

LICENSING AND REGISTRATION COMMITTEE

08 MARCH 2023

REPORT OF THE DEPUTY CHIEF EXECUTIVE

A2. **LICENSING ENFORCEMENT SCHEDULE OF ROUTINE LICENSING INSPECTIONS FOR 2023**

(report prepared by Michael Cook & Keith Simmons)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The purpose of this report is to invite the Committee to consider the arrangements for routine inspections of licences, permits, consents etc within the scope of the Committee's work. The Committee is asked to consider approving an initial Schedule for Inspections to be undertaken in 2023.

EXECUTIVE SUMMARY

Tendring District Council is a Licensing Authority by virtue of separate legislative provisions relevant to the individuals licensing framework. As set out in those separate provisions, the Council will determine its approach to ensuring that those who are licensed comply with the requirements of the licence, permit, notice, consent etc, concerned.

Where the Licensing Authority takes enforcement action to ensure compliance with conditions etc. then it does so in accordance with the relevant legal framework and it will have due regard to the Licensing Service Enforcement policy and the Council's overall Enforcement Policy.

RECOMMENDATION(S)

It is recommended that the Committee:

- (a) considers the need and frequency for routine inspections with a view to achieving compliance with licensing requirements within the remit of this Committee and, if satisfied, endorse the schedule of such inspections as set out at Appendix A to this report; and
- (b) notes that the Licensing Manager will then make arrangements, within the available resource, to implement the endorsed routine inspection arrangements in 2023 and report on progress to this Committee in time for it to inform consideration of a revised schedule for 2024.

REASON(S) FOR THE RECOMMENDATION(S)

The Committee has, within its remit, a range of licences, permits, consents etc and it is appropriate that the Committee indicates to the Council Officers the extent to which time and resource is applied to different licences etc on a routine basis to monitor, encourage and enforce compliance with the legislative requirements and Council policies for those respective licences. The schedule set out at Appendix A represents a draft schedule in relation to 2023.

ALTERNATIVE OPTIONS CONSIDERED

To not adopt a programme of routine inspections would mean such inspections were not necessarily undertaken and inspections were not undertaken in the pro-active way identified in the schedule. This in itself can lead to a pattern of inspections that does not reflect the overall needs of the Council across its licensing functions.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The draft schedule set out at Appendix A is intended to support the following themes from the Council's Corporate Plan 2020-24:

- Delivering High Quality Services: Effective regulation and enforcement
- Community Leadership through partnerships: Law and Order - for a safer community
- Strong Finances and Governance: Effective and positive Governance.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

The express powers of the Council in relation to inspection for licencing permits, consents and licences are set out in the various separate licensing statutes and include the following:

Licence Type	Powers to Inspect
Street Collections	Section 5 of the Police, Factories, & c. (Miscellaneous Provisions) Act 1916 provides for Councils to adopt Regulations concerning Street Collections. Section 6 of the Tendring District Council Regulations requires Street Collectors to produce written authority to a duty officer. The regulation also sets out a range of requirements on collectors and a breach of requirements is an offence under regulation 18.
House to House Collections	There are no express powers in the House to house Collections Act 1939. There are though powers in that Act that are exercisable by a Police Constable.
Private Hire and Hackney Carriage Vehicles	Section 73(1) of Part II to the Local Government (Miscellaneous Provisions) Act 1976 – It is an (6)(3) Vehicles Licences offence to wilfully obstruct a duly authorised Council Officer or Police Officer acting in pursuance of the licensing requirements in the 1976 Act or otherwise assist them or provide information reasonably required.

	Section 50(1) – proprietors of licensed vehicles shall present for inspection their vehicle upon a notice from the Council (up to three times a year). Section 50(4) – the insurance documents for the licensed vehicle shall be produced upon request of a duly appointed Council Officer. Section 68 – Duly authorised Council Officers or Police Officers may inspect a licensed vehicle at all reasonable times and suspend the vehicle licence if the vehicle is not fit for use.
Private Hire Operators	Section 73(1) of Part II to the Local Government (Miscellaneous Provisions) Act 1976 – It is an offence to wilfully obstruct a duly authorised Council Officer or Police Officer acting in pursuance of the licensing requirements in the 1976 Act or otherwise assist them or provide information reasonably required. Section 56(2) – operators shall produce records of bookings on request to a duly authorised Council Officer or Police Officer. Section 56(4) – operators shall produce their licence on request to a duly authorised Council Officer or Police Officer.
Private Hire and Hackney Carriage (Drivers Licence concluding a Dual Licence)	Section 73(1) of Part II to the Local Government (Miscellaneous Provisions) Act 1976 – It is an offence to wilfully obstruct a duly authorised Council Officer or Police Officer acting in pursuance of the licensing requirements in the 1976 Act or otherwise assist them or provide information reasonably required. Section 51(3) – licensed drivers shall produce their licence badge upon request within five days.
Sex shops/Sexual Entertainment Venues	Paragraph 25 of Schedule 3 to Part II of the Local Government (Miscellaneous Provisions) Act 1982 – A duly authorised Council Officer or Police Officer may enter and inspect a licensed premises. It is an offence (without reasonable excuse) to obstruct such an inspection.
Street Trading Consent	There are no express powers in Schedule 4 to Part III of the Local Government (Miscellaneous Provisions) Act 1982
Scrap Metal Site Licence	Section 16(1) of the Scrap Metal Dealers Act 2013 – Police and Council Officer may enter and inspect on notice to the site manager. Section 16(9) - The officers may inspect scrap metal and records of the licensees including of payments. Section 16(13) – obstruction of an inspecting officer is an offence.
Temporary Event Notice (TENS) under Licensing Act 2003	An authorised Council Officer may enter the premises to which a temporary event notice relates. Where an authorised Council Officer has reason to believe that premises are being/to be used for a licensable activity, he may enter the premises to check authorisation.
Personal Licences under Licensing Act 2003	An authorised Council Officer may require the holder of the personal licence to produce that licence for examination.
Premises Licences under Licensing Act 2003	An authorised Council Officer has the power to require production of a Premises Licence from the Licensee (or nominee). Where an authorised Council Officer has reason to believe that premises are being/to be used for a licensable activity, he may enter the premises to check authorisation.

Club Premises Certificates under Licensing Act 2003	An authorised Council Officer has the power to require production of a Club Premises Certificate from the nominee of the Club. Where an authorised Council Officer has reason to believe that premises are being/to be used for a licensable activity, he may enter the premises to check authorisation.
Club Permits under Gambling Act 2005	An authorised officer may undertake activities for the purpose of assessing compliance with the Act. They may enter premises: (a) to discover whether facilities for gambling other than private and non-commercial gaming or betting are being provided, are about to be provided or have been provided on the premises, (b) to determine whether an operating licence or premises licence is held in respect of the provision of facilities for gambling on the premises, and (c) to determine whether facilities are being, will be or have been provided in accordance with the terms and conditions of an operating licence or premises licence.
Gaming Machine Permits under Gambling Act 2005	See above
Premises Licences under Gambling Act 2005	See above
Gaming Notifications under Gambling Act 2005	See above
Boats and Boatman	There are no express powers in Section 94 of the Public Health Acts, Amendment Act 1907.

In exercising the express powers of the Council as Licensing Authority under the Licensing Act 2003 it must do so with a view to promoting the licensing objectives defined in that Act, as follows:

- The prevention of crime and disorder;
- Public Safety;
- The prevention of public nuisance;
- The protection of children from harm.

In respect of the express powers under the Gambling Act 2005, the Licensing Authority must carry out those functions with a view to aiming to permit the use of premises for gambling in so far as the authority think it is, inter alia, reasonably consistent with the licensing objectives defined in that Act, as follows:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

FINANCE AND OTHER RESOURCE IMPLICATIONS

The cost of the activity in support of carrying out the Routine Schedule will be met from the current service budget.

Consideration has been given to the finance and resource implications of the proposed decision set out in the recommendation section of the report and any significant issues are set

out below.

It is considered that the routine inspection arrangements set out in Appendix A to this report can be accommodated within the overall resource for achieving compliance with the relevant licensing requirements, within the legal framework referred to, and providing for inspections etc to be arranged in response to intelligence received or complaints made.

USE OF RESOURCES AND VALUE FOR MONEY

The intention in setting a schedule of routine inspections is to ensure resources are dedicated in a programmed way to inspections of those who hold licences, consents, permits etc from the Council (as Licensing Authority). As such it seeks to support the policy objectives of the Council exercising licensing functions.

In addition to identifying individual enforcement needs for a specific licensee, permit or consent holder etc, it will act to support future guidance and enforcement for a wider group of licensees and policy development by the Council. As such it is intended to support well informed decision making and improve efficiency going forward. These routine inspections are intended to be in addition to reactive enforcement based on information received and activity around enforcement covering those who are currently unlicensed. The allocation of resources across all of these areas of enforcement will need to be applied flexibly based on circumstances

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The various calls on enforcement resources will be monitored to support appropriate decision making in this element of licensing.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	As set out above, the development of a schedule of routine inspections is designed, over time, to support decision making by the Council.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	As delivery of the routine inspections programme takes place it will be monitored and lessons learned will fed back into practices, resources allocated and policy / guidance. This approach is intended to support efficiency of the service.

MILESTONES AND DELIVERY

The report sets out the proposed enforcement activity to be undertaken in 2023 and invites the Committee to consider approving this Schedule for Inspections with a view to reviewing this in early 2024 based on experience of applying the schedule.

ASSOCIATED RISKS AND MITIGATION

The two most significant risks would be that the Council does not inspect licences sufficiently on a routine basis (that the licensing regime does not function effectively to achieve compliance) and, in a potentially competing way, that it applies excessive resource to routine inspections (and this in turn means that it is unable to respond appropriately to intelligence it receives of potentially unauthorised licensable activity or complaints from consumers or others about the actions of licensees in respect of licensable activities).

It is the role of Officers, initially, and the Committee, periodically, to consider issues identified as risks and determine the appropriate responses.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The following Council Units or Officers and/or other organisations have been consulted in preparing this report: Management Team

The comments received have been taken into account in the preparation of the report.

EQUALITIES

In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act);
- advance equality of opportunity between people who share a relevant characteristic and people who do not;
- foster good relations between people who share a protected characteristic and people who do not.

SOCIAL VALUE CONSIDERATIONS

Well regulated activities should, of themselves, contribute to the overall economic, social and environmental well-being of the District. The adoption of the proposed schedule of routine inspections seeks to support well regulated licensable activities.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

There are no environmental implications arising directly from the content of this report.

OTHER RELEVANT 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 Council has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area. The schedule of routine inspections seeks to support this duty.

Health Inequalities

There are no direct implications arising from the proposals set out in this report.

Area or Ward affected	All
-----------------------	-----

PART 3 – SUPPORTING INFORMATION

BACKGROUND
In addition to the activity identified in the schedule at Appendix A the Council's Officers also routinely check publicly available information in local publications and the internet for evidence to inform pro-active compliance activity. Officers also receive information from a variety of other sources that assist intelligence for the Council's licensing function. The action taken will depend upon the nature of the information and the extent to which it identifies non-compliances/offences and offenders and the risk of harm to the public and consumers. Some of this information may be through complaints about the activities of individuals/organisations that are undertaking unauthorised licensable activity or activity that is contrary to the basis on which a licence is held. Such pro-active and responsive compliance activity will constitute the majority of the time resource available within the team concerned.
PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.
Not Applicable
BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL
None

APPENDICES
Appendix A – Proposed Schedule of Routine Licensing Inspections for 2023

REPORT CONTACT OFFICER(S)	
<i>Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.</i>	
Name	Michael Cook Keith Simmons
Job Title	Licensing Manager Head of Democratic Services and Elections
Email/Telephone	licensingsection@tendringdc.gov.uk 01255 686565