



Basingstoke  
and Deane

## **BASINGSTOKE AND DEANE BOROUGH COUNCIL LICENSING SERVICE ENFORCEMENT POLICY AND PROCEDURES.**

**This Policy forms an appendix to the Basingstoke and Deane  
Borough Council General Enforcement Policy.**

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## 1 INTRODUCTION, PURPOSE AND SCOPE

- 1.1 For the purpose of this Licensing Enforcement Policy and procedure document and the actions that may be taken; enforcement is defined as

***“the act of compelling observance of or compliance with a law, rule, or obligation”.***

and that any action taken to achieve this or seek redress for a lack of compliance will be referred to as enforcement action.

- 1.1.1 It is the role of the Licensing Authority through the Licensing Team to protect the safety and welfare of people including, members of the public, employees and animals who may be exposed to risks from the provision of licensable activities. It is also to protect the interests of those that could be adversely affected by such licensable activities when carried out unlawfully by unlicensed persons or organisations.
- 1.1.2 Almost all licences and permits are issued subject to standard and specific licence conditions attached. All of the conditions are attached for a purpose, usually to achieve those objectives set out in para 1.1.1 above or to ensure at least minimum standards are maintained or to protect the animals to which a licence relates.
- 1.1.3 All officers who may take enforcement decisions and instigate prosecutions or other formal actions are required to follow the principles which are embodied in this document and in accordance with any relevant statutory codes of practice.
- 1.1.4 The appropriate use of enforcement powers is important in order to secure compliance with the law and to ensure that those who have duties under it through the authorisation of a licence or permit may be held to account for any failures, particularly in relation to public safety, the statutory licensing objectives and animal welfare.
- 1.1.5 Whilst undertaking compliance and enforcement actions, the shared licensing team will have regard to the Regulators’ Compliance Code issued by the Better Regulation Delivery Office of the Department for Business and Skills (April 2014), to the Code for Crown Prosecutors issued by the CPS (Crown Prosecution Service) (January 2013) and to any Statutory Guidance and Local Statements of Licensing Policy issued under those Acts listed at Table 1.

## **1.2 PURPOSE**

- 1.2.1 Basingstoke and Deane Borough Council (the Licensing Authority) has a responsibility to protect the people they serve using the tools provided within the legislation under which licences and permits are granted. For the purposes of this document the word licence also relates to permits and certificates.
- 1.2.2 The purpose of this Licensing Enforcement Policy is to set out the general principles and approach that the shared licensing team will follow when seeking compliance or taking enforcement action in respect of licences that have been issued and where licensable activities are taking place without the authorisation of a required licence.
- 1.2.3 The Licensing team and the council recognise that most businesses and persons carrying on licensable activities wish to comply with the law. Officers will provide advice and guidance wherever possible to assist business to meet their legal obligations.
- 1.2.4 Licence holders will understand what to expect from enforcement action and know that action is proportionate and undertaken having regard to this policy.
- 1.2.5 This document also sets out the general procedures that officers will follow for each licensing function when seeking compliance at inspections of licensed businesses, when taking any action required to assist the business in securing compliance and when addressing unlicensed activities.

### 1.3 SCOPE

1 3.1 The Licensing Team at Basingstoke and Deane Borough Council is responsible for the administration and enforcement of a range of licences, certificates and permits. The scope of this enforcement policy relates only to the licences and permits listed at Table 1.

**Table 1**

<b>Legislation</b>	<b>Licence/permit type</b>
Licensing Act 2003	Premises Licences, Club Premises certificates including variations, transfers and reviews. Temporary Event Notices, Personal Licences
Gambling Act 2005	Premises licences including transfers and variations, Temporary and Occasional Use Notices, Gaming machine and Club Gaming permits, Licensed premises gaming notifications. Lotteries
Local Government (Miscellaneous Provisions) Act 1976	Private hire operator, vehicle and driver licences, Hackney carriage vehicle and driver licences.
Highways Act 1980	Licences to place tables and chairs on the highway
Local Government (Miscellaneous Provisions ) Act 1982	Street Trading Consents, Licensing of Sex Establishments
Scrap Metal Dealers Act 2013	Licensing of dealers and collectors of scrap metal
Animal Boarding Establishments Act 1963	Licences to board dogs and cats
Breeding and Sale of Dogs (Welfare Act 1999	Licensing of dog breeders
Dangerous Wild Animals Act 1976	Licensing of keepers of dangerous wild animals.
Pet Animals Act 1951	Licensing of Pet Shops selling animals
Riding Establishments Act 1964 and 1970	Licence to keep a riding establishment
Zoo Licensing Act 1981	Licensing of Zoo's
Animal Welfare Act 2006	Power to prosecute for offences under this Act
Local Government (Miscellaneous Provisions) Act 1982	Street Trading Consents
Local Government (Miscellaneous Provisions) Act 1982	Licensing of Sex Establishments and Sexual Entertainment venues.
Police, Factories etc., Miscellaneous Provisions Act 1916	Permits for charitable collections in the street.
House to House Collections Act 1939	Licences for charitable collections from houses and other premises

1.3.2 This policy relates to routine compliance visits, reactive compliance checks and complaint investigation visits.

1.3.3 Working with partners – Wherever possible, the licensing team will work in partnership with the Responsible Authorities and other relevant partners to achieve common goals on matters of mutual concern in order to protect public safety. The Responsible Authorities who may be consulted in relation to applications and complaints made to the councils and where enforcement issues arise are:

- Hampshire Police (Licensing and Roads Policing Unit)
- Environmental Health (Environmental Protection, Food and Health and Safety)
- The Planning Authority
- Hampshire Fire and Rescue Service
- Social and Health Care
- Gambling Commission
- Trading Standards

This is to ensure a consistent and robust approach and to avoid duplication of enforcement and unnecessary burdens on businesses.

1.3.4 Other relevant partners may include but is not restricted to:

- An authorised veterinary officer and/or Council dog warden/RSPCA for purposes of Animal Welfare Licencing
- Officers from Department for Environment, Food and Rural Affairs(DEFRA ) in respect of Zoo Licensing
- Any other relevant party as required

1.3.5 Policy Review – This policy will be reviewed at least every 3 years, or more frequently should the need arise to ensure it remains current and relevant.

## **2 GENERAL ENFORCEMENT PRINCIPLES**

- 2.1 The following general enforcement principles apply across all of the licensing functions administered by the Licensing Service. Due to the broad range of enforcement options available in respect of the individual licensing functions, section 3 sets out specific enforcement options and procedures unique to each function.
- 2.1.1 It is recognised that each case is individual and will be considered on its own facts and merits. However, the general principles will apply in all cases.
- 2.1.2 All officers will be authorised to exercise statutory functions on behalf of the Licensing Authority. Officers will carry and produce upon request, a card to confirm their identity and their authority to carry out inspections, investigations and to enter premises.
- 2.1.3 In order to achieve compliance, officers will take care to assist businesses and others to meet their legal obligations without unnecessary expense, whilst taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly putting public and others safety at risk.
- 2.1.4 In all cases council resources will be targeted to where they will be most effective by assessing risks and potential impacts of noncompliance on public safety.
- 2.1.5 In respect of all Licensing functions the general approach to enforcement in respect of non-compliances and justified complaints will be as follows:
- Verbal or written warning
  - Suspension, revocation of or refusal to renew a licence
  - Imposition of licence conditions
  - Formal caution
  - Prosecution
  - Review of a licence (Licensing Act or Gambling Act licences)
  - Injunction
  - Closure Notice
  - Combination of the above.

However, in some cases the enforcement options detailed in the relevant legislation for a specific licensing function will take preference to the above action.

2.1.6 Where enforcement responsibility is shared with other agencies for example the Police or Environmental Health, those parties will consult and work together to achieve the appropriate outcome.

2.1.7 When determining the appropriate course of action the licensing officer will take into consideration the following matters:

- the risk or harm to the public and others;
- the seriousness of the noncompliance;
- the explanation and history of noncompliance by the offender;
- the confidence in the ability of the licence holder to comply;
- the quality of evidence.
- The likely effectiveness of the enforcement options

2.1.8 The Crown Prosecutor's Code of evidential and public interest tests must be met in all cases. In some cases prosecution will be justified to prevent the undermining of the licensing services enforcement responsibilities. These may include but are not limited to the following matters:

- Declining a caution
- Continued negligent or intended non compliance
- Failure to pay a fixed penalty
- Non co-operation, acts of obstruction or threats of physical harm or abuse

2.1.9 Officers will use all best means to gather reliable and accurate evidence in the process of routine compliance checks, reactive checks and investigations into complaints and allegations having regard to this policy, any local function specific statements of policy and the following principles.

- Openness

The licensing team will provide information and advice if requested in plain language on the rules that the councils will apply and the options available. The councils' website information will kept up to date.

- Helpfulness

The licensing team will actively work with licence holders to advise and assist with compliance through pre application advice, risk based compliance visits and the production of newsletters and other written updates where possible.

- Proportionality

The licensing team agrees that where enforcement action is necessary, such action will be proportionate to the risks posed by the noncompliance. Therefore the licensing team will take into account the circumstances of the case including the extent of the impact of the noncompliance and the attitude and willingness of the licence holder. The same principle applies to the attaching of conditions to licences.

- Consistency

The licensing team will carry out its duties in a fair, equitable and consistent manner. In order to achieve this principle, consultation will take place, as appropriate, within the team and with other licensing enforcing authorities on similar issues.

- Complaints and Appeals

Any right of appeal will be included with any decision notice or letter. This will include the time period to make such an appeal and the necessary tribunal to be contacted. In addition to this if the need arises, people will be encouraged to use the council's corporate complaints system should they have reason to complain about actions undertaken by the licensing team.

## **2.2 COMPLAINTS AND ALLEGATIONS (EXCLUDING TAXI AND PRIVATE HIRE DRIVERS)**

2.2.1 Where complaints or allegations are received in respect of licensed premises or licence holders, the licensing team will obtain all relevant information as possible from the person making the complaint or allegation.

2.2.2 Anonymous complaints will not usually be accepted. However, officers will consider the evidential quality of all complaints or allegations made and may determine that an investigation is appropriate to promote the licensing objectives.

2.2.3 If the complaint or allegation appears to be justified, the premises/person subject to the complaint or allegation will be visited by a licensing officer as part of the investigation process. The process will be followed as for routine and compliance visits pertaining to each licensing function detailed at Table 1 below.

2.2.4 Where a complaint is of a serious nature or relates to activities at a specific time of the day or night, a visit will be made at an appropriate time to establish the facts of the case.



- 2.2.5 Appropriate measures are in place to ensure that complaints of a vexatious, frivolous or unfounded repetitive nature are managed effectively.
- 2.2.6 All parties involved in a complaint or allegation will be given adequate opportunity to provide evidence to support the investigation process.
- 2.2.7 Where matters arising from an investigation relate to other authorities responsibilities for example Environmental Health for noise nuisance or Police for crime and disorder, those authorities will be notified and may assist with the investigation process in partnership with the licensing team.
- 2.2.8 The outcome of any investigation into a complaint or allegation will be provided to all parties (having regard to Data Protection requirements).
- 2.2.9 All actions taken will be recorded on the licensing case management systems.
- 2.2.10 This document does not affect the discretion of the Borough Solicitor to take action in any case where it is deemed in the public interest to take formal proceedings in a Court of law. In making decisions about whether to take enforcement action and to what extent, the Licensing Authority is not acting on behalf of an individual complainant, but is in fact exercising a wider responsibility to further its primary aim of securing a safe environment for the consumer and others affected.

## **2.3 USE OF PROSECUTIONS**

2.3.1 The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice (where allowed for in the legislation) requiring the operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.

### **2.3.2 Sufficiency of Evidence**

A prosecution will not be commenced or continued by the Council, or one of its officers, unless the service department and legal advisers are satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may seem. Where there is sufficient evidence, a prosecution will not be commenced or continued by

the Council unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

### 2.2.3 Public Interest Factors

The Council and its officers will consider relevant factors in deciding whether or not to prosecute. These include, for example: -

- the impact on public health and safety;
- the environmental effect of the noncompliance;
- the foreseeability of the noncompliance or circumstances leading to it;
- the intent of the offender, individually and/or corporately;
- the history of noncompliance;
- the attitude of the offender;
- the deterrent effect of a prosecution, on the offender and others;
- the personal circumstances of the offender;
- the alternative of a fixed penalty charge, where available.

The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

### **3 SPECIFIC ENFORCEMENT OPTIONS AND PROCEDURES BY LICENSING FUNCTION**

#### **3.1 ALCOHOL AND ENTERTAINMENT LICENSING**

- 3.1.1 Premises - Officers carrying out any enforcement activity under this Act will have due regard to the appropriate version of the statutory guidance issued under the Licensing Act 2003 and the council's own statement of Licensing Policy.

The fundamental aim of the Licensing Act 2003 is to promote the following four Licensing Objectives:

- Public Safety
- Prevention of Crime and Disorder
- Prevention of Public Nuisance
- Protection of Children from Harm

All compliance and enforcement action will be to secure and promote those binding objectives.

- 3.1.2 Resources will be targeted to where they will be most effective. Premises and clubs licenced under the Licensing Act 2003 will be visited according to an allocated risk rating. The risk rating is the system in use at the time of the proposed inspection. The higher the risk score, the more frequent the visit. Risk rating will be based on the nature of the premises, the range and hours of licensable activities authorised, the location of the premises and the confidence in the management of the business. All licensed clubs visits will be pre-booked to reflect the different powers of entry under the Act.
- 3.1.3 Where breaches of the licence authorisations and conditions are identified which are considered to be minor or not affecting the promotion of the licensing objectives, the licence holder will be given appropriate guidance and clear advice to secure compliance. This will be provided either by a checklist copy or a formal letter depending upon the level of noncompliance.
- 3.1.4 The findings and outcome of visits to premises will be considered on the individual merits of each case. In all cases the licence holder and/or his agent will be informed either verbally (for minor breaches) or in writing.
- 3.1.5 Where offences are identified which impact negatively on the promotion of the licensing objectives the officer will consider formal action by applying for a review of the licence or club premises certificate having regard to the principles at Section 2 of this policy. The licence holder will be informed.

3.1.6 REVIEWS – Where a decision is made that a review is necessary under section 51 of the Act (section 85 for clubs), the officer will act in his/her capacity as a responsible authority when submitting a review application. Reviews however, are seen as a last resort when all other interventions have failed and the licence holder fails to promote the licensing objectives.

3.1.7 In addition, where there is clear evidence that a licensed club is no longer a qualifying club under section 62 of the Act, the officer will consider the withdrawal of the club premises certificate under section 90 of the Act. This option will be discussed with the Club Chairman or secretary prior to the withdrawal of the certificate. The statutory procedure will be followed.

### 3.2 Unauthorised activities

3.2.1 Where licensable activities are identified as being provided without the authorisation of a licence or club premises certificate the licensing team will investigate and gather all necessary evidence using the powers available to them under the Act.

3.2.2 Generally, for first time offenders, advice will be given and the person carrying out the unlicensed activities will be verbally advised to cease and this will be followed up in writing with a warning. Reasons will be given for that action will include details of the legislation being breached. (LA2003 section 136).

3.2.3 Depending on the severity of the breach having regard to the risk to public safety, a decision will be made whether to persuade the person carrying out the activities to apply for a licence or whether enforcement action by way of a prosecution should be instigated.

3.2.4 Where activities continue and a licence or club premise certificate has not been granted, formal enforcement by way of a instigating a prosecution will commence if the unlicensed activities continue to be provided.

### 3.3 Temporary Event Notices (TEN's)

3.3.1 Temporary licensable events authorised by a TEN will be monitored according to risk. Where a premises licence is in place at the premises to which the TEN applies (to extend hours or activities) a decision to monitor the event will be based on the risk category applied to the premises and also the nature and hours of the event authorised by the Notice.

3.3.2 Where noise is a potential concern licensing officers will engage with the council's Environmental Health Team to determine what action will be taken to monitor compliance with the TEN.

3.3.3 Where TENS are used to authorise small areas for licensable activities (such as beer tents or late night refreshment) as part of a larger event, the provision of the sale of alcohol under the TEN will be considered as part of any Safety Advisory Group (SAG) that may be convened in advance of an event to assess all relevant matters. All large events where licensable activities are provided will be monitored by one or more officers of the licensing team and/or Environmental Protection Team.

3.3.4 Where noncompliance is identified at events authorised by TEN's, officers will consider the risk created by the noncompliance, the extent of the non-compliance such as excessive hours and the impact such as noise nuisance or crime and disorder when determining what enforcement action should be undertaken. The licensing officer will liaise with the Police and the EHO where necessary. The user of the TEN will be advised what noncompliance was identified. They will be advised in writing as to what action will be taken and why, ranging from a warning through to prosecutions or service of notices under the Environmental Protection Act 1990 by the EHO.

#### 3.4 Personal Licences

3.4.1 Where the Licensing Authority becomes aware that a personal licence holder is charged with a relevant offence as defined under the Licensing Act 2003 and fails to declare that they are a personal licence holder to the court, the Licensing Authority will send a warning letter as to their duty to advise a court that they are a personal licence holder.

3.4.2 Where it becomes apparent that a personal licence holder has failed to notify the Licensing Authority of a conviction for a relevant offence or foreign offence as defined under the Licensing Act 2003, the Licensing Authority will either:

- Send a warning letter to the personal licence holder to advise them of the requirement to notify the licensing authority or
- Prosecute the personal licence holder for failing to notify the Licensing authority as required under section 132 of the Licensing Act 2003

Each case will be considered on its individual merits.

3.4.3 All actions taken will be recorded on the licensing case management system.

## **4 GAMBLING AND GAMING ACTIVITIES - GAMBLING ACT 2005**

4.1. The fundamental aim of the Gambling Act 2005 is to promote the following four Licensing Objectives:

- Ensuring gambling is kept free from crime and disorder
- Ensuring gambling is conducted in a fair and open way
- Protection of children and vulnerable adults.

All compliance and enforcement action will be to secure and promote those binding objectives.

4.1.1 Premises Officers carrying out any enforcement activity under this Act in respect of premises licensed for gambling and gaming will have due regard to the appropriate version of the Statutory Guidance issued under the Gambling Act 2005 by the Gambling Commission and the Licensing Authority's own Statement of Principles under the Gambling Act 2005

4.1.2 Resources will be targeted to where they will be most effective. Premises licenced under the Gambling Act 2005 will be visited according to an allocated risk rating. The risk rating is the system in use at the time of the proposed inspection. The higher the risk score, the more frequent the visit. Risk rating will be based on the nature of the premises, the location of the premises and the confidence in the management of the business.

4.1.3 Any inspection and enforcement action will follow the same principles as in paras 3.1.3 to 3.1.7 above but in respect of the Gambling Act 2005.

4.1.4 Where compliance matters cannot be resolved through the above route the Licensing Authority will consider the use of the Review process under section 207.

### **4.2 Gambling Permits and Lotteries**

4.2.1 Activities authorised by the range of permits issued under the Gambling Act 2005 will be monitored as part of the routine premises inspections having regard to the relevant Codes of Practice issued by the Gambling Commission. Any enforcement action will follow the same principles as for premises licences.

## 5 TAXI AND PRIVATE HIRE LICENCES

- 5.1.1 Drivers, and operators are required to be 'fit and proper' and vehicles are required to be 'safe and suitable' in order to protect public safety.
- 5.1.2 Each case will be considered on its individual merits and officers may choose to depart from this policy in exceptional circumstances.
- 5.1.2 Drivers Licences– All drivers of taxis and private hire vehicles are required to comply with the relevant legislation and licence conditions or byelaws as applicable.
- 5.1.3 Drivers will be monitored by way of routine, reactive and random compliance checks and during targeted events with partners such as the Police, Driver and Vehicle Services Agency (DVSA), Department for work and Pensions (DWP) and the council's anti-fraud team and in response to complaints and allegations.
- 5.1.4 The licensing team will ensure that compliance checks and targeted partner checks take place at different times of the day and night and include drivers involved in a range of work such as school contracts, day to day bookings, executive work and at taxi ranks. This is to ensure that all drivers covering a range of hours and activities are exposed to compliance checks.
- 5.1.5 Noncompliance will be considered on its individual merit and may result in the following actions.
- Verbal advice
  - Immediate Verbal warning (followed up in writing)
  - Advisory letter
  - Request for noncompliance to be rectified immediately
  - Request for noncompliance to be rectified within a deadline
  - Suspension of the driver licence under section 61 of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup>
  - Written warning (initial or final)
  - Referral to the police
  - Prosecution
- 5.1.6 Where it is appropriate to suspend or revoke a driver's licence with immediate effect under section 61 for reasons of public safety, this power will be used and a licence holder will be given notice and the reasons why an immediate suspension/revocation has been imposed.<sup>1</sup> Where there is perceived not to be an imminent risk to public safety, suspensions and

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<sup>1</sup> Invoked in the interest of protecting public safety

revocations will be imposed with the ability to continue using the licence until the end of a 21 day appeal period (if no appeal made) or until the appeal process is complete where appeals are made.

5.1.7 In cases of suspension, revocation or refusal to renew, the licensee will be notified of their appeal rights. All actions taken will be recorded on the licensing case management systems.

5.2 Vehicle Proprietor Licence – Vehicles will be checked as per para 5.1.3 and 5.1.4 above to ensure compliance with the appropriate licence conditions and the law.

5.2.1 Noncompliance will be considered on its individual merit and may result in one or more of the following actions.

- No further action
- Verbal advice
- Immediate Verbal warning (followed up in writing)
- Advisory letter
- Issue of a DVSA suspension notice (by the DVSA officer)
- Request for noncompliance to be rectified immediately
- Request for noncompliance to be rectified within a deadline
- Suspension or revocation of the vehicle licence under section 60 or 68 of the Local Government (Miscellaneous Provisions) Act 1976
- Written warning (initial or final)
- Prosecution for noncompliance with licence conditions

5.2.2 In cases of suspension, revocation or refusal to renew a licence, the licence holder or applicant will be notified of their appeal rights. All actions taken will be recorded on the licensing case management systems.

5.3 Private Hire Operators

5.3.1 All private hire operators will be monitored by way of routine checks following a risk assessment. The checks will include monitoring compliance with the operator licence conditions and other matters in respect of the operation of the business as authorised by the licence.

5.3.2 Noncompliance will be considered on its individual merits and may result in one or more of the following actions:

- No further action
- Verbal advice
- Immediate Verbal warning (followed up in writing)
- Advisory letter
- Request for noncompliance to be rectified immediately



- Request for noncompliance to be rectified within a deadline
- Written warning (initial or final)
- Suspension or revocation or refusal to renew operators licence in accordance with section 62 of the Local Government (Miscellaneous Provisions) Act 1976
- Prosecution.

5.3.3 In cases of suspension, revocation or refusal to renew a licence the licence holder will be notified of their appeal rights.

5.3.4 All actions taken will be recorded on the licensing case management system.

#### 5.4 Complaints and allegations

5.4.1 Where complaints or allegations are made about drivers, vehicles or operators the licensing officer will determine the nature of the allegation and determine whether it is a matter which the Licensing Team are able to investigate.

5.4.2 Matters that are not relevant to the licence will be referred back to the complainant and advice given about whom to contact where possible.

5.4.3 Drivers – Where complaints are made about a driver, he/she will be invited to the council offices and given an opportunity to discuss the allegation/complaint with a licensing officer.

5.4.4 Licensing officers will carry out an investigation to establish all facts. This may include interviewing the complainant and other interested parties and seeking records from a private hire operator and any other actions necessary to support the investigation.

5.4.5 On completion of an investigation the driver will be advised of the outcome in writing. The actions arising following an investigation may include one or more of the following:

- Verbal advice
- Immediate Verbal warning (followed up in writing)
- Advisory letter
- Request for noncompliance to be rectified immediately
- Request for noncompliance to be rectified within a deadline
- Suspension of the driver licence under section 61 of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup>
- Written warning (initial or final)
- Referral to the police

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<sup>2</sup> Invoked in the interest of protecting public safety

- Prosecution
- 5.4.6 Where it is appropriate to suspend or revoke a driver's licence with immediate effect under section 61 for reasons of public safety, this power will be used and a licence holder will be given notice and the reasons why an immediate suspension/revocation has been imposed.<sup>ii</sup> Where there is perceived not to be an imminent risk to public safety, suspensions and revocations will be imposed with the ability to continue using the licence until the end of a 21 day appeal period (if no appeal made) or until the appeal process is complete where appeals are made.
- 5.4.7 In cases of suspension, revocation or refusal to renew a licence the licence holder will be notified of their appeal rights.
- 5.4.8 All actions taken will be recorded on the licensing case management system.
- 5.5 Vehicles – Where complaints or allegations are made about licensed vehicles, the proprietor of the vehicle licence will be contacted and either asked to present the vehicle at the council offices for an inspection or agree a location for the vehicle to be inspected.
- 5.5.1 Noncompliance will be considered on its individual merit and may result in one or more of the following actions.
- No further action
  - Verbal advice
  - Immediate Verbal warning (followed up in writing)
  - Advisory letter
  - Request for the noncompliance to be rectified immediately
  - Request for non-compliance to be rectified within a deadline
  - Issue of a DVSA suspension notice (by a DVSA officer)
  - Suspension or revocation of the vehicle licence under section 60 or 68 of the Local Government (Miscellaneous Provisions) Act 1976.
  - Written warning (initial or final)
  - Prosecution for non-compliance with conditions
- 5.5.2 In cases of suspension, revocation or refusal to renew a licence, the license holder will be notified of their appeal rights.
- 4.5.3 All actions taken will be recorded on the licensing case management system.
- 5.6 Operators – Where complaints or allegations are made about operators, the operator will be contacted and given an opportunity to discuss the details of the complaint.

5.6.1 Licensing officers will carry out an investigation to establish all facts. This may include interviewing the complainant and other interested parties and obtaining private hire operator booking records and any other actions necessary to support the investigation.

5.6.2 On completion of an investigation the operator will be advised of the outcome in writing. The actions arising following an investigation may include one or more of the following:

- No further action
- Verbal advice
- Immediate verbal warning (followed up in writing)
- Advisory letter
- Request for noncompliance to be rectified immediately
- Request for non compliance to be rectified within a deadline
- Suspension, revocation or refusal to renew of the operator licence under section 62 of the Local Government (Miscellaneous Provisions) Act 1976
- Written warning (initial or final)
- Referral to the Police
- Prosecution

5.6.2 In cases of suspension, revocation or refusal to renew a licence the licence holder will be notified of their appeal rights.

5.6.3 All actions taken will be recorded on the licensing case management system.

#### 5.7 Failure to provide mid licence interim documents

5.7.1 There are a range checks that may become due during the period of a driver, vehicle or operator licence in order to maintain its status in accordance with the council's policy on taxi and private hire licensing.

5.7.2 Those checks that may be come due include:

##### Drivers

- 3 yearly Disclosure and Barring Service check on criminal history
- Group 2 medical examination
- DVLA Driver licence check

##### Vehicles

- Certificate of Compliance
- Vehicle insurance
- Public liability insurance

#### Operators

- Public Liability Insurance
  - 3 yearly Disclosure and Barring Service check on criminal history
- 5.7.3 All licence holders will be sent advance written reminders for the above interim checks. Failure to provide the required documentation within the given timescales will lead to the suspension or revocation of the licence to which the check relates.
- 5.7.4 Licence holders will be provided with the relevant appeal rights.
- 5.7.5 All actions taken will be recorded on the licensing case management systems.

## **6 HIGHWAY LICENCES (TABLES AND CHAIRS)– HIGHWAYS ACT 1980**

- 6.1.1 Where businesses wish to place tables and chairs and other street furniture on the public highway outside their premises or elsewhere on the highway, a licence under section 115E of the Highways Act 1980 is required.
- 6.1.2 Where a licence is in force for tables and chairs outside premises licensed under the Licensing (or other) Act, this area will be inspected at the same time as that compliance visit in order to avoid duplication and excessive burden on businesses.
- 6.1.3 Non compliances with the conditions of the licence will result in one of the following options:
- Written notice to secure compliance
  - Imposition of additional licence conditions at reapplication
  - Removal of the furniture from the highway following a request to the Highways officer ( and recovery of any costs in doing so)
- 6.1.4 Complaints and allegations – The Licensing Team will investigate all complaints and allegations and noncompliance will be actioned as at para 6.1.3.
- 6.2 Unlicensed street furniture on the highway. In cases where street furniture is placed on the highway without a licence the licensing officer will visit the site and advise of the requirement to obtain a licence. They will advise verbally to remove the street furniture pending an application. This will be followed up with a warning letter and an application form.

- 6.2.1 Failure to apply for and obtain a licence where unlicensed furniture is left on the highway following the warning letter will result in a request to highways department to remove the furniture from the public highway.

## **7 SCRAP METAL DEALERS**

- 7.1 Licensed Sites - Routine compliance checks will be carried out at licensed scrap metal dealer sites according to the risk. The factors considered when determining risk are:

- Size of site and nature of the business
- Volumes of scrap metal dealing
- Number of licensed collectors linked to the site
- Confidence in management of the scrap metal business
- History of compliance

- 7.1.1 Licensing officers will have regard to all Government Guidance issued by the Home Office and the Local Government Association (LGA) and in particular to the LGA Scrap Metal Dealers Act Compliance and Enforcement Guide (January 2014) when carrying out site visits.

- 7.2 Unlicensed sites- Where a business is identified as acting as a Scrap Metal Dealer without a licence from the Local Authority, the licensing officer (or the police) will follow the enforcement procedure in accordance with Schedule 2 of the Scrap Metal Dealers Act 2013.

- 7.2.1 Where a closure notice is issued the relevant appeal rights will be given with the notice.

## **8 ANIMAL WELFARE LICENCES**

- 8.1 Establishments requiring to be licensed under the range of Acts detailed at Table 1 will be visited in accordance with the requirements set out in each Act or where that is not stipulated, premises will be visited according to risk.

- 8.1.1 The aim of any compliance check or enforcement actions will be to protect animal welfare and public safety. Officers will have regard to the 5 “Animal Welfare Needs” as outlined in the Animal Welfare Act 2006 which are:

- for a suitable environment (place to live)
- for a suitable diet
- to exhibit normal behaviour patterns
- to be housed with, or apart from, other animals (if applicable)
- to be protected from pain, injury, suffering and disease

8.1.2 In the case of all licensed animal establishments, noncompliance with standard and other licence conditions will result in one or more of the following actions:

- Verbal or written advice
- Advisory letter
- Immediate verbal warning (followed up in writing detailing works required to secure compliance within an agreed and reasonable timescale)
- Written warning (initial or final)
- Imposition of additional appropriate licence conditions (on reapplication) to secure animal welfare and public safety
- Further visit accompanied by Councils authorised veterinary officer
- Prosecution for noncompliance with conditions or causing harm to animals.
- Refusal to renew a licence

8.2 Unlicensed premises or activities. Where allegations are made of unlicensed activities in respect of any of the animal welfare licensing acts and evidence is limited, a courtesy letter will be sent advising of the requirement for licensing.

8.2.1 Where evidence suggests unlicensed activities are more than likely taking place officers will visit to establish the extent of the activities. If a licence is required a letter will be sent outlining the evidence and requiring the activities to stop. The letter will include written advice and guidance in how to apply for a licence.

8.2.2 Where unlicensed activities continue further evidence will be gathered where possible and having obtained sufficient evidence, officers will instigate a prosecution.

8.4 Animal Welfare Act 2006

8.4.1 The Animal Welfare Act (an enabling Act) provides suitably authorised local authority officers to use powers provided within the act in cases of animal suffering.

8.4.2 Licensing Officers competent in the use of the powers are authorised under section 51 of the Act.

8.4.4 Where suffering is identified at any licensed or other premises the authorised officers will inspect, accompanied by an RSPCA officer and/or the council's Dog Warden and a decision made on the most appropriate party(s) to undertake any necessary enforcement actions arising.

8.4.5 Where appropriate the authorised officers may also take action against an offender under the following sections of the Act:<sup>3</sup>

Section 4 – causing unnecessary suffering

Section 5 – Mutilation

Section 6 – Docking of Dogs tails

Section 7 – Administration of poisons

Section 8 – Fighting

Section 11–Transfer of animals by way of prize to persons under 16

Section 18 -Powers in relation to animals in distress

Section 19 –Power of entry for section 18 purposes

Section 23 - Entry and search under warrant in connection with offences

8.4.6 Any action proposed will be undertaken having regard to any current government guidance and codes of practice.

8.4.7 All actions will be recorded on the licensing case management systems.

## 8.5 Zoo Licensing

8.5.1. Officers carrying out inspections at licensed zoos will have regard to the 'Zoo Licensing Act 1981- Guide to the Acts Provisions' issued by the Department for Environment, Food and Rural Affairs (2012)

8.5.2 Officers will carry out periodical and special inspections of licensed zoo's under sections 10 and 11 of the Zoo Licensing Act 1981 at periods specified within the Act. The officers may be accompanied by an appointed veterinary officer and/or officers appointed by the Secretary of State for that purpose.

8.5.3 Where officers believe a current licence needs to be altered (to ensure proper conduct of the zoo during the period of the licence) under section 16 of the Act, the officer will inform the licence holder in writing and allow sufficient time for him to make representations. The officer will have regard to the Secretary of States Modern Zoo Practice when considering imposing relevant conditions.

8.5.4 Where an officer determines that a licence holder is not complying with the condition of his licence the officer may make a direction that the zoo or part of it must close for a specified time.

8.5.5 Unlicensed Zoos – Where a Zoo is being operated without a licence the officer will provide advice and guidance on the licensing process. Where

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<sup>3</sup> Usually but not exclusively enforced by the RSPCA

necessary the officer may, having regard to section 16C of the Act make a closure order in respect of the unlicensed zoo.

- 8.5.6 Where offences are committed under section 19 of the Act the Officer may instigate a prosecution having regard to the history of the premises and the nature and scale of the offence.

## **9 STREET TRADING**

- 9.1 Basingstoke and Deane Borough Council has adopted the provisions of section 2 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and designated certain streets within those Boroughs as Consent streets.

- 9.2 Where a person wishes to sell articles on any of the designated Consent streets, they are required to obtain a Street Trading Consent from the licensing authority.

- 9.3 Street Traders will be inspected to check compliance with the authorisations on their Consents and compliance with the conditions attached. Officer will have regard to the council's Street Trading Policy.

- 9.4 Where noncompliance is identified, one or more of the following actions will be taken:

- Verbal advice
- Advisory letter
- Immediate Verbal warning (followed up in writing)
- Request for noncompliance to be rectified within a deadline
- Serving of Notice of Revocation of Street Trading Consent
- Prosecution for noncompliance with Consent conditions
- Prosecution for continuing to trade following revocation

A notice of revocation of street Trading Consent will also be served where agreed consent fee payment plans are not maintained.

- 9.5 Whilst there are no appeal rights under this legislation, Consent holders will be offered an informal appeal to the Head of Service initially and if unsuccessful, to the Licensing subcommittee. There are no further rights of appeal other than by judicial review. There are no further appeal rights to the courts.



## 9.6 Unlicensed Street Trading

- 9.6.1 Officers will visit sites where unlawful street trading has been identified and will advise the trader of the requirement to obtain a Consent. The trader will be advised to cease trading and submit an application.
- 9.6.2 If unlicensed traders continue to trade a warning letter will be sent and further continued trading will lead to the instigation of a prosecution.

## 10 **SEX ESTABLISHMENTS**

- 10.1 Officers inspecting licensed sex establishments will have regard to the council's policy on the licensing of sex establishments.
- 10.2 Licensed sex establishments will be inspected according to risk. The frequency will be dependent on a number of factors including:
- Nature of the business eg, sexual entertainment, sex shop or sex cinema
  - Hours of operation and location
  - Number of employees engaged in entertainment
  - Range of goods sold
  - Range of films sold or shown
  - History of compliance
  - Confidence in management
- 10.3 Where non-compliance is identified the licence holder will be given appropriate guidance and advice to secure compliance within clear timescales. This will be provided either by a checklist copy or a formal letter depending upon the nature or seriousness of noncompliance.
- 10.4 Where serious noncompliance and/or breach of licence conditions is identified officers will have a range of enforcement options depending on the nature and impact of the noncompliance including:
- imposition of conditions
  - revocation of a licence
  - refusal to renew the licence
  - Prosecution
- 10.5 Where noncompliance is found that impacts on the safety and welfare of employees and the public, in particular children, the most likely course of action will be to instigate a prosecution.
- 10.6 The relevant appeal rights will be provided in respect of any formal action.

## 10.7 Unlicensed sex establishments

- 10.7.1 All unlicensed sex establishments will be visited by officers. Where evidence suggests a licence is required the operator will be advised at the visit and in writing of the licensing requirements and provided with all necessary information on how to apply. They will be advised to cease trading until a licence has been obtained.
- 10.7.2 Where activities continue without a licence being granted officers will gather further evidence and instigate a prosecution.
- 10.7.8 All actions will be recorded on the licensing case management systems.

## 11 **CHARITY STREET COLLECTIONS**

- 11.1 Holders of charity collection permit are required to comply with the regulations made under section 5 of Police, Factories, etc (Miscellaneous Provisions) Act 1916.
- 11.2 Where collectors working under a charity street collection permits are found to be in breach of the regulations, the licensing officer may take one or more of the following actions:
- Verbal or written warning to the permit holder as to the conduct of the collectors
  - Refusal of subsequent applications
  - Prosecution
- 11.3 Where collectors fail to submit financial returns as required by the regulations, subsequent applications for permits are likely to be refused until financial returns are up to date.
- 11.4 Unauthorised charity street collections
- 11.4.1 Where persons are found to be carrying out unauthorised charity street collections, licensing officers will attend the location of the collection and the collectors will be advised to cease collecting immediately. A warning letter with advice on how to apply for a permit will be sent to the promoter or other person responsible for the unlicensed collection.
- 11.4.2 Where further unlicensed collections occur following a warning, evidence will be gathered with a view to instigating a prosecution. Officers will also consider refusing any subsequent applications for street collection permits by those organisations or promoters.

## **12 HOUSE TO HOUSE COLLECTIONS**

12.1 Holders of licences for house to house charity collections are required to abide by the regulations made under the House to House Collections Act 1939.

12.2 Where collectors are found to be in breach of the regulations, officers will investigate and determine the appropriate action which may include:

- Verbal or written warning
- Revocation of licence
- Refusal of subsequent application
- Prosecution

12.3 Where collectors fail to submit financial returns as required by the regulations, subsequent applications for licences are likely to be refused until financial returns are up to date.

### **12.4 Unauthorised House to House Collections**

12.4.1 Where persons are found to be carrying out unauthorised House to House collections (excluding exempt collections), Licensing officers will investigate the collection activities and the collectors will be advised to cease collecting. A warning letter with advice on how to apply for a licence will be sent to the promoter or other person responsible for the unlicensed collection.

12.4.2 Where further unlicensed collections occur following a warning, evidence will be gathered with a view to instigating a prosecution. Officers will also consider refusing any subsequent applications for House to House collection licenced by those organisations or promoters.

12.4.3 Where collectors fail to submit financial returns as required by the regulations, subsequent applications for licences are likely to be refused until financial returns are up to date.

12.4.4 All actions will be recorded on the licensing case management systems.

## List of Basingstoke and Deane Borough Council Local Policy statements

Licensing Act 2003 - Statement of Policy  
Gambling Act 2005 – Statement of Principles.  
Taxi and Private hire Policy – *Under construction*  
Policy on tables and Chairs on the Highway  
Street Trading Policy  
Sex Establishments Policy  
Charity Street Collections Policy

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