

BRIDGEND COUNTY BOROUGH COUNCIL

LICENSING COMMITTEE

REPORT OF THE ASSISTANT CHIEF EXECUTIVE LEGAL AND REGULATORY SERVICES

26 NOVEMBER 2009

Licensing Act 2003:

Memorandum of Understanding and Joint Enforcement Protocol between Bridgend County Borough Council Partner Authorities

1. Purpose of Report

- 1.1 To seek the approval of the Committee to formally adopt a Memorandum of Understanding and Joint Enforcement Protocol between the Council, South Wales Police and South Wales Fire and Rescue Service.

2. Connection to Corporate Improvement Plan/Other Corporate Priority

- 2.1 The duties of the Council under the Licensing Act are regulatory in nature. The licensing objectives of the prevention of crime and disorder, public safety, the prevention of nuisance and child protection, underpin many of the aims of the Corporate Improvement Plan and the Council's Corporate Priorities.

3. Background

- 3.1 The Licensing Act 2003 introduced 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 equally weighted licensing objectives, to be promoted by the Council as the licensing authority in conjunction with other "responsible authorities" and the licensed trade.
- 3.2 Statutory guidance strongly recommends that protocols be set up between responsible authorities and the licensing authority and the Memorandum and Joint Protocol attached at Appendix A seeks to formalise the common aims and partnership working that have been established.

4. Current Situation/Proposal

- 4.1 The Memorandum of Understanding is based on the joint promotion of the following licensing objectives:
 - a. The prevention of crime and disorder
 - b. The promotion of public safety

- c. The prevention of public nuisance
- d. The protection of children from harm

4.2 Effective co-operation and liaison with these bodies is essential to ensure that premises licence holders, designated premises supervisors, personal licence holders and club premises certificate holders understand and comply with the law. The parties to the protocol include the following local responsible authorities:

- South Wales Police
- South Wales Fire and Rescue Service
- Bridgend County Borough Council Public Protection Department, including Trading Standards and Public Protection officers
- Bridgend County Borough Council Planning Department
- Bridgend County Borough Council child protection officers.

4.3 The purpose of the protocol is to promote efficient and effective co-operation between agencies when dealing with areas of mutual interest, to secure high levels of open communication, clear lines of responsibility regarding enforcement of the law, and a proportionate and targeted approach to dealing with problem premises.

4.4 Regular Responsible Authority meetings have been established to share information, and to promote a strategic approach to assessing problem premises. The group is also looking at positive steps to engage with the trade to ensure the promotion of the licensing objectives and a recent partnership initiative saw the launch of a Trade Guidance Pack to licensees in Bridgend Town Centre.

5. Effect upon Policy Framework & Procedure Rules

5.1 None

6. Legal Implications

6.1 Section 4 of the Licensing Act 2003 provides that in carrying out its functions, a licensing authority must have regard to guidance issued by the Secretary of State under Section 182 of the Act. The publication of a joint protocol is in accordance with the recommendation at paragraph 13.21 of the current guidance.

7. Financial Implications

7.1 There are no financial implications to the report. Publication costs will be met from existing budget.

8. Recommendations

The Committee is recommended to:

- 8.1 Approve and endorse the Memorandum of Understanding and Joint Enforcement Protocol between Bridgend County Borough Council Partner Authorities attached at Appendix A to this report.

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Background Documents:

Guidance Issued Under Section 182 of the Licensing Act 2003 available at www.culture.gov.uk

Licensing Act 2003

**Memorandum of Understanding and
Joint Enforcement Protocol
2009**

signed between:

Bridgend County Borough Council (the Licensing Authority)

and

**South Wales Police
South Wales Fire & Rescue Service**

LICENSING ACT 2003

Memorandum of Understanding and Joint Enforcement Protocol signed between:

Bridgend County Borough Council (the Licensing Authority)

and

**South Wales Police
South Wales Fire & Rescue Service**

1. The above statutory organisations are the Parties to this Memorandum of Understanding and Joint Enforcement Protocol.
2. Bridgend County Borough Council, South Wales Police and South Wales Fire & Rescue Services aim to provide safe environments for the communities within the County Borough of Bridgend.
3. The Licensing Act 2003 introduced 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 promoted by licensing authorities, in conjunction with other “responsible authorities”, as defined by the Act, and the holders of licences. The Act also defines other bodies as responsible authorities, with rights of consultation and objection to applications, but it is not thought that formal agreements will be required with these bodies.

These are:

- a. The prevention of crime and disorder
 - b. The promotion of public safety
 - c. The prevention of public nuisance
 - d. The protection of children from harm
4. 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 and club premises certificate holders understand and comply with the law.
 5. The Government has strongly recommended that protocols be set up between authorities and this document has been prepared with that in mind.

6. The purpose of this document is to ensure efficient and effective co-operation between agencies when dealing with areas of mutual interest, to secure:
 - a. High levels of open communication between agencies;
 - b. Clear lines of responsibility regarding enforcement of the law;
 - c. Sharing intelligence, where appropriate to enable effective enforcement of the law.

It sets out the steps that have been agreed to achieve that aim, in accordance with guidance issued by the Office of the Deputy Prime Minister.

7. **Communication**

- 7.1 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.

8. **Sharing Intelligence**

- 8.1 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.

9. **Data Protection and exchange of information**

- 9.1 Section 29 of the Data Protection Act 1998 allows for the exchange of information for the purposes of the prevention of crime or the apprehension of offenders.
- 9.2 Section 115 of the Crime and Disorder Act 1998 allows for information to be specifically exchanged between the Police, the Licensing Authority, and other responsible authorities.
- 9.3 Parties to this Protocol may disclose information to other parties for these purposes providing that the Protocols applicable to each organisation for data protection are observed. Requests for information under the Act must be made in writing giving reasons why disclosure is necessary.
- 9.4 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.

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

10. **Enforcement Action**

10.1 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.

10.2 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.

10.3 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 Section for prevention of nuisance; the Fire & Rescue Service for fire risk issues)

11. **Relevant Legislation:**

a. **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.

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

c. **Fire & Rescue Services Act 2004/Regulatory Reform (Fire Safety) Order 2005** – 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.

d. **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.

e. **The Town and Country Planning Act 1990** – enables the local Planning Authority to determine planning applications for development to A3 uses (Town & Country Planning (Use Classes) Order 1988 – pubs, restaurants, hot food takeaways) in accordance with the Development Plan and

Supplementary Planning Guidance, to impose planning conditions on any consents and to take enforcement action to secure compliance with planning conditions and against unauthorised development if it is in the public interest to do so.

- f. **Children Act 2004** - places a duty on Local Authorities and their partners to co-operate and improve the wellbeing of children.
- g. **Environmental Protection Act 1990** - the Act empowers Local Authorities to deal with matters amounting to a statutory nuisance, including noise from premises and in streets. Where a complaint is referred to the Local Authority, it has a statutory obligation to investigate the matter.

12. Offences

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

Note abbreviations, as follows:

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

Section	Offence	Authority
33 (6)	Failure to notify LA of change of name or address 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	LA

	alteration of rules of a club	
83 (6)	Failure to notify of a change of registered address of club	LA
93 (3)	Failure to produce CPC for amendment with 14 days of LA request	LA
94 (5, 6, 9)	Failure to keep, display and produce club premises certificate at premises	LA
96 (6)	Inspection of premises before grant etc of club premises certificate at premises	RA
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 a temporary event notice	LA or Police
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
136 (1)	Allowing licensable activities otherwise than in accordance with an authorisation	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	Police or LA
146 (1,2,3)	Sale or supply of alcohol, to children under 18	Trading Standards, Police or LA

147 (1, 3)	Allowing sale or supply of alcohol to children under 18	Trading Standards, Police or LA
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	Police or LA
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 to 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 RA

13. **Investigation of Offences**

13.1 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:

- a. early discussion with the appropriate authority, including (unless in cases of extreme urgency) the licensing authority's enforcement officer.
- b. supply the relevant authority in a timely manner all of the relevant evidence (whether subsequently used or unused).

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

- a. 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 as soon as is practicable; and

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

14. **Responsibility for Prosecutions**

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

- a. the Licensing Authority;
- b. the Director of Public Prosecutions;
- c. for offences under Ss. 146 and 147, the Local Weights and Measures Authority.

14.2 It is expected that the Police and Weights and Measures authority will normally bring proceedings, including the issue of simple cautions and penalty notices for disorder, as a result of offences, which they have investigated. In all other cases the Licensing Authority will be the prosecuting Authority.

15. **Notification of Prosecutions and Cautions**

15.1 Notwithstanding the duty of the court in section 131 (duty to notify the Licensing Authority of convictions against personal licence holders) for relevant offences the appropriate prosecuting authority will notify the Licensing Authority as soon as possible of any conviction, simple caution or penalty notice for disorder under the Act.

15.2 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.

15.3 The notification shall be in writing and shall state:

- a. the name and address of the person convicted or cautioned;
- b. the nature and date of the conviction or caution, and
- c. the details of any conviction including any order under section 129 of the Act.

16. **Liaison Between Parties to this Agreement**

16.1 Liaison meetings will take place between the Licensing Authority and Responsible Authorities on a regular basis, depending on the nature and quantity of business and with other responsible authorities as the need arises, but not less than annually.

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

16.3 Meetings to discuss a co-ordinated response to enforcement problems will take place on a monthly basis and will at best involve the Police and the Licensing

Authority Enforcement Officer. Other Responsible Authorities will attend as and when necessary.

17. **Consultation on Applications**

17.1 In the case of new licensing applications and variations to existing licences, it is the responsibility of each applicant to serve the application forms on the Licensing Authority and copies on all relevant Responsible Authorities. The Licensing Authority urges each responsible authority to initiate contact with the applicant to discuss any ambiguity or supplementary information required prior to submission of any representations to the Licensing Authority.

Each Responsible Authority has 28 days, from the date of receipt, to respond to the Licensing Authority.

17.2 Contested applications will be determined by a Licensing Sub-Committee, unless all parties agree that a hearing is not necessary.

Any hearing must be held within two months of the application being received, unless it has to be rejected and re-served. The relevant responsible authority will notify the Licensing Section not less than twenty four hour before a scheduled hearing that agreement has been reached that a hearing is not necessary. Notification should be by e mail or letter.

Responsible authorities should ensure that all evidence, in a sanitised form if appropriate, is served on the applicant prior to any hearing taking place.

The Licensing Section will maintain and circulate a log of all applications received and each Responsible Authority will notify the Licensing Section, as soon as practicable, of any non-receipt of a copy of the application.

18. **Applications for Review of a Licence**

18.1 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.

18.2 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:

- a. inform the licensing authority that they are considering a review and the reason why.
- b. seek an informal resolution to the matter if possible or appropriate.
- c. 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, in accordance with the responsible authority's enforcement policy.

19. **Procedural Review**

- 19.1 This document will be reviewed at least annually or sooner if required by any relevant changes to legislation or procedures 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.

All parties will be consulted on any changes, amendments and be required to sign new versions/editions of the document.

Signatories:

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Signed... *Yvonne Mitchell*.....

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South Wales Police

Date... 18.9.09.....

Signed... *Angelo Bennett PS4298*.....

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Date... 21-10-09.....

Signed... *David R Hughes*.....

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Bridgend CBC Public Protection
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Date... 18/9/09.....

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Date... 21/10/09.....

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Date... 12.08.09.....

Signed... *J. Jenkins*.....

MOU Version July 2009