

Licensing and Registration Committee 10 April 2019

A.2 Proposed Revision of Licensing Enforcement Policy

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PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To request that the Committee approve in principle a revised draft Licensing Enforcement Policy, and to seek permission for the document to be circulated to key stakeholders for consultation purposes.

EXECUTIVE SUMMARY

It is best practice that the Authority revises the policy on Enforcement processes from time to time to ensure that the most current information and guidance is made available to applicants taking into consideration the legislation and resources available.

RECOMMENDATION(S)

It is recommended that Members agree:

- a) That subject to any representations that members may wish to make, that the draft Enforcement Policy as set out in Appendix A to this report be approved in principle.
- b) That the draft Enforcement Policy be circulated to the Licensing Authority's key stakeholders for consultation purposes and that any representations received be considered at a future meeting of the committee.
- c) That if no representations are received, the Licensing Manager in consultation with the Chairman (or failing him the Vice-Chairman) of the Committee be authorised to forward the proposed Enforcement Policy to Full Council for consideration and adoption.

PART 2 – IMPLICATIONS OF THE DECISION

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Whilst statutory regulations do not permit charging for functions relating to some enforcement, the revised regulations and implemented Policy would not adversely affect the budgets. The revised approach to enforcement action may outline further steps in a staged approach to dealing with matters in order to achieve compliance. Compliance is permitted to be afforded for within certain fees, for example in taxi licensing.

The implementation of a concise and staged approach to compliance and enforcement matters will enhance the role and assist informing Officers when engaged in any enforcement process. This will lead to more robust and defensible decisions in relation to action concerning breaches of the legislation, conditions and unlicensed traders. This may reduce the risk of costs should a decision be appealed. In adopting a compliance and enforcement policy, the courts will understand the rationale and reason behind Officers' actions.

LEGAL

Decisions in relation to a licence holder are likely to amount, amongst other things, to consideration of civil rights and obligations under the Human Rights Act 1998. This policy assists in ensuring that these rights are fully considered.

A reasonable and proportionate policy will ensure that Officers consider and take action against infringements of legislation in a robust, consistent, transparent and proportionate manner which will assist in ensuring that they are defensible in a Court of Law.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

CRIME AND DISORDER

The adoption of a revised Enforcement Policy will enable Officers to demonstrate a robust, consistent, transparent and proportionate approach to Licensing enforcement issues.

EQUALITY AND DIVERSITY

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to:

- (i) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010,
- (ii) advance equality of opportunity between people from different groups, and
- (iii) foster good relations between people from different groups

The decisions recommended through this paper fall in line with the legislation and do not pose a risk to issues surrounding equality.

The Council has had due regard with reference to the Human Rights Act 1998 in ensuring no right is compromised by the way in which the Council make enforcement decisions and that enforcement is considered with proportionately, balancing the public need with the need of the individual or organisation concerned. An Equality Impact Assessment has been completed by the Licensing Manager.

AREA/WARDS AFFECTED

All

CONSULTATION

It is important that the Licensing Authority engages with its stakeholders before a revised Enforcement Policy is adopted in order that all parties can have an opportunity to comment on the proposals.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Tendring District Council as the Licensing Authority has responsibility for licensing and registering a range of functions in the interests of public safety and protection. As such, we have a moral and legal duty to uphold the requirements of various legislation in which we are governed.

It is best practice to be transparent and concise in how we as the Licensing Authority achieve compliance and enforcement. It is important to revise our policy on our approach to compliance and enforcement matters to reflect change over time, changes in resources and to reflect changes in legislation in order to maintain public confidence, continue to

achieve public safety and prevent offences being committed under the various Acts.

An Enforcement Policy enables clarity on the position of licence holders, what is expected of them, steps the Licensing Authority would expect them to take to rectify an issue and steps we make take to resolve an issue in relation to non-compliance and offences under various Acts.

The Policy will also act as guidance to members of the Miscellaneous Licensing Sub-Committee when making decisions on the status of a licence. The guidance will outline actions that are reasonable and proportionate to ensure decisions are fair, in the public interest and proportionate and that any decision taken will be defensible.

Compliance and enforcement is important to maintain integrity and confidence in the various licensing regimes, and to prevent anyone obtaining an unfair advantage through unlicensed activities and to ensure the security and safety of the public.

Some functions in which we have a duty to ensure requirements, regulations and various licensing objectives are upheld include:

- a) hackney carriage and private hire drivers and vehicles and private hire operators;
- b) alcohol, entertainment and late night refreshment;
- c) charity collections;
- d) sex establishments;
- e) gambling premises, permits and lottery registrations;
- f) scrap metal dealers and collectors.

This Licensing and Enforcement Policy seeks to cover all relevant licensing functions and all related topics.

The revised policy will replace the previous Licensing Enforcement Policy to ensure consistency and fairness in the way in which we regulate licensing functions.

CURRENT POSITION

The Authority's Licensing Enforcement Policy was last revised on 3 September 2009.

Consultation Proposals

When the first Enforcement Policy was put out for consultation, key stakeholders were asked for their views on the document. It is proposed that stakeholders from the Corporate Enforcement Strategy are consulted.

Timetable

In order to ensure that any revisions to the Enforcement Policy are in place, it is suggested that the following timetable be adopted.

10 April 2019	Licensing and Registration Committee authorise consultation process to commence.
TBC	Consultation Period.
TBC	If representations are received the Licensing and Registration Committee meet to consider these and formulate revised policy document for submission to Council.
TBC	If no representations are received, the Licensing Manager in consultation with the Chairman (or failing him the Vice-

Chairman) of the Committee be authorised to forward the proposed Licensing Enforcement Policy to Council for consideration and adoption.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

Appendix A - Draft Licensing Enforcement Policy