

**LICENSING COMMITTEE: 9 January 2007**

**Report of the Chief Strategic Planning and Environment Officer**

**LICENSING ENFORCEMENT POLICY AND CONSUMER PROTECTION  
PROTOCOL**

**1. Background**

- 1.1 The licensing authority has adopted an enforcement policy. From experience of the Licensing Act 2003 and in recognition of the changes to be brought in by the Gambling Act 2005 the policy has been updated.
- 1.2 The report is to provide details of the amendments to the Licensing Enforcement Policy and request Committee approval.

**2. Enforcement Policy.**

- 2.1 In 2001, a report was presented to Committee advocating the adoption of a corporate enforcement policy to meet the demands of the Enforcement Concordat. This corporate policy was designed in such a manner to allow it to be supplemented by service area policies. A further report was taken to Committee in April 2001, which sought approval to adopt a template upon which to base all future enforcement policies.
- 2.2 The main drivers behind the creation of enforcement policies is the Enforcement Concordat and the Crown Prosecution Service Code of Practice together with the need for constant improvement of the service.
- 2.3 In August 2001 the Committee approved the adoption of a Licensing Enforcement Policy. The document was amended to reflect change in the Crown Prosecution Service Code and on 7 April 2004 the Committee endorsed amendments to the Licensing Enforcement Policy which were necessary as a result of the introduction of the Licensing Act 2003.
- 2.4 The policy will adequately cover the introduction of the Gambling Act 2005 although it needs amending to include the new functions the licensing authority will assume responsibility for on the implementation date.
- 2.5 The existing policy does not address the issue of Reviews of Premises licences which are an essential element of both the Licensing Act and Gambling Act and the policy has therefore been amended to include the following:

**“LICENCE REVIEW**

The Licensing Authority has a duty to Review a Premises Licence or a Gambling Premises Licence where it receives an application to do so from a Responsible Authority or an Interested Party or in the case of Gambling premises, where it

thinks it appropriate to do so. The authority would expect a Responsible Authority to apply to the authority for Review in particular where it has established that three or more contraventions of licensing legislation have taken place within the previous twelve month period. Following a Review the Licensing Authority may take the following actions where it has found it appropriate to do so:

- Modify the conditions of the licence, by altering, omitting or adding to them.
- Exclude a licensable activity from the scope of the licence.
- Remove the Designated Premises Supervisor.
- Suspend the Premises Licence for a period not exceeding three months.
- Revoke the Premises Licence.”

2.6 This amendment has been approved by both South Wales Police and the Consumer Protection Division. The amended Licensing Enforcement Policy is attached to the report as Appendix A.

### **3. Enforcement Protocols.**

3.1 South Wales Police and the local Weights and Measures Authority (Consumer Protection) are key enforcement partners of the Licensing Authority under the Licensing Act 2003. In the interests of effective enforcement the development of enforcement protocols with these agencies is of fundamental importance.

3.2 The government in its Draft Guidance Para 3.44 issued under section 182 Licensing Act 2003 stated:

*“The Government strongly recommends that licensing authorities should express the intention to establish protocols with the local police on enforcement issues. This should provide for a more efficient deployment of local authority staff and police officers who are commonly engaged in enforcing licensing law and the inspection of licensed premises.”*

In its Statement of Licensing Policy the Licensing Authority made clear its intention to establish protocols with the local Police on enforcement issues to provide for a more efficient deployment of officers commonly engaged in enforcing licensing law and the inspection of licensed premises. The protocol to target agreed problems and high-risk premises, while providing a lighter touch in respect of low risk premises.

3.3 The authority reached an agreement and formally established an enforcement protocol which South Wales Police in January 2006. The protocol established the general responsibility of each agency while ensuring flexibility and that no barrier exists to each party enforcing all aspects were necessary.

3.4 A protocol has been agreed between the Consumer Protection Division and the Licensing Service a copy of which is attached as Appendix B.

#### **4. Achievability**

This report contains no equality personnel or property implications.

#### **5. Legal Implications**

- 5.1 All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

#### **6. Financial Implications.**

- 6.1 The licensing service is required to be self financing with all expenditure being met from fees and charges which are set by government.
- 6.2 There are no additional financial implications arising from this report. The national licence fees set by Government are intended to recover the cost of local authorities taking enforcement action. All enforcement activities will be financed within the currently approved budgets.

#### **7. Recommendation**

- 7.1 It is recommended that:
- a) Committee approve the amended Enforcement Code detailed in the report; and
  - b) Committee endorse the protocol established between the Consumer Protection Division and the Licensing Authority.

**SEAN HANNABY**

**4 December 2006**

**CHIEF STRATEGIC PLANNING AND ENVIRONMENT OFFICER**

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers: None

LICENSING ENFORCEMENT POLICY

INTRODUCTION

Cardiff Council is committed to protecting its citizens and visitors to the city through the implementation of the statutory systems of licensing and does this in a number of ways including:

- establishing appropriate policies
- providing advice and guidance;
- establishing appropriate licence conditions;
- carrying out inspections;
- consulting with other agencies;
- assessing suitability and fitness;
- determining applications for licences;
- undertaking monitoring;
- responding to complaints;
- initiating appropriate disciplinary action;
- initiating legal intervention where necessary;
- refusing, revoking, suspending or varying licences.

The service aims to enforce the law by carrying out its regulatory functions, including the implementation of enforcement actions in a consistent and transparent manner.

Many licensed activities take place outside normal office hours and the service will monitor activity at these times while the operation is taking place.

In carrying out its statutory functions the service consults and liaises widely with internal and external agencies including South Wales Police, South Wales Fire Brigade, Trade Organisations, local residents associations, LACORS (Local Authority Co-ordinators of Regulatory Services), the SIA (Security Industry Authority) and other local authorities.

This statement sets out the current approach to enforcement by the Licensing Service of Regulatory Services, Cardiff County Council. The approach is based upon the principles of good enforcement, as detailed by the Enforcement Concordat; a central and local government guide to enforcement functions. Regard is also taken to the Council’s corporate enforcement policy, The Regulatory Services Business Plan and Section 182 guidance and the Authorities Statement of Licensing Policy for alcohol, entertainment and late night refreshment licensing.

*Areas of Responsibility*

Many pieces of legislation require the implementation of systems of licensing and the service has responsibilities to determine and enforce many licensing regimes. The licensing authority has the responsibility for determining applications for licences, permits and registrations some of which are detailed in the following table.

<b>Alcohol, Public Entertainment and Late Night Refreshment</b>	Sale and Supply of all alcohol, whether for consumption on or off the premises Public Entertainment involving Music, Singing and Dancing, Indoor Sports, Cinemas, Theatres; and Late Night Refreshment Houses, Performances of Hypnotism.
<b>Animal Health and Welfare</b>	Animal Boarding Establishments, Dangerous Wild Animals, Dog Breeding Establishments, Pet Shops, Riding Establishments, Game Dealers.
<b>Charitable Collections</b>	House to House and Street Collections.
<b>Gambling</b>	<b>Gambling Permits, Prize Gaming Permits, Betting Premises, Bingo Halls, Casinos,</b>

	Lottery Registration, Track Betting, Family Entertainment Centres, Adult Entertainment Centres.
<b>Street Trading</b>	Designation of places for street trading. Street Trading Licences and Consents.
<b>Hackney Carriage and Private Hire Vehicles</b>	Hackney Carriage and Private Hire drivers, proprietors and operators.
<b>Miscellaneous</b>	Premises where acupuncture, cosmetic body piercing, electrolysis and tattooing services are provided, Sex Establishments, Justice Applications, Scrap Metal Dealers.

In some areas there is potential for a shared enforcement role with agencies such as the South Wales Police Force, South Wales Fire Service, Vehicle Inspectorate and other council agencies. Wherever such issues arise the licensing service has put in place liaison arrangements to ensure the law is administered effectively and efficiently and that joint enforcement action complies with the principles outlined in this policy.

### ***Purpose and Methods of Enforcement***

We will take care to help individuals and organisations comply with their legal obligations without unnecessary expense, while taking firm enforcement action, including prosecution and licence revocation where appropriate against those who flout the law or act irresponsibly. Included in the term 'enforcement' are advisory visits, routine inspections and assisting with compliance as well as formal enforcement action. Powers available to officers include:

- Verbal advice;
- Visits and routine inspections;
- Warning letters;
- Enforcement notices;
- Suspension of licence;
- Instigation of prosecution or caution where a criminal offence has been committed;
- Recommendation of revocation, variation or refusal of a licence.

### **ENFORCING THE LAW**

Regulatory Services believes in firm but fair regulation, and its enforcement activities follow these essential principles:

- ***Openness*** about how we operate and what the regulated may expect;
- ***Consistency*** of approach;
- ***Targeting*** of enforcement action;
- ***Proportionality*** in applying the law and securing compliance;
- ***Accountability*** of our service and actions.

### ***OPENNESS***

**Openness means helping individuals and businesses to understand what we expect of them and what they should expect from us.**

It also means making clear why an officer intends to, or has taken enforcement action.

This means distinguishing between statutory requirements and good practice.

Individuals and organisations need to know what to expect from enforcing authorities and their procedures with regard to regulation. We will ensure that, wherever possible:

- where action is required, it is clearly explained (in writing, wherever possible) why the action is necessary together with a suitable timescale; distinction being made between good practice and what is legally required;
- General issues are discussed on what is required by law before enforcement action is taken, unless urgent action is required to protect service users or prevent evidence being destroyed;
- where urgent action is required, a written explanation of the reasons is; provided as soon as practicable after the event.

### *CONSISTENCY*

**Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.**

Individuals and organisations have the right to expect consistency in the advice given, use of enforcement powers, decisions to prosecute and the use of disciplinary procedures. Officers need to take into account many variables including the scale of impact on public safety, the effect of any non-compliance on others, the attitude and competency of the offender and history of previous incidents. Decisions on enforcement action are a matter of professional judgement and the officer must exercise both consistency and discretion, including effective arrangements for liaison with other enforcement authorities. Where any doubt arises, discussions will be held with senior officers to agree the necessary course of action and to ensure a consistent approach. In addition enforcement activities will be undertaken in accordance with the Council's Equal Opportunities Policy.

### *TARGETING*

**Targeting means making sure that, whilst all request for service are responded to, regulatory effort is directed primarily towards those whose activities actually or potentially give rise to the most serious risks to public safety.**

We will take into account the hazards associated with each activity requiring a licence and the nature and extent of the risks involved to the health and safety of the public.

The licensing service will prioritise enforcement activity according to the risks posed by the type and scale of the operation.

### *PROPORTIONALITY*

**Proportionality means relating enforcement action to the risks posed. Any action taken by officers to achieve compliance will be proportionate to the seriousness of any breach, whilst upholding current legislation.**

Some incidents or breaches of regulatory requirements may put the safety of service users at serious risk. The enforcement action taken will be proportionate to the risks posed and the seriousness of any breach of the law or licensing requirement.

Consideration will also be paid to The Code for Crown Prosecutors 2000 when considering the instigation of legal proceedings, and advice taken from the Chief Legal Services Officer.

### *ACCOUNTABILITY*

**Should there be elements of dissatisfaction with the level of service or inspection carried out, we would welcome constructive criticism about what could be improved.**

Our complaints procedure is well publicised (and appears on the Internet) making it easily accessible to business, the public, employees and consumer groups. All complaints are viewed as learning opportunities and are NOT used as a reason to penalise any of the parties involved, unless there has been evidence of misconduct. In cases where disputes cannot be resolved following formal enforcement action, the right of appeal will be explained, and appropriate time scale outlined. Information about the Local Government Ombudsman will be provided where agreement cannot be reached.

## **TAKING REMEDIAL ACTION**

The Licensing Service seeks to secure compliance with the law in a variety of ways. Most of the dealings we have with individuals and businesses are informal, providing advice and assistance over the telephone, during visits and in writing. However, where informal methods have been unsuccessful, or a serious breach of a licensing condition or regulation is likely to occur which may endanger the safety of the public, formal enforcement mechanisms will be taken to ensure compliance with the law.

Such action may involve:

- providing written requirements with reasons;
- the service of Statutory Notices on licence holders;
- issue of informal warning advising of the consequences of future non-compliance
- requiring reports from professional experts;
- imposition of penalty points;
- legal proceedings in the courts;
- suspension of a licence;
- refusal, revocation or variation of a licence.

Legal or disciplinary proceedings will be instigated against individuals or organisations where any breach of licensing legislation has occurred and is an important part of the enforcement process. It aims to punish those who flout the law, to serve as a deterrent and to set an example to others that breach of legislation is punishable. In severe circumstances, prosecution without prior warning and licence revocation will be pursued.

A decision on enforcement action will be taken on its own merits and after full consideration of the implications and consequences of the action. While fair and effective enforcement is essential to the maintenance of law and order, an alleged breach of criminal law does not necessarily result in action. There must be sufficient, admissible and reliable evidence that an offence has been committed and that there is a realistic prospect of conviction. Evidence must be useful and reliable. If the case does pass the evidential test, the second stage is whether the action is needed in the public interest. These factors will usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may suggest that another course of action may be more appropriate, such as issuing a formal caution rather than pursuing a prosecution or revoking a licence. Generally, however, the more serious the offence, the more likely it is that a prosecution or disciplinary action will be needed in the public interest. Each case is unique and is considered on its own merits.

## **PROSECUTION**

Prosecution of offenders will be considered where a person has failed to obtain a necessary licence, permit or registration or where any breach of licensing legislation is identified. Instigation of a prosecution will have regard to the Licensing Services legal proceedings procedure, advice from the Chief Legal Services Officer and The Code for Crown Prosecutors 2004. In particular, where there is sufficient evidence, the decision to prosecute will also include a consideration of the following:

- the potential of serious consequences for licence service users;
- the potential for harm to community confidence in the licensing regime;
- the position of authority and trust of the licence holder;
- that the person was a ring leader or an organiser of the offence;
- that the offence was premeditated;
- persistent breaches of regulatory requirements, including possible previous convictions and response to previous advice and the likelihood of a recurrence;
- if the offence, although not serious in itself, is widespread in the area where it was committed;
- mitigating circumstances or explanations offered for the offence;
- any financial advantage for the perpetrator from the commission of the offence;
- number of people affected by the offence, any circumstances causing public concern, and any views expressed by victims;

- the possibility of a ‘reasonable excuse’ defence being successfully used by an organisation, where appropriate;
- whether the victim is a vulnerable member of society; and
- whether the conviction is likely to result in a significant sentence.

Any recommendation to the Chief Regulatory Services Officer to instigate legal proceedings must be authorised by the relevant senior officer.

## **ALTERNATIVES TO PROSECUTION**

In cases where prosecution is not the most appropriate course of action, the alternatives of an informal written warning or a formal caution will be considered. A formal caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution may have been instigated. It will only be brought to the Court’s attention if the offender is convicted of a subsequent offence.

## **LICENCE SUSPENSION**

In circumstances that give rise to an immediate public danger or where the continuation of a licence would be likely to bring the licensing system into public disrepute the immediate suspension of a licence may be justified.

## **DISCIPLINARY HEARINGS**

Where licence holders have:

- been convicted of a relevant offence;
- refused to comply with a condition of the licence;
- behaved in a way which may render that person as unsuitable to hold a licence; or
- behaved in a way which is likely to have put the public at risk

the offender will be reported to a Committee of the Council or a Disciplinary Panel which will consider the case and in appropriate circumstances impose penalty points. Where ten penalty points are awarded in any three-year period the licence, permit or registration may be revoked. In the case of more serious offences the committee may feel that the immediate revocation, suspension or variation of a licence may be the most appropriate course of action. Where offenders are reported to a Committee for consideration of disciplinary action we will:

- give sufficient notice of the date the matter is to be considered;
- give notice to the licence holder of the charges against them;
- provide the opportunity for the licence holder to be represented;
- provide the licence holder with the opportunity to present their case and provide supporting evidence;
- ensure the matter is determined in an impartial manner in accordance with the rules of natural justice;
- provide written notice of the decision with reasons.

## **LICENCE REVIEW**

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- Modify the conditions of the licence, by altering, omitting or adding to them.
- Exclude a licensable activity from the scope of the licence.
- Remove the Designated Premises Supervisor.



- Suspend the Premises Licence for a period not exceeding three months.
- Revoke the Premises Licence.

## **APPEALS**

Where there is right of appeal against formal action, advice on appeal mechanisms will be clearly set out in writing at the time the matter is determined or the action taken.

Reviewed: *9th January 2007*    Date of Next Review *8th January 2010*.

## **CARDIFF COUNCIL**

### **LICENSING ACT 2003**

#### **Protocol between the Consumer Protection Division and the Licensing Authority**

Trading Standards Officers were appointed as a responsible authority for the purposes of the Licensing Act 2003 by paragraph 7 of Statutory Instrument 2005 No. 42 The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005.

The following working arrangement outlines an agreement between the Consumer Protection Division of Cardiff Council (CP) and the Licensing Authority (LA) on the operational details and procedures under the Licensing Act 2003.

#### **A. Commitment by the Licensing Authority**

In respect of applications for the grant or variation of an application for a premises licence involving the sale of alcohol.

##### **1. Premises License**

The LA will check that CP have received a copy of every application form, the operating schedule and two sets of plans of the premises, within the proscribed time limits.

##### **2. Provisional Statement**

The LA will check that CP have received a copy of every application form, accompanied by a schedule of works (which sets out details of the licensable activities intended to be carried on and the planned construction or alteration works) and two sets of plans, within the proscribed time.

##### **3 Club Premises Certificate**

The LA will check that CP have received a copy of every application form, accompanied by an operating schedule, two sets of plans for the premises and a copy of the club's rules, within the proscribed time.

##### **4. Reviews**

Where an application for review is made by a person or body other than CP the LA will provide a copy of the application to CP for comment.

#### **In addition the LA will provide CP with:**

- A detailed list of all Premises Licences granted which permit the off sale of alcohol, on request.
- Access to any data held by the LA in respect of licensed premises.
- A list of all applications that are going before a Licensing Sub-Committee in which CP have made representations at least 10 days prior to the Committee Hearing.
- Details of any complaints about a Licensed Premises relating to the underage sale of alcohol at the premises.
- Details of all Magistrates Appeal Hearings where a CP Officer may be required to attend, at least 7 days prior to the Appeal.

**B. Commitment by Consumer Protection**

The Consumer Protection Division will:

1. Consider every application under the Licensing Act 2003 and advise the LA of any relevant representations it may have within 20 days of the application being made.
2. Investigate complaints about the sale of alcohol to children and young persons from licensed premises.
3. Actively monitor and enforce the provisions of the Licensing Act 2003 in respect to the sale of alcohol to underage persons from any premises permitted to sell alcohol for consumption off the premise.
4. In accordance with the Licensing Enforcement Code CP will apply for to the LA for a review of any Premises Licence in which contraventions of the Licensing Act 2003 have been detected on three or more occasions.
5. Report each year to the Licensing Committee on the actions taken and finding in respect of the sale of alcohol to underage persons in off licensed premises.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_  
**Paul Shone (Operational Manager Licensing & Strategic Services)**  
**On behalf of Cardiff Council.**

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_  
**Dave Holland (Operation Manager Consumer Protection)**  
**On behalf of Cardiff Council.**