

**LICENSING AND REGISTRATION COMMITTEE**

**2 OCTOBER 2024**

**REPORT OF THE ASSISTANT DIRECTOR - GOVERNANCE**

**A1. LICENSING ENFORCEMENT AND INSPECTION POLICY 2024-2028**

**PART 1 – KEY INFORMATION**

**PURPOSE OF THE REPORT**

This report is submitted to the Committee to enable it to consider the revised Licensing Enforcement and Inspection Policy following a 5-week period of consultation on a draft revised policy. This report sets out the proposed policy to be adopted and the outcome of the consultation.

**EXECUTIVE SUMMARY**

It is best practice that the Authority keeps its policy on Enforcement processes under review enabling the Council to consider the most current information and guidance is made available to applicants taking into consideration the legislation and resources available. The renewed policy will then be available to applicants, licensees, those seeking to address issues with licensees, the Authority's partner agencies and the public.

The Licensing and Registration at its meeting on 24 July 2024 agreed to undertake public consultation on the draft policy.

**RECOMMENDATION(S)**

- (1) It is recommended that the Committee receive and considers the outcome of the public consultation on a revised draft Licensing Enforcement and Inspection Policy and then determine whether to recommend the policy attached to this report to Cabinet for adoption; and**
- (2) That, on the basis (1) above is approved, Officers be authorised to make minor amendments to the policy to ensure that it reflects operational positions of the Council and legislative / case law relevant to the policy.**

**REASON(S) FOR THE RECOMMENDATION(S)**

The recommendations seek to provide a process through which the current Licensing Enforcement and Inspection Policy can be updated to take into account of changes since the last policy was adopted and of the views expressed in the consultation on a draft revised policy.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

The draft revised Licensing Enforcement and Inspection Policy set out at Appendix A is intended to support the following themes from the Council’s Corporate Plan 2024-28:

- Pride in our area and services to residents
- Working with Partners to improve quality of life
- Promoting our Heritage offer, attracting visitors and encouraging them to stay longer
- Financial sustainability and openness

### LEGAL REQUIREMENTS (including legislation & constitutional powers)

Decisions in relation to a licence holder following matters coming to light will be determined in relation to the specific licensing legislation provisions. They are likely to also 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. Those considerations will, to the extent that they apply, also be given to those raising matters with the Authority in connection with a licensee. A reasonable and proportionate policy will ensure that the Authority considers 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.

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 – Duty

	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.
Pavement Licence	Section 13 of Levelling Up and Regeneration Act 2023 – Enforcement powers for licensed and unlicensed pavement licences.

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**

In most cases licensing legislation seeks to protect the public and protect them as consumers. As such this is the general approach the Council will take in relation to Enforcement and Inspections.

Whilst statutory licensing powers do not always permit charging for functions relating to some enforcement, the revised draft Policy would not adversely affect the budgets. The approach to enforcement action may include a staged approach to dealing with matters in order to achieve

compliance.

The implementation of a consistent and staged approach to compliance and enforcement matters will assist 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. In adopting a compliance and enforcement policy, the courts will understand the rationale and reason behind Officers' actions where public / customer safety is at serious risk the Council will act swiftly and robustly.

#### **USE OF RESOURCES AND VALUE FOR MONEY**

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The revision of the policy does not, of itself, directly impact on 'financial' sustainability. Ensuring that, when permitted, enforcement costs are part of the costs recovered through fees in licensing is an important factor likewise enforcement means that compliance by licensees is seen as the appropriate given the licence fees they paid.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The policy directly seeks to support consistently in good decision making.
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.	The implementation of the policy will be reviewed to ensure it can be delivered in a way that supports economic, efficient and effective delivery of services.

#### **MILESTONES AND DELIVERY**

The review of the Licensing Enforcement and Inspection Policy this financial year is itself a key milestone in ensuring Licensing Policies remain up to date. Subject to the decision of the Committee, Cabinet will then consider adoption of the proposed policy.

#### **ASSOCIATED RISKS AND MITIGATION**

The principal risks this policy seeks to address are those around supporting good decision making.

#### **OUTCOME OF CONSULTATION AND ENGAGEMENT**

The draft revised Licensing Enforcement and Inspection Policy submitted to the Committee at its meeting of 24 July 2024 was subject to public consultation and scrutiny for a period of 5 weeks from 30 July 2024 to 3 September 2024.

A page was created for the consultation on the Council's website and a public notice was displayed outside of the front of the Town Hall and the Council's Offices at Pier Avenue, Clacton on Sea.

The below were written to inviting them to comment on the draft policy:

- All Tendring District Councillors
- All Parish Councils
- Responsible Authorities as defined in the Licensing Act 2003 (including Essex Police)
- Institute of Licensing

- A number of licensing solicitors
- A range of licence holders of local premises licence (including pubs, off-licences, night time economy, street traders, gambling premises and taxis)

In addition to the consultation letters the licensing team also visited a number of licence holders within the District handing out consultation postcards to encourage the trader to voice their opinions.

Two members of the public sent in responses to the consultation. Their comments are as below:

- “The policy itself is fine - but without effective enforcement it is just empty words. In my experience, TDC's enforcement, whether in relation to illegal traders or bylaws is woeful. Unless your enforcement capability is seriously improved, no amount of policy wording will make any difference”.
- “We must acknowledge the income licenced premises bring to the locality however they must adhere to licensing rules to protect the community and the most vulnerable persons in the locality”.

The Council has had due regard with reference to the Human Rights Act 1998 in ensuring no right is unreasonably 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.

## **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**

There are no direct social value considerations in respect of this policy.

## **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**

<b>the following and any significant issues are set out below.</b>	
<b>Crime and Disorder</b>	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.
<b>Health Inequalities</b>	There are no direct implications arising from the proposals set out in this report.
<b>Area or Ward affected</b>	All

### **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, it has a legal duty to uphold the requirements of various sets of legislation in which we are governed.

It is best practice to be transparent and consistent in how the Licensing Authority achieves compliance and enforcement. It is important the Authority revises its policy on its 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 Enforcement and Inspection Policy seeks to cover all relevant licensing functions and all related topics.

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

The Licensing and Registration Committee at its meeting on 24 July 2024 agreed to undertake public consultation on the draft revised policy.

#### **PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.**

The Authority's Licensing Enforcement and Inspection Policy was last revised by the Licensing and Registration Committee of 6 August 2019 (minute 41 refers)

Licensing and Registration Committee of 24 July 2024 (minute 8 refers)

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

None

#### **APPENDICES**

Appendix A – Proposed Licensing Enforcement and Inspection Policy

#### **REPORT CONTACT OFFICER(S)**

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