



# **BUSINESS COMPLIANCE AND SUPPORT POLICY (LICENSING)**

September 2017

**The Licensing Authority is responsible for the administration and compliance of regulated activities in North Lincolnshire**

**Our Purpose**

To ensure that people using regulated activities are safe and ensure that persons carrying them out meet statutory tests.

**Our Role**

We monitor, inspect and regulate services to make sure that they comply with the law and adhere to the standards set to ensure the safety of the users.

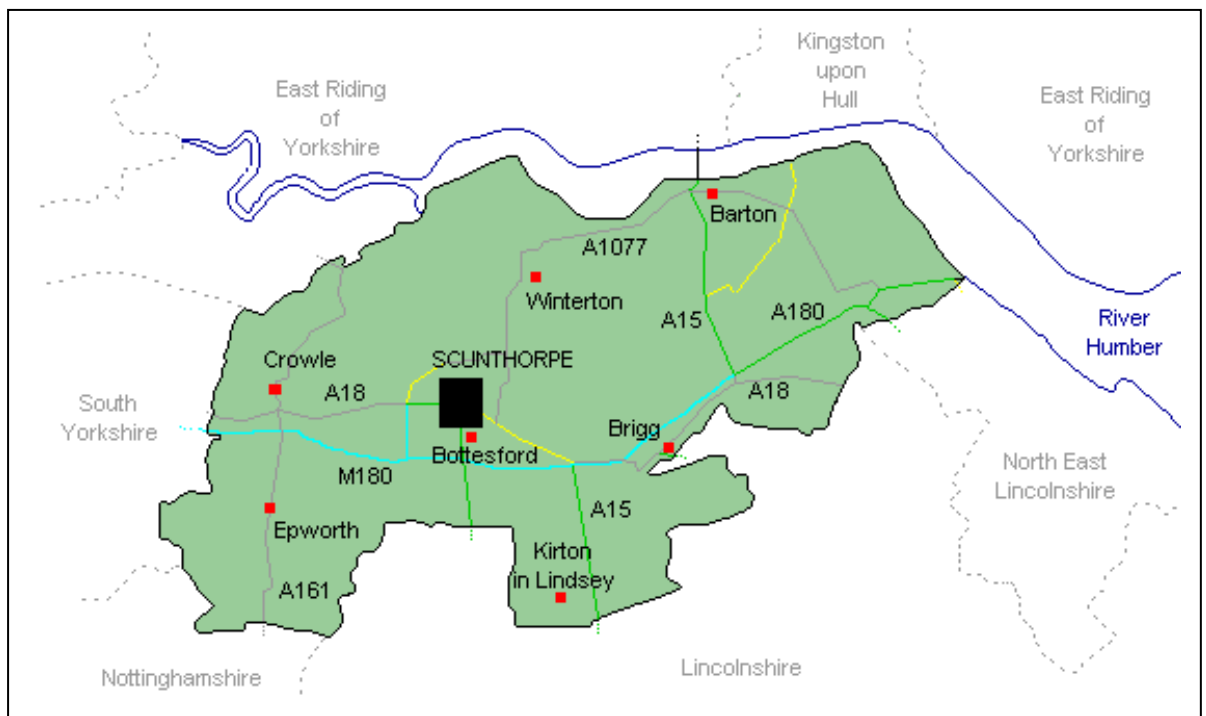
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## Introduction

### 1 The Area of North Lincolnshire

- (1) North Lincolnshire covers a mix of urban and rural areas. It includes the towns of Scunthorpe, Barton upon Humber and Brigg. There are also several other market towns, villages and rural areas. Its total area is 328 square miles.
- (2) The 2011 Census gave the population of North Lincolnshire as 167,446. Of these, 76,200 live in Scunthorpe and Bottesford. The other 91,246 people live in the rural areas, which include the towns of Barton upon Humber and Brigg.
- (3) Large concentrations of licensable activities are located in Scunthorpe town centre, in the areas of Doncaster Road, the High Street and Frodingham Road.
- (4) Below is a map of the area.



### 2 General Information

- (1) This document sets out how North Lincolnshire Council's Licensing Team will ensure compliance with the legislation that it is responsible for.
- (2) The Licensing Team deal with over forty different types of licence, consent, permit or authorisation with over 5700 businesses, people or

vehicles licensed to operate in the area. The licences are required to run businesses from a diverse range from scrap metal dealers to animal welfare establishments.

- (3) As with all licensing matters, decisions about the action will depend on the individual circumstances in the case. There will be occasions, depending on the facts in an individual case where the action taken will not follow the precise steps described in this policy and as such this policy is to be read as a guide to best practice when considering the appropriate action. The policy cannot cover every eventuality, nor can it be a substitute for judgement in individual cases.
- (4) This policy sits between the Service Area Enforcement Policy and the individual policies for each area of licensing. When dealing with business compliance, the Licensing Authority has both criminal and civil remedies available.

### **3 Consultation**

- (1) In determining this policy, North Lincolnshire Council has consulted the following persons/bodies:
  - Federation of Small Businesses
  - Scunthorpe Charter Trustees
  - Town & Parish Councils
  - Trade Associations
  - Licence Holders
- (2) In addition, various other professional persons within North Lincolnshire Council have been consulted. These include:
  - Legal Services, including Democratic Services
  - Community Safety Partnership
  - Town Centre Manager
  - Leader of Conservative Group
  - Leader of Labour Group
  - Chair of Licensing Committee
  - Cabinet Members
- (3) The views of all the appropriate bodies and organisations have been taken into consideration and weighted appropriately.

### **4 Review of the Business Compliance and Support Policy**

- (1) The Council will review this policy every five years. At the time of the review all interested parties will again be consulted. In addition to the five yearly reviews, this policy will be subject to continuous evaluation and may be updated at any time.

## 5 Contacts

- (1) The Licensing Team is currently part of the Operations Service. Our address is:

Licensing Team  
Church Square House,  
PO Box 42,  
Scunthorpe,  
North Lincolnshire,  
DN15 6XQ.

Email: [licensing@northlincs.gov.uk](mailto:licensing@northlincs.gov.uk)

- (2) To ask about any licensing issue, first contact the Licensing Team by visiting [www.northlincs.gov.uk](http://www.northlincs.gov.uk).

# **Part 1 – Purpose and Principles of Enforcement**

## **Introduction**

This part of the policy sets out the reasons for enforcing the legislation across a number of regulated activities. Our aim is to protect the safety and welfare of people using regulated businesses; to protect the welfare of animals and to provide support; to educate businesses and licence holders to help them to comply with the law; and to promote a fair trading environment.

## **Purpose and Principles of Ensuring Compliance**

### **6 Purpose of Ensuring Compliance**

- (1) Our main aims when ensuring compliance with the provisions of the various Acts, are:
  - Protect the welfare of animals
  - Protect the safety and welfare of people who use or are affected by regulated activities
  - Maintain standards
  - Protect public funds
  - Ensure that businesses operate in a fair and vibrant economy
- (2) In order to achieve these aims, we will adopt the most suitable approach, which can include either civil or criminal remedies or both.
- (3) The matters referred to in **paragraph 6(1)** will form the basis of the Licensing Authorities compliance priorities.

### **7 Protecting the Welfare of Animals**

- (1) Animals are not able to speak for themselves; therefore protecting the welfare of animals is a priority. Businesses will be inspected depending on the risk that they cause to the welfare of the animals. Well run establishments may not be visited so that we can focus on establishments in need of improvement.
- (2) Any action available to deal with welfare issues are contained in the service area enforcement policy.
- (3) Should businesses or licensed persons fail to protect the welfare of animals, appropriate action will be taken to ensure compliance and to reduce the likelihood of a repeat.
- (4) Further to the detail provided in the service area enforcement policy, the Licensing Authority will not fetter its discretion when dealing with matters of animal welfare and may escalate the action if it is deemed appropriate to do so.

### **8 Protecting the Safety and Welfare of People who use Regulated Activities**

- (1) Regulated businesses impact on all aspects of life; therefore it is imperative that we ensure that they are carried out in such a way that they are safe for the users. Such businesses can come into contact with vulnerable adults and children.



- (2) Should businesses or licensed persons fail to protect the safety of users, appropriate action will be taken to ensure compliance and to reduce the likelihood of a repeat.
- (3) Further to the detail provided in the service area enforcement policy, the Licensing Authority will not fetter its discretion when dealing with matters of public safety and may escalate the action if it is deemed appropriate to do so.

## **9 Maintaining Standards**

- (1) In order to protect users and animals it is important that regulated businesses maintain the highest possible standards. These standards are set through conditions attached to the licence and via inspections.
- (2) Where a regulated business fails to maintain standards, then appropriate action will be taken to improve the standards. Should the standards be such that they impact on public safety, then licences or authorisations may be suspended and/or action taken.
- (3) Further to the detail provided in the service area enforcement policy, should the standards fall so as to cause an imminent impact on public safety or the welfare of animals, then depending on the seriousness of the situation, action may be escalated from the standard process identified in this policy.

## **10 Protecting Public Funds**

- (1) The licensing function is a self-funding service. The cost of delivering the administration and enforcement of the function is borne by the licence holders - not the tax payer, save for action against unlicensed activities.
- (2) Where businesses have failed to pay their annual fee or renewal then, if applicable, the licence or authorisation will be suspended or revoked. Should such a business operate once their licence has been suspended or revoked, then the appropriate action will be taken.

## **11 Principles that Guide our use of Enforcement Powers**

- (1) The principles that guide the use of our powers are set out in the service area enforcement policy. In summary, this policy states that we will use our powers to promote any statutory licensing objectives or to promote the priorities identified in this policy. Further, we regulate businesses to ensure the safety of users and to protect the welfare of animals. As such, we will act for them when taking action. When considering our approach we will be guided by the following principles:
  - Proportionality
  - Consistency

- Transparency
- Targeted

(2) Proportionality – The action taken to enforce the provisions of the legislation should be appropriate. Following an offence being committed, an assessment will be carried out to determine the most appropriate action. The action must be proportionate to the circumstances of an individual case. Before formal action is taken, we will generally try to work with businesses to deliver compliance or improvements, unless there is a risk of harm to the public or animals or the businesses are repeatedly or seriously failing to comply with their legal obligations.

(3) Consistency – We will aim to apply our powers, as far as possible dealing with similar cases in a similar manner. However, the facts in each case, including the businesses or persons past history are rarely replicated from case to case.

Consistency does not mean that we will use the same option every time a particular legal requirement is breached, although we will seek to use the principles and processes set out in this policy to decide how to respond to a breach of the legislation or conditions, that is not always possible as each case must be determined on its merits

(4) Transparency – We will aim to be transparent about our approach and be consistent with how we carry out our functions.

This policy will be published on the Council’s website and will be made available to all regulated businesses and people. When considering action, we will complete decision records in all cases, providing the reasons for the actions taken.

As per **paragraph 3** of this policy, we will consult on any changes to this policy.

(5) Targeted – Our enforcement activity will be targeted primarily where the activities give rise to the most serious risks; where information tells us that there is a problem; and to deal with our priorities.

## 12 Economic Considerations

(1) Regulating businesses can have a significant impact on the businesses affected. Depending on the nature of the offence, we will endeavour to seek compliance without the need for formal action. Businesses should be able to operate in a vibrant economy supported by local regulators, albeit that all businesses should operate in compliance with the law, thus ensuring the competition is fair for all.

### 13 Graduated Approach

- (1) In accordance with **paragraph 11(2)**, we will be proportionate in our approach to the use of our powers. Action is available through both criminal and civil powers.
- (2) Depending on the seriousness of the case and the type of licensable activity, we will try to resolve compliance issues informally. Licence holders may be called in for a meeting to discuss compliance issues at which they will be invited to submit an action plan of improvements, or may be asked to consider variations to their operating practices.
- (3) Should the case be more serious or the action plan identified in **paragraph 13(2)** or variations to operating plans fail or not be forthcoming, then licences may be reviewed.

## **Part 2 – Our Approach to Using our Powers**

### **Introduction**

This part of the policy sets out the powers that we have to deal with licensable activities within North Lincolnshire and how we will use the said powers when we take action.

## Our Approach to Using our Powers

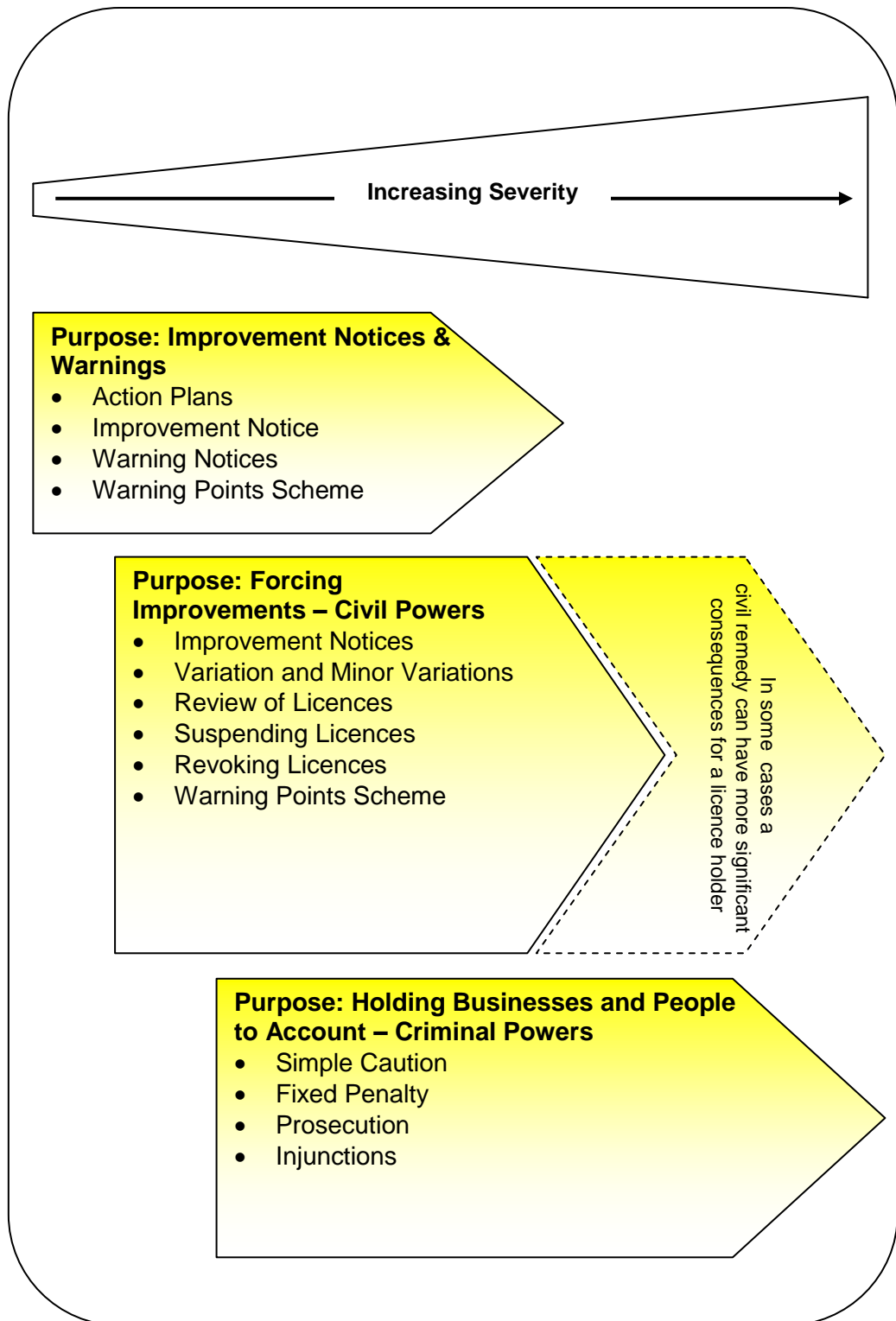
### 14 What we can Consider

- (1) The Licensing Authority covers a number of regulated activities. Officers are authorised to licence and enforce the legislation, dealing with businesses and individuals who control these regulated activities.
- (2) The scope of the activities we regulate include:
  - Alcohol, Entertainment and Late Night Refreshment
  - Animal Welfare
  - Charitable Activities
  - Gambling
  - Hackney Carriage and Private Hire
  - Highways Authorisations and Street Trading
  - Scrap Metal
  - Sex Establishments
- (3) In the case of each licensable activity, there is primary legislation and in some cases secondary legislation covering compliance. In addition, conditions may be attached to some types of licence. The enforcement of the legislation and conditions gives the Licensing Authority a choice of how to deal with the breach. Most breaches are a criminal offence and allows for prosecution. In addition to the prosecution of offenders civil powers may be used to correct a problem where it is deemed appropriate.
- (4) The appropriate action will be regularly reviewed, albeit that at the start of any investigation where a criminal offence may have been committed, the Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedures and Investigations Act 1996 (CPIA) will be followed. Should there be a need to use civil powers later, then again the principles of these Acts will be used as a best practice guide.
- (5) Where it is deemed appropriate to use civil powers rather than criminal powers, then we can impose conditions, suspend or revoke a licence or authorisation. Failure to comply with the civil powers would be a criminal offence, which could result in prosecution.

### 15 Our Powers and how they Correspond to Ensuring Compliance

- (1) Having a broad range of powers available means that we have to select the appropriate response to the non-compliance issue. Taking into account our priorities as detailed in **paragraph 6(1)** we will also consider the severity of the infringement and the likelihood that a person might re-offend. In addition, our response may differ if the type of offence is prevalent and taking action might deter others from committing a similar offence.

- (2) The following table demonstrates how we might use our powers to support our enforcement objectives.



## 16 Appropriate Powers

- (1) Each complaint will be considered on its merits. Where a complaint is less serious, Officers will use their discretion to deal with the issue expeditiously. In more serious cases, where there may be more than one course of action available, we need to ensure that we use the appropriate powers. To assist in this decision, we will take the following steps:
- a) Initial Assessment – Before commencing action, the first stage will be to consider the case at a tasking meeting. Most cases will be followed up with an inspection, while serious cases may proceed directly to evidence collection. At this initial stage and throughout the investigation we will look to identify risk, be that to the public, the perpetrator, or the witness.
  - b) Evidential Review – The progress of the action will be regularly reviewed at the tasking meeting. Evidence will be reviewed to determine if a breach of the legislation or conditions has occurred and to determine if there is sufficient evidence to proceed with an investigation.
  - c) Selection of Appropriate Action – Having considered the evidence, a view will be given as to the appropriate action to take. The following matters will be taken into consideration:
    - Seriousness of the offence.
    - Likelihood of re-offending.
    - Deterrence value/prevalence of the offence.
    - History of breaches.
  - d) Case Management Review – The case will be reviewed at the tasking meeting. At these meetings, the direction of the investigation will be reviewed as will the evidence collected. The action may be changed at this meeting, for example where prosecution has been selected, it could change to a different solution if it is deemed more appropriate based on the evidence. If it is deemed there is no case to answer an exit strategy will be agreed at this stage with all parties being informed.
  - e) Investigating Officer Review – Once the investigation has been concluded, the Investigating Officer will consider the evidence, history and seriousness of the case. The Officer will make a recommendation to a manager as to the action that should be taken.
  - f) Management Review – The manager will consider the recommendation of the Investigating Officer and review the evidence. Should the manager feel that more evidence is needed, then the file will be returned to the Investigating Officer.

Once the manager has concluded that there is a case to answer, then a decision will be made as to the most suitable action, in accordance with this policy and the service area enforcement policy. Should the decision be to prosecute, then the file will be passed to the Senior Officer who is Authorised to approve the action.

- (2) Where a matter is very serious and requires immediate action or a response to protect the public, then decisions may be taken outside of these steps.
- (3) Before determining which powers to use, either criminal or civil, we will look at all options. In the main, we will aim to deal with matters through the civil processes, although there are occasions where the use of civil powers can have a more severe outcome. When determining the best powers available we will take the following into account:
  - a. Did the business or person know.
  - b. Did the business or person impact on the safety or welfare of service users or animals.
  - c. Has the business or person failed to act upon previous warnings or advice.
  - d. Is the nature of the offence or infringement prevalent within the licensed trade.
  - e. Does the business or person act as a role model within the licensed community.
  - f. Does the offence or infringement have an impact on any licensing objective.
  - g. Was the offence or infringement of a serious nature.
- (4) The steps in this paragraph appear to be bureaucratic, whereas in practice, the steps can happen very quickly and sometimes simultaneously. Officers will use their knowledge and judgement when making a decision on the appropriate action to be taken.

## **17 Taking No Action**

- (1) There may be times when a complaint is made or following an investigation where the most appropriate action available is to do nothing. Where this is the case we will notify any complainant and inform the business or person who is being investigated.

## **18 Risk Assessments**

- (1) Following the assessment of powers to be used, an assessment will be made of the risks involved to the investigation. When considering such risks we will look at the reliability of evidence and witnesses, the age of the perpetrator and other factors. Determining of the risk can impact on the decision as to which powers are most suitable to be used.



## **19 Inspections and Other Visits**

- (1) Licence holders and applicants will generally be informed in advance of any inspection or visit, unless to do so would alter a pattern of behaviour.
- (2) When visiting premises to check that they are complying with the conditions attached to the licence, notice will not be given in advance, as to do so could provide a false indication as to how the business is operated. When carrying out such visits and inspections, we will focus on areas where the action is needed and deal with topical issues.

## **20 Powers of Entry**

- (1) When using our powers of entry we will do so in accordance with the Home Office Code of Practice, pursuant to Section 48 (1)(a) of the Protection of Freedoms Act 2012 or other such statutory guidance.

## **21 Exit Strategy**

- (1) Throughout the investigative process we will continually review the evidence and re-evaluate the direction of the investigation. Consideration will be given as to the best action to be taken. At any time during the process where it is not deemed appropriate to continue, then the Investigating Officer in consultation with the manager may decide to terminate the investigation or change from a criminal investigation to a civil investigation. When such a decision is made, a determination record will be made.

## Part 3 – Improvement Notices and Warnings

### Introduction

This part of the policy sets out how we will use Warnings and Notices as part of a graduated approach so that we can support businesses to improve their standards and avoid more serious action in most cases.

Our purpose here is to deal with issues and avoid more serious action, thus supporting businesses in compliance with the law.

#### **Purpose: Improvement Notices & Warnings**

- Action Plans
- Improvement Notice
- Warning Notices
- Warning Points Scheme

## Improvement Notices and Warnings

### **22 Renewal Notices and Payment of Annual Fees**

- (1) In order to assist businesses and people who hold a licence to be compliant, we will endeavour to make sure that a renewal notice or letter is sent to them. The letter will be sent out in good time to allow the applicant every opportunity to re-apply for a licence should they wish to do so. Such notices will not be sent where the authorised activity is temporary in nature.
- (2) Should a person or business continue to operate once their licence or authorisation has expired, then the renewal notice may be used to prove that they have carried on their business without the benefit of a licence.
- (3) It remains the licence holders responsibility to make sure that they apply for a renewal in a timely manner and pay any maintenance due.

### **23 Warning Notices**

- (1) Depending on the seriousness of the offence, we will aim to issue a warning notice in the first instance. We will not issue such a warning where a licence has expired or has been suspended as the licence holder will have been made aware that they may not operate.
- (2) Contained within the warning notice will be such information that is needed to ensure that the person or business can comply with the law. Should a person or business continue to operate without rectifying the issue, therefore non-compliant with the law, then the warning notice may be used to prove that they have carried on their business in a non-compliant manner.

### **24 Improvement Notices**

- (1) Where standards at a licensed premises or on a vehicle fail to meet a required standard, then we may issue an improvement notice. If an improvement notice is served a period of time will be given for the business to improve their standards. Failure to comply with such a notice could result in further action being taken against the responsible person.

### **25 Animal Welfare Improvement Notices**

- (1) Section 10 of the Animal Welfare Act 2006 allows for a notice to be served on a person in charge of the premises where it fails to meet the requirements under section 9 of the said Act. Should the person fail to improve the premises as detailed in the notice then further action may be taken.

## 26 Section 19 Notices

- (1) Section 19 of the Criminal Justice and Police Act 2001 allows for a notice to be served on any premises where alcohol is sold other than in accordance with an authorisation. The notice gives the premises user seven days to rectify the matter otherwise a closure order can be applied for.
- (2) Closure Notices will be used as a part of our graduated approach and will normally be issued in conjunction with a warning notice. If the premises has been warned about their compliance, then issuing a section 19 notice will not be served. Such a notice does not force the premises to cease licensable activities nor does it close the premises.
- (3) Should a premises licence holder fail to rectify the matters contained within the closure notice within the seven day period, then a closure order may be applied for, or consideration may be given to pursuing a prosecution of the premises.

## 27 Suspension Notices

- (1) Various provisions allow for the suspension of a licence or authorisation. The suspension of a licence has serious consequences for the business or individual, therefore every opportunity is given so that it may be avoided. Suspensions of licences will be considered as follows:
  - a. Premises – Premises will be suspended where the licence holder has failed to pay the annual licence fee, where the legislation allows us to do so. Before such action is taken the licence holder will be reminded that the fee needs to be paid.
  - b. Drivers – Hackney Carriage and Private Hire Drivers may have their licences suspended either with immediate effect or without immediate effect. Where a licence is suspended but not with immediate effect, then a driver may still drive while an appeal is being considered. If a licence is suspended with immediate effect, then the licence cannot be used pending an appeal. The suspension of a licence with immediate effect will only be issued where it is deemed to be in the interest of public safety.
  - c. Vehicles – Hackney Carriage and Private Hire Vehicles may be suspended where they are not fit, safe or comfortable, the meter is faulty or incorrect or where they fail to meet the conditions of the licence. Such a suspension will normally be issued under section 68 of the Local Government (Miscellaneous) Provisions Act 1976. Where a licensed vehicle cannot be used lawfully to carry passengers for hire and reward, for example the insurance is incorrect, then a suspension notice may be issued under section 60

of the same Act. The Council reserves the right to use either section 60 or 68 where it is most appropriate to do so.

## **28 Warning Points Scheme**

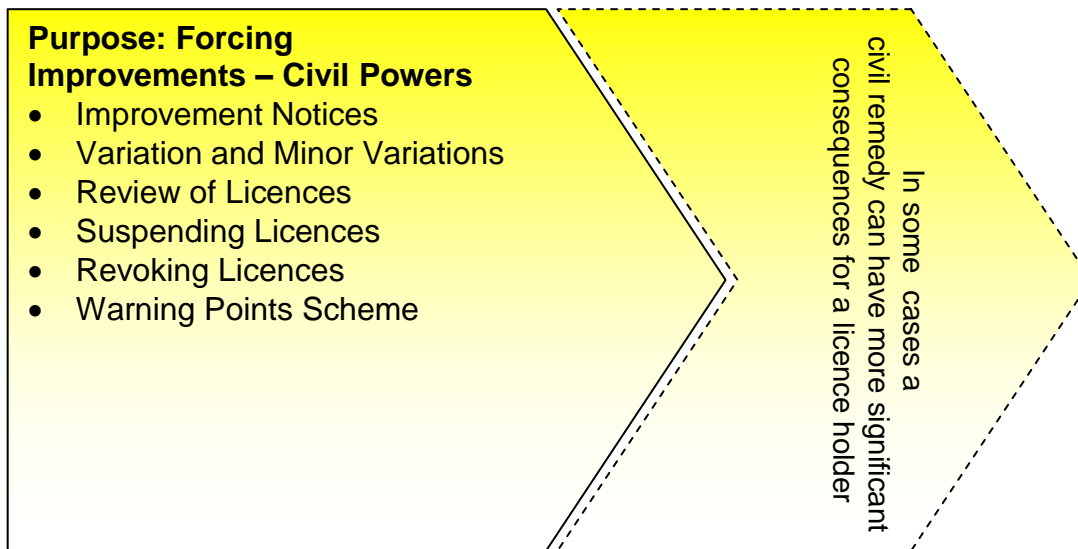
- (1) In accordance with Appendix G of our Hackney Carriage and Private Hire Licensing Policy, the Council has developed a scheme where drivers receive warnings that carry a number of points. Where a driver receives more than 12 points then they are referred to the Licensing Sub-Committee for their licence to be reviewed. This scheme has been developed to bridge the gap when prosecution is too onerous but doing nothing is not an option.

## Part 4 – Forcing Improvements – Civil Powers

### Introduction

The Licensing Authority has powers deal with businesses under both criminal and civil procedures. This part of the policy will deal with how we will use our civil powers to address issues.

Our purpose here is to deal with issues and avoid criminalising people and businesses, however there are occasions where a civil sanction could have a more detrimental impact than a prosecution.



## Forcing Improvements – Civil Powers

### 29 Nature of Civil Powers

- (1) The use of civil powers aims to deal with issues with people or businesses without criminalising the licence holder. There may be occasions where the use of a civil power could be more severe than the outcome where criminal powers may be used. Before determining which power to use, we will consider the outcome we are trying to achieve and use the most appropriate powers available.
- (2) Civil powers may be used alongside criminal powers and there may be occasions where it is deemed appropriate to use both sets of powers in parallel.
- (3) Unlike criminal powers, which are heavily codified, civil powers are less so. Hearsay can be used in civil investigations as can expert witnesses who represent complainants or witnesses. We will utilise these methods, albeit that we understand that where expert witnesses are used it is appreciated that anonymity can never be guaranteed.
- (4) We will apply similar principals to the use of civil powers as there are for criminal powers as we aim to act in an open, fair and ethical manner. The general principals of the Criminal Procedure and Investigations Act 1996 (CPIA) will be used when investigating using civil powers to ensure that action is carried out in a transparent manner.
- (5) Before determining to use civil powers an assessment will be made in accordance with **paragraph 16(3)** of this policy and the risks to the investigation will be considered in accordance with paragraph 18.

### 30 Hearings

- (1) Hearings can be held before an application is granted, to review a licence as per paragraph 30 or to appeal certain decisions. Such hearings are before a Licensing Sub-Committee or an Authorised Officer.
- (2) The Licensing (Activities) Sub-Committee deals with all applications and reviews for premises licensed under the Licensing Act 2003 and the Gambling Act 2005. For further information, please refer to the Statement of Licensing Policy and the Cumulative Impact Policy or the Statement of Principles for the appropriate legislation.
- (3) The Licensing (Miscellaneous) Sub-Committee deals with applications and reviews for Hackney Carriage and Private Hire Licensing, Sex Establishments and Street Trading Licences. Street Trading Licences will only be referred when the Authorised Officer has doubt as to the suitability of the application.

- (4) Other applications will be considered by an authorised officer.

### **31 Review of a Licence**

- (1) Depending on the relevant legislation, there are provisions to review certain licences. Where these provisions exist, the review of a licence can be carried out in addition to a prosecution.
- (2) The use of review powers are normally used where the action required is corrective in nature rather than punitive. In many cases, prosecution is seen as a last resort, however there are occasions where a review of a licence can have a longer lasting impact on a person or business in which case the review would be seen as the last resort.
- (3) The decision to review or prosecute or do both shall be determined on a case by case basis.

### **32 Impose, Vary or Add Conditions**

- (1) Where an application or licence is reviewed by a licensing sub-committee or by an authorised officer, then in certain circumstances, conditions can be added to the licence or the licence varied.
- (2) Conditions will only be attached where they support an appropriate licensing objective or are needed to protect the public or to ensure the welfare of animals. Such conditions will be necessary and reasonable and a decision record will be provided as to why the conditions are necessary.
- (3) All applications and reviews will be considered on their individual merits, having considered all the facts.

### **33 Suspensions**

- (1) A number of Acts that we deal with allow for a licence to be suspended. Such suspensions may be issued by a Licensing Sub-Committee or by an Authorised Officer. Where a licence has been suspended, then full reasons will be provided. Some of the suspensions will take immediate effect, as per **paragraph 36**.
- (2) Suspensions are an effective tool to encourage businesses to comply with legislation or as a measure just short of a revocation. Such suspensions would normally be for a period up to 3 months, but maybe longer if it is deemed appropriate to protect the public.
- (3) Where a licence holder fails to pay an annual fee under the Licensing Act 2003, a suspension notice will be issued. Licence holders will be notified in writing of the suspension, giving the reasons.



### **34 Lapse of a Licence**

- (1) A licence or other authorisation may lapse for a number of reasons. Most of the reasons for a lapse are out of the control of the Licensing Authority. Before a licence is due to expire a renewal notice will normally be sent to remind the licence holder that an application needs to be made.
- (2) Where a licence holder fails to pay an annual fee under the Gambling Act 2005, the said licence or authorisation lapses and ceases to have effect. The licence holder will be notified of the lapse, giving the reasons.
- (3) It is the licence holders responsibility to ensure that applications are made in a timely manner and that any payments are made by a due date. The Council cannot accept any liability if the application is late and the business has to stop trading while the application is determined.

### **35 Revocation**

- (1) Revocation is very much a last resort. Licence holders will be given every opportunity to resolve compliance issues before revocation is considered.
- (2) Where the non-compliance is serious in nature, the licence holder has failed to comply with reasonable requests, has a history of non-compliance, or where guidance recommends revocation, then such action may be the only option available. All cases will be determined on their own merits and if deemed appropriate, then revocation may be the first option considered.

### **36 Other Remedies**

- (1) The benefit of using civil powers is that there are a number of options available before revocation or suspension is needed in most cases. These options can include:
  - a. Working with businesses to develop action plans.
  - b. Improvement notices and warnings.
  - c. Seeking Minor Variations to avoid reviews.
  - d. Restricting licensable activities and/or hours.
  - e. Issuing licences for a shorter time.
  - f. Asking for additional checks.
  - g. Warning Points Scheme (Hackney Carriage and Private Hire)
- (2) This list is not exclusive and we will utilise any option that helps a business to comply where it is deemed appropriate, reasonable and necessary.

### **37 Use of Powers with Immediate Effect**

- (1) Certain powers allow action to be taken with immediate effect or via an expedited process. Such powers will only be used where it is necessary to do so to protect the public or where a serious crime has or is likely to occur. Where we utilise such powers, an investigation will be carried out first and such a decision will be made in accordance with the delegation in any appropriate policy.
- (2) Where such action is proposed by a responsible authority or partner agency we will follow any appropriate guidance.

### **38 Non-Compliance following the Use of Civil Powers**

- (1) Where a business or person has failed to comply with actions taken under civil powers, then further action will follow. In such circumstances we will review the case to determine if the further action should be an escalation of civil powers or if criminal powers should be used. Each case will be determined on its own merits.
- (2) A breach of licence conditions, which are attached via a civil process, in many cases can be a criminal offence. In most cases, a person or licence holder will be warned before further action is taken unless the said person should have known better.

## **Part 5 - Holding Providers and Individuals to Account – Criminal Powers**

### **Introduction**

In contrast to the civil powers, the Licensing Authority has the ability to deal with businesses and hold them to account through the use of criminal powers. These powers may be used either on their own or in parallel with civil powers.

#### **Purpose: Holding Businesses and People to Account – Criminal Powers**

- Simple Caution
- Fixed Penalty
- Prosecution
- Injunctions
- Community Protection Warnings and Notices

## **Holding Providers and Individuals to Account – Criminal Powers**

### **39 Holding Individuals and Businesses to Account**

- (1) The use of criminal powers should be a last resort in most cases. There are times that civil powers can have a greater detrimental impact on a person or business, which will be taken into account when we determine the most appropriate powers available.
- (2) We will normally offer businesses an opportunity to comply with the requirements of the law before criminal powers are used, however we reserve the right to take more serious action should it be deemed appropriate. When determining the best powers to be used we will consider the matters at **paragraph 16(3)** of this policy.
- (3) When taking action using criminal powers, we will adhere to all relevant statutory codes and guidance, such as the Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedure and Investigations Act 1996 (CPIA).

### **40 Unlicensed Persons and Businesses**

- (1) Before any action is taken against a person acting without the appropriate licence or authorisation, we will inform of the need to be licensed. The said person or business will be required to cease the unlicensed activity until they obtain the appropriate authorisation.
- (2) Should a business or person fail to adhere to the warning and continue to trade without a licence or authorisation, then action will be taken using criminal powers.
- (3) Should the business or person apply to or become compliant during the investigation, then depending on the nature of the offence a decision will be made to determine the most appropriate action, which may include:
  - a. Take no further action.
  - b. Issue a warning letter.
  - c. Issue a simple caution.
  - d. Continue with the prosecution.
- (4) The reasons for the decision will be fully documented.

### **41 Trading While Suspended**

- (1) Any person or business who continues to trade once their licence or authorisation has been suspended will normally face a criminal

investigation, as any suspension will be notified in writing. Such action would not be taken during any appeal period.

- (2) The Council reserves the right to take other steps where there are mitigating circumstances.

#### **42 Trading when a Licence has Lapsed**

- (1) Businesses or people who continue to trade once a licence has lapsed may be subject to a criminal investigation and prosecution. Certain types of business may be permitted to continue to trade so long as they have submitted a valid application, which includes payment and all supporting documentation.
- (2) Certain licence types will not be permitted to continue to trade while an application is pending. These activities include hackney carriage and private hire, where a licence is needed for insurance purposes, and other activities where there is a direct impact on public safety. We reserve the right to inform any business or person that they may not trade while an application is pending following the lapse of a licence or authorisation.

#### **43 Trading following Revocation**

- (1) Trading following the revocation of a licence will normally result in the use of criminal powers, unless there are substantial mitigating circumstances. Such action would not be taken during any appeal period.

#### **44 Simple Caution**

- (1) During the investigation, consideration will be given as to the most appropriate action. Where a business or person has complied or ceased an unlicensed activity during an investigation, or where there are mitigating circumstances a simple caution might be considered. The business or person would need to accept guilt for the offence being investigated.
- (2) The matters detailed in **paragraph 16(3)** will be taken into consideration when determining to issue a simple caution.

#### **45 Penalty Notices**

- (1) The use of Fixed Penalty Notices (FPN) by the Licensing Authority are limited. Where such notices are available, then we may use them rather than taking other action.
- (2) Where a business or person has been issued with a FPN and continues to fail to meet the statutory obligations, then we may take other formal action, either through civil or criminal powers.

#### **46 Prosecution**

- (1) Prosecution is normally seen as a last resort. Should it be deemed necessary, then we have failed to gain compliance by other means or the business or person has failed to heed warnings that have been made. We will use the criteria detailed in **paragraph 16(3)** to determine when a prosecution is appropriate.

#### **47 Community Protection Warnings and Notices**

- (1) Where a person or business causes a detrimental effect of a persistent or continuing nature which impacts on the quality of life in the locality and the behaviour is unreasonable, then a Community Protection Notice can be served. Before such a notice is served a warning will be issued in the first instance. Should the person or business fail to cease the detrimental activity, then further action is available. Further details are available in the Council's Enforcement Policy.

## **Part 6 – Representations, Decisions and Appeals**

### **Introduction**

This part of the policy deals with how representations and appeals are dealt with. There are appeals through both the civil and criminal processes. We will notify all parties of their right of appeal.

## **Representations, Decisions and Appeals**

### **48 Representations and Complaints**

- (1) Where we receive a complaint we will aim to acknowledge the said complaint within 5 working days. Due to the nature of the legislation we enforce and the complexity of our investigations, the outcome of the case might not be known for some considerable time. We will try to keep complainants informed of the progress of any investigation.
- (2) Representations made as a part of a review or other process will be considered in accordance with the appropriate policy. All representations will be acknowledged.

### **49 Decisions**

- (1) When we make a decision as to the most appropriate action, we will record the decision in writing. Should this change as a result of a review of the evidence or mitigation, again a record will be made in writing.

### **50 Appeals**

- (1) Following a decision to take action, a business or person will be notified in writing of any appeal process available.

### **51 Appeals (Warning Points)**

- (1) The appeals process for warning points issued against hackney carriage and private hire licensed drivers, vehicles and operators is in accordance with the appropriate policy. Again, where points are issued, the person will be notified of the appeals process in writing.



## **Part 7 – Publication and Notification of Action Taken**

### **Introduction**

This part of the policy deals with how we will use any information following action taken. There are times that we have to inform third parties of the action we have taken and where appropriate we will publicise the action in the local media.

## **Publication and Notification of Action**

### **52 Publication in Local Media**

- (1) Following action taken, we may decide to publicise the outcome in the local media. Such action will be taken where it is appropriate to act as a deterrent to others from breaching the legislation in the same way.

### **53 Notification of Action Taken**

- (1) Once the action has been concluded, we will notify any interested parties, such as complainants of the outcome. In addition, we may also notify other responsible authorities and key partners of the action taken.

### **54 Data Protection Act 1998**

- (1) We will act in compliance with the provisions of the Data Protection Act 1998. Information gathered as part of an ongoing investigation is not disclosable and will not be shared, save with key partners in accordance with section 115 of the Crime and Disorder Act 1998, which allows information to be disclosed for the prevention or detection of crime and/or disorder.

## **Part 8 – Pre-application Advice Service and Business Support**

### **Introduction**

This part of the policy identifies how we will support businesses and applicants through the application process and how we will engage with businesses to educate them in order to avoid the use of powers.

## **55 Pre-application Advice Service**

- (1) The application process for many types of licence can be complicated. In some cases applications are rejected for failings by the applicant, especially where the applicant has not engaged with a solicitor or licensing consultant. In order to reduce the number of applications that are rejected we offer a pre-application advice service. The service is provided at cost and we will not make a profit from providing the service.

## **56 Limits to the Service**

- (1) The pre-application service provides support and advice up to the point where the application is submitted. The advice will include advice about advertising but does not include the advertising as this remains the responsibility of the applicant. Officers will be able to engage with the responsible authorities to discuss conditions that are likely to be sought, thus reducing the chance of a representation. The Officer providing the advice will not process the application.
- (2) When providing advice, the officer will maintain a written record of all advice provided. This advice will be given to the applicant.

## **57 Hearings**

- (1) Should the application need to be referred to the Licensing Committee following a representation, the officer providing advice will not be in attendance. The written notes made during the application process will be included in the hearing documents.

## **58 Business Support**

- (1) Where possible, we will provide support for businesses with the provision of training. Depending on the nature of the training we will aim to provide it either free or at cost.

## Glossary of Terms

“we”	- means North Lincolnshire Council
“Council”	- means North Lincolnshire Council
“Licence”	- Means, Licence, Consent, Registration, Permit or any authorisation issued to allow a regulated activity
“Licensing Committee”	- means a group of between 9 and 15 members of North Lincolnshire Council who will deal with Policy Issues
“Licensing Sub-Committee”	- means a group of either 3 or 5 members of North Lincolnshire Council who will deal with Licence Applications where there is a representation and reviews of licences
“Magistrates' Court”	- means Grimsby Magistrates' Court
“Statutory Provisions”	- means laws passed by Parliament
“Licensing Manager”	- means the manager with day to day responsibility of managing the Licensing Function who has budgetary control
“Head of Trading Standards and Licensing Group Manager; Trading Standards and Licensing”	- means the manager with responsibility for the Licensing Function - means the manager with responsibility for the Licensing Function
“Assistant Director Technical and Environment”	- means a senior manager who has oversight of the function
“Licensing and Mediation Officer”	- means an authorised officer employed to assist the manager with day to day responsibility of managing the Licensing Function
“Principal Licensing and Mediation Officer”	- means an authorised officer employed to assist the manager with day to day responsibility of managing the Licensing Function