



# Licensing, Gambling and Sexual Establishments Enforcement Policy 2015

Colchester Borough Council

9th September 2015

# Contents

General Principles of the Enforcement Policy .....	1.0
Organisational Arrangements.....	2.0
Enforcement Options .....	3.0
Enforcement Approaches.....	4.0
Complaints .....	5.0
Inspections and Visits to Premises .....	6.0
Status and Review .....	7.0
References .....	8.0

# **COLCHESTER BOROUGH COUNCIL “THE LICENSING AUTHORITY”**

## **LICENSING, GAMBLING AND SEXUAL ESTABLISHMENTS ENFORCEMENT POLICY (2016)**

### **1.0 - General Principles of the Enforcement Policy**

- 1.1 The purpose of the enforcement policy is to ensure compliance with the Licensing Act 2003 and the Gambling Act 2005, and to ensure the promotion of the licensing objectives under these two acts. Where appropriate the Colchester Borough Council (“Colchester”) may use provisions under other Acts to ensure the promotion of the objectives. The relevant licensing objectives are:

Licensing Act 2003:

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

Gambling Act 2005

- a) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; and
- b) Ensuring that gambling is conducted in a fair and open way; and
- c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.

- 1.2 The enforcement policy also covers Sex Establishments under the Local Government (Miscellaneous Provisions) Act 1982. However, as this Act does not provide licensing objectives, the enforcement policy is in place for sex establishments to ensure compliance with licence conditions as well as the legislation.

- 1.3 The following principles underpin this policy in relation to licensing enforcement:
- a) Standards: setting clear standards
  - b) Openness: clear and open provision of information
  - c) Helpfulness: helping business by advising on and assisting with compliance
  - d) Complaints: having a clear complaints procedure
  - e) Proportionality: ensuring that enforcement action is proportionate to the risks involved
  - f) Consistency: ensuring consistent enforcement practice.

- 1.4 The Council is a signatory to the Enforcement Concordat: Good Practice Guide for England and Wales produced by the Government’s Better Regulation Unit in

association with the Local Government Association. This enforcement policy confirms Colchester's commitment to implementing Concordat principles in all enforcement action.

- 1.5 Colchester also recognises the Regulators' Compliance Code issued under the Legislative and Regulatory Reform Act 2006. This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improves regulatory outcomes.
- 1.6 In certain instances Colchester may conclude that a provision in the code is either not relevant or is outweighed by another provision. Colchester will ensure that any decision to depart from the code will be properly reasoned, based on material evidence and documented.
- 1.7 Colchester Aims to ensure that licensed premises have a positive impact on their locality and where any premises do cause problems, these are addressed swiftly and in the most appropriate manner. This policy supports the Council's goals set out in its strategic plan to create a vibrant, prosperous, thriving and welcoming town.
- 1.8 In most cases Colchester believes the best way to achieve its aims is to give guidance and reasonable support to licence holders. Formal enforcement action may be appropriate in certain cases, including those where the issues are particularly serious or there have been repeated offences.
- 1.8 In all cases Colchester will seek to balance the needs of businesses against the rights of residents to enjoy their homes and surroundings.

### **Enforcement of Other Acts**

- 1.10 For the sake of clarity, any enforcement activity undertaken by officers of the Licensing Authority for purposes other than licensing, will be carried out in accordance with the enforcement policy relevant to the legislation. This could include investigations to assist other teams, or to carry out investigations and action in respect of smoking in workplaces (under The Health Act 2006). Or Closure Notices/Orders under the Anti-Social Behaviour, Crime and Policing Act 2014

## **2.0 - Organisational Arrangements**

- 2.1 Colchester recognises the 24-hour economy that operates in the Borough. Therefore, having commitment to the licensing objectives, Colchester has is committed to visiting businesses outside of normal office hours at times when the business is available, where it is reasonable to do so.

2.2 Along with the Licensing Authority, the Responsible Authorities and other relevant teams and agencies have a role to play in the enforcement of the Acts, and to work effectively with these authorities a joint enforcement protocol is in place.

2.3 To enable effective communication between the Licensing Authority and the Responsible Authorities, a joint working group called the Licensing Enforcement Group (LEG) has been established comprising (LEG) representatives from Colchester's licensing team, planning enforcement, environmental protection, police licensing team, fire authority, trading standards, child protection and other relevant teams within Colchester. The joint enforcement protocol details how this group works.

2.4 As a multi –agency group the LEG has a very wide range of enforcement options available through its partners. The options available to other responsible authorities are outside the scope of this policy as they are not functions of the Licensing Authority. However, it should be noted that where action is taken that involves a number of responsible authorities then it may be jointly agreed at the LEG.

### **3.0 - Enforcement Options**

3.1 Colchester recognises the importance of ensuring consistency of approach and effective use of resources by targeting those premises where problems have occurred. The procedures set out below are designed to ensure that enforcement is proportionate and that education and support is given where necessary but that firm action is taken against irresponsible premises operators. It is also transparent in that the policies are published so that businesses and residents can be aware of the enforcement strategy of Colchester. The procedures set out below reflect these general principles.

3.2 To ensure consistency in the approach between different officers, detailed internal procedural guidance notes for officers are produced and updated as required. It is expected that officers will follow these procedures in the majority of cases. There may be occasions where officers need to deviate from these procedures to deal with individual cases in an effective and proportionate manner. These procedures and standard letters may also be updated from time to time to meet the needs of the service, changes to legislation or guidance from relevant bodies.

3.3 The main enforcement options include, without limitation:

- Take no action
- Advice and written warnings
- Simple Caution
- Closure Notices
- Review of Licences
- Prosecution
- Injunctions

3.4 When considering which course of action is appropriate, the factors that Colchester will take into account include:

- The gravity/seriousness of the infringement
- The nature of the alleged infringement
- The status, circumstances and previous history of the alleged offender
- The reliability and scope of the evidence collected
- The likelihood of the alleged offender being able to establish a statutory defence to the alleged infringement
- The desirability of a particular course of action in terms of the benefit to the community at large
- Regard to authoritative advice, guidelines and recommendations
- Explanation offered by the alleged offender, and the willingness to prevent a recurrence of any alleged infringement
- The general record and approach of the offender Any other factors that may be relevant

3.5 Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors, which details considerations to be taken in the public interest when bringing proceedings.

3.6 In certain cases a prosecution may take place without prior warning where there is potential for considerable harm arising from the breach.

3.7 All enforcement decisions and actions will be made with due regard to the provisions of the: Licensing Act 2003, Gambling Act 2005, Local Government (Miscellaneous Provisions) Act 1982, and the Anti-Social Behaviour, Crime and Policing Act 2014. Regard will also be given to other relevant legislation, authoritative advice, guidelines and recommendations. Equal rights and anti-discrimination legislation and the Human Rights Act 1998 will also be considered.

3.8 In the public interest, information and data concerning non-compliance will be shared, where appropriate, with other enforcement agencies. Where this takes place, due regard will be paid to the provisions of the Data Protection Act 1998 and the LEG data sharing protocol.

3.9 The Licensing Authority may bring enforcement action where it has not investigated offences. This will be as a result of evidence, information and requests brought under the terms of the joint enforcement protocol. Where this happens, the Licensing Authority will consider the case under this policy, and take into account any recommendation by the investigating team.

## **4.0 – Enforcement Approaches**

4.1 The section details the approach Colchester will take in specific circumstances. These approaches are common to all three Acts unless stated otherwise.

4.2 Situations that are not covered by these specific approaches will fall under the general approach of the enforcement policy.

### **Unlicensed premises**

4.3 For the purposes of this policy, premises providing unauthorised licensable activity will be treated in the same way as unlicensed premises. Unauthorised licensable activity includes activity not permitted on the licence, or activity that is provided in breach of conditions.

4.4 The underlying principle is that all premises providing licensable activity should have a valid premises licence or club premises certificate, and should operate in accordance with the law.

4.5 When dealing with unlicensed premises, the licensing authority will take the provisions in Section 3 (Enforcement Options) into consideration, paying particular regard to the following matters:

- a) Levels of crime and disorder, anti-social behaviour, public nuisance and public safety in and around unlicensed premises will be the key priorities.
- b) The history of the premises.
- c) The steps if any a premise has taken to become licensed.

### **Unlicensed Alcohol Sales (Licensing Act 2003 only)**

4.6 Unlicensed alcohol sales will be treated as a serious breach of the law by Colchester that will require action other than advice in the majority of situations.

4.7 For the purposes of this policy, unlicensed alcohol sales include alcohol being sold in breach of condition(s) on a premises licence or a temporary event notice

4.8 Where the unlicensed sale of alcohol takes place, Colchester will take into account the options in section 3.3 and 3.4 with consideration to the statement above and the matters listed for unlicensed premises.

4.9 Colchester may serve a Closure Notice under the Criminal Justice and Police Act 2001, or the Anti-Social Behaviour, Crime and Policing Act 2014 in addition to action available under the Licensing Act 2003.

4.10 Where a Closure Notice has been served and the unlicensed sale of alcohol continues, a closure order may be applied for at a Magistrates Court.

### **Sale of Alcohol to Children (Licensing Act 2003 only)**

4.11 Unlawful sales of alcohol to children will be treated as a serious breach under the Licensing Act 2003. Where Colchester has evidence to prove alcohol has been sold

to children, in breach of the Act, prosecution may be considered in the first instance without prior warning.

4.12 This does not prevent other forms of action being taken; either separately or in addition to prosecution and each case will be assessed on its own merits.

#### **Temporary Event Notices (Licensing Act 2003 only)**

4.13 Premises which benefit from a Temporary Event Notice and exceed the limits for qualifying events, for example by holding an event for more than 499 people, will be regarded as an unlicensed premises.

#### **Sale of Alcohol and the Designated Premises Supervisor (Licensing Act 2003 only)**

4.14 All premises that sell alcohol under a premises licence must also have a Designated Premises Supervisor (DPS) named on the licence. The person named as the DPS must hold a valid personal licence for the premises to be able to sell alcohol.

4.15 If the Licensing Authority becomes aware that a premises is selling alcohol without a DPS, the starting principle will be that the premises cannot sell alcohol until a DPS is named on the licence. In this instance a Section 19 notice under the Licensing Act 2003 will be issued to ensure that no alcohol is sold on the premise.

#### **Keeping of Licences, Display of Licence Summary's and Similar Provisions**

4.16 All premises have to comply with various requirements under the Acts in respect of keeping and displaying the licence.

4.17 The starting principle is that all premises must comply with these requirements, and Colchester will seek to ensure this is the case. Reasons for these requirements not being met could include administrative issues such as the licence not yet having been issued or a delay in the licence holder's representative in forwarding the licence to the premises.

4.18 In all cases, rather than taking formal action such as a simple caution or prosecution, Colchester will take an informal approach in the first instance, where appropriate.

4.19 Exceptions to this will be where there are multiple breaches of legislation that merit formal action. In these cases Colchester may seek for these offences to also be considered when taking formal action against the premises.

4.20 Where there has been a persistent problem and no action has been taken to comply, then prosecution may be considered.



## **Licence Reviews**

4.21 The Licensing Authority may apply for a review of a licence as a responsible authority under the Licensing Act 2003 and Gambling Act 2005. A review application may be made on the grounds of non-compliance with the licence conditions, along with concern over the promotion of the licensing objectives. The decision to review a premises licence may be taken following a visit to the premises by officers, any intelligence received from other parties or by complaints that are made about the premises.

4.22 The Guidance issued to Licensing Authorities under Section 182 of the Licensing Act 2003, as amended, states that it is not expected that the Licensing Authority should normally act as a Responsible Authority in applying for reviews on behalf of other persons, such as local residents or community groups. If a request is made to the Licensing Authority to review a licence on behalf of another party, the Licensing Authority will have regard to any guidance on reviews and the enforcement policy when considering what course of action to take.

4.23 Where the Licensing Authority makes a review application, the options available to the Licensing Sub-Committee will be set out in the report. The decision on what course of action to take rests with the Sub-Committee. The options available could include:

- a. add, remove or amend a licence condition imposed by the Licensing Authority;
- b. suspend the premises licence for a period not exceeding three months;
- c. revoke the premises licence
- d. remove the DPS
- e. For gambling premises only - exclude a default condition imposed by the Secretary of State (relating to, for example, opening hours) or remove or amend such an inclusion;

4.24 The option for the licence to be revoked will only be made where no other option is considered suitable to address the individual problems. This could occur as a result of a history of non-compliance where enforcement action, including previous reviews, has failed to resolve the problems, or where the nature of the problems are considered serious enough to merit the licence being revoked.

4.25 The Sub-Committee would have to reach a decision based on the evidence put before them from the Licensing Authority, responsible authorities, licence holder and any other person who has made a representation.

## **Licence Reviews for Gambling Premises**

4.26 Where circumstances at a licensed gambling premises require action to be taken under this policy, the approach of Colchester will be to favour initiating a review of the licence over prosecution.

4.27 This does not prevent other forms of action being taken, and each case will be assessed on its own merits.

### **Operational Arrangements for Licence Reviews**

4.28 The Licensing Authority shall ensure that there is a separation of responsibilities within the Licensing Authority, so that an officer advising the Sub-Committee determining the review will not be the same person who has made the application as the responsible authority. This is to ensure procedural fairness and eliminate conflicts of interest.

## **5.0 - Complaints**

5.1 Colchester will keep a record of all complaints it receives that are relevant to licensed and unlicensed premises on a computer database. This should not be confused with complaints made to the Council about the licensing team.

5.2 Any complaints may be brought to the attention of other appropriate authorities. Where appropriate the Licensing Authority will:

- notify the licence holder and DPS and request that steps are taken to resolve the issues made in the complaint.
- keep the complainant updated with the progress of the complaint in accordance with Colchester's Customer Care Standards.

5.3 Where the Licensing Authority investigates a complaint, it may do so by way of correspondence, an announced inspection, or a covert visit depending of the circumstances. The action that can be taken is detailed in the sections for inspections and investigation of unlicensed premises.

5.4 In some cases the Licensing Authority will not investigate complaints it receives. An example of this may be when the nature of complaint is not relevant to licensing, or where a partner agency may be better placed to deal with the complaint. In these cases the complaint will be referred to the appropriate agency and the complainant notified of the reasons.

5.5 After the investigation of a complaint, further action may be taken in line with this enforcement policy where appropriate.

## **6.0 - Inspections and Visits to Premises**

6.1 The underlying principle of the policy is that no inspection of a premises should take place without a reason with the exception of 6.2.

6.2 Colchester is responsible for ensuring proper compliance in respect of licenses issued by the Authority and that the licensing objectives are promoted. To enable Colchester to assess this it will initially visit and inspect premises. Once inspected premises will be risk rated accordingly and this will be used to help to determine future action.

6.3 There are a range of circumstances that will result in Colchester needing to visit a premises, these are:

- a) Premises identified as high risk
- b) Inspections during the consultation period for an application, which can include new, variation, renewal and review applications
- c) Premises identified as a problem by other authorities
- d) Where complaints have been made that require investigation
- e) Premises where officers have witnessed grounds for concern
- f) Premises where other information suggests there is cause for concern
- g) Inspections as part of a wider project to ensure compliance at a particular class of premises or premises in a particular area.

6.4 To ensure that unnecessary burdens are not placed upon businesses and resources are targeted effectively, the Licensing Authority will endeavour to work closely with all relevant enforcing bodies and teams within Colchester when determining inspections of licensed premises. This means that the inspection may be carried out by other enforcing bodies or teams.

6.5 Where it is necessary for more than one enforcing body or team to inspect a premise, joint inspections will be planned where appropriate.

### **Risk Rating and Frequency of Inspections**

6.6 Colchester believes that the proper management of the premises is a key consideration in the impact a premises will have on the immediate area and the promotion of the licensing objectives. As such, this will be a principle factor to determine the risk rating when a premise is inspected. Other matters considered as part of the risk rating are; the type of premise, hours of operation, licensable activity, location and compliance with conditions.

6.7 Wherever possible, information will be shared with relevant authorities to identify high risk premises. High risk premises will be inspected by the Licensing Authority when appropriate, or by another enforcement body.

### **Pre-arranged inspections**

6.8 Inspections may be carried out during normal office hours when the premises is likely to be quiet by means of a pre-arranged appointment, to ensure that the appropriate person at the premises is available. The inspection may include a comprehensive check to ensure the approved arrangements at the premises are

being properly maintained, which may be impractical to check when the premises is busy. Pre-arranged evening or night time visits may also be made if required so that activity provided at the premises may be assessed.

### **Un-announced Inspections**

6.9 Unannounced inspections will usually be carried out for high risk premises in addition to any other inspections that may be required.

6.10 Other premises will be visited as required; where concerns are raised at the LEG, a complaint is received or officers witness a problem.

6.11 These inspections will be made at the most relevant time for licensable activity, often at night, but officers will identify themselves upon arrival at the premises.

6.12 Where problems are found, such as unlicensed activity, it may be necessary to carry out frequent inspections until compliance is achieved. The frequency required will be determined on a case by case basis.

### **Other Visits to Premises and Observations**

6.14 Enforcement Officers routinely work at night when the majority of licensing related problems are likely to occur.

6.15 Officers will therefore seek to make observations of any problems that are seen whilst they are working at night. Officers will also make observations on premises or areas that have current or historical cause for concern. All observations will be recorded for future reference, including occasions when no problems have been witnessed at individual premises.

6.16 Officers may enter premises covertly as members of the public where they suspect offences may be occurring. This can include making test purchases to establish if licensable activity is being provided. On these occasions officers will generally not identify themselves at the time unless the problems are particularly serious.

6.17 **COVERT SURVEILLANCE** During an investigation into suspected non-compliance with legislation, the Council may need to undertake directed covert surveillance from time to time. This may include using remote sound or video monitoring equipment, personal observation or covert human intelligent sources. Where it is necessary to use covert surveillance techniques, the Council will comply with the requirements of the Regulation of Investigatory Powers Act 2000. In all cases where covert surveillance is required, such work will only be undertaken with the express permission of an authorised manager who is not directly involved with the investigation. Requests for the authorisation of surveillance will be made in writing by the investigating officer. All such requests will be accompanied by a statement which details the reason why covert surveillance is appropriate and proportionate, how it is to be undertaken, who is likely to be involved and any impact that might

result from the surveillance. In deciding whether or not to authorise covert surveillance, the authorised manager will have regard to any other policies relevant to the investigation surveillance authorisations will only last for as long as deemed necessary. A register of authorised covert surveillance operations under Regulation of Investigatory Powers Act will be held by the Council. Authorisations will not be made public whilst there is an on-going investigation.

6.18 Where problems are found the Licence Holder and other relevant parties will always be notified in writing as soon as practicable after the event.

6.19 This method of visiting premises may be used in addition to, or instead of, other types of inspection when investigating complaints, depending on the circumstances.

6.20 . The information may be used to:

- a) Determine current problems, enabling better targeting of resources by Colchester and other enforcing agencies
- b) Determine what action is appropriate in individual cases, particularly where a history of observations helps establish if an offence has been committed on an isolated occasion, or if there are ongoing problems.
- c) As evidence in future enforcement action,

## **7.0 - Status and Review**

7.1 Colchester's Licensing Committee adopted this policy on 9 September 2015.

7.2 This is a public document and is available at [www.Colchester.gov.uk/licensing](http://www.Colchester.gov.uk/licensing)

7.3 Complaints concerning the application of this enforcement policy dealt with in accordance with the Colchester's customer complaints procedure. Details of the procedure are available on [www.Colchester.gov.uk](http://www.Colchester.gov.uk)

## **8.0 - References**

8.1 Licensing Act 2003

8.2 Secretary of States Guidance under Section 182 of the Licensing Act 2003 (October 2012)

8.3 Colchester's Statement of Licensing Policy (January 2016-2021)

8.4 Gambling Act 2005

8.5 Gambling Commission Guidance to Local Authorities

8.6 Colchester's Statement of Gambling Policy (January 2013-2016)

8.7 Colchester's Sex Establishment Policy (2011)

8.8 Enforcement Concordat Better Regulation Unit (March 1998(as amended))

8.9 Regulators Compliance Code (December 2007)

8.10 The Human Rights Act 1998

- 8.11 Equal rights and anti-discrimination legislation
- 8.12 Colchester Council Complaints Policy
- 8.13 Code For Crown Prosecutors – Crown Prosecution Service 2004
- 8.14 Data Protection Act 1998