

# CABINET

21 NOVEMBER 2024

## REFERENCE FROM THE LICENSING AND REGISTRATION COMMITTEE

### A.4 ADOPTION OF A LICENSING ENFORCEMENT AND INSPECTION POLICY 2024-2028

(Report prepared by Ian Ford, Committee Services Manager)

#### PURPOSE OF THE REPORT

To enable the Cabinet to consider the recommendation made to it by the Licensing and Registration Committee in relation to the adoption of a Licensing Enforcement and Inspection Policy 2024 – 2028 (the Policy recommended for adoption is set out as an Appendix to this report).

#### EXECUTIVE SUMMARY

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 the Council is governed.

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

	<p>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.</p> <p>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.</p>
Private Hire Operators	<p>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.</p>
Private Hire and Hackney Carriage (Drivers Licence concluding a Dual Licence)	<p>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.</p>
Sex shops/Sexual Entertainment Venues	<p>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.</p>
Street Trading Consent	<p>There are no express powers in Schedule 4 to Part III of the Local Government (Miscellaneous Provisions) Act 1982</p>
Scrap Metal Site Licence	<p>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.</p>
Temporary Event Notice	<p>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</p>

(TENS) under Licensing Act 2003	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.

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 the Licensing Authority has 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.

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.*

A draft Policy Statement had been considered by the Licensing and Registration Committee at its meeting held on 24 July 2024. The Committee at that time had authorised consultation on the draft for a period of five 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 Tending District Councillors
- All Parish Councils
- Responsible Authorities under 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 bring the consultation to the attention of the trader to voice their opinions.

Two members of the public had sent in responses to that consultation. Their comments were 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 licencing rules to protect the community and the most vulnerable persons in the locality”.*

The draft Policy was seeking to set out how this Council (as the licensing authority) would implement 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.

This Council’s Licensing and Registration Committee (“the Committee”), at its meeting held on 2 October 2024 (Minute 23 refers), considered the matter again (including the above mentioned responses received during the consultation). The Head of Democratic Services & Elections had informed the Committee that the first comment referred to the Council’s resource allocation which was not within the Policy but would be kept under review. In relation to the second comment this referred to the need for balance and the Head of Democratic Services & Elections confirmed that the Policy was intended to apply a balancing act between proportional enforcement action and the public good.

Through the report, the Committee was invited to determine its recommendation to Cabinet. The Committee’s decision was as follows:-

**“RESOLVED** that –

- (a) the revised draft Licensing Enforcement and Inspection Policy be recommended to Cabinet for its formal adoption; and*
- (b) once adopted, the Assistant Director (Governance) (or other authorised Officer) be authorised to make minor amendments to that Policy in order to ensure that it reflected the operational positions of the Council and legislative / case law relevant to the Policy.”*

The Policy Statement referred to in the above decision of the Licensing and Registration Committee is set out as an Appendix to this report.

#### Housing and Planning Portfolio Holder's Comments

*"I welcome the submission of this revised Policy. It supports the commitment we gave in the Corporate Plan 2024-28 to support pride in our area and services to residents. Regulatory systems only work properly when enforcement powers are used proportionately and responsibly to protect the public and consumers. This Policy sets out the approach to be taken in Licensing to achieve this. It builds on the programme of routine inspections agreed by the Licensing and Registration Committee through which we take a pro-active approach to checking compliance. I formally invite Cabinet to approve this Policy."*

#### **RECOMMENDATION**

**That, subject to Cabinet's consideration of the recommendation of the Licensing and Registration Committee arising from its meeting held on 2 October 2024, Cabinet resolves that the Licensing Enforcement and Inspection Policy 2024 - 2028, as set out in the Appendix hereto, be adopted.**

#### **CURRENT POSITION**

Cabinet is now requested to consider the recommendation submitted to it by the Licensing and Registration Committee.

The Assistant Director (Governance)'s Report and accompanying Appendix which was considered by the Licensing and Registration Committee at its meeting held on 2 October 2024 is available using this link:

[Agenda for Licensing and Registration Committee on Wednesday, 2nd October, 2024, 6.30 pm \(tendringdc.gov.uk\)](https://tendringdc.gov.uk)

Under the Leader of the Council's approved Scheme of Delegation, as set out in Schedule 3 (Responsibility for Executive Functions) of Part 3 of the Council's Constitution, the Portfolio Holder for Housing and Planning is the designated Executive Member for overseeing licensing policy matters.

#### **BACKGROUND PAPERS**

None. However, the published Minutes of the meeting of the Licensing and Registration Committee held on 2 October 2024 have been referred to in the preparation of this report.

#### **APPENDICES**

A.4 Appendix – Licensing Enforcement and Inspection Policy 2024 - 2028 (as recommended for approval by the Licensing and Registration Committee)