



ISLE OF WIGHT COUNCIL ENVIRONMENTAL HEALTH

NOISE CONTROL POLICY

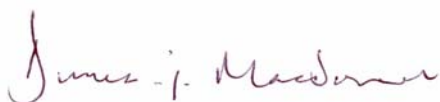

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Signed: 	Signed: 
Date: March 2008 (Version 8)	Date: March 2008

1. INTRODUCTION

- 1.1 The Council's noise policy was first adopted in September 1999. The policy was subsequently reviewed in September 2001 and again in November 2003. At the time of the first noise policy it was considered not appropriate to adopt the provisions of the Noise Act 1996. This is still currently the case, as the situation on the Isle of Wight does not warrant the cost of providing a full night-time 24 hour 7 day response service. Rather an out of hours service is provided on set days and between times where analysis of complaints has revealed a need (paragraph 2.2 below). This is supplemented through an agreement with Hampshire Police (appendix 1) to cater for complaints made outside of this service. However, owing to the introduction of additional powers available to the Council (and others) to control noise and anti social behaviour, the involvement of internal and external agencies such as Social Services Mental Health Access and Treatment Teams (MATS), Safer Communities Team, Health Authority and the Environment Agency, substantial modifications were required and this version encompasses those.
- 1.2 Throughout the past hundred years the environment has become increasingly noisy, primarily due to changes in transport. Road traffic is the most pervasive source of noise, with aircraft noise being locally intrusive close to airports and under flight paths. Leisure activities are often generators of noise – discos, clubs, pubs, motor sports, water-sports, clay pigeon shooting and flying. Television, radio and hi-fi have created opportunities for everyone to make noise which can be easily heard outside the home. There are some noise sources which, whilst they may cause annoyance, cannot be dealt with easily. These might be described as 'noise of living'. In such cases, improving sound insulation between party walls and floors may be required to reduce the impact of the noise. In such cases statutory action may not be possible. Complaints about neighbour noise can be a symptom of a deeper dispute between neighbours, the complaint being a device by one party to harass the other party. For some sources, for example road traffic and aircraft (other than model aircraft), there are no powers available to local authorities to control noise. Whilst dealing with complaints of alleged noise nuisance is often seen as the main way of controlling noise, the development control process also provides local authorities with a substantial means of control through the imposition of noise control conditions or the recommendation for refusal of planning permission.
- 1.3 The law relating to noise nuisance implies a degree of 'give and take' and balance. It is not concerned with trivial matters. Thus something that is transient, occurring very rarely, or of short duration, is unlikely to constitute a nuisance. The Council recognises that absolute quiet cannot be expected, nor is there the freedom to make as much noise as one pleases; that dealing with complaints about alleged noise nuisance is often about balancing individual rights and needs.
- 1.4 This document sets out the Isle of Wight Council Environmental Health Department management policy for dealing with environmental noise; including industrial (e.g. noisy plant and machinery etc), commercial (e.g. early morning deliveries, noisy discos and music etc) and domestic (e.g. the playing of amplified music, barking dogs, DIY etc). This includes our reactive service and the inter agency approaches to proactively control noise through licensing and development control. Service standards which residents can expect to be met are described together with the reasoning behind them.
- 1.5 The aim of the policy is to ensure that the service the Council provides through Environmental Health is proportional, targeted, consistent and effective whilst fulfilling it's statutory duty under the Environmental Protection Act 1990, Noise and Statutory Nuisance Act 1993 and the Clean Neighbourhood and Environment Act 2005. The policy is to be followed by all officers involved with noise control. The organisational chart of Environmental Health and Licensing is reproduced at appendix 2.
- 1.6 In addition to the statutory duty indicated in 1.5 above the impact of environmental noise, or unwanted sound, on individuals has been reported by the World Health Organisation to cause adverse impacts both in physical and mental health terms. It is therefore important that the

Council has an effective policy and sufficient resources for implementing it, consistent with its objectives.

- 1.7 The Environmental Health Licensing Team is currently responsible for the issuing, renewal and enforcement of conditions relating personal and premises licences, club premises certificates, temporary event notices and provisional statements under the Licensing Act 2003. The powers available to the Council and others to prevent crime and disorder and public nuisance are subject to detailed guidance issued under Section 182 of the Licensing Act 2003 together with the Council's current statement of licensing policy. Environmental Health are listed as a 'responsible authority' under the Act, and will be served with copies of all applications for new licences or variations, and will be expected to provide comments to the Licensing Team in order to ensure that the licensing objective of the prevention of public nuisance is achieved. It should be noted that conditions relating to noise can only be attached to licences where they are deemed to be 'reasonable and necessary'. Requests for assistance relating to noise may also arise from licensed premises. The procedure to be followed by officers of Environmental Health and licensing is detailed under Service Standards below.
- 1.8 The Isle of Wight Council Development Control Section is responsible for the determination of planning applications. These applications have the potential to affect the amenity of neighbouring land uses in terms of proposed noisy development or the proximity of proposed noise sensitive development to existing noise sources. Such applications are considered in terms of planning policies and guidance. Environmental Health is consulted on such applications and makes recommendations regarding the suitability of the proposed development and, where appropriate, provides advice on reasonable, necessary and proportionate conditions, to protect amenity. All such requests shall be dealt with as requests for service and be responded to **within 21 days** of receipt.
- 1.9 All officers, in investigating requests for assistance relating to noise, shall have due regard to this policy in addition to legislation and codes of practice e.g. Environmental Protection Act 1990, Noise and Statutory Nuisance Act 1993, Control of Pollution Act 1974, Noise Act 1996, Clean Neighbourhood and Environment Act 2005, approved code of practice noise from ice cream van chimes, legal precedents (*R v Falmouth and Truro Port Health Authority, ex p South West Water Ltd* [2000] 3 All E.R. 306; [2000] EHLR 306, relevant British Standards (BS4142: 1997) and guidance e.g. NFU code on the use of audible bird scarers, Secretary of States Guidance issued under section 182 of the Licensing Act 2003 and the Council's current statement of licensing policy.

2. SERVICE STANDARDS

- 2.1 On average Environmental Health receives over 1000 requests for assistance relating to noise and consultations (licensing and development control), by telephone, letter, facsimile, e-mail, referral from another agency (both internal and external to the Council) or personal visit. Persons requesting assistance may register their request by:
- Telephone: 01983-823000
Letter addressed to: Environmental Health Manager Environmental Health Jubilee Stores
The Quay Newport Isle of Wight PO30 2EH
Facsimile: 01983-529804
E-mail: eh@iow.gov.uk
Personal visit to the above address during normal office hours which are:
Monday to Thursday, 8:30am to 5:00pm
Friday 08:30am to 04:30pm
- 2.2. Outside of these hours telephone calls are passed to a 24 hour 365 day Call Centre (telephone 01983 821105) which record the details of the complaint and are dealt with as follows:
- i) On Fridays or Saturdays between 6:30pm and 2:30am hrs **as well as Thursdays between May and September (inclusive)**, they are passed to "out of office hours" shift officers.

- ii) Outside of the times in (i) above, the next working day.

- 2.3 Environmental Health upon receipt of each request will undertake to respond **within 3 working days** and aims to resolve all requests **within 8 weeks** of receipt. Officers will endeavour to respond, within **30 minutes of** requests received from the call centre, during the operation of a out of office hours shift. The achievements of compliance with response and resolution targets are local performance indicators, which are reported upon annually.
- 2.4 Environmental Health will also undertake to carry out customer evaluation of its service to ensure that it meets customer expectation and needs as far as the effective and efficient use of resources permit. In particular the out of hours arrangements for contacting the service will be subject to annual review.

Interaction with Licensing Team on Noise Control

- 2.5 The Licensing Team upon receipt of applications for new or variations to premises licences will ask the Environmental Health Geographical Team for formal comment. These requests will be dealt with in accordance with the specific procedure detailed in Appendix 5.
- 2.6 Requests for assistance relating to existing licensed activities will be investigated by the appropriate Environmental Health geographical area team **together with** the licensing section in accordance with the below specific procedure (Appendix 4). If as a result of the investigation an abatement notice is served or evidence of public nuisance (see below):

(Clarified in statutory guidance issued under section 182 of the Licensing Act paragraph 7.40 *"Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the **living and working amenity** and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises."*

is obtained appropriate enforcement action will be considered which may include a review hearing being requested by Environmental Health for the Licensing Authority to consider appropriate action, or, in more serious cases, prosecution by the Licensing Team for breach of condition(s). In serious cases, the power under section 40 of the Anti Social Behaviour Act 2003, to close the premises for 24 hrs may be exercised, in consultation, with the Police. In such circumstances a review hearing will be requested immediately.

Interactions with Social Services (MATs), Health Authority, Environment Agency on Noise Control

- 2.7 A proportion of people who cause or suffer noise disturbance may have mental health problems. A balance has to be struck between the special needs of people who are mentally ill and the need to protect the amenity and quality of life of their neighbours. Where complaints are made relating to people with mental health problems or from persons believed to be suffering from mental health problems, a multi agency approach will be adopted. This will include liaison with Social Services, Health Authority and any other relevant organisations. Where alternative methods of "behavioural management and assistance" are effective enforcement will not normally be initiated.

Integrated Pollution Prevention and Control

- 2.8 Under the Pollution, Prevention and Control Act 1999 and associated regulations certain processes are prescribed and require permits to control the level of polluting emissions to air, land and or water. Permits are issued by the Environment Agency for those processes with the biggest potential to pollute. These permits may include conditions to control noise. Where such applications are made, representations will be made to ensure appropriate conditions are imposed by the Environmental Agency on consents as agreed and appropriate.

Interactions with Private Landlords on Noise Control

- 2.9 Where appropriate and necessary in addition to any enforcement action taken by Environmental Health, the landlords powers under the Housing Act 1985 to seek possession orders may also be made. Evidence obtained of noise disturbance may be used in proceedings under this act and officers will assist in providing this evidence in proceedings.

Qualifications of Officers

- 2.10 All officers undertaking noise control duties shall be suitably qualified and experienced to undertake this work. They shall either be registered Environmental Health Officers or officers with specific qualifications such as the Diploma in Acoustic and Noise Control or the Certificate of Competence in Environmental Noise Measurement or equivalent, combined with demonstrable experience in this field. Officers without these additional qualifications may undertake this work under the direction of suitably qualified and experienced officers.

3. ENFORCEMENT

- 3.1 If evidence of a nuisance or the likely occurrence or recurrence of a nuisance is obtained, action shall be taken in accordance with the Environmental Health Department enforcement policy statement. Where the Council is satisfied that a statutory nuisance exists or is likely to occur or recur the council is under a duty to serve an abatement notice. However, in exceptional circumstances where a business has a best practicable means defence, and the Council is satisfied on the balance of probabilities that it would likely succeed in the event of an appeal, the decision may be taken not to serve an abatement notice. In such circumstances this decision will be ratified by senior managers and legal services.
- 3.2 The action taken (One or more may be taken simultaneously) may vary from:
- i) to take no action (See 3.1 above)
 - ii) to take informal action (See 3.1 above)
 - iii) to issue a statutory notice
 - iv) to instigate legal proceedings (once a notice has been served and evidence obtained of non compliance)
 - v) to seize noise making equipment or abate the nuisance themselves and seek costs from the person responsible (once a notice has been served and evidence obtained of non compliance)
 - vi) to obtain an anti social behaviour order or acceptable behaviour contract
 - vii) to seek a high court injunction

- 3.3 Prior to the service of a statutory notice under the Environmental Protection Act 1990 or Control of Pollution Act 1974, the decision to serve the notice shall be ratified and the actual notice wording shall be checked by the officers line manager or deputy (*unless it is considered that there would be significant risk to public health by the delay or that a substantial nuisance would occur, recur or continue as a result of the delay*). In any event the Notice checklist form (Appendix 6 of the Enforcement Policy Statement) shall be completed. In the event that the decision is made *not to suspend* the notice pending the outcome of an appeal, full justification and reasoning MUST be recorded to ensure compliance with the Human Rights Act 1998 Article 6(1). A letter accompanying the notice shall also be sent. A letter to the complainant shall also be sent at the same time as the notice is served. Full details of the appeals process shall be included with the letter.
- 3.4 Where a complaint is found not to be justified in terms of statutory nuisance the complainant will be informed (as soon as practical and in any event within 5 working days) and advised on the procedure for taking their own action under Section 82 of the Environmental Protection Act 1990.



APPENDIX 1

AGREEMENT BETWEEN HAMPSHIRE CONSTABULARY AND THE ISLE OF WIGHT COUNCIL TO PROVIDE ASSISTANCE AND COOPERATION IN RELATION TO NOISE COMPLAINTS



Isle of Wight Council-Environmental Health Department will:

- i) continue to provide a shift system working from 1830 hours to 0230 hours on Friday and Saturday evenings (including Thursday's from 1 May to 30 September inclusive). This will be subject to annual review. . Outside the hours of the shift system Wightcare (Telephone 821105) will record the detail of complaints and forward these to Environmental Health the next working day. Furthermore, if the complaint is of a potentially serious nature which may be easily controlled e.g. playing of amplified music loudly rather than a barking dog, the complainant will be advised to contact the Police.
- ii) supply the Police with details of any noise abatement notices served to ensure details are recorded on the local records management system.
- iii) ensure that, in appropriate circumstances where a noise abatement notice has been served, complainants are advised when contacting the police to explain to the officer receiving the call that the request is targeted for Police deployment.
- ii) act upon receipt of a information, within one working day, in accordance with the Department's Enforcement and Noise policy.
- iii) keep the Police informed of action taken in connection with the complaint.
- iv) provide assistance to the Police in relation to incidents of "noise in the street" where a public disturbance is anticipated.
- v) request assistance from the Police only where the personal safety of the officers carrying out their lawful duties may be at risk.
- vi) consult with the Police where action is contemplated which may result in a public disturbance.
- vii) ensure that all requests for information held by the Police are necessary for the lawful execution of it's duties and comply with the Data Protection Act 1998.

For Isle of Wight Council Environmental Health Department

Signed: Date: March 2008

Name: Warren Haynes
Position: Environmental Health Manager

Hampshire Constabulary will:

- i) during normal office hours (0830 – 1700 Monday to Thursday and 0830 – 1630 Friday) refer all noise complaints to Environmental Health (telephone 823000). Between the hours of 1830 hours to 0230 hours on Friday and Saturday evenings (and Thursday's from 1 May to 30 September inclusive) refer complaints to Environmental Health via Wightcare (Telephone 821105)
- ii) outside of Environmental Health's working hours inform complainants of the legal position of the Police, i.e. that they are not empowered to take legal action regarding noise and that it is the responsibility of the Isle of Wight Council Environmental Health Department.
- iii) *when resources permit*, attend the complainants premises and assess the noise complaint (particularly in cases where Noise Abatement Notices have been previously served which are detailed on the Police Records Management System RMS). On attending the premises, if the noise level is unreasonable taking into consideration the time of day and the tolerance of a "normal person", the Police will then visit the perpetrators premises, obtain details of the occupier/person responsible and request that the noise be reduced to an acceptable level. If a noise abatement notice has been served or the perpetrator refuses to comply with the request or further complaints are subsequently received which are verified by one additional visit to the area, the Police will forward full details of the incident including police incident number and investigating officer contact details to Environmental Health (Fax 01983 529804), within one working day.
- iv) where appropriate following the visit(s) (particularly in cases where Noise Abatement Notices have been previously served) a proforma statement should be completed.
- v) not normally respond to anonymous complaints unless there are exceptional circumstances.
- iv) ensure full details of all complaints and actions by the Police or the are recorded on the Police computer system for future reference.
- v) provide assistance to the officers of Environmental Health when requested if resources are available and appropriate.
- vi) provide relevant information, as soon as practicable, to authorised officers of Environmental Health in accordance with the information sharing protocol.

For Hampshire Constabulary

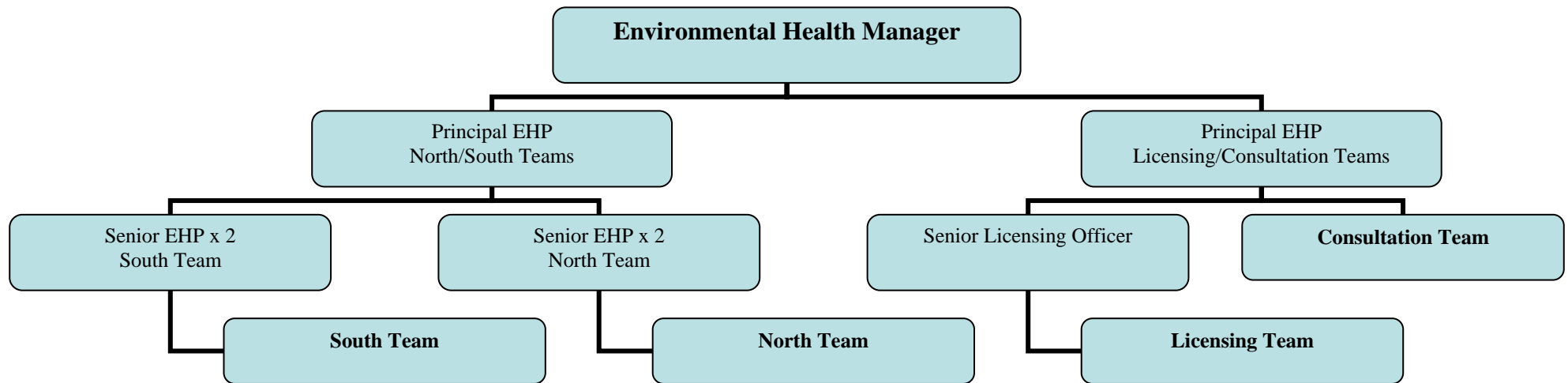
Signed:

Date: March 2008

Name: Mark Bell

Position: Community Safety Inspector

Appendix 2
Environmental Health and Licensing Structure November 2005



PEHP – Principal Environmental Health Practitioner
SEHP – Senior Environmental Health Practitioner
FSO – Food Safety Officer
HPO – Health Protection Officer
EPO – Environmental Protection Officer
LEO – Licensing Enforcement Officer

Appendix 3

Standard Procedure for Noise Investigations (Other than licensed premises)

- 3 This procedure is to be followed by all staff involved with the investigation of noise requests with the exception of those relating to licensed premises which shall be dealt with in accordance with in accordance with a separate procedure (Appendix 4). Service requests in respect of intruder alarms shall be conducted in accordance with the "Procedure for control of noise from audible alarms on property". Reference shall also be made to the noise policy, procedures on control of noise from specific sources, and the Environmental Health enforcement policy statement.
- 3.1 All noise requests received as detailed in 2.1 of the noise policy shall be recorded on to the FLARE computer system. If a request is received by an officer whilst out of office hours action shall be taken in accordance with 3.2 below.
- 3.2 Out of office hours requests are passed from Wightcare to the Duty Officer (when on duty) who shall decide the officer level of the request which shall depend upon the complexity, exact nature and knowledge required to investigate the request. The Duty Officer shall then either request administration to send standard letters in accordance with 3.3 below (But see 3.22 below in terms of contact with persons suspected of Mental Health problems), or *in exceptional circumstances, e.g. requests involving noise of a temporary but intrusive nature*, or arrange for immediate investigation in accordance with 3.8 below.
- 3.3 During normal office hours requests will be received by administrative staff. Administrative staff will search the database to establish whether any current requests or previous requests are on file. If there are no current requests or if the previous request is greater than 8 weeks old, administration will enter the details on to the database, load the appropriate template and arrange to send standard letters, within the target deadline for first response, together with log sheets, to the person requesting assistance (the "IP") and at the same time an appropriate letter to the person alleged to be the cause of the request (the "Perp"). **NB**-If there have been multiple requests (more than 2) in the past administrative officers should seek officer advice before proceeding.
- 3.4 Upon return of any diary log sheets administration will pass these to the Duty Area Officer who will allocate the request to an investigating officer. The assigned officer will assess the evidence contained within the diary log sheets to ascertain whether they indicate an actionable statutory noise nuisance. Dependant upon this assessment one of the below actions in 3.5 or 3.6 will be taken.
- 3.5 If the evidence indicates that the complaint may be substantiated by the diary sheets this will be duly noted on the computer and the request will be passed to administration to arrange for the appropriate standard letters, to be sent to the "IP" and at the same time an appropriate letter to the "Perp".
- 3.6 If the diary log sheets fail to indicate an actionable statutory noise nuisance this will be duly noted on the computer and the request will be passed to administration to arrange for the appropriate standard letter, to be sent to the "IP". The request will then be closed (However, see 3.14 below, furthermore if the log sheets contain evidence which is inconclusive the letters mentioned in 3.5 above shall be sent).
- 3.7 If further requests are received from the IP following the action in 3.5 above the investigating officer shall arrange further investigations including remote noise monitoring and or visits by officers in accordance with 3.8 below.
- 3.8 Upon receipt of the request, or upon further requests as detailed in 3.7 above being received, the action taken by the investigating officer regarding an individual request will vary upon the actual circumstances and any past Departmental involvement. However, the below investigative actions should normally be followed in ALL cases. Where these actions are not

followed the investigating officer SHALL firstly discuss the matter with their line manager.

- The officer receiving the request shall review the recorded information on the computer record and any other evidence (e.g. returned diary log sheets) to establish the best course of action to investigate the request further, resolve the cause of the request, refer it to the appropriate body or advise the person that no action may be taken. In determining the best course of action the investigating officer shall consider 1.5 of the noise policy and the following:
- For requests involving *noise of a temporary but intrusive nature* e.g. construction noise or *new domestic requests* received after 23:00 hours whilst on night shift or further requests from IP's following completion of diary log sheets (see 3.11 below), the sending of diary log sheets may not be appropriate and a personal investigative visit would be the normal course of action. At ALL times officer's Health and Safety shall take precedence and in the event of any reasonable doubt concerning safety a request for Police assistance shall be made by telephoning 0845 0454545. If the Police are unavailable, under NO circumstances should a visit be made. The IP should be informed accordingly. Prior to any visit or contact with the Police reasonable attempts should be made to contact the person requesting the assistance to make an appointment or to verify that the cause for the request is still persisting and to witness the alleged nuisance.
- For requests concerning the likely occurrence of a statutory nuisance e.g. planned raves, noisy construction activities action may be taken in accordance with 3.12 below. If a developer/builder makes a request to carry out potentially noisy operations outside of the recommended times (**8am to 6pm Monday to Friday and 8am to 4pm on Saturdays, at no time on Sundays or Bank Holidays.**) for noisy construction activities written details of the request (times/duration/reasons) will need to be received. Such a request will normally be refused except in exceptional circumstances. Under such circumstances there will be a need to assess the disturbance potential of the extension by visiting the site or if this is not possible by interviewing the applicant by phone. There will need to be justifiable documented reason(s) why an extension has been allowed. Any extension granted should be coupled with a recommendation that the developer/builder write to all potentially affected households explaining the circumstances and detailing the extended working hours/duration. The Investigating Officer should request a copy of the letter and check that it has been received by contacting the complainant. All extensions shall be discussed and agreed with the investigating officers line manager.
- For further requests following the actions in 3.5 above the officer should arrange either for the installation of remote noise monitoring equipment in the IP's premises in accordance with the Department's instructions or for a planned visit. In the event that the remote noise monitoring equipment is refused or an appointment missed by the IP full details shall be recorded on the computer by the equipment installing officer and the appropriate standard letter shall be sent by the investigating officer.

3.9 Once the best course of action has been decided the officer shall update the computer as the case proceeds with the following information:

- Input the date of First Action (Unless already completed)
- Complete details of the action taken on the action diary and the reasoning behind such action (where it departs from this procedure) in the text box including the date and time taken. **Note-** Managers informed consent should be sought before departing from procedure or as soon as practical afterwards.
- Input the details for the next scheduled action on the request, if this is greater than 10 working days reasoning MUST be included in the notes box including details of the notification to the IP.

- 3.10 The investigating officer shall then ensure that the investigation proceeds as expeditiously as possible with the aim of resolving the request within 8 weeks of receipt. Any further actions taken by any officer shall be recorded as detailed in 3.9 above. All actions carried out by officers with respect to requests **MUST** be detailed on the computer record, within 3 working days. No period between actions shall exceed 10 working days (Unless full reasoning is included on the computer and the IP shall be kept informed at all times.
- 3.11 In general an investigation shall be considered completed if after 3 separate visits or 3 separate uses of remote monitoring equipment no evidence of a nuisance has been obtained. In this event the person requesting assistance shall be informed and provided with information on taking their own action by use of the appropriate standard letter.
- 3.12 If evidence of a nuisance or the likely occurrence or recurrence of a nuisance is obtained, action shall be taken in accordance with our enforcement policy statement. Prior to the service of a statutory notice under the Environmental Protection Act 1990 or Control of Pollution Act 1974. The decision to serve a notice shall be ratified and the actual notice wording shall be checked by the officers line manager or deputy (*unless it is considered that there would be significant risk to public health by the delay or that a substantial nuisance would occur, recur or continue as a result of the delay*) In any event the Notice checklist form (Appendix 6 of the Enforcement Policy Statement) shall be completed. In the event that the decision is made *not to suspend* the notice pending the outcome of an appeal, full justification and reasoning **MUST** be recorded to ensure compliance with the Human Rights Act 1998 Article 6(1). A letter accompanying the notice shall also be sent. A letter to the IP shall also be sent at the same time as the notice is served. See also 3.21 below for other “enforcement” options in exceptional circumstances.
- 3.13 If a statutory notice is served the request shall not be considered resolved until the notice is complied with or no further requests have been received over a continuous period of 20 working days (See also 3.14 and 3.15 below). A copy of the notice served shall be provided to administration. Any prosecution proceedings for non compliance with the notice shall be prepared by the investigating officer in accordance with the prosecution procedure and enforcement policy. Consideration, where appropriate, shall also be made for the seizure of any noise making equipment in accordance with Section 81(3) of the Environmental Protection Act 1990 and Section 10(7) of the Noise Act 1996. The decision to take such action shall be ratified by the Enforcement Authority Panel (*unless it is considered that there would be significant risk to public health by the delay or that a substantial nuisance would occur, recur or continue as a result of the delay*). In such cases the procedures for the seizure of noise making equipment and the obtaining and execution of warrants shall be followed.
- 3.14 Following completion of all actions with respect to a request the investigating officer shall complete the closed box with the date and any correspondence e.g. log sheets, non standard letters, notices etc shall be passed for filing. **No request** shall be considered completed until the person requesting assistance has been notified that the officer considers the matter closed.
- 3.15 Should a further request be made concerning the same premises by the same person **within 8 weeks** of the completed request, the original request shall be reopened, if, a significant material change has occurred to warrant a further investigation or a statutory notice had been served, and allocated to the original investigating officer.

GENERAL

- 3.16 Requests for assistance from persons who wish to remain anonymous or refuse to allow investigating officers into their premises will be advised that their complaint will not normally be investigated. Persons who do not wish to act as witnesses for genuine fear of reprisal will be advised that their identity will be protected. In such circumstances the investigating officer must ensure that sufficient evidence from officer(s) or remote noise monitoring equipment is available and the advice of Legal Services sought via the relevant Principal Officer, prior to any formal

action.

- 3.17 It shall be the duty of the Environmental Health Manager to carry out, or cause to be carried out an annual review of this procedure including the incorporation of feedback from customer evaluation.
- 3.18 In accordance with the Crime and Disorder Act 1998 other organisations that may have an interest in the action being taken by this Section shall also be kept informed and details shall be recorded as specified in 3.9 above (For example: Safer Communities Team, Housing Associations and Hampshire Constabulary).
- 3.19 Any complaints relating to this procedure or the application of it shall be dealt with in accordance with the Councils complaints procedure.
- 3.20 The method of management assessment of the investigating officers actions as outlined in paragraph 5 of the procedure for the investigation of Environmental Protection Requests shall be followed in respect of reviews of requests dealt with by this procedure.
- 3.21 In exceptional circumstances the option of a high court injunction (S.81(5)) and or an anti social behaviour order may be considered. An application for a high court injunction is subject to Section 80 (4) and the failure to comply with a noise abatement notice which has been served. For example prior knowledge of a planned rave, repeated breaches of an abatement notice, serious continued wide spread public nuisance. In all such cases the Environmental Health Manager or Head of Consumer Protection shall be notified and advice of the Legal Services Section shall be sought via the relevant Principal Officer together with the Safer Communities team on telephone 550987.
- 3.22 Where complaints are made concerning persons with suspected mental health conditions e.g. shouting at themselves etc contact will initially be made by investigating officers with the Social Services MATS team on 522214 (fax 522212) and with the Health Authority to coordinate a joint response with the long term aim of a solution. The investigating officer shall not close the request after making contact but continue to be involved and monitor the progress of developments until either the matter is resolved or enforcement action is deemed necessary in consultation with the parties.
- 3.23 In an instance where shared files can't be accessed on W:\ a back up CD is available and can be found on the Geographical Teams Notice Board. This will ensure continuity of access to the Noise Policy and Procedure and the electoral Roll in the event of e.g. an IT failure. The disk MUST be replaced after use'

Appendix 4

Standard Procedure for Noise Investigations involving licensing

- 4.1 This procedure is to be followed by all staff involved with the investigation of noise requests relating to licensed premises which can include amplified and non amplified music, noise from customers on or in the vicinity of the premises, operations connected with the premises licence e.g. noise from deliveries of goods, plant and machinery operation, bottle disposal etc. All other noise requests unconnected with licensing shall be dealt with in accordance with Appendix 3. Reference shall also be made to the noise policy, current statement of licensing policy, statutory guidance and the Environmental Health enforcement policy statement.
- 4.2 One of the four licensing objectives is the prevention of public nuisance as defined in paragraph 2.8 of the noise policy. All noise requests received relating to regulated entertainment shall be recorded on to the FLARE computer system. A separate job shall be created for the appropriate Environmental Health Geographical Team **and** the Licensing Section. Each job shall be linked (using **SO5** code in FLARE) to the other to assist co operative working. If a request is received by an officer whilst out of office hours action shall be taken in accordance with 4.3 below.
- 4.3 Out of office hours requests are passed from Wightcare to the Duty Officer (when on duty) who shall decide the officer level of the request which shall depend upon the complexity, exact nature and knowledge required to investigate the request. The Duty Officer shall then either request administration to send standard letters in accordance with 4.4 below, or *in exceptional circumstances, e.g. requests involving noise of a temporary but intrusive nature*, or arrange for immediate investigation in accordance with 4.9 below.
- 4.4 During normal office hours requests will be received by administrative staff. Administrative staff will search the database to establish whether any current requests or previous requests are on file. If there are no current requests or if the previous request is greater than 8 weeks old, administration will enter the details on to the database, load the appropriate template and arrange to send Environmental Health standard letters, within the target deadline for first response, together with log sheets, to the person requesting assistance (the "IP") and at the same time an appropriate letter to the person alleged to be the cause of the request (the "Perp"). **NB**-If there have been multiple requests in the past administrative officers should seek officer advice before proceeding. The action taken by the licensing team will depend on whether the requests originate from premises that are licensed or unlicensed. Where the premises are unlicensed an investigation will be mounted with a view to action consistent with the enforcement policy and applicable guidance. Where the premises are licensed, the applicable conditions will be examined (Using L6U) and where there are specific controls in place a standard letter will be sent to the premises concerned to warn the proprietor of the potential breach of condition. The licensing officer will then follow the procedure set out in 4.9 below. In those circumstances where there are no applicable conditions which could be used to secure the licensing objective the appropriate Environmental Health geographical team will be advised accordingly and the licensing team's involvement will cease until and if a request by Environmental Health is made for a review of the premise licence.
- 4.5 Upon return of any diary log sheets administration will pass these to the Duty Area Officer who will allocate the request to an investigating officer. The assigned officer will assess the evidence contained within the diary log sheets to ascertain whether they indicate an actionable statutory noise nuisance *or public nuisance* as defined in paragraph 2.17 of the noise policy. Dependant upon this assessment one of the following below actions in 4.6 or 4.7 shall be taken.
- 4.6 If the evidence indicates that the complaint may be substantiated by the diary sheets this will be duly noted on the computer and the request will be passed to administration to arrange for the

appropriate standard letters, to be sent to the “IP” and at the same time an appropriate letter to the “Perp”.

- 4.7 If the diary log sheets fail to indicate an actionable statutory noise nuisance *or public nuisance* this will be duly noted on the computer and the request will be passed to administration to arrange for the appropriate standard letter, to be sent to the "IP". The request will then be closed (However, see 4.15 below, furthermore if the log sheets contain evidence which is inconclusive the letters mentioned in 4.6 above shall be sent).
- 4.8 If further requests are received from the IP following the action in 4.6 above the investigating officer shall arrange further investigations including remote noise monitoring and or visits by officers in accordance with 4.9 below.
- 4.9 Upon receipt of the request, or upon further requests as detailed in 4.8 above being received, the action taken by the investigating officer regarding an individual request will vary upon the actual circumstances and any past Departmental involvement. However, the below investigative actions should normally be followed in ALL cases. Where these actions are not followed the investigating officer SHALL firstly discuss the matter with their line manager. Licensing Officers should liaise with the relevant geographical team managers to secure assistance as necessary.
- The officer receiving the request shall review the recorded information on the computer record and any other evidence (e.g. returned diary log sheets) to establish the best course of action to investigate the request further, resolve the cause of the request, refer it to the appropriate body or advise the person that no action may be taken. In determining the best course of action the investigating officer shall consider 1.5 of the noise policy and the following:
 - For requests involving *noise of a temporary but intrusive nature* or *new* requests received after 23:00 hours whilst on night shift or further requests from IP's following completion of diary log sheets (see 4.12 below), the sending of diary log sheets may not be appropriate and a personal investigative visit would be *the normal course* of action. At ALL times officer's Health and Safety shall take precedence and in the event of any reasonable doubt concerning safety a request for Police assistance shall be made by telephoning 0845 0454545. If the Police are unavailable to accompany the officer, under NO circumstances should a visit be made. The IP should be informed accordingly. Prior to any visit or contact with the Police reasonable attempts should be made to contact the person requesting the assistance to make an appointment or to verify that the cause for the request is still persisting and to witness the alleged nuisance.
 - For requests concerning the likely occurrence of a statutory nuisance e.g. TEN's involving amplified music, action may be taken in accordance with 4.13 below.
 - For further requests following the actions in 4.6 above the officer should arrange for the installation of remote noise monitoring equipment in the IP's premises in accordance with the Department's instructions or for a planned visit. In the event that the remote noise monitoring equipment is refused or an appointment missed by the IP full details shall be recorded on the computer by the equipment installing officer and the appropriate standard letter shall be sent by the investigating officer.
- 4.10 Once the best course of action has been decided the officer shall update the computer as the case proceeds with the following information:
- Input the date of First Action (Unless already completed)
 - Complete details of the action taken on the action diary and the reasoning behind such action (where it departs from this procedure) in the text box including the date, time taken (in minutes). **Note-** Managers agreement should be sought before departing from procedure or as soon as practical afterwards.
 - Input the details for the next scheduled action on the request, if this is greater than 10 working days reasoning **MUST** be included in the notes box including details of the notification to the IP.

- 4.11 The investigating officer shall then ensure that the investigation proceeds as expeditiously as possible with the aim of resolving the request within 8 weeks of receipt. Any further actions taken by any officer shall be recorded as detailed in 4.10 above. All actions carried out by officers with respect to requests **MUST** be detailed on the computer record, within 3 working days. No period between actions **shall exceed 10 working days** (Unless full reasoning is included on the computer) and the IP shall be kept informed at all times.
- 4.12 In general an investigation shall be considered completed if after 3 separate visits or 3 separate uses of remote monitoring equipment no evidence of a nuisance has been obtained. In this event the person requesting assistance shall be informed and provided with information on taking personal action under Section 82 and or to request a review of the premises licence by use of the appropriate standard letter.
- 4.13 Where evidence of a *public nuisance* is obtained due to a breach of licence conditions action shall be taken by the licensing team in accordance with the enforcement policy statement. Where no suitable conditions are in place on the premises licence to control the problem, a review shall be initiated by Environmental Health and the appropriate form as specified under [The Licensing Act 2003 \(Premises Licences and Club Premises Certificates\) Regulations 2005](#). The review **MUST** relate to a particular premises for which a licence is in existence and must be relevant to the promotion of the licensing objectives. Officers **MUST** ensure that they have sufficient evidence of the failure of the premises to promote the licensing objective(s) which **MUST** be detailed in the review documentation. In order to secure the best prospects of positive action by the licensing authority, evidence should also include prior warnings given i.e. standard letters (See paragraph 5.108 of the SoS Guidance issued under section 182 of the Licensing Act). All cases **MUST** be peer reviewed by line management before a review is initiated.
- 4.14 If evidence of a nuisance or the likely occurrence or recurrence of a nuisance is obtained, action shall be taken by Environmental Health in accordance with the enforcement policy statement. Prior to the service of a statutory notice under the Environmental Protection Act 1990, the decision to serve a notice shall be ratified and the actual notice wording shall be checked by the officer's line manager or deputy (*unless it is considered that there would be significant risk to public health by the delay or that a substantial nuisance would occur, recur or continue as a result of the delay.*) In any event the Notice checklist form (Appendix 6 of the Enforcement Policy Statement) shall be completed. In the event that the decision is made *not to suspend* the notice pending the outcome of an appeal, full justification and reasoning **MUST** be recorded to ensure compliance with the Human Rights Act 1998 Article 6(1). A letter accompanying the notice shall also be sent. A letter to the IP shall also be sent at the same time as the notice is served. The action described in 4.13 should also be taken by Environmental Health to initiate a review of the premise licence. In exceptional circumstances see also 4.23 below for other "enforcement" options.
- 4.15 If a statutory notice is served the request shall not be considered resolved until the notice is complied with or no further requests have been received over a continuous period of 4 weeks (See also 4.16 and 4.17 below). A copy of the notice served shall be provided to administration. Any prosecution proceedings for non compliance with the notice shall be prepared by the investigating officer in accordance with the prosecution procedure and enforcement policy. Consideration, where appropriate, shall also be made for the seizure of any noise making equipment in accordance with Section 81(3) of the Environmental Protection Act 1990 and Section 10(7) of the Noise Act 1996. The decision to take such action shall be ratified by an Authority Panel (*unless it is considered that there would be significant risk to public health by the delay or that a substantial nuisance would occur, recur or continue as a result of the delay.*) In such cases the procedures for the seizure of noise making equipment and the obtaining and execution of warrants shall be followed.
- 4.16 Following completion of all actions with respect to a request the investigating officer shall complete the date of closed box and any correspondence e.g. log sheets, non standard letters,

notices etc shall be passed for filing. **No request** shall be considered completed until the person requesting assistance has been notified that the officer considers the matter closed.

- 4.17 Should a further request be made concerning the same premises by the same person **within 8 weeks** of the completed request, the original request shall be reopened, if, a significant material change has occurred to warrant a further investigation or a statutory notice had been served, and allocated to the original investigating officer.

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- 4.18 Requests for assistance from persons who wish to remain anonymous or refuse to allow investigating officers into their premises will be advised that their complaint will not normally be investigated. Persons who do not wish to act as witnesses for fear of reprisal will be advised that their identity will be protected. In such circumstances the investigating officer must ensure that sufficient evidence from officer(s) or remote noise monitoring equipment is available and the advice of Legal Services sought via the relevant Principal Officer, prior to any formal action.
- 4.19 It shall be the duty of the Environmental Health Manager to carry out, or cause to be carried out an annual review of this procedure including the incorporation of feedback from customer evaluation.
- 4.20 In accordance with the Crime and Disorder Act 1998 other organisations that may have an interest in the action being taken by this Section shall also be kept informed and details shall be recorded as specified in 4.10 above (For example; Safer Communities Team, Housing Associations and Hampshire Constabulary).
- 4.21 Any complaints relating to this procedure or the application of it shall be dealt with in accordance with the Councils complaints procedure.
- 4.22 The method of management assessment of the investigating officers actions as outlined in paragraph 5 of the procedure for the investigation of Environmental Protection Requests shall be followed in respect of reviews of requests dealt with by this procedure.
- 4.23 In exceptional circumstances the option of a high court injunction (S.81(5)) and or an anti social behaviour order may be considered. An application for a high court injunction is subject to Section 80 (4) and the failure to comply with a noise abatement notice which has been served. For example prior knowledge of a planned rave, repeated breaches of an abatement notice, serious continued wide spread public nuisance. In all such cases the Environmental Health Manager or Head of Consumer Protection shall be notified and advice of the Legal Services Section shall be sought via the relevant Principal Officer together with the Safer Communities team on telephone 550987.
- 4.24 In an instance where shared files can't be accessed on W:\ a back up CD is available and can be found on the Geographical Teams Notice Board. This will ensure continuity of access to the Noise Policy and Procedure and the electoral Roll in the event of e.g. an IT failure. The disk MUST be replaced after use'

Appendix 5

Environmental Health Procedure for dealing with licence applications.

- 5.1 In relation to new applications will be considered by the Environmental Health Geographical Team with regard to securing the objective of prevention of public nuisance. In considering whether to raise a representation with respect to an application, Environmental Health will consider the current version of the statement of licensing policy, statutory guidance and including the following:
- Noise complaint history of the premises
 - Confidence in management of the premises derived from compliance history
 - Presence of any noise sensitive development within 30 metres
 - Sound integrity of premises structure and fabric
 - Possession and satisfactory operation of noise control equipment/procedures e.g. noise limiter
 - Proposed operating hours, those wishing to operate after 23:00 hrs can expect greater scrutiny
 - Inclusion of external areas for licensed activities (e.g. marquees, garden areas, smoking shelters etc)
 - That regular extensions have been granted to the premises which were used and resulted in no justified neighbour complaints.
- 5.4 On receipt of an application, the officer shall interrogate the FLARE database for previous complaints. Assuming the premises has been operating “normally”, previous complaints over 2 years old may be discounted as these will be “stale”. Previous service requests should be examined to establish what comments or recommendations have been made in the past. If these are still appropriate they should be used in the comments to be fed back to the licensing section.
- 5.5 The appropriate case officer for each application must then be e-mailed a request to inspect the premises and return the completed “Public Nuisance Assessment Form of Licensed Premises vers 1.doc AND Licensing warning.
- 5.6 On receipt of the completed forms, the officer will generate a report using either standardlicensing1.doc or licencenocomments.doc as appropriate by way of appropriate FLARE code. The information from 2.9 and 2.10 above shall be used along with information gleaned from the application (e.g. existing and proposed hours of entertainment; any control measures suggested in the Operating Schedule; types of entertainment and to what time, and whether these are to be indoors or outdoors. Consideration should be given as to what suitable conditions may be imposed to prevent or minimise nuisance. Reference should be made to the current *Licensing Authority Statement of Licensing Policy*. The pool of conditions produced by Hants & Isle of Wight ECAC should be referred to. Where conditions not listed in this document or referred to in the Statement of Licensing Policy is proposed, the officer’s line manager should be consulted and their agreement established.
- 5.7 Conditions may include the installation of a noise limitation device, additional means of ventilation, appropriate signage, or a noise control procedure. A visit should not ordinarily be carried out as one will have been done by the licensing case officer. However, the officer may wish, exceptionally, to confirm matters reported by the case officer. The purpose of the visit will be to establish whether the type of activity proposed is capable of taking place without causing “public nuisance”. Whether or not a visit takes place, the officer will evaluate whether additional controls may be required, or propose that the application should be refused. These comments shall be forwarded to the case officer for consideration, **within 28 days** of receipt.
- 5.8 All actions must be recorded appropriately in the appropriate Licensing screen of FLARE. It is crucial that detailed records of decisions taken and their reasons are kept as the officer will be required to defend these at any subsequent Hearing and/or appeal.

- 5.9 The officer receiving the request will interrogate the FLARE database to establish the history of nuisance complaints, if any, relating to the applicant premises. If no complaints are revealed a memorandum shall be sent to the Licensing section using the Standardpel memo generated by FLARE and the appropriate code. It is important that an accurate time figure is produced as time expended on licence application considerations may be recharged to the licensing team.