

# Shepway District Council

Licensing Policy Statement

Licensing Act 2003

XXXX 2018



**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 guidance (revised guidance 13 July 2017) issued under Section 182 of the Act (“the Guidance”). This policy will take effect on XXX 2018 and will remain in force for a period of not more than 5 years, during which time it will be kept under review.

Ben Geering MRTPI  
Head of Planning  
Planning & Communities  
January 2018

## 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 XXXX 2018.

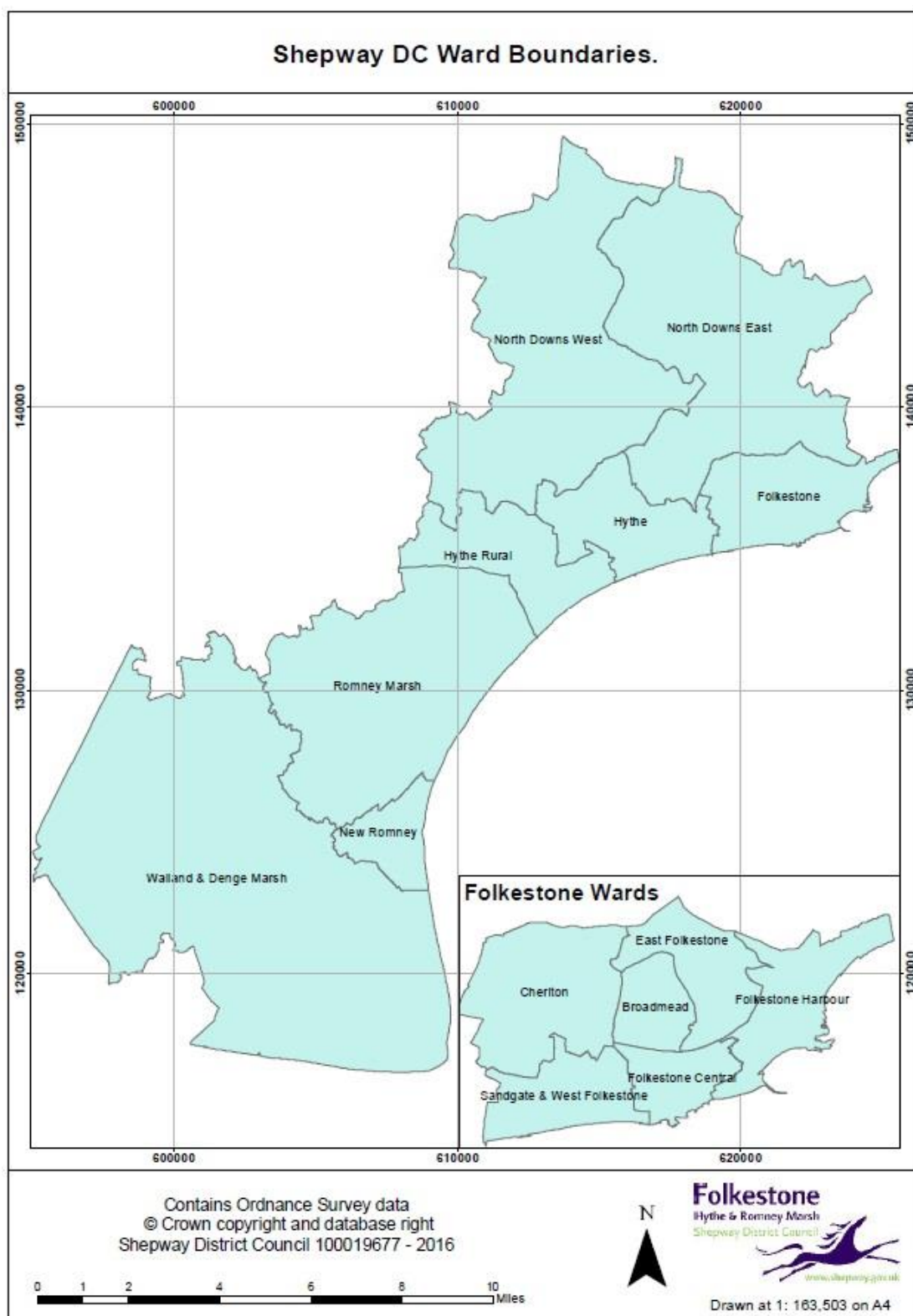
Further details on the requirements that need to be met can be obtained from the licensing authority.

## 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, **North Downs area** 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 **588** licensed premises in the District, of which **545** hold premises licences and **43** 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 **1,605** 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 1,000 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
- 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 event notices (both standard and late TENs – see Appendix H).



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 **into** 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, **this Policy and the Guidance issued under Section 182 of the Licensing Act 2003**, 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, **in particular the Code of Conduct at Appendix D**. 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 **to prevent an adverse impact for the community as a whole.**

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 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 **hours**/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 Kent Police, 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. **However, the licensing authority strongly encourages applicants to resolve any planning**

issues before any licensing application is made. The licensing sub-committee will consider an application on its individual merits but may adjourn an application in order to avoid anomalies in the decisions of the two regimes, eg different opening hours.

### **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.

The licensing authority has adopted the principles of the government's enforcement guidance designed to ensure effective and efficient public

protection services. Specifically, the licensing authority is committed to accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.

Enforcement is based on the principles that licence holders / businesses should:

- receive clear explanations from an enforcement authority of the steps they need to take and the period for compliance
- have opportunities to resolve matters before enforcement action is taken - unless immediate action is needed
- receive an explanation of their rights of appeal.

The licensing authority will work closely with partners to assist licence holders to comply with the law and the four licensing objectives it seeks to promote. Proportionate but firm action will be taken against those who breach the conditions of their licence or break the law.

The licensing authority has set clear standards of service and performance that the public and businesses can expect. The policy explains how the licensing authority will undertake its enforcement role effectively and fairly.

The licensing authority's corporate complaints procedures, (comments, complaints and compliments), are available from website: [licensing@shepway.gov.uk](mailto:licensing@shepway.gov.uk)

The licensing authority will also carry out regular monitoring visits in and around licensed premises.

See appendix J for the enforcement actions/options.

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 change and evidence supports this course of action.

No area of the District is currently covered by a special policy on cumulative impact. The council does not have a special policy as there is no evidential basis for such a policy taking into account the seven sources detailed in the statutory guidance. However, if an issue is identified requiring a special policy in the future, the matter can be revisited by the council at any time.

The absence of a special saturation policy does not prevent any responsible authority or other person making evidence based relevant representations on an application for the grant/variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

### **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 Policy applies to all types of premises licences and club premises certificates. It should be noted that the operating schedules must specify both the hours in which premises are open to customers and the hours when licensable activities are taking place.

In its revised guidance, the government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas and that licensing authorities are best placed to make decisions regarding licensing opening hours as part of the implementation of its licensing policy statement.

### **Core fixed hours**

This policy does not apply retrospectively and therefore premises with the benefit of hours outside the core hours will continue to operate in the same fashion. However, there is nothing to prevent the Licensing Sub-committee, on a review application, to consider the operating hours afresh if the business, club etc is having an adverse impact on the licensing objectives.

## **Residential areas, non-residential and mixed residential / non-residential areas**

The licensing authority considers that set fixed hours in residential and non-residential areas will promote the licensing objectives and in particular prevent of public nuisance.

It is the intention to generally grant licences or variations to licences where the hours when customers are permitted to be on the premises are within the 'core hours' as set out. This is not a policy to refuse applications for hours longer than the core hours and consideration will be given to the individual merits of each application.

Where an application is made to operate outside the core hours each application will be considered on its individual merits against the criteria as set out in paragraph below.

The licensing authority expects applicants to consider how people using the premises are to depart from the premises and from the area and make reference to it in their operating schedule. As part of applications for premises that intend to operate after midnight, operating schedules should include particular consideration to the availability of transport after the bus and train services cease operation.

(i) Applications for hours within the core hours set out below in this Policy will generally be granted, subject to not being contrary to other elements in the Policy.

(ii) Applications for hours outside the core hours set out below in this Policy will be considered on their individual merits, subject to other relevant policies and with particular regard to the following:

- a) the demonstration of the promotion of the licensing objectives, in particular, prevention of crime and disorder, public safety and prevention of public nuisance associated with the likelihood of the effect of the grant of a licence for later or earlier hours on those objectives
- b) whether there is residential accommodation in the proximity of the premises that would be likely to be adversely affected by premises being open or carrying out operations at the hours proposed
- c) the proposed hours of the licensable activities and when customers will be permitted to remain on the premises
- d) the proposed hours when any music, including incidental music, will be played
- e) the hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises
- f) the existing hours of licensable activities and the past operation of the premises (if any) and hours of licensable premises in the vicinity

- g) whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night
- h) the capacity of the premises
- i) the type of use: recognising that premises that sell alcohol, play music for dancing, provide fast food, are more likely to be associated with crime and disorder and public nuisance than restaurants, theatres, cinemas, other performance venues or qualifying clubs
- j) the licensing authority will take into account the active measures proposed for a 'winding down' period including arrangements for people to be collected from the premises to travel home safely
- k) conditions on hours may be attached that require that the supply of alcohol for consumption on the premises ceases a suitable period of time before customers are required to leave the premises
- l) the licensing authority may reduce hours if, after review, it is necessary to impose conditions specifying shorter hours in order to promote the licensing objectives
- m) specific days for non-standard hours should be identified and justified as part of the application to allow responsible authorities and other persons to evaluate the impact that these licensable activities may have, and to plan accordingly. The consideration of applications for later hours for bank holiday Mondays will take into account that later hours are generally granted for preceding Sundays and that the next day is a working day. Non-specific days are expected to be covered by TENs or variation applications.

**Core opening hours** when customers are permitted to be on the premises in **residential and residential/non-residential areas**; this includes 30 minutes 'drinking up' time:

For premises for the supply of alcohol for consumption on the premises:

- Monday to Sunday: 10:00 - 23:30

For premises for the supply of alcohol for consumption off the premises:

- Monday to Saturday: 08:00 to 23:00
- Sundays: 10:00 to 22:30

For premises for the provision of other licensable activities:

- Monday to Sunday: 09:00 - 23.30

**Core opening hours** when customers are permitted to be on the premises in **non-residential areas**; this includes 30 minutes 'drinking up' time:

For premises for the supply of alcohol for consumption on the premises:

- Monday to Thursday and Sunday: 10:00 - 23:30
- Friday, Saturday 10:00 – 01:00
- Sunday prior to a bank holiday Monday 10:00 – 01:00

For premises for the supply of alcohol for consumption off the premises:

- Monday to Saturday: 08:00 to 23:00
- Sundays: 10:00 to 22:30

For premises for the provision of other licensable activities:

- Monday to Thursday and Sunday: 10:00 - 23:30
- Friday, Saturday 10:00 – 01:00
- Sunday prior to a bank holiday Monday 10:00 – 01:00.

Applicants are expected to comply with paragraphs 8.39 and 8.40 of the revised guidance to:

- (a) ensure that they obtained sufficient information in respect of the layout of the local area and physical environment to promote the licensing objectives and
- (b) determine the category of area that the premises is situated in, ie residential or non-residential or residential/non-residential as this will provide guidance as to which core hours should be applied.

If there is any dispute as to the category of area, this will be determined by the Licensing Sub-committee if an application requires a hearing. Reasons for the licensing authority's category determination will be included in the facts and reasons provided in support of the overall decision.

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, **especially if the licensing authority departs from its policy in respect of core hours**. 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.

### **Justification and reasons for core hours Policy**

Shepway district has a large number of licensed premises, particularly located within Folkestone in close proximity to residential properties or within mixed residential and non-residential areas. There is extensive late-night opening and a range of closing hours throughout the night, which often leads to groups of people moving between premises, late at night within residential areas. There is significant number of licensed premises in the area which operate after midnight. Often these premises are located within more historic parts of the town, within the Leas and Bayle Conservation Area whereby properties have single glazing and close interaction with the street.

Many of these premises obtained these hours through the process of conversion of licences during the transition period and continue to provide a variety of later operating times.

Since 2005, when the significant majority of premises closed at 22:30 there has been a constant increase in the number of businesses and facilities with a premises licence. The current position has been reached through a continual creeping extension to the night-time economy geographically, the number of premises and duration of the licensable activities, eg premises regularly extending the opening hours with a piece-meal strategy of applying for an extra 30 – 60 minutes every 12 – 18 months.

The number of residents in Folkestone town centre has also increased, alongside investment in the housing stock, changes of use of office buildings to residential and regeneration of the old town Creative Quarter. The council has received significantly more complaints and representations that the occupants of properties within the town centre and surrounding residential area are having their fundamental human rights to (a) quiet enjoyment of their homes and (b) sufficient sleep to ensure that their health and general well-being is not being compromised due to an imbalance between the promotion and development of businesses and those who live and work in the town. The Anti-social Behaviour, Crime and Policing Act 2014 supports these rights as a primary consideration to be made by authorities investigating complaints.

It is the role of the District as Licensing Authority to get the balance right between the licensing trade, residents, the licensing objectives and the availability of TENs to premises licence holder. This is therefore, an appropriate juncture to introduce fixed hours to maintain this balance. Adoption of fixed hours will mean that current premises licence holders will continue to operate in exactly the same way where they do so without problems. The fixed hours will only affect new premises licence applications, applications to vary existing licences beyond their current / core hours and those premises subjected to a review application. This adoption of fixed hours will have the added advantage of encouraging all applicants and licence holders to promote the four licensing objectives, the principal objective of the Licensing Act 2003.

The local authority, as do residents, recognise that the vast majority of licence holders operate safe and professional establishments but that problems are caused by groups of people migrating through the town centre and residential areas to different establishments. The minimum adverse interference caused is boisterous and excited behaviour of large numbers of people walking along key routes through and towards the town - these are the main routes used by pedestrians moving between and to / from licensed premises.

More serious anti-social behaviour endured is noise breakout from the premises, shouting, screaming, vomiting, urinating and defecating on private property or within the street.

The limited availability of night time public transport in the town centre means that people (a) remain in the town centre or walk home, often in loud groups or (b) use taxis and private hire vehicles, both of which extend the period and levels of noise.

Evidence submitted at review hearings and objections lodged, confirm that crime and disorder incidents occur in line with the hours premises are open.

In the particular circumstances of the Shepway district with its already extensive late opening, the council welcomes the inclusion in guidance of the government's acknowledgement on the primacy of the licensing authority to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement, and recognising that licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities.

In accordance with the guidance:

- the licensing authority will always consider each application and will not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application
- where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and / or different hours from those requested
- shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

The council does not accept that in the circumstances of the district the granting of generally longer hours would result in a reduction in crime and disorder and public nuisance. It is prepared generally to grant premises licences for hours that will provide for longer hours at the end of the week but that still enable people to travel home relatively easily by train, bus, and taxi, while retaining opportunities for residents to have an additional respite on Sunday. It expects applicants to consider how people using the premises are to depart from the premises and from the area and make reference to it in their operating schedule. As part of applications for premises that intend to operate after midnight, operating schedules should for instance give particular consideration to the limited availability of transport in the early hours of the morning and the impacts of people dispersing from the premises.

Hours later than the core hours will be considered on their merits in relation to other sections of the policy. Folkestone Town Centre has seen considerable investment in recent years, with a growth in the restaurant, micropub and bar sectors and investment within town centre hotels. The Council wishes to see a less alcohol led and a more diverse range and variety of entertainment available later at night, capitalising on existing resources such as the Leas Cliff Hall and Quarterhouse and will allow for greater flexibility to those



premises that add to a more varied offer of entertainment, cultural activity, healthy activities etc. The council wishes to encourage a wider range of people to frequent the venues, both so that they can enjoy what it has to offer and because a wider range of age groups can act to curb anti-social behaviour; in doing this it will further the licensing objectives of prevention of crime and disorder and public nuisance.

The consideration of hours of operation will be in the context of the particular circumstances of each application and the licensing objectives of preventing crime and disorder and public nuisance.

The hours at which noise may occur and disturbance of residents' rest, relaxation and sleep will be of particular concern. In general, the conditions will be framed to ensure that closing hours on nights when residents have to get up for work the next morning are earlier than when it is less likely that they will have to do so.

Activity associated with late night licensed premises may have an impact on the local environment and may cause public nuisance. The effect of noise is greater later at night when ambient noise levels are lower and residents are at home relaxing or wishing to sleep.

The licensing authority in considering the imposition of conditions will focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning, when residents in adjacent properties will want to relax, or sleep.

Conditions relating to noise may also prove necessary to address any disturbance anticipated from the activities of customers in the vicinity of the premises. Applicants should carefully consider the hours that they will wish to operate each licensable activity and when to close their premises for the entry of customers and when to require them to leave. They should consider each licensable activity separately and carefully reflect this in their operating schedules. The licensing authority will similarly consider hours for licensable activities and closing times and appropriate conditions.

The benefits of "winding down" periods (after the last sales of alcoholic drinks, while food and non-alcoholic drinks are still available, when the volume and tempo of music is reduced and the levels of lighting are increased). These are very widely recognised as helping to reduce crime and disorder and public nuisance.

Applicants should consider the benefits of stopping serving alcohol before other licensable activities stop and a suitable time before the premises close and customers must leave. In noise sensitive areas operators should consider stopping playing dance music and to switch to quieter, slower tempo music with a less pronounced beat while other licensable activities continue.

The consumption of alcohol on licensed premises is not directly regulated as a licensable activity under the Act but is clearly relevant in assessing whether the premises promote the licensing objectives. Similarly, the time to which

customers are permitted to remain on licensed premises, and subsequently leave those premises, is also relevant. Notwithstanding that some licence holders, as a matter of good management, may restrict the sale and consumption of alcohol for a period of time before the end of opening hours as part of a “winding down” strategy described above, the licensing authority will, subject to other conditions and restrictions, impose conditions on a licence to restrict the time at which alcohol may be consumed on the premises and / or require that all customers leave the premises by a certain time where it considers it appropriate to do so to promote the licensing objectives.

Applicants are encouraged not to apply for later hours than they will in fact operate; particularly the seeking of 24 hour licences where there is no intention of operating on a 24 hour basis. Responsible authorities and other persons will generally be more likely to make objections the later the hour that licensable activities are proposed to take place.

Premises where regulated entertainment is provided to a seated audience eg cinemas, theatres and concert venues, provide a diverse range of cultural and entertainment facilities and are attended by a wide range of age groups. They generally have little association with crime and disorder or public nuisance; because of this, these types of premises will be given the opportunity to operate more flexibly late at night. Any relevant representations received and the availability of transport will be matters for careful consideration.

In the past qualifying clubs have had little association with crime and disorder or public nuisance. Through their membership requirements, they exert a degree of control over behaviour in and around their premises. Any relevant representations received and the availability of transport will also be matters for careful consideration.

It is recognised that there is likely to be an increase in cultural, business, and tourism opportunities at the later hours but also that these activities may bring associated challenges for residents and public service providers. The council recognises that the scale, diversity and concentration of the night time economy, particularly in town centres is unique and brings cultural and financial benefits to the whole district. The council believes that good management of town centres, and investment in a diverse evening economy, and of the street environment within which it operates, is essential to the continued success of the area, and in attracting a wide range of people who want to work, visit or live in the area.

Statutory licensing policies are key tools in managing the competing pressures that the successful night time economy brings. They have been developed over many years to balance the benefits and impacts that arise for businesses, residents and visitors.

#### Non-standard hours

In order to have conditions that are clear and enforceable the circumstances in which the non-standard hours will apply must be identifiable. This is to give an opportunity for representations to be made in relation to particular events



and in order to provide predictability as to when non-standard hours will apply for the benefit of those who may be affected.

The inclusion of particular national saints' days will have to be considered in relation to the overall number of events. The particular clientele of premises may be a reason to seek non-standard hours for other national days. There should be no expectation of specific non-standard hours for any particular day. Premises not benefiting from exemptions for New Year's Eve must seek it specifically or use a temporary event notice.

### **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 **concern**/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/intervention meeting** to address, clarify and try to resolve the issues of concern.

The mediation process is used to assist applicants and those making representations in respect of new/variation applications to investigate as to

whether agreement can be reached as to hours, conditions, operations etc thereby avoiding hearing. Even if full agreement cannot be achieved, mediation can narrow the issues for consideration by the licensing sub-committee.

Intervention meetings are available as alternative to review proceedings and are arranged and facilitated by the council to assist in a swift resolution of concerns and issues of residents and licence holders. This facility is available in order to avoid unnecessary, expensive and protracted legal process and hearings.

A structured process will allow a person to identify the root cause of any concern and provide the premises licence holder the opportunity to review their operation so that a resolution can be explored.

It is important to note that:

- a) it is a completely voluntary process and any person can withdraw from the process at any time
- b) a person's statutory rights are unaffected and may pursue alternative actions, eg a review hearing application may be lodged.

The intervention meeting form can be found at Appendix E.

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, Supermarkets and Garages**

The licensing authority will normally consider licensing shops, stores, supermarkets and garages to sell alcohol for consumption off the premises within the core hours defined above.

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. **Appendix I provides a summary of activities that are exempt from the requirement of a premises licence or TEN.**

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.

### **Licensing Forum**

**The Licensing Officer will arrange and facilitate a licensing forum for licence holders, residents, responsible authorities, councillors, interested parties or specific issues / groups, eg area member panel matters, to address issues of mutual concern. The aims and objectives will be driven by solely the licensing objectives and a general consensus to support / develop business, culture and the well-being of the residents of the district.**

## 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 **refer to the Code of Conduct (Appendix D) and to carry out a risk assessment (Appendix F)** 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 25 initiative**;
- 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, applicants are encouraged to refer to the Code of Conduct (Appendix D) and to carry out a risk assessment (Appendix F) of their premises by 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 refer to the Code of Conduct (Appendix D) and to carry out a risk assessment (Appendix F) 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 **23:00** and **07:00**;
- 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, **smoking areas** 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 **eg not before 08:00 or after 10:00**), or additional litter (including fly posters and unauthorised placards) in the vicinity of the premises;
- Measures to minimise noxious smells **emitting** 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.

**The council encourages all premises selling / supplying alcohol to operate the Challenge 25 Scheme.**

**When preparing their operating schedules, applicants are encouraged to refer to the Code of Conduct (Appendix D) and to carry out a risk assessment (Appendix F) of their premises by reference to the following items of best practice:**

### **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 **05:00** 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/**local authority 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 (TENs)

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 notices** (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.

Please see Appendix H for a summary of standard and late TENS.

## 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 constitution and club rules**;
- 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 **DPS**. 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 months old showing no relevant convictions.

Where a criminal record check discloses an unspent relevant conviction (see Schedule 4 of the Act) and the police object to the application on crime prevention grounds, the licensing sub-committee will normally refuse such an application unless there are exceptional and compelling circumstances to justify the granting of a licence.

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.**

The Licensing Authority encourages premises licence holders to have as many employees as possible, in addition to the DPS, to obtain a personal licence / personal licence qualification as this raises knowledge, awareness and competences which in turn, promotes the licensing objectives. If a business adopts such an approach, this can be raised as a reason for departing from the Policy when addressing the individual merits of an application.

### 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

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)
- Home Office - Immigration

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.

Matter to be dealt with	Sub Committee	Officers
Application for grant licence	If 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 Application to review	If Police representation made All cases	All other cases

premises licence/club premises certificate		
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	If no police objection is made
Determination of application by community premises to disapply the mandatory conditions for alcohol on a premises	If police representation made	If no police objection is made
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		All cases including if representation is made
Application for a Minor Variation of a Club Premises Certificate		All cases including if representation is made

### **\*Irrelevant, frivolous, vexatious and repetitious representations**

The licensing authority will not consider representations which are irrelevant, made out of time or which are, in the council's opinion, repetitious, frivolous or vexatious.

Representations must be relevant before the licensing authority can consider them.

This means that they must:

- address one or more of the licensing objectives
- be made by a responsible authority or other person
- have some evidential link to the premises in question.

Officers will be delegated with the authority to reject a representation.

## 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

#### Fire

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

#### Environmental Health

##### (Health & Safety)

##### Commercial Team Leader

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

#### Planning Control

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

##### (Noise Pollution)

##### Environmental Protection Team Leader

Environmental Health  
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

#### Social Services

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

#### Primary Health Care Trust

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

**Home Office (Immigration)**  
Alcohol Licensing Team  
Lunar House, 40 Wellesley Road,  
Croydon CR9 2BY

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