



Licensing Enforcement and Inspection Policy

**If you have any comments on this Policy, please email
admin.licensing@eden.gov.uk and these will be taken into account during future
policy reviews.**

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Reviewed September 2010 and amended to include Gambling Act 2005

1. Introduction

- 1.1 A purpose of licensing is the protection of the public. In order to achieve this, legislation requires licences, permits or registrations to be obtained. These are normally subject to certain conditions.
- 1.2 The effectiveness of legislation and licence conditions in protecting the public depends crucially on persons complying with such legislation and conditions.
- 1.3 The purpose of this policy is to set out what licensees and others can expect from principles and policies which deal with any enforcement and inspection undertaken by the Licensing Section.
- 1.4 In order to achieve compliance the Licensing Committee and its Officer will assist licensees to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who break the law or act irresponsibly.
- 1.5 This policy document is provided for the guidance of Members, Officers, consumers and members of the public.
- 1.6 In making decisions about enforcement action the Council is not solely acting on behalf of an individual complainant, but is exercising a wider responsibility to further its primary aim of securing a safe environment for the public consumers and others who may be affected by the actions, inactions or omissions of licensees.

2. Areas of Licensing included in the Policy

- 2.1 The areas of licensing which are covered by this policy are as follows:

Fundraising

House to House Collections

Street Collections

Licensing Act 2003

Licences under Licensing Act 2003 for supply of alcohol, regulated entertainment and late night refreshment.

Vehicles

Taxis and Private Hire Vehicles

Taxis and Private Hire Drivers

Private Hire Operators

Other Licensing

Boats and Boatmen

Street Trading

Gambling Act 2005

Issue premises licences for gambling activities, consider notices for temporary use of premises for gambling, grant permits for gaming and gaming machines in clubs, regulate gaming and gaming machines in alcohol licensed premises, grant permits to family entertainment centres, grant permits for prize gaming, consider occasional use notices for betting tracks and register small society lotteries.

3. Investigations

- 3.1 Inspections and investigations will be carried out in a professional and consistent manner as set out below.

4. Authorisations

- 4.1 Only Officers authorised by the Council through the Department of Corporate and Legal Services will be responsible for undertaking investigations. Officers will only be authorised to deal with such investigations who have the experience and knowledge to undertake such action in accordance with established procedures laid down. They will follow the relevant procedures and guidelines in carrying out their duties. Officers are issued with a personal identity card, which will be carried with them at all times and will be shown upon request.

5. Covert Surveillance

- 5.1 During an investigation into suspected non-compliance with legislation, the Council may need to undertake directed covert surveillance from time to time. This may include using remote sound or video monitoring equipment but is most likely to involve personal observation.
- 5.2 Where it is necessary to use covert surveillance techniques, the requirements of the Regulation of Investigatory Powers Act 2000 will always be complied with. In all cases where covert surveillance is required, such work will only be undertaken with the express permission of an authorised officer who is not directly involved with the investigation.
- 5.3 Requests for the authorisation of surveillance will be made in writing by the investigating Officer. All such requests will be accompanied by a statement which details the reason why covert surveillance is appropriate and proportionate, how it is to be undertaken, who is likely to be involved and any impact that might result from the surveillance.
- 5.4 In deciding whether or not to authorise covert surveillance, the authorised manager will have regard to any policies and issues relevant to the investigation and any alternative methods of conducting the investigation. Surveillance authorisations will only last for as long as necessary.
- 5.5 A register of authorised covert surveillance operations under Regulation of Investigatory Powers Act is held by the Council. Authorisations will not be made public whilst there is an on-going investigation.

6. Targeting

- 6.1 Enforcement activities are targeted towards circumstances which carry high risks or where there is or could be a considerable impact as a result of the non-compliance with the licensing conditions or the general law. Enforcement activities may be targeted towards individuals who are primarily responsible for an activity, who have the greatest responsibility to ensure compliance with the law or who have been the subject of previous enforcement action. From time to time, the Council will engage in enforcement initiatives which are directed towards issues where there is a need to draw attention to the existence of legislation and its enforcement.
- 6.2 The Council aims to undertake a programme of inspection and enforcement on all of its licensing functions.
- 6.3 Each licensing function is assessed against risk and this will be taken into account in establishing the nature and the frequency of any inspection or enforcement activity. The following factors will be taken into account when determining the level of risk associated to the particular licensing function:
- The nature of the licensing function
 - The history of the licensing function
 - The nature and extent of complaints received by the Council
 - Information received from other agencies/departments
 - Safety and public protection issues
- 6.4 Any inspection of a licensing function undertaken by the Council which results in the exposure of issues which reveal non-compliance with a licence or its conditions will be recorded. Appropriate action will be taken in relation to any particular issue and the licensee will be given an appropriate opportunity and time to address the issue. The licensee will be re-inspected in order to ascertain that the issue has been addressed.

7. Levels of Enforcement

- 7.1 Where informal methods have been unsuccessful, or a serious breach of a licensing condition/objective or regulation is likely to occur which may endanger the safety of the public, formal enforcement will be taken to ensure compliance with the licence. Each case will be considered on its merits. An emphasis of the Council will be the prevention of offences and further alleged offences wherever possible.
- 7.2 Licensees, businesses or persons generally are expected to comply with the law. The term 'enforcement' covers a wide variety of activities, including:
- Warnings
 - Formal Cautions
 - Hearings and Reviews
 - Prosecutions

- 7.3 Minor breaches of licensing requirements will normally give rise to a verbal and/or written warning. More serious breaches or a continual pattern of minor breaches may involve formal cautions, hearings or reviews and even prosecutions.
- 7.4 In the case of the Licensing Act 2003 this may involve suspension or revocation of a licence following action by the Police or a Licensing hearing.
- 7.5 There are a number of enforcement options and consideration will be given to when we would take action and why we need to take action and the nature of that action. Account will be taken of breaches of legislation and where a person or company has ignored advice or guidance.

7.6 Warning

7.6.1 If there has been a minor incident where the law has been broken, it may be decided that the most appropriate course of action is to issue the offender with a verbal and/or written warning. Account will be taken of any previous warnings when we are considering taking formal action.

7.6.2 A written warning will:

- clearly state the nature of the problem and may suggest either specific remedies or a standard which is to be achieved;
- state the actions which may be followed if matters do not improve;
- designate a named officer as a point of contact;
- clearly distinguish between legal requirements and desirable standards;
- indicate any follow up action which may be taken, eg a revisit in 14 days;
- offer to work with the person(s) responsible in finding a solution, if appropriate;
- point the way to specialist advice or additional information, if appropriate;
- be firm, businesslike, unambiguous, polite and helpful.

7.7 Formal Cautions

7.7.1 In certain situations, the Council may consider it appropriate to issue a formal caution instead of deciding to prosecute. A formal caution should still be treated as a serious matter and will be recorded.

7.7.2 The issue of a formal caution may influence any future decision to prosecute and may be referred to in any future court proceedings.

7.7.3 Formal cautions may be used to deal with less serious offences quickly. It is unlikely that a formal caution would be given in circumstances where the offender has a history of failing to change their behaviour. When a formal caution is given, the person involved must admit the offence and accept the caution.

7.8 Hearings and Reviews

7.8.1 In some circumstances where licence holders have for example:

- been convicted of a relevant offence;
- refused to comply with a condition of the licence;
- behaved in a way which may render that person as unsuitable to hold a licence;
- behaved in a way which is likely to have put the public at risk; or
- appear to breach the Licensing Objectives of the Licensing Act 2003

the licence holder may be reported to the Licensing Committee to review the licence. The Committee may consider that the immediate revocation, suspension or variation of a licence may be the most appropriate course of action.

7.8.2 Where offenders are reported to a Committee for consideration of formal action the Council will:

- give sufficient notice of the date the matter is to be considered;
- give notice to the licence holder of the allegations against them;
- give notice to the Relevant Authorities and Interested Parties;
- provide the opportunity for the licence holder to be represented;
- provide the licence holder with the opportunity to present his/her case and provide supporting evidence;
- ensure the matter is determined in an impartial manner in accordance with the rules of natural justice;
- provide a written notice of the decision with reasons.

7.9 Prosecution

7.9.1 The Council will not take prosecution action unless and until the evidence as been assessed in line with the Code for Crown Prosecutors and all other relevant guidance. A prosecution will be considered when:

- it will draw attention to the need to follow the law, responsible people would expect prosecution to be appropriate, or where a conviction may deter others from offending;
- the public may have been put in danger or safety may have been compromised;
- the offence is serious;
- there is a history of failure to comply with licensing conditions;
- the evidence is sufficiently strong that the case is likely to result in a conviction;
- a prosecution would be in the public interest.

7.9.2 In general, the more serious the offence, the more likely it is that a prosecution will be considered necessary. The following are examples of factors which may indicate a prosecution is appropriate.

- The overall seriousness of the offence and harm caused.
- The perpetrator has encouraged others to commit offences.
- The offence was pre-meditated.
- The offender showed disregard for the law.
- The offender stood to gain from the offence.
- The victim, if any, was vulnerable, suffered damage or felt threatened by the offence.
- There is significant harm to any person or relevant issue.
- The offence had a discriminatory element, for example, on the basis of race or religion.
- The offender has previous convictions or cautions that relate to similar offences or instances.
- There is likelihood that further offences may be committed.

8. Human Rights Act

8.1 The Provisions of the Human Rights Act

8.1.1 Of particular importance to the Council's enforcement policy, Article 6 (the right to a fair trial) Article 8 (the right to respect for private and family life) and Protocol 1, Article 1 (Protection of property) will be considered and applied in each case. In all cases, the Council will be objective in ensuring that decisions are not influenced in any way by gender, ethnic origin, religious or political beliefs of the alleged offender.

8.1.2 The Council will only act in accordance with the law. The Council will act as is necessary to secure public safety, prevent crime and disorder, to protect health and well being, and to protect the rights of others.

8.2 Other Action

8.2.1 Each case will be decided on its merits and an informed decision made which is proportionate to the alleged offence and consistent with other similar cases. When an officer witnesses a breach in licensing legislation he/she is required to make a decision on what correct action should be taken. This could result in a verbal/written warning, formal caution or prosecution. A prosecution will have to be in the public interest. Enforcement activities will be targeted towards situations which carry higher risks to the public. In all situations, enforcement action will be undertaken with regard to the principles of the Enforcement Concordat.

8.2.2 The Council can sometimes have a shared responsibility for enforcement with another enforcement agency. If this is the case, the other agency will be consulted in order to consider whether the matter should be referred to that authority.

8.2.3 Where the Council take the lead in deciding what enforcement action, if any, is appropriate, it will have regard to this Policy, the Council's Corporate Prosecution Policy (which incorporates the guidance set out in the Code for Crown Prosecutors) and the Enforcement Concordat as adopted by the Council as a whole.

8.2.4 In particular the Council will take into account the following factors:

- a) the risk or harm to the public and others;
- b) whether the matter is in the public interest;
- c) the seriousness of the complaint;
- d) any explanation of the offender;
- e) whether the matter is a recurrence;
- f) whether there has been previous contravention of the legislation and/or licence conditions;
- g) the willingness of the alleged offender to prevent a recurrence of the problem;
- h) the availability of witnesses;
- i) the reliability of witnesses;
- j) the sufficiency of the evidence.

8.2.5 All available evidence will be evaluated before a decision on what course of action to take is chosen. This shall involve the Council's legal advisers.

9. Licensing Information and Guidance

9.1 The Council will maintain a selection of guidance documents relating to each licensing function. This will include advice for both licence holders and also for the general public who may wish to complain about the particular licensing function. This guidance will be available on request from the Licensing Section or by accessing the Council's website.

9.2 Where there is likely to be a change in legislation or policy relating to the licensing function, relevant information will be sent to the licensee and other interested parties.

9.3 Where it is deemed relevant (owing to the nature of the licensing function and volume of licences in existence), information in the form of a newsletter will be sent out periodically to the licensee – currently only taxi operators and premises licence holders fall into this category.

9.4 A joint approach with other agencies will be used when it is deemed necessary because of the nature of the particular issue and to increase the overall impact of the matter, ie joint letter (or campaign) organised by the licensing authority and police relating to underage drinking.

- 9.5 All information held by licensing section and the methods of communicating that information relating to the particular licensing function will be reviewed on an annual basis or when change of legislation or policy dictates.

10. Monitoring and Review

- 10.1 This policy will be monitored on an annual basis by the Department of Corporate and Legal Services.
- 10.2 Every three years, the policy will be fully reviewed to ensure that it is relevant and appropriate to the Council's enforcement activities.

11. Complaints and Comments

- 11.1 If you consider that the enforcement action we take or propose does not follow the principles set out in the enforcement policy, you should raise your concerns with the relevant licensing officer. If the officer is not able to resolve your complaint, you should send your concerns to:

Director of Corporate and Legal Services
Eden District Council
Town Hall
Penrith
CA11 7QF

- 11.2 Information on how to make a complaint can be found on the Council's website at [http: www.eden.gov.uk](http://www.eden.gov.uk).

11.3 Dealing with Enforcement Information

- 11.3.1 If you wish to make any complaint against alleged unlicensed activity or breach of conditions of licence then you can contact the Licensing Section during normal office as indicated below. If you need to make the complaint outside of normal office hours then you can leave a message which will be responded to when the office re-opens. In the case of emergencies, the emergency out of hours telephone number may be used. In any event, complaints made to the Licensing Section regarding other people's activities will be investigated by a Licensing Officer who will also inform you of the outcome of your complaint.

12. Contact Points

The Licensing Section
Eden District Council
Town Hall
Penrith
CA11 7QF

Licensing Enquiries: (01768) 212148/212209/212273

Emergency out of hours: (01768) 867468

Fax (mark for Licensing): (01768) 890470

Email: admin.licensing@eden.gov.uk