case, it is important that they have the permission of the landowner. Landowners may need planning permission, and are advised to contact the Council's Planning Department. It should be noted however that lack of planning permission is not a factor for consideration when determining the grant of a licence.
- 2.8 The aim of this Policy is to set out the general approach of the Council when considering:
- applications for Street Designation Orders;
  - applications for Street Trading Licences;
  - applications for Temporary Licences;
  - the revocation or prosecution for breach, of a licence;

- enforcement of the legislation; and
- conditions attached to licences.

### 3.0 **Consultation**

In the development of this Policy local traders, partner agencies and officers were consulted. (This will occur once the policy is agreed in principle).

- 3.1 The Council may also require Street Trading Licences for traders who operate in Council car parks, riverside walks and other similar areas where the public have access without payment.
- 3.2 Appropriate officers may consider issuing Street Trading Licences to organisers of events such as the Christmas Market, Farmers' Markets, Street Markets, car boot sales etc. The organiser will thereby become a Principal Licence Holder, which will allow them to be responsible for numerous traders operating in certain areas and/or for a limited time. However, both the Principal Licence Holder and individual traders will still be subject to the Council's Street Trading Policy and Standard Conditions in relation to street trading.

### 4.0 **Designation of Sites**

#### 4.1 **Exemptions from the need to obtain a Street Trading Licence**

Some types of trade are legally exempt from the need to obtain a Street Trading Licence. These include:

- a person trading under the authority of a Pedlar's Certificate granted under the Pedlars Act 1871;
- trading as a news vendor within a defined area;
- trade carried out by roundsmen e.g. milkmen.

#### 4.2 **Pitches**

The Council has few suitable permanent pitches for street trading. Details of these pitches can be obtained via the Council's website or by contacting the Council's licensing team.

- 4.3 From time to time the Council may establish new pitches based on the criteria below:
- 4.4 In determining whether to create a street trading pitch the Council will have regard to:
- any effect on road safety, either arising from the siting of the pitch or from customers visiting or leaving;
  - any loss of amenity caused by noise, traffic or smell;
  - existing Traffic Orders e.g. waiting restrictions;



- any potential obstruction of pedestrian or vehicular access; any obstruction to the safe passage of pedestrians;
  - the safe access and egress of customers and staff from the pitch and immediate vicinity;
  - any land owner's permission. This may be required from a private land owner or the relevant Council Service;
  - the sale of goods or services which conflict with those provided by nearby shops or existing trading pitches.
- 4.5 When an existing or new pitch becomes available, the Council may publish details inviting applications for the said pitch. The details will be published on the Council's website.
- 4.6 Applications will be undergo a process whereby an interest may be lodged by any person who wishes to occupy the vacant pitch, the decision as to who should be awarded the pitch is based on the following criteria:
- a) preference will be given to traders living in the Borough;
  - b) the goods to be sold must not replicate those of neighbouring stalls or shops (within a distance of 200 metres);
  - c) a consultation of existing stall holders;
  - d) consideration of any health/food safety concerns;
  - e) any information as to previous conduct in relation to running a stall;
  - f) preference will be given to persons who do not occupy any other pitches in the Borough.
- 4.7 If no suitable application is received the pitch will be re-advertised.
- 4.8 In situations where there are competing applications that meet with all pre licensing conditions and the above criteria then appropriate officers will decide on the allocation of the pitch.
- 4.9 The pitch will be offered to the applicant whose proposal is considered most suitable for the particular location.
- 4.10 A Street Trading Licence cannot be issued to a person under the age of 17 years.
- 4.11 The complete application process may take up to 3 months in order to take into account the consultation period and in the case of contentious applications, a hearing before the relevant Licensing Panel. The Council will however aim to decide cases within 2 months.

5.0 **Considerations when assessing an application for a Street Trading Licence**

5.1 In considering applications for the grant or renewal of a Street Trading Licence the following factors will be considered:

(a) Public Safety

Whether the street trading activity represents, or is likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazard, unhygienic conditions or danger that may occur when a trader is accessing the site.

(b) Prevention of Crime and Disorder

Whether the street trading activity represents, or is likely to represent, a substantial risk to public order. This is potentially more of a problem for licences late in the evening.

(c) The Prevention of Public Nuisance

Whether the street trading activity represents, or is likely to represent, a substantial risk of nuisance to the public from noise, refuse, vermin, fumes, odours or misbehaviour, particularly in residential areas.

(d) Appearance and suitability of the stall or vehicle

5.2 The stall or vehicle must be of a good quality design, of smart appearance and meet criteria, including size, laid down in the standard licence conditions. Photographs or sketches including dimensions must be provided with all new applications and requests for approval of changes to or replacement of a stall or vehicle.

5.3 The trading unit must be suitable and safe for the use for which it is intended. It must be of good quality design, safe construction and add to the quality of the street scene. The unit shall comply in all respects with any legal requirement relating to the trading activity proposed and in particular with the following legislation and any consequent amendments:

- The Food Safety Act 1990
- The Food Hygiene (England) Regulations 2006 and Regulation (EU) No 852/2004
- Food safety requirements made under the European Communities Act 1972
- Health and Safety at Work etc Act 1974 and any regulations made under it
- Environmental Protection Act 1990

- Licensing Act 2003.

(e) Needs of the Area

The demand for the articles for sale, and the geographical location of the proposed site.

(f) Environmental Credentials

The impact of the proposed operation on the local environment including street surfaces and materials, power supply, carbon footprint, supply chain, packaging, waste minimisation, waste disposal and waste created by customers.

(g) Food Traders

Applicants to trade in hot or cold food must hold a current Level 2 Food Hygiene Certificate accredited by The Chartered Institute of Environmental Health, The Royal Society of Health, or The Royal Institute of Public Health and Hygiene.

(h) Highway

The location and operating times will be such that the highway can be maintained in accordance with the Council's requirements and that there are no dangers to those who have a right to use the highway and no obstruction for emergency access.

(i) History

The suitability of the applicant must be considered. Previous failures without reasonable excuse to comply with the above legislation or failure or neglect in paying Licence fees may result in a Licence being refused, revoked or not renewed.

- 5.4 Applications for permanent licences will only be considered for sites in 'Licence Streets'.
- 5.5 Applications for Temporary Licences will be considered in respect of any suitable place, subject to compliance with the pre licensing and licensing conditions.
- 5.6 An applicant for the grant of a new street trading licence site shall provide a copy of a map showing all streets and other public areas within a radius of 500 metres from the proposed location of the Street Trading site. The map shall be to a scale of 1:2500 (or other scale as by prior consent in writing by the licensing department) and clearly indicate the location of the site in the centre of the map, and the locations of other street traders and outlets trading in similar commodities to those proposed.

## 6.0 **Special Events**

For special events such as Christmas or Continental Street Markets or Farmers' Markets, the Council will issue one licence to the person organising the event, rather than to each individual trader. This policy is aimed at promoting events and encouraging more traders to attend them.

- 6.1 For successful applications, the Council will issue a single licence, which will cover a number of traders.

## 7.0 **Licences**

### 7.1 **Temporary Licence**

There are a number of activities which will require a temporary licence. These include:

- Buskers and street entertainers
- Companies promoting their services or a new product
- Individual stalls e.g. fairground ride, hot dog seller
- Organised multiple stalls forming a street market e.g. Farmers' Market, Christmas Market.

- 7.2 A Temporary Licence may be granted for a single day or other periods of time up to a maximum of 6 months dependant on whether the activity/event is a one-off of short duration e.g. promotions or an event taking place over a longer period such as a Christmas Market.

### 8.0 **Street Trading Licence**

The following activities require a street trading licence:

- a street market;
- items for sale displayed on the public footway immediately outside a shop;
- tables and chairs on the public footway immediately outside their food and drink premises;
- trading activities on private land adjacent to a street e.g. burger van in pub car park, flower seller outside cemetery, phone accessories outside grocers;
- trading from a mobile vehicle e.g. burger van; and
- 'A' boards.

### 9.0 **Nature of Goods and Trading Hours**

The nature of goods which may be sold from any pitch and trading hours will be specified in the consultation process.

- 9.1 The Council would not normally grant a Street Trading Licence for the sale of goods or services which conflict with those provided by nearby shops or existing trading pitches.

- 9.2 Street trading hours will normally mirror those of shops in the immediate vicinity. Extended trading hours will be determined on a pitch-by-pitch basis and may be allowed for special events such as a Christmas Market.

- 9.3 Late night food traders operating after 11 pm will be subject to the Licensing Act 2003 requirements regarding Premises Licences. Greater consideration will be given to the impact on the night-time economy and the possibility of crime and disorder on the streets as a result of the potential grant of a Street Trading Licence.
- 9.4 The design and appearance of the stall, barrow, van or cart etc used must be agreed by the Licensing Manager or Head of Business Regulation. Such agreement may take into account any planning, highways or other concerns as may be considered at the time.
- 9.5 Any subsequent substantial change to the licence may be subject to consultation.
- 10.0 **Issue of Street Trading Licences**  
Street Trading Licences will normally be issued for a period of 6 months although daily and weekly rates are available.
- 10.1 No refunds will be given if traders are unable to trade.
- 10.2 The transfer of temporary Street Trading Licences is not permitted. If a licence holder no longer wishes to trade that person's licence will be terminated and the pitch will be advertised and a new licence issued.
- 11.0 **Fees**  
Fees for Street Trading Licences must be paid in full in advance.
- 11.1 If a Street Trading Licence holder exceeds the authorised pitch size without permission, an additional fee will be charged at a daily rate per extra square metre above the allowed area. The licence may also be referred back to Licensing Committee with a view to revocation and in some cases there is a likelihood that a fixed penalty notice may be issued or that the trader may face prosecution.
- 11.2 The fee structure will primarily reflect pitch location, trading days and hours.
- 11.3 The Council cannot guarantee that pitches will be available every day, and accepts no liability for loss of earnings in relation to Street Trading Licence holders or their employees. In the event of road works, utility or service repairs and other genuine circumstances that affect the use of any pitch, the Licensing Manager and Head of Business Regulation will consider appropriate refunds on a case by case basis, provided a request has been made in writing from the licence holder.
- 11.4 There will be no refund of licence fees should a licence for any reason become revoked, however, if a licence is surrendered, any appropriate refund of monies paid will be considered following written request and notice of surrender on a case by case basis.

- 11.5 In the event of a licence application not being granted, the Council will retain the application fee however, the enforcement portion of the fee will be refunded.
- 12.0 **Street Trading Licences for which fees are not payable**  
The Licensing Manager or Head of Business Regulation, in consultation with the Director of Environment may consider reducing or exempting fees for the following street trading activities:
- fetes, carnivals or similar community based and run events;
  - non-commercial or charitable events;
  - farmers markets (producer-managed market place for local producers to sell their own produce direct to local people); and
  - sales of articles by householders on land contiguous with their homes.
- 13.0 **Conditions and Enforcement**  
Standard conditions will be attached to every Street Trading Licence detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.
- 13.1 Specific conditions will also be attached such as the days and hours when street trading is permitted, the goods which may be sold and the size of the pitch.
- 13.2 Failure to comply with conditions may lead to revocation or the Street Trading Licence not being re-issued.
- 13.3 Persons trading without a Street Trading Licence and who are not exempt will be the subject of enforcement action in accordance with the Business Regulation Groups Enforcement Policy. This will include any person who holds a certificate granted under the Pedlars Act 1871, but who fails to operate in accordance with the Act.
- 13.4 The Council will follow the principles set out in its Enforcement Policy, which proposes that a graduated response is taken where offences against legislation are found or where licence conditions have been contravened. More serious offences may result in a referral to a Licensing Panel, the issue of a formal caution or a referral for prosecution.
- 13.5 The following are offences under the Act and will be considered for prosecution or a fixed penalty notice as appropriate and in line with the enforcement policy:
1. street trading in a prohibited street;
  2. street trading in a Licence street without a relevant Licence to Trade;
  3. street trading with a Licence to Trade, but not complying with the times or location stated within the Licence to Trade; and

4. street trading without complying with the terms and conditions of the licence.
- 13.6 All decisions regarding enforcement action will be made in accordance with the Council's enforcement policy and code for Crown Prosecutors.
- 13.7 The Council applies standard conditions to Street Trading Licences and these vary slightly between the four main types of trader:
- Permanent
  - Temporary pitch/stall
  - Front shop display
  - Pavement café (or tables and chairs).
- 14.0 **Enforcement**
- 14.1 **Introduction**  
This section of the Licensing Policy details the Council's commitment to enforcing the provisions contained within the relevant legislation.
- 14.2 It also highlights the Council's commitment to work in partnership with all enforcement agencies, to provide consistent enforcement on licensing issues.
- 15.0 **Enforcement**  
The Licensing Team aims to work closely with other enforcement authorities when dealing with issues on the street.
- 15.1 Where licensable activities are conducted without the benefit of a licence or permit, the Council will look to gather evidence and take enforcement action as appropriate.
- 15.2 If the Council considers that there is an issue of public order or threat to public safety in any particular instance, it will call for assistance from the Metropolitan Police.
- 15.3 The Council may call for assistance from the CCTV centre when dealing with such issues.
- 15.4 The Council will enforce the provisions of all appropriate legislation and will ask persons causing a nuisance to cease the activity that they are conducting and leave the area where appropriate.
- 15.5 Enforcement commences with the issue of clear terms and conditions at the time an application for a Street Trading Licence is made. Council officers will provide advice with respect to any issues surrounding the interpretation of licence conditions or other matters.
- 15.6 In the first instance, enforcement activity will take the form of a reminder, the giving of information, or words of advice. Further breaches or in the case of more serious matters, formal written warnings will be issued. In rare cases, due to aggravating factors it may be necessary to proceed directly to legal action.

#### **16.0 Fixed Penalty Notices**

Recently introduced powers allow enforcement officers to issue fixed penalty notices for a range of street trading offences. These include contravention of Street Trading Licence conditions and unlicensed street trading. This provides an opportunity for the trader to discharge liability to conviction by payment of a fixed sum of money. Where a trader chooses not to pay the fixed penalty a prosecution will be taken in the Magistrate's Court for the original offence.

- 16.1 The level of fixed penalty charge will be determined by the Licensing Committee from time to time and will reflect the cost of enforcement in relation to the offence committed.
- 16.2 Any further offences by the same individual may result in a prosecution rather than the offer of a fixed penalty. In addition to any penalty imposed by the court the offender may be ordered to pay all or part of the Council's costs in bringing the case.
- 16.3 Where traders continually breach the conditions of their licence the Council is able to instigate procedures that may result in the revocation of the Street Trading Licence.

#### **17.0 Monitoring & Enforcement Action**

Officers regularly inspect all areas where street trading takes place to ensure compliance, for example, that trading is taking place within the area granted by the licence, which may also be marked on the pavement. In addition all complaints of unlicensed trading or breaches of the licence conditions are investigated. Enforcement action will also be in accordance with the Business Regulation Enforcement Policy.

- 17.1 Without prejudice to the Council's powers to prosecute for any offences under the Act, the Council may suspend or withdraw the licence and/or seize the goods where it is believed that there has been a serious breach of the licence conditions or the Act, such as unlicensed street trading. It should be noted that no revocation procedures are required in relation to a temporary licence
- 17.2 The decision to revoke, suspend or withdraw a licence will be taken by a Licensing sub-committee. Any decision to prosecute a licence holder or assistant will generally be taken by the Director of Environmental Services or by other officers under the relevant scheme of authorisation. The decision will take into account:
  - the seriousness of the breach;
  - previous trading history;
  - the level of past compliance; and
  - the trader's response to previous warnings.



## 18.0 What action can the council take against licence contraventions?

- Verbal warnings – e.g., where contraventions are easily resolved
- Written warnings – a more serious contravention and/or where the verbal warning has not resolved contravention
- Revocation e.g. the space available in the street is insufficient; fees unpaid
- Fixed Penalty Notices
- Prosecutions
- Simple cautions.

18.1 The Act enables London Local Authorities to regulate street trading activities in their borough by means of a licensing regime.

18.2 The London Local Authorities Act 2004 introduced provisions to enable certain street trading offences to be dealt with by way of the issues of fixed penalty notices as an alternative to summary prosecution. Details of the offences together with the amount of the fixed penalty are set out at Appendix B.

18.3 Enforcement activity commences with the provision of information so that traders know what is expected of them. This is followed by advice and guidance from enforcement officers who may issue either verbal or written warnings as to the consequences of non-compliance. Continuing non-compliance will result in the issue of a fixed penalty notice which, if unpaid, or there are further breaches, will result in summary prosecution and consideration given to revocation of the licence.

## 19.0 Appeal

Under the provisions of the Act, any person aggrieved by a refusal or revocation of a licence may appeal to a Magistrate's Court. In the case of Temporary Licences however, there are no rights of appeal.

## 20.0 Unlicensed Traders

Unlicensed traders are those traders that trade in undesignated areas and in designated areas without the authority of a Street Trading Licence. Anyone wishing to trade on the public highway or from private land within 7 metres of the public highway must have a licence to trade. However, an exception is street trading on private land in front of a shop which cannot be regulated/licensed if it forms part of the business of the shop and takes place during normal trading hours/same hours as the business - even if it is within 7 metres of the road/footway.

20.1 Street trading without the required licence is an offence under Section 38 of the London Local Authorities Act 1990 and carries a maximum fine of £1,000 upon conviction. The trader's goods may be seized and where appropriate an application made to Magistrates for a Forfeiture Order, to have the goods forfeited. Additionally prosecutions may be

taken for obstruction of the highway under Section 137 of the Highways Act 1980.

- 20.2 To further improve the ability of the service to carry out effective enforcement against traders, an online link with HM Land Registry has been established, to ascertain ownership of land where trading takes place. This has become necessary as many traders assert that the land on which they are trading is a private forecourt.

21.0 **General**

This Policy will complement and inform other Council initiatives, policies and visions.

- 21.1 This Policy will be the subject of periodic monitoring and review.

- 21.2 This Policy will inform the detailed conditions attached to every Street Trading Licence.

- 21.3 This Policy will be applied in a manner which is consistent with the Council's equalities and enforcement policies.

22.0 **Review**

This Policy may be reviewed by the Licensing Committee or minor changes made to it by the Head of Business Regulation and Licensing Manager, in consultation with the Chair of the Licensing Committee, where circumstances require it and there is not sufficient time to convene a meeting of the Licensing Committee.

- 22.1 Hounslow Council may refuse an application under the Act (Discretionary grounds for refusing an application) if:

- (a) the location at which the applicant wishes to trade as a stationary trader is unsuitable;
- (b) the space in the designated street in which the applicant wishes to trade as a stationary trader is inadequate for the applicant to do so without causing undue interference or inconvenience to persons or vehicles using the street;
- (c) the area or areas of the district in which the applicant wishes to trade as a mobile trader are unsuitable for the applicant to do so without causing undue interference or inconvenience to persons or vehicles in the area or areas;
- (d) there are sufficient traders trading in the street, or at premises adjoining it, in the articles, things or services in which the applicant wishes to trade;
- (e) the nature of the articles, things or services in which the applicant wishes to trade is such that their sale or supply, or their preparation for sale or supply, would adversely affect the general amenity of the area in which the applicant wishes to trade;

- (f) that the applicant has, in connection with the application, made a statement which he knows to be false in a material particular;
- (g) that the applicant is, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a street trading licence;
- (h) that the applicant has, without reasonable excuse, failed to avail himself to a reasonable extent of a previous Street Trading Licence;
- (i) that the applicant has at any time been granted a Street Trading Licence by the Council, which was revoked or could have been revoked on the grounds that he had refused or neglected to pay fees or other charges due to the Council in respect of the licence;
- (j) that the applicant has failed to provide the particulars required by the council to deal with the application; and/or
- (k) that the applicant has failed to provide or identify suitable or adequate arrangements for storing any articles, things or receptacles in or with which he proposes to trade.

22.2 Without prejudice to its right to take account of any relevant consideration in determining the suitability of each Street Trading Licence, the Council will take into account:

- a) the safety of the public and any risks which may arise;
- b) the appropriateness and suitability of the street or part thereof and commodities in relation to the location;
- c) the potential adverse impact that street trading may have upon the character and appearance of the area in question;
- d) the extent to which the sale of the commodity will provide a useful service to the event or occasion not otherwise provided in the area;
- e) the potential environmental effects such as additional litter, cleansing requirements, odour and noise;
- f) the potential for the proposed said Street Trading Licence to have an adverse effect in terms of anti-social behaviour and public disorder;
- g) any other statutory provision which would be appropriate to consider; and/or
- h) previous complaints arising from any street trading activities in that street or part thereof.

The Licence Holder shall in no circumstances deposit litter, rubbish or refuse in the street, but shall at all relevant times provide adequate and proper containers for the disposal of such refuse from his vehicle and customers and shall encourage his customers to use those containers.

23.1 The Licence Holder shall tidy up, clear up and clean up all refuse, litter etc. before leaving the locality and take the refuse and containers with him/her.

23.2 The Licence Holder must ensure that waste liquids arising at the stall are not disposed of into any highway channel, gully or manhole or in any other manner likely to cause pollution of any surface water channel.

23.3 All refuse generated by the business must be taken to a licensed waste disposal site. Licence Holders must identify their method of waste disposal at the time of application and keep records of their waste arrangements, which must be made readily available to authorised officers from Hounslow Council on request.

**24.0 Access by Council and Police Officers**

Licence Holders must allow access to Authorised Officers of the Council and Police Officers at all reasonable times.

**25.0 Street Trading Licences**

The conditions attached to all Street Trading Licences stipulate that a Licence Holder cannot assign, let, sell, rent or otherwise part with his interest or possession of a Street Trading Licence.

25.1 If a Licence Holder or his/her employee is requested to move the stall/vehicle by an authorised Council Officer, a Police Officer, an Officer of the Council or the Fire or Ambulance Service, he/she shall immediately comply with that request.

25.2 The Council may vary the Conditions attached to the Licence at any time.

**26.0 Price List**

All Licence Holders must clearly display a price list for goods on offer for sale.

**27.0 Insurance**

All Licence Holders shall have and maintain an insurance policy against public liability and third party risks. A minimum insurance cover of £2 million shall be obtained by the Licence Holder and shall cover the operator's vehicle or stall and any additional equipment under his control such as generators etc. If food is sold, the insurance shall specifically cover against food poisoning to the same amount. The insurance certificate or cover note shall be produced to the Licensing Team before the Street Trading Licence is issued and at any other time on demand during the currency of the licence. This applies to both permanent and temporary licences.

**28.0 Renewal**

The Licence Holder must apply to the Council for a renewal at least 14 days prior to the date of the current licence's expiry. If an application for renewal is not received by the expiry date, the licence will lapse.

- 28.1 Reminders will be sent out approximately 3 weeks prior to the expiry of a licence. It will be the duty of the licence holder to ensure that any renewal is made at least one week prior to expiry to ensure that the licence is continuous. No renewals will be accepted after the expiry date and in such cases any application will be treated as a new application and will undergo the full application process. No trading will be permitted unless a renewed licence has been issued.
- 28.2 In addition, a new application will be required which will include a renewed consultation period of 28 days plus a potential Panel hearing before the licence may be granted.
- 28.3 It is a criminal offence to engage in street trading without holding a current licence.
- 28.4 Prospective applicants are most strongly advised to seek the necessary permissions, licences and, where appropriate, planning permissions before making a commitment to any financial outlay and before applying for the Street Trading Licence.
- 29.0 **Charitable Collections**
- 29.1 This part of the Policy sets out how we will deal with charitable organisations that wish to collect monies and/or goods for charity. This is subject to any enactment of the Charities Act 2006.
- 30.0 **Street Collections**  
A permit is required by anyone collecting money or selling articles for charitable purposes in a public place and it is an offence to hold a collection without one. Permits are issued in London by the Commissioner of Police. The rules governing their issue and the conduct of collections are contained in regulations made by the Secretary of State.
- 31.0 **House to House Collections**  
A licence is required by anyone collecting money or selling articles from door to door, shop to shop, pub to pub, etc. for charitable purposes and it is an offence to hold a collection without one.
- 31.1 In the Metropolitan Police District licences are issued by Charities, TP HQ Room 443, Victoria Embankment, Westminster, London SW1A 2JL. Telephone: 0207-321-7129.
- 31.2 The rules governing the issue of House to House Collection Licences are contained within the House to House Collection Act 1939 and the House to House Regulations 1947, copies of which may be available from your local library. The Act and the regulations should be read carefully.

- 31.3 They **MUST** be fully complied with by anyone promoting or taking part in a house to house collection as failure to do so is an offence which may result in prosecution.

## 32.0 **OTHER ACTIVITIES**

### 32.1 **Introduction**

There are a number of other activities that take place in the streets of Hounslow that cannot be controlled by licence, permits or licences. These activities are listed below.

### 32.2 **Petitions**

People or organisations asking members of the public to support their cause, such as political groups, welfare or ecological groups. Every person enjoys the right to freedom of speech and the Council will only take action if it receives complaints about disorder or threat to public safety. In such cases it will notify the police.

### 32.3 **Awareness**

People, groups or organisations such as radio stations, television stations or the armed forces may wish to raise awareness by handing out leaflets.

### 32.4 **Leaflet Distribution**

If as part of an event there is a consideration in handing out leaflets, then the applicant should consider that every piece of dropped litter could receive an individual fine and additionally prosecution in extreme cases.

- 32.5 Arrangements should be in place for any dropped leaflets to be picked up. One of the best ways to avoid this is to make leaflets worth retaining by attaching special offers or making leaflets available for the public to pick one up if they wish rather than placing them in their hands directly.

- 32.6 Failure to clear up after your event may impact negatively on any future applications.

### 32.8 **Market Research**

This type of activity includes mail order companies, insurance companies and national questionnaires.

### 32.9 **Pedlars**

They are required to hold a certificate issued by the police force in the area that they reside. They are able to travel to trade within the area. They must only stop to trade when approached by a customer. They must not remain stationary after the sale has been made.

### 32.10 **Busking**

If a busker or a group of buskers act in such a way as to cause a nuisance to Passers by, then they will be asked to cease and leave the area.

- 32.11 The Council may call for assistance from the Metropolitan Police when dealing with such issues.

**33.0 ADDITIONAL CONDITIONS APPLICABLE TO SPECIAL EVENTS AND MARKETS**

All stalls to be issued with a number that must be displayed on the stall.

- 33.1 The Licence Holder should keep records of each stallholder present on the market, to include the stallholder's pitch number, name and company name, their address, vehicle registration and a contact telephone number. This must be produced on request to an authorised officer.
- 33.2 The Licence Holder must not allow the sale of offensive weapons (including imitation fire-arms, firearms, airguns, swords and crossbows).
- 33.3 If additional street cleaning is required as a result of the event, a charge will be levied in accordance with the Council's fees and charges.

References in this Policy to 'Appropriate Officers' refer to the Head of Business Regulation or the Licensing Manager subject to consultation with the Director of Environment or the Assistant Director of Environment and Regulatory Services.

**FIXED PENALTIES UNDER THE LONDON LOCAL AUTHORITIES ACT 2004  
RELATING TO STREET TRADING**

<b>Legislation</b>	<b>Section</b>	<b>Description of Offence</b>	<b>Amount of Fixed Penalty</b>
London Local Authorities Act 1990	34(1)	Contravention of condition of Street Trading Licence or Temporary Licence	£150
	34(2)	Making false statement in connection with application for Street Trading Licence or Temporary Licence	£100
	34(3)	Resisting or obstructing Authorised Officer	£150
	34(4)	Failure to produce Street Trading Licence on demand	£50
	38(1)	Unlicensed street trading	£150



## **STREET TRADING APPLICATION AND LICENCE FEES**

### **LONDON LOCAL AUTHORITIES ACT 1990 (AS AMENDED)**

The fees for Street Trading Licences for the period 1 April 2009 to 31 March 2010 inclusive as determined under section 32 (1) of the London Local Authorities Act 1990 (as amended) are listed as below:

#### **Permanent Traders Annual Licence**

Application Fee £73.50 plus  
Licence Fee of £105 per Square Metre (or part thereof)

#### **Casual (Temporary) Stalls per Six Months**

Application Fee £36.75 plus  
Licence Fee of £52.50 per Square Metre (£105 per annum) (or part thereof)

#### **Temporary Street Trading Licence for Pavement Cafes, Shop Front Displays and 'A' Boards Per Six months**

Application Fee £36.75 plus  
Licence Fee of £42 per Square Metre (or part thereof)

#### **In respect of all Licences**

An alternative system of daily fees may be used by traders who do not wish to trade on every day of the week. This is designed to reduce the overall cost for 'one off' or infrequent traders e.g. Saturday only trading.

The daily fees are as follows:

Monday to Friday a flat rate of £8.40 per day plus application fee (£36.75)  
Saturday and Sunday a flat rate of £10.50 per day plus application fee (£36.75)