

LICENSING ACT 2003

1. Parties to this Protocol:

**Swindon Borough Council
West Wiltshire District Council
North Wiltshire District Council
Salisbury District Council
Kennet District Council
Wiltshire Constabulary
Wiltshire Fire & Rescue Service
Wiltshire County Council
Crown Prosecution Service
Health and Safety Executive
Local Safeguarding Children's Board (Wiltshire)
Swindon Area Child Protection Committee
British Transport Police**

- 1.1 The above statutory organisations are the Parties to this Protocol.
- 1.2 Under the Licensing Act, responsible authorities defined in the Act have the objectives of preventing crime; protecting public safety; preventing nuisance; and preventing harm to children in relation to premises licensed under the Act.
- 1.3 Each Party has enforcement responsibilities in relation to licensed premises and recognise the importance of effective co-operation and liaison to ensure premises licence holders; designated premises supervisors; personal licence holders; and club premises certificate holders understand and comply with the law and promote the licensing objectives.
- 1.4 This Protocol sets out the steps that have been agreed to achieve that aim and supports the Licensing Authorities Licensing Policies, Licensing Act, and guidance from the Department of Culture Media and Sport Guidance on this subject.

Complaints

Complaints can potentially be received by all agencies. The details of the complaint should be forwarded to the agency shown as the primary enforcement agency for that specific issue or offence on the attached list. If there is no obvious or apparent lead agency, details should be forwarded to the Licensing Authority.

2. Enforcement

- 2.1 From time to time, joint inspections will be carried out by the licensing authority licensing enforcement officers and officers from the relevant responsible authorities.
 - a. Joint inspections will be conducted on the basis of an intelligence led assessment via the National Intelligence Model (NIM) or in response to a specific complaint(s). Responsibility for co-ordinating and negotiating on a joint inspection will rest with the responsible authority with the expertise for dealing with the complaint in question. Pro-active visits may still take place, arranged by the relevant agency.
- 2.2 This does not prevent action being taken by any individual authority at any time should offences become apparent. The role of the Primary Enforcement Agency will be to

LICENSING ENFORCMENT PROTOCOL

initiate evidence gathering, supply statements or other supporting material to be forwarded on to the appropriate prosecuting agency.

- 2.3 The role of the other agencies will be to provide support and resources to the Primary Enforcement Agency and to provide statements and evidence to the them should they detect offences during routine operating procedures for prosecution by the Primary Agency.

3. Offences

- 3.1 The Parties agree that prime responsibility for enforcing the offences under the Act should lie with:

Section	Offence	Primary Enforcement Agency
Sch 8 Para 10	Knowingly and recklessly make false statement in application for a licence	Licensing Authority
Sch 8 Para 22	Knowingly and recklessly making false statement in application for a licence	Licensing Authority
33	Notification of change of name or address by premises licence holder or designated premises supervisor	Licensing Authority
40	Premises licence holder failing to notify designated premises supervisor of variation to premises licence	Licensing Authority
41	Failure to send premises licence to licensing authority upon removal of designated premises supervisor	Licensing Authority
49	Failing to notify designated premises supervisor of grant of interim authority notice	Licensing Authority
56	Failure to provide premises licence to be updated	Licensing Authority
57	Failure to secure safe custody or display on premises of premises licence	Licensing Authority
59	Obstructing Inspection of premises before grant of a premises licences	Relevant Authority
82	Notification of change of name or alteration of rules of a club	Licensing Authority
83	Change of relevant registered address of club	Licensing Authority
93	Failure to provide club premises certificate to be updated	Licensing Authority
94	Duty to keep and produce club premises certificate	Licensing Authority
96	Inspection of premises before grant etc of club premises certificate	Relevant Authority

LICENSING ENFORCMENT PROTOCOL

Section	Offence	Primary Enforcement Agency
108	Obstruction of authorised officer (not constable!)	Relevant Authority
109	Failure to display temporary event notice on premises	Licensing Authority
109(4)	Failure to have copy of TEN on premises.	Licensing Authority
109(8)	Failure to produce TEN on request of a Constable or Authorised Officer	Licensing Authority/Police
123	Failure to notify convictions during application period	Licensing Authority
127	Duty to notify change of name or address	Licensing Authority
128	Fail to notify Court on being charged with offence that he holds a personal licence	Licensing Authority
132	Failure of personal licence holder to notify Local Authority of conviction.	Licensing Authority
135	Failure to produce personal licence on request of Authorised Officer or Constable	Relevant Authority/Police
136	Unauthorised licensable Activities	Licensing Authority
137	Exposing alcohol for unauthorised sale	Licensing Authority
138	Keeping alcohol on premises for unauthorised sale	Licensing Authority
140	Allowing disorderly conduct on licensed premises	Police
141	Sale of alcohol to person who is drunk	Police
142	Obtaining alcohol for a person who is drunk	Police
143	Failure to leave licensed premises	Police
144	Keeping Smuggled goods	Relevant Authority
145	Unaccompanied children prohibited from certain premises	Licensing Authority
146	Sale of alcohol to children (Premises for consumption on the premises)	Trading Standards and Police
146	Sale of alcohol to children Premises for consumption off of the premises)	Trading Standards and Police
147	Allowing sale of alcohol to children	Trading Standards
148	Sale of liqueur confectionary to children under 16	Trading Standards

LICENSING ENFORCMENT PROTOCOL

Section	Offence	Primary Enforcement Agency
149	Purchase of alcohol by or on behalf of children	Police /Trading Standards ¹
150	Consumption of alcohol by children	Police, Licensing Authority or Trading ¹ Standards
151	Delivering alcohol to children	
152	Sending a child to obtain alcohol	
153	Prohibition of unsupervised sales by children	Licensing Authority
156	Prohibition on sale of alcohol on moving vehicles	Police/Licensing Authority
158	False statements made for the purposes of the Act	Licensing Authority
160	Failure to comply with closure order. (Magistrates Courts)	Police
161	Failure to comply with closure order. (Police Officer).	Police
163	Cancellation of closure Order	Police
165	Permitting relevant premises to open – contravention of magistrates order	Police
168	Allow premises to open during appeal period (subject to para 18(4) of Schedule 5.	Police
177	Failure to notify change of name or address	Licensing Authority
179	Obstruction of Constable or authorised Officer.	Relevant Authority / Police
Sch 1	Offences relating to Schedule 1 of the Act (Regulated Entertainment)	Licensing Authority
Recordable crimes	Recordable Crimes within the Home Office Classification of Offences at any location	Police

3.2 British Transport Police will be the Primary Enforcement Agency for offences that fall within their jurisdiction.

3.3 A Relevant Authority is any stakeholder agency that detects a licensing offence in the first instance and have a statutory duty to act or powers to prosecute, e.g. the Health and Safety Executive. The Primary Enforcement Agency is the agency responsible for the prosecution of the identified offence.

¹ Trading Standards role will be to support police and licensing authorities as they do not have powers to prosecute under the act.

4. Investigation of Offences

- 4.1 When a relevant authority has become aware of any offence under the Act, that authority may take formal action in accordance with section 3 of this protocol, and take the following steps:
- a. Take appropriate intervention action to secure and preserve evidence to support a potential prosecution and provide witness evidence should it be necessary.
 - b. Early discussions with the appropriate Primary Enforcement Agency, including (unless in cases of extreme urgency) the licensing authority's enforcement officer.
 - c. Supply the relevant Primary Enforcement Agency in a timely manner all of the relevant evidence (whether subsequently used or unused).
 - d. Set out in writing details of the offence and notify the Primary Enforcement Agency for action to be taken/considered.
 - e. This does not exempt the relevant authority making appropriate staffing arrangements to respond to complaints and managing high demand premises.

Note: For example, should the police find a licence holder operating outside of the operating schedule they will intervene and provide evidence for the Primary Enforcement Agency, i.e. the Licensing Authority to progress as appropriate and proportionate. This could apply to any enforcement.

- 4.2 Once in receipt of a request to take action, the Primary Enforcement Agency will:
- a. Assess the facts and take appropriate action in accordance with the Enforcement Protocol for that authority and take appropriate timely action proportionate to the overall problems that exist to the area in support of the Licensing Objectives
 - b. Inform the relevant authority and stakeholders that initiated the complaint or supplied the information of the action taken.
5. Regular liaison meetings will take place between the licensing officer and the local police licensing officer.

5. Mutual Assistance

- 5.1 Each licensing authority across Swindon and Wiltshire employ officers specifically engaged to conduct enforcement and inspection duties under the Licensing Act. Each licensing authority agrees to nominate officers to act as points of contact and each authority will provide out of hours contact arrangements for response to complaints should the need arise.

6. Responsibility for Prosecutions

- 6.1 Section 186 of the Act provides that proceedings for offences under the Act may be instituted by:-
- a. A Licensing Authority.
 - b. By the Director of Public Prosecutions. Or
 - c. By a local Weights and Measures Authority for offences under section 146 or 147.
- 6.2 In line with section 3 of this protocol, the Primary Enforcement Agency will take the responsibility for prosecution of offences under the Act.

7. Register of Cautions

- 7.1 Each Authority will maintain a register of any **Formal Caution** as recorded by the Police National Computer (PNC) and/or the Office of Fair Trading (OFT) they issue to holders of Licences, Certificates or Permissions and where databases allow update a common database.

8. Notification of Prosecutions, Cautions and Intelligence

- 8.1 Notwithstanding the duty of the Court in Section 131 (Duty to notify Licensing Authority of convictions) the appropriate prosecuting Authority will inform the relevant Licensing Authority as soon as practicable of any conviction or caution of any relevant offence
- 8.2 Where information or intelligence becomes available to any of the relevant authorities which may significantly affect the operating conditions of the premises e.g. risk to children or young persons, supplying controlled drugs etc then a review of the licences held relating to the premises or persons will be requested by that authority as soon as practicable which may include an overt/covert partnership response to the issue.
- 8.3 The Wiltshire Constabulary will act as a Single Point of Contact (SPOC) for the Area Child Protection Committee (ACPC)²/Local Safeguarding Children's Board (LSCB) and agree to refer any issues of concern to the above Board as per **Appendix 1**. Any 'relevant comments' made by the ACPC or LSCB will be taken in to account in any review as per 8.2 above. The SPOC will be the officer responsible for the Child Protection Unit for each policing division within the Constabulary area and referrals will only concern premises subject to intelligence through the National Intelligence Model (NIM) or of concern and **not** all licensed premises within the Constabulary area.
- 8.4 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.
 - d. This should be provided as soon as practicable.

² To be known in due course as 'Local Safe Guarding Children's Board

9. Applications for Licence Reviews

- 9.1 This Protocol recognises the right of any relevant authority to apply to the Licensing Authority for a Licence or club premises certificate to be reviewed at any time with relevant partners
- 9.2 Except in extreme cases (where there has been a serious risk to public safety, children, crime, or nuisance) the relevant authority seeking a review will be expected to:-
- a. Give an early indication to the Licensing Authority of the events requiring an application. The Licensing Authority will be required to inform other relevant authorities of the fact.
 - 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 alternative approaches to dealing with the situation leading to the application have first been attempted.

10. Data Protection and Exchange of Information

- 10.1 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.
- 10.2 Section 115 of the Crime and Disorder Act 1998 allows for information to be specifically exchanged between the police and the statutory agencies in support of the reduction of crime and disorder and the licensing objectives which supports that.
- 10.3 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 and be recorded for audit purposes in line with Joint Information Exchange Protocol which exists between the agencies.
- 10.4 Relevant Authorities should be mindful that information may be of use to other agencies for the purpose of reducing crime and disorder. When such information is identified it should be proactively passed to the relevant authorities contained within this protocol.
- 10.5 Information supplied must only be used for the purpose for which it is obtained, must be securely retained whilst in the possession of the relevant 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 who remains the 'data owner'.
- 10.6 This part of the Protocol may be supplemented by any Memorandum of Understanding on data exchange agreed either at a local or national level.

11. Annual Review

- 11.1 An annual report based on a financial year will be submitted to the relevant licensing committee for each local authority area. The format will be directed by the local Licensing Committee, but will review enforcement action taken and problems encountered in relation to licensed premises and review business processes to ensure continuous improvement.

Signatories

Stephen Harcourt Date
Head of Public Health
Swindon Borough Council

Peter Woodcock Date
Corporate Director
West Wiltshire District Council

Laurie Bell Date
Strategic Manager
Community and Environment
North Wiltshire District Council

Geoff Silver Date
Head of Environmental Services
Salisbury District Council

Brad Fleet Date
Director
Environmental Health & Public Services
Kennet District Council

Peter Vaughan Date
Assistance Chief Constable
Wiltshire Constabulary

Peter Baxter Date
Assistance Chief Fire Officer
Wiltshire Fire Brigade

LICENSING ENFORCMENT PROTOCOL

Stephen Clover Date
Head of Environmental Services
Wiltshire County Council

Stacy Turner Date
Wiltshire Crown Prosecution Service

Kevin Marshall Date
A/Chief Inspector
British Transport Police

Bob Woolfson Date
Wiltshire Local Safeguarding Children's Board

Andrew Ireland Date
Swindon Area Child Protection Committee