

Licensing Enforcement Policy

COLCHESTER CITY COUNCIL

ENFORCEMENT POLICY

LICENSING TEAM

INDEX TO CONTENTS

Contents	Page
1. Introduction	4
2. Executive Summary	4
3. Enforcement Policy Statement	4
4. Context of Enforcement	
4.1 Definition of Enforcement	5
4.2 The importance of enforcement	5
4.3 The need for a Licensing Policy	6
4.4 Scope of the Enforcement policy	6
4.5 Colchester's approach to enforcement	6
5. Types of Intervention and Enforcement Carried out by Licensing	
5.1 Planned Inspections, Interventions and Surveillance Programmes	10
5.2 Service Requests & Complaints	10
5.3 Statutory Notifications and Other Wider Intelligence Sources	10
5.4 Primary Authority	10
5.5 Enforcement of Non – Compliant Activities	11
5.6 Criteria for Determining Choice of Specific Enforcement Action(s)	11
5.7 No Action	11
5.8 Informal verbal or Written Advice	12
5.9 Fixed Penalty Notices	12
5.10 Formal Enforcement Notices & Orders	12
5.11 Refusal, Suspension, Review or Revocation of Licence or Approval	12
5.12 Prosecution	13
5.13 Determining Whether a Prosecution is Viable & Appropriate	13
5.14 Referral to Crown Prosecution Service	13
5.15 Sharing of Intelligence regarding enforcement	14
5.16 Joint Enforcement Roles	14
5.17 Other Factors Considered When Using Enforcement Powers	14
6. Enforcement options and procedures	
6.1 Working in partnership with others	16

7.	Recovering our costs	16
8.	Publicity	16
9.	Comment, Compliments, Complaints	16
10.	Policy Review	17

Appendix	1	Licensing regulatory areas covered	18
Appendix	2	Specific Regulatory Powers	19
Appendix	3	Licensing Enforcement Policy	23

1. Introduction

- 1.1 This Enforcement Policy covers the work of the Licensing Team. It is an updated policy covering the delivery of enforcement.
- 1.2 The Public Protection Section of Colchester City Council, where the Licensing Team is situated plays a vital role in protecting and supporting the public, the environment, and groups such as residents, workers, and businesses in the Borough of Colchester. It is important that these enforcement functions are carried out in an equitable, practical, and consistent manner, and that both those subject to and beneficiaries of regulation and those on whose behalf enforcement is carried out can understand the approach we as a Council take.
- 1.3 The Council has a duty to enforce a range of statutory instruments adopting a variety of formal and informal sanctions. This can include anything from advising a licensed premises about what they need to do to comply with the law, to revoking the licence of a Hackney Carriage driver for being unfit to hold a licence. This places the Council and its officers in a position of responsibility to ensure that its approach fits with national and local policy, codes, and guidance. This is particularly important regarding the economic challenges facing local government and business.

2. Executive Summary

- 2.1 The purpose of this policy is to set out clearly the approach of the Council's Licensing Team towards enforcement when dealing with non-compliance. It provides guidance on the range of options available to achieve compliance with the legislation we enforce, and how discretionary powers may be used to regulate and raise standards in various sectors. The document is intended to communicate Colchester City Council's policy in respect of its approach to those affected by its activities and officers of the local authority.
- 2.2 It also sets out the principles applied to encourage smarter, risk-based enforcement. The Council is committed to ensuring that its officers act in accordance with this policy. It is not in itself a statement of law and does not

affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

3. Enforcement Policy Statement

- 3.1 The Council is committed to following good enforcement practice in accordance with current legislation listed at Appendix 1. This includes carrying out our activities in a way that enables those we regulate to comply and grow, avoiding imposing unnecessary regulatory burdens, and assessing whether similar social, environmental, and economic outcomes could be achieved by less burdensome means.
- 3.2 This policy has been produced in cognisance of Colchester City Council's (CCC) obligations under Section 17 of the Crime and Disorder Act 1998 to exercise its functions and do all that it reasonably can to prevent and reduce crime and disorder in its area.
- 3.3 This policy is also in accordance with the government's 'Better Regulation Agenda.' Specifically, it implements good practice recommended by the Cabinet Office Enforcement Concordat; the Regulators' Code; and the regulatory principles required under the Legislative and Regulatory Reform Act 2006, including the duty to have regard to economic growth (the Growth Duty).
- 3.4 All authorised officers when making enforcement decisions shall abide by this policy, and the supporting documented procedures, both within the appendices and departmental processes.
- 3.5 In certain instances the service may conclude that a provision in the Code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 3.6 This Policy lays out the generic principles for good enforcement. This is refined where relevant with service-specific enforcement standards, procedures and standards that are referenced within the attached appendices. These will be reviewed and updated considering new legislation, guidance, and service demands.

4. Context of Enforcement.

- 4.1 Definition of 'Enforcement'

“Enforcement” includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. The term “enforcement” therefore has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities. It is not limited to formal enforcement action such as prosecution but can include a range of interventions that seek to achieve compliance with the law.

4.2 The role of enforcement

Regulation is important for the protection of the vulnerable, or to achieve other social or environmental objectives. The appropriate use of enforcement powers, including prosecution is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to comply. The Council places great importance on the consistent use of enforcement action and does not set itself numerical targets for prosecutions or statutory notices.

Good enforcement should help economic prosperity and encourage sustained growth without placing unreasonable burdens on businesses. Through their actions, the regulators incorporated within this policy, help to maintain a ‘level playing field’ to allow fair competition and good companies to thrive.

It is acknowledged that this resource should also be encouraging compliant businesses to grow through proportionate regulatory activity and provision of reliable advice, without compromising the protection of the public. There is also ample evidence to show that appropriate compliance can reduce avoidable expenditure, for example by lowering labour costs as a result of fewer accidents.

4.3 The need for a Licensing Enforcement policy

There is an expectation from national bodies such as the Better Regulation Delivery Office (Department for Business, Innovation and Skills), the Institute of Licensing, Gambling Commission and the Health and Safety Executive amongst others that local authorities will clearly set out their policy with respect to enforcement to ensure that there is clarity for all parties who may be affected. Fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses, and the environment. Decisions about enforcement action and, in particular the decision to prosecute, have serious implications for all involved. CCC will apply this policy to ensure that: -

- Decisions about enforcement action are open, fair, proportionate, and consistent.

- Officers apply current Government guidance and relevant codes of practice.
- Everyone understands the principles, which are applied when enforcement action is considered.

4.4 Scope of the enforcement policy

The Regulators Code and Enforcement Concordat apply to: -

- Licensing

4.5 Colchester's approach to enforcement

In coming to a decision on how to deal with non-compliance, we will have regard to the following principles which are set out in the Macrory review¹ Regulatory Penalties. In particular, our actions should: -

- Aim to change the behaviour of the offender.
- Aim to eliminate any financial gain or benefit from non-compliance.
- Be responsive and consider what is appropriate for the offender and regulatory issue.
- Be proportionate to the nature of the offence and the harm caused.
- Aim to restore the harm caused by regulatory non-compliance, where appropriate
- Aim to deter future non-compliance.

In achieving compliance, we will also deliver against the principles of good enforcement which include openness, helpfulness, proportionality, consistency, targeting, transparency, and accountability. On occasions this will involve working in partnership with other enforcement agencies.

Openness: -

- We will provide information and advice in plain language on the rules that we apply. This may be provided either verbally, by telephone, on the Councils' website, by personal visit where appropriate, electronically or in writing.
- We will be open about our work, including any charges that are set.
- We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
- We will make it clear what should be expected from the Council as an Enforcement Authority.

- We will respond to requests for information under the Freedom of Information Act or Environmental Information Regulations, within 20 working days. Our document retention policy will detail our commitment to data & record Management.

Helpfulness: -

- As prevention is better than cure, we will actively work with individuals and businesses to advise and assist. We encourage compliance by providing guidance and liaising with stakeholders on how this can best be presented and disseminated – a request for advice will not directly trigger enforcement action where there is a willingness to resolve any non-compliance which may be identified.
- Our staff will identify themselves and provide a courteous and efficient service.
- We will provide a contact point and telephone number to encourage individuals and businesses to seek advice/information from us.
- Applications for approval of establishments, licensing, registration, or authorisation will be dealt with efficiently and promptly.

Proportionality: -

- We aim to minimise the cost of compliance by ensuring that any action required is proportionate to the risk and that we take proper account of the economic consequences of our actions.
- As far as the law allows, we will take account of the circumstances of the case and the attitude of the offender when considering action.
- We will help to promote a thriving local economy by maintaining a fair and safe trading and working environment.
- We are committed to choosing proportionate approaches based on relevant factors such as business size and capacity.
- We are committed to dealing firmly with those who deliberately or persistently fail to comply.

Consistency: -

- We will carry out our duties in a fair, equitable and consistent manner.

- Officers are expected to exercise judgment in individual cases, and we will ensure that a similar approach is taken in similar circumstances.
- We will take account of advice offered to us through bodies such as the Local Government Association (LGA), Institute of Licensing and the Gambling Commission.
- Where a Primary Authority Partnership exists, officers will consider advice previously issued by the primary authority when considering the most appropriate course of action. Where, after further liaison with the primary authority, officers consider that formal action is still appropriate; the statutory notification process will be followed. This scheme does not preclude officers from taking immediate action in the event of serious or imminent risks to health or safety.
- Where there is a wider regulatory interest, we will liaise and co-operate with or pass information to the appropriate enforcement agency. This may include the sharing of intelligence with other Government Agencies, Police Forces, Fire Authorities, Statutory Authorities, or other Local Authorities.
- We will liaise with our colleagues in other Essex Authorities and Regulatory Services, to share information and intelligence, and develop a consistent approach to enforcement, for example through the use of common protocols.
- We will consult in developing clear standards, setting out the level of service and performance the public and businesses can expect to receive.
- We will publish our standards and how we have performed annually by way of service plans, statutory and key performance indicators.
- Advice from officers will be clear and an explanation given as to why remedial works are necessary.
- The timescales for compliance with notices will be reasonable.

Targeting: -

- We will ensure resources are targeted primarily on those whose activities give rise to the most serious risks.
- We will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it through the use of a graduated enforcement approach.
- We will identify and implement risk-rating schemes for all service areas where our work routinely brings us into contact with businesses.
- We will seek to ensure our resources are used with maximum effectiveness to avoid burdening businesses with the costs of unnecessary interventions.
- Where more serious non-compliance is identified, we will advise duty holders of the circumstances under which a revisit will be undertaken and the timescale for that revisit.

Transparency: -

- We will help duty holders to understand what is expected of them and what they should expect from officers.
- We will clearly distinguish between legal requirements and good practice advice.
- We will have regard to this enforcement policy when making decisions about the appropriateness of enforcement actions. Where for any reason a decision needs to be taken outside of, or in contravention of this policy, a clear and reasoned argument will be recorded as to why that decision was taken.

Accountability: -

- We will ensure that we have policies and procedures against which our work can be judged.
- We will ensure there is an effective and accessible mechanism for dealing with comments and complaints.
- Officers are responsible to Elected Members, the public and Government bodies for their actions.

5. Types of Intervention and Enforcement Carried Out by the Licensing Team

Colchester has a range of interventions and enforcement actions available that enable effective monitoring of activities subject to regulatory control and appropriate actions to secure compliance.

Varied types of enforcement and options are open to staff dependant on the legislation enforced and which are chosen based on criteria shown in 5.6.

5.1 Planned Inspections, Interventions and Surveillance Programmes

These form an important and fundamental part of the Council's monitoring regime to ensure we meet our statutory duties with respect to our Licensing and wider public protection responsibilities.

Planned inspections will be based on the requirements set out by Government and its relevant departments and agencies, and we will give due regard to any law, relevant codes of practice, statutory guidance and advice issued by them. For example, the Institute of Licensing codes of practice and the HSE's National Local Authority (LA) Enforcement Code.

When conducting enforcement visits, officers will make their identity known, carry and show their formal written authorisation when requested except in circumstances where this might compromise the investigation.

Surveillance may include, for example, surveying for potential breaches of statutory regulations and checking compliance with licence conditions.

5.2 Service Requests & Complaints

Service requests or complaints may be received from the public, including employers, residents, visitors, workers, and consumers. The nature of the service request or complaint will determine the follow up actions necessary in terms of the priority, speed of those actions and resources deployed. They also provide a useful form of intelligence that can help to determine future planned inspections and intervention programmes.

5.3 Statutory Notifications and Other Wider Intelligence Sources

This may be where information is provided by other Council services, other LAs or partners such as Trading Standards, Police, Fire and Rescue etc. HSE, and Trades Unions may directly notify matters such as serious workplace accidents and incidents, follow up actions and response time will be assessed using the criteria set out in 5.6 below for the determination of enforcement actions.

Local businesses and/or their representative organisations can also provide information and intelligence that may be helpful when considering ongoing and future enforcement programmes and again the above criteria will be used for any proposed follow actions.

5.4 Primary Authority

Primary Authority Partnerships are statutorily based (Regulatory and Enforcement Sanctions Act 2008) and one of their key aims is to secure regulatory compliance standards across a wide range of regulatory activities in a consistent and proportionate manner. Fundamental to the scheme are partnerships between businesses who trade across more than one local authority boundary and the local authority regulator, normally (but not exclusively), where the businesses head office is based, or primary production takes place.

There is also provision as part of the partnership agreement for the Primary Authority to produce an inspection plan that includes where enforcement authorities should target any inspection or planned intervention. As an enforcement authority we are required to have regard to any agreed inspection plans and focus our inspection and subsequent actions towards those aspects specifically identified requiring attention in the agreed inspection plan.

5.5 Enforcement of Non-Compliant Activities

Different enforcement powers are conferred by diverse legislation, but a summary can be seen below and may be selected:

- No action
- Informal verbal or written advice / warning
- Fixed Penalty Notices (FPNs)
- Formal enforcement notices & orders
- Refusal, revocation, suspension or review of a licence or approval

5.6 Criteria for Determining Choice of Specific Enforcement Action(s)

Each enforcement decision will be taken on its own merits, but the following criteria can be applied:

- Seriousness in terms of impact or likely impact on public safety and health or the local environment
- Relevant Council policies and priorities
- Risk to welfare
- Deliberate or repeated non-compliance
- Non-compliance that gives an economic advantage over compliant businesses
- Public interest and confidence
- Other relevant national or European priorities

5.7 No Action

In some cases, a contravention of the law may not justify more formal action. Factors may include the cost of enforcing compliance which may be far greater than the detrimental effect of the contravention. A decision to take no action may also be taken in circumstances such as where a trader has ceased business, and the risk no longer exists. Such decisions will be taken with a view to what is in the 'public interest' and in such cases the offender and any 'victim' will be informed of the reasons for taking no action.

5.8 Informal Verbal or Written Advice

For minor breaches we may only give verbal or written warnings or advice. We will clearly identify any contraventions and advise how to correct them along with a compliance deadline. This timescale will be reasonable and take into account the implications of non-compliance.

5.9 Fixed Penalty Notices (FPNs)

Some legislation offers the use of FPNs as an alternative to taking an offender to court. They are available for lower-level offences and can avoid the defendant having a criminal record. Where legislation permits an offence to be dealt with by way of an FPN, we may choose to offer an FPN on a first offence without prior warning or decide to issue a written warning.

5.10 Formal Enforcement Notices & Orders

Some of the legislation we use allows formal notices to be served upon a duty-holder requiring them to provide information, remedy a defect or cease an activity. In situations where risk is immediate the notice may require an activity to stop straight away e.g., Health and Safety Prohibition Notice. In other cases, a reasonable time for compliance will be given taking into account the seriousness of the contravention and the implications of an immediate risk to health or safety. All notices issued will include details of any appeal provisions.

5.11 Refusal, Suspension, Review or Revocation of Licence or Approval

Licensing is responsible for the approval and monitoring of many activities that need approval by way of a licence, registration, permit etc.

Each type of licence has a defined process for making applications and how the Licensing Team will consider the applications and where appropriate representations and objections. The Council's scheme of delegation determines the circumstances where an application can be determined by officers or when the application should be considered by an appropriate Committee or Sub-Committee.

- Applications may be granted, granted with appropriate conditions, or refused.
- Applicants will be advised of their rights of appeal.

Licence holders who breach licence conditions may be warned verbally or in writing but can also be required to attend before the relevant Sub-Committee or Magistrates' Court (dependent on the offence) which can result in the suspension or revocation of their licence or the addition of conditions.

5.12 Prosecution

A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- Deliberate, reckless, negligent, or persistent breach of legal obligations, which were likely to cause material loss or harm to others.
- Deliberate or persistent ignoring of written warnings or formal notices.
- Endangered, to a serious degree, the health, safety or wellbeing of people, animals, or the environment.
- There was an attempt to make financial gain at the expense of others.
- An authorised officer was assaulted and/or obstructed in the course of his/her duties.

5.13 Determining Whether a Prosecution is Viable and Appropriate

Two 'tests' will be applied to determine whether a Prosecution or Simple Caution is viable and appropriate. The officers will follow guidance set by the CPS when applying the tests.

A Prosecution will only be progressed when the case has passed both the evidential test and the public interest test.

The Evidential Test

We must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

- **The Public Interest Test**

The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. A serious offence would also include the failure to comply with a Statutory Notice. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect.

5.14 Referral to Crown Prosecution Service

In cases where the breach of duty lead to a death(s) Colchester City Council may refer the matter to the Crown Prosecution Service (CPS) to consider whether manslaughter or corporate manslaughter charges are investigated in addition to our own criminal investigations. In such cases Licensing will follow the Work-Related Deaths Protocol

5.15 Sharing of Intelligence regarding Enforcement

Licensing will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- The Responsible Authorities under the Licensing Act 2003
- The Responsible Authorities under the Gambling 2005
- Environment Agency
- The Police Fires & Rescue
- HMRC
- Border Force
- Security Industry Authority
- National Anti-Fraud Network
- Other Local Authorities
- Other Regulators

5.16 Joint Enforcement Roles

Where enforcement roles are shared or overlap with other agencies we will cooperate or consult, (for example the Police Service for Licensing) including sharing information and providing evidence) to protect the local community, environment, and groups such as vulnerable persons.

5.17 Other Factors Considered When Using Enforcement Powers

Power of Entry

Licensing officers are provided with specific powers of entry by a wide range of legislation. This gives them a right (usually in the form of delegated authority from Colchester City Council to named officers) to legally enter defined premises, such as businesses, vehicles, or land for specific purposes. Powers of entry include enabling our officers to undertake inspections and investigations for a wide range of regulatory responsibilities including Licensing legislation, in addition to dealing with emergencies or searching for evidence during those investigations.

Often, the power to enter is accompanied by what are known as ‘associated powers,’ which set out what our officers are allowed to do once they have entered the premises. This might, for instance, include conducting a search, seizing relevant items, or collecting samples.

Police and Criminal Evidence Act (PACE) 2004

Our officers will have close regard to the requirements set out in the Police and Criminal Evidence Act and any amendments and current and codes relevant to our regulatory enforcement responsibilities. This includes investigation of relevant offences, powers of entry in the course of discharging statutory duties, taking samples to help in gaining necessary evidence and interviewing those suspected of committing offences.

Regulation and Investigatory Powers Act (RIPA) 2000

The Act regulates the powers of public bodies to carry out surveillance and investigation, including the interception of communications, and we will ensure we use our powers in accordance with Colchester City Council’s Corporate RIPA policy.

Local Government (Miscellaneous Provisions) Act 1976 section 16

This is used to formally request information about a premise or a person.

Protection of Human Rights

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering any enforcement action. There is a clear public interest in enforcing relevant public and environmental protection regulations, in a proportionate way. In particular, due regard will be given to respect for private and family life, home and correspondence.

Equalities, Vulnerable Persons, and Minority Groups

The enforcement services covered by this enforcement policy will align with and meet the equality policies and objectives adopted by Colchester City Council. We will aim to effectively support and promote access to our enforcement services recognising the diversity of the communities we serve and ensure that residents and businesses are treated equally and fairly through the delivery of our services.

Enforcement in Colchester City Council Premises and Contracted Services

On rare occasions, there may be a perceived potential for conflict of interest where the Council has ownership or management interests in premises normally enforced by their own inspecting officers. For instance, where the Council is the clear duty-holder for health and safety purposes, the premises will be transferred to the Health and Safety Executive for enforcement purposes. Responsibility for day-to-day health and safety at work matters on such premises lies with the head of the relevant service. In other contexts, such as food hygiene, licensing issues, the Licensing, Food Safety and Health and Safety Officers will offer advice as they would in other circumstances. If considered necessary, any disputed matters would be referred to the Head of Service.

6. Enforcement options and procedures

6.1 Officers will take the most appropriate course of action and each case will be considered in accordance with this document. Enforcement decisions will be fair, independent, and objective and will not be influenced by issues such as ethnicity or origin, gender, religious belief, political views or the sexual orientation of the suspect, victim, witness, or offender. Decisions will not be affected by undue pressure from any source. Our decisions will have appropriate regard to the principles promoted through the Council's HR policies and equality policies.

6.2 Working in partnership with others.

Where appropriate, enforcement activities within CCC Public Protection will be coordinated with other regulatory bodies and enforcement agencies, both within and outside the council. In this way, we will seek to maximise the appropriateness and effectiveness of any enforcement and have an integrated approach to problem solving.

Where an enforcement matter affects a wide geographical area beyond the Council's boundaries, potentially involving enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of this matter as soon as possible and all enforcement activity coordinated with them.

7. Recovering our costs

We will seek to recover all our legitimate costs from enforcement activities resolved through court proceedings.

8. Publicity

We will consider, in all cases, drawing media attention to factual information about charges that have been laid before the courts, but will take great care to avoid any publicity that could prejudice a fair trial. We will also consider publicising any conviction that could serve to draw attention to the need to comply with legal requirements or deter anyone tempted to disregard their duties.

9. Comments, compliments, complaints

Is committed to the delivery of responsive, good quality customer services to the people of the Borough and would welcome comments and feedback about the impact the enforcement policy may have on local residents and/or business through our Customer Service Team.

10.0 Policy review

It is considered good practice to review Council policies. In future, a 3-yearly review of this Policy will provide a reasonable timetable in line with other Service policies of the Councils and Specifically the Licensing Team. A review may also be appropriate in the intervening period if there is a significant change in legislation, national codes, guidance or national or local policy.

November 2023

Appendix one

Licensing Regulatory Areas

The sale and supply of alcohol, late night refreshment and entertainment
Gambling
Sex establishments
The hackney carriage and private hire trade
Caravan site licences
Charitable collections
Pavement Licences and Permits

Legislation

Note: this list is not exhaustive.

Anti-Social Behaviour, Crime and Policing Act 2014
Caravan Sites and Control of Development Act 1960
Charities Act 2006
Dangerous Wild Animal Act 1976
Gambling Act 2005
Highways Act 1980
House to House Collections Act 1939
Hypnotism Act 1952
Licensing Act 2003
Local Government (Miscellaneous Provisions) Act 1976
Local Government (Miscellaneous Provisions) Act 1982
Mobile Homes Act 2013
Police and Crime Act 2009
Police Reform and Social Responsibility Act 2011
Scrap Metal Dealers Act 2013
Sunday Trading Act 1994
Town Police Clauses Act 1847

Appendix Two - Specific Regulatory Powers

Team: **Licensing, Community Safety and Safeguarding**

Function: **Licensing**

Main Legislation: **Local Government (Miscellaneous Provisions) Act 1982, Licensing Act 2003, Gambling Act 2005, and Associated Regulations**

Enforcement Powers Available

	No Action	Informal Written Verbal Warning	or Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Other Enforcement Options Available	Simple Caution	Prosecution
Power Available?	☐	☐	☐	☐	☐	☐	☐	☐
Specific Details	-	-	-	-	-	Refusal to grant or renew. Conditions on licence, consent, etc. Potential to suspend or revoke	-	Failure to have licence, consent etc. Offences within specific Act. Non-compliance with conditions. -
Appeals						Magistrates	Offender does not have to	Higher Court

							accept Caution	
Other Factors to Consider	EP CCC Complaint	EP CCC Complaint	n/a	n/a	n/a	EP	EP CCC Complaint	EP CCC Complaint
Other Relevant Guides or Procedures	-	-	n/a	n/a	n/a	Section 182 Licensing Act Guidance. Committee rules & policies. Delegated powers	Regulators' Code CPS Guidelines. Section 182 Licensing Act Guidance	Regulators' Code CPS Guidelines. Section 182 Licensing Act Guidance

Team: **Licensing, Community Safety and Safeguarding**

Function: **Licensing** (Taxis and Private Hire)

Main Legislation: Local Government (Miscellaneous Provisions) Act 1976, & the Town and Police Clauses Act 1847

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Other Enforcement Options Available	Simple Caution	Prosecution
Power Available?	☐	☐	☐	☐	☐	☐	☐	☐
Specific Details	-	CCC Taxi and PH policy Points System	-	Driver Suspension/Revocation Letter/Notice Vehicle Suspension/Revocation Letter/Notice Operator Suspension/Revocation Letter/Notice	Require extra vehicle test Require extra driver medical	Refusal to grant or renew. Conditions on licence, consent etc. Potential to suspend or revoke	-	Failure to comply with the terms of the statutory notice. Failure to pay or accept a fixed penalty notice. -

Appeals		Licensing Sub-Committee or Magistrates		Magistrates	Magistrates	Magistrates	Offender does not have to accept Caution	Higher court
Other Factors to Consider	EP CCC Complaint	EP CCC Complaint	n/a	EP CBC Complaint D of T Guidance IOL guidance Council Policy	EP D of T Guidance IOL guidance Council Policy	EP	EP CCC Complaint	EP CCC Complaint
Other Relevant Guides or Procedures	-	IOL guidance Council Policy	n/a	-	Committee rules & policies. Delegated powers IOL guidance Council Policy	Committee rules & policies. Delegated powers IOL guidance Council Policy	Regulators' Code CPS Guidelines IOL guidance Council Policy	Regulators' Code CPS Guidelines IOL guidance Council Policy

The following policy relates to the work of the Licensing Team within Public Protection at Colchester City Council. The policy set out the aims and objectives for the Team, and the specific enforcement options open to officers. Officers will have regard to them and to the various current Codes of Practice and Practice Guidance when making decisions about the most appropriate enforcement action. This document supports the attached Colchester City Council Enforcement Policy - Licensing Team which contains the broad principles of Enforcement.

LICENSING ENFORCEMENT POLICY

1. Statement of objectives

1.1 The Licensing Team is committed to the Council's core priorities. This policy linked with the Licensing Policy which gives detail on how the Council prioritises:

- Tackling the climate challenge and leading sustainability
- Creating safe, healthy, and active communities
- Delivering homes for people who need them
- Growing a fair economy so everyone benefits
- Celebrating our heritage and culture
- Achievements and next steps

and will inform the enforcement actions taken. Amendments to priorities will be embedded automatically.

1.2 This service policy promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens.

1.3 In certain instances the service may conclude that a provision in the Code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

1.4 The service pursues a positive and proactive approach towards ensuring compliance by:

- Supporting the better regulation agenda.
- Helping make prosperity and protection a reality for the City's' community.
- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily.
- Responding proportionately to regulatory breaches; and
- Protecting and improving public safety.

1.5 This policy is based on the seven 'Hampton Principles' of: Economic Progress:

- a. Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
 - b. Risk Assessment: Regulators, and the regulatory system, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
 - c. Advice and Guidance: Regulators should provide authoritative, accessible advice easily and cheaply.
 - d. Inspections and other visits: No inspection should take place without a reason.
 - e. Information requirements: Businesses should not have to give unnecessary information or give the same information twice.
 - f. Compliance and enforcement actions: The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
 - g. Accountability: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.
1. 6 The rights and freedoms given to an individual under the Human Rights Act, particularly Article 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act.

2. Scope of the Policy

- 2.1 This policy supports and supplements specific guidance on enforcement action contained in the Statutory Code of Practice for Regulators, Colchester City Council's Corporate Enforcement Policy, delegated to the Licensing Team in the Councils' Statutory Codes of Practice and relevant guidance documents and guidelines issued by Government Departments and co-ordinating bodies.
- 2.2 This policy relates to actions taken to educate and enforce legislation where non-compliances have been identified or have a realistic potential to occur.
- 2.3 The policy is limited to those enforcement activities delegated to the Licensing team in the Councils' Scheme of delegation.

3. Training

- 3.1 Officers undertaking enforcement duties will be suitably trained and qualified to ensure they are fully competent to undertake their enforcement activities.

4. Management Systems

- 4.1 The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, to ensure, so far as is reasonably practicable, uniformity and consistency.

5. Enforcement Options

- 5.1 The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government Departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.
- 5.2 Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards. The aim of sanctions and penalties are to:
- Change the behaviour of those breaching regulations.
 - Eliminate any financial gain or benefit from non-compliance.
 - Be responsive and consider what is appropriate for the individual and regulatory issue, which can include warnings, fixed penalty notices, suspensions, and licence revocation.
 - Proportionate to the nature of the offence and the harm caused.
 - and
 - Aim to deter future non-compliance.
- 5.3 Criteria to be considered when considering the most appropriate enforcement option include:
- the potential of the offence to cause harm.
 - confidence in the offender.
 - consequences of noncompliance.
 - likely effectiveness of the various enforcement options.

6. Informal Warning

- 6.1 Informal action may be taken when: -
- the act or omission is not serious enough to warrant formal action or
 - from the individual's/enterprise's history it can be reasonably expected that informal action will achieve compliance or
 - confidence in the individual/enterprise's management or ability to resolve the matter is high or
 - the consequences of non-compliance will not pose a significant risk to public safety
- 6.2 When an informal approach is used to secure compliance with regulations, written documentation issued will: -
- contain all the information necessary to understand what is required and why

- indicate the regulations contravened, measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen.
- clearly differentiate between legal requirements and recommendations of good practice. Such a differentiation will also be made when verbal advice is given.

7. Prosecution

7.1 The Department recognises that the decision to prosecute is significant and could have far reaching consequences on the person prosecuted.

7.2 The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the Council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The matters to be considered when deciding if the issue of proceedings is proportionate include: -

- the seriousness and nature of the alleged offence.
- the role of the suspect in the commission of the offence.
- any explanation by the suspect or any agent or third party acting on their behalf.
- was the suspect in a position of trust, responsibility, or authority in relation to the commission of the offence.
- is there evidence of premeditation or disregard of a legal requirement for financial reward.
- risk of harm to the public, an individual or the environment.
- relevant previous history of compliance.
- reliability of evidence and witnesses
- any mitigating or aggravating circumstances or the likelihood that the suspect will be able to establish a defence.
- suspect's willingness to prevent a recurrence of the offence.
- the need to influence future behaviour of the suspect.
- the likely penalty to be imposed; and
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

7.3 All relevant evidence and information will be considered before deciding whether to instigate proceedings to enable a consistent, fair, and objective decision to be made.

7.4 Where an act or omission is capable of constituting both a summary and either way offence, when deciding which offence to charge the following will be considered: -

- the gravity of the offence.
- the adequacy or otherwise of the powers of the summary court to punish the offence.
- the record of the suspect.

- the suspect's previous response to advice or other enforcement action.
- the magnitude of the hazard.
- any circumstances causing particularly great public alarm.
- comments from the Council's Legal Services.

7.5 As a general rule an individual or business will be given a reasonable opportunity to comply with the law although in some circumstance's prosecution may be undertaken without giving prior warning, for example -

- the contravention is a particularly serious one.
- the integrity of the licensing framework is threatened.

8. Appeals

8.1 If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant team manager or Head of Service.

8.2 Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with corporate procedures and guidance.

8.3 Complaints that are not dealt with by the Council's complaints procedure are listed in corporate policy and include:

- Complaints where the complainant or another person has commenced or intends to commence legal proceedings against the council, in which case advice should be sought from Legal Services
- Complaints where the council has commenced or intends to commence legal proceedings against the complainant or another person relating to the matter of complaint.

November 2023