

Committee: LICENSING COMMITTEE

Agenda Item

Date: March 15, 2006

5

Title: ENFORCEMENT PROTOCOL

Author: Michael Perry (Executive Manager Corporate Governance) 01799 510416.

Item for decision

Summary

1. During the preparation of the initial draft Licensing Policy it was envisaged that there would be an Enforcement Protocol between the licensing authority and the responsible authorities. Indeed paragraph 1.45 of the Council's Licensing Policy commits the licensing authority to establish an Enforcement Protocol on enforcement issues.
2. Within Essex a working group was formed comprising representatives from Essex licensing authorities, the Police, the Fire and Rescue Service, Trading Standards, Health and Safety/Environmental Protection services and the Child Protection Service. This group was tasked with producing a draft Enforcement Protocol drawing from existing Protocols and Memorandums of Understanding used by other enforcement bodies and the (few) licensing Enforcement Protocols available at the time. Work has been slow and the draft Protocol has only just been finalised.

Recommendations

3. Members determine what variations (if any) they wish to propose to the Enforcement Protocol.
4. Members authorise the Executive Manager Corporate Governance to sign the Enforcement Protocol (amended if appropriate) on behalf of the licensing authority.

Background Papers

Essex Licensing Officers Model Enforcement Protocol available from Michael Perry.

Impact

Communication/Consultation	None.
Community Safety	The Protocol is designed in such a way as to ensure that the most appropriate agency is

	responsible for enforcement in respect of the 4 licensing objectives.
Equalities	None.
Finance	There is no indication as yet as to the level of enforcement work the authority may be engaged in. Any enforcement work will however require resourcing.
Human Rights	None.
Legal Implications	Although the Protocol indicates the preferred agency to take enforcement action this would not preclude other agencies taking such action if it was considered appropriate or necessary.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

1. After lengthy delays the working group have produced a Model Enforcement Protocol. The aim of the Protocol is to facilitate co-operation and co-ordination between enforcement agencies. It is brought to Members now, as it is necessary to decide whether the Council should subscribe to this Protocol.
2. The principal relationship will be between the Police and the licensing authority as the only bodies empowered to prosecute for breaches of the Licensing Act 2003. Responsible authorities will however advise and are responsible for making representations.
3. The Protocol draws upon the Enforcement Concordat issued by the Government. The main aims of the Concordat are that businesses should:
 - (a) receive clear explanations from enforcers of what they need to do and by when
 - (b) Have opportunities to resolve differences before enforcement action is taken unless immediate action is necessary
 - (c) Receive an explanation of their rights of appeal.
4. The Model Protocol anticipates that licensing authorities will have an Enforcement Policy separate from its Licensing Policy Statement. At present Uttlesford have no such policy. I consider that a policy would merely copy the Enforcement Concordat and is therefore superfluous to requirements. Accordingly the reference to a Licensing Policy should be deleted from the Model Protocol.
5. The Model Protocol designates responsibility between the responsible authorities and the local authority for inspecting premises for compliance, investigating complaints regarding non-compliance, making representations and seeking reviews and initiating proceedings for offences under the Act. It provides for inspections to be based upon risk assessment and intelligence to ensure that resources are effectively concentrated on problem premises.
6. The Model Protocol requires the parties to ensure they comply with relevant legislation, the Protocol and internal policies on information disclosure; to consult with each other on matters of policy and strategy and to ensure that information held is accurate and up to date.
7. The Model provides for there to be regular liaison between the parties. This authority already has regular meetings with the relevant authorities.
8. With regard to reviews, the Protocol stresses the need for good communication and liaison. Joint working may be promoted in certain

circumstances and the Protocol suggests how this may be most effectively achieved. There are procedures for a lawful exchange of information between the relevant authorities.

9. Statutory guidance under the Licensing Act 2003 makes it clear that enforcement must be under the most appropriate legislation, which will usually not be the 2003 Act. The Protocol contains examples of other legislation, which may be used to address issues in licensed premises.
10. In terms of division of responsibility, the 'split' is broadly as follows: -

Licensing Objective	Enforcing Authority
Crime and disorder	Essex Police
Public Safety	The Protocol suggests the licensing authority. I believe this should refer to the local authority as the Environmental Health Department have powers under other legislation.
Public nuisance	The licensing authority or Essex Police. I believe that the local authority should be added for the same reason as under public safety above.
Protection of children from harm	Essex Police, licensing authority and Trading Standards in respect of under aged drinking and the sale of alcohol to under 18 year olds.

11. The responsibility for making representations and seeking reviews is split as follows: -

Licensing Objective	Enforcing Authority
Crime and disorder	Essex Police
Public Safety	Local authority, Health and Safety service, Health and Safety Executive and/or Essex Fire and Rescue.
Public nuisance	Local authority Environmental Health Service and/or Essex Police

Protection of children from harm	Child Protection Agency and/or Essex Police.

Appendices further indicate examples of the division of responsibilities and which authorities may take the lead in different situations.

12. Part 8 of the Act extends the existing power of the Police to close premises and gives local authorities power to close licensed premises. The Anti Social Behaviour Act 2003 further grants local authorities power to close licensed premises in certain circumstances. The Protocol suggests that the Police should consult local authorities where excessive noise is a factor in seeking closure of licensed premises. Local authorities should consult the Police when using their powers under the Environmental Protection Act and/or the Anti Social Behaviour Act. The Protocol anticipates that the local authority will be given Police support when using its powers to close licensed premises.

13. Where licensable activities not covered by an authorisation under the 2003 Act are suspected or discovered, the main objectives are: -

- Prevention of the unlicensed activity proceeding
- Ensuring public safety and preventing crime and disorder (if necessary by using closure powers)
- Evidence gathering with a view to prosecution

A multi agency approach is advocated by the Protocol.

14. As well as specifying the lead agencies for seeking reviews, the Protocol gives guidance as to the procedure to be adopted and in particular provides that the party seeking a review should be able to show that alternative solutions had been pursued or considered but that the desired outcome was unlikely to be achieved through informal means.

15. The Protocol designates the preferred legal authority for prosecutions and contains procedures for notifying the outcome of prosecutions. In this respect, there are difficulties with the Licensing Act itself. The Act requires the holder of a personal licence who is being prosecuted for a relevant offence to produce his licence to the Court. There is no mechanism for ensuring that this is done. The Act requires the Magistrates Court dealing with a relevant offence to notify the licensing authority of any relevant convictions. However, the licence will have been issued by the licensing authority within the district of which the licensee lived when he applied. He may have moved or not carry on business in that district. I consider that the Protocol should be amended to provide for better notification of convictions by the parties to the Protocol.

16. The Model Protocol requires the parties to deal with the media in such a way as to reflect the multi agency approach and to consult before issuing press releases where possible.
17. The Protocol provides that where a temporary events notice is served the licensing authority will notify all responsible authorities of the notice. However, only the Police can serve an Objection Notice and this can only be served where the Police are satisfied that the crime prevention objective would be undermined. I doubt the value therefore of this provision in the Protocol.
18. The Protocol will be reviewed as necessary and at least on an annual basis. In the unlikely event of any disputes these will be resolved by the local Crime and Disorder Reduction Partnership acting as arbiter.

Risk Analysis

Risk	Likelihood	Impact	Mitigating Actions
The Council does not enter into an Enforcement Protocol.	LOW	HIGH The lack of clarity as to which would be the lead authority on enforcement issues would either lead to duplication of effort and waste of resources or inadequate enforcement.	Adopt and enter into an Enforcement Protocol (amended as necessary) and apply the same.
The Council enters into a Protocol substantially different to that applied through the rest of the County.	LOW	MEDIUM Where enforcement agencies are used to working to a particular set of rules, it may cause confusion to have an entirely different Protocol with one authority.	Only the minimum necessary amendments to the Protocol should be requested.