

TAUNTON DEANE BOROUGH COUNCIL

LICENSING COMMITTEE – Monday 28 February 2005

Report of the Licensing Manager

Enforcement Protocol

(this matter is the responsibility of Councillor Edwards)

Executive Summary

This report details the current number and the opening hours of licensed premises within Taunton Deane Borough Council's licensable area. This report has been compiled to show the current position in order to assess the impact of the Licensing Act 2003. The report also introduces a proposed joint enforcement protocol, which it is hoped will be adopted by the Licensing Authority and the Responsible Authorities, such as the Police and Fire Services.

1. Purpose of Report

- 1.1 The purpose of this report is to provide information to enable the Licensing Committee to be able to assess the impact of the Licensing 2003 and to make a recommendation to adopt a joint enforcement protocol with the Responsible Authorities.

2 BACKGROUND

- 2.1 There are approximately 200 premises licensed to sell or supply alcohol "on" the premises, 86 premises licensed to sell alcohol "off" the premises, 52 Restaurant licences, 3 Residential Licences, 11 Restaurant and residential Licences and 49 registered clubs.
- 2.2 There are currently 97 premises licensed to provide Public Entertainment, 24 premises licensed for Theatrical Performances, 3 premises licensed for Film Exhibitions and 12 premises licensed to provide Late Night Refreshment.
- 2.3 A number of the premises detailed above will hold more than one licence and it is therefore estimated that approximately 500 premises will require a licence or club premises certificate in accordance with the Licensing Act 2003.
- 2.4 There are currently 10 premises licensed to provide Public Entertainment after midnight in Taunton Town Centre, 1 of which closes at 1am, 4 close at 2am and 5 close at 3am. There is also 1 premises in Wellington that closes at 2am and number of Village Halls all licensed to open until 1am. A full List of premises licensed to open after midnight is attached at Appendix 1.

3. ENFORCEMENT INSPECTION PROTOCOL

- 3.1 The Licensing Act details number of bodies that become Responsible Authorities (RAs) and as such become Statutory Consultees. The RAs all have the power to seek a review of a licence. Not all of the RAs have the power to prosecute in

accordance with the Licensing Act. In order to provide some guidance on which body should be the lead agency in relation to enforcement, an enforcement protocol has been drafted. To date this protocol has been circulated to all RAs and their views and opinions have been requested. The Draft protocol is attached at Appendix 2.

- 3.2 In addition to the enforcement protocol, it is believed that premises should be inspected in accordance with the likelihood of the premises to cause problems. In order to assess which premises are most likely to create problems, a simple calculation sheet has been drawn up. The sheet is attached at Appendix 3.

6. RECOMMENDATION

- 6.1 It is RECOMMENDED that the Licensing Committee note the contents of this report and endorse the use of the enforcement protocol and risk rating calculation sheet.

Contact Officer:

Jim Hunter Licensing Manager
Tel: 01823 356343
Email: j.hunter@tauntondeane.gov.uk

Appendix 1

Premises licensed after midnight

AURA 3AM
BRAZZ 1AM
CHURCHINFORD VILLAGE HALL 1AM
DELLERS 3AM
HOLIDAY INN 2AM
KINGS ARMS WELLINGTON 2AM
LYDEARD ST LAWRENCE VILLAGE HALL 1AM
MARKET HOUSE 2AM
THE MOAT HOUSE 2AM
OAKE MANOR GOLF CLUB 1AM
ODEON CINEMA 3AM
REMEDIES 2AM
ROYAL BRITISH LEGION CLUB (TAUNTON) LTD 1AM
RUISHTON VILLAGE HALL 1AM
SHOUT! 3AM
SOMERSET COUNTY CRICKET CLUB 1AM
STAPLEGROVE VILLAGE HALL 1AM
STOKE ST MARY VILLAGE HALL 1AM
STURM'S SPORTS BAR 2AM
TAUNTON SCHOOL ENTERPRISES 1AM
TOAD @ THE WAREHOUSE 3AM
TRULL MEMORIAL HALL 1AM
THE VICTORIA ROOMS 1AM
WELLSPRINGS LEISURE CENTRE 1AM
WIVELISCOMBE RFC CLUBHOUSE 1AM
YATES' 3AM

Appendix 2

Licensing Act 2003

Memorandum of Understanding and Joint Enforcement Protocol signed between

Taunton Deane Borough Council (the Licensing Authority) and

- 1. Avon and Somerset Constabulary**
- 2. Avon and Somerset Fire & Rescue Authority**
- 3. Somerset County Council Trading Standards Service**
- 4. Somerset County Council Social Services**
- 5. Taunton Deane Borough Council Environmental Health Service**

1. The above statutory organisations are the Parties to this Memorandum of Understanding and Joint Enforcement Protocol.

2. Taunton Deane Borough Council and Avon And Somerset Constabulary, Avon And Somerset Fire & Rescue Authority and Somerset County Council aim to provide safe environments for the community of Taunton Deane.

3. The Licensing Act 2003 introduces a new regime for the licensing of a variety of activities, including places where alcohol is sold and entertainment is provided. It sets out four equal licensing objectives which, are to be promoted by licensing authorities in conjunction with other "responsible authorities", as defined by the Act, and the holders of licences. The Act also defines other bodies as responsible authorities, with rights of consultation and objection to applications, but it is not thought that formal agreements will be required with these bodies.

These are:

- a. The prevention of crime and disorder
- b. The promotion of public safety
- c. The prevention of public nuisance
- d. The protection of children from harm

4. Each Party has enforcement responsibilities in relation to premises licensed under the Act and recognises the importance of effective co-operation and liaison to ensure that premises licence holders, designated premises supervisors, personal licence holders and club premises certificate holders understand and comply with the law.

5. The Government has strongly recommended that protocols be set up between authorities and this document has been prepared with that in mind.
6. The purpose of this document is to ensure efficient and effective co-operation between agencies when dealing with areas of mutual interest, to secure:
 - a. High levels of open communication between agencies
 - b. Clear lines of responsibility regarding enforcement of the law
 - c. Sharing intelligence, where appropriate to enable effective enforcement of the law

It sets out the steps that have been agreed to achieve that aim, in accordance with guidance issued by ODPM.

7. Communication

7.1 Good communication between agencies is vital to ensure that information of mutual interest is shared effectively and, in particular, where responses are required within a tight timescale to meet statutory periods for determination of applications, that deadlines can be met. It is important that each organisation has a reliable contact point, and will identify nominated officers and details of one other officer who in their absence would assume their duties. There must be a clear understanding about when, where and how contact shall be made, including for emergencies.

Appendix 01

A list of contact points for each agency identifying; postal addresses, electronic addresses, telephone number, nominated officers and details of one other officer who in their absence would assume their duties.

8. Sharing Intelligence

8.1 The parties to this Memorandum of Understanding need to share information about premises and people currently licensed or proposed to be licensed, in such a way as to enable the effective operation of the licensing process. This agreement automatically enables the sharing of information by all parties in compliance with the rules on Data Protection, Freedom of Information and Human Rights.

9. Data Protection and exchange of information

9.1 Section 29 of the Data Protection Act 1998 allows for the exchange of information for the purposes of the prevention of crime or the apprehension of offenders.

9.2 Section 115 of the Crime and Disorder Act 1998 allows for information to be specifically exchanged between the Police and the Licensing Authority.

9.3 Parties to this Protocol may disclose information to other Parties for these purposes providing that the local Protocols applicable to each organisation for data protection are observed. Every request for information under the Act must be made in writing giving reasons why disclosure is necessary.

9.4 Information supplied must only be used for the purpose for which it is obtained, must be securely retained whilst in the possession of the responsible authority that has requested it, and must be securely disposed of when no longer required. It must not be further transmitted to a third party without the consent of the original authority that supplied the information.

9.5 This part of the Protocol may be supplemented by any Memorandum of Understanding on data exchange agreed either at a local or national level.

10. Risk Rating of Premises:

The local authority in conjunction with the Police will assess premises using the attached risk rating scheme. The Risk Rating scheme uses the following criteria:

- History/Compliance record
- Nature of activities
- Customer base
- Numbers
- Location
- Confidence in the management
- Consultation with other authorities

**Reputations Draft Format
Still to be added**

11. Enforcement Action

11.1 Enforcement action taken in respect of breaches of legislation will remain the responsibility of the agency designated for each piece of legislation, but the outcome of such action should be fed into the process for determining applications and reviewing the status of licences currently in force.

11.2 The Licensing Act does not transfer from the Police or the Fire Authority powers of enforcement for any pieces of legislation. From time to time, however, it may be expedient for joint inspections to be carried out by officers from the licensing authority and officers from one or more of the relevant responsible authorities.

11.3 Joint inspections will normally be conducted on the basis of a risk-rating scheme applied to all licensed premises, or in response to specific complaints.

Responsibility for seeking a joint inspection will rest with the responsible authority with the expertise in dealing with the complaint in question (eg the Environmental Health Service for prevention of nuisance; the Fire & Rescue Service for fire risk issues)

12. Relevant legislation:

- a. Licensing Act 2003** – provides a clear focus on the promotion of the licensing objectives; introduces better and more proportionate regulation to give customers more choice, whilst providing the necessary protection for local residents and others.
- b. Police Act 1964** – imposes a primary responsibility on the Police Authority to maintain an adequate and effective Police Force.
- c. Fire & Rescue Services Act 2004** – places a duty on the Fire Authority to provide efficient arrangements for the giving, when requested, of advice in respect of buildings and other property as to fire prevention, restricting the spread of fires and means of escape in case of fire.
- d. Crime & Disorder Act 1998** – places a statutory requirement on Police Services, Local Authorities and other agencies to tackle crime and disorder by working in partnership.

13. Offences

13.1 The Parties agree that the prime responsibility for enforcing the offences under the Act should lie as follows:

Note abbreviations, as follows:

- LA = Licensing Authority
- CPC = Club Premises Certificate
- DPS = Designated Premises Supervisor
- PLH = Premises Licence Holder
- AO = Authorised Officer

Section	Offence	Authority
33 (6)	Failure to notify LA of change of name or address PLH or DPS	LA
40 (2)	Failure to notify existing DPS of variation to premises licence to exclude them	LA
41 (5)	Failure to provide premises licence to LA upon removal of DPS	LA
46 (4)	Failure to notify DPS of application for transfer of premises licence	LA
49 (5)	Failure to notify DPS of grant of interim authority notice	LA
56 (3)	Failure to provide premises licence at request of LA for amendment	LA
57 (4)	Failure to keep or display premises	LA

	licence on premises	
57 (7)	Failure to produce premises licence to an AO for examination	LA
59 (5)	Obstruction of an AO entering premises to inspect before grant of a licence, review or a statement	LA
82 (6)	Failure to notify of change of name or alteration of rules of a club	LA
83 (6)	Failure to notify of a change of registered address of club	LA
93 (3)	Failure to produce CPC for amendment within 14 days of LA request	LA
94 (5, 6, 9)	Duty to keep, display and produce club premises certificate at premises	LA
96 (6)	Inspection of premises before grant etc of club premises certificate	LA
108 (3)	Obstruction of an AO in inspecting temporary event premises	LA or Police
109 (4)	Failure to keep or display temporary event notice on premises	LA
109 (8)	Failure to produce temporary event notice to an AO	LA
123 (2)	Failure to notify LA of conviction for relevant offence during application or renewal period	LA
127 (4)	Failure to notify LA of change of name or address of personal licence holder	LA
128 (6)	Fail to notify court of personal licence or "notifiable event" when being dealt with for a relevant offence	Police or LA
132 (4)	Failure to notify LA of conviction for relevant or foreign offence	LA
134 (5)	Failure to produce personal licence within 14 days to LA for updating	LA
135 (4)	Failure to produce personal licence to an AO whilst on premises to sell or authorise sale of alcohol	LA or Police
136 (1)	Allowing licensable activities otherwise than in accordance with an authorisation	LA or Police
137 (1)	Unauthorised exposure for retail sale of alcohol	LA or Police
138 (1)	Unauthorised possession of alcohol with intent to sell or supply	LA or Police
140 (1)	Allowing disorderly conduct on	Police or LA

	licensed premises	
141 (1)	Sale or supply of alcohol to person who is drunk	Police or LA
142 (1)	Obtaining alcohol for a person who is drunk	Police or LA
143 (1)	Failure to leave licensed premises following a request from a PC or AO	Police
144 (1)	Keeping unlawfully imported goods on relevant premises	Police or Customs and Excise
145 (1)	Allowing unaccompanied children under 16 on relevant premises when alcohol is being supplied	LA or Police
146 (1, 2, 3)	Sale or supply of alcohol to children under 18	LA, Police or Trading Standards
147 (1, 3)	Allowing sale or supply of alcohol to children under 18	LA, Police or Trading Standards
148 (1, 2)	Sale or supply of liqueur confectionery to children under 16	LA or Police
149 (1, 3, 4)	Purchase or supply of alcohol by or on behalf of children under 18	LA or Police
150 (1, 2)	Consumption on relevant premises of alcohol by children under 18, or knowingly allowing it to occur	LA or Police
151 (1, 2, 4)	Delivering or permitting others to deliver alcohol to children under 18	LA or Police
152 (1)	Sending a child under 18 to obtain alcohol for consumption	LA or Police
153 (1)	Permitting children under 18 to sell or supply alcohol children	LA or Police
156 (1)	Sale of alcohol in or from a moving vehicle	Police
158 (1)	False statement in connection with a licensing application	LA
160 (4)	Keeping premises open in contravention of an area closure order	Police or LA
161 (6)	Permitting premises to be open in contravention of a premises closure order	Police or LA
165 (7)	Permitting premises to be open in contravention of a Magistrates' closure order	Police or LA
179 (4)	Obstructing entry by a PC or an AO to premises to check on the carrying out of licensable activity	Relevant responsible authority

14. Investigation of offences

14.1 When the licensing authority or a responsible authority has become aware of an offence and would like another more appropriate responsible authority (or the licensing authority) to take formal action, they will take the following steps:

- a. early discussion with the appropriate authority, including (unless in cases of extreme urgency) the licensing authority's enforcement officer
- b. supply the relevant authority in a timely manner all of the relevant evidence (whether subsequently used or unused)
- c. set out in writing details of the offence and request that the relevant authority take action

14.2 Once in receipt of a written request to take action the appropriate authority will:

- a. assess the facts and take appropriate action in accordance with its own enforcement policy. The appropriate authority will, unless immediate action is required, commence an investigation within a maximum of 15 working days of receipt of the complaint.
- b. inform the authority that initiated the complaint, and any other relevant authority, of the action taken, and reasons why.

15. Responsibility for Prosecutions

15.1 Section 186 of the Act provides that proceedings for offences under the Act may be instituted by:

- a. the Licensing Authority
- b. the Director of Public Prosecutions
- c. for offences under Ss. 146 and 147, the Local Weights and Measures Authority

15.2 It is expected that the Police and the Weights & Measures Authority will normally bring proceedings, including the issue of formal cautions, as a result of offences which they have investigated, unless, in the case of some minor offences, it is specifically agreed that the Licensing Authority will do so. (This may, for example, be part of a prosecution which relates to a series of matters of which the offences form part).

15.3 In all other cases, the Licensing Authority will be the prosecuting authority.

16. Notification of prosecutions and cautions

16.1 Notwithstanding the duty of the court in section 131 (duty to notify the Licensing Authority of convictions) the appropriate prosecuting authority will inform the Licensing Authority within five working days of any conviction or caution under the Act.

16.2 The Licensing Authority for these purposes is the Licensing Authority that issued the personal licence, premises licence, club premises certificate or which received the temporary event notice, even if not a party to this Protocol.

16.3 The notification shall be in writing and shall state:

- a. the name and address of the person convicted or cautioned
- b. the nature and date of the conviction or caution and
- c. the details of any conviction including any order under section 129 of the Act.

17. Register of Cautions

17.1 The Licensing Authority will maintain a register of formal cautions issued to holders of personal licences, premises licences, club premises certificates or persons issuing a temporary event notice.

18. Liaison between Parties to this Agreement

18.1 Liaison meetings will take normally place between the Licensing Authority and the Police on a monthly basis, depending on the nature and quantity of business and with other responsible authorities on a basis to be agreed, but not less than annually.

18.2 Responsible Authorities will determine the basis for liaising with each other, but this will be not less than annually.

19. Consultation on applications

19.1 The Licensing Authority will consult with all responsible authorities on each application, in accordance with Regulations made under the Act.

(NB It is expected that this section will be expanded, once the Regulations and timescales for responses to consultations have been determined. It will be important to establish a clear set of agreed procedures, to enable responsible authorities to make full representations, where necessary, so that the Licensing Authority can determine every application within the required period, by reference to a committee, where their procedures require it.

In any event, each Licensing Authority will need to conclude specific agreements with the responsible Authorities)

20. Applications for review of a licence

20.1 This document recognises the right of any responsible authority to apply to the Licensing Authority for a licence or club premises certificate to be reviewed at any time.

20.2 Except in extreme cases (where there has been a serious incident of crime and disorder, a serious risk to public safety, a serious incident of public nuisance or a serious incident related to the protection of children from harm) the responsible authority seeking a review will be expected to:

- a. give an early indication to the Licensing Authority of the events requiring an application.
- b. seek an informal resolution to the matter if possible or appropriate.
- c. be able to demonstrate to the Licensing Committee hearing the application for a licence review that, where appropriate, alternative approaches to dealing with the situation leading to the application have first been attempted, in accordance with the authority’s enforcement policy.

21. Procedural Review

21.1 All parties to this agreement shall periodically review this document to ensure that it maintains a suitable response and working arrangement for all licensing functions and achieves necessary feedback to assist in meeting the statutory objectives. It is suggested that the first review should take place not later than one year following the Second Appointed Day.

Signed

[NAME]

Taunton Deane Borough Council (Licensing Authority)

Date

Signed

[NAME]

Avon and Somerset Constabulary

Date

Signed

[NAME]

Avon and Somerset Fire & Rescue Authority

Date

Signed

[NAME]

Somerset County Council (Trading Standards Service)

Date

Signed
[NAME]
Somerset County Council (Social Services)
Date

Signed
[NAME]
Taunton Deane Borough Council (Environmental Health Service)
Date

Appendices

Risk Rating Scheme Phase 1 & 2

Consultees Draft Return Forms

Appendix 3



Premises Risk Rating Scheme Phase 1

Premises Name	Premises Type
Address of Premises	
Name of person seen	Maximum numbers
Inspecting Officer	2 nd Officer
Time of Inspection	Start Time
	Finish Time

Has the premises undergone a licensing inspection within the past 12 months	Yes/No
Is the inspecting officer familiar with the premises	Yes/No
Has the premises had a PEL within the last five years	Yes/No
What is the rateable value Band of the premises	A B C D E
Does the premises fall into Band D or E City/town centre pub	D or E
Premises Rating	Low Med High
Police premises rating	
Fire service premises rating	
Licensing officer rating	
Knowledge of alcohol/drugs abuse or violence	Yes/No
Food safety	
Health and safety	
Public nuisance	
Unlicensed entertainment	
Breach of licence conditions	
Confidence in management	
Lack of confidence in the current management	Yes/No
History of unsatisfactory management on the premises	Yes/No

If **yes** to any of these questions detail comments below

Current Hours							
Monday	to	Tuesday	to	Wednesday	to	Thursday	to
Friday	to	Saturday	to	Sunday	to		
Proposed Hours							
Monday	to	Tuesday	to	Wednesday	to	Thursday	to
Friday	to	Saturday	to	Sunday	to		

Comments

Premises Rating Low Medium or High =