



EAST HAMPSHIRE DISTRICT COUNCIL

LICENSING ENFORCEMENT

POLICY

January 2010

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1. BACKGROUND

Purpose of Licensing:

1.1 Licensing is necessary to protect the public health and public safety of residents, visitors and the business community whilst encouraging fair trading and promoting the economy. In order to achieve this, legislation requires that licences, permits, consents and registrations be obtained, (as detailed in Appendix A1). These are subject to certain conditions.

Purpose of an Enforcement Policy

1.2 The Licensing Team recognise that most businesses and individuals want to comply with the law. Assistance and advice will be provided, wherever possible, to help businesses and individuals meet their legal obligations without unnecessary expense. However, it will take firm action against those who flout the law or act irresponsibly.

1.3 The purpose of enforcement action is to:

- Protect the public
- Punish offenders
- Change the behaviour of offenders
- Deter future non-compliance
- Provide a fair trading environment for compliant businesses

1.4 Enforcement policies set out what businesses and any other parties being regulated can expect from enforcement action and ensure all such action is proportionate and is conducted with openness, fairness and consistency.

1.5 This policy directs that any kind of enforcement action will be primarily based upon an assessment of risk to public health. Enforcement action will not, therefore, constitute a punitive response to minor technical contraventions of legislation.

1.6 The effectiveness of laws and licence conditions in protecting consumers or sectors in society depends crucially on persons complying with licensing legislation as detailed in Appendix A2. Additionally, section 17 of the Crime and Disorder Act 1998 places a duty on all local authorities and police authorities to consider crime and disorder reduction while exercising all their duties. We also expect licence holders to comply with any reasonable request of authorised officers if requested to take a particular action in order to prevent and reduce crime and increase community safety.

1.8 East Hampshire District Council complies with the principles in the Regulators Compliance Code. This policy reflects the principles of that code. This policy has also been prepared to operate in conjunction with the Environmental Services General Enforcement Policy.

2. RESPONSIBILITIES

2.1 East Hampshire District Council is responsible for the keeping of registers, the granting of licences, permits and consents as detailed in this policy. These are usually subject to certain conditions.

2.2 The Principal Licensing Officer is responsible for the effective operation of this policy.

2.3 The Council's Licensing Committee have jurisdiction in certain matters within this policy. It is not necessary for Council Members to be involved in detailed consideration of individual cases (other than in very exceptional circumstances). The decision to refer a case for prosecution, based on the available evidence and professional judgement, shall be left to the Head of Environmental Services.

2.4 All prosecutions must be authorised by the Head of Environmental Services. Prior to submitting a prosecution file to the Head of Environmental Services the case officer must first consult with the Environmental Services Manager (Commercial) to ensure that the prosecution is in accordance with this enforcement policy. The case officer must then consult with the Head of Legal Services to ensure that the case has been properly considered and is sound.

2.5 All authorised officers shall abide by this policy when making enforcement decisions. Any departure from the policy will be exceptional, capable of justification and be fully considered by the Environmental Services Manager (Commercial) before the decision is taken. Any departures from this policy with reasons must be recorded.

2.6 All authorised officers should be fully acquainted with the requirements of this policy and any future amendments.

3. PRINCIPLES OF ENFORCEMENT

3.1 Effective and well-targeted regulation is essential in promoting fairness and protection from harm.

3.2 We will consider the impact that our regulatory interventions may have on economic progress, through consideration of the costs, effectiveness and perceptions of fairness of regulation. We will only adopt a particular approach if the benefits justify the costs.

3.3 We will ensure that the allocation of our regulatory efforts and resources will be targeted where they will be most effective by assessing the risks to their regulatory outcomes. Risk assessment will precede and inform all aspects of our approaches to regulatory activity.

3.4 We will provide targeted and practical advice that meets the needs of regulated businesses. Such advice will be provided in a range of formats, such as face-to-face interactions, telephone helpline and online guidance. In determining the appropriate formats, we will seek to maximise the reach, accessibility and effectiveness of advice while ensuring efficient use of resources.

3.5 We will ensure that inspections and other visits, such as compliance or advice visits, to regulated businesses only occur in accordance with a risk assessment methodology, except where visits are requested by regulated businesses, or where we act on relevant intelligence.

3.6 We will focus our greatest attention on regulated businesses where risk assessment shows that both a compliance breach or breaches would pose a serious risk to a regulatory outcome and there is high likelihood of non-compliance by regulated businesses.

3.7 Where two or more inspectors, whether from the same or different regulators, undertake planned inspections of the same regulated business, we will have arrangements for collaboration to minimise burdens on the regulated business, for example, through joint or co-ordinated inspections and data sharing.

3.8 We will seek to reward those regulated businesses that have consistently achieved good levels of compliance through positive incentives, such as light touch inspections and positive publicity. We will also take account of the circumstances of small regulated businesses, including any difficulties they may have in achieving compliance.

3.9 We will ensure that our sanctions and penalties are consistent with the principles set out in the Government's better regulation agenda. This means that we will:

- aim to change the behaviour of the offender
- aim to eliminate any financial gain or benefit from non-compliance
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- be proportionate to the nature of the offence and the harm caused
- aim to restore the harm caused by regulatory non-compliance, where appropriate and
- aim to deter future non-compliance.

3.10 We will ensure that clear reasons for any formal enforcement action are given to the person or business against whom any enforcement action is being taken at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will be explained at the same time.

3.11 Our principles of enforcement will include the following:

Openness:

- We will be open about how work is done and the policies and procedures we follow.
- All enforcement decisions or departure from this policy will be recorded and open to scrutiny.
- Advice will be put clearly and simply and confirmed in writing on request. It will explain what is required, why it is required and over what timescale.

- We will provide information and advice in a number of different formats and in plain language.

Proportionality:

- We will ensure that any enforcement action is proportionate to the risks.
- We will take into account the circumstances of the case and the attitude of the licence holder.
- We will work with customers to help them meet their legal obligations without unnecessary expense.
- Legal requirements will be clearly distinguished from best practice advice.
- We will ensure that any enforcement, or remedial action taken is reasonable and in proportion to the circumstances.

Consistency:

- We will carry out our duties in a fair, equitable and consistent manner.
- To achieve this we will consult and liaise with other local authorities and agencies, such as the Hampshire and Isle of Wight Licensing Officers' Group, and particularly, where there is a shared enforcement role, with other enforcing authorities.

Helpfulness:

- We will actively work to advise and assist customers in compliance with the law, such as, through the production of information leaflets and through the publication of guidance on our website.
- Licensing staff will be courteous and efficient, identify themselves by name and carry an identity card. Contact details will be provided for customers wishing further help or advice.

4. ENFORCEMENT CRITERIA

4.1 All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:

- The Police and Criminal Evidence Act 1984
- The Criminal Procedures and Investigations Act 1996
- The Crime & Disorder Act 1998
- The Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Legislative and Regulatory Reform Act 2006
- Regulatory Enforcement and Sanctions Act 2008
- Regulators Compliance Code
- The Code for Crown Prosecutors
- Guidance issued by the Local Better Regulation Office (LBRO)
- Prevailing East Hampshire District Council Corporate policies and priorities.

4.2 In determining the nature and extent of the enforcement action the Council will take into account the following factors;

- The risk or harm to the public and others
- Whether the matter is in the public interest
- The seriousness of the offence
- The consequence of non-compliance
- The explanation of the offender
- Confidence in the individual that they will not offend in the future
- Whether there has been previous contravention of the legislation and/or licence conditions
- The willingness of the alleged offender to prevent a recurrence of the problem
- The likely effectiveness of the various enforcement options
- The availability and reliability of witnesses
- The sufficiency of the evidence
- Statutory defences
- Whether a Primary Authority arrangement exists or where there is shared enforcement responsibility with another enforcement agency.

4.3 Before formal enforcement action is taken, where appropriate, the authorised officer will discuss the circumstances of the case with the Principal Licensing Officer or Environmental Services Manager (Commercial). Where immediate action is taken, reasons for such action will be given at the time and confirmed in writing.

4.4 Where there are rights of appeal against formal action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.

4.5 In making decisions about enforcement action, the Council is not acting on behalf of an individual complainant, but is exercising a wider responsibility to secure a safe environment for the public and any others who may be affected.

5. ENFORCEMENT OPTIONS

5.1 Enforcement action may only be initiated by officers who are authorised to do so in accordance with the Licensing Team's authorisation procedure. The enforcement options detailed below constitute incremental steps reflecting the seriousness of the non compliance.

LEVEL 1

- Verbal advice and/or guidance
- Notice or letter identifying non compliances with timescales
- Non investigation/advisory letters

(Including any of the above which contains information to promote or assist compliance.)

LEVEL 2

- Written warning advising of the consequences of continued non compliance or of a repetition of reported non compliance.

LEVEL 3

- The attachment of additional conditions
- Refusal to renew licence/permit/consent
- Suspension and/or revocation of licence/permit/consent

LEVEL 4

- Formal Caution
- A Hearing before the Licensing Sub-Committee

(A process whereby the offender admits the offence and the Formal Caution may be presented to a court as evidence of a previous admission of guilt)

LEVEL 5

- Prosecution

5. 2 The five levels of enforcement action are not necessarily sequential, and although best practice recommends that prosecution is considered as a last resort, each case will be considered on its own merits by the Principal Licensing Officer.

6. INFORMAL ACTION

6.1 The Licensing Team uses a variety of informal actions to secure compliance with legislation including offering advice, verbal warnings/requests for action, the use of letters and the issue of licensing inspection reports, including those generated immediately following an inspection.

6.2 It is appropriate to use informal action in the following circumstances:

- the act or omission is not serious enough to warrant formal action

- from the individual's/business' past history it can be reasonably expected that informal action will achieve compliance
- confidence in the individual's/business' management involved is high
- the consequences of non-compliance will not pose a significant risk to public health.

6.3 Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.

7. FORMAL CAUTIONS

7.1 The Home Office Circular 30/2005, '*Cautioning of Adult Offenders*', states that the purpose of the formal caution is:

- to deal quickly and simply with less serious offenders
- to divert them from unnecessary appearance in the criminal courts and
- to reduce the likelihood of re-offending.

7.2 To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered:

- There must be sufficient evidence of the suspect's guilt.
- The suspect must have made a clear and reliable admission of the offence (either verbally or in writing).
- It is in the public interest to use a Simple Caution as the appropriate means of disposal.
- The suspect must be 18 years or over.

7.3 If all of the above requirements are met, the officer must consider whether the seriousness of the offence makes it appropriate for disposal by a Simple Caution.

7.4 If there is insufficient evidence to consider taking a prosecution, then by implication the conditions are not satisfied for the use of a formal caution. It is also inappropriate to use a formal caution where the suspected offender does not make a clear and reliable admission of the offence. There is no legal obligation for any person to accept the offer of a formal caution and therefore no pressure will be applied to the person to accept a caution.

7.5 Formal cautions shall be used in accordance with the Home Office Circular 30/2005 and relevant LACORS (Local Authorities Coordinators of Regulatory Services) guidance. The Head of Environmental Services is designated the "cautioning officer" to issue formal cautions.

7.6 Where a person declines the offer of a formal caution, it will be necessary to consider taking alternative enforcement action. While this will probably mean taking a prosecution, this is not inevitable. For example, it may be felt that a written warning would be appropriate.

7.7 Where a formal caution has been given other relevant regulatory bodies will be advised such as the Police, the Gambling Commission or the Primary Authority.

8. PENALTY POINTS (Hackney Carriage and Private Hire Vehicles Licence Holders)

8.1 Hackney Carriage and Private Hire Operators, Drivers and Vehicles are principally regulated under the Local Government (Miscellaneous Provisions) Act 1976, the Town Police Clauses Act 1847, licence conditions and the Council's Byelaws.

8.2 Should an operator, driver or proprietor of a vehicle commit an offence or breach byelaws or conditions of a licence, they will be asked to attend the offices for an interview. Once investigations are completed, any of the actions detailed in Section 5 of this policy may be taken.

8.3 The primary objective of the penalty points scheme is to improve the levels of compliance and help improve the standards, safety and protection of the travelling public. It is designed to work in conjunction with other enforcement options. It provides a formalised stepped enforcement plan. The purpose of the scheme is to record misdemeanours and to act as a record of licence holder's behaviour and conduct so as to ascertain whether they are a fit and proper person. It does not prejudice the Council's ability to take other forms of actions.

8.4 Penalty points will remain unspent for twelve months. This period is on a roll forward basis, so as to allow any older points to be considered as 'spent' and therefore excluded from the running total recorded against any individual licence holder.

9. PROSECUTION

9.1 The decision to refer a case for prosecution is a very significant one. Prosecution will, in general, be restricted to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements, often following previous contact with the authority and who put the public at serious risk.

9.2 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following:

- a) The seriousness of the alleged offence;
 - The risk or harm to public health
 - Identifiable victims
 - Failure to comply with a statutory notice served for a significant breach of legislation
 - Disregard of public health for financial reward.
- b) The previous history of the party concerned:
 - Offences following a history of similar offences
 - Failure to respond positively to past warnings
 - Failure to comply with statutory notices.
- c) The likelihood of the defendant being able to establish a due diligence

defence

- d) The ability of any important witnesses and their willingness to co-operate
- e) The willingness of the party to prevent a recurrence of the problem
- f) The probable public benefit of a prosecution and the importance of the case e.g. whether it might establish a legal precedent
- g) Whether other action, such as issuing a formal caution in accordance with Home Office Circular 30/2005 *would be more appropriate*.
- h) Any explanation offered by the business or the suspected offender. This will always be encouraged.

9.3 There are however, various factors which will point away from a prosecution including:

- The likelihood of a nominal penalty
- The offence was committed as a result of a genuine mistake or misunderstanding. This must be balanced against the seriousness of the offence.
- Whether any other action, such as issuing a formal caution in accordance with Home Office Circular 30/2005 would be more appropriate.

9.4 When circumstances have been identified which may warrant a prosecution, all relevant evidence and information shall be considered, to enable a consistent, fair and objective decision to be made.

9.5 Before a prosecution proceeds, the officer responsible for referring the case to the Head of Legal Services must be satisfied that there is relevant, admissible, substantial and reliable evidence that an identifiable person or company has committed an offence. There must be a realistic prospect of conviction. With insufficient evidence to prosecute, other types of formal action, such as formal cautioning, are not alternatives.

9.6 In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision, based on relevant criteria, that it is in the public's interest to prosecute. The Head of Legal Services, in taking a decision to prosecute, will review the decision of the referring officer. He will comply with the Code for Crown Prosecutors, issued by the Crown Prosecution Service, which provides guidance to be considered, including relevant public interest criteria.

9.7 Once a decision has been taken that a case is suitable for prosecution, the matter will be referred, without undue delay, to the Head of Legal Services.

9.8 Where a prosecution is initiated other relevant bodies may be advised. These bodies may include Primary Authorities and/or the Police. Reference shall be made to any detailed advice offered by LBRO and LACORS.

9.9 Where it appears that the enforcement action being considered may be inconsistent with that adopted by other authorities or contrary to any advice issued by

the LBRO, DCMS, Gambling Commission, LACORS etc, the issue will be raised and discussed at the Hampshire and Isle of Wight Licensing Officers' Group. If a reasonable, consensus group view cannot be achieved, or the issue appears to be of national significance, or it is felt existing guidance or case law has not adequately taken account of the legal provisions, we will ask LACORS to consider the issue to ensure consistent enforcement.

9.10 In all cases where there may be a shared enforcement responsibility, such as Hampshire Constabulary, the Gambling Commission, Trading Standards Department or the Hampshire Fire and Rescue, then the other party will always be consulted on the best co-ordinated approach.

9.11 This policy document is provided for the guidance of officers, licence holders, businesses, Councillors and members of the public. It cannot affect the discretion of the Principal Licensing Officer to recommend enforcement action in any case where it is deemed in the public interest to take proceedings in a court of law.

10. OTHER ACTIONS

10.1 Regardless of any course of action arising in consequence of a non compliance, other actions including the following may also be taken:

- Issue of Fixed Penalty Notices
- Issue of Penalty Points
- Referral to the Licensing Sub-Committee
- Referral to any other agency for action
- Referral to any other appropriate Local Authority
- Referral to Police
- Referral to the Vehicle and Operator Services Agency (VOSA)
- Referral to appropriate department within the Council
- Driving assessment
- Driving lessons and reassessment

11. DEALING WITH INTELLIGENCE

11.1 Where a report of unlicensed activities or a breach of licence conditions is received, it will be investigated by a Licensing Enforcement Officer. The quality of response to any such "service request" is set out in the relevant service standards published by the Head of Environmental Services.

12. EQUAL OPPORTUNITIES

12.1 We will ensure, through the application of this policy, that all licence holders, businesses and members of the public will receive fair and equitable treatment irrespective of their race, ethnicity, gender, sexuality or any disability.

13. REVIEW

13.1 This policy will be reviewed at least annually and amended as necessary in the light of legislative changes and other prevailing circumstances.

13.2 We will keep our regulatory activities and interventions under review with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

13.3 We will consult and involve regulated businesses and other interested parties in designing our risk methods, and publish details of these methods. We will regularly review and, where appropriate, improve our risk methods and take into account feedback and other information from regulated businesses and other interested parties.

13.4 The operation of this policy will be monitored and any variations addressed.

13.5 If you have any comment on this Licensing Enforcement Policy please email: licensing@easthants.gov.uk . Your comments will be taken into account during future policy reviews.

13.6 A formal complaints procedure operates within the Council for use in the event of a substantive complaint being made against the Licensing team or any of its officers. If you wish to make a complaint about the service you have received please contact David Robertson, Environmental Services Manager (Commercial) on Tel: 01730 234307 or Email: david.robertson@easthants.gov.uk .

14. CONTACT POINTS

**Principal Licensing Officer
East Hampshire District Council
Penns Place
Petersfield
Hampshire
GU31 4EX**

Office Hours: Monday – Friday: 09.00 – 17.00

General Enquiries: 01730 234389

Enforcement: 01730 234095/234379

Fax: 01730 234330

Email: licensing@easthants.gov.uk

15. GLOSSARY

LBRO – Local Better Regulation Office

LACORS – Local Authorities Co-ordinators of Regulatory Services

DCMS – Department of Culture, Media and Sport

LICENCES, CONSENTS AND PERMITS ISSUED BY THE LICENSING TEAM:

VEHICLES

- Hackney Carriage & Private Hire Vehicle Licence
- Hackney Carriage & Private Hire Driver's Licence
- Private Hire Operator's Licence

ALCOHOL & ENTERTAINMENT

Licensing Act 2003: For the sale by retail of alcohol/the supply of alcohol by or on behalf of a club/regulated entertainment/late night refreshment.

- Premises Licence
- Personal Licence
- Club Premises Certificate
- Temporary Event Notices (TENs)

GAMBLING

- Premises Licence
- Gaming Machine Permits
- Society Lottery Registrations
- Temporary Use Notices
- Occasional Use Notices

OTHER LICENSING

- Motor Salvage Operators (Registration)
- Scrap Metal Dealers (Registration)
- Sex Establishments (Licence)
- Charitable Street Collections
- Charitable House to House Collections

(NB: this list is not exhaustive and is subject to amendment).

Up to date information is available from the Licensing Team on 01730 234389

LEGISLATIVE FRAMEWORK FOR THE LICENSING TEAM

- Animal Boarding Establishments Acts 1963
- Breeding of Dogs Act 1973 & 1991
- Breeding and Sale of Dogs (Welfare) Act 1999
- Canal Boats Regulations 1878
- Dangerous Wild Animals Act 1976
- Gaming Act 1968
- Licensing Act 2003
- Gambling Act 2005
- Highways Act 1980
- Local Government (Miscellaneous Provisions) Act 1976 & 1982
- Motor Salvage Operators Regulations 2002
- Performing Animals (Regulation) Act 1925
- Pet Animals Act 1951
- Public Health Amendment Act 1907
- Public Health (Control of Disease) Act 1984
- Riding Establishments Act 1964 & 1970
- Scrap Metal Dealers Act 1964
- Town Police Clauses Act 1847
- Transport Acts 1985 and 1991
- Vehicle Crimes Act 2001
- Zoo Licensing Act 1981

And any other Regulations made there under and any amendment or extension or consolidation thereof and under any byelaw there under.

(NB: This list is not exhaustive and is subject to subsequent amendment).