

KENT & MEDWAY LICENSING ENFORCEMENT PROTOCOL

This agreement formalises the arrangements for licensing enforcement, in respect of Kent Police, the Borough/District/Unitary Authorities and their enforcement partners. In addition it provides guidance regarding the legal requirements and operational procedures.

The Authorities and Agencies listed below have signed and agreed to abide by the terms of this Protocol.

SIGNATORIES TO THIS AGREEMENT INCLUDE: -

SHERI GREEN

Dartford Borough Council

Lee CROXTON

Gravesham Borough/District Council

Robin HALES

Sevenoaks Borough Council
Maidstone & Malling Police

GARY STEVENSON

Tunbridge Wells District Council

DAVID HUGHES

Tonbridge & Malling Borough Council

DAVID PETFORD

Maidstone Borough Council

JUDITH ARMITT

Medway Unitary Authority

MICHAEL HAWKINS

Swale Borough Council

COLIN CARMICHAEL

Canterbury City Council

RICHARD SAMUEL

Thanet District Council

[NAME]

Dover District Council

J.A. STEWART

Shepway District Council

DAVID HILL

Ashford Borough Council

Superintendent Martin HEWITT

North Kent Police

Superintendent Jeremy PRICE

West Kent Police

Superintendent Mark SALISBURY

Superintendent Stella MERCER

Medway Police

Superintendent Alistair HOPE

Swale Police

SUPERINTENDENT JOANNA YOUNG

Canterbury Police

SUPERINTENDENT PENNY MARTIN

Thanet Police

SUPERINTENDENT PAUL BRANDON

South East Kent Police

A/Superintendent Dan MURPHY

The Weald Police

JOHN WILDISH

Kent Fire and Rescue Service

CLIVE BAINBRIDGE

Weights & Measures Authority

PETER GILROY

Kent County Council

KENT & MEDWAY ENFORCEMENT PROTOCOL

Contents:

Page Number	
3	Introduction and purpose
4	Aim of the Protocol
6	Enforcement Action
6	General Principles
7	Liaison Arrangements
8	Exchange and Handling of Information
9	Risk Based Approach
9	Guiding Principles for Decision Making
10	Provision of Advice and Investigation of Complaints
11	Dealing with Underage Sales of alcohol
11	Dealing with Disorderly Premises
12	Dealing with Public Nuisance
15	Dealing with Unlicensed Activities
17	Responsibility for Prosecutions
17	Media Relations
18	Review of this Protocol
18	Resolution of Disputes
APPENDICES:	
1	Liaison Contact Details
2	Risk rating scheme
3	Lead Authorities
4	Illustrative Scenarios
5	Gambling Act 2005: Guidance to Licensing Authorities on Enforcement and Compliance

Introduction and purpose

The purpose of this protocol is to facilitate co-operation and co-ordination between enforcement agencies in pursuance of the Licensing Act 2003 and Gambling Act 2005. It will underpin the mutual operational support required to tackle licensing issues.

Licensing Act 2003, the licensing authority and the responsible authorities, as defined in the Act, are required to promote the following objectives, in relation to premises and people licensed under the Act:

- preventing crime and disorder
- protecting public safety
- preventing nuisance
- protecting children from harm

These objectives will also be used to form the basis of licensing enforcement.

Gambling Act 2005, the licensing authority and the responsible authorities, as defined in the Act, are required to promote the following objectives: -

- 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.

Both the Gambling Commission and licensing authorities must have regard to the three licensing objectives. However, whilst the Commission will generally concentrate on enforcement and compliance matters relating to the way in which gambling is provided, licensing authorities will concentrate on issues related to the premises themselves, in addition to being responsible for issuing premises licences, permits, temporary use permissions and the registration of societies running small lotteries.

The Gambling Commission, licensing authorities and the police are all parties to the inspection and enforcement regime created by the Gambling Act, and it is important to the effectiveness of this regime that information is readily exchanged and efforts are coordinated. Section 350 and schedule 6 of the Gambling Act establish the principles by which information should be managed between all parties. Section five of the document at Appendix 5 outlines the principles by which the exchange of information under the Gambling Act will be managed.

In detecting and prosecuting criminals, law enforcement agencies make a vital contribution to the improvement of society as a whole. In addition, experience indicates that sharing information provides considerable assistance in bringing criminals to justice.

The Government strongly recommends that licensing authorities establish protocols on enforcement issues. The principal relationship that needs to be defined relates to that between Kent Police and the local authority. However, Responsible Authorities have a statutorily defined role, a role that frequently overlaps between agencies. The role of these agencies is also defined within this protocol.

Within this protocol the terms Local Authority and Licensing Authority are very carefully selected as there is a clear distinction in the Licensing Act between the role of the Licensing Authority and that

of the Local Authority, which has the responsibility for the enforcement of offences relating to pollution, health and safety and trading standards as appropriate.

Each Borough/District council/ Unitary Authority has adopted the Government's Enforcement Concordat designed to ensure effective and efficient public protection services. Specifically, the Council is committed to accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner. This protocol does not serve the purpose of being the local authority's Licensing Enforcement Policy.

The Enforcement Concordat is based on the principles that businesses should:

- receive clear explanations from enforcers of what they need to do and by when;
- have opportunities to resolve differences before enforcement action is taken - unless immediate action is needed;
- receive an explanation of their rights of appeal

Helping businesses to comply with regulations and to meet their legal duties is the goal of the Enforcement Concordat. However, it recognises that enforcers must be able to take immediate action when required (for example, to ensure public health and safety or to protect the environment) and does not restrict enforcers' ability to take appropriate action against those who flout the law or act irresponsibly. This combination of assistance and quick action, when that is needed, will protect the public and preserve fair competition.

More information regarding the Enforcement Concordat can be found at <http://www.dti.gov.uk/consumers/enforcement/enforcement-concordat/index.html>

All signatories to this protocol recognise the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the licensing and gambling objectives it seeks to promote. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.

In particular, the Local Authority has set clear standards of service and performance that the public and businesses can expect and a licensing enforcement policy has been created that explains how the Council will undertake its role as Licensing Authority and how the principles of effective enforcement will be achieved.

The parties recognise that voluntary disclosure of information, on a case-by-case basis, will be made provided there is a lawful basis for disclosure and where there are reasonable grounds to believe that a criminal offence has been committed.

AIM OF THE PROTOCOL:

The aim of this protocol is to establish a model upon which all local authorities in Kent can base their individual enforcement with Kent Police, Kent & Medway Fire and Rescue Service, Kent County Council & Medway Trading Standards and the Child Protection Agency, as appropriate.

The aim of an enforcement protocol is to clearly establish the roles played principally by each enforcement agency, that is:

- Local / Licensing Authority
- Kent Police
- Kent Fire and Rescue Service
- Local Authority Environmental Health Services

- Local Authority Occupational Health and Safety Enforcement Service
- Health and Safety Executive
- Kent County Council and Medway Unitary Authority Trading Standards (or local Trading Standards Department as appropriate)
- Kent & Medway Child Protection Committees (or local child protection representative, as appropriate)
- Other enforcement agencies as appropriate (e.g. Customs and Excise, Security Industry Association)

The protocol seeks to establish the roles of the agencies detailed above in relation to:

- inspecting premises for compliance with a relevant licence
- investigating complaints regarding non-compliance
- making representations
- initiating proceedings for offences under the Licensing, Gambling & Entertainment Acts

This protocol seeks to build upon the good working relationships, which currently exists between the enforcement agencies. All parties recognise the importance of effective co-operation and liaison to ensure those with responsibilities under legislation understand and comply with the law.

The aim of this protocol will also be to comply with the Secretary of State's guidance to local authorities, which states:

'As part of their statement of policy, the Government strongly recommends that licensing authorities should express the intention to establish protocols with the local police on enforcement issues. This would provide for a more efficient deployment of licensing authority staff and police officers that are commonly engaged in enforcing licensing law and the inspection of licensed premises.'

In particular, these protocols should also provide for intelligence led enforcement in dealing with agreed problem and high-risk premises, which require greater attention, while providing a lighter touch in respect of low risk premises that are well run. In some local authority areas, the limited validity of public entertainment, theatre, cinema, night café and late night refreshment house licences has in the past led to a culture of annual inspections regardless of whether the assessed risks make such inspections necessary. Inspections will take place at the discretion of those charged with this role. The principle of risk assessment and intelligence led enforcement should prevail and inspections should not be undertaken routinely but when and if they are judged necessary. This should ensure that resources are more effectively concentrated on problem premises.

However, the visiting regime for premises will not be decided solely on a risk assessment basis. The Local Authority will, as part of its' proactive stance, make regular visits to and in the vicinity of licensed premises in order to assess the impact of their operation on residents and other businesses in the area.

There will be a presumption that visits will take place when various crime and disorder and other indicators show that there are potential problems developing in relation to specific premises or areas.

The Local Authority will monitor patron movement to, from and between premises and the provision and accessibility of transport to assist dispersal of persons away from licensed premises.

Enforcement Action

The purpose of enforcement is to create a safe environment for all.

Enforcement action can include the following progressive approach to achieve compliance.

- Verbal advice- *which may be documented*
- Written advice
- Verbal warning- *which will be documented*
- Written warning
- Statutory Notice
- Formal Caution (cross ref to Home Office circular 18/1994)
- Prosecution

The individual circumstances of the breach of the legislation will determine the level of enforcement. All actions will be considered in accordance with the requirements of the Human Rights Act 1998 and considered on its individual merits.

GENERAL PRINCIPLES

The Signatories, in signing this document agree to:

- Take note of the spirit of cooperation and goodwill that exists between their organisations.
- Recognise the benefits to be derived from developing close working relationships.
- Seek to enhance the understanding of the advantages and opportunities which joint activity can bring to effective law enforcement and community safety.
- Promote and improve the legitimate exchange of information and operational cooperation in support of shared objectives.

Each party to this protocol undertakes to;

- ensure that it complies with all the relevant legislation, this protocol and its internal policies on disclosure
- regularly consult with each other upon matters of policy and strategy
- ensure that the data it holds are as accurate and up to date as possible

Partners are expected to draw upon their own legal advice, wherever necessary.

Information disclosed by any party must be kept secure by the partner to whom it has been provided. Each party must be satisfied that adequate arrangements are in place to protect the confidentiality of the information requested prior to a disclosure being made.

We agree when handling the media;

- to be fair to our fellow partners, and maintain their integrity.
- when providing information to the public, to do so honestly and fairly.
- statements must reflect the multi-agency decision process.
- consent of the data owner will be sought prior to release to the media.

Each party to this protocol are aware of and embrace the principles of The National Intelligence Model (NIM) which is 'A Model for Policing' that ensures information is fully researched, developed and analysed to provide intelligence which enables senior managers to:

- provide strategic direction
- make tactical resourcing decisions about operational policing and
- manage risk

It is important to note that the NIM is NOT just about crime and NOT just about intelligence - it is a model that can be used for most areas of policing. It offers, for the first time, the realisable goal of integrated intelligence in which ALL forces and law enforcement agencies play a part in a system bigger than themselves.

LIAISON ARRANGEMENTS:

It is likely that regular contact will be established between the agencies. This contact is expected and encouraged to be regular and on occasion formalised.

Liaison between the partners to this protocol will:

- Provide an avenue to the appropriate channels of information.
- Provide a consistent approach to communication, operations and investigations.
- Encourage early contact and liaison in specific cases.
- Allow for advice or guidance to be given in relation to a specific case.
- Ensure that any other national or regional campaigns or investigations, which may have a bearing on the district, are considered.
- Enable relevant officers to be kept informed of the progress of cases that are being investigated.
- Ensure that information and intelligence being passed between the agencies is dealt with confidentially and processed in accordance with the terms of this protocol and supports the understanding of mutual benefits.
- Provide a forum to ensure understanding is reached between the local authorities and the police with regard to response times when support is required when dealing with noise problems from licensed premises.
- Provide a forum to ensure a procedure is agreed on how the local authorities power to close premises under section 40 of the Anti Social Behaviour Act 2003 interfaces with the police's power to close premises under section 161 of the Licensing Act 2003

Good Practice

Licensing Authorities should coordinate regular monthly meetings to which all enforcement agencies, partners and those who have responsibilities under the Licensing and Gambling Acts are invited. The group may include the Police, Environmental Health, Planning, Trading Standards, KF&RS, KAS and A&E representatives. The Licensing Authority will undertake administration and management of this meeting.

Each enforcement agency should nominate a Liaison Officer (and a deputy) to initially be the contact point regarding any matters relating to licensed premises. The role of these officers will be:

- to ensure the effective exchange of information between the agencies
- the consideration of the necessity for joint visits

- the implementation of co-ordinated actions, as necessary and as agreed between the agencies
- to co-ordinate the supply of evidence and information to another agency taking formal action
- in the first instance, the recipient of complaints, evidence or information, from other agencies, who believe that agency is the most appropriate agency to take action
- the initial contact to discuss and liaise in the event of uncertainty over lead agency roles

This protocol needs to set out the communication points between the parties and the contact details. Please update appendix 1 – with appropriate roles rather than named officers; TENS may have different contact points; unlicensed events may have different contacts.

There is a clear need for good communication and liaison. In particular, where the lead authority dealing with the premises identifies the need for a 'case conference', other responsible authorities will support the lead authority to gather all views in preparation for enforcement. The lead authority will be expected to co-ordinate such case conferences.

There may be occasions where a partners' assistance is sought in respect of the investigation of an offence, or in future planned targeted action. By working together on occasion partners should be able to achieve more wide reaching results.

In the case of joint operations, the following points should be agreed

- Identify the roles and responsibilities of each partner.
- Detail the resources required.
- Explain the objectives and expected outcomes.
- Comment on the timescale to achieve them.
- Identify the central point for coordination.

If required, the above should be confirmed in writing.

In undertaking joint operations parties must ensure that they are compliant with current legislation to which they are bound. If there is any doubt about the legality of an operation by either party it must be halted and advice sought from the initiating parties' senior representative.

Parties understand that there may be other organisations involved in an operation that have not signed this protocol. Even in these instances the principles of the protocol must be adhered to.

EXCHANGE AND HANDLING OF INFORMATION

The purpose of this document is to assist the exchange of information whilst not overriding existing legal safeguards on personal information. The manner in which information can be exchanged takes into account the following legislation;

- The Data Protection Act 1998 - for the processing of personal information.
- The Human Rights Act 1998 - for the rights of the individual's privacy.
- The Freedom of Information Act 2000
- The Common Law Duty of Confidence.

Whilst the legislative provisions do not make mandatory the disclosure of information, providing that a request follows the guidance set out in the Kent & Medway Information Exchange protocol document, the parties will normally disclose the requested information.

Exchange of information should be conducted in a timely and accurate fashion and confirmed in writing in all cases, (written confirmation includes in electronic form).

There are a variety of data types to consider when exchanging information, all of which have legal implications for the parties. The parties agree to comply with their legal obligations in respect of all disclosures of information undertaken and undertake to adhere to the principles and guidance held within the Kent & Medway Information Exchange Protocol for which a Memorandum of Understanding has been signed by the Chief Officers of each organisation represented on the Kent Inter-Agency Safety Group. This umbrella document is an agreement in principle between all partners to share information, subject to the provisions of that Protocol.

RISK BASED APPROACH

IT IS STRESSED THAT FOR THE PURPOSE OF THIS RISK RATING THE ONLY RISKS THAT CAN BE CONSIDERED ARE THOSE THAT HAVE AN IMPACT ON THE LICENSING OBJECTIVES.

This protocol provides for the targeting of resources towards high-risk premises and activities that require greater attention, while providing a lighter touch in respect of low risk premises that are well operated.

The principle of using a scoring scheme based on risk factors will normally prevail and proactive inspections will usually be undertaken in accordance with a priority inspection scheme. This should ensure that resources are more effectively allocated to higher risk or 'problem premises'.

A risk-rating model has been developed. In the main it will be based on a high, medium, low risk basis. Enforcement activity will be based on the rating achieved e.g. Low risk = monitoring processes.

See appendix 2 for details of visits each authority may undertake, the basis for their inspection (risk) rating, the programme of inspections and the scope for joint inspections.

GUIDING PRINCIPLES FOR DECISION MAKING

The relevant enforcement authority using the most appropriate legislation must pursue offences committed by perpetrators on licensed premises.

Examples where other legislation may be used to address issues in licensed premises are included in appendix 4.

Close liaison is essential to ensure consistent and transparent action by the relevant agencies as well as to ensure effective use of resources. However, nothing in this protocol will preclude representation by more than one responsible authority in respect of the same or different licensing objectives, relevant to the same licensed premises. Indeed, in some circumstances it would be advantageous for responsible authorities to support each other towards the common aim of promoting the licensing and gambling objectives.

As a guiding principle, the lead authority for both enforcement action and for making representation should be based on the impact the contravention or action has on the promotion of the licensing and gambling objectives, and in most cases common sense will dictate the lead authority, along the following lines:

In respect of instigating legal proceedings, typically the split of responsibility may be as described below:

Crime and Disorder: Kent Police
Public Safety: Licensing Authority
Public Nuisance: Licensing Authority or Kent Police
Protection of Children: Kent Police or Licensing Authority

In respect of making representations, the split may be described as:

Crime and Disorder: Kent Police
Public Safety: Local Authority H&S Service, HSE and/or Kent Fire and Rescue Service
Public Nuisance: Local Authority Environmental Services and/or Kent Police
Protection of Children: Social Services and/or Child Protection Agency

The table attached at Appendix 3 seeks to indicate further examples of the likely split of responsibilities and indicates which authority might lead under different situations especially in relation to the new Licensing Act 2003 but can be related to current legislation.

Examples of situations, explaining which authority may take the lead, are included in Appendix 4 and in Appendix 5 in relation to the Gambling Act 2005.

Human Rights Act considerations

Any action taken must be in compliance with relevant legislation. The Human Rights Act 1998 Decision Considerations JAPAN should be taken into account when making decisions whether or not to take action:

- **J**ustification
- **A**uthorisation
- **P**roportionality
- **A**uditable
- **N**ecessary

PROVISION OF ADVICE AND INVESTIGATION OF COMPLAINTS

The signatories to this protocol recognise the value of advice and guidance to applicants and holders of licences, certificates and permissions and all encourage applicants and holders of licences, certificates and permissions to seek such advice, particularly before submitting applications for variations to existing permissions or prior to submitting a temporary event notice.

It is recognised that the relaxation of licensing hours is going to cause a significant increase in noise complaints and therefore an increase in demand of limited resources. Authorities are rightly obliged to ensure effective use of existing resources. The Licensing Act does however provide an opportunity to raise the profile of this area of work and, connected to this, authorities can make new budget growth bids for additional resources to ensure there is sufficient funding available for meaningful and sustainable enforcement work.

Each agency will endeavour, where resources permit, to provide advice and guidance on those matters within the remit of that agency (determined in accordance with the guiding principles of decision making). Where information is requested on a matter outside of any agency's remit, then the contact details of the relevant agency will be passed to the applicant/licence holder.

On receipt of a complaint or concerns relating to licensed premises, club premises or a personal licence holder, the receiving agency will:

- Action, as appropriate, if the matter is within that agency's remit
- Pass to the relevant agency, in accordance with the liaison arrangements, detailed above,
- Liaise with the other agencies to establish lead responsibility, in accordance with the liaison arrangements, detailed above.

Each agency will have its own service standards and will respond in accordance with those standards.

DEALING WITH UNDERAGE SALES OF ALCOHOL

The Criminal Justice and Police Act 2001 removed a legal restriction on the use of young persons for Test Purchase operations for alcohol against licensed premises.

Both police and local authority Trading Standards Departments have the necessary authority to prosecute breaches of legislation involving the sale of intoxicating liquor to underage people. Research has shown that the illegal purchase and consumption of alcoholic drinks have significant impact on crime and disorder.

A Memorandum of Understanding has been signed between Kent Police, Medway Council and Kent County Council agreeing individual responsibilities with regard to their enforcement tactic. This document is held at the Partnership & Crime Reduction Department at Kent Police Headquarters.

DEALING WITH DISORDERLY PREMISES

This section describes action to be taken where activities on, or in the vicinity of and related to premises are disorderly or excessive noise is emitted from premises and it is necessary to close the premises to: -

- Ensure public safety and prevent crime and disorder
- Prevent the disturbance

The intention, wherever possible, is to prevent such an activity taking place, by using a Multi-agency approach at an early stage whenever the likelihood of such an event has been established. There will be an expectation that enforcement agencies will work together to achieve a positive outcome that will enable us to identify and target premises to obtain evidence and prosecute for offences where appropriate.

The enforcement partners will:

- As a priority; gather, collate and share information concerning identified premises with our partners and other relevant agencies as permitted under Section 115 Crime & Disorder Act 1998.
- Encourage and as far as is practical, support licensees in taking action to prevent or curtail disorder or nuisance from taking place, ensuring we do not recommend action which gives rise to personal/organisational liability.
- Carry out an operational review of the information available and, whenever appropriate, take action to prevent or curtail any disorder or nuisance from taking place.
- As far as practicable attend all disorder or nuisance discovered or brought to our attention, and, when resources and legislation permit, seek to prevent them from continuing and gather evidence with a view to prosecuting offenders as appropriate.

- Kent Police will provide a presence to reassure local communities. Agencies will gather evidence and intelligence to support proceedings against persons identified as being in breach of legislation or for use in preventing future activities.
- Share information and evidence between Kent Police and the local authority taking into account timescales in relation to prosecution.
- Pursue a policy of openness with the media to highlight the dangers of disorder and nuisance and the resolve of a multi-agency co-operation to prevent them. Whenever possible joint press releases should be issued and should seek to assure local communities.

Section 161 of the Licensing Act 2003 *provides that a senior police officer of the rank of inspector or above may make an order closing individual premises covered by premises licences or a temporary event notice for up to 24 hours where disorder is taking place, or is likely to take place imminently or a nuisance is being caused by noise emanating from the premises. Such orders may only be made where it is necessary in the interests of public safety or to prevent the nuisance caused by noise coming from the premises. These powers should not be used where it has been possible to anticipate the disorder arising, for example, in connection with intelligence about likely future disorder at a football fixture or in connection with a demonstration.*

Section 160 of the Licensing Act 2003

Under section 160 a police officer of the rank of superintendent or above may ask a magistrates' court to make an order requiring all premises holding premises licences or subject to a temporary event notice which are situated at or near the place of the disorder or anticipated disorder to be closed for a period up to 24 hours. The court may not make such an order unless it is satisfied that it is necessary to prevent disorder. A constable may use necessary force to close any premises covered by such an order.

DEALING WITH PUBLIC NUISANCE

This section describes action where

- (i) excessive noise is being created by customers on, or in the vicinity of and related to premises or
- (ii) excessive noise is emitted from premises but it is not deemed necessary to take immediate closure action.

It is again important to use a multi –agency approach to deal with this problem so that any enforcement officer witnessing a problem can gather and share information to obtain useful evidence. Many conditions on premises licences relating to noise are not couched in detailed acoustic terms. It is therefore entirely possible for an assessment to be made by non-specialist licensing enforcement officers or police officers as well as Environmental Health Practitioners as to whether or not licensing conditions are being breached. This is important as most local authorities do not have a twenty-four hour, seven day a week out of hours service.

Local Authority Environmental Health Departments are able to use the statutory noise nuisance procedure contained within Part III of the Environmental Protection Act 1990 to deal with noise emanating from premises. This will have a part to play in some cases; for example dealing with more serious noise problems caused by music systems at premises.

There are certain disadvantages/limitations with this Act when dealing with the majority of public nuisance issues relating to the Licensing Act as follows:

- The Environmental Protection Act does not cover noise on the street and so cannot therefore be used for dealing with noise in the vicinity of and related to premises.
- Dealing with public noise nuisance will take significantly longer using the procedure contained within Part III of the Environmental Protection Act 1990 (large amount of evidence gathering to satisfy statutory nuisance definition and prosecution of offence takes place in the Magistrates Court) than action taken under the Licensing Act where a formal review of a problem license can be called at any time by the police, responsible authority or local resident/business with the matter being heard and determined by a review panel in the local council's offices.

Thus in the majority of case when dealing with non critical public nuisance issues the matter will be dealt with by reference to the formal review system contained within the Licensing Act 2003.

Anti-social Behaviour Act 2003 – Closure of noisy premises

Section 40 of the Anti-social Behaviour Act 2003 allows a chief executive of a local authority to issue a closure order in relation to licensed premises or premises operating under a temporary event notice which are causing a public noise nuisance. The closure order can apply for a maximum of 24 hours, starting from the time when the notice was issued to the manager. If a person disobeys a closure order, by permitting the premises to be open in contravention of a closure order, they will be committing an offence.

40 Closure of noisy premises

40(1) The chief executive officer of the relevant local authority may make a closure order in relation to premises to which this section applies if he reasonably believes that -

- (a) a public nuisance is being caused by noise coming from the premises, and
- (b) the closure of the premises is necessary to prevent that nuisance.

40(2) This section applies to premises if -

- (a) a premises licence has effect in respect of them, or
- (b) a temporary event notice has effect in respect of them.

40(3) In this section "**closure order**" means an order which requires specified premises to be kept closed during a specified period which -

- (a) does not exceed 24 hours, and
- (b) begins when a manager of the premises receives written notice of the order.

40(4) A person commits an offence if without reasonable excuse he permits premises to be open in contravention of a closure order.

40(5) - *relates to penalty.*

Section 41 of the Anti-social Behaviour Act 2003 is a supplemental and interpretation section. It outlines the procedure under which an order can be cancelled. The chief executive officer of a local authority can authorise environmental health officers to issue closure orders.

41 Closure of noisy premises: supplemental

41(1) Where a closure order is made in relation to premises, the chief executive officer of the relevant local authority -

- (a) may cancel the closure order by notice in writing to a manager of the premises,
- (b) shall cancel the order as soon as is reasonably practicable if he believes that it is no longer necessary in order to prevent a public nuisance being caused by noise coming from the premises, and
- (c) shall give notice of the order as soon as is reasonably practicable to the licensing authority for the area in which the premises are situated.

41(2) The chief executive officer of a local authority may authorise an environmental health officer of the authority to exercise a power or duty of the chief executive officer under section 40(1) or under subsection (1) above; and -

- (a) authority under this subsection may be general or specific, and
- (b) a reference in section 40(1) or subsection (1) above to a belief of the chief executive officer includes a reference to a belief of a person authorised under this subsection.

41(3) In section 40 and this section -

Chief Executive Officer of an authority means the head of the paid service of the authority designated under section 4 of the Local Government and Housing Act 1989,

Environmental Health Officer of an authority means an officer authorised by the authority for the purpose of exercising a statutory function in relation to pollution of the environment or harm to human health,

Licensing Authority has the same meaning as in the Licensing Act 2003,

Manager in relation to premises means-

- (a) a person who holds a premises licence in respect of the premises,
- (b) a designated premises supervisor under a premises licence in respect of the premises,
- (c) the premises user in relation to a temporary event notice which has effect in respect of the premises, and
- (d) any other person who works at the premises in a capacity (paid or unpaid) which enables him to close them,

Premises Licence has the same meaning as in the Licensing Act 2003,

Relevant Local Authority in relation to premises means an authority which has statutory functions, for the area in which the premises are situated, in relation to minimising or preventing the risk of pollution of the environment or of harm to human health, and

Temporary Event Notice has the same meaning as in the Licensing Act 2003 (and is to be treated as having effect in accordance with section 170(6) of that Act).

DEALING WITH UNLICENSED ACTIVITIES

This section describes action to be taken where activities are suspected or discovered but for which a licence has not been issued or has otherwise been covered by a Temporary Event Notice under the Licensing Act 2003.

- Prevent the unlicensed activity proceeding
- Ensure public safety and prevent crime and disorder (if necessary by closing the event/premises)
- Gather evidence with a view to prosecuting the organisers.

The intention, wherever possible, is to prevent unlicensed events taking place, by using a Multi-agency approach at an early stage whenever the likelihood of such an event has been established. There will be an expectation that enforcement agencies will work together to achieve a positive outcome that will enable us to identify and target the organisers of such events to obtain evidence and prosecute for offences where appropriate.

The enforcement partners will:

- As a priority; gather, collate and share information concerning unlicensed activities with our partners, landowners and other relevant agencies as permitted under Section 115 Crime & Disorder Act 1998.
- Encourage and as far as is practical, support landowners in taking action to prevent or curtail unlicensed activities from taking place, ensuring we do not recommend action which gives rise to personal/organisational liability.
- Carry out an operational review of the information available and, whenever appropriate, take action to prevent or curtail any unlicensed activity from taking place.
- As far as practicable attend all unlicensed activity discovered or brought to our attention, and, when resources and legislation permit, seek to prevent them being established, seize property as permitted by legislation, and gather evidence with a view to prosecuting organisers or landowners as appropriate.
- When intervention is inappropriate Kent Police will provide a presence to reassure local communities. Agencies will gather evidence and intelligence to support proceedings against persons identified as being in breach of legislation or for use in preventing future unlicensed activities.
- Share information and evidence between Kent Police and the local authority taking into account timescales in relation to prosecution.
- Pursue a policy of openness with the media to highlight the dangers of unlawful events and the resolve of a multi-agency co-operation to prevent them. Whenever possible joint press releases should be issued and should seek to assure local communities.

Unlicensed activity tends to fall into two categories - those in respect of which the authorities have received prior information or intelligence regarding the event, and those where they have not. The former enables a pre-planned multi-agency response and the latter would require a spontaneous response that would normally be initiated by Kent Police as a result of information received. A measured response will be taking by enforcement agencies to such information and the risk such

unlicensed activity may be deemed to be posed. The following responses relate to those events, which by their nature, size, location, etc. are deemed 'high risk'.

Pre-Planned Response

Enforcement agencies will apply the declared strategy of sharing 'information and intelligence, with a view to preventing the event through early intervention where the law and resources permit.

Enforcement agencies will work together to ensure that both permissive landowners, and organisers are aware of their obligations.

Owners of land adjacent to proposed sites will be advised, allowing sufficient time to apply preventative measures where possible.

Where time permits, enforcement agencies will make contact with the community likely to be affected. Where resources permit, high visibility policing will be used to provide reassurance.

Local Authority Officers will be expected to attend wherever possible to support Kent Police at the site of an unlicensed event.

Spontaneous Response

Enforcement agencies will apply the declared strategy of sharing 'information and intelligence, with a view to preventing the event through early intervention where the law and resources permit.

Kent Police officers together with Local Authority Officers will seek to attend all unlawful events brought to their attention to gather and secure evidence with a view to prosecuting organisers and or landowners.

The decision to stop a large unlicensed event from continuing has resource and serious safety implications for the officers implementing the decision and for persons attending the event. The decision to stop the event will normally be made by the Kent Police Silver Commander following a full operational review and risk assessment. If, taking into account the ongoing risk to public safety, the event is allowed to continue; a full audit trail of decisions and risk assessments MUST be available.

When intervention is considered inappropriate Kent Police should seek to provide a continuing presence to reassure local communities. Both Agencies when possible will seek to gather evidence and/or intelligence to support proceedings against persons identified as breaching legislation or for use in preventing future unlicensed events.

Section 19 of the Criminal Justice and Police Act 2001 empowers a constable or local authority to serve a closure notice on a person having control of, or responsibility for, any premises that are being, or have been used within the last 24 hours, for the sale or consumption of alcohol on or in the vicinity of the premises, **without a liquor licence**, in contravention of section 139 of the Licensing Act 2003.

Where such a closure notice is served it **must** also be served on any other occupier of the premises whose access may be impeded if the part involved in the unlicensed sale of alcohol was to be closed.

- **Alcohol** - has the same meaning as in the Licensing Act 2003. (Section 28(1), Criminal Justice and Police Act 2001.)

- **Notice** - means a notice in writing. (Section 28(1), Criminal Justice and Police Act 2001.)
- **Premises** - includes any land or other place (whether enclosed or otherwise). (Section 28(1), Criminal Justice and Police Act 2001.)
- **Sale** - includes exposure for sale. (Section 28(1), Criminal Justice and Police Act 2001.)
- **Unauthorised sale** - means any supply of alcohol within in the meaning of Section 14 of the Licensing Act 2003. (Section 28(1), Criminal Justice and Police Act 2001.)

Section 20 of the Criminal Justice and Police Act 2001 enables a constable or local authority to apply for a closure order by complaint from magistrates (between 7 days and six months after the service of the closure notice) in relation to premises on which a closure notice has been served.

A complaint **cannot** be laid where the police or local authority is satisfied that the unlicensed sale of alcohol has ceased and there is no reasonable prospect of it re-starting.

Post Event

Following any serious incident involving an unlicensed activity, the relevant enforcement agencies will participate in a de-brief. Information on preventative operations will be discussed and best practice and areas of weakness identified, All information/evidence surrounding an event will be shared with a view to taking decisions on prosecution or future licensing applications.

RESPONSIBILITY FOR PROSECUTIONS:

It is expected that the decision of who will instigate legal proceedings will be taken in accordance with the guiding principles for decision-making, irrespective of which authority obtained the evidence.

Section 186 of the Act restricts the bringing of proceedings to the Licensing Authority or the Director of Public Prosecutions, except sections 146 and 147 when proceedings are brought by a local Weights and Measures Authority.

Therefore, any prosecution that the police wish to bring, will need the consent of the Director of Public Prosecutions (acting through a Crown Prosecutor). This means that the decision to charge (or summons) must be that of the Crown Prosecution Service. Contact should initially be made to Vivienne Pearson, the Licensing Co-Ordinator for the Crown Prosecution Service in Kent or, when unavailable, to the Unit Head of the relevant Area, ie. Maidstone, Canterbury, Folkestone, Medway or Gravesend.

In the event of the LA instigating proceedings on the evidence of officers of Kent Police, Kent Police will nominate the Operational Chief Inspector (of the BCU for the local authority) as the single point of contact to oversee the collection of all used and unused material, to liaise on availability of officers for court, etc. In the event that a warrant is issued, a copy of the file will be held in the warrants office together with the warrant.

REGISTER OF CAUTIONS

Kent Police, at this time, will maintain a register of formal cautions issued to holders of licences, certificates or permissions. Responsibility for this function will transfer to the Licensing Authority upon implementation of the Licensing Act 2003.

MEDIA RELATIONS

The lead agency will be responsible for liaison with the media but will ensure that any other agency with an interest in the matter is kept informed of the media attention and that the

response to such interest is discussed, where appropriate, prior to the issue of formal press statements.

REVIEW OF THIS PROTOCOL

The application of this protocol will be kept under regular review at the Kent & Medway Regulatory Licensing Steering Group but will be the subject of formal review annually, such review to be carried out by the Policy & Enforcement Sub Group of the Kent & Medway Regulatory Licensing Steering Group, having regard to

- Changes in legislation;
- Changes in Government, LACORS or other authoritative guidance;
- National court rulings;
- Challenges, or Representation made.

Each local authority is encouraged to hold a formal review with the officers involved, on an annual basis, the results of which should be passed to the Enforcement Sub Group for consideration as part of the review of this framework.

RESOLUTION OF DISPUTES

As a consequence of the strong existing partnerships, disputes are expected to be a very rare occurrence. However, in the event of a dispute and in the first instance, the relevant agencies involved should call a formal meeting and try to resolve the dispute by agreement. In the most unlikely event that a satisfactory resolution cannot be achieved, the local Crime and Disorder Reduction Partnership will be asked to adjudicate on the matter.

Appendix 1

Liaison Contact Details *(Add/Amend as appropriate)

Police:

Contact Numbers

Crime Reduction Coordinator (Inspector)
Area Licensing Officer

Fire:

Divisional Fire Officer

Local Authority:

Environmental Health Manager
Health & Safety

List other enforcement/responsible authority/departments as appropriate

Licensing Authority

Licensing Manager
Senior Licensing Officer

Trading Standards

Senior Officer
Deputy

Child Protection Committee/District Social Services

District Manager

Licensing Enforcement Protocol – Risk Rating Scheme Matrix

The purpose of this risk-rating scheme is to ensure a consistency of approach by those charged with the enforcement of licensing regulation and legislation across the County.

Each Licensing and Responsible Authority within Kent accepts the need for such consistency and has, subject to their own policies and procedures, agreed to use this scheme when dealing with licensed premises within their area.

Name of premises _____
Type of premises _____

HAZARD	Y/N	RISK			CONTROL MEASURES IN PLACE
		High	Med	Low	
Primarily for supply of alcohol					
Entertainment/Dance provided					
Food provided/available					
High alcohol consumption					
History of Drug misuse					
Type/Areas of premises vulnerable to drug misuse					
Extended Permitted Hours To midnight Beyond midnight					
Capacity Numbers over 1000 500 200					
Crowd control Exit & entry					
Drinks promotions					
History of disorderly behaviour or public nuisance					
History of Noise/Environmental pollution					
History of Poor Management					
History of failure to comply with licensing legislation/conditions					
Family/Children use					
Affect on residential area					
Staff training/ qualifications					
Fire Control					

First Aid					
Transport/Dispersal measures					
Crime prevention measures					
	TOTAL				

OVERALL PREMISES RISK RATING

Based on aggregate rating of risk factors present

Aggregate score	=	Premises Rating
+7 high	=	HIGH
1-6 high	=	MEDIUM
0 high, +8 medium	=	MEDIUM
0 high, 1-7 medium	=	LOW
remainder	=	LOW

Risk Rating Scheme – Enforcement Action for premises indicated as Low, Medium or High risk

Low	Medium	High
Telephone call to discuss issue(s)	Correspondence with premises	Multi-Agency case conference
Correspondence with premises	Personal visit to Licensee	Tasked operations with a view of gathering evidence
Personal visit	Multi-Agency case conference	Produce action plan to resolve problem
	Meeting with Company Representative	Written Warning
	Produce action plan to resolve problem	Prosecution
		Review of Premises Licence
	Inspection/Monitoring	
Inspection of premises once a year	Inspection of premises every 6 months	Inspection of premises every 3 months
Monitoring inspection during hours of operation every 6 months	Monitoring inspections during hours of operation every 3 months	Monitoring inspections during hours of operation monthly

It is not expected that each and every authority will complete an inspection. One may be completed on behalf of another and information shared as part of the exchange protocol and partnership working.

KENT RISK RATING SCHEME - GUIDANCE NOTES

The purpose of this risk-rating scheme is to ensure a consistency of approach by those charged with the enforcement of licensing regulation and legislation across the County. Each Licensing and Responsible Authority within Kent accepts the need for such consistency and has, subject to their own policies and procedures, agreed to use this scheme when dealing with licensed premises within their area.

'Inspections of premises do not have to take place save at the discretion of those charged with this role. The principle of risk assessment and targeting should prevail and inspections should not be undertaken routinely but when and if judged necessary' – para. 3.57 S182 Guidance to the Licensing Act 2003.

Below are listed the hazards and some of the expectations/control measures enforcement officers may expect to see in place to reduce the risk.

Primarily for supply of alcohol - Type of establishment

HDVD	H
Drinking Club	L
Public House	M

Control Measures

Provision of licensed door/floor security/monitored cctv
Detailed policy relating to drunkenness
Management training/instruction to staff
Client base
Age profile of customer base
Promotion/minimum pricing policy
Size of premises
Hours of trading
Location of premises
History log of premises

Entertainment/Dance provided – Type of Establishment

Night Club
Pub with Dance Floor/Disco area
Dance Club
Hall /Stage
Comedy/Theatre
Restaurant/show bar

Control measures

Size of establishment/size of dance floor area
Door Supervision/CCTV
Type of entertainment provided
Client age profile
Type of music provided
Type of entertainment provided
Special effects
Location

Food provided/available - Type of Establishment

Public House with restaurant
Restaurant
Café
Café/Bar (open air provision)
Theatre
Cinema
Night club /food bar
Night Club/restaurant
Casino
Betting shop
Late night refreshment house

Control Measures

Method of service
Emphasis on food
Hours of provision
Type of food provided (Kebab)
Interlude provision
Location of food service area

High alcohol consumption –

- 1) Number of regular HAPPY HOURS
- (2) Are there regular Lower Prices/Drinks Promotions?
- (3) Number of complaints/incidents of Public Disorder that could be linked with excessive consumption.
- (4) Number of arrests for Drunk Offences

History of drug misuse –

- (1) Number of customers convicted of drug offences who use premises
- (2) Intel. reports of suspected drug users/dealing in or in vicinity of premises.
- (3) Number of reports from other sources claiming drugs use /dealing in premises.

Type/Areas of premises vulnerable to drug misuse –

- (1) History (drugs) of area in which premises is situated
- (2) Are police initiatives welcome --- use of iontrack as condition of entry / visits by Drugs unit/dogs
- (3) What info does licensee supply re suspected drug use.
- (4) What control measures/staff training have been put into place.

Capacity Number over 1000, 500, 200

Extended hours - Are door supervisors employed at the premises (larger premises only)

Are doors and windows kept closed to prevent noise problems

If the premises are in a residential area – are pub gardens being used by customers, and until what time.

Are there signs on the exit doors 'Residential area, please keep voices down' or the like.

Crowd control Exit & Entry - It is expected that there will be a person at the door to greet customers. If queues form is the area roped off or divided from passers by and are customers

vetted while in the queue. Is there CCTV with/without audio to cover the door? During exit are customers monitored to remove drinks/bottles and are there sufficient persons to encourage dispersal from the premises in a quiet and orderly fashion?

Drinks promotions - It is expected that drinks promotions will be used in a responsible manner in a way that does not encourage excessive drinking. Is there consultation with authorities prior to any promotion? Has the Licensee/manager entered into any voluntary agreement concerning discounting?

History of disorderly behaviour or public nuisance - The following are examples of disorderly behaviour or public nuisance – have measures been put in place to reduce them: -
Regular complaints re noise emanating from the premises,
Regular complaints re noise caused by customers leaving the premises,
Criminal Damage caused by customers leaving the premises,
Regular arrests for Drunkenness/ Public Order offences in or outside the premises,
A requirement for police officers to be present at the premises to ensure the orderly dispersal of customers,
Rubbish strewn around the property and the immediate vicinity.

History of Noise/Environmental pollution - The Licensing Authority would expect the operator to have measures in place to prevent noise and environmental pollution in the vicinity of the premises.

These measures could include:

- a) Regular inspection/patrol of the external perimeter to ensure that noise outbreak is not obtrusive.
- b) Sensible positioning of amplification and public address systems.
- c) Limiting the area for regulated entertainment both internally and externally to prevent noise outbreak.
- d) Limiting the times of regulated entertainment.
- e) The closing of windows and the provision of an entrance lobby with self-closing external doors.
- f) Display of prominent signage to advise customers to leave the vicinity quietly. Door supervisors to give the same message.
- g) The installation of noise limiters and sound insulation to the premises.
- h) The sensitive disposal of refuse particularly bottles and waste to prevent noise and noxious smells.
- i) External lighting not to cause a nuisance to adjacent properties.

History of poor management - The following are some examples of poor management – have measures been put in place to reduce them:-

- High turn over of managers,
- High turn over of staff,
- Failing to comply with conditions of the Premises Licence,
- Serving and allowing drunks to remain on the premises,
- No responsibility shown for the behaviour of their customers when they leave the premises,
- Selling alcohol to underage persons,
- High numbers of reports of thefts in the premises ,
- High number of drug incidents in the premises,
- High numbers of assaults in the premises,
- High number of arrests for criminal activity at the premises ie selling stolen goods

History of failure to comply with licensing legislation/conditions - view is that this is High Risk

Control measures - Multi agency case conference or tasked ops. to get evidence. Then judgement necessary to decide which of warning / prosecution / review is most appropriate.

Operating guideline - We would always expect the licence holder to be fully aware of the licensing legislation / conditions and also to have informed all staff accordingly. This is particularly relevant where previously information & advice has been supplied or meetings held to discuss a problem. Evidence will need to be gathered if proceeding towards prosecution / review. Monthly monitoring would also be appropriate

Family/Children use - Are cigarette/Gaming/Pool and machines of a like kind capable of being supervised by bar staff.

If families are being encouraged to use the premises are the toilets child friendly.

Are Entertainment/services of a sexual/adult nature being provided at the premises/times

Similarly adult films.

Is there a strong element of gambling (not gaming machines) at the premises.

Affect on residential area - The Licensing Authority would expect the operator to have measures in place to ensure that there is no adverse effect on the residential area in the vicinity of the premises.

Adverse effect in these areas would normally be crime and disorder in the form of violence and damage and environmental pollution in the form of noise and litter.

These measures could include:

- a) Limiting times particularly if premises are in vicinity of sensitive residencies ie care homes/sheltered housing.
- b) Ensuring customers leave the premises quietly with the provision of the appropriate signage and staff to give the same message in areas such as car parks.
- c) Ensuring that no receptacles/ bottles/glasses are removed from the premises.
- d) Dispersal of patrons leaving to different areas to minimise large groups to prevent confrontation.

Staff training/qualifications - Is there a member of staff first aid trained.

Have staff been trained in recognizing symptoms of drug taking and 'safer clubbing'.

Licensed Door staff - view is that this is High Risk

Control measures - Tasked ops. to gather evidence leading to written warning / prosecution

Operating guideline - In view of the importance of door staff to the safety of customers, keeping order, preventing crime & disorder etc it is a condition that where door staff are employed that they are SIA licensed and for the personal licence holder to employ sufficient numbers in ratio to the capacity of the premises.

The personal licence holder should make door staff fully aware of their responsibilities at individual premises. Failure to comply will result in investigation by way of evidence gathering, leading to written warnings, prosecution etc. where appropriate.

Monthly monitoring would also be relevant here.

Fire control measures - see Guidance Note 70 Fire Safety Standards for Small Licensed Premises and Guidance Note 71 Licensing Act 2003 – Requirements from Premises License Applications

Fire risk assessment – see Guidance Note 72 Small Licensed Premises – Guidance on Fire Risk Assessments and Emergency Plans

Appendix 3

Licensing Act 2003 Offences, Lead Authority

SECTION	LEAD AGENCY	DESCRIPTION OF OFFENCE	OFFENDER(S)
33(6)	Licensing Authority	Failure to notify licensing authority of change in name or address of premises licence holder or designated premises supervisor	Premises licence holder
40 (2)	Licensing Authority	Failure to notify existing premises supervisor that premises licence has been varied to replace them, or that such application has been refused	Premises licence holder
41 (5)	Licensing Authority	Failure to provide premises licence (or statement of reasons for failure to do so) to licensing authority within 14 days of direction following premises supervisor giving notice of intention to cease	Premises licence holder
46 (4)	Licensing Authority	Failure to notify designated premises supervisor of application for transfer of premises licence with interim effect or of actual transfer (where applicant and premises supervisor not same person)	Applicant for transfer of premises licence
49(5)	Licensing Authority	Failure to notify premises supervisor of interim authority notice	Interim authority holder
56 (3)	Licensing Authority	Failure to produce premises licence at request of licensing authority for amendment	Premises licence holder
57 (4)	Licensing Authority	Failure to keep premises licence or certified copy at premises	Premises licence holder
57 (4)	Licensing Authority	Failure to display summary of premises licence or certified copy and notice specifying nominated person	Premises licence holder
57 (5)	Licensing Authority & Police	Failure to produce premises licence or certified copy to constable or authorised person for examination	Premises licence holder Nominated person
59 (5)	Licensing Authority & Police	Obstruction of authorised person entering premises to inspect premises re: grant of licence, provisional statement, variation or review	Any person
82(7)	Licensing Authority	Failure to give notice of change of name or alteration of rules of club	Secretary of club
83 (7)	Licensing Authority	Failure to give notice of change of registered address of club	Secretary of club

93 (3)	Licensing Authority	Failure to produce club premises certificate for amendment within 14 days of request from licensing authority	Secretary of club
94(5)	Licensing Authority	Failure to produce club premises certificate (or certified copy) at premises in custody or control of nominated person	Secretary
94 (6)	Licensing Authority	Failure to display at premises summary of club premises certificate (or certified copy) and a notice stating position held by nominated person	Nominated person
94 (9)	Licensing Authority & Police	Failure to produce club premises certificate (or certified copy) to constable or authorised person for examination	Nominated person
96 (5)	Licensing Authority & Police	Obstruction of authorised person trying to enter premises for purposes of inspection prior to grant, variation or review of CPC	Any person
108 (3)	Licensing Authority & Police	Obstruction of authorised officer from inspecting temporary event premises to assess impact upon crime prevention objective	Any person
109 (4)	Licensing Authority & Police	Failure to: display copy of temporary event notice; keep notice in custody of premises user (or nominated person at premises); or display notice of who nominated person is	Premises user
109 (8)	Licensing Authority & Police	Failure to produce temporary event notice to authorised officer	Premises user Nominated person
123 (2)	Licensing Authority	Failure to notify licensing authority of conviction for relevant offence or foreign offence as soon as reasonably practicable during grant or renewal application period	Applicant for personal licence
127 (4)	Licensing Authority	Failure to notify licensing authority of change of name or address of personal licence holder	Personal licence holder
128 (6)	Licensing Authority	Failure to notify court of personal licence or 'notifiable event' when being dealt with for relevant offence	Personal licence holder
132(4)	Licensing Authority	Failure to notify licensing authority of conviction for relevant or foreign offence	Personal licence holder
134 (5)	Licensing Authority	Failure to produce personal licence within 14 days to licensing authority to be updated	Personal licence holder
135(4)	Licensing Authority & Police	Failure to produce personal licence to authorised person or a constable whilst on premises to make or authorise sale or supply of alcohol	Personal licence holder

136 (1)	Licensing Authority & Police	Knowingly allow or carry on or attempt to carry on unauthorised licensable activity	Any person (but exceptions – see s134(2))
137(1)	Licensing Authority & Police	Expose alcohol for unauthorised sale by retail	Any person
138 (1)	Licensing Authority & Police	Keeping alcohol on premises for unauthorised sale by retail or supply (supply includes supply by or on behalf of a club)	Any person
140 (1)	POLICE	Allowing disorderly conduct on licensed premises	Any person authorised to prevent conduct
141 (1)	POLICE	Sale or supply (or attempt) or allow sale or supply of alcohol to person who is drunk	Any person in capacity to prevent
142 (1)	POLICE	Obtain or attempt to obtain alcohol for consumption on relevant premises by drunk person	Any person
143 (1)	POLICE	Failure to leave licensed premises or attempt to enter premises following request from constable or authorised person	Any drunk or disorderly person
144 (1)	POLICE	Keeping unlawfully imported goods on relevant premises	Any person authorised to prevent
145 (1) (2) (3)	POLICE	Allowing unaccompanied child to be on relevant premises	Premises licence holder, person who works there authorised to request child to leave or DPS
S146 (1)(3)	WEIGHTS & MEASURES AUTHORITY & POLICE	Sale/supply of alcohol to under 18	Any person or a club
147 (1) (3)	Licensing Authority & Police	Allowing sale/supply of alcohol to under 18	Any person authorised to prevent or member or officer of club present
148 (1) (2)	Licensing Authority & Police	Sale/supply of liquor confectionary to under 16	Any person or a club
149 (1) (3) (4)	Weights & Measures Authority and Police	Purchase/supply (or attempt purchase/supply) of alcohol by or on behalf of under 18 Purchase/supply (or attempt purchase/supply) of alcohol for consumption on relevant premises by under 18	Under 18 or person purchasing on behalf of

150 (1) (2)	Weights & Measures Authority and Police	Consumption on relevant premises of alcohol by under 18 or knowingly allowing the consumption to occur	Under 18 or person in capacity to prevent
151 (1)	POLICE	Delivering alcohol sold or supplied on relevant premises to under 18	Person working on premises
151 (2) (4)	POLICE	Allowing anybody else to deliver alcohol sold or supplied on relevant premises to under 18	Person working on premises in capacity to prevent delivery
152 (1)	POLICE	Sending an under 18 to obtain alcohol sold or supplied on relevant premises for consumption off the premises	Any person
153 (1)	Licensing Authority & Police	Allowing an under 18 to sell or supply alcohol on relevant premises	'Responsible person' – see 153(4)
156 (1)	POLICE	Sale of alcohol on or from moving vehicle	Any person
157 (5)	POLICE	Sell or attempt to sell or allow sale of alcohol on train contrary to prohibition order	Any person
158 (1)	Licensing Authority	False statement in connection with licensing application	Any person
157 (4)	Licensing Authority & Police	Keeping premises open, or allowing premises to be kept open in breach of a closure order in respect of an identified area	Manager, premises licence holder, designated premises supervisor or premises user for temporary event
160 (6)	Licensing Authority & Police	Permit premises to be open in contravention of magistrates' closure order	Any person
161 (7)	POLICE	Permit premises to be open in contravention of a closure order for specified premises	Any person
165 (7)	POLICE	Permit premises to open in contravention of magistrates' closure order pending reconsideration of conditions	Any person
179 (4)	Licensing Authority & Police	Obstructing entry of an authorised person entering premises to investigate whether licensable activity is being carried out in accordance with an authorisation	Any person
Sch 8, para 10 (1)	Licensing Authority	(Transitional offence) – false statement in connection with application for conversion of existing licence under para 2	Any person
Sch 8, para 22 (1)	Licensing Authority	(Transitional offence) – false statement in connection with application for conversion of existing club certificate under para 14	Any person

Appendix 4: Illustrative Scenarios

Examples of Using Other Legislation:

Scenario: During a routine inspection of a nightclub, the Fire Officer observes that all the fire exits are locked and the manager has no knowledge of the location of the keys necessary for unlocking them.

Action: Without being able to immediately rectify the problem, the most appropriate course of action for the Fire Officer is to serve a prohibition notice under section 10 of the Fire Precautions Act, 1971 to remedy the situation (as opposed to seeking a review of the licence under the Licensing Act, 2003).

Scenario: Person found in possession of quantity of illicit drugs following drug search on entry to premises. Initial detention by Doorstaff as per Premises Drugs Policy.

Action: Kent Police will deal with any resulting offences and provide advice and guidance in relation to drug issues.

Examples of Who Takes the Lead:

Scenario: Premises licensed to sell alcohol reported to be operating beyond their permitted hours:

It may at first sight be assumed that the Police would lead, as there is sale of alcohol beyond the permitted hours. However, the impact of that contravention should be assessed in determining the lead authority.

When the Police Lead: If the impact of the licensed premises opening later than their permitted hours is that additional crime, disorder and antisocial behaviour (which includes noise in the street) and is identifiably associated with specific licensed premises then the Police should lead by interviewing the premises licence holder.

Action: Kent Police could prosecute for breach of licence condition, seek a review of the licence or write a warning letter to the premises licence holder (whichever of these actions would be most consistent with the Kent Police's prosecution policy).

When the Local Authority Lead: If the impact of opening beyond permitted hours was noise from music escaping from the premises causing a disturbance to residents in the vicinity Licensing or Noise enforcement team would lead.

Action: The LA officer could then write a warning letter to the premises licence holder / Designated Premises Supervisor, seek a review of the licence or consider the appropriateness of taking action under the Environmental Protection Act 1990.

In addition, the Licensing Authority could prosecute for breach of licence condition, using the evidence of the Licensing, Noise enforcement team or Police. (Again the choice of action(s) should be consistent with the local authority enforcement policy).

However, there would be other examples where there is overlap within the same objective.

Examples of Overlaps:

Scenario It is identified during a routine check on a licensed village hall (which is not a workplace) that there is a total absence of fire fighting equipment.

The Fire Authority could lead on this matter, in order to promote the public safety objective, acting under the Licensing Act 2003, if no more appropriate legislation existed to resolve the situation. Alternatively, an officer with health and safety expertise could act if authorised under the Licensing Act 2003; this officer could be an environmental health officer, technical officer, building control officer, licensing officer or an external consultant expert in a particular field of health and safety. (As the HASAWA was not applicable it could not just be an officer authorised under that Act).

Fire Authority Lead: If the public safety breach were restricted just to the absence of fire fighting equipment, it would be more appropriate for the fire officer to lead.

Health and Safety Lead: If the absence of fire fighting equipment was merely one example of a number of health and safety breaches, the majority of which related to other health and safety matters, the officer expert in health and safety would be the more appropriate lead.

Joint Action: If there were a large number of breaches of public safety in respect of both fire precautions and general health and safety, it would be most appropriate for both authorities to consider seeking a review of the licence, in the acknowledgement that any authority may apply to the licensing authority for a licence or club premises certificate to be reviewed at any time.

This example clearly demonstrates the need for good communication and liaison between the responsible authorities, to ensure effective and targeted use of resources and a transparent but comprehensive approach to the relevant licence holder.

Appendix 5: Gambling Act 2005

Guidance to Licensing Authorities Part III – Enforcement and Compliance Principles to be Applied June 2007

1. Introduction

1.1 This document sets out the Gambling Commission's (the Commission) views on:

- the principles that licensing authorities should adopt in developing their compliance and enforcement practice;
- the division of responsibilities between the Commission and licensing authorities in enforcement and prosecution. It should be noted that licensing authorities are not able to institute criminal proceedings in Scotland, and will refer cases where there has been a breach of the Gambling Act 2005 (the Act) to the Procurator Fiscal;
- the exchange of information between licensing authorities and the Commission; and
- the role of the police in the enforcement and compliance framework.

1.2 The administration and regulation of permits, small society lotteries and temporary permissions for gambling are the responsibility of licensing authorities. In summary we propose that the factors that should be taken into account when determining which agency will take the lead on enforcement are:

- the nature of the breach;
- the seriousness of the breach;
- the frequency of the breach; and
- the enforcement action that is available.

Generally licensing authorities will take the lead in enforcing premises licence conditions, dealing with breaches of premises licence conditions, and investigating and prosecuting less serious or significant incidents of illegal gambling. The Commission meanwhile will lead on enforcement activity connected to operating and personal licences, and on the investigation and prosecution of illegal gambling of multi-authority, regional or national importance. Where non-gambling offences are also involved a multi agency approach may be appropriate, and licensing authorities, the police and Commission should use local consultation arrangements to agree priorities and who should lead on which issues.

1.3 Annex A contains a series of scenarios that indicate which agency should take the lead in a particular situation. The Annex is intended as a guide only, and each case should be considered on its merits.

2. Underlying principles

2.1 For the purposes of this document regulatory action would include informal or formal warnings and licence reviews, issue of simple cautions (warnings) or, in England and Wales only, the prosecution of an offence under the Act. The main objective of the compliance process will be to ensure compliance with the three licensing objectives,

including in particular compliance with the general licensing conditions (including mandatory and default conditions), specific licence conditions and any applicable codes of practice. Enforcement can be defined as the criminal or regulatory investigation process and any consequent laying of criminal charges or imposition of a regulatory sanction.

2.2 The approach we propose is similar to the approach adopted by most licensing authorities in relation to liquor licensing; that is a risk based approach where the main determinant is the risk posed to the three licensing objectives, 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.

2.3 Both the Commission and licensing authorities must have regard to the three licensing objectives. However, whilst the Commission will generally concentrate on enforcement and compliance matters relating to the way in which gambling is provided, licensing authorities will concentrate on issues related to the premises themselves, in addition to being responsible for issuing premises licences, permits, temporary use permissions and the registration of societies running small lotteries.

2.4 The Commission, licensing authorities and the police are all parties to the inspection and enforcement regime created by the Act, and it is important to the effectiveness of this regime that information is readily exchanged and efforts are coordinated. Section 350 and schedule 6 of the Act establish the principles by which information should be managed between all parties. Section five of this document outlines the principles by which the exchange of information will be managed.

Risk based assessments

2.5 The Commission is pursuing a risk based approach to compliance and enforcement, as set out in its consultation document '*Licensing Compliance and Enforcement*' (May 2006). The basis of the approach is to assess when and where to take action depending on the assessment of how likely it is that the licence conditions or codes of practice may be breached, and with what impact.

2.6 Many licensing authorities already pursue a risk based approach towards other areas of licensable activity, such as alcohol and taxi licensing.

2.7 The Commission considers therefore that licensing authorities should adopt a risk based approach in respect of the gambling permissions that they issue, and should base their approach around risk towards the three licensing objectives, relevant codes of practice, guidance issued by the Commission, and the principles included in their 3-year licensing policy statements.

2.8 As a starting point for developing their local risk based approach, licensing authorities should undertake a review of existing records and risk assessments. These may include police reports relating to gambling premises, records that the authority may

have in relation to alcohol licences, and information held by trading standards and/or environmental health colleagues.

This exercise should inform a proposed pattern of visits to premises, planned in connection with the authority's other functions or when reacting to complaints. After any visit undertaken, a licensing authority should review their risk assessments with a view to informing their criteria for undertaking a premises inspection. Complaints, information and intelligence received by the licensing authority relating to gambling premises will also inform the general risk ratings of premises.

Permits

2.9 The Act introduces a range of permits for providing gambling facilities, which are granted and issued by licensing authorities. Permits regulate gambling and the use of gaming machines for non-licensed premises, and are generally suitable where the stakes and prizes involved in the gambling are very low (with certain exceptions), or gambling is not the main function of the premises (except in the case of Family Entertainment Centre Gaming Machine permits). The Commission has no specific powers to take action over the misuse of permits other than the general power of prosecution of illegal gambling.

2.10 Licensing authorities are responsible under section 282 of the Act for receiving notifications from owners of alcohol licensed premises when they intend to exercise their automatic entitlement to two gaming machines in each premises.

2.11 Licensing authorities may grant or reject an application for a permit, but may not attach conditions to it other than limiting the number of machines in limited cases. However, holders of club gaming permits, club gaming machine permits or alcohol licensed premises permits must abide by the Commission's codes of practice on the location and operation of gaming machines (issued under section 24 of the Act), and licensing authorities may take into account matters set out in the relevant paragraphs of schedules 10 to 14 of the Act. Permit holders are not normally required to also hold an operating licence, but in all cases a permit cannot be granted for a premises which has already been issued with a valid premises licence.

2.12 Licensing authorities in England and Wales have the power to prosecute if a gaming machine is made available for use in contravention of section 242 of the Act. Licensing authorities in Scotland should refer intentions to prosecute to the Procurator Fiscal.

Small society lotteries

2.13 Licensing Authorities are responsible for registering small society lotteries that operate in their area. Once registered these become exempt lotteries under the Act. These are lotteries promoted on wholly behalf of a non-commercial society which is established and conducted for:

- charitable purposes;
- the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity; or

- any other non-commercial purpose other than that of private gain.

2.14 A lottery, or series of lotteries, is defined as small if the total value of tickets put on sale in a single lottery is £20,000 or less and the aggregate value of the tickets put on sale in all the lotteries in a calendar year is £250,000 or less. Societies planning to run lotteries in excess of these limits will require a lottery operating licence from the Commission.

2.15 Licensing authorities will be responsible for ensuring that the provisions of Schedule 11 of the Act in respect of all exempt lotteries are adhered to, with reference to the societies registered with them to operate small lotteries (see also part 2 of the 'Guidance to licensing authorities' series of documents, which focuses on the registration and administration of small society lotteries, available on the Commission's website).

2.16 The Act gives licensing authorities in England and Wales the power to prosecute offences relating to the promotion and facilitation of non-exempt lotteries, misusing the proceeds of a lottery and breaching the conditions of a small society lottery. The Commission has no specific powers in relation to small society lotteries.

Temporary use and occasional use permissions

2.17 The Commission has no specific powers in relation to temporary permissions for gambling. It is the function of licensing authorities to record applications for temporary permissions to provide gambling facilities in the form of temporary and occasional use notices.

Premises licences

2.18 Premises licences are issued by licensing authorities to regulate where gambling takes place, and to ensure that the premises are suitable for gambling. To be granted a premises licence the applicant must hold a valid operating licence issued by the Commission (except for betting (track) premises licences where the licence holder may not be the actual provider of betting facilities) and the premises licence holder must comply with the Act.

2.19 The inter-relationship between the operating licences, issued by the Commission, and premises licences, issued by licensing authorities, and the respective roles of the enforcement agencies (the Commission, licensing authorities and the police) forms the basis of the rest of this document.

3. Premises licences compliance

3.1 While enforcement is the regulatory or criminal investigation process which may result in either the imposition of a regulatory sanction or the laying of criminal charges, the compliance process involves gambling operators, individuals working in the industry at all levels, licensing authorities and the Commission. It is aimed at ensuring compliance with all aspects of regulation (the licensing objectives, licence conditions and codes of practice).

3.2 This must be primarily a collaborative process, and the effectiveness of the regulatory regime for the gambling industry depends on the establishment and

maintenance of an open, cooperative and effective relationship between operators, individuals, licensing authorities and the Commission.

3.3 The primary responsibility for compliance by any organisation subject to regulation lies with that organisation's senior management, and not the regulator. It is the Commission's role, through the operating and personal licence regime, to ensure that senior management have adequate systems and controls in place to ensure that their business does not pose a regulatory risk, that they are aware of their responsibilities and are carrying them out effectively. The incentive for operators is that better compliance results in less regulatory intervention.

Inspection visits

3.4 Premises licences granted by licensing authorities authorise the provision of facilities for casinos, bingo, betting (including on tracks), adult gaming centres and family entertainment centres.

3.5 Premises licences may only be issued to people with a relevant gambling operating licence issued by the Commission, although as mentioned previously this may not be the case for tracks (where the occupier of the track who gets the premises licence need not be the person who actually offers the facilities for gambling).

3.6 In addition to the mandatory and standard default conditions attached to premises licences, licensing authorities are entitled to attach local conditions provided they are proportionate and relate to the upholding of the licensing objectives. Part 1 of the Commission's 'Guidance to Licensing Authorities' (April 2006) suggests types of condition that might be considered applicable in relation to each type of licence. In undertaking inspection activity, licensing authorities should seek to ensure that all relevant conditions attached to a particular premises licence are being upheld and are not at risk of breach.

3.7 The Commission has a legitimate interest in what happens in premises as the operating licence conditions require that the businesses' policies developed centrally are translated into practice at the point of interaction with the customer. To this end the Commission's compliance regime contains elements of random and programmed premises inspections based on the risks to the operating licence conditions, codes of practice and the licensing objectives.

3.8 The Act gives licensing authorities, the Commission and the police parallel powers of inspection in respect to premises. In theory a premises licence holder could be subject to inspections from both the Commission and the issuing licensing authority as part of their risk based compliance programme, and as such the potential for over-regulation exists. The Commission intends to ensure, to the extent that is feasible and cost-effective, that there is no duplication with the relevant bodies visiting the same premises within a short space of time apparently to check the same or similar issues.

3.9 This document has already identified that licensing authorities are used to operating in a risk based environment and that they should adopt a risk based approach when determining the frequency at which gambling premises are to be inspected. It is open to an authority to visit all the premises in their area, particularly when considering applications, as this will enable them to risk rate premises. Licensing authorities will

receive complaints and observations about premises and these should also be factored into decisions on when to visit specific premises. They may also have a random element in their inspection programme. This combined approach will enable each licensing authority to develop a range of options dependent on the risk assessment model that they adopt.

3.10 The Commission recommends that licensing authorities consider the outcomes of the Department for Trade and Industry's (DTI) retail enforcement pilot study when published. The study seeks to co-ordinate the activities of local authority officers (including those employed in a licensing function) that may visit gambling premises for a range of regulatory reasons, for example in relation to an alcohol licence, health and safety regulation or in response to reports of noise nuisance.

3.11 The Commission will undertake visits to premises in accordance with its risk model to ensure compliance with the relevant operating licence, for example to ensure that the policy and procedures adopted by licence holders are translated into appropriate transactions with customers. Most Commission inspections will be programmed, and the local licensing authority will normally be invited to offer any observations it has on the specific premises in advance of visits, and if appropriate the Commission will undertake joint visits with licensing authorities.

Information

3.12 It is recommended that licensing authorities provide advice to all those who make enquiries to them, about the legal responsibilities involved in providing premises or holding permits for gambling, whether or not they currently hold a licence or a permit.

3.13 Enquiries relating to operating or personal licences should be handled by consulting the Commission's website, or referring such enquiries to the Commission's website or directly to the Commission.

3.14 Further details on the Commission's approach to compliance can be found in our consultation paper on Licensing, Compliance and Enforcement (issued May 2006), available through the Commission's website.

4. Enforcement

Regulatory Sanctions

4.1 If a premises licence or permit holder is found to be at risk of breaching, or is actually in breach of, a premises licence condition, a code of practice attached to a permit, or otherwise committing an offence under the Act, then licensing authorities may take enforcement action against that licence or permit holder. Such enforcement action may take the form of regulatory action, ranging from issuing simple cautions to prosecuting an offence under the Act.

4.2 Informal actions that could be taken include giving oral and written advice, or issuing oral and written warnings. Formal actions that could be taken include conducting interviews under PACE (or common law in Scotland), reviewing a premises licence, issuing simple cautions and initiating prosecutions.

4.3 If the matter relates to a premises licence, then it may be that the particular circumstances give rise to the possibility of breaching the conditions of both a premises and an operating licence. In such circumstances the Commission will generally take action against the operator (which might include prosecution but would normally be regulatory action) following discussion with the licensing authority, against the operator. However there may be occasions where a licensing authority is better placed to take the lead, particularly where there is a breach of premises licence condition that is confined to one authority area and is a particular priority for that area, or where the risk of, or impact of, any operating licence breach is isolated rather than systematic. The licensing authority may also be best placed to take the lead if there are additional specific matters that it also wants to take action on that fall outside the scope of the Act's licensing objectives, such as health and safety concerns.

4.4 Licensing authorities will also take the lead if there is a possibility of a breach or an actual breach of a permit, as the Commission does not have powers to undertake enforcement action relating to permits, besides the general power to prosecute illegal gambling.

4.5 Section 197 of the Act requires licensing authorities to inform the Commission when a review into a premises licence is initiated, either as a result of a complaint from another party or if initiated by the licensing authority itself. The Commission will therefore be able to provide an input into any premises licence review and as such requires to be informed of the output of such reviews, as there may be wider implications towards the status of the operating licence.

4.6 Where considered appropriate and necessary, cases that involve offences other than gambling offences should be referred to the appropriate external enforcement agency (e.g. Police, Advertising Standards Authority, Trading Standards etc.), but the Commission will need to be aware of the breach.

4.7 The Commission has established criteria by which it will determine which agency should take the lead on enforcement matters relating to breaches connected to premises licences, permits and temporary use notices, and recommends that licensing authorities should pursue a similar approach. The criteria are:

The powers available in the Act

- only licensing authorities can undertake administrative action (suspensions, revocations) in relation to premises licences and permits.

The nature of the breach or risk of breach

- if it involves permits, temporary use licences or breaches of premises licences conditions with essentially local impact the local licensing authority will normally deal with them.

The seriousness of the breach or risk of breach

- where a breach appears to be widespread or stemming from systemic failures on the part of the operator, then the Commission will generally take action. The Commission will also generally take action if the offence is high impact, if there is nationwide deterrence value of enforcement action or if the case will establish a precedent;

- as noted above the Commission will be notified if a licensing authority starts to review a premises licence and so will have the opportunity to comment and contribute to the review.

The geographical impact of the breach

- if there is a regional element to the breach, for example a number of pubs in a particular city are offering a similar types of unlicensed gambling, it may be appropriate for licensing authorities to co-ordinate their activity locally and liaise with the Commission on the regulatory action to be taken.

The frequency of the breach, or risk of breach

- a 'one off' event may be best dealt with by a licensing authority, whereas repeat offences, or offences in several premises owned by the holder of an operating licence suggesting systemic breaches of licence conditions, should generally be dealt with by the Commission.

The enforcement action that is available

- for example whether a fine would be a suitable enforcement outcome.

4.8 Generally, if a licensing authority discovers a breach of a premises licence condition or permit in the course of other regulatory activity, it is expected that it will deal with the case. However, when formal enforcement action in relation to suspected breaches of a premises licence is to be taken by a licensing authority, it should inform the Commission that it is taking such action. This enables the Commission to comment on the proposed course of action if it considers it necessary to do so. It will be for the Commission to respond promptly to the notification of the intention to take action, and it is not expected that licensing authorities will wait for agreement from the Commission before taking action.

4.9 If the Commission is preparing a case against an operator and would prefer the local licensing authority not to act, the Commission will advise the authority accordingly of this, and will inform it of the reasons for this request.

Prosecutions

4.10 The Act gives licensing authorities (in England and Wales), the police and the Commission the power to prosecute (among other offences) the offence of using premises for gambling without the requisite permissions. While in exceptional circumstances, such as repeated deliberate breaches of premises licence conditions, licensed operators or permit holders may be prosecuted without any prior regulatory action (warnings, suspension or revocation of licence or removal of permit, etc), most prosecutions will be against those illegally providing gambling without a licence or permit.

4.11 In Scotland, licensing authorities are not able to institute criminal proceedings themselves, but are to refer cases where there has been a breach of the Act to the Procurator Fiscal.

4.12 Normally the Commission or the licensing authority would decide when to involve the police, rather than the police initiating any action. The Commission believes that examples of scenarios where the police should be involved include:

- when non-gambling offences are discovered, e.g. large scale theft or other serious crime which extends beyond the reach of licence conditions; and/or
- assistance with Commission investigations e.g. enquiries into other criminal activity.

4.13 There is a distinction between those who conduct gambling operations under a licence or permits but breach the conditions of their licence or permit, and those who seek to profit from providing facilities for gambling without a licence. While both situations result in unlawful gambling, the latter situation is generally considered by the Commission to be more serious.

Illegal gambling

4.14 The Commission views the prevention of illegal gambling as an enforcement priority. Combating illegal gambling is of significant benefit to the licensed community as the provision of illegal unregulated gambling impacts upon the reputation of the industry as a whole. Those engaged in illegal gambling should expect to be subject to the criminal investigation and prosecution process.

4.15 The Commission will generally take the lead in prosecuting the offence of providing facilities for gambling where it is committed in the context of illegal gambling which appears organised and has a potentially national or regional impact, or where there are deliberate, reckless or significant breaches by a licensed operator.

4.16 The expectation is that licensing authorities will take prosecutions against those providing or facilitating illegal gambling, i.e. gambling without a licence or permit, where the criminality is contained in one premises.

4.17 The annual premises licence fee is set to cover the costs of compliance and enforcement work undertaken by licensing authorities, including the cost of dealing with illegal gambling in a licensing authority's area.

4.18 The issue of illegally sited machines is complex and will need a co-ordinated approach. Licensing officers should contact the local compliance officer in the first instance to agree an approach.

Breaches of licences

4.19 For the licensed industry there are a range of compliance and regulatory tools to ensure that licence holders remain compliant. Enforcement is a highly effective method of ensuring regulatory compliance and deterring regulatory breaches. Therefore the Commission will undertake enforcement cases against those licensed operators and individuals who fall below the required regulatory standard or who fail to take effective remedial action to correct regulatory failings. In serious cases this will mean regulatory or criminal proceedings that may ultimately result in loss of the licence and therefore expulsion from the industry.

4.20 Before commencing criminal proceedings against a licensed operator or his staff without a prior premises licence review (by virtue of which the Commission would be notified), licensing authorities should consult the Commission, as it may be that there have also been related breaches connected to operating and/or personal licences held by the operator, or breaches at premises in other parts of the country.

4.21 If a particular breach is committed by a large national or regional operator, which may have wider implications for the gambling industry as a whole, then the Commission may wish to take primacy. However under such circumstances the Commission will liaise with licensing authorities to establish who should take the lead on a case by case basis.

4.22 In exceptional circumstances, where a licensing authority considers that enforcement action is justified and would normally take primacy, but feels it does not have sufficient investigatory powers or resources to deal with a relevant breach of the Act, it should refer the matter to the Commission to consider whether or not it can either assist the authority by providing resources/expertise or assuming primacy in the investigation and potential prosecution. The authority should contact the local Commission Compliance Officer in the first instance.

4.23 In the course of an investigation into a breach of licence conditions or codes of practice, a licensing authority may find that other non-gambling offences are being committed on the premises, e.g. drugs offences or handling of stolen goods. Under these circumstances a multi-agency approach involving the police and the Commission is essential.

5. Information exchange

5.1 The regime introduced by the Act relies on a network of agencies to ensure that the licence conditions or codes of practice are not breached and to pursue offences under the Act. Section 350 and schedule 6 establish the principles by which information and knowledge must be exchanged in order to effectively support this network.

5.2 The Commission published a document entitled *'Information exchange between the Gambling Commission and licensing authorities'* in March 2007, which explores the subject of how agencies will ensure that the appropriate data is held and shared in more detail. This document can be found on the Commission's website.

5.3 The Act allows the exchange of information between licensing authorities and the Commission in relation to premises licences issued (and any variations to those licences), temporary use notices, registered lotteries and on permits issued for club gaming, club gaming machines, pub gaming machines and prize gaming. Certain actions connected to local licensing activity also trigger an exchange of information between the licensing authority and the Commission, such as the initiation of a premises licence review. The protocols by which this information will be provided to the Commission are also established in the document mentioned above.

5.4 In developing a risk based approach the Commission relies on information and intelligence from the other agencies it works with, including licensing authorities. The Commission will, from time to time, require specific and general information (for example on the prevalence of bingo in pubs, or on the pattern of requests for more than two machines in licensed premises) from licensing authorities. Unsolicited information from all sources, including licensing officers, is however also welcome and will be evaluated and considered.

5.5 Licensing authorities should look to exchange information connected to licensing activity with their neighbouring authorities and other regions where deemed appropriate.

5.6 Local authorities (referring to an overall authority or council, rather than just the licensing division) are likely to be the source of much information about illegal gambling and potential breaches of operating and personal licences that will be identified through other activities, including their role in issuing other types of licences. Examples of the type of relevant information that may be

provided by other parts of a local authority include the illegal supply of machines to private hire vehicle offices, the presence of illegal card rooms in cafes, or the unsupervised use of machines at a track.

5.7 The Commission has considered various options for managing the exchange of information with licensing authorities and has concluded that before any formal action is taken against the holder of a licence (of any type), details of the alleged breach should be shared between both the Commission and the relevant licensing authorities as appropriate. This removes the likelihood of operators being the subject of 'double jeopardy' in terms of compliance and enforcement activity overlapping between the Commission and licensing authorities. Furthermore this approach ensures that the Commission can be made aware if one operator is being investigated for similar breaches by a number of authorities, and can co-ordinate activity between authorities and take action against the operating licence holder if necessary.

5.8 As the new legislation introduced by the Act beds in, the Commission will review the information it receives over time to ensure that appropriate intelligence is being received, and to identify any gaps or inconsistencies in information provision.

Gambling Commission June 2007

The Gambling Commission regulates gambling in the public interest. It does so by keeping crime out of gambling, by ensuring that gambling is conducted fairly and openly, and by protecting children and vulnerable people from being harmed or exploited by gambling.

The Commission also provides independent advice to government on gambling in Britain. For further information or to register your interest in the Commission please visit our website at: www.gamblingcommission.gov.uk

Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP
T 0121 230 6500
F 0121 233 1096
E info@gamblingcommission.gov.uk