

Committee Agenda



**Epping Forest
District Council**

Licensing Committee Thursday, 20th April, 2006

Place: Civic Offices, High Street, Epping

Room: Council Chamber

Time: 2.00 pm

Democratic Services Officer G J Woodhall (Research and Democratic Services)
Email: gwoodhall@eppingforestdc.gov.uk Tel: 01992 - 56 4470

Members:

Councillors M Cohen (Chairman), Mrs M Sartin (Vice-Chairman), Mrs J Davis, R D'Souza, Mrs R Gadsby, F Maclaine, L Martin, Mrs M McEwen, P McMillan, R Morgan, T Richardson, Mrs P K Rush, Councillor Mrs P Smith, Ms S Stavrou and K Wright

<p>PLEASE NOTE THE START TIME OF THE MEETING</p>

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST**

(Head of Research and Democratic Services) To declare interests in any item on this agenda.

- 3. ANY OTHER BUSINESS**

Section 100B(4)(b) of the Local Government Act 1972, together with paragraphs 6 and 25 of the Council Procedure Rules contained in the Constitution require that the permission of the Chairman be obtained, after prior notice to the Chief Executive, before urgent business not specified in the agenda (including a supplementary agenda of which the statutory period of notice has been given) may be transacted.

In accordance with Operational Standing Order 6 (non-executive bodies), any item raised by a non-member shall require the support of a member of the Committee concerned and the Chairman of that Committee. Two weeks' notice of non-urgent items is required.

4. TO SIGN OFF THE MINUTES OF THE LICENSING SUB-COMMITTEES

Copies of the minutes of the Sub-Committee meetings will be available for the relevant chairmen to sign off.

5. REPORT TO THE COMMITTEE ON THE CURRENT SITUATION WITH REGARD TO APPLICATIONS UNDER THE LICENSING ACT 2003

Under the Licensing Act 2003, Officers are required to report on the numbers of applications received and the determinations of those applications.

Premises Licence Applications/Variations:

Applications received:	47
Applications granted under delegated authority by Officers:	38
Applications considered by Sub-Committee:	9
Applications granted (subject to conditions):	9
Applications refused:	0
Appeals to Magistrates Court:	2

Personal Licence Applications:

Applications received:	84
Applications granted under delegated authority by Officers:	84
Applications for variation considered by Sub-Committee:	0
Applications refused:	0
Appeals to Magistrates Court:	0

6. TO REVIEW THE ORGANISATION AND OPERATION OF THE LICENSING SUB-COMMITTEES AND IDENTIFY ANY MATTERS OF CONCERN ARISING

Members are asked to review the proceedings of the Licensing Sub-Committee meetings held so far and identify any problems of procedure, policy and housekeeping that have adversely affected the running of the meetings.

7. SCHEME OF DELEGATION - EXEMPTION FROM DISPLAYING A LICENCE PLATE ON A PRIVATE HIRE VEHICLE (Pages 5 - 8)**Recommendations:**

- (1) That the attached Scheme of Officer Delegation for plate Exemptions be endorsed;**
- (2) That, based upon the Scheme, authority to issue Private Hire Vehicle Plate Exemptions be delegated to the:**
 - (a) Head of Environmental Services; and**
 - (b) Environmental Health Manager; and**
- (3) That the appropriate amendments be made to the Schedule of Delegation to Officers in the Council's Constitution.**

At the last meeting of the licensing Committee, held on 13 October 2005, Officers reported on the situation in respect of applications for Private Hire Vehicle Licence plate Exemptions. Members requested that a Scheme of Delegation be developed and submitted to this meeting for consideration by the Committee.

Please find attached to the agenda the draft Scheme of Delegation, the draft Application Form, and the draft Certificate of Exemption.

8. TO REVIEW THE CURRENT AND FUTURE TRAINING NEEDS OF THE COMMITTEE

Guidance on the Gambling Act 2005 has yet to be issued; however Officers have contacted Roger Butterfield with a view to him providing training nearer to the implementation date of the legislation.

9. TO REVIEW THE DRAFT LICENSING ENFORCEMENT PROTOCOL FOR ESSEX (Pages 9 - 46)

Recommendation:

- (1) That the attached draft Licensing Enforcement Protocol for Essex be considered by the Committee.**

The Essex Licensing Officers Group have produced a draft Enforcement Protocol. Members are requested to review the attached Protocol and inform Officers of anything they wish to be considered as part of the consultation.

10. DATE OF NEXT MEETING

Under the provisional Calendar of Meetings for 2006/07, due to be considered by the Council on 24 April 2006, the next meeting of the Licensing Committee is scheduled for 12 October 2006.

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Agenda Item 7

Scheme of Delegation for Exemptions from Displaying a Licence Plate on a Private Hire Vehicle

1. The Head of Environmental Services or the Environmental Health Manager be authorised to issue private hire vehicle plate exemptions.
2. Applications only to be accepted from owners of high range prestige vehicles such as:
 - Mercedes E Class;
 - BMW 5 Series;
 - Chrysler Grand Voyager;
 - Lexus GS range; and
 - Jaguar XJ series.
3. Applicants to submit at least two letters of support from agencies willing to employ them only if a plate exemption is granted.
4. Officers to be given discretion to take into consideration information such as contracts which have been entered into and whether the driver is liveried, in addition to the above.
5. All applications to be made on the authorized application form.
6. Exemptions to be granted subject to the conditions on the Certificate of Exemption.
7. All Exemption Certificate holders to display the issued sticker in the bottom left-hand corner of the rear window of the vehicle in question so that it is visible from outside the vehicle.
8. All applicants have the right of appeal to a Licensing Sub-Committee.

**Certificate exempting a private hire vehicle licence holder
from displaying a private hire licence plate**



Environmental Health

Epping Forest District Council hereby exempts the following vehicle from displaying a private hire vehicle plate

Vehicle make	Vehicle model
CC rating	Year of registration
Registration number	Seating capacity
Private hire vehicle licence number	Name of private hire vehicle licence holder

This certificate is valid for one year from the date of issue.

The exemption does not apply when the vehicle is used for normal private hire work.

The vehicle plate and this certificate must be carried in the vehicle and be made available for inspection by an authorised officer at all times.

Any changes to the circumstances under which this authorisation was issued must be reported to the licensing officer at the council immediately.

The supplied sticker must be displayed in the lower left hand corner of the rear window of the vehicle and visible from outside the vehicle.

Signed (authorised officer):

Date of issue:

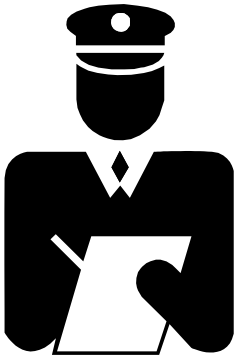
Application for an exemption to display a licence plate on a private hire vehicle		 Environmental Health
Name		
Address		
Vehicle make	Vehicle model	
CC rating	Year of registration	
Registration number	Seating capacity	
Private hire vehicle licence number	Name of private hire vehicle licence holder if different from above	
I attach the following supporting evidence		
(Continue overleaf if necessary)		
Will the driver be liveried? (circle one)		What percentage of your work will require the exemption from displaying a private hire licence plate?
yes	No	
Is there any other information you wish to be taken into consideration?		
(Continue overleaf if necessary)		
Signed (person holding the private hire vehicle licence)		

Application notes

Application will only be accepted from owners of high range prestige vehicles.
 Examples of acceptable vehicles are Mercedes E Class, BMW 5 series, Chrysler Grand Voyager, Lexus GS range, Jaguar XJ series.
 Applicants must submit at least two letters of support from agencies willing to employ them only if a plate exemption is granted.
 Additional information such as contracts which have entered into etc may be taken into consideration.

For official use		
Application received:	Granted/Refused	Appeal date:
Signed (authorised officer):		

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DRAFT MODEL Enforcement Protocol

This agreement formalises the enforcement arrangements for the Licensing Act 2003, in respect of XX Borough/District and its enforcement partners. In addition it provides guidance regarding the legal requirements and operational procedures.

The undersigned agencies agree to abide by the terms of this Protocol.

SIGNATORIES TO THIS AGREEMENT

..... Date
[NAME]
XX Council

..... Date
[NAME]
Essex Police

..... Date
[NAME]
Essex Fire and Rescue Service

..... Date
[NAME]
Essex County Council Trading Standards Department



ESSEX MODEL ENFORCEMENT PROTOCOL (DRAFT 6B)

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INTRODUCTION AND PURPOSE

The purpose of this protocol is to facilitate co-operation and co-ordination between enforcement agencies in pursuance of the Licensing Act 2003. It will underpin the mutual operational support required to tackle licensing issues. It seeks to detail the role of each agency in promoting the licensing objectives.

Under the Licensing Act 2003, the licensing authority and the responsible authorities, as defined in the Act, are required to promote the following objectives, in relation to premises and people licensed under the Act:

- preventing crime and disorder
- protecting public safety
- preventing nuisance
- protecting children from harm

In detecting and prosecuting offenders, law enforcement agencies make a vital contribution to the improvement of society as a whole. In addition, the sharing of information provides a sound basis for instigating and supporting enforcement and prosecution of offenders, where justified.

The Government strongly recommends that licensing authorities establish protocols on enforcement issues. The principal relationship that needs to be defined is that between Essex Police and the local authorities, as it is only these bodies that are charged with the powers to prosecute for breaches of the Licensing Act 2003. Nevertheless, Responsible Authorities have a statutorily defined role, including the ability to make representation to the Licensing Authority. Responsible Authorities have important parts to play in the licensing regime, not least because there are frequent overlaps in their aims and functions. This protocol therefore seeks to define the role of these agencies.

Within this protocol the terms 'Local Authority' and 'Licensing Authority' are very carefully selected as there is a clear distinction in the Licensing Act between the role of the Licensing Authority and that of the Local Authority, the latter having responsibility for the enforcement of offences relating to pollution, health and safety and trading standards as appropriate under legislation that is not dependent on licensing. Licensing officers will provide administrative support to the licensing authority.

Enforcement Concordat & Enforcement Policies

NOTE TO LOCAL AUTHORITIES: The following paragraphs will need to be amended by each LA depending on their position with regard to enforcement concordat/policies, etc. Some LAs have not 'signed up' to the Concordat. Those that have done so may have established separate and specific Licensing Enforcement Policies whereas others may have included licensing in a more generic Enforcement Policy covering a number of different regulatory functions.

Appendix 6, to which this section refers, will only be relevant if the LA has adopted the Enforcement Concordat.

XX Borough/District council has adopted the Government's Enforcement Concordat designed to ensure effective and efficient public protection services. Specifically, the Council is committed to

accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.

The Enforcement Concordat is based on the principles that businesses should:

- receive clear explanations from enforcers of what they need to do and by when;
- have opportunities to resolve differences before enforcement action is taken - unless immediate action is needed;
- receive an explanation of their rights of appeal

A copy of the Enforcement Concordat is reproduced at Appendix 6.

All signatories to this protocol recognise the interests of both citizens and businesses and will work closely with other agencies to assist licence holders to comply with the law and to promote the four licensing objectives. However, firm but proportionate action will be taken against those who commit serious offences or consistently break the law.

In particular, the Council has set clear standards of service and performance that the public and businesses can expect. In addition, a licensing enforcement policy has been created that explains how the Council will undertake its role as Licensing Authority and how the principles of effective enforcement will be achieved. It is important to recognise that this protocol does not serve as the local authority's Licensing Enforcement Policy nor does it form part of the Local Licensing Policy Statement. These policies are available from the XXX Department as are details of the Council's corporate complaints procedures. These documents can also be viewed on the Council's website: www.XXX.gov.uk

The parties recognise that voluntary disclosure of information, on a case-by-case basis, will be made provided there is a fair and lawful basis for disclosure.

AIMS OF THIS PROTOCOL

An aim of this protocol is to establish a model upon which all local authorities in Essex can base their individual enforcement protocols with Essex Police, Essex County Fire and Rescue Service, Essex County Council Trading Standards and the Child Protection Agency, as appropriate.

NOTE TO LOCAL AUTHORITIES: This opening paragraph to be deleted in their individual adopted version.

An aim of this enforcement protocol is to clearly establish the roles played by each enforcement agency, that is:

- Local Licensing Authority (xx Council)
- Essex Police
- Essex Fire and Rescue Service
- Local Authority (i.e. XXX Council's) Pollution Control Service
- Local Authority (i.e. XXX Council's) Occupational Health and Safety Enforcement Service
- Health and Safety Executive
- Essex County Council Trading Standards (or local Trading Standards Department as appropriate)
- Essex Child Protection Agency (or local child protection representative, as appropriate)

- Other enforcement agencies as appropriate (e.g. HM Customs and Excise)

The protocol seeks to establish the roles of the agencies detailed above in relation to:

- inspecting premises for compliance with the relevant licence
- investigating complaints regarding non-compliance
- making representations and seeking reviews
- initiating proceedings for offences under the Licensing Act 2003

This protocol seeks to build upon the good working relationships, which currently exist between the enforcement agencies. All parties recognise the importance of effective co-operation and liaison to ensure those with responsibilities under the Licensing Act 2003 can understand and comply with the law.

An aim of this protocol is to comply with the Secretary of State's guidance to local authorities, which states:

'As part of their statement of policy, the Government strongly recommends that licensing authorities should express the intention to establish protocols with the local police on enforcement issues. This would provide for a more efficient deployment of licensing authority staff and police officers that are commonly engaged in enforcing licensing law and the inspection of licensed premises.'

'In particular, these protocols should also provide for intelligence led enforcement in dealing with identified high-risk premises, which require greater attention, while providing minimal enforcement of low risk premises that are well run. In some local authority areas, the limited validity of public entertainment, theatre, cinema and late night refreshment house licences has in the past led to a culture of annual inspections regardless of whether the assessed risks made such inspections necessary. The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. The principle of risk assessment and intelligence led enforcement should prevail. Inspections will be undertaken when and if they are judged necessary. This should ensure that resources are more effectively concentrated on problem premises.'

PRINCIPLES

The Signatories, in signing this document agree to:

- Take note of the spirit of cooperation and goodwill that exists between each organisation.
- Recognise the benefits to be derived from developing close working relationships.
- Seek to enhance the understanding of the advantages and opportunities which joint activity can bring to effective law enforcement and community safety.
- Promote and improve the legitimate exchange of information and operational cooperation in support of shared objectives.

Each party to this protocol undertakes to:

- Ensure that it complies with all the relevant legislation, this protocol and its internal policies on information disclosures.

- Regularly consult with each other upon matters of policy and strategy.
- Ensure that the information it holds is as accurate and, where necessary, up to date.

Partners are expected to draw upon their own legal advice, wherever necessary.

Information disclosed by any party must be kept secure by the partner to whom it has been provided. Each party must be satisfied that adequate arrangements are in place and will trust that those parties have sufficient guarantees to protect the confidentiality and security of the information requested prior to a disclosure.

LIAISON ARRANGEMENTS

It is likely that regular contact will be established between the agencies. This contact is expected and encouraged to be regular and, if necessary, formalised.

Liaison between the partners to this protocol will:

- Provide an avenue to appropriate sources of information.
- Provide a consistent approach to communication, operations and investigations.
- Encourage early contact and liaison in specific cases.
- Allow for advice or guidance to be given in relation to a specific case.
- Ensure that any other national or regional campaigns or investigations, which may have a bearing on the district, are considered.
- Enable relevant officers to be kept informed of the progress of cases that are being investigated.
- Ensure that information and intelligence being passed between the agencies is dealt with confidentially and processed in accordance with the terms of this protocol and data protection legislation, and supports the understanding of mutual benefits.

Local Contacts

Each enforcement agency should nominate a Liaison Officer (and a deputy) to be the initial contact point regarding any matters relating to licensed premises. The role of these officers will be:

- To ensure the effective exchange of information between the agencies.
- To consider the necessity for joint visits.
- To implement co-ordinated actions, as necessary, and as agreed between the agencies.
- To co-ordinate the supply of evidence and information to another agency taking formal action.
- To forward complaints, evidence or information to the most appropriate agency to take action.
- To discuss and liaise in the event of uncertainty over lead agency roles.

In each of the above cases, the agencies will have regard to the seriousness of the matter to be referred on to a partner agency and will select the communication method accordingly. Where necessary, the matter will be confirmed in writing.

Appendix 3 sets out the communication points between the parties and their contact details.

NOTE TO LOCAL AUTHORITIES: The details will need to be completed in Appendix 3 – These need to refer to roles rather than named officers; TENs may have different contact points; unlicensed events may have different contacts.

Joint working

There is a clear need for good communication and liaison. In particular, where the lead authority dealing with the premises identifies the need for a 'case conference', for instance in preparation for review of licence, other responsible authorities will support the lead authority to gather all views. The lead authority will be expected to co-ordinate such case conferences.

There may be occasions where a partners' assistance is sought in respect of the investigation of an offence, or in future planned targeted action. By working together partners should be able to achieve more wide reaching results.

In the case of joint operations, the following points should be agreed:

- Identify the roles and responsibilities of each partner.
- Detail the resources required.
- Explain the objectives and expected outcomes.
- Comment on the timescale to achieve them.
- Identify the central point for coordination.
- A method of formally recording the findings of the operation as it relates to each agency in one document and an agreed method of storing that document.
- The protocol for the use of technical equipment used to support the operation e.g. video camera.
- The outcome of any risk assessment.
- Process for debrief, reflection and learning.

If required, the above should be confirmed in writing.

In planning joint operations both parties must ensure that they are compliant with current legislation to which they are bound. If there is any doubt about the legality of an operation by any party it must be halted and advice sought from the initiating parties' senior representatives.

Parties understand that there may be other organisations involved in an operation that have not signed this protocol. In these instances the signatories will ensure that principles of this protocol are adhered to by those other agencies.

Other liaison arrangements will exist for specific tactical enforcement measures, such as for sales of alcohol to persons under the age of eighteen. In this regard, reference will be made to national guidelines and local arrangements existing between trading standards services and Essex Police.

EXCHANGE AND HANDLING OF INFORMATION

The purpose of this document is to assist the exchange of information whilst not overriding existing legal safeguards on personal information.

Section 185 of the Licensing Act 2003 specifically allows for the sharing of information between the Licensing Authority and Responsible Authorities for the exclusive purpose of facilitating the

exercise of the authorities' functions under the Act. The manner in which information can be exchanged should also take into account the following legislation:

- The Data Protection Act 1998 - for the processing of personal information.
- The Human Rights Act 1998 - for the rights of the individual's privacy.
- The Freedom of Information Act 2000
- The Common Law Duty of Confidence.
- The Electronic Communications Act, 2000
- Computer Misuse Act, 1990
- Criminal Procedure and Investigations Act 1996
- Crime and Disorder Act, 1998

Exchange of information should be conducted in a timely and accurate fashion and confirmed in writing in all cases to form an audit trail. (Note: written confirmation includes information in electronic form). Creating an accurate and up to date should include:

- Record of data disclosed.
- Project chronology.
- Notes of meetings with our partners, and recent correspondence and phone calls.

Human Rights Act 1998

The European Convention on Human Rights (ECHR) protects the right to respect for private and family life (Article 8). However, the Convention qualifies this right by confirming public authorities can 'interfere' with this right if it is lawful (DPA 1998), proportionate and non-discriminatory. Lawful interference can be necessary in the interests of the following:

- National Security.
- Public Safety.
- Economic well being of the country.
- The prevention of crime and disorder.
- The protection of health or morals.
- The protection of the rights or freedoms of others.

Confidentiality

The parties undertake that information will only be used for the purpose for which it was requested, and will securely store it and destroy it when no longer required.

Designated Officers

In order to ensure compliance with the Data Protection Act, the parties to this agreement shall nominate designated officers to whom all requests, and from whom all disclosures of information will be made, on behalf of the relevant data controller.

Details to be supplied are:

- Full name
- Business address

- Rank or grade
- Official telephone number
- Official fax number
- Official e-mail address (if appropriate)

On a case-by-case basis, authorised officers will decide:

- Why disclosure is necessary to support the relevant action.
- Why the public interest overrides the presumption of confidentiality.
- Ensure that processing of the personal data held is in accordance with the principles of the Data Protection Act 1998, (see Appendix 4)

Process

Requests for information must only be sent by the authorising officer to the nominated officers authorised to make disclosures of information. Requests must not be passed to any other officer. The parties agree to provide details of its officers who are authorised to make disclosures on request. The initial contact between parties may be by meeting, correspondence or telephone. Any disclosure will be made only in writing or by secure electronic communication.

The information provided must be sent to the officer within the requesting agency who authorised and transmitted the request.

The parties to this agreement will:

- Maintain a record of disclosures that will be subject to inspection by internal audit staff.
- Use information only for the purposes for which it was lawfully provided. It will hold that information in accordance with the Data Protection Act 1998.

The parties recognise that access to personal information by staff should be limited to employees with a demonstrable 'need to know'. The data subject is legally entitled to request a copy of their personal data, unless an exemption under the Data Protection Act 1998 applies. If the data subject requests access to their personal data, the data subject will need to submit a request in writing, enclosing the appropriate fee and documentation to prove identity.

The parties must agree the criteria for the review and weeding of data in accordance with existing policies and codes of practice and should agree a maximum retention period for each item of data.

Providing that the principles of the Code of Practice have been respected and that disclosure would be lawful, the Authority will normally disclose the requested information to the full extent that it holds that information within 7 days.

NOTE TO LOCAL AUTHORITIES: This part of the protocol may need to be supplemented by any memorandum of understanding on data exchange agreed locally. An example may be in relation to accessibility of shared use of licensing software and real time updating of Innkeeper by LA's.

RISK BASED APPROACH

This protocol provides for the targeting of resources towards high-risk premises and activities that require greater attention, while providing a lighter touch in respect of low risk premises that are well operated.

The principle of using a scoring scheme based on risk factors will normally prevail and proactive inspections will usually be undertaken in accordance with a priority inspection scheme. This should ensure that resources are more effectively allocated to higher risk or 'problem premises'.

When either the fire authority or the relevant health and safety agency carry out risk-based inspections of licensed premises, both parties, where appropriate, will inform each other of their inspection findings.

Enforcement agencies' actions will be informed by technical standards. Both the fire authority and the relevant health and safety agency will adopt risk appropriate standards having regard to specific guidance in codes of practice, government guidelines (including appendix E of the guidance issued under section 182 of the Licensing Act 2003), approved industry guides and other approved sources.

NOTE TO LOCAL AUTHORITIES: LA's may wish to insert or refer to their specific risk rating scheme which may include more detail here about the types of visits undertaken, the basis for their inspection (risk) rating, the programme of inspections; the basis for which may be the LACORS model scheme, when published.

NOTE TO ESSEX POLICE: Essex Police may wish to insert or refer to the National Intelligence Model.

GUIDING PRINCIPLES FOR DECISION MAKING

The Statutory Guidance issued under section 182 of the Licensing Act makes it quite clear that offences committed by proprietors on licensed premises must be pursued by the relevant enforcement authority using the most appropriate legislation; this in the main will **not** be the Licensing Act 2003.

Examples where other legislation may be used to address issues in licensed premises are included in Appendix 5.

The Licensing Act 2003 does not distinguish clearly the lead authority either for enforcement or for making representations, in respect of the four licensing objectives. Indeed, some of the interests of the responsible authorities clearly overlap.

Close liaison is therefore essential to ensure consistent and transparent action by the relevant agencies as well as to ensure effective use of resources. However, nothing in this protocol will preclude representation by more than one responsible authority in respect of the same or different licensing objectives, relevant to the same licensed premises. Indeed, in some circumstances it would be advantageous for responsible authorities to support each other towards the common aim of promoting the licensing objectives.

As a guiding principle, the lead authority for both enforcement action and for making representation should be based on the impact the contravention or action has on the

promotion of the licensing objectives, and in most cases common sense will dictate the lead authority, along the following lines:

In respect of instigating legal proceedings under the Licensing Act 2003, typically the split of responsibility may be as described below:

Crime and Disorder: Essex Police

Public Safety: Licensing Authority

Public Nuisance: Licensing Authority or Essex Police

Protection of Children: Essex Police or Licensing Authority (also Trading Standards in respect of underage drinking, sale of alcohol to under 18's, etc.)

In respect of making representations and seeking reviews, the split may be described as:

Crime and Disorder: Essex Police

Public Safety: Local Authority H&S Service, HSE and/or Essex Fire and Rescue Service

Public Nuisance: Local Authority Pollution Service and/or Essex Police

Protection of Children: Child Protection Agency and/or Essex Police

The table attached at Appendix 2 seeks to indicate further examples of the likely split of responsibilities and indicates which authority might lead under different situations.

Examples of situations, explaining which authority may take the lead, are included in Appendix 5.

Safe Capacities

Where stipulating a safe capacity is deemed necessary for instance where there is considered to be a significant risk, both the Fire Authority and the relevant Health and Safety agency will liaise and seek to agree on the maximum occupancy for the premises and/or its containing parts. The Fire Authority will make an assessment, which will relate to fire safety issues. Similarly, health and safety officers will make an assessment from a public safety perspective.

Use of Closure Powers

Part 8 of the Licensing Act significantly extends the existing powers of the police to close licensed premises. In addition, the Antisocial Behaviour Act 2003, conferred powers on the local authority to close licensed premises under certain circumstances.

Where the licensed premises is causing noise nuisance and disturbance, the powers available to each agency could be used in response to the same circumstances and an agreement needs to be reached to establish which powers would be most appropriate, both to resolve the immediate problems and having regard to subsequent actions.

The Secretary of State's guidance refers to the experience of local authority officers in dealing with noise and their additional powers to confiscate sound equipment. Police officials may therefore find it helpful to consult the local authority where excessive noise is a factor in seeking closure of the licensed premises, prior to taking this action. Equally, where local authority officers are considering using their powers under the Environmental Protection Act and/or the Antisocial Behaviour Act, they may need to discuss their proposals and the potential consequences with a senior police officer and agree the way forward, having regard to the risks

to the public and officers and the overall objective of preventing nuisance to the residents in the vicinity of the premises. It is expected that adequate support from the police will be sought on all occasions where the local authority is contemplating using its powers to close premises.

NOTE TO LOCAL AUTHORITIES: Local authorities may wish to draw up a local protocol for the handling of noise nuisance associated with licensed premises and TENS, having regard to their own noise call-out arrangements, scheme of delegation to authorise the service of abatement notices, seizures and closures.

PROVISION OF ADVICE AND INVESTIGATION OF COMPLAINTS

The signatories to this protocol recognise the value of advice and the provision of information as effective means of enabling duty holders to achieving compliance with the law. Applicants and holders of licences, certificates and permissions shall be encouraged to seek such advice, particularly before submitting applications for variations to existing permissions or prior to submitting a Temporary Event Notice.

Each agency will endeavour, where resources permit, to provide advice and guidance on those matters within the remit of that agency (determined in accordance with the guiding principles of decision making contained in this protocol). Where information is requested on a matter outside of any agency's remit, then the contact details of the relevant agency will be passed to the enquirer.

On receipt of a complaint or concerns relating to licensed premises, club premises or personal licence holder, the receiving agency will:

- Take appropriate action, if the matter is within that agency's remit;
- Pass to the relevant agency, in accordance with the liaison arrangements, as detailed above; or
- Liase with the other agencies to establish lead responsibility, in accordance with the liaison arrangements detailed above.

Each agency will have its own service standards and will respond in accordance with those standards.

DEALING WITH UNLICENSED ACTIVITIES

This section describes action to be taken where activities (as defined by section 1(1) of the Licensing Act 2003) are suspected or discovered but for which a licence has not been issued or has not otherwise been covered by a Temporary Events Notice. In such cases the main objectives will be to:

- Prevent the unlicensed activity proceeding.
- Ensure public safety and prevent crime and disorder (if necessary by closing the event).
- Gather evidence with a view to prosecuting the organisers.

The intention, wherever possible, is to prevent unlicensed events taking place, by using a Multi-agency approach at an early stage as soon as the likelihood of such an event has been established. There will be an expectation that enforcement agencies will work together to

achieve a positive outcome that will enable them to identify and target the organisers of such events, to obtain vital evidence and to prosecute for offences where appropriate.

The enforcement partners will:

- As a priority; gather, collate and share information concerning unlicensed activities with our partners, landowners and other relevant agencies as permitted under Section 112 Crime & Disorder Act 1998.
- Encourage and as far as is practical, support landowners in taking action to prevent or curtail unlicensed activities from taking place, ensuring action is not recommended that could give rise to personal/organisational liability.
- Carry out an operational review of the information available and, whenever appropriate, take action to prevent or curtail any unlicensed activity from taking place.
- As far as practicable, attend all unlicensed activity discovered or brought to the authorities' attention, and, when resources and legislation permit, seek to prevent them being established, seize property as permitted by legislation, and gather evidence with a view to prosecuting organisers or landowners as appropriate.
- When intervention is inappropriate Essex Police will provide a presence to reassure local communities. Agencies will gather evidence and intelligence to support proceedings against persons identified as being in breach of legislation or for use in preventing future unlicensed activities.
- Share information and evidence between Essex Police and the local authority taking into account timescales in relation to prosecution.
- Pursue a policy of openness with the media to highlight the dangers of unlawful events and the resolve of a multi-agency co-operation to prevent them. Whenever possible joint press releases should be issued and should seek to assure local communities.

Unlicensed activity tends to fall into two categories - those in respect of which the authorities have received prior information or intelligence regarding the event, and those where they have not. The former enables a pre-planned multi-agency response and the latter would require a spontaneous response that would normally be initiated by Essex Police as a result of information received. A measured response will be taken by enforcement agencies to such information and the risk such unlicensed activity may be deemed to be posed. The following responses relate to those events, which by their nature, size, location, etc. are deemed 'high risk'.

Pre-Planned Response

- Enforcement agencies will apply the declared strategy of sharing information and intelligence, with a view to preventing the event through early intervention where the law and resources permit.
- Enforcement agencies will work together to ensure that both permissive landowners, and organisers are aware of their obligations.

- Owners of land adjacent to proposed sites will be advised, allowing sufficient time to apply preventative measures where possible.
- Where time permits, enforcement agencies will make contact with the community likely to be affected. Where resources permit, high visibility policing will be used to provide reassurance.
- Local Authority Officers will be expected to attend wherever possible to support Essex Police at the site of an unlicensed event.

Spontaneous Response

- Enforcement agencies will apply the declared strategy of sharing information and intelligence, with a view to preventing the event through early intervention where the law and resources permit.
- Essex Police officers together with Local Authority Officers will seek to attend all unlawful events brought to their attention to gather and secure evidence with a view to prosecuting organisers and or landowners.
- The decision to stop a large unlicensed event from continuing has resource and serious safety implications for the officers implementing the decision and for persons attending the event. The decision to stop the event will normally be made by the Essex Police Silver Commander following a full operational review and risk assessment. If, taking into account the ongoing risk to public safety, the event is allowed to continue; a full audit trail of decisions and risk assessments MUST be available.
- When intervention is considered inappropriate Essex Police should seek to provide a continuing presence to reassure local communities. Both Agencies when possible will seek to gather evidence and/or intelligence to support proceedings against persons identified as breaching legislation or for use in preventing future unlicensed events.

Post Event

- Following any serious incident involving an unlicensed activity, the relevant enforcement agencies will participate in a de-brief.
- Information on preventative operations will be discussed and best practice and areas of weakness identified.
- All information/evidence surrounding an event will be shared with a view to taking decisions on prosecution or future licensing applications.

REVIEW OF LICENCES

The Licensing Act 2003 permits responsible authorities to apply for a review of a premises licence or a club premises certificate.

In the acknowledgement that any authority may apply to the licensing authority for a premises licence or club premises certificate to be reviewed at any time, the signatories of this protocol agree to follow the guiding principles in decision making when determining the most appropriate authority to seek such a review.

Except in extreme cases, the responsible authority seeking a review will:

- Give an early indication to both the holders of the premises licence or club premises certificate and to the licensing authority that this is their intended course of action.
- Liase with other responsible authorities as appropriate to ensure a co-ordinated and thorough review.
- Seek an informal resolution to the matter with the holders of the premises licence or club premises certificate, if this is both possible and appropriate.
- Be able to evidence to the Licensing Committee hearing that alternative solutions had been sought to the problem giving rise to the application but that the desired outcome was unlikely to be achieved through informal means.

LEGAL PROCEEDINGS

Responsibility for Prosecutions

Section 186 of the Act provides that offences under the Act may be instituted by:

- (1) A licensing authority
- (2) By the Director of Public Prosecutions
- (3) By a local weights and measures authority for offences under section 146 or 147

It is expected that the decision of who will instigate legal proceedings will be taken in accordance with the guiding principles for decision-making (as explained in this document), irrespective of which authority obtained the evidence. Whilst individual circumstances must be judged on each occasion, reference can be made to Appendix 1: Licensing Act 2003 Offences with Indicative Lead Authorities.

In the event of the licensing authority instigating proceedings on the evidence of officers of Essex Police, Essex Police will nominate the Operational Chief Inspector (of the territorial division for the local authority) as the single point of contact to oversee the collection of all used and unused material, to liase on availability of officers for court, etc. In the event that a warrant is issued, a copy of the file will be held in the Warrants Office together with the warrant.

Notifications of Prosecutions

Notwithstanding the duty of the court in section 131 (duty to notify licensing authorities of convictions), the prosecuting authority will inform the licensing authority within 5 working days of any relevant conviction or caution under the Act.

The relevant licensing authority for this purpose is the licensing authority that issued the licence, certificate or temporary event notice, even if that authority is not a party to this protocol (e.g. the licensing authority that issued a personal licence). The notification shall be in writing and shall state:

- the name and address of the person convicted or cautioned

- the nature and date of the conviction or caution
- the details of any conviction including any order under section 129 of the Act.

Register of Cautions

Each licensing authority will maintain a register of formal cautions issued by the local authority in respect of breaches of the Licensing Act 2003

MEDIA RELATIONS

We agree when handling the media:

- to be fair to our fellow partners, and maintain their integrity
- to act in a fair and honest manner when providing information to the public
- to issue statements that reflect the multi-agency decision process
- to seek the consent of the data owner prior to release to the media.

On any individual licensing matter, the lead agency will be responsible for liaison with the media but will ensure that any other agency with an interest in the matter is kept informed of the media attention. The Agency will make reasonable efforts to ensure that the response to such interest is discussed, where appropriate and practicable, prior to the issue of formal press statements.

TEMPORARY EVENT NOTICES:

In response to a temporary event notice, all responsible authorities will be notified of the details of the event for information. However, it is acknowledged that only the Police can serve a counter notice and only where they are satisfied that the crime prevention objective would be undermined.

The Pollution Control Officer, Health and Safety Inspector (of the local authority or Health and Safety Executive) and/or Essex Fire and Rescue Service may have concerns regarding the event, which they will seek to address through other mechanisms. It is therefore essential that all agencies seeking to address concerns in respect of a temporary event liaise closely in order that everyone involved can be sure that measures taken to address one agency's concerns do not adversely impact on the concerns of others.

REVIEW OF THIS PROTOCOL

The use and effectiveness of this protocol will be kept under review at the Essex Joint Licensing Officers Forum, having regard to

- Changes in legislation;
- Changes in guidance from Government, LACORS or other authoritative bodies;
- Court rulings;
- Challenges, or Representations made; and
- Issues arising in the implementation of this protocol

Note to Local Authorities:

Each local authority is encouraged to hold a formal review with the officers involved, on an annual basis, the results of which should be passed to the Essex Joint Licensing Officers Forum for consideration. A note should be included in individual protocols to this effect.

RESOLUTION OF DISPUTES

As a consequence of the strong existing partnerships, disputes are expected to be very rare. However, in the event of a dispute the relevant agencies involved should in the first instance call a formal meeting and try to resolve the dispute by agreement. In the unlikely event that a satisfactory resolution cannot be achieved, the local Crime and Disorder Reduction Partnership will be asked to adjudicate on the matter.

Appendix 1: Licensing Act 2003 Offences with Indicative Lead Authorities

Section	Offence	LEAD AUTHORITY
33	Notification of change of name or address by premises licence holder or designated premises supervisor	Licensing authority
40	Premises licence holder failing to notify designated premises supervisor of variation to premises licence	Licensing authority
41	Failure to send premises licence to licensing authority upon removal of designated premises supervisor	Licensing authority
49	Failing to notify designated premises supervisor of grant of interim authority notice	Licensing authority
56	Failure to provide premises licence to be updated	Licensing authority
57	Failure to secure safe custody or display on premises of premises licence	Licensing authority
59	Obstructing inspection of premises before grant of a premises licence	Licensing authority <i>NB: this is a strange as the power of entry is given to both police officers and authorised persons but the offence appears to be only to obstruct the authorised person!? If authorised person in this context DOES include the Police it should read: or Police (depending on whose officer is obstructed)</i>
82	Notification of change of name or alteration of rules of a club	Licensing authority
83	Change of relevant registered address of club	Licensing authority
93	Failure to provide club premises	Licensing authority

	certificate to be updated	
94	Duty to keep and produce club premises certificate	Licensing authority
96	Inspection of premises before grant etc of club premises certificate	Licensing authority <i>NB: Same situation as s. 59 above!</i>
108	Right of entry when temporary event notice may be given	Licensing authority or Police <i>NB: Same situation as s. 59 & 96 above. But reference is made here to Authorised Officer rather than to Authorised Person, and is separately defined for the purposes of this section.</i>
109	Failure to display temporary event notice on premises	Licensing authority
123	Duty to notify licensing authority of convictions during application period	Licensing authority
127	Duty to notify change of name or address	Licensing authority
128	Fail to notify court of personal licence	Police or licensing authority
136	Unauthorised licensable activities	Licensing authority or Police
137	Exposing alcohol for unauthorised sale	Licensing authority or Police
138	Keeping alcohol on premises for unauthorised sale	Licensing authority or Police
140	Allowing disorderly conduct on licensed premises	Police
141	Sale of alcohol to person who is drunk	Police
142	Obtaining alcohol for a person who is drunk	Police
143	Failure to leave licensed premises	Police
144	Keeping smuggled goods	Police or Customs

		and Excise <i>Can't remember if we clarified whether or not Customs could take prosecution under this section?</i>
145	Unaccompanied children prohibited from certain premises	Licensing authority or Police
146	Sale of alcohol to children	Licensing authority, Police or Trading Standards
147	Allowing the sale of alcohol to children	Licensing authority, Police or Trading Standards
148	Sale of liqueur confectionary to children under 16	Licensing authority, Police or Trading Standards
149	Purchase of alcohol by or on behalf of children	Licensing authority, Police or Trading Standards
150	Consumption of alcohol by children	Licensing authority, Police or Trading Standards
151	Delivering alcohol to children	Licensing authority, Police or Trading Standards
152	Sending a child to obtain alcohol	Licensing authority, Police or Trading Standards
153	Prohibition of unsupervised sales by children	Licensing authority, Police or Trading Standards
156	Prohibition on sale of alcohol on moving vehicles	Police
158	False statements made for the purposes of the Act	Licensing authority

179	Intentionally obstruct entry to an authorised person	Licensing Authority or Police. <i>Same situation here as above – does obstruction offence include Police? Where LA – both Authorised Persons and Authorised Officers can be obstructed</i>
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Phil's note: Section 154 establishes the enforcement role for local weights and measures authorities BUT this only extends to the provisions of sections 146 and 147, so far as they apply to sales of alcohol made on or from premises to which the public have access. Why then are they indicated to be ENFORCING AUTHORITIES in this list for sections 148 to 153? Surely they are ASSISTING in these situations, not taking prosecutions for breaches?

Appendix 2: Indicative Split of Responsibilities for Responsible Authorities

PREVENTION OF CRIME AND DISORDER				
ISSUE/SUBJECT	POLICE	FIRE	LA	COMMENTS
Underage drinking	<input checked="" type="checkbox"/> if on premises			<input checked="" type="checkbox"/> TS also involved if 'off sales'
Drunkenness on premises	<input checked="" type="checkbox"/>			
Public drunkenness	<input checked="" type="checkbox"/>			
Drugs	<input checked="" type="checkbox"/>			
Violent behaviour	<input checked="" type="checkbox"/>			
Anti-social behaviour	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> possibly, if linked to noise pollution or ASBO	
Effective and responsible management of premises	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Licensing	
Training and supervision of staff	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Licensing	
Adoption of best practice guidance	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Licensing	
Acceptance of accredited 'proof of age' cards and/or 'new type' driving licences with photographs	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/> Trading standards also
Provision of effective CCTV in and around premises	<input checked="" type="checkbox"/>			
Employment of Security Industry Authority licensed Doorstaff	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Licensing	
Provision of toughened or plastic glasses	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> H&S or Licensing	
Provision of secure, deposit boxes for confiscated items ('sin bins')	<input checked="" type="checkbox"/>			
Provision of litterbins and other security measures, such as lighting, outside premises	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Pollution	

PUBLIC SAFETY				
ISSUE/SUBJECT	POLICE	FIRE	LA	COMMENTS
Overcrowding of premises		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	
Blocked or locked means of escape in the event of fire		<input checked="" type="checkbox"/>		Police or LA would give immediate advice and refer on to Fire.
Use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	
Suitable and sufficient risk assessments		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	FIRE would consider Workplace Fire RA
Effective and responsible management of premises	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	
Provision of a sufficient number of people employed or engaged to secure the safety of the premises	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	Police if security staff; LA if safety stewards; FIRE if fire marshals
Regular testing (and certification where appropriate) of procedures, appliances, systems etc.		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	E.g. FIRE if fire alarms & fire detection systems, emergency lighting, fire fighting appliances
Appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	Police if security staff; LA if safety stewards; FIRE if fire marshals
Adoption of public safety best practice guidance		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	
Provision of effective CCTV in and around premises	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> H&S	
Provision of toughened or plastic glasses	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> H&S	
Implementation of crowd management measures	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	

PREVENTION OF PUBLIC NUISANCE				
ISSUE/SUBJECT	POLICE	FIRE	LA	COMMENTS
Public nuisance from noise outside premises	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Pollution	.
Public nuisance from noise inside premises			<input checked="" type="checkbox"/> Pollution	.
Public nuisance from litter			<input checked="" type="checkbox"/> Pollution	
Public nuisance from people leaving the premises	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Pollution	
Effective and responsible management of premises	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Pollution)	
Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Pollution	
Control of operating hours for all or parts (e.g. garden areas) of premises	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Pollution	
Adoption of best practice guidance on public nuisance	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Pollution	
Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices			<input checked="" type="checkbox"/> Pollution	
Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Pollution	H&S if crowd safety involved
Liaison with public transport providers			<input checked="" type="checkbox"/> Through transport planning	
Siting of external lighting, including security			<input checked="" type="checkbox"/> Pollution	Liase with Police if security affected

lighting to prevent nuisance				
Management arrangements for collection and disposal of litter			<input checked="" type="checkbox"/> Pollution	Refer to waste/litter collection authority

PROTECTION OF CHILDREN FROM HARM				
ISSUE/SUBJECT	POLICE	FIRE	LA	COMMENTS
Concerns over moral or psychological harm to children	<input checked="" type="checkbox"/>			Possible input from child protection
Concerns over physical harm to children	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> H&S	Possible input from child protection
Exposure to strong language and sexual expletives (in films)	<input checked="" type="checkbox"/>			Possible input from child protection
Purchase, acquisition or consumption of alcohol	<input checked="" type="checkbox"/>			Possible input from child protection & Trading Standards
Exposure to drugs, drug taking or drug dealing	<input checked="" type="checkbox"/>			Possible input from child protection
Exposure to gambling	<input checked="" type="checkbox"/>			Possible input from child protection
Exposure to activities of an adult or sexual nature	<input checked="" type="checkbox"/>			Possible input from child protection
Exposure to incidents of violence or disorder	<input checked="" type="checkbox"/>			Possible input from child protection
Exposure to special hazards such as falls from height			<input checked="" type="checkbox"/> H&S	
Effective and responsible management of premises for protection of children	<input checked="" type="checkbox"/>			Possible input from child protection
Provision of a sufficient number of people employed or engaged to secure the protection of children from harm		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> H&S	Possible input from child employment welfare officers
Appropriate instruction, training and supervision of those employed or				Possible input from child protection

engaged to secure the protection of children from harm				
Adoption of best practice Guidance on child protection				Possible input from child protection
Limitations on the hours when children may be present, in all or parts of the premises	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Licensing	Possible input from child protection
Limitations or exclusions by age when certain activities are taking place	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Licensing	Possible input from child protection
Imposition of requirements for children to be accompanied by an adult	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Licensing	Possible input from child protection
Acceptance of accredited 'proof of age' cards and/or 'new type' driving licences with photos	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/> Licensing	Possible input from child protection Trading Standards

OTHER OFFENCES				
ISSUE/SUBJECT	POLICE	FIRE	LA	COMMENTS
The activity which is being provided is not one of the licensable activities included on their licence	<input checked="" type="checkbox"/> Anyone can report	<input checked="" type="checkbox"/> Anyone can report	<input checked="" type="checkbox"/> Anyone can report	Lead would depend on the impact such a contravention caused
The hours of operation exceed those detailed on their licence	<input checked="" type="checkbox"/> Anyone can report	<input checked="" type="checkbox"/> Anyone can report	<input checked="" type="checkbox"/> Anyone can report	Lead would depend on the impact such a contravention caused

Appendix 3: Schedule of Local Contacts

Note to local authorities: The personnel details that will need to appear in Appendix 3 should refer to roles rather than named officers. There may be different contact points for TENs and for reacting to unlicensed events.

Appendix 4: Data Protection Legislative Provisions

Article 8 of Schedule 1, Human Rights Act 1998: Right to respect for private and family life:

- Everyone has the right to respect for their private and family life, their home and correspondence.
- There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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.

Data Protection Principles

Organisations processing personal data (“controllers”) must comply with the data protection principles. These require that:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Data Protection Act 1998

The Data Protection Act gives all individuals who are the subject of personal data ("data subjects") a general right of access to the personal data that relates to them. These rights are known as "subject access rights". Requests for access to records and for other information about those records are known as "subject access requests."

A data subject is entitled to be told if any personal data is held about them and, if so:

- to be given a description of the data;
- to be told for what purposes the data are processed; and
- to be told the recipients or the classes of recipients to whom the data may have been disclosed.

This information should include what sort of data are held, the purposes for which the data are processed and the type of organisation or people to whom the data may be disclosed.

The disclosure of personal data is however permitted under s29 in any case where not to make the disclosure would be likely to prejudice the prevention and detection of crime or the prosecution of offenders.

S29 Data Protection Act 1998

Crime and taxation. 29. - (1) Personal data processed for any of the following purposes-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders, or
- (c) the assessment or collection of any tax or duty or of any imposition of a similar nature,

are exempt from the first data protection principle (except to the extent to which it requires compliance with the conditions in Schedules 2 and 3) and section 7 in any case to the extent to which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in this subsection.

(2) Personal data which-

- (a) are processed for the purpose of discharging statutory functions, and
- (b) consist of information obtained for such a purpose from a person who had it in his possession for any of the purposes mentioned in subsection (1),

are exempt from the subject information provisions to the same extent as personal data processed for any of the purposes mentioned in that subsection.

(3) Personal data are exempt from the non-disclosure provisions in any case in which-

- (a) the disclosure is for any of the purposes mentioned in subsection (1),

and

(b) the application of those provisions in relation to the disclosure would be likely to prejudice any of the matters mentioned in that subsection.

(4) Personal data in respect of which the data controller is a relevant authority and which-

(a) consist of a classification applied to the data subject as part of a system of risk assessment which is operated by that authority for either of the following purposes-

(i) the assessment or collection of any tax or duty or any imposition of a similar nature, or

(ii) the prevention or detection of crime, or apprehension or prosecution of offenders, where the offence concerned involves any unlawful claim for any payment out of, or any unlawful application of, public funds, and

(b) are processed for either of those purposes,

are exempt from section 7 to the extent to which the exemption is required in the interests of the operation of the system.

(5) In subsection (4)-

"public funds" includes funds provided by any Community institution;

"relevant authority" means-

(a) a government department,

(b) a local authority, or

(c) any other authority administering housing benefit or council tax benefit.

Appendix 5: Illustrative Scenarios

Examples of Using Other Legislation:

Scenario	Action
During a routine inspection of a nightclub, the Fire Officer observes that all the fire exits are locked and the manager has no knowledge of the location of the keys necessary for unlocking them.	Without being able to immediately rectify the problem, the most appropriate course of action for the Fire Officer is to serve a prohibition notice under section 10 of the Fire Precautions Act, 1971 to remedy the situation (as opposed to seeking a review of the licence under the Licensing Act, 2003).
Excessive noise from amplified music is escaping from a village hall, causing unreasonable disturbance to residents in the locality.	The Local Authority Pollution Officer would act under the provisions of section 80 of the Environmental Protection Act 1990 to remedy the situation (as opposed to seeking a review of the licence under the Licensing Act, 2003).
A member of staff is arrested for stealing money from the till of a licensed premises.	The person is arrested and dealt with under the Theft Act 1968.

Examples of Who Takes the Lead:

Scenario:

Premises licensed to sell alcohol are reported to be operating beyond their permitted hours:

It may at first sight be assumed that the Police would lead, as there is sale of alcohol beyond the permitted hours. However, ***the impact of the contravention*** should be assessed in determining the lead authority.

When the Police Lead: If the impact of the licensed premises opening later than their permitted hours is that additional crime, disorder and antisocial behaviour arises in the vicinity of the premises, then the Police should lead by interviewing the premises licence holder.

Action: Essex Police could prosecute for breach of licence condition; seek a review of the licence; or write a warning letter to the premises licence holder (whichever of these actions would be most consistent with the Essex Police's prosecution policy).

When the Local Authority Lead: If the impact of opening beyond permitted hours was noise from music escaping from the premises causing a disturbance to residents in the vicinity, the Local Authority Pollution Officer would lead, again by interviewing the premises licence holder.

Action: The LA officer could then serve a noise abatement notice under the Environmental Protection Act or seek a review of the licence or write a warning letter to the premises licence holder. In addition, the Licensing Authority could prosecute for breach of licence condition, using the evidence of the Pollution Officer. (Again the choice of action(s) should be consistent with the local authority enforcement policy).

However, there would be other examples where there is overlap within the same objective.

Examples of Overlaps:

Scenario:

During a routine check on a licensed village hall (which is not a workplace) it is discovered that there is a total absence of fire fighting equipment.

The Fire Authority could lead on this matter, in order to promote the public safety objective, acting under the Licensing Act 2003, if no more appropriate legislation existed to resolve the situation. Alternatively, an officer with health and safety expertise could act if authorised under the Licensing Act 2003; this officer could be an environmental health officer, technical officer, building control officer, or licensing officer.

Fire Authority Lead: If the public safety breach were restricted just to the absence of fire fighting equipment, it would be more appropriate for the fire officer to lead. The Fire Authority would not be in a position to prosecute under the Licensing Act 2003 (assuming that the maintenance of adequate fire fighting equipment was a licence condition) but it could prompt a review of the licence.

Health and Safety Lead: If the absence of fire fighting equipment was merely one example of a number of health and safety breaches, the majority of which related to other health and safety matters, the officer expert in health and safety would be the more appropriate lead. Since no work undertaking goes on in the building, no action would be possible under the Health and Safety at Work etc. Act. The health and safety enforcement agency could nevertheless seek a review of the licence.

Joint Action: If there were a large number of breaches of public safety in respect of both fire precautions and general health and safety, it would be most appropriate for both authorities to consider seeking a review of the licence, in the acknowledgement that any authority may apply to the licensing authority for a licence or club premises certificate to be reviewed at any time.

This example clearly demonstrates the need for good communication and liaison between the responsible authorities, to ensure effective and targeted use of resources and a transparent but comprehensive approach to the relevant licence holder.

Appendix 6: THE ENFORCEMENT CONCORDAT

Note to local authorities: Appendix 6 will only be relevant if the LA has adopted the Enforcement Concordat. The following is a summary of the Concordat, which if necessary can be adapted to suit the local situation.

The Principles of Good Enforcement: Policy and Procedures

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term “enforcement” are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

Principles of Good Enforcement: Policy

- **Standards**

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

- **Openness**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

- **Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice /information from us. Applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

- **Complaints about service**

We will provide well-publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

- **Proportionality**

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

- **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Coordinators of Regulatory Services (LACORS) and the Local Authority National Type Approval Confederation (LANTAC).

Principles of Good Enforcement: Procedures

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

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