

## **Licensing Act 2003**

### **Memorandum of Understanding and Joint Enforcement Protocol signed between**

**XXX Council (the Licensing Authority) and**

- 1. Cambridgeshire Constabulary**
- 2. Cambridgeshire & Peterborough Fire & Rescue Authority**
- 3. Cambridgeshire County Council Trading Standards Service**
- 4. Cambridgeshire County Council Social Services**
- 5. XXX Council Environmental Health Service**

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

XXX Council and Cambridgeshire Constabulary, Cambridgeshire & Peterborough Fire & Rescue Authority and Cambridgeshire County Council aim to provide safe environments for the community of Huntingdonshire.

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.

These are:

1. The prevention of crime and disorder
2. The promotion of public safety
3. The prevention of public nuisance
4. The protection of children from harm

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, club premises certificate holders and those submitting temporary events notices understand and comply with the law.

The Government has strongly recommended that protocols be set up between authorities and this document has been prepared with that in mind.

The purpose of this document is to ensure efficient and effective co-operation between agencies when dealing with areas of mutual interest, to secure:

1. High levels of open communication between agencies
2. Clear lines of responsibility regarding enforcement of the law
3. Sharing intelligence, where appropriate to enable effective enforcement of the law

It sets out the steps that have been agreed to achieve that aim.

### **Communication**

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 their deputies. There must be a clear understanding about when, where and how contact shall be made, including for emergencies.

### **Sharing Intelligence**

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.

### **Data Protection and exchange of information**

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.

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

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.

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.

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

## **Enforcement Action**

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.

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 but not of clubs.

Joint inspections will normally be conducted on the basis of a risk assessment 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 (e.g. the Environmental Health Service for prevention of nuisance; the Fire & Rescue Service for fire risk issues)

## **Relevant legislation:**

1. **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.
2. **Police Act 1964** – imposes a primary responsibility on the Police Authority to maintain an adequate and effective Police Force.
3. **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.
4. **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.

## **Offences**

(Note abbreviations), as follows:

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

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

<b>Section</b>	<b>Offence</b>	<b>Authority</b>
33 (6)	Failure to notify LA of change of name or address of 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 licence on premises	LA
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 unauthorised licensable activities	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 licensed premises	Police or LA
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

### **Investigation of offences**

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:

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

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

1. 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.
2. inform the authority that initiated the complaint, and any other relevant authority, of the action taken, and reasons why.

### **Responsibility for Prosecutions**

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

1. the Licensing Authority
2. the Director of Public Prosecutions
3. for offences under Ss. 146 and 147, the Local Weights and Measures Authority

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).

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

### **Register of Cautions**

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.

### **Notification of prosecutions and cautions**

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.

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.

The notification shall be in writing and shall state:

1. the name and address of the person convicted or cautioned
2. the nature and date of the conviction or caution and
3. the details of any conviction including any order under section 129 of the Act.

### **Liaison between Parties to this Agreement**

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

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

## **Consultation on applications**

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.)*

## **Applications for review of a licence**

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.

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:

1. give an early indication to the Licensing Authority of the events requiring an application.
2. seek an informal resolution to the matter if possible or appropriate.
3. be able to demonstrate to the Licensing Sub 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.

## **Definition of Terms**

It is important that any terminology used is recognised by all personnel in each service. Wherever possible, terminology should be the same and have a clear meaning. An understanding of any new or replacement phrases must be conveyed to all parties to this document.

## **Procedural Review**

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.



Signed .....  
[NAME]  
XXX Council (Licensing Authority)

Signed .....  
[NAME]  
Cambridgeshire Constabulary

Signed .....  
[NAME]  
Cambridgeshire & Peterborough Fire & Rescue Authority

Signed .....  
[NAME]  
Cambridgeshire County Council (Trading Standards Service)

Signed .....  
[NAME]  
Cambridgeshire County Council (Social Services)

Signed .....  
[NAME]  
XXX Council (Environmental Health Service)