

To: LICENSING AND GAMBLING ACTS COMMITTEE

Date: 28 OCTOBER 2008

Item No: 4

Report of: Head of Environmental Development

Title of Report: REGULATORS' COMPLIANCE CODE – RISK-BASED  
INSPECTION PROGRAMME

### Summary and Recommendations

**Purpose of report:** To inform Members of the risk-based inspection programme for determining the frequency of inspecting those premises licensed under the Licensing Act 2003.

**Report Approved by:**

**Finance:** Andy Collett

**Legal:** Daniel Smith

**Policy Framework:** Statement of Licensing Policy

**Recommendation(s):**

**Committee is recommended to:**

- i) agree to adopt the scheme of risk rating licensed premises as outlined in this report,
- ii) agree to consult regulated entities and interested parties,
- iii) receive a further report on responses to the consultation, and
- iv) review the scheme after it has been in place for 1 year.

- 1 Committee considered a report on the Regulators' Compliance Code (the Code) at its meeting on 3 June 2008 and agreed to receive a further report on the development of a risk-based inspection programme.
- 2 It is a legal requirement that Council regulatory services have regard to the Code which promotes the policy of risk based inspections, focusing on those businesses known to present the highest risk.

*“4.1 Regulators should ensure that the allocation of their regulatory efforts and resources is targeted towards where they would be most effective by assessing the risks to their regulatory outcomes. They should also ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including: ... inspection programmes.”*

*“4.4 Regulators should consult and involve regulated entities and other interested parties in designing their risk methodologies, and publish details of the methodologies.”*

*“4.5 Regulators should regularly review and, where appropriate, improve their risk methodologies. In doing so, they should take into account feedback and other information from regulated entities and other interested parties.”*

- 3 There is no requirement within the Licensing Act itself to conduct risk assessments. However the Secretary of State’s Guidance recommends that licensing authorities adopt a risk assessment procedure as part of their enforcement functions.
- 4 Oxford’s Statement of Licensing Policy, Section 9.2 “Enforcement”, states that the Council will adopt the principles of risk assessment and targeting, taking into account the nature of the licensed activities, the extent to which the licensing objectives are met, and confidence in the management of the premises.
- 5 Risk assessments generally involve a system whereby risk criteria are assigned numerical values. These values are then added together to form a figure which determines the overall risk and therefore inspection frequency. Flexibility is built into the procedure for making amendments to the premises risk rating. This includes increasing a risk rating following a poor inspection, complaints or legal action or, conversely, the lowering of a risk rating following a satisfactory inspection or transfer of the licence to a more responsible licensee.
- 6 Officers have developed a risk rating system for categorising licensed premises (see appendix). The initial assessment is undertaken as a ‘desk-top’ rating exercise, using the Part A criteria. The initial assessment of 765 licensed premises has assigned them to the three bands in the following table (where A is the highest risk). The risk level is then refined as premises are inspected, to take account of compliance and confidence in management, in accordance with the Part B assessment.

7 Inspection rating:

<b>Category</b>	<b>Part A Initial Rating</b>	<b>Initial distribution of premises based on Part A</b>	<b>Part B Post-inspection Rating</b>
<b>A</b>	Over 100	22	Over 140
<b>B</b>	50 – 100	162	70 - 140
<b>C</b>	Less than 50	581	Less than 70

9 The minimum inspection frequency will be as follows:

<b>Category</b>	<b>Minimum Inspection Frequency</b>	<b>Number of Inspections</b>
<b>A</b>	At least every 6 months	44 per year
<b>B</b>	At least every 12 months	162 per year
<b>C</b>	At least every 24 months	291 per year

- 10 The rating will determine the frequency of inspection for each licensed premises. However, inspections may be brought forward ahead of schedule following complaints, intelligence or information from Responsible Authorities. Officers will supplement the inspection programme with other monitoring visits, test purchasing operations and liaison with Responsible Authorities and Nightsafe.
- 11 Officers propose to consult on these arrangements by writing to bodies representing businesses, relevant trade organisations and those involved in previous licensing consultations and by inviting comments on details on the Council's website.

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**Background papers: None**

**Version number: 1**

## APPENDIX

### Part A: Initial Risk Assessment

#### 1. Food and drink:

Classification of the business activity by its potential adverse effect on the licensing objectives.

• On sales of alcohol	(30)
• Late night refreshment only	(20)
• Off sales of alcohol only	(10)

#### 2. Regulated Entertainment

Further classification of the business activity by its potential adverse effect on the licensing objectives.

• Live music, recorded music, performance of dance or similar activity	(30)
• Plays, films, indoor sporting event, boxing or wrestling	(20)
• Making music, dancing or similar activity	(10)

#### 3. Hours of Operation

Classification to take account the more potentially sensitive times of the night.

• Later than 02.00 hours	(30)
• 12.00 midnight to 02.00 hours	(20)
• 23.00 hours to 12.00 midnight	(10)

#### 4. Premises Size / Capacity

Classification by capacity of premises.

• 300 plus	(30)
• 100 to 299	(20)
• 0 to 99	(10)

#### 5. Record of complaints

Classification according to the number of justifiable complaints since the last inspection.

• Large number of justifiable complaints, legal action or review of licence.	(30)
• Some justifiable complaints	(20)
• At least one justifiable complaint	(10)

Maximum Score	(150)
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## Part B: Inspection Risk Assessment

### 1. Level of Compliance

This factor considers the level of compliance observed during the inspection. Adherence to the Operating Schedule and to relevant Government or Industry Guides to Good Practice and other similar guidance would be considered.

• Failure to satisfy statutory obligations requiring immediate remedial action. Standards generally low.	(30)
• Businesses with some non-compliance with statutory obligations requiring warning letter.	(20)
• Businesses with some minor non-compliance with statutory obligations.	(10)
• High standard of compliance with statutory obligations and industry codes of recommended practice, conforms to relevant trade good practice.	(0)

### 2. Confidence in Management Control Systems

The actual performance of management is scored on the basis of the results observed and judgement on the likelihood of satisfactory compliance being maintained in the future.

Factors that will influence the officer's judgement include:

- The "track record" of the company, its willingness to act on previous advice and enforcement, and the complaint history.
- The attitude of the present management towards licensing legislation.
- Internal or external technical knowledge on licensing matters available to the company.
- The presence of quality systems, including performance monitoring, appropriate to the size of the business and the risk involved, with clearly defined responsibilities.

• Little or no technical knowledge. Little or no appreciation of quality control, no management system.	(30)
• Staff have a basic understanding of relevant licensing law. May not have a management system.	(20)
• Staff demonstrate awareness of relevant licensing law and necessary controls. Appropriate management system. Smaller businesses may have minimal documentation.	(10)
• Good management system. Evidence of compliance with licence conditions.	(0)