

# Shepway District Council

## Licensing Policy Statement Licensing Act 2003

January 2016



**Folkestone**

Hythe & Romney Marsh  
Shepway District Council



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## Foreword

The Licensing Act 2003 (henceforth known as the Act) requires that each licensing authority publishes a “Statement of Licensing Policy” that sets out the policies the authority will apply in the exercise of its licensing functions under the Act. Each licensing authority is obliged by the Act to review this policy every five years.

This policy has been prepared in accordance with the provisions of the Act and having regard to the statutory (amended March 2015) guidance issued under Section 182 of the Act (“the Guidance”). This policy will take effect on 15<sup>th</sup> September 2016 and will remain in force for a period of not more than 5 years, during which time it will be kept under review.

Dr Sarah Robson  
Head of Communities  
Shepway District Council  
January 2016

## Consultation

This policy has been consulted on by members of the public, community stakeholders, specific groups and individuals as listed in section 5(3) of the 2003 Act. These are:

- The Chief Officer of Police for the area;
- The Fire and Rescue Authority for the area;
- Each Local Authority's Director of Public Health in England;
- Persons/bodies representative of local premises licence holders;
- Persons/bodies representative of local club premises certificate holders;
- Persons/bodies representative of local personal licence holders;
- Persons/bodies representative of businesses and residents in its area;
- The Child Protection Agency, and
- Advertised on Shepway District Council's website.

The views of all these bodies, and evidence presented, were given due weight in the determination of this policy.

This policy was put before Council for approval in April 2016.

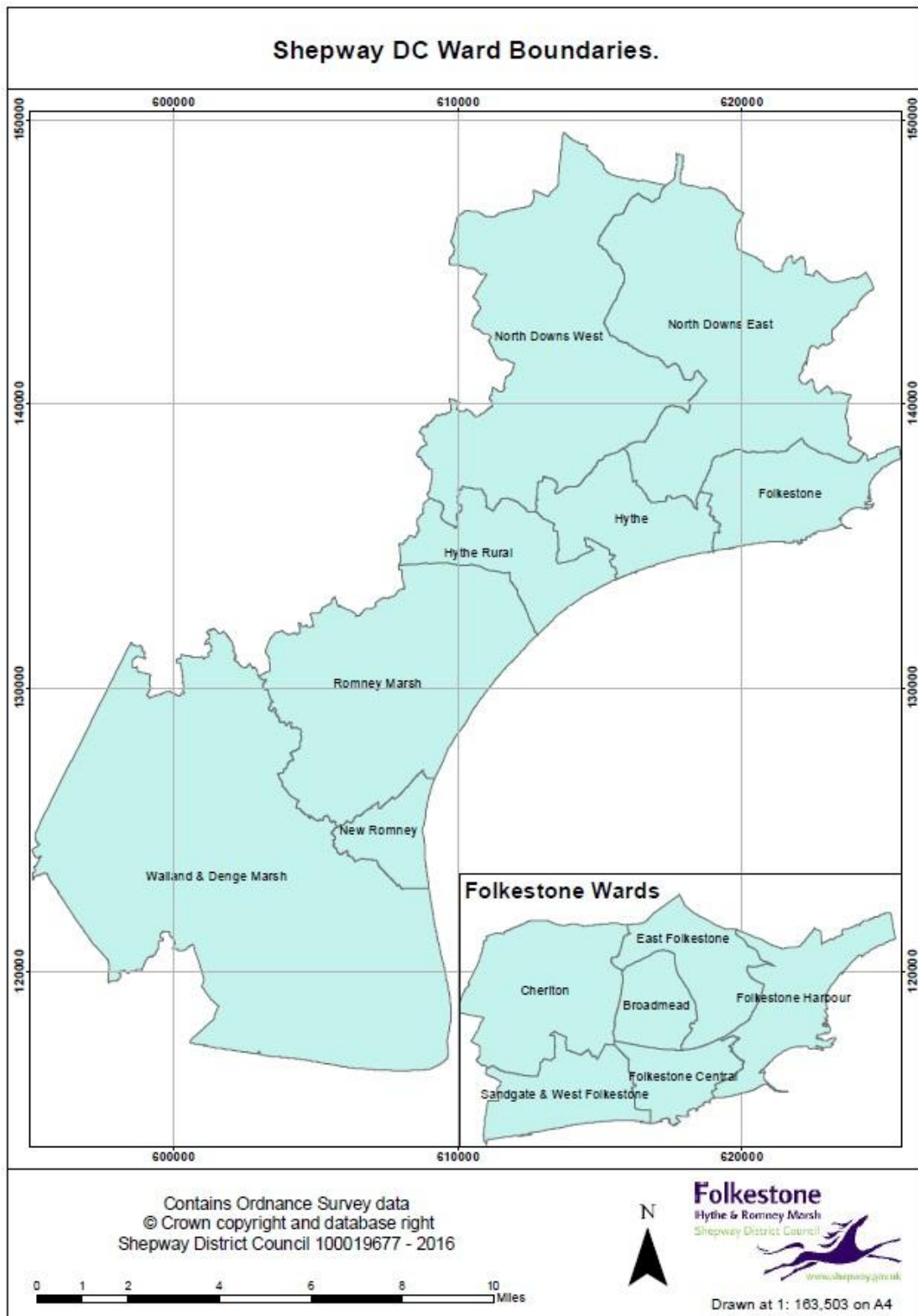
Further details on the requirements that need to be met can be obtained from the licensing authority.

## About Shepway District

Shepway District covers an area of 35,670 hectares (140 sq. miles) on the east Kent coast about 75 miles from London. It has a population of around 109,500 (2014) most of whom live in the Folkestone and Hythe Urban area, but there are also settlements at Lydd and New Romney and along the coastal strip.

The District occupies a key strategic position between the United Kingdom and mainland Europe at the end of the M20 motorway and with the Channel Tunnel, the port of Folkestone and Lydd Airport providing gateways to continental Europe. The location of the District is set out in the map below.

Shepway District Council is situated in the County of Kent, which contains 12 District Councils and 1 Unitary Authority in total. Each is represented on the Kent & Medway Regulatory Licensing Steering Group (K&MRLStGp) whose role includes the identification of issues on which a consistent countywide approach is considered essential and the formulation of recommended policy that establishes a minimum standard on these identified issues.



There are approximately 550 licensed premises in the District, of which 500 hold premises licences and 50 hold club premises certificates. Premises licensed include shops, village and community halls, pubs, bars, nightclubs, restaurants, open spaces, takeaways, barns, vineyards, hotels and private member clubs. In addition the licensing authority has granted over 1450 personal licences.

## Part A – Introduction

Shepway District Council, the licensing authority for the District of Shepway, makes this Statement of Licensing Policy in accordance with Section 5(1) Licensing Act 2003.

The Act requires that the licensing authority carry out its various licensing functions so as to promote the following four licensing objectives:-

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Each objective is of equal importance and there are no other licensing objectives. These four objectives are of paramount consideration at all times. These four licensing objectives are considered in more detail in Part B.

### Licensable Activity

The policy relates to all those licensing activities identified as falling within the provisions of the Act, namely:-

- Retail sale of alcohol
- Supply of alcohol to club members
- Provision of 'regulated entertainment' – to the public, to club members or with a view to profit
- A performance of a play
- An exhibition of a film
- An indoor sporting event before 08.00 or after 23.00 or to more than 1000 spectators
- Boxing or wrestling entertainment
- Performance of live music on an unlicensed premise or on a licensed premise before 08.00 or after 23.00 or to more than 500 people
- Any playing of recorded music on an unlicensed premise or on a licensed premise before 08.00 or after 23.00 or to more than 500 people
- A performance of dance before 08.00 or after 23.00 or to more than 500 people
- Provision of facilities for making music
- Provision of facilities for dancing
- The supply of hot food and/or drink from any premises between 23.00 to 05.00 hours (late night refreshments)

### Applications

The scope of the policy covers new licence applications, transfers and variation of operating schedules and temporary events.



Due to the similarity between the application processes for both premises licences and club premises certificates, a reference to a premises licence in this section will also be a reference to an application for a club premises certificate.

All applications for new premises licences and variations must be accompanied by an operating schedule. The schedule should specify (amongst other things) the steps which the applicant proposes to promote each of the four licensing objectives.

If no responsible authority or 'other person' lodges an objection (known as a 'relevant representation') to the application, the licensing authority must grant the application as set out in the operating schedule, subject only to mandatory conditions under the Act. The steps proposed by the applicant will become interpreted in to legally enforceable licence conditions. The licensing authority will have no discretion to refuse the application or to alter or add to the conditions arising from the operating schedule.

Where, however, there are relevant representations, then a hearing of the opposed application before a licensing sub-committee will normally follow. At the hearing the sub-committee will, having regard to the representations, take such steps as it considers appropriate to promote the four licensing objectives. These may include granting or refusing the application or adding to or modifying the conditions proposed in the operating schedule.

In exercising its discretion, the licensing sub-committee will have regard (amongst other things) to this Policy. Therefore, in drawing up their operating schedule, applicants would be well advised to read this Policy carefully. Where an operating schedule complies with this Policy, it is generally less likely that any 'other person' or responsible authority will object to it, or that an objection will succeed. Therefore, compliance with this Policy is likely to assist the applicant to avoid the delay and expense of a contested licensing hearing, and the risk of a refusal or the addition of unwanted conditions.

This is not to say that an opposed application which complies with this Policy will necessarily be granted or that an opposed application which does not comply with it will necessarily be refused. Where there have been relevant representations, the licensing authority will always consider the individual merits of the case, and interfere with the operating schedule only when, and to the extent, appropriate to promote the four licensing objectives. Blanket or standard conditions will not be applied without regard to the merits of the individual case. So, for example, the licensing authority will not interfere with an operating schedule which does not comply with this Policy where the steps proposed are sufficient to meet the four licensing objectives in the individual circumstances of the case.

However, this Policy represents the licensing authority's view of the best means of securing the four licensing objectives in most normal cases. It has been drawn up in consultation with other expert bodies and responsible authorities, together with community stakeholders. While the contents of the

operating schedule are a matter for the applicant, where there is objection to a schedule which departs from this Policy, the licensing sub-committee, hearing an opposed application, will normally expect to be given a good reason for the departure if it is asked to make an exception to this Policy.

In this Policy, there are a number of references to the licensing authority's expectation of applicants. As explained above, this Policy is only engaged where the licensing authority has a discretion following the receipt of a relevant representation. In such cases, the licensing authority will not apply this Policy rigidly, but will always have regard to the merits of the case with a view to promoting the four licensing objectives.

Further, the licensing authority may use this Policy when exercising other licensing functions. For example, when considering an application for review of a licence, the licensing authority is likely to view with concern premises which are being operated in clear breach of the terms of this Policy.

Nothing in this Policy will:-

- Undermine the rights of any person to apply under the Act for a variety of permissions and have each such application considered on its individual merits; and/or,
- Override the right of any person to make representations on any application or seek a review of a licence or certificate where provision has been made for them to do so under the Act.

A prime responsibility of the licensing authority in licensing activities in premises is to work with the business community to maintain the level of business activity in towns and villages in a manner that has due regard for public enjoyment, tourism and commerce, while balancing this with the promotion of the four licensing objectives.

Licensing is also about regulating licensable activities on licensed premises, by qualifying clubs or at temporary events within the terms of the Act. The conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity. Whether or not incidents can be regarded as being "in the vicinity" of licensed premises is a question of fact and will depend on the particular circumstances of the case.

In addressing this matter, the licensing authority will primarily focus on the direct impact of the activities taking place at licensed premises on members of the public living, working or engaged in normal activity in the vicinity concerned.

The licensing authority acknowledges that licensing law is not the primary mechanism for the general control of nuisance or anti-social behaviour by individuals once they are away from the premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control

and licensing law will always be part of a holistic approach to the management of the daytime, evening and night-time economy.

The Act requires applicants to consider carefully this Policy when drafting their applications. Applicants should show that they have considered the practical effects of managing their business to accord with this Policy.

Shepway District Council expects holders of a premises licence, club premises certificate or temporary event notice to make every effort to minimise the impact of their activities and any nuisance or anti-social behaviour by their patrons within the vicinity of their premises.

The Human Rights Act 1998, incorporating the European Convention on Human Rights, makes it unlawful for a local authority to act in a way, which is incompatible with a Convention right. The licensing authority will have regard to the Human Rights Act when exercising its licensing functions, with particular reference to the following relevant provisions of the European Convention on Human Rights:-

Article 6 – In the determination of civil rights and obligations every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 8 – Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 1 of the First Protocol – Every person is entitled to the peaceful enjoyment of his or her possessions.

### **Determining a Licence Application**

Where an application is properly made and no responsible authority or other person makes representations, the licensing authority must grant the application, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions in the act. This should be undertaken as a simple administrative process by the officers of the licensing authority.

If representations are made by a responsible authority or other person, it is for the licensing authority to decide whether those representations are relevant to the licensing objectives and not frivolous or vexatious. If the licensing authority decides that any representations are relevant, then it must hold a hearing to consider them, unless the representations are withdrawn with agreement of all parties before a hearing.

At a hearing, the licensing authority may:

- Grant the application subject to modifying conditions that are consistent with the operating schedule in a way it considers appropriate for the promotion of the licensing objectives;
- Reject one or more requested licensable activities;

- Reject the application; and/or
- Refuse to specify a person as a designated premises supervisor.

All decisions of the licensing authority, and any conditions imposed, must be appropriate for the promotion of the licensing objectives. Parties that disagree with the licensing authority's decision, have a right of appeal to the magistrates' court.

### **Administration, Exercise and Delegation of Functions**

The powers of the licensing authority under the Act may be carried out by Shepway District Council's licensing committee, by its licensing sub-committees or by one or more officers acting under delegated authority.

In the interests of speed, efficiency and cost-effectiveness to all parties involved in the licensing process, the Council has established a scheme of delegation to deal with applications received under the Act.

This form of delegation is without prejudice to the officers referring an application to the licensing sub-committee, or the sub-committee to the licensing committee, if considered appropriate in the circumstances of any particular case, and only in accordance with the Act.

The Council's approved table of delegation, showing the decision-making process for applications under the Licensing Act 2003, is attached at Appendix B to this Policy document.

### **Partnership Working**

The licensing authority will seek proper integration with local crime prevention, planning, transport, employment, tourism and cultural strategies. In reviewing this policy the Council is consulting with the public and representative bodies and the views of all those responding to the consultation will be given appropriate weight when determining this policy.

The licensing authority will endeavour to work with other local authorities, particularly where licensing authority boundaries meet, to try and ensure a consistent approach is taken to licensing matters while respecting the differing needs of individual communities throughout the county.

### **Planning**

The use of any licensed premises or places may be subject to planning controls which differ to that of licensing. Licensing is concerned with the fitness of the operator and detailed issues concerning the operation and management of the premises that are not addressed by the planning process, which relates to the use of the premises.

There is no legal basis for a licensing authority to refuse a licence application because it does not have the relevant planning permission.

## Promoting Cultural Life

Licensing is not solely about control but about promoting a diverse and vibrant cultural life for all. A well-regulated, varied day-time, evening and night-time economy can benefit both residents and businesses and contribute to the promotion of the licensing objectives. This statement of licensing policy will therefore also support through integration with other strategies a number of other aims and purposes:

- The use of proportionate regulation to give business greater freedom and flexibility to meet their customers' expectations;
- Greater choice for consumers, including tourists, about where, when and how they spend their leisure time;
- The encouragement of more family friendly premises where younger children can be free to go with the family;
- The maintenance of a safe and family friendly environment within the District, particularly within town centres;
- The further development within communities of our rich culture of live music, dancing and theatre, and other forms of entertainment both in rural areas and in our towns;
- The regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring; and
- The necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.

This policy will seek to reflect local requirements and recognise the need to encourage and promote live music, dancing, theatre and other forms of entertainment for the wider cultural benefit of communities generally. The potential for limited disturbance in neighbourhoods will be carefully balanced with these wider benefits. Through consultation the licensing authority will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music and dancing.

## Enforcement

The Council delivers a wide range of enforcement services aimed at safeguarding the environment, the community and at providing a 'level playing field' on which businesses can fairly trade. The administration and enforcement of the licensing regime is one of these services. The licensing authority will aim to ensure effective and efficient public protection services and practice by carrying out its regulatory functions in a fair, open and consistent manner.

Shepway District Council will continue to support and participate in the Kent & Medway Licensing Steering Group – a county forum which aims to:-

- Help develop consistency between the statutory agencies responsible for licensed premises;
- Develop potential for a joint approach to implementation and administration;

- Act as a strategic forum for licensing in Kent;
- Develop liaison with agencies and other relevant organisations;
- Promote best practice; and
- Enhance the potential for sharing resources.

The licensing authority recognises the need to avoid duplication with other regulatory regimes as far as possible. This Policy is not intended to duplicate existing legislation and regulatory regimes that place duties upon employers and operators. In the event that conduct of activity related to the business has been found to be in contravention of other regulatory regimes the licensing authority will have regard to such conduct in considering licensing applications.

Some regulations do not cover the particular circumstances that arise in connection with entertainment. The licensing authority may (when its discretion is engaged), for example, attach conditions to premises licences and club premises certificates where these are considered appropriate for the promotion of the four licensing objectives and are not already provided for in any other legislation.

### **Cumulative Impact**

A cumulative impact policy creates a rebuttable presumption that applications within a particular area of the District for new premises licences or club premises certificates or material variations thereto will normally be refused, if relevant representations are received about the cumulative impact on the four licensing objectives.

The licensing authority will review the need for a special policy on cumulative impact at least every five years in line with the review of this policy to see if circumstances have changed and one is needed.

In addition to the review each five years the licensing authority may consider a special policy on cumulative impact at any time if circumstances changed and evidence supported this course of action.

No area of the District is currently covered by a special policy on cumulative impact.

### **Early Morning Restriction Orders (EMRO)**

An EMRO enables a licensing authority to prohibit the sale of alcohol for a specified time period between the hours of 12 a.m. and 6 a.m. in the whole or part of its area, if it is satisfied that this would be appropriate for the promotion of the licensing objectives.

EMROs are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.

The licensing authority will review the need for an EMRO at least every five years in line with the review of this policy to see if circumstances have changed and any are needed.

In addition to the review each five years the licensing authority may consider an EMRO at any time if circumstances changed and evidence supported this course of action.

No area of the District is covered by an EMRO at present.

### **Late Night Levy**

A Late Night Levy enables licensing authorities to charge a levy to persons who are licensed to sell alcohol late at night in the authority's area, as a means of raising a contribution towards the costs of policing the late-night economy.

The decision to introduce the levy is an option available to all licensing authorities in the whole of their respective areas. The levy will be payable by the holders of any premises licence or club premises certificate ("holders"), in relation to premises in the authority's area, which authorise the sale or supply of alcohol on any days during a period (the "late night supply period") beginning at or after midnight and ending at or before 6am.

The licensing authority will review the need for a Late Night Levy at least every five years in line with the review of this policy to see if circumstances have changed and one is needed.

In addition to the review each five years the licensing authority may consider a Late Night Levy at any time if circumstances changed and evidence supported this course of action.

No area of the District is covered by a Late Night Levy at present.

### **Variation of Licences**

When considering an application for the variation of a licence, the licensing authority will consider the impact of the variation in terms of the policies in this document and the four licensing objectives. It will not use such an application as a means to review the licence terms and conditions already granted.

### **Minor Variations**

A premises licence/club premises certificate holder may apply under the minor variation procedure for small variations that will not impact adversely on the four licensing objectives.

A minor variation may be appropriate in cases:

- Where there is a minor change to the layout of a premises that would not affect public safety or nuisance;

- A reduction in the hours of operation of a premises;
- The removal of conditions that have become obsolete due to changes in legislation;
- The addition of voluntary conditions.

Minor variations are not permitted to increase the hours for the sale or supply of alcohol. There is no right to a hearing if the minor variation application is rejected, although an application for a full variation application may be made.

### **Removal of Designated Premises Supervisor from a Community Premises**

Where community premises hold a premises licence allowing the sale/supply of alcohol, the licence holder can apply to have the mandatory condition requiring a designated premises supervisor to be appointed, be removed. This passes the responsibility for the sale/supply of alcohol to the premises' management committee.

### **Licensing Hours**

The Act does not promote or prohibit longer licensing hours, however the licensing authority recognises that the statutory guidance issued by the Secretary of State emphasises that the aim through the promotion of the four licensing objectives should be to reduce the potential for concentrations of and a slower dispersal of, people from licensed premises through flexible opening times. This may be important to ensure that large concentrations of people do not leave premises at the same time and it may reduce the friction at late night hot food outlets, taxi ranks, taxi or private hire operators' offices and other sources of transport that can lead to disorder and disturbance.

The licensing authority will not set fixed opening hours within certain areas, as this may lead at particular times to the movement of significant numbers of people seeking premises opening later, resulting in concentrations of disturbance and noise.

The licensing authority may consider imposing stricter conditions in respect of noise control where premises are situated in areas that have dense residential accommodation and/or are close to sensitive areas, for example hospitals, schools, places of worship, nursing homes. However, regard will be given to the individual merits of any application, and the licensing authority would only have discretion to consider attaching such conditions where a relevant representation is received in respect of an application, and then only where considered appropriate for the promotion of the four licensing objectives.

### **Transfer of Licenses**

When considering an application for the transfer of a premises licence, the licensing authority will only have regard to the exceptional circumstances of the case as set out in any objection raised by the police on the grounds that the transfer will undermine the crime prevention objective. The effect on the



crime prevention objective will be considered against the background of the policies contained in this document.

### **Provisional Statements**

An application for a provisional statement will be considered in the same way as would an application for a premises licence or club premises certificate, on the assumption that the works are completed as per the schedule of works submitted by the applicant.

### **Sexual Entertainment Venues**

Where premises are to be used on twelve or more occasions within a 12 month period for relevant sexual entertainment, the premises must also be licensed as a Sexual Entertainment Venue under the Local Government (Miscellaneous Provisions) Act 1982. Relevant sexual entertainment includes lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows..

### **Complaints, Reviews and Appeals**

The licensing authority will investigate complaints relevant to the four licensing objectives in relation to licensed premises. In the first instance, complainants will be encouraged to raise the complaint directly with the licensee or business concerned. Where a responsible authority or any 'other person' has made:

- valid representations about licensed premises; or
- a valid application for a licence to be reviewed

Then the licensing authority may initially arrange a mediation meeting to address, clarify and try to resolve the issues of concern.

This process will not override the right of any responsible authority or any 'other person' to apply for a review of the premises licence or club premises certificate, or for any licence holder to decline to participate in a mediation meeting.

Applicants and those making representations in respect of applications and reviews to the licensing authority have a statutory right of appeal to the magistrates' court against the licensing authority's decisions.

### **Shops, Stores and Supermarkets**

The licensing authority will normally consider licensing shops, stores and supermarkets to sell alcohol for consumption off the premises at any times they are open for shopping.

The licensing authority may consider whether there are very good reasons for restricting those hours. For example, a limitation of opening hours may be appropriate following relevant representations from the police in the case of

shops known to be the focus of disorder and disturbance because people gather there and engage in nuisance and/or anti-social behaviour.

### **Mandatory Conditions**

The Licensing Act 2003 provides Mandatory Licensing Conditions that apply to all relevant premises in England and Wales. These conditions are amended from time to time by Statutory Instruments. Current Mandatory Conditions can be viewed by visiting our website, [www.shepway.gov.uk/licensing](http://www.shepway.gov.uk/licensing) or requesting a copy by post.

### **Deregulation Act 2015**

The Deregulation Act 2015 introduced a number of changes to the Licensing Act 2003. This Act was to make provision for the reduction of burdens resulting from legislation for businesses or other organisations or for individuals; make provision for the repeal of legislation which no longer has practical use; make provision about the exercise of regulatory functions; and for connected purposes.

An overview of key points relevant to this policy is below.

- Temporary Event Notices - increased maximum number of events at a premises from 12 to 15 per calendar year
- Personal licences – it is no longer a requirement to renew a personal licence
- Sale of liqueur confectionery to children under 16 - this offence has been abolished
- Late night refreshment – a Local Authority may exempt supplies by designating areas, descriptions of premises and times specified
- Removal of requirement to report loss or theft of licence etc to police before copies may be issued – this applies to premises licence or summary, club premises certificate or summary, temporary events notice and personal licence
- Exhibition of films in community premises - the provision of entertainment consisting of the exhibition of a film at community premises is not to be regarded as the provision of regulated entertainment for the purposes of this Act, a number of conditions have to be satisfied

## **PART B – The Licensing Objectives**

### **Each Licensing Objective is of Equal Importance**

#### **Prevention of Crime and Disorder**

The prevention of crime and disorder objective is to protect the public from crime and anti-social behaviour caused by irresponsible licensed premises.

#### **Best Practice in Crime Prevention**

The licensing authority strongly encourages the implementation of best practice in licensed premises in the District in order to promote the crime prevention objective. Types of premises vary throughout the District, as do the types of licensable activities carried on at those premises, and therefore the steps appropriate to promote this objective will vary by premises.

When preparing their operating schedules, applicants are encouraged to carry out a risk assessment of their premises by reference to the following items of best practice:-

- Training given to staff in crime prevention measures appropriate to the premises;
- The physical security features installed in the premises. This may include matters such as the position of cash registers; the place where alcohol is stored in “off-licences”; the standard of CCTV that is installed and the retention period for images; the use of plastic, toughened or similar safety drinking glasses in pubs and clubs; and the secure storage of waste which could potentially be used as weapons;
- Measures to prevent the supply and consumption of illegal drugs, including any search procedures, entry policies and retention of seizures;
- Measures to raise staff awareness of, and discourage and prevent the use of, drugs on the premises;
- Arrangements to provide secure facilities to store seized drugs in a secure place;
- Additional to age verification requirements, the licensing authority and partners supports the Challenge 21 and 25 initiatives;
- The likelihood of any violence, public order or policing problem if the licence or certificate is granted;
- Whether the applicant is a member of the Pubwatch scheme (or similar) within the District.

Applicants are expected to include the above items of best practice in their operating schedules, where relevant to the premises. Where they elect not to do so, they are advised to include information explaining the omission. This might be because a risk assessment has shown that the step is unnecessary or because the item is already the subject of another consent, e.g. a planning permission or statutory obligation. If such information is not included, it may

result in a relevant representation being made, leading to the cost and delay of a hearing before a licensing sub-committee.

The steps volunteered in the operating schedule will become conditions of the licence or certificate, and therefore applicants should consider carefully the steps appropriate for the promotion of the four licensing objectives at their particular premises.

The licensing authority will work in partnership with local Pubwatch initiatives in supporting licence holders to actively prevent crime and disorder and to form strategies to reduce current levels by meeting as necessary with members of the initiative. The strategies seek to address matters such as under-age sales, problems associated with drunken individuals, use of illegal drugs, violent and anti-social behaviour.

### **Public Safety**

The public safety objective is concerned with the physical safety of the people, including any performers appearing at the premises, attending licensable activities at the relevant premises.

The licensing authority is committed to ensuring public safety across the District by working in close partnership, in particular with Kent Police, Kent Fire and Rescue Service, licensees, and with any other relevant bodies.

### **Best Practice in Public Safety**

The licensing authority strongly encourages the implementation of best practice in licensed premises in the District in order to promote the public safety objective. Types of premises vary throughout the District, as do the types of licensable activities carried on at those premises, and therefore the steps appropriate to promote this objective will vary by premises.

When preparing their operating schedules, applicants are reminded that it is a requirement of legislation that any licensed premises carry out a fire risk assessment and to record the significant findings in writing (Regulatory Reform (Fire Safety) Order 2006 Article 9 paragraph 6).

When preparing their operating schedules, risk assessments of the premises should make reference to the following items of best practice:-

- Occupancy Limits – The authority will not generally impose conditions as to occupancy levels where these are adequately addressed by other controls but may do so in any other case where relevant representations are made. Capacities should be addressed in the fire risk assessment;
- Fire Safety – The fire risk assessment completed in relation to the use of the premises, should assist applicants in satisfying Kent Fire and Rescue Authority that the public safety objective will be met;
- Levels of door supervision adequate to control access to and egress from premises in order to ensure the public safety;

- Training for current and future staff in matters relating to public safety, where not already required by other legislation;
- Prevention of injury – Where there is evidence of a current or past problem in relation to particular premises or a particular locality, or in all circumstances it is considered likely that such a problem might occur, and/or premises are to be used primarily for the sale or supply and consumption of alcohol on premises (particularly if those premises have little seating for patrons relative to their size/capacity). Applicants should give consideration to a policy of using plastic, polycarbonate or toughened glass, and a policy not to pass glass bottles over the bar, either throughout the period of operation or at certain times or on certain occasions;
- Measures to reduce the impact of noise both in terms of staff safety and protection of hearing of the public and staff at the premises, where such measures are not already required by other legislation;
- Measures to ensure that litter does not cause a nuisance or a health hazard to the public or a fire hazard to the vicinity, as generated by the activity at or near to the premises.

Applicants are expected to include the above items of best practice in their operating schedules, where relevant to the premises. Where they elect not to do so, they are advised to include information explaining the omission. This might be because a risk assessment has shown that the step is unnecessary or because the item is already the subject of another consent, e.g. a planning permission or statutory obligation. If such information is not included, it may result in a relevant representation being made, leading to the cost and delay of a hearing before a licensing sub-committee.

The steps volunteered in the operating schedule will become conditions of the licence or certificate, and therefore applicants should consider carefully the steps appropriate for the promotion of the four licensing objectives at their particular premises.

### **Prevention of Public Nuisance**

In considering the promotion of this licensing objective, the licensing authority will focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate or unreasonable.

The licensing authority is likely to be concerned with noise nuisance, light pollution, noxious smells and litter.

Under the Act, “public nuisance” retains its broad common law meaning. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a person 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 any other person.

## Best practice in the Prevention of Public Nuisance

The licensing authority strongly encourages the implementation of best practice in licensed premises in the District in order to promote the prevention of public nuisance objective. Types of premises vary throughout the District, as do the types of licensable activities carried on at those premises, and therefore the steps appropriate to promote this objective will vary by premises.

When preparing their operating schedules, applicants are encouraged to carry out a risk assessment of their premises by reference to the following items of best practice:

- Measures to prevent noise and vibration escaping from the premises, including; music, noise from ventilation equipment, and human voices. Such measures may include the installation of soundproofing, air conditioning (though this may add to the problem, especially if left on overnight), acoustic lobbies and sound limitation devices;
- Measures to prevent disturbance by patrons/customers arriving at or leaving the premises, particularly between the hours of 11.00 pm and 7.00 am;
- Measures to prevent queuing or, if queuing is inevitable, to divert queues away from neighbouring premises, or otherwise to manage the queue to prevent disturbance or obstruction;
- Measures to ensure that customers/patrons and staff leave the premises quietly;
- Arrangements for parking by patrons/customers, and minimisation of the effect that parking will have on local residents and businesses;
- Measures to reduce the impact that the use of gardens or other open-air areas will have on local residents and businesses;
- The positioning of external lighting, including security lighting that is installed appropriately;
- Accessibility to local public transport services, including taxis and private hire vehicles;
- Measures to minimise the impact of refuse storage or disposal (including noise associated with bottle delivery and disposal), or additional litter (including fly posters and unauthorised placards) in the vicinity of the premises;
- Measures to minimise noxious smells omitting from the premises.

Applicants are expected to include the above items of best practice in their operating schedules, where relevant to the premises. Where they elect not to do so, they are advised to include information explaining the omission. This might be because a risk assessment has shown that the step is unnecessary or because the item is already the subject of another consent, e.g. a planning permission or statutory obligation. If such information is not included, it may result in a relevant representation being made, leading to the cost and delay of a hearing before a licensing sub-committee.

The steps volunteered in the operating schedule will become conditions of the

licence or certificate, and therefore applicants should consider carefully the steps appropriate for the promotion of the four licensing objectives at their particular premises.

### **Protection of Children from Harm**

The protection of children from harm includes the protection of children from moral, psychological and physical harm, and this would include the protection of children from too early an exposure to strong language, sexual imagery and sexual expletives, for example, in the context of film exhibitions or where adult entertainment is provided. However, in the context of many licensed premises such as pubs, restaurants, café bars and hotels, the licensing authority recognises that the development of family friendly environments should not be frustrated by overly restrictive measures in relation to children.

The licensing authority also recognises that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions unless the Act itself imposes such a restriction or there are good reasons to restrict entry or to exclude children completely. The licensing authority will focus on enforcing the law concerning the consumption of alcohol by minors.

### **Access to Licensed Premises**

The Act prohibits unaccompanied children from entering certain premises and between certain hours. It is an offence under the Act to:-

- a) permit children under the age of 16 who are not accompanied by an adult (aged 18 or over) to be present on premises being used exclusively or primarily for the supply of alcohol for consumption on those premises under the authority of a premises licence, club premises certificate or temporary event notice, and
- b) permit the presence of children under the age of 16 who are not accompanied by an adult between midnight and 5.00 am at other premises supplying alcohol for consumption on the premises under the authority of a premises licence, club premises certificate or temporary event notice.

Other than set out above, and subject to the licence holders, the Act does not prevent unaccompanied children from having free access to any licensed premises where the consumption of alcohol is not the exclusive or primary activity.

The licensing authority will consider the individual merits of each application, and then only when an application attracts relevant representations, before deciding whether it is appropriate to limit the access of children to any given premises. The following are examples of premises that will raise particular concern:-

- Where there have been convictions for serving alcohol to minors or with a reputation for under-age drinking;
- Where there is a known association with drug taking or drug dealing;
- Where there is a strong element of gambling on the premises;
- Where entertainment of an adult or sexual nature is provided;
- Where films with age-restricted classifications are to be shown.

Where relevant representations are received in respect of an application, the licensing authority may consider the following additional measures (which may be adopted in combination) for limiting the access of children to licensed premises in order to prevent harm:-

- Limitations on the hours when children may be present;
- Limitations on ages below 18;
- Limitations or exclusion when certain activities are taking place;
- Restrictions or exclusions in respect of parts of premises;
- Requirements for an accompanying adult;
- Full exclusion of all persons under 18 years of age from the premises when any licensable activities are taking place.

### **Children and Cinemas**

In the case of premises giving film exhibitions, the licensing authority expects licence holders or clubs to include in their operating schedules arrangements for restricting children from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification.

### **Illegal Sales of Restricted Goods**

The licensing authority, Kent County Council's (KCC) Trading Standards and the police take a serious view of the sale to minors of age-restricted goods. Trading Standards in Kent will continue to seek to ensure that there is no illegal sale of age restricted goods. The work of KCC Trading Standards in setting up systems to avoid sales to minors taking place is acknowledged and welcomed by the licensing authority. This work will continue and the licensing authority will welcome reports from KCC Trading Standards on any relevant licensing matter. The licensing authority has particular regard to addressing problems caused by the link between alcohol sales to minors and crime and disorder issues.

### **Best Practice in the Protection of Children from Harm**

The licensing authority strongly encourages the implementation of best practice in licensed premises in the District in order to promote the protection of children from harm objective. Types of premises vary throughout the District, as do the types of licensable activities carried on at those premises, and therefore the steps appropriate to promote this objective will vary by premises.



When preparing their operating schedules, applicants are encouraged to carry out a risk assessment of their premises by reference to the following items of best practice:-

- Staff training on the law with regard to restricted sales;
- Training records and documentation to be kept available for inspection;
- Staff training to include; checking identification (ID) for proof of age, through a secure system. Ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark;
- A responsible person (as identified by Section 153 (4) of the Act) who is present and responsible for transactions made through staff that may be under 18 years of age;
- Procedures in place to record refusals of sales, with such records kept available for inspection;
- Vending machines dispensing age-restricted goods to be positioned to allow for proper supervision at all times;
- Arrangements for restricting children from viewing age-restricted films, classified according to the recommendations of the British Board of Film Classification (BBFC) or the licensing authority.

Where the majority of the intended audience at regulated entertainment is expected to be children or the entertainment offered is of a nature likely to be of interest to children (e.g. theatre productions or film shows), the following are considered best practice arrangements in order to control their access and egress and to assure their safety:-

- Each event/facility to assess requirements has undertaken specific risk assessments to identify ratios/regulations required for applicant may be asked to provide proof of risk assessment;
- A “lost child” policy which identifies arrangements for the safe care of lost children until they are reunited with the parent/guardian;
- A staff-to-children ratio which will ensure adequate supervision.

Applicants are expected to include the above items of best practice in their operating schedules, where relevant to the premises. Where they elect not to do so, they are advised to include information explaining the omission. This might be because a risk assessment has shown that the step is unnecessary or because the item is already the subject of another consent, e.g. a planning permission or statutory obligation. If such information is not included, it may result in a relevant representation being made, leading to the cost and delay of a hearing before a licensing sub-committee.

The steps volunteered in the operating schedule will become conditions of the

licence or certificate, and therefore applicants should consider carefully the steps appropriate for the promotion of the four licensing objectives at their particular premises.

### **Applications which Receive Objections**

If a relevant representation is made, the licensing authority will have discretion to take such steps as are appropriate to promote the four licensing objectives. In exercising its discretion, it may where relevant, take into account whether the applicant proposes to follow the best practice set out above.

The licensing authority recognises the need to avoid duplication with other regulatory regimes as far as possible, including avoiding replicating offences set out in the Act and other legislation. The Licensing Authority will, when considering an application following receipt of relevant representation, consider attaching conditions to licences and certificates intended to promote the licensing objectives, and these should reflect the general principles regarding licence conditions set out in Chapter 1 of the Guidance issued under section 182 of the Act.

Any such conditions imposed will be tailored to the style and characteristics of the premises and the type of activities expected/permitted/licensed to take place there.

## PART C – Temporary Event Notices

Where a person wishes to use premises for one or more licensable activities for a period not exceeding 168 hours, that person can serve a;

- Standard temporary event notice (TEN) must be served on the licensing authority, the police and the local authority exercising environmental health functions (EHA) on whose area the event is held, no later than ten clear working days before the event is to begin. To avoid confusion, the ten working days does not include weekends, public holidays, the day of receipt of the TEN and the day of the event itself.
- Late temporary event notices (late TEN) can be served up to five working days but no earlier than nine working days before the event. The late TEN must be served on the licensing authority, the police and the local authority exercising environmental health functions (EHA) on whose area the event is held, no later than five clear working days before the event is to begin. To avoid confusion, the five working days does not include weekends, public holidays, the day of receipt of the TEN and the day of the event itself.

The maximum number of persons allowed on the premises at the same time during the temporary event is 499.

If alcohol is to be supplied, all supplies must be carried out by or under the authority of the person serving the TEN, and that person need not hold a personal licence.

Only the police and EHA may object to the staging of a temporary event. If they believe that any of the four licensing objectives will be undermined by the event they will issue an 'objection notice'.

Where an objection notice is received in relation to a standard TEN, if required the licensing sub-committee will convene within seven working days of it being issued. The licensing authority will notify all relevant parties of the time and venue for the hearing. A hearing will not always be necessary if an agreement can be reached beforehand.

Where an objection notice is received in relation to a late TEN, the event will automatically be refused authorisation. There is no right of appeal in this instance.

There are limitations on the number of TENs that individuals can give and which can be given in relation to a particular premises:

- Any premises can only be used for 15 temporary events per calendar year, up to a total maximum of 21 days;
- Personal licence holders can give 50 TENs (made up of standard and late TENs) a year; non personal licence holders can only give 5 (made up of standard and late TENs);

- Personal licence holders can give 10 late TENs a year; non personal licence holders can only give 2;
- There must be at least 24 hours between temporary events organised by the same person or an associate in relation to the same premises.

The 2003 Act provides that only the licensing authority can impose conditions (from the existing conditions on the premises licence or club certificate) to a TEN. The licensing authority can only do so:

- If the police or EHA have objected to the TEN;
- If the objection has not been withdrawn;
- If the licensing authority considers it appropriate for the promotion of the four licensing objectives to impose one or more conditions.

Where the limitations on a temporary event cannot be fulfilled, for example due to the large numbers attending, a premises licence will be required. The licensing authority would strongly advise applicants to submit early notice of such a major event to allow responsible authorities to discuss and agree operating schedules.

## **PART D – Club Premises Certificate**

Members' clubs can operate under club premises certificate instead of premises licence. This means, for example, that they are not required to have a designated premises supervisor, and sales of alcohol do not need to be authorised by a personal licence holder.

### **Qualifying Clubs**

To be classified as a club for the purpose of this certificate, a group must meet several conditions. These include:

- Legitimacy - each applicant must be a real club with at least 25 members;
- A membership process that takes at least two days between application and acceptance;
- Alcohol must not be supplied on the premises other than by the club;
- Alcohol must be purchased by a committee made up of members all of whom are at least 18 years old;
- Alcohol for the club must be purchased legally.

Other legal restrictions for clubs operating under a club premises certificate are in the Act and applicants are advised to contact the licensing authority for advice.

## PART E – Personal Licences and Designated Premises Supervisors (DPS)

### Personal Licences

A personal licence is not required in order to be employed in a pub or other business that sells alcohol. Premises licensed to sell alcohol must have a designated premises supervisor, who holds a personal licence.

The one exception is a community premises that has successfully applied to waive the DPS requirement under section 41(d) of the Act.

Anyone who does not hold a personal licence must be authorised to sell alcohol by a personal licence holder. There is no such requirement for the supply of alcohol in a members' club.

Personal licences allow you to sell alcohol on behalf of any business that has a premises licence.

In order to apply, you must be aged 18 years or over, and hold a licensing qualification - for example, a BII Level II examination certificate for Personal Licence holder and a basic criminal conviction check, no more than three month old showing no relevant convictions.

The aim of the qualification is to ensure that licence holders are aware of licensing law and the wider social responsibilities involved in the sale of alcohol.

The personal licence is designed to ensure that anybody running or managing a business that sells alcohol will do so in a professional fashion. Only holders of personal licences can become designated premises supervisors for any business that sells **alcohol**.

### Designated Premises Supervisors

A designated premises supervisor (DPS) is normally the person who has been given the day-to-day responsibility for the running of the premises by the premises licence holder.

All businesses and organisations selling **alcohol**, except certain community premises must have a designated premises supervisor.

Whoever holds this role must be named in the operating schedule, which needs to be completed as part of the application process when applying for a premises licence or by submitting an application to vary a premises licence to specify an individual as a DPS.

The DPS will act as primary contact for the licensing authority and the responsible authorities, including the police. They must understand the social issues and potential problems associated with the sale of alcohol, and also have a good understanding of the business itself. While they need not be on

site at all times, they are expected to be involved enough with the business to be able to act as its representative.

If the licensing authority or police have any questions or concerns about the business, they will expect to be able to reach the DPS.

Each business may have only one supervisor selected for this role, but the same person may act as the designated supervisor at more than one business.

The Act requires the DPS and all personal licence holders take responsibility for the sale and supply of alcohol. This is because of the impact alcohol has on the wider community, on crime and disorder, and antisocial behaviour. Because of these issues, selling alcohol carries greater responsibility than licensing regulated entertainment and late night sales of food and non-alcoholic drinks.

### **Further Information**

If you need more details about the licensing process or making an application please contact the Licensing Department, Shepway District Council, Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY. Tel: 01303 853000. [licensing@shepway.gov.uk](mailto:licensing@shepway.gov.uk)

Appendix A – Responsible Authorities

Appendix B – Delegation table

Appendix C – Useful addresses

## Appendix A: Responsible Authorities

Below is a list of Responsible Authorities:

- The relevant licensing authority and any other licensing authority in whose area part of the premises are situated
- Chief Officer of Police
- The local Fire & Rescue Authority
- The relevant authority under the Health & Safety at Work Act 1974
- Local authority exercising environmental health functions (EHA)
- The local Planning Authority
- A body that represents those who are responsible for or interested in matters relating to the protection of children from harm (Kent County Council social services)
- Each local authority's Director of Public Health (DPH) in England (Kent public health department)
- The local Weight and Measures Authority (Kent County Council trading standards)

Addresses for these bodies can be found in **Appendix C**



## Appendix B: Exercise and Delegations of Functions

All decisions on licensing matters under the 2003 Act, with the exception of the approval and review of its Statement of Licensing Policy, will be taken in accordance with the following scheme of delegation aimed at underlining the principles of timely, efficient and effective decision-making.

These delegations are without prejudice to Officers referring an application to a Sub-Committee, or a Sub-Committee to Full Committee, if considered appropriate by the Licensing Officer or Sub Committee in the circumstances of any particular case and where permitted by legislation.

<b>Matter to be dealt with</b>	<b>Sub Committee</b>	<b>Officers</b>
Application for grant licence	If Police representation made	If no representation made
Decision whether to revoke personal licence when convictions come to light after grant	All cases	
Application for personal licence with unspent convictions	All cases	
Application for premises licence/club premises certificate	If representation made	If no representation made
Application for provisional statement	If representation made	If no representation made
Application to vary premises licence/club premises certificate	If representation made	If no representation made
Application to vary designated premises supervisor	If Police representation made	All other cases
Request to be removed as designated premises supervisor		All cases
Application to transfer premises licences	If Police representation made	All other cases
Applications for Interim Authorities	If Police representation made	All other cases

Application to review premises licence/club premises certificate	All cases	
Decision whether a representation is irrelevant, frivolous, vexatious etc		All cases
Decision to object when local authority is a consultee and not the lead authority	All cases	
Determination of a police representation to a temporary event notice	All cases	
Determination of application for the alternative licence condition to be included in the licence instead of the conditions in section 19(2) and (3))	If police representation made	<i>If no police objection is made</i>
Determination of application by community premises to disapply the mandatory conditions for alcohol on a premises	If police representation made	<i>If no police objection is made</i>
Determination of application for a review: supply of alcohol from community premises	If police representation made	
Determination of application for expedited reviews	If police representation made	
Determination of application for Interim steps	If police representation made	
Determination of application for a review of premises licence following review notice	If police representation made	

Application for a Minor Variation of a Premises Licence		<i>All cases including if representation is made</i>
Application for a Minor Variation of a Club Premises Certificate		<i>All cases including if representation is made</i>

## Appendix C: Useful Addresses

Licensing Team  
Shepway District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent CT20 2QY  
01303-853526 / 853407  
[licensing@shepway.gov.uk](mailto:licensing@shepway.gov.uk)

### Responsible Authorities

#### **Police**

Police Licensing (East Division)  
CSU  
Canterbury Police Station,  
Old Dover Road,  
Canterbury  
Kent CT1 3JQ  
01622 690690

#### **Environmental Health**

(Health & Safety)  
Mr A Atkins  
Environmental Health  
Shepway District Council, Civic  
Centre, Castle Hill Avenue,  
Folkestone, Kent  
CT20 2QY  
01303-850388

(Noise Pollution)

Mrs S Hogben,  
Environmental Health  
Shepway District Council, Civic  
Centre, Castle Hill Avenue,  
Folkestone, Kent  
CT20 2QY  
01303-850388

#### **Social Services**

Kent County Council - Social  
Services  
Queens House, Guildhall Street,  
Folkestone, Kent CT20 1DX  
01303-253476

#### **Fire**

Fire Safety Officer  
Folkestone Fire Station  
Park Farm Road  
Folkestone  
Kent CT19 5DH  
01303-227201

#### **Planning Control**

Planning  
Shepway District Council, Civic  
Centre, Castle Hill Avenue,  
Folkestone, Kent  
CT20 2QY  
01303-850388

#### **Trading Standards**

Kent County Council, Trading  
Standards, Invicta House, County  
Hall, Maidstone, Kent ME14 1XX  
01622-221012

#### **Primary Health Care Trust**

Kent Public Health  
Room 1. 60 Sessions House,  
County Hall, Maidstone Kent ME14  
1XQ  
01622 694175

