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# **Statement of Licensing Policy 2021 - 2026**



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## 1. INTRODUCTION

Folkestone & Hythe District is a coastal district in south eastern England and home to a diverse collection of towns, villages, and environments. Chiefly rural in nature, the district is large and covers approximately 363 sq. km (140 sq. miles). The district stretches from the East Sussex border (near Rye) in the south west, across the low-lying Romney Marsh and through to Folkestone and the escarpment and the hills of the Kent Downs in the north. The settlements and districts of Ashford, Dover and Canterbury adjoin Folkestone & Hythe in eastern Kent. The district has distinctive contrasting rural landscapes and urban environments.

The district occupies a key strategic position between the United Kingdom and mainland Europe via the Channel Tunnel, and the UK's largest and busiest sea port at the end of the M20, and with excellent connectivity with two HS1 railway stations. The location of the district is set out in the map below.



The majority of the district's 113,200 residents live in urban areas (60.6%), with the remaining 39.4% to be found living in rural areas. Approximately 1 in 10 people in the district live in isolated dwellings, hamlets, or small villages (below 1,000 people).

1 (Population Estimates Unit, ONS (Crown Copyright) Data released on 6 May 2020 by the Office for National Statistics) 2 Correct at time of publication

The district has a number of economic strengths, including its good transport links (M20 motorway, High Speed rail links to London, and proximity to the Channel Tunnel), relatively low wage levels and affordable land/building costs relative to the wider South East region, a large working age population and a high quality natural environment. Economic weaknesses include its relative remoteness, relatively low rates of entrepreneurship and few residents with higher skills.

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.

Whilst the Council considers that licensed entertainment provides a valuable contribution towards the local economy, tourism, and cultural development of the district, the Council also recognises that such entertainment can lead to increased noise, nuisance and crime and disorder, if not properly controlled. In Particular, the Council wishes to minimise any negative impact from licensed entertainment on residential households.

## **1.2 Consultation and Review**

In preparing and reviewing this Policy the Council has consulted with a number of different bodies, a list of which can be viewed at Appendix A. The Council extends its thanks to all of those who took the time to make their views known on its proposed statement of licensing policy and the revisions to it.

This Policy takes effect XXX and should remain in force for five years. The Council will keep this Policy under review and continue to work in partnership with the responsible authorities towards the promotion of the Licensing Objectives. If it is necessary to make revisions to this policy as a result of any review, the Council will publish the revised policy.

## **1.3 Licensing Policy Strategy**

Folkestone and Hythe District Council is the Licensing Authority for Folkestone & Hythe District under the Licensing Act 2003 (“the Act”) The Council is responsible for granting: premises licences, club premises certificates, temporary events notices, and personal licences in respect of the sale and/or supply of alcohol and the provision of regulated entertainment and late-night refreshment.

The Licensing Act 2003 requires licensing authorities to publish a ‘Statement of Licensing Policy’ every five years which sets out how they intend to exercise their functions. This statement of policy does not override the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits. Neither does it override a Responsible Authority’s, or other person’s, right to make a representation in relation to an application for a licence and to have that representation considered on its merits. The discretion of the Licensing Authority in relation to applications is only engaged if relevant representations are made.

The Policy covers regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Nothing in this Policy will prevent a person applying for a variety of permissions under the Act.

The Policy covers the following licensable activities:

- retail sales of alcohol
- supply of alcohol by or on behalf of a club
- provision of 'regulated entertainment', to the public, to club members or with a view to profit
- provision of late-night refreshment (hot food and drink at any time between 23.00 p.m. and 05.00 a.m. for consumption on or off the premises)
- a performance of a play
- an exhibition of a film
- an indoor sporting event before 08:00am or after 23:00pm or to more than 1000 spectators
- boxing or wrestling entertainment
- performance of live music on an unlicensed premises or on a licensed premises before 08.00 or after 23.00 or to more than 500 people
- any playing of recorded music on an unlicensed premises or on a licensed premises 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 Policy has been prepared in accordance with the provisions of the Licensing Act 2003 and the Guidance issued by the Secretary of State. The Licensing Authority must carry out its licensing role with a view to promoting the four licensing objectives:

1. the prevention of crime and disorder
2. public safety
3. the prevention of public nuisance
4. the protection of children from harm.

It is important to note that all objectives have equal importance in the implementation of this Policy.

The Licensing Act 2003 also supports a number of other key aims and purposes which are vitally important and should be principal aims for everyone involved in licensing work and will therefore be integral to the Policy. They include:

1. Protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
2. Giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
3. Recognising the important role which pubs and other licensed premises play in our local communities by minimizing the regulatory burden on business, encouraging innovation, and supporting responsible premises;
4. Providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
5. Encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may impact upon them.

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The Licensing Authority must have regard to these licensing objectives in carrying out its licensing functions under the Licensing Act 2003. They embody concerns that the council acknowledged in exercising its licensing powers under previous legislation.

If the council acting as the Licensing Authority departs from this Guidance, it will give its reasons<sup>1</sup>. It will always consider the merits of each application. It may make exceptions to its own policies where it is appropriate to do so in order to promote the licensing objectives and it will give reasons for doing this. The policies are intended to strike a reasonable balance between different and sometimes competing aims in promoting the licensing objectives.

Regard will be taken to the Protocols appended to the Licensing Policy (Appendix 1), but they are not part of the Policy for the purposes of the formal review process and will be subject to review as and when required or deemed necessary to do so by the Licensing Authority. Updated versions will be available on the Council's website at:

<https://folkestone-hythe.gov.uk/licensing>

This Statement of Licensing Policy does not undermine the right of any individual to apply under the terms of the Act for a variety of permissions and have any such application considered on its individual merits. The way that the council has delegated authority to determine applications is shown at Appendix 1. This Statement of Licensing Policy does not override the right of any person to make representations on an application or seek a review of a licence or certificate, where provision has been made for them to do so in the Licensing Act 2003. See Appendix 1 on reviews of premises licences.

The council as a Licensing Authority only has discretion on whether to grant applications for new premises licences or variations to licences (see Appendix 1), and to impose conditions on granting or varying licences if representations relevant to the licensing objectives are made by "responsible authorities" or by "other persons" (including local residents and businesses) in due time. Otherwise, the Licensing Authority must grant all applications for premises licences.

#### **1.4 Encouraging Diversity and Inclusion**

Folkestone & Hythe Council is committed to creating vibrant communities through our Folkestone Place Plan. This includes achieving equality and inclusion in all that we do, to improve the quality of life and opportunities for all people who live, work, and visit our district.

We want to remain one of the most popular tourist destinations in the UK as well as ensuring our local residents continue to access and take advantage of living in the area. This means we need to hold ourselves, as well as the venues and businesses we licence, to account to ensure that together we continue to promote and offer equal opportunities and inclusive experiences for everyone.

#### **Public Sector Equality Duty**

The council must have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary a Public Authority must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.



- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

### **Using the Licensing Process**

We will use the Licensing Process to ensure both Operators and the Local Authority are compliant in carrying out due regard to public sector equality duty. This includes:

- Determining licensing applications and reviews.
- Making representations as a responsible authority.
- Applying for reviews in appropriate circumstances.
- Defending appeal decisions.

In practice this means that the council through the Licensing Process will identify applicants that do not provide sufficient information on how they are promoting equality and inclusivity and could make a representation to require that the applicant address the issue or explain to members of the Licensing Sub-Committee why they have not done so.

### **Council Commitments**

Over the duration of this statement of licensing policy the council will:

- Ensure that any strategy or policy affecting the licensed industry is always underpinned by the promotion of equality and inclusivity.
- Develop a Supplementary Licensing Document (SLD) and accompanying code of practice for licensed operators on equality and inclusivity with relevant trade bodies, licensed club venues and other key stakeholders.
- Publish progress on these commitments as part of its annual report on compliance with the Equality Duty

### **Your Duty as a Licensed Venue Operator**

Applicants and licensees must make themselves familiar with the law and their responsibilities set out within the Equality Act 2010 and relevant guidance for businesses, which can be found on the [Equality & Human Rights Commission](#) website

The Act makes discrimination against any person (including employees and customers) unlawful.

Section 149 (7) of the Act defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

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Any activity in breach of the Act may be considered an offence and will lead to enforcement by the Equality and Human Rights Commission

## **Our Expectations on Licensed Venues to Promote Equality & Inclusivity**

There is no one size fits all approach to making a venue inclusive, and each operator will need to make an assessment of its own practices and policies. However, the following are common and best practice examples that could be adopted:

- Inclusive and transparent policies (for example admittance policies may clearly stipulate adherence to a dress code and refusal if someone presents as intoxicated; however they must not prevent admittance based on perceived attractiveness, size, or against any of the protected characteristics).
- Robust complaints procedures that make it easy for customers who feel they have been discriminated against to raise their concerns and understand how this will be investigated or managed.
- Accessible venue layouts that make venues welcoming.
- Comprehensive training on equality and inclusion for all staff. It is important that any training is regularly refreshed.

## **2. LICENSING PROCESS**

### **2.1 Making an application**

2.1.1 It is recognised by the Licensing Authority that licensed premises vary considerably in terms of the offer made, size, occupancy, location, clientele etc. Venues may offer alcohol, regulated entertainment or late-night refreshment or any combination of these activities. There is therefore no definitive list of control measures that should be introduced by all premises. Licensed premises will be assessed according to the activities they provide and the individual risks of each premises' activity.

### **2.2 Guidance Documents**

2.2.1 The Licensing Authority has prepared a guidance document and protocols to assist with the application process; these are available at <https://folkestone-hythe.gov.uk/apply-for-a-licence-or-permit>

2.2.2 Applicants should also have regard to government guidance issued under Section 182 of the Licensing Act 2003.

2.2.3 Regard should also be had to Protocol B (Publicity for Licensing Applications) at Appendix 1.

## **2.3 Representations**

2.3.1 There is a prescribed period during which the Licensing Authority can receive a written representation to an application. This is usually 28 days from the date the Licensing Authority receives the application but varies depending on the type of application under consideration. To be considered a Relevant Representation it must relate to one or more of the Licensing Objectives.

2.3.2 “Relevant Representations” can include positive, supportive representations as well as objections.

2.3.3 Regard should be had to Protocols C (Disclosure of Representations) and G (How to Make Representations) at Appendix 1.

## **2.4 Decision Making Process and Licensing Sub Committee**

2.4.1 With certain statutory exceptions (including the approval of this Policy), the powers of the Council under the Licensing Act 2003 must be carried out by a Licensing Committee which comprises at least 10 but not more than 15 councillors, by the Licensing Sub-Committee (3 councillors) or by one or more officers acting under delegated authority. Folkestone & Hythe District Council appoints the members of the Planning & Licensing Committee each year at the Annual Council Meeting. Table 1 (below) sets out how the Licensing Authority has delegated its various licensing functions.

2.4.2 Regard should be had to Protocol H (Delegations and Responsible Authorities) at Appendix 5.

## **2.5 Granting of Licences**

2.5.1 If no Relevant Representations are received then the authorisation will be issued automatically with, in the case of a premises licence or club premises certificate, such conditions attached as are mandatory or are consistent with the operating schedule accompanying the application. The Licensing Authority will have no discretion to refuse the application or to alter or add to the conditions offered through the operating schedule.

2.5.2 Where Relevant Representations are made, the Licensing Authority must hold a hearing before a Licensing Committee or, in the case of Folkestone & Hythe District Council, a sub-committee of the Planning & Licensing Committee who will take the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are:

1. to grant the licence subject to the operating schedule modified to such extent as the (Sub-)Committee considers necessary for the promotion of the licensing objectives, and subject to the relevant mandatory conditions;
2. to exclude from the scope of the licence any of the licensable activities to which the application relates;
3. to refuse to specify a person in the licence as the premises supervisor;
4. to reject the application.

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2.5.3 The Licensing Authority aims to conduct hearings in a manner that is:

- Fair
- Open, Transparent and Accountable
- Designed to treat everyone equally, whatever their status.

In particular hearings will be conducted to ensure that no one is disadvantaged by being unrepresented.

2.5.4 Regard should also be had to Protocol I (Hearings at Licensing Committee) at Appendix 1.

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**Table 1: Delegation of Licensing Functions**

<b>Matter to be dealt with</b>	<b>Sub-Committee</b>	<b>Officers</b>
Application for personal licence	If a police objection	If no objection made
Application for personal licence with unspent Convictions	All cases	
Application for premises licence/club premises certificate	If a relevant representation made	If no relevant representation made
Application for provisional statement	If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate	If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor	If a police objection	All other cases
Request to be removed as designated premises supervisor		All cases
Application for transfer of premises licence	If a police objection	All other cases
Applications for interim authorities	If a police objection	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a representation is irrelevant frivolous vexatious etc.		All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application	All cases	
Determination of an objection to a temporary event notice	All cases	
Determination of application to vary	If a police objection	All other cases

premises licence at community premises to include alternative licence condition.		
Decision whether to consult other responsible authorities on minor variation application		All cases
Determination of minor variation application		All cases
Any other decisions in connection with an application or temporary events notice		All cases
The conduct of any appeal or other legal process arising out of an application or temporary events notice (including the settlement, compromise or further appeal of any such appeal or process)		All cases
Note: Notwithstanding these delegations, an officer may refer a matter to a Licensing Sub-committee or to the Licensing Committee for determination, and a Licensing Sub-committee may refer a matter to the Licensing Committee for determination.		

## 2.6 Events

- 2.6.1 The Council wishes to encourage cultural and community events in the area and is aware of the Secretary of State's Guidance around the licensing of public open spaces. In accordance with the provisions of the Licensing Act 2003, the Council has made applications and been granted premises licences for areas of public land.
- 2.6.2 Persons or organisations wishing to carry on a licensable activity on licensed land are not required to obtain a premises licence or give a temporary event notice themselves but do need the consent of the Council to put on the event. This can help to facilitate events that do require a premises licence, but which would be impractical to arrange, while giving the Council a degree of control over the running of the event. Such persons or organisations may also need to obtain the relevant permission to use the land or premises.
- 2.6.3 The Council has established a Safety Advisory Group (SAG), whose role is to overview events taking place within Folkestone & Hythe to achieve their safe delivery and good management. This applies to events in the Folkestone & Hythe District, whether on Council land or elsewhere. It covers both licensable and non-licensable (for the purposes of the Licensing Act 2003) events.

Folkestone & Hythe District Council's events website contains comprehensive information to assist those organising events and can be viewed via <https://www.folkestone-hythe.gov.uk/events>

## **2.7 Public Spaces Protection Order (PSPOs)**

2.7.1 The Local Authority supports the use of Public Spaces Protection Orders and has made the appropriate Order under Part 4, Section 59 Anti-Social Behaviour Crime & Policing Act 2014.

2.7.2 The Licensing Authority expects licensed premises which operate in areas where the PSPO has been implemented to have measures in place to ensure their customers do not contribute to activities which have or may have a detrimental effect on the quality of life of those in the locality.

## **2.8 Planning and Licensing**

2.8.1 The Policy aims to accord with the vision for the district. The Licensing Authority notes that the Licensing system and the Planning system are separate regimes but accepts that Local Plans and other strategies can also positively shape and attract development to the benefit of local businesses and residents.

2.8.2 Regard should be had to Protocol A (Planning and Licensing) at Appendix 1.

## **2.9 Cumulative Impact Policies**

2.9.1 The cumulative impact of the number, type, and density of premises in particular areas, such as town centres, may lead to them becoming saturated with premises of a certain type making them a focal point for large groups of people together leading to severe or chronic problems of public nuisance, anti- social behaviour or other alcohol related problems. Local crime and related trauma data may be used to map the extent of such problems. The licensing authority may consider publishing a cumulative impact assessment (CIA) to help limit the number of types of licence applications granted in such areas if it is satisfied that it is appropriate to include an approach to cumulative impact in its Licensing Policy Statement. It will take the decision only after it is satisfied that there is evidence to support such a decision.

The effect of adopting a CIA of this kind is to create a rebuttable presumption if relevant representations to that effect are received, that applications for new premises authorisations or club premises certificates or material variations will normally be refused, unless it can be demonstrated that the operation of the premises involved will be unlikely to add to the cumulative impact already being experienced. What constitutes a material variation will depend upon the policy in place and the reasons for the area being designated as suitable for adoption of a special policy.

The Secretary of State's guidance encourages applicants to address the CIA in their Operating Schedules in order to rebut such a presumption. Any CIA will stress that the presumption does not relieve responsible authorities or other persons of the need to make a relevant representation before the local authority may lawfully consider giving effect to its CIA.

The Licensing Authority recognises that many different kinds and styles of premises sell alcohol, serve food, and provide entertainment. It recognises that some applications in a CIA area will be unlikely to add to the problems arising from saturation. Where it can exercise discretion in determining applications in an area where a CIA is in force, that

is, where relevant representations have been received, it will have full regard to the impact different premises may have on the local community.

The Licensing Authority must grant any application in a CIA area subject only to conditions that are consistent with the operating schedule submitted by the applicant if it receives no relevant representation.

The Licensing Authority will keep any cumulative impact assessment policy under review. Cumulative impact assessments were introduced in the 2003 Act by the Policing and Crime Act 2017, with effect from 6 April 2018. The amendments require the Licensing Authority to review the CIA within three years of its publication.

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

The Council has not prepared a cumulative impact assessment policy at this time. However, the Council is considering a Cumulative Impact Assessment in respect of the central area of Folkestone & Hythe. If a cumulative impact policy is deemed appropriate a consultation will be carried out on the cumulative impact assessment and this policy revised if required.

## **2.10 Problem Premises**

### Enforcement

- a. The Licensing Authority will employ officers and authorise them to carry out functions under the Licensing Act 2003 and will use the full range of enforcement actions, including the use of statutory powers if necessary. Where there is evidence to suggest that the licensing objectives are being undermined, enforcement action will be taken in accordance with the principles of better regulation and the Regulators Compliance Code. A more informal approach will be used in less serious cases and partnership working is promoted in order to prevent problems arising.
- b. The Licensing Authority monitors compliance with the licensing objectives through a programme of inspection visits. Proactive visits are made to those premises where concerns have been raised relating to the licensing objectives.
- c. In cases where the Licensing Authority and another enforcement agency both have the power to prosecute, officers of the Licensing Authority will liaise with that other body to avoid inconsistencies with the policies and actions of the other agency and to ensure that any proceedings instituted are for the most appropriate offence.
- d. The Licensing Authority expects that where enforcement action relates to a breach of one or more of the licensing objectives, one of the responsible authorities will consider making an application to the Licensing Authority to review the premises licence.



## Reviews of Licences

- a. The procedure for reviewing premises licences and club premises certificates represents a key protection for the community where there is evidence to show that a specific concern exists relating to one or more of the licensing objectives.
- b. The Licensing Authority expects responsible authorities and other parties to give early notice to licence holders of any concerns about problems identified at premises and of the need for improvement. It is expected that requests for a review of any licence will be sought only if such notice has failed to resolve the matter or problem.
- c. Representations must be made in writing and must be relevant, and not vexatious, repetitious, or frivolous. The Licensing Authority will arrange a hearing in accordance with the regulations.
- d. The possible outcomes of a review hearing are:
  - To take no action;
  - To modify the conditions of the licence (including altering or omitting a condition or adding a new condition);
  - To exclude a licensable activity from the scope of the licence;
  - To remove the designated premises supervisor;
  - To suspend the licence for a period not exceeding three months; or
  - To revoke the licence

## **3 FOLKESTONE SPECIFIC POLICIES**

### **3.1 Good Practice for Licensed Premises**

3.1.1 The Licensing authority encourages all persons to have regard to the document entitled “Good Practice for Licensed Premises” at Appendix 1.

### **3.2 Creating the Future of Folkestone**

[Folkestone’s Place Plan](#) is a key planning document which sets out the shared vision and proposes where future development is to be permitted, what land should be protected and how places should develop.

#### **Key Message**

The Licensing Authority wishes to encourage applications for creative and cultural venues which do not adversely impact upon the licensing objectives by not encouraging applications for premises that offer predominantly vertical drinking to maintain the balance of development. If applications are made, they must demonstrate how the licensing objectives are to be promoted.

### 3.3 Licensing Hours

3.3.1 Each application for a premises license needs to be considered on its own merits and legally cannot be pre-determined against a fixed criteria.

The Council wants to ensure that licensing hours do not inhibit the development of thriving and safe evening and night time local economies. This provides a greater choice and flexibility; there should always be a balance against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet.

The Council recognises that fixed or artificially early closing times in certain cases can lead to peaks of disorder and disturbance on the streets when large numbers of people tend to leave licensed premises at the same time. Staggered dispersal of customers is an important factor in reducing friction at late night food outlets, taxi ranks and other sources of transport in the area concerned.

The Council does have recommended advisory hours that we would expect applicants to aim towards for their type of business. If later hours are applied for then we would expect further detail and an even more robust emphasis on how their Operating Plan will mitigate any public nuisance or crime and disorder.

Below is a table of our recommended hours:

Type of business	Recommended closing time
Cafe	22:00
Restaurant	23:00
Pub	23:30
Nightclub	02:00

In general, the Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. The Licensing Authority may not restrict opening hours unless it receives valid representations by Responsible Authorities and/or other persons. If such representations are received it may consider restricting hours or imposing suitable conditions in cases where licensed premises are situated in largely residential areas, where the trading hours of the premises and competing businesses in the vicinity are likely to lead to undue pressure on the public transport system, or additional public nuisance, disorder, and antisocial behaviour, or where the licensed premises include outside areas.

#### 3.3.2 Early Morning Restriction Orders (EMROs)

An EMRO is a powerful tool which will prevent licensed premises in the area to which the EMRO relates from supplying alcohol during the times at which the EMRO applies. The licensing authority may consider whether other measures may address the problems that they have identified as the basis for introducing an EMRO.

- a. The Police Reform and Social Responsibility Act enables licensing authorities to restrict the sale of alcohol in the whole or a part of their area for any specified time between 12 midnight and 6 am through the application of an Early Morning Restriction Order. The Council recognises that this may be a useful tool to help address specific, alcohol related problems in local communities,

particularly where it is difficult to attribute the cause of the associated problems to any particular premises. This could be particularly relevant where there is a concentration of late-night activity in one area.

- b. By virtue of section 7 of the act, the function of making, and varying or revoking, an early morning restriction order, or any matter relating to the discharge of such function, is not the responsibility of the licensing committee and under current law must be decided by the full Council.
- c. Folkestone & Hythe District Council does not currently consider that there is a need for an EMRO in the District.

### **3.4 Shops Selling Alcohol (Off Licences)**

3.4.1 There has been a continuing trend towards more alcohol being purchased from shops and consumed at home and less being purchased and consumed in traditional pubs, restaurants and night clubs than used to be the case in the past. There is also a growing practice of “pre-loading” before going out to licensed establishments. This change has the potential to create specific problems and detriment to the licensing objectives. These include ease of access to alcohol by children, ease of thefts, encouragement of street drinking, and increase of crime and disorder and public nuisance. There are a number of ways in which Licensees and ultimately the Licensing Authority can address these concerns.

#### **3.4.2 Layout and Operation of Premises**

- a. In most cases, the Applicant will be able to address the potential problems and detriment to the licensing objectives, through the layout and the operation of the premises. The Applicant should set out the steps which it is proposed to take to promote the licensing objectives in the Operating Schedule.
- b. It is for the Applicant to determine what steps should be taken. It is also the case that the appropriate steps will differ according to the size and nature of the premises; what might be appropriate for a large supermarket may not be appropriate for a small local shop. Subject to those qualifications, steps may include:
  - Security / CCTV. The Applicant should identify in the Operating Schedule what systems of security, supervision by staff, and/or CCTV will be in place to promote the licensing objectives.
  - Display Area. The Applicant may identify in the Operating Schedule a fixed specified area in which alcohol will be displayed. If so, a plan should be attached to the Operating Schedule identifying that area. If the Applicant wants to be able to move the fixed specified area, the operating schedule should specify the parameters for any changes. If the Applicant wishes to provide additional displays for special occasions (e.g. Christmas/New Year (1 November to 31 January), Easter (3 weeks before Easter Monday to 1 week after), the Operating Schedule should identify the special occasions and the nature of the likely changes.

- c. In the Licensing Authority's Opinion:
- Displays should not be located in aisles which interfere with customer flow;
  - Displays should not be located at or near check-outs.
- d. Segregated Areas for the Display and Sale of Alcohol. The Applicant may identify in the Operating Schedule a fixed segregated area of the premises in which alcohol will be displayed and/or sold. If so, a plan should be attached to the Operating Schedule identifying that area. The Operating Schedule should identify how the segregated area will be constructed, whether and if so, how access will be controlled, and how the segregated area will operate.
- e. Sales over the Counter/No Self-Service. If the Applicant intends that all displays of alcohol will be behind a counter, that there will be no self-service and all sales will be conducted by staff and alcohol handed to customers by staff, the Applicant should identify how the system will operate in the Operating Schedule. A plan should be attached to the Operating Schedule identifying the particular parts of the premises that will be used

#### Conditions and Review

- f. It is for the Applicant to explain how the licensing objectives will be promoted. Set out above are suggestions that the Applicant may wish to consider. Any proposals should be included in the Operating Schedule together with an appropriate plan. The Licensing Authority will consider what conditions should be imposed as are consistent with the Operating Schedule.
- g. If there are relevant representations, there will usually be a Hearing. Having regard to those representations, the Licensing Authority may impose conditions as are consistent with the Operating Schedule modified to such extent as the Licensing Authority considers appropriate for the promotion of the licensing objectives. Set out above are examples of matters which the Licensing Authority may consider.
- h. If it becomes apparent that the licensed hours and/or the layout or operation of the premises are having a negative impact on the licensing objectives, it is possible that a responsible authority or any other person may apply for a review of the licence. Thefts of alcohol or issues identified through the alcohol watch scheme (or similar) may also prompt a review. After a hearing, it is possible that the Licensing Authority may modify the conditions of the licence to restrict the hours or impose conditions to ensure matters such as those set out above are addressed, if it considers it appropriate for the promotion of the licensing objectives.

### **3.5 Petrol and Service Stations**

- 3.5.1 Under section 176 of the Licensing Act 2003, no premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises. "Excluded premises" means a motorway or

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trunk road service area or premises used primarily as a garage or which form part of premises which are primarily so used.

- 3.5.2 The Licensing Authority may require information from the applicant regarding the primary use of the premises prior to the hearing. Trading figures can be used to determine the issue of primary use.

### **3.6 Temporary Event Notices**

- 3.6.1 The Licensing Act 2003 enables certain organised events for less than 500 people to take place following notification to the Licensing Authority, the Police and Environmental Health.
- 3.6.2 Guidance on giving Notice can be found in the Home Office Fact Sheet which is available at [Folkestone & Hythe Guidance to applying for a Temporary Events Notice](#).
- 3.6.3 Although the statutory legal minimum time required for the notification of a temporary event to the Licensing Authority, Police and Environmental Health is 10 working days, or 5 working days for a late temporary event, it is essential that proper consideration of the proposed event is given. Statutory guidance allows the Licensing Authority to publicise its preferred timescale for notification.
- 3.6.4 The Licensing Authority will encourage bona fide community events. Applications for TENS at existing licensed premises will not be encouraged where the proposal is simply to extend the existing hours of operation and applications made in cumulative impact areas will be subject to increased scrutiny.
- 3.6.5 The Licensing Authority expects those who have given notice of a temporary event to have identified the particular issues having regard to their type of premises and/or activities, and to have in place written policies for addressing issues such as drunkenness, crime/disorder, and drugs on their premises and for ensuring staff are trained on these policies. "Good practice Guidance for Licensed Premises" contains guidance on promoting the licensing objectives including potential risks and possible solutions for the different types of licensable activities.

#### **Key Message:**

Where events qualify for a temporary Event Notice, applicants are encouraged to submit notifications at least 4 weeks but not more than 12 weeks before an event where an existing premises licence is in operation. For applications where there is not a current premises licence, for example community events, at least 15 working days in advance of the event would be encouraged to allow for proper consideration of the event.

### **3.7 The Operating Schedule**

- 3.7.1 Persons who run premises providing 'alcohol delivery services' should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, should contact their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.

3.7.2 Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises.

3.7.3 The Licensing Authority seeks to encourage the highest standards of management in licensed premises and expects the licence holder to continue to manage their premises in accordance with their operating schedule. For further guidance please refer to Appendix 2: Management of Premises.

**Key Message:**

The Licensing Authority expects all applicants for the grant or variation of a premises licence or club premises certificate to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained, to promote the four licensing objectives on and in the immediate area of their premises.

### **3.8 Folkestone & Hythe Licensing Forum**

Folkestone & Hythe District will establish a Licensing Forum within key areas of the district which allows for a platform of communication between key stakeholders, allowing for a structured environment for collaborative working, best practise and shares community challenges between business, residents, police, and local authorities.

The Licensing Forum will meet on a monthly basis and will minute actions which will be displayed within the public domain. Folkestone & Hythe District Council will facilitate and administer the meeting with an elected Chairperson from the key stakeholder group.

### **3.9 Irresponsible Drinks Promotions and Drunkenness on Premises**

3.9.1 We know that low cost alcohol sold in on and off trade premises increases alcohol consumption which can lead to crime and disorder issues. The Licensing Authority through this policy would like to encourage the responsible consumption of alcohol and where there is evidence that the licensing objectives are being compromised or are likely to be compromised, the Licensing Authority will consider imposing controls on drinks promotions to deal with localised problems. These controls could include restricting the sale of super strength beer, lager and cider, or the requirement to charge a minimum cost per drink as part of a package of measures to deal with problems.

3.9.2 Binge drinking is defined by the NHS and National Office of Statistics as drinking more than double the daily unit guidelines for alcohol in one session. Binge drinking for men, therefore, is drinking more than 8 units of alcohol – or about three pints of strong beer, and for women, it's drinking more than 6 units of alcohol, equivalent to two large glasses of wine.

Binge drinking can lead to drunkenness on the premises or in the vicinity and can be encouraged through irresponsible drinks promotions such as encouraging people to consume more alcohol than planned or to consume more alcohol in a short space of

time. A responsible approach to drinks promotions and compliance with the spirit of the mandatory conditions on irresponsible drinks promotions can prevent customers from getting drunk.

In addition to the mandatory conditions which prevent drinking games and large quantities of alcohol for free or at a fixed or discounted price, the Licensing Authority would like to encourage a voluntary code of good practice in relation to drinks promotions.

The Licensing Authority would like to discourage all licensed premises to promote irresponsible drinking promotions. Examples of irresponsible drinks promotions can be found in Appendix 1.

## **4. Management of Premises**

### **4.1 Designated Premises Supervisor**

4.1.1 Any premises where alcohol is sold under a premises licence must have a designated premises supervisor (DPS). The DPS will be named in the premises licence, a summary of which must be displayed on the premises. A DPS must be a personal licence holder. Every sale of alcohol must be made or authorised by a person who holds a personal licence (or must be made or authorised by the management committee in the case of community premises).

4.1.2 The Licensing Act 2003 does not require a DPS or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the DPS and the premises licence holder remain responsible for the premises at all times.

4.1.3 The Licensing Authority will normally expect the DPS to have been given the day-to-day responsibility for running the premises and as such it is expected that the DPS would usually be present at the licensed premises on a regular basis. The Authority expects that this will be in excess of 50% of a 7-day week.

4.1.5 Within all licensed premises, whether or not alcohol is to be sold, the Licensing Authority will expect there to be proper management arrangements in place which will ensure that there is an appropriate number of responsible, trained/instructed persons at the premises to ensure the proper management of the premises and of the activities taking place, as well as adherence to all statutory duties and the terms and conditions of the premises' licence.

### **4.2 Licensed Door Supervisors**

4.2.1 Premises licence holders and DPS's should ensure that their premises do not increase the fear of crime in their locality. To this end they should ensure, so far as is possible, that customers do not cause nuisance or disorder outside the premises and that measures to ensure the safety of customers and prevention of nuisance are in place. SIA Licensed Door Supervisors have an important role in managing customers, not only on the doors but also in the immediate area of their premises. Whilst they will not be appropriate at all licensed premises, where premises have a particularly late closing time with a large capacity, it is expected that these premises pay due consideration to obtaining SIA Door Supervisors, in particular at weekends, which are likely to be the busiest nights.

### **4.3 Dispersal Policy**

4.3.1 The Licensing Authority accepts that licensed premises can have a diffuse impact. People can cause disturbance when returning to residential areas from later opening premises elsewhere and people who use off-licences may locate to a remote spot to drink. These problems are not within the control of any particular licensed premises and are not within the scope of the Licensing Act 2003. However, premises licence holders are expected to take measures to encourage people to leave their premises quietly and considerately. The Licensing Authority would encourage premises to adopt a dispersal policy where appropriate.

For further guidance on Management of Premises please refer to Appendix 2.

### **4.4 Risk Assessments**

4.4.1 The Licensing Authority will expect that appropriate and satisfactory general and technical risk assessments, management procedures and documentation have been made available to the relevant responsible authority and to the Licensing Authority, that demonstrate that the public will be safe within and in the vicinity of the premises.

4.4.2 As a minimum the following matters must be taken into consideration:

- Whether the premises already have a licence which specifies the maximum number of people that can be present and, whether a risk assessment has been undertaken as to the maximum number of people who can be present in various parts of the premises, so that they can be operated safely and can be evacuated safely in the event of an emergency.
- Whether there are procedures in place to record and limit the number of people on the premises with opportunities for “pass outs” and readmission.
- Whether patrons can arrive at and depart from the premises safely.
- Whether there may be overcrowding in particular parts of the premises;
- Whether music and dance venues and performance venues will use equipment or special effects that may affect public safety (e.g. moving equipment, vehicles, pyrotechnics, strobe lights, smoke machines).
- Whether there are defined responsibilities and procedures for medical and other emergencies and for calling the emergency services.

Full Risk Assessment Template can be found under Appendix 7.

### **4.5 Promoters**

4.5.1 Licence holders, DPS's and Personal Licence Holders remain responsible for activities taking place on premises when promotions take place. Action will be taken against Licence Holders and all other persons responsible for the management and operation of the premises in the event that it is required whether or not the event in question has been “promoted” and run by another person. In addition the Licensing Authority will expect Premises Licence Holders to have in place written agreements to ensure that when hiring out venues to promoters, the responsibility for the management of the premises is clear. The promoter and its employees or agents shall comply in all respects



with all conditions, requirements and regulations of the local authority, Licensing Authority, police authority and fire authority and have regard to the “Good practice for Licensed Premises”.

4.5.2 Regard should be had to Protocol F (Promotions) at Appendix 1.

## **4.6 Takeaway Food Premises**

5.6.2 It is recognised that takeaway premises open late at night can be associated with disorder as persons under the influence of alcohol having left, or in some cases being ejected from, late night venues congregate there. Applicants are recommended to have written policies for dealing with disorder and nuisance and should give consideration to the issues regarding takeaways in the Good Practice Guide.

5.6.3 Operators of takeaway premises (including mobile units) must have suitable arrangements in place for the containment and disposal of their waste in accordance with the Environmental Protection Act 1990 and subsidiary regulations. Operators of premises where food or drink is provided in disposable containers for consumption elsewhere than on the premises are expected to consider the potential for litter near their premises and take steps to actively reduce the amount of litter generated from their premises. Applicants are also asked to consider the type of packaging container, whether it is always necessary and whether it can be sourced from sustainable materials.

4.6.4 Where the Licensing Authority considers it appropriate and necessary, it may impose conditions on a premises licence to require the operators of premises serving customers with hot food or drink to provide litter bins in the vicinity of the premises in order to prevent the accumulation of litter from its customers. It may require the proprietor to service those litter bins as part of their own waste management arrangements.

## **4.7 Pavement Cafes and External Areas**

4.7.1 The introduction of the “smoke free public places” law led to an increase in the number of people outside licensed premises. The provision of tables and chairs outside premises can enhance the attractiveness of a venue, but regard should be had to the need to ensure that the use of such areas will not cause nuisance to the occupiers of other premises in the vicinity. In particular, those with authorisations are expected to manage persons smoking in the vicinity of premises so they do not impede access to the premises and do not cause disturbance. In addition they are expected to provide ash trays or wall mounted cigarette bins for patrons so as to minimise litter.

4.7.2 Licensees should also be aware of the possibility of breakages of drinking glasses and glass bottles in outside areas. Consideration should therefore be given to the use of toughened or ‘plastic’ drinking vessels and other management controls to avoid or lessen the likelihood of broken glass in these areas.

4.7.3 The Licensing Authority has a number of concerns with respect to the development of external areas to licensed premises and will consider imposing conditions to improve the management of the outside area or prohibiting or restricting the use of these areas in order to promote the public nuisance objective.

4.7.4 Specific guidance for the operation of 'pavement cafes' is available from the council website or on request from the Licensing Authority, it is likely that the premises will need to apply for a Pavement Licence or Tables & Chairs permit unless the land is privately owned.

## **4.9 Promotion and Advertising**

4.9.1 [The Environmental Protection Act 1990](#) (as amended by the [Clean Neighbourhoods & Environment Act 2005](#)) allows the Council to designate Council-owned land and highways as an area where the distribution of free printed matter is permitted only with the prior consent of the Council. The purpose of this legislation is to help control the litter problem created by the distribution of free printed matter, which is often quickly discarded by persons to whom it is given. The offence of leaving litter is also addressed in the Environmental Protection Act 1990.

4.9.5 Licence holders must ensure that they do not engage in or commission fly-posting. Licence holders which are found in breach of the advertising regulations under the [Town and Country Planning Act 1990](#), or the [Highways Act 1980](#) will be dealt with under the applicable legislation (i.e. removal of the advert and/or prosecution of the person who displayed the advert and/or the beneficiary).

Further guidance on fly posting can be access via [Folkestone & Hythe/Fly-posting](#)

## **4.10 Nudity and Striptease**

4.10.1 Not all establishments where there are displays of nudity will fall under the definition of "Sexual Entertainment Venue" for the purposes of [Schedule 3](#) Local Government (Miscellaneous Provisions) Act 1982 and in respect of which a separate Licence may be required.

4.10.2 Applicants for premises licences or club premises certificates under the Licensing Act 2003 must state in the application form whether any adult entertainment may be provided which may give rise to concern in respect of children. If such entertainment is to be provided, the Licensing Authority will expect the applicant to have given particular consideration to the promotion of the licensing objectives in relation to the protection of children from harm and the prevention of crime and disorder.

## **4.11 Films**

4.11.1 The Licensing Authority expects licence and certificate holders and those who have given notice of a temporary event and who wish to show any film classified by the BBFC as R18 (or which would otherwise fall within that category) and in doing so satisfy the definition of a Sex Cinema as set out in the Local Government (Miscellaneous Provisions) Act 1982, to also have a [Sex Cinema Licence issued under the provisions of the 1982 Act](#).

For further guidance on classifying films please access [Folkestone & Hythe's Film Classification Policy](#).

## **4.12 Children and Licensed Premises**

4.12.1 Whilst the Licensing Authority wishes to see family-friendly premises thriving in the district, it is of the opinion that the protection of children from harm in licensed premises is an important issue. Consequently the risk of harm to children will be a consideration when determining applications and the Licensing Authority will have particular regard to the views of Children, Young People and Vulnerable Adults through their Safeguarding Policy.

4.12.2 Applicants will be expected to include in their operating schedule a statement of the measures that they will take to protect children from harm which includes moral, psychological, and physical harm as well as the protection of children from exposure to strong language, sexual expletives, and gambling. Once the Applicant has carried out assessments of any risk to children, they can volunteer appropriate conditions. Examples of control measures are given in the document "Good Practice for Licensed Premises."

4.12.3 Whilst children may be adequately protected from harm by the action taken to protect adults, they may also need special consideration, and no policy can anticipate every situation. When addressing the issue of protecting children from harm, the applicant must demonstrate that those factors that may particularly impact on children have been considered. These include:

- Where entertainment or services of an adult or sexual nature are provided;
- Where there have been convictions of members of the current staff at the premises for serving alcohol to persons under 18 years of age;
- Where the premises have a reputation for underage drinking;
- Where there has been a known association with drug taking or dealing;
- Where there is a strong element of gambling on the premises; and
- Where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

4.12.4 The Licensing Authority will rarely impose complete bans on access to children, however in exceptional circumstances, conditions restricting access or excluding children completely may be considered necessary. Such a condition may become necessary following representations or after a review of a licence has taken place.

4.12.5 Operators of premises where children are to be permitted access should employ or engage a sufficient number of people to secure the protection of children from harm. They should have in place safe recruitment policies and practices and should obtain enhanced checks with the [Disclosure and Banning Service \(DBS\)](#) (formerly the Criminal Records Bureau) for all staff working with children.

4.12.6 The Licensing Authority may, in appropriate circumstances, attach conditions to a licence in order to control entertainment specifically aimed at children or otherwise to ensure adequate supervision.

### **4.13 Proxy Sales**

4.13.1 Adequate procedures must be in place to ensure that all members of staff working at the premises are routinely trained and regularly reminded of their responsibilities in relation to the issue of proxy sales of alcohol and shall ensure that all reasonable steps

and procedures are in place and implemented to prevent adults purchasing alcohol for those underage.

4.13.2 Steps must be in place to ensure that any designated premises supervisors and members of staff involved with the delivery of alcohol to residential addresses are made fully aware of their responsibilities to ensure that no alcohol is sold to persons underage.

#### **4.14 Events or Activities for Under 18s**

4.14.1 Applicants for premises' licences who wish to use their premises for events specifically for unaccompanied under-18s must address the issues in their operating schedule under the protection of children from harm objective. Premises operating events for under-18s and not demonstrating compliance may be regarded as failing to promote the licensing objective of protecting children from harm and thus be liable to a review of their licence.

4.14.2 Where entertainment is to be provided specifically for children, and it is likely that a child will be left in the care of a person employed by or contracted to the management of the premises for that purpose or left in the care of a person using that premises for the provision of children's entertainment, the Licensing Authority expects that enhanced checks with the [Disclosure and Barring Service \(DBS\)](#) (formerly the Criminal Records Bureau) are carried out for the persons providing the entertainment to, or supervising the children. It may impose this requirement by way of condition, either through the review process, or in the event of the application being subject to representations.

4.14.3 The Licensing Authority expects licence and certificate holders and those who have given notice of a temporary event and who wish to hold events specifically for unaccompanied under-18s, to demonstrate a commitment to adhere to the Kent [Safeguarding Children Multi-Agency Partnership](#).

#### **4.15 Safeguarding**

4.15.1 Folkestone is a safe place, and we are committed to working together with partners to continue to deliver safety, security, and confidence in the late night economy. We will work together to:

- Protect vulnerable victims
- Keep our neighbourhoods safe by supporting neighbourhood policing and tackling anti-social behaviour
- Keep our neighbourhoods safe during major events
- Identify key locations in the Town Centre to target deterrence and reassurance action through additional police patrols and deployment of Street Pastors
- Further develop best practice to encourage licensees to train staff and raise awareness of safeguarding
- Invest in personal safety campaigns – we will continue to support vulnerability training to stakeholders involved within the Night Time Economy.

4.15.2 Various night time safeguarding initiatives have been established and the Licensing Authority has adopted a multi-partnerships collaborative approach toward these initiatives which can be reviewed via the [Kent Safeguarding Children Multi-Agency Partnership \(KSCMP\)](#) website.

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4.15.3 Licensees are expected to work alongside the Licensing Authority and partners to assist in these safeguarding initiatives and to participate in various training regimes implemented to improve awareness of the signs of vulnerability which can include a variety of factors including intoxication, age, losing contact with friends or lack of familiarity with the area including, again by way of example, the training of SIA door personnel and staff of licensed premises in victim vulnerability and sexual exploitation in the night time economy.

4.15.4 The Licensing Authority are liaising with Kent Police in connection with a [Drugs Protocol](#) which it is hoped will be used by Licensees in conjunction with Kent Police.

#### **4.16 Protecting Young Vulnerable Victims**

4.16.1 Licensed Premises are often used as a place to exploit and abuse victims, they provide an ideal environment for the grooming and sexual exploitation of children and young people. As part of the grooming process adults may meet young people or take them to licensed premises, to develop a relationship of trust and make them feel special by giving them 'treats' such as meals or alcohol, or by involving them in adult parties. A premise could be misused for this kind of activity by the people who are socialising or working there.

4.16.2 Child Sexual Exploitation is often hidden from view and goes unnoticed. Those who work in the late night economy have a unique position to act as our eyes and ears, to spot activity or predatory behaviour that may be linked to child sexual exploitation and let us know so we can act quickly to safeguard victims and bring their abusers to justice.

4.16.3 Premise licence holders and their managers must make sure that suitable control measures are in place at licensed venues for the protection of children from harm.

4.16.4 It is expected that premises, especially those trading during later hours, and takeaways implement appropriate measures, which could include the employment of designated welfare staff, trained first aiders and trained staff, to identify vulnerable person(s) and respond to accidents, injuries, and other immediate harms such as unconsciousness, alcohol poisoning, exploitation, and drug intoxication.

## APPENDIX 1

### GOOD PRACTICE FOR LICENSED PREMISES AND PROTOCOLS

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## Introduction

### The Licensing Act 2003

The Licensing Act 2003 (the Act) focuses on the promotion of four statutory licensing objectives which must be addressed when licensing functions are undertaken. The four licensing objectives are:

1. The prevention of crime and disorder
2. Public safety
3. The prevention of public nuisance
4. The protection of children from harm

### The aim of this guidance

The aim of this guidance is to provide applicants and licensees with advice and guidance on good practice to promote the four licensing objectives which should be of paramount consideration at all times. This guidance is consistent with the Home Office Guidance issued under section 182 of the Act and with Folkestone & Hythe's Statement of Licensing Policy.

In order to further improve the safety and the attractiveness of the area and to minimise the nuisance caused by licensed premises the Licensing Authority will encourage licence holders to identify measures to effectively manage their premises and also the area in the immediate vicinity of the premises. This guidance outlines what Folkestone & Hythe's Licensing Authority and its responsible authority partners expect in practical terms from applicants when completing their operating schedules and from licensees when operating their premises under the terms of a premises licence.

### Risks associated with licensed premises

The behaviour of customers in and around premises is not solely affected by the individual and the type and quantity of alcohol consumed, but also by the drinking environment and the way that the premises is managed and operates. Risks associated with licensed premises can vary depending on the type of premises, such as the design, layout and general environment, the location, the policies in place and the events held there. Factors such as venue size, availability of seating and density of customers can help to predict the likelihood of disorder.

A range of protective factors can also reduce the likelihood of disorder. It is vital that premises licence holders and their staff understand how good, efficient, and effective management of premises reduces disorder.

The International Centre for Alcohol Policies (ICAP) and the European Forum for Responsible Drinking have indicated the factors that can increase risk and the factors that can protect against a premise having issues.

<b>Protective Factors</b>
Lack of congestion, not overly crowded
Managing the exit of patrons
Monitoring patrons, including at entry, the bar and the exit Higher percentage of customers sitting
Promotion of food (full meals and snacks)
Good range of reasonably priced soft drinks
Good standards of cleanliness and housekeeping
Inappropriate persons (e.g. intoxicated or underage) being refused entry or refused service
Friendly staff
Calling last orders in plenty of time
Quick and efficient service
Staff trained in responsible service
Good communication between staff

<b>Risk Factors</b>
High levels of noise and movement
Congestion anywhere in the premises (at the door, bar, stairs, toilets, dance floor etc)
Higher percentage of customers standing
Unsupervised pool tables
Music with a lot of offensive and sexually explicit words
Lack of bar wiping, table cleaning, toilet cleanliness
Acceptance of openly sexual behaviour
In house promotion or entertainment focusing on alcohol
TV showing aggressive, offensive, sexual or intoxication-related images. Vomiting
Drug dealing or drug use
Lack of ventilation
Drunk or underage persons allowed in and served
Drunk customers on the premises
Staff being hostile or aggressive towards patrons
Staff allowing aggression and watching conflict
Staff sending people outside to fight
Late intervention in situations by staff.



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## **How the guidance should be used**

The Licensing Authority expects applicants to have regard to this guidance when completing their operating schedule. The guidance should help guide licensees on the general promotion of the four licensing objectives and also assist in identifying potential risks in the operation of their premises and suggest possible measures to help manage these risks.

This guidance is not intended to replace other statutory risk assessment processes such as fire risk, health and safety and food safety.

After making an assessment of the risks and the measures considered necessary to promote the four licensing objectives, applicants should consider offering conditions voluntarily as part of their application. To assist applicants and for consistency, the Authority has prepared a “pool of model conditions” which are available at <https://www.folkestone-hythe.gov.uk/>. The wording of the conditions may be modified to suit particular premises and situations.

## **General issues applying to all licensing objectives**

This section provides guidance on good practice for the general promotion of all four licensing objectives at licensed premises.

### **Training**

Licensees, their staff, door staff and third parties operating from the premises should all be trained in the effective and safe management of the premises and the promotion of the four licensing objectives. Training is key to ensuring that all concerned have the knowledge and skills to prevent and manage risks at premises and are aware of their responsibilities under the Licensing Act 2003, and this Good Practice Guidance. Training should be regularly updated, and good records maintained showing the date and the name of the person trained and should be available for inspection by the police or licensing authority. There are a number of formal qualifications for staff such as Personal Licence training or other standards as recognised by bodies such as the British Institute of Innkeepers.

### **Irresponsible Drinks Promotions**

Binge drinking is defined by the NHS and National Office of Statistics as drinking more than double the daily unit guidelines for alcohol in one session. Binge drinking for men, therefore, is drinking more than 8 units of alcohol – or about three pints of strong beer, and for women, it's drinking more than 6 units of alcohol, equivalent to two large glasses of wine.

Binge drinking can lead to drunkenness on the premises or in the vicinity and can be encouraged through irresponsible drinks promotions such as encouraging people to consume more alcohol than planned or to consume more alcohol in a short space of time. A responsible approach to drinks promotions and compliance with the spirit of the mandatory conditions on irresponsible drinks promotions can prevent customers from getting drunk.

In addition to the mandatory conditions which prevent drinking games and large quantities of alcohol for free or at a fixed or discounted price, the Licensing Authority would like to encourage a voluntary code of good practice in relation to drinks promotions.

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The Licensing Authority would like to discourage all licensed premises to promote irresponsible drinking promotions. Examples of irresponsible drinks promotions may include:

### **In the “on trade”**

- women drink for free;
- half price drinks for under 25s;
- discount nights for students
- cheap drinks for fans of a specific sporting team
- half price drinks when England scores a goal;
- free drink if your team wins;
- all you can drink for £10;
- pay £5 entry and then drink up to 12 shots;
- 10 pints for £10;
- pay your entry fee then drink free until 10pm.
- drink 4 pints get the 5th for free
- promotions that make a customer drink a certain amount of alcohol in order to get a prize or reward
- materials or signs on or near to premises to advertise promotions which condone, encourage, or glamorise anti-social behaviour or refer to the effects of drunkenness in any positive way.
- drinks promotions that encourage customers to purchase enough alcohol in one sitting to constitute “binge drinking”.
- drinks offers that are not promoted and organised in a responsible way.
- Selling alcohol and a mixer cheaper than soft drink on its own e.g. selling diet coke for £1.80 but diet coke and vodka for £1.50
- Not encouraging people to drink soft drinks by setting inflated prices
- Communal drinking vessels e.g. Gold Fish bowls
- 3 trebles for £3.99
- Pricing structures that make alcohol cheaper the more you buy.
- Happy Hours, half price or 2 for 1 offers.
- Pub crawls and student nights.
- Mobile sales e.g. shots girls selling alcohol or dispensing at the table.
  - Drinks promotions which encourage a person to ‘binge drink’ in one serving/sitting.

### **In the “off trade”**

- National research shows that the introduction of a minimum unit price of 50 pence would reduce harmful and hazardous drinking which would lead to a reduction in occurrences of alcohol related crimes, hospital admissions and sickness absences and reduce the financial burden on the NHS, the criminal justice system and social care. The Licensing Authority would like to encourage retailers to voluntarily adopt this approach to a minimum unit price.
- Multi buy alcohol promotions that offer a discount for buying multiple items. E.g. 3 bottles of wine for £12.00.

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**Key Message:**

If you are in doubt, please speak with the Licensing Authority before you organise a specific promotion.

**LICENSING OBJECTIVE 1: THE PREVENTION OF CRIME AND DISORDER**

The main causes of crime and disorder in licensed premises arise from inadequate security, poor design and layout, the type of event being promoted, overcrowding and customers being drunk or under the influence of drugs. This can result in conflict, violence, and anti-social behaviour. It is therefore recommended that applicants and licensees take a proactive approach to preventing and managing crime and disorder from their premises.

For new premises or the refurbishment of existing premises, preventative measures should be factored in during the design stage. Consideration should be given to the design and layout of the premise to minimise the potential for crime and disorder. Useful information can be found in documents such as 'Secured by Design Licensed Premises'. A responsible business would liaise and regularly share intelligence relating to crime and disorder issues with other licensed premises, the police, the licensing authority, trading standards through pub watch and shop watch meetings or via local radio networks and would also actively take part in community safety initiatives.

**Preventing underage sales and proxy purchases of alcohol**

It is an offence to sell alcohol to a person who is under the age of 18 and it is also an offence to obtain alcohol on behalf of an underage person which is known as a 'proxy sale'. Underage sales can be prevented through:

- A strict "No ID – No Sale" policy such as Challenge 21 or Challenge 25 age verification checks which includes a credible photographic proof, which will be either a passport, photographic driving licence or proof of age card carrying a PASS logo. This is the subject of a mandatory condition under the Licensing Act 2003.
- All on trade premises should be part of the Home Office recommended [False ID scheme](#) and other community safety initiatives coordinated by Kent Police.
- The use of till prompts will remind staff to ask for proof of age.
- Display posters at the premises stating that it is an offence to purchase alcohol on behalf of an underage person.
- Keep and use a refusals register or refusals button on the electronic point of sale and ensure this is completed each time a sale is refused to a person who cannot prove they are over 18. The book should show the date, time, description of customer, name of staff member who refused the sale and the reason it was refused. This should be made available to the Police or authorised Council officers on request and should be regularly reviewed to identify trends and patterns.
- Ensure licence holders and staff are regularly trained and reminded of their responsibilities under the Licensing Act 2003 in relation to underage and proxy sales of alcohol.

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- Shops and supermarkets will find it easier to identify potential underage and proxy sales taking place if the view outside of their premises is not obscured by posters on windows.

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Proactively sharing intelligence with the local police and trading standards can also prevent young people having access to alcohol.

#### Preventing drunkenness on premises

A licence holder should ensure that all staff are aware of their responsibilities under the Licensing Act not to serve alcohol to a person who is already drunk. Drunkenness on premises can be prevented by:

Not having irresponsible drinks promotions which encourage people to consume more alcohol than planned or to consume more alcohol in a short space of time. See the section above on Irresponsible Drinks promotions for more information.

Refusal to admit a person who is already intoxicated on to the premises.

Encouraging staff to be observant and identifying the early signs of customers becoming drunk. Glass collectors can also be a good source of information and installing mirrors can assist in general visibility.

Training staff in the effects of alcohol and conflict management will provide them with the knowledge, skills, and confidence to refuse sales to drunken people.

A Duty of Care Policy must be in place, which outlines what steps staff should take to prevent intoxication and what to do if a person becomes intoxicated whilst at the premises. There is also the danger that a drunken person may be refused entry and therefore become separated from friends who would look after them. A drunken person can be vulnerable and at risk of exploitation and the policy should help staff to identify these vulnerabilities and take the appropriate course of action depending on the situation. A drunk person should never be left on their own or placed in a taxi without being in the care of a suitable person. All staff at the premise should be aware of the policy.

#### Consumption of alcohol on the street and street drinkers

Street drinkers or people who are drunk can cause anti-social behaviour, disorder and a nuisance to visitors, businesses, and residents. Licence holders can play an important part in minimising this by restricting street drinkers' access to alcohol such as:

Avoiding stocking low cost high strength alcohol such as white ciders and high strength lagers

Restricting the sale of strong beer and cider above 5.5% ABV.

Preventing the sale of single cans or bottles of beer and cider.

Ensuring all staff are aware of their responsibilities under the Licensing Act 2003 not to serve alcohol to a person who is drunk.

Not offering irresponsible drinks promotions as outlined in the section above.

- Keeping and using a refusals registers or refusals button on the electronic point of sale and ensuring this is completed each time a sale is refused to a person who is drunk. The book should show the date, time, description of customer, name of staff member

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who refused the sale and the reason it was refused. This should be made available to the Police or authorised Council officers on request and should be regularly reviewed to identify trends and patterns.

- Taking part in community safety initiatives with Kent Police and sharing intelligence.

### **Preventing conflict, aggression, and violence in and around the premises**

Long queuing, overcrowding and congestion can cause jostling, conflict and aggression which can lead to violence. There are ways this can be prevented:

- Having a customer dispersal policy will help prevent a mass exit at the end of the evening such as change in music style, wind down time and increased lighting, the provision of food and non-alcoholic drinks.
- Determining the number of door supervisors via a risk assessment based on the type of event, the type of crowd, the size of the establishment. At the very least this should be a ratio of 1 door supervisor per 50 customers. Consideration should also be given to providing a sufficient male/female split, but at least one female door supervisor should be on duty.
- Risk assessment must be undertaken by the licence holder and submitted to the Folkestone & Hythe District Council Licensing Team.
- Having a door admissions policy in place which includes age restrictions, dress code, the searching of bags etc and which is well publicised on the premises website, can help reduce conflict and aggression if entry is refused.
- A policy to manage capacity should be adopted to prevent overcrowding and over congestion in areas will help to prevent customers from become aggressive through accidental jostling. Measures such as clickers, ticket sales and head counts will help monitor capacity.
- There are many injuries caused by glass being used as a weapon. The risk of injury can be reduced through the use of toughened glasses. Controlling glass through regular collections and disposal can also reduce the risk of disorder.

### **Preventing theft from the premises**

High value alcohol and alcohol which is close to entrances can be a target for theft. This can be prevented by:

- Ensuring that storage areas and cellars are locked and secured when the premises are open to the public.
- Shops selling alcohol ensuring that alcohol is not displayed within the first few meters of the door to prevent 'grab and run' thefts.
- More expensive alcohol or other items attractive to thieves being security tagged.

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- Installing lockable shutters which can be closed at the end of the licensed hours will also prevent illegal sales of alcohol.
  - Possessions can also be a target for thieves particularly if customers are relaxed and enjoying a night out. Measures such as:
  - Regular property patrols and highlighting potential risks to customers
  - Having well managed cloakrooms and toilets
  - Having well-lit premises
  - Installing bag hooks at tables and bars
  - Installing mirrors to aid supervision

### **Preventing the possession of illegal drugs and weapons and the use of drugs**

Licence holders should have a zero tolerance approach to the use of drugs and the carrying of weapons in to the premises. Premises licence holders should also take steps to prevent the misuse of drugs within their premises through:

- A “no search no entry” policy and having effective search policies and specialist equipment if necessary.
- Searches should occur in public and in view of CCTV and the police should be informed if anyone is suspected of carrying an illegal substance.
- An effective drugs policy would include arrangements for seizing, retaining, and documenting seized drugs, supervising toilet areas and training staff in drug awareness.

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## LICENSING OBJECTIVE 2: PUBLIC SAFETY

The Licensing Authority is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised and it is the licence holders responsibility under Health and Safety Legislation to have clearly documented policies and procedures in place which will identify all public safety risks associated with their premises. The risk assessment should also identify the measures that will be implemented to prevent, manage, and respond to these risks.

A full risk assessment should be carried out and be reviewed every 12 months which identifies potential hazards to staff or customers and sets out precautions to manage the hazards. Templates can be found on the Health and Safety Executive Website or the Communities and Local government website. All staff should be aware of the risk assessment, and it should be made available for inspection when required.

Other measures to ensure the general safety of customers include:

- Having a well maintained First Aid box available
- Having at least one member of staff on duty at all times with a recognised qualification in first aid.
- Providing an accident book to record all accidents or incidents and which should be available for inspection by an authorised Council employee.
- Avoiding irresponsible drinks promotions, spotting the early signs of people who are drunk, refusing to serve people who are intoxicated and procedures for dealing with glass will also help prevent aggressive and rowdy behaviour. Further information can be found in the section on Licensing Objective 1: The prevention of Crime and disorder.
- Having a written policy in place to deal with all types of accidents and emergency incidents such as evacuation procedures in the event of fires (see more in section below), bomb threats, suspect packages and when to contact emergency services.

### Maximum Occupancy

It is important to ensure that the maximum occupancy of the premises is not exceeded including ensuring there is no overcrowding or congestion in particular parts of the premises. This can be achieved by having measures in place to record numbers of people entering, leaving, and re-entering and by ensuring there is an up to date health and safety risk assessment.

The Licensing Authority therefore expects that the maximum number of people that can be safely accommodated within the applicant's premises at any one time will be determined as part of a fire risk assessment. This information should be forwarded to the Kent Fire and Rescue Service with the copy of the licence application and copied to the Licensing Authority.



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The following guidance on occupancy capacity of a premises is provided to assist applicants and is based on Building Regulations 2000 Approved Document B (Fire Safety), 2006 Edition: Volume 2: Buildings other than dwelling houses.

### **Safe Arrival and Departure**

Consideration should also be given to how patrons arrive at and depart from the premises safely bearing in mind the customer profile. This can be achieved by:

- ensuring there is adequate lighting,
- having a well-managed and efficient door policy to prevent long queuing times which can cause people to become agitated or aggressive,
- having a customer dispersal policy will help prevent a mass exit at the end of the evening such as change in music style, wind down time, increased lighting, the provision of food and non-alcoholic drinks,
- Customers should be actively discouraged from drink driving and this can be achieved by promoting and publicising a Designated Driver Scheme.
- Promoting safe transport options to customers such as the location of taxi ranks, contacts for licensed private hire vehicles, safe waiting areas inside the premises and night bus options.
- Please refer to [Folkestone & Hythe Taxi Policy](#) for further guidance.

### **Fire Safety**

Bearing in mind the age, design and layout of the premises, measures need to be put in place to ensure there are sufficient and safe means of escape in the event of fire or evacuation. Fire risks can be increased by the use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, overcrowding and congestion. Fire risks can be identified and mitigated through a robust fire risk assessment and measures are likely to include:

- having electrical installations and equipment regularly maintained and tested and having compliant and well maintained fire safety and fire detection equipment,
- training staff in fire safety so that they can deal with emergency situations including the location of equipment, utilities, services, and the layout of premises,
  - ensuring that means of escape are clearly visible, unobstructed, and well maintained, including areas outside exits leading to a place of ultimate safety such as the street. This means of escape should be regularly checked to ensure it remains unlocked and unobstructed

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## **Preventing drug related harm and spiking**

There should be a zero-tolerance policy to the use of drugs at the premises and consideration needs to be given to the measures that need to be in place should a person be found to be under the influence of drugs.

This includes:

- refusing entry to anyone who is showing signs of drug use and contacting the emergency services when appropriate,
- ensuring that staff are trained in drug awareness, so they know how to recognise the effects of drug use and know when medical attention is required,
- considering offering anti drink spiking products to customers,
- reporting suspected or actual spiking incidents to the police immediately.

## **Women's Safety Schemes**

- Use of safety schemes such as 'Ask Angela', Women's Safety Charter.

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## LICENSING OBJECTIVE 3: PREVENTION OF PUBLIC NUISANCE

Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour, and insects or where its effect is prejudicial to health.

The Licensing Authority recognises that well-managed licensed premises can benefit the local community and the local economy, but there is clearly a risk that licensed premises, particularly those operating at night and in the early hours of the morning, can cause a range of nuisances impacting on people living, working, or sleeping nearby.

### Noise

The impact on a neighbourhood of licensed premises is significantly influenced by the times when those licensed premises are open, and the times when licensable activities are taking place, particularly between the times of 11pm and 7am.

The location of the premises is also a significant factor and extra consideration to noise is needed in denser residential areas and where it is near other noise sensitive premises such as hospitals, care homes and places of worship. Operators should also recognise the impact of noise as a result of their customers eating, drinking, smoking, queuing, and leaving the premises. The impact on local residents can be managed by:

### All premises

- engaging with local residents on a regular basis to ensure that licence holders are being good neighbours and dealing with problems as they arise,
- providing a contact telephone number to local residents to report noise disturbances to a responsible person at the venue,
- ensuring that the times when glass is disposed of and removed from the premises is not at a time of day likely to disturb residents, these should normally be carried out between the normal working hours of 8am and 6pm.

### “On trade” premises

- considering the option to have a noise report or a noise assessment carried out by an acoustic consultant in order to identify noise issues and the actions needed to address these,
- keeping windows and doors closed whilst the premises is in use to prevent noise breakout,
- locating DJs, stage, and speakers away from doors and windows,
- designing the premises with noise limiting features such as sound proofing, acoustic double lobbies, and sound limitation devices,

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- minimising the extent that patrons are outside the premises,
  - ensuring that the occupancy capacity of the premises is not exceeded,
  - considering what impact the proposed hours of operation of the premises will have on public transport including the availability of buses, taxis and private hire vehicles,
  - planning a 'wind down period' between the end of the licensable activities and closure of the premises,
  - establishing a last admission time,
  - regularly collecting glass and preventing unauthorised removal of glass from the premises will help reduce the impact of noise from glass on residents and neighbours,
  - carrying out regular sound checks and noise monitoring and logging these checks with an indication if the check was as a result of a complaint or routine checking. This log should be available to environmental health if required.
  - displaying prominent notices close to exits requesting patrons to leave the premises quickly and quietly, and notices in car parks reminding patrons in residential areas to leave quickly and quietly and not to rev engines, slam doors, play loud music or sound horns.
  - making announcements at the end of the evening asking people to disperse quickly and quietly.
  - having a customer dispersal policy and effective management of queues see section on Licensing Objective 2: Public Safety.
  - ensuring that staff and performers also pack up and leave the premises quietly and quickly,
  - If queuing occurs, ensure that the queue is diverted away from residential areas and provide door supervisors to manage patrons.

#### **“Off trade” premises**

- encouraging customers not to hang about outside shops if it is causing a nuisance to other customers or local residents,
- planning the times of deliveries so they do not occur at a time of day likely to disturb residents. These should normally be carried out between the normal working hours of 8am and 6pm,
  - noise management of outside smoking areas.

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## **Other nuisance issues**

Residents can be disturbed by other factors such as litter, smells, fumes, dust, tobacco or other smoke, or other emissions, street fouling and light pollution. Unauthorised advertising and the distribution of flyers by operators or third parties cause littering.

Also there could be nuisance caused by congesting the pavement or the roadway, and so impeding reasonable access of emergency services and essential services such as refuse collection and street cleaning.

### **Measures to address these issues include:**

- Increasing refuse storage or waste collection
- Preventing littering by providing litter bins and wall mounted cigarette bins and clearing up street litter generated by the premises such as flyers, cigarette butts or food wrappers.
- Providing effective ventilation systems to prevent nuisance from odour and ensuring these are screened, enclosed, silenced or on timers in order to prevent noise nuisance.
- Providing ash trays and cigarette bins to minimise litter
- Ensuring that external lighting is turned off after the premises are closed to the public.

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## LICENSING OBJECTIVE 4: THE PROTECTION OF CHILDREN FROM HARM

The protection of children from harm includes the protection of children from moral, psychological, and physical harm and this includes the protection of children from exposure to strong language, sexual expletives, and gambling. Whilst there has been a general relaxation in allowing accompanied children greater access to licensed premises, this places additional responsibilities upon licence holders to safeguard children and provide a safe environment.

This can be achieved by:

- ensuring that staff have an awareness of safeguarding issues and that appropriate recruitment processes are in place for anyone working with children and young people including enhanced checks with the Disclosure and Banning Service (DBS) (formerly the Criminal Records Bureau).
- If the supply of alcohol is the exclusive or primary purpose of the services provided at the premises, the licence holder should consider restricting the admission of children after a specified time in the evening or only admitting children if they are accompanied by an adult. The Licensing Authority would not normally impose complete bans on access to children, however in exceptional circumstances restricting access or excluding children completely may be considered necessary.
- considering the impact the operation of their premise may have on the immediate vicinity, particularly if there are schools, cinemas, family restaurants, bowling alleys or other facilities nearby likely to be frequented by children and young people.

### Under 18 events

If a licence holder is considering using their premises for an event for under 18s there is specific guidance available which has been developed with the [Kent Safeguarding Board](#).

The Licensing Policy also requires licence holders who are holding an event specifically for unaccompanied under-18s, to demonstrate a commitment to adhere to the “Policy and Procedures for the Protection of Young People who Attend under- 18 Club Nights”.

### Preventing underage sales and adults buying alcohol on behalf of the underage

It is an offence to sell alcohol to a person who is under the age of 18, and it is also an offence to obtain alcohol on behalf of an underage person which is known as a ‘proxy sale’. These sales can be prevented through:

- A strict “No ID – No Sale” policy such as Challenge 21 or Challenge 25 age verification checks which include credible photographic proof, which will be either a passport, photographic driving licence or proof of age card carrying a PASS logo. This is the subject of a mandatory condition under the Licensing Act 2003.
- All premises should be part of the Home Office recommended “False ID Scheme” and other community safety initiatives coordinated by Kent Police.
- The use of till prompts to remind staff to ask for proof of age.

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- Displaying posters at your premises stating that it is an offence to purchase alcohol on behalf of an underage person.
  - Keeping a refusals register or refusals button on the electronic point of sale and ensuring this is completed each time a sale is refused to a person who cannot prove they are over 18. The book should show the date, time, description of customer, name of staff member who refused the sale and the reason it was refused. This should be made available to the Police or authorised Council officers on request and should be regularly reviewed to identify trends and patterns.
  - Ensuring licence holders and staff are regularly trained and reminded of their responsibilities under the Licensing Act 2003 in relation to underage and proxy sales of alcohol. Good records of training should be maintained.
  - Shops and supermarkets will find it easier to identify potential underage and proxy sales taking place if the view outside of their premises is not obscured by posters displayed in the windows. Proactively sharing intelligence with the local police and trading standards can also prevent young people having access to alcohol.

### **Preventing exposure to inappropriate activity**

- The following are some examples of control measures to prevent children from accessing inappropriate activities:
- There should be provisions in place to restrict children from viewing age restricted films such as age checks at point of sale and prior to entry to a screening room to ensure that admission of children to films is in accordance with the recommendations of the British Board of Film Classifications.
- Age restricted gaming or vending machines should have suitable signage setting out the age restrictions and should be in full view of staff for monitoring.
- Children under the age of 18 should be excluded from the premises or part of the premises where adult entertainment is taking place.
- Adverts or flyers for entertainment of an adult nature should not be distributed or displayed externally on the premises or in any part of the premises internally where they can be seen by children and young people.

## PROTOCOL (A) – PLANNING AND LICENSING

### Purpose

1. Operation of licensed premises will require a number of additional approvals as well as under the Licensing Act 2003. One of the most important additional approvals is planning permission under the Town and Country Planning Act 1990. This protocol looks at the relationship between Planning and Licensing.

### Planning

2. Planning permission is required for certain building operations (such as new buildings and alterations which materially affect the external appearance of the building) and material changes of use. Advice can be obtained from the Council's Planning Department on whether planning permission is required and about the planning process. Also see the Council's website at <https://folkestonehythe.gov.uk/article/216/Planning>
3. Many licensed premises will fall within a Use Class. The most relevant use classes are:

<b>Class</b>	<b>Category</b>	<b>Definition</b>	<b>Permitted Changes include:</b>
A1	Shops	Includes:  (1) the retail sale of goods other than hot food  (2) the sale of sandwiches or other cold food for consumption off the premises  where the sale is to visiting members of the public.	None
A3	Restaurants and cafés	Use for the sale of food and drink for consumption on the premises.	A1
A4	Drinking establishments	Use as a public house, wine-bar or other drinking establishment	A1 and A3
A5	Hot food takeaway	Use for the sale of hot food for consumption off the premises	A1 and A3



<b>Class</b>	<b>Category</b>	<b>Definition</b>	<b>Permitted Changes include:</b>
C1	Hotels	Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.	None
D2	Assembly and leisure	Use as (a) a cinema, (b) a concert hall, (c) a bingo hall, (d) a dance hall, (e) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.	None

4. Some premises do not fall within any Use Class. Planning permission will be required for a change to such a use. These include:

<b>Use</b>	<b>Permitted Change</b>
as a Theatre	None
as an Amusement arcade or centre, or a funfair	None
as a Hostel	None
as a Night-club	None
as a Casino	D2

5. Planning permission is not required for a change of use where the new use remains in the same Use Class as the old use (e.g. from a café to a restaurant). Nor is it required for a change of use where the new use falls within the Use Class referred to in the Permitted Change column next to the old use (e.g. from a public house to a café). Note: Although planning permission may not be needed for a change of use, planning permission may still be needed for physical changes to the premises.
6. Details of the Council's Planning Policies can be seen on the Council's website <https://www.folkestone-hythe.gov.uk/planning/planning-policy> and [Folkestone & Hythe Adopted Development Plans and Policies](#) or contact the Council's Planning Department.
7. Even where proposed premises have planning permission, there may still be conditions or planning obligations that will affect the way the premises are used (e.g. operating hours). It will be necessary to apply to vary or remove the condition or obligation.

8. If you are unsure whether or not the existing use of a building is lawful for planning purposes or whether or not your proposal requires planning permission, you can apply for a "Lawful Development Certificate" (LDC).
9. You may need further planning consents if you are carrying out works within a conservation area, if you are making alterations to, or which affect the setting of a listed building, or if you are carrying out work to trees covered by a tree preservation order or within a conservation area.

### **Which application should be made first?**

10. The Licensing Authority considers that in most cases all planning permissions, consents and certificates should be obtained before any Licensing Applications is made. It will smooth the licensing process, if the planning position is clear and certain before a Licensing Application is made and there is no doubt that the premises can be lawfully used for the purposes covered by the Licensing Application. It will mean that it is less likely that the local planning authority as a responsible authority will make representations in relation to the Licensing Application. Members of the public will also be less likely to be confused about the two separate issues and so less likely to make representations on planning matters to a Licensing Application.
11. There may be exceptional reasons why an Applicant considers that it is necessary to make a Licensing Application before or at the same time as a Planning Application. If that is the case, Applicants are requested to explain their reasons for doing so, when the Licensing Application is submitted (e.g. the only outstanding planning matter relates to a minor uncontroversial matter not relevant to licensing objectives such as extraction facilities, landscaping, or refuse storage). This may help to avoid representations being made.
12. Where an applicant has indicated that a licensing and planning application has been made at the same time, licensing officers will consider whether there should be discussion with planning counterparts with the aim of agreeing mutually acceptable operating hours and scheme designs<sup>1</sup>  
(1 Para 9.45 - s182 Guidance – April 2017)

### **Won't the outcome come of the Licensing and Planning Applications be the same?**

13. Not necessarily. The two regimes need to be properly separated to avoid duplication and inefficiency<sup>2</sup>. They are two separate statutory systems with their own statutory rules, criteria, policies, and guidance, looking at different aspects of similar proposals, and where the Council is the decision-maker in both cases. Planning considers the principle of the use in the light of the approved planning policies and the effect of the development on matters such as amenity, visual appearance, character of the locality, need, outlook and privacy, road safety, noise, disturbance, smells, fumes, or other harmful effects. Licensing must carry out its functions with a view to promoting the four licensing objectives – the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. They involve consideration of different (albeit related) matters<sup>3</sup>. Because of this, it will not be the case that the same decisions will always be made.

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14. Within the Council, the licensing function is discharged separately from the planning function. Licensing Committee and the Director of Place is responsible for the former; Planning Committee and the Chief Planning Officer for the latter. Licensing applications will not be a re-run of planning applications and vice versa; planning decisions will not bind those making licensing decisions and vice versa<sup>4</sup>. Licensing and planning decisions have to be made according to the respective statutory criteria etc. that applies to them. Just because planning has granted planning permission does not mean that licensing will grant a licence; just because planning has imposed no conditions restricting hours does not mean that licensing will not consider such a restriction appropriate; just because planning has imposed a particular closing hour does not mean that licensing will not impose an earlier or later hour. Where these hours are different, the applicant must observe the earlier closing time or face enforcement action<sup>5</sup>. While both systems may be made aware of the decisions made by the other, they do not bind each other or create any presumption that a particular decision will be made.

### **Advice to Applicants, Responsible Authorities and Persons making Representations**

15. Concentrate on the considerations material to the licensing or planning decision (as the case may be) rather than try to influence one decision by reference to the other. On a licensing matter, concentrate on the promotion of the four licensing objectives, and not on planning policies, objectives, and harm. There may be common facts but do not forget to relate them to the criteria relevant to the actual decision.

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<sup>2</sup> Para 14.57 – s182 Guidance – April 2017

<sup>3</sup> Para 14.57 – s182 Guidance – April 2017

<sup>4</sup> Para 14.57 – s182 Guidance – April 2017

<sup>5</sup> Para 14.58 – s182 Guidance – April 2017

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## **PROTOCOL (B) – PUBLICITY FOR LICENSING APPLICATIONS**

### **Purpose**

1. The purpose of this Protocol is to set out what publicity will be given to Licensing Applications. This is key to ensuring that all interested persons can be made aware of applications so that they can consider whether to make representations.

### **Statutory requirements**

2. There are many statutory requirements to give publicity to licensing applications. These vary depending on how the application is made (electronically or in paper form). There are obligations placed on the Applicant and the Licensing Authority. The requirements differ according to the type of licensing application that is being made.
3. The requirements may involve site notices, press notices and notices on the Council's website. The aim is to ensure that those who may be affected by an application have an easy means of finding out about applications and so are able to make representations in the prescribed time limits.
4. The requirements are contained in the Licensing Act 2003 and Regulations; mainly the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2006 (as amended) (SI 2005 No 42).
5. Appendices A, B and C summarise the requirements. Appendix A summarises the provisions about site notices, press notices and notices on the World Wide Web. Appendix B summarises the provisions about notifications to responsible authorities, the police, and other persons.
6. You are advised to refer to the Act and Regulations for the definitive provisions.
7. The Applicant has to give notice of any application to the Licensing Authority and pay the required fee. There are detailed requirements as to what should be included with an application.

### **The Council's Website**

8. Details of applications and granted licences are included on the Council's website. You can go direct to the site by using the web address <https://www.folkestone-hythe.gov.uk/planning> or by accessing the main website [www.folkestone-hythe.gov.uk](http://www.folkestone-hythe.gov.uk)
9. If you register with the site, you can make comments on-line and track applications.

### **Additional Publicity**

10. We think it is important to ensure that everyone likely to be interested in an application is aware of it. We therefore notify councillors and neighbours. This is additional discretionary publicity that we choose to give to applications. It is important to stress that neither the Act nor the Regulations impose any duty on a licensing authority to advertise an application or to take any steps to notify anyone affected by it that it has been made (other than what is set out in the Appendices).

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## Councillors

11. We will send details by email to councillors representing the ward in which premises are situated. We notify them of all applications/new applications, variations, minor variations, reviews, transfers, interim authority notices, and temporary event notices.

## Neighbours

12. We will notify neighbouring residents and businesses about:

Applications for a new premises licence;

Applications to vary that will result in an increase the hours during which the premises may operate or will result in the premises operating later;

Applications to vary a licence by including the sale or supply of alcohol;

Applications to vary a licence by adding music;

13. We will give notice by letter.

14. Licensing Officers will have to make a judgment as to the area in which neighbours will be notified. There cannot be a hard and fast rule, whether by reference to distance or numbers. In making a decision Licensing Officers will adopt the following approach:

- a. The starting point will be to write to occupiers of premises that fall within a circle with a radius of 30 metres drawn from a point at the centre of the premises.
- b. Where premises are split by the circle (e.g. a block of flats, groups of office units), the occupiers of all the premises in the block etc. will be written to.
- c. The Licensing Officer will consider whether the extent of the circle should be properly extended or reduced. This will depend on the character of the area, the type of licensable activity, the extent of existing crime, disorder and nuisance, pedestrian and vehicle flows, and the likely impact of the application on the licensing objectives. For instance, if the entrance to premises and likely pedestrian and vehicle flow is away from a block of flats, whose residents are therefore unlikely to experience any impact from the licensable activity, a decision may be made not to extend the circle to include the block or to exclude the block entirely.

15. If a business or resident considers that there should have been wider consultation, get in touch with the Licensing Officers quickly, and they will consider your views. You need to act quickly because the Licensing Authority has no power to extend the statutory time during which representations can be made.

## Appendix A – Public Notices

Type of Application	Site Notice	Press Notice	LA Website	Additional Contents of Notice
Application for Premises Licence (section 17)	✓ How – ① Contents – ❶	✓ How – ② Contents – ❶	✓ How - ③ Contents – ❶	Statement of the relevant licensable activities which it is proposed will be carried on on or from the premises.
Application for a provisional statement (section 29)	✓ How – ① Contents – ❶	✓ How – ② Contents – ❶	✓ How - ③ Contents – ❶	State that representations are restricted after the issue of a provisional statement. Where known, may state the relevant licensable activities which it is proposed will be carried on on or from the premises.
Application to vary a premises licence (section 34) (except where the only variation is the inclusion of the alternative licence condition)	✓ How – ① Contents – ❶	✓ How – ② Contents – ❶	✓ How - ③ Contents – ❶	Briefly describe the proposed variation.
Application for a club premises certificate (section 71)	✓ How – ① Contents – ❶	✓ How – ② Contents – ❶	✓ How - ③ Contents – ❶	Statement of the relevant qualifying club activities which it is proposed will be carried on on or from the premises.

Type of Application	Site Notice	Press Notice	LA Website	Additional Contents of Notice
Application to vary a club premises certificate (section 84)	✓ How – ① Contents – ❶	✓ How – ② Contents – ❶	✓ How - ③ Contents – ❶	Briefly describe the proposed variation.
Minor variation of a premises licence (section 41A)	✓ How – ④ Contents – ❷			Prescribed Heading "Licensing Act 2003: Minor Variation of Premises Licence".
Minor variation of a club premises certificate (section 86A)	✓ How – ④ Contents – ❷			Prescribed Heading "Licensing Act 2003: Minor Variation of Club Premises Certificate".
Application for a review of a premises licence (section 51)	✓ How – ⑤ How long - ★ Contents – ❸		✓ How – ⑥ How long - ★ Contents – ❸	
Application for a review of a club premises certificate (section 87)	✓ How – ⑤ How long - ★ Contents – ❸		✓ How – ⑥ How long - ★ Contents – ❸	

Type of Application	Site Notice	Press Notice	LA Website	Additional Contents of Notice
Summary review of premises licence: serious crime and disorder (section 53A)	✓ How – ⑤ How long - ⚙ Contents – ③		✓ How – ⑥ How long - ⚙ Contents – ③	The dates for making representations shall be between the date of the first working day after the day on which the notice was published and the date of the ninth subsequent working day AND The grounds of the review shall be that in the opinion of a senior police officer the premises are associated with serious crime or serious disorder or both.
Review of premises following closure order (section 167)	✓ How – ⑤ How long - ⚙ Contents – ③		✓ How – ⑥ How long - ⚙ Contents – ③	

How – ①	<p><b>By Applicant</b></p> <ul style="list-style-type: none"> <li>• For a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the licensing authority by displaying a notice</li> <li>• Equal or larger than A4</li> <li>• Of a pale blue colour</li> <li>• Printed legibly in black ink or typed in black in a font of a size equal to or larger than 16</li> <li>• Prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises AND</li> <li>• In the case of premises of more than 50 metres square, a further notice every 50 metres along the external perimeter of the premises abutting any highway.</li> </ul>
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How – ②	<p><b>By Applicant</b></p> <ul style="list-style-type: none"> <li>• Publish a notice in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the vicinity of the premises (i.e. <i>The Journal</i> or <i>Evening Chronicle</i>)</li> <li>• On at least one occasion during the period of 10 working days starting on the day after the day on which the application was given to the licensing authority.</li> </ul>
How - ③	<p><b>By the Licensing Authority</b></p> <ul style="list-style-type: none"> <li>• Publication of notice on the Licensing Authority's website</li> <li>• For a period of no less than 28 consecutive days starting on the day after the days on which the application was given to the relevant licensing authority.</li> </ul>
Contents – ①	<ol style="list-style-type: none"> <li>1. Name of the applicant or club.</li> <li>2. Postal address of the premises or club premises, if any, or if there is no postal address for the premises a description of those premises sufficient to enable the location and extent of the premises or club premises to be identified.</li> <li>3. The postal address and, where applicable, the worldwide web address where the register of the relevant licensing authority is kept and where and when the record of application may be inspected.</li> <li>4. The date by which a responsible authority or any other person may make representations to the relevant licensing authority.</li> <li>5. That representations shall be made in writing.</li> <li>6. That it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.</li> <li>7. PLUS additional contents (if any) listed in column 5.</li> </ol>

<p>How – ④</p>	<p><b>By Applicant</b></p> <ul style="list-style-type: none"> <li>• For the continuous period beginning on the first working day after the application was given to the licensing authority and ending at the expiry of the ninth consecutive working day after that day</li> <li>• Equal or larger than A4</li> <li>• White</li> <li>• Printed legibly in black ink or typed in black</li> <li>• In the case of the Title in a font of a size equal to or larger than 32</li> <li>• In the case of the remainder in a font of a size equal to or larger than 16</li> <li>• Prominently at or on the premises to which the application relates so that it can be conveniently read from the exterior of the premises AND</li> <li>• If any part of the external perimeter of the premises that is 100 or more metres in length abuts a public highway or other place accessible to the public, by displaying such a notice at least every 50 metres along that part of the perimeter.</li> </ul>
<p>Contents – ②</p>	<ol style="list-style-type: none"> <li>1. Brief description of the proposed variation or variations.</li> <li>2. The name of the applicant or club.</li> <li>3. Postal address of the premises or club premises, if any, or if there is no postal address for the premises a description of those premises sufficient to enable the location and extent of the premises or club premises to be identified.</li> <li>4. The postal address and, where applicable, the worldwide web address where the register of the relevant licensing authority is kept and where and when the record of application may be inspected.</li> <li>5. The date by which an interested party may make representations to the relevant licensing authority.</li> <li>6. That representations shall be made in writing.</li> <li>7. That it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence;</li> <li>8. PLUS additional contents (if any) listed in column 5.</li> </ol>

How – ⑤	<p><b>By the Licensing Authority</b></p> <ul style="list-style-type: none"> <li>• Display prominently a notice</li> <li>• Of size equal or larger than A4</li> <li>• Of pale blue colour</li> <li>• Printed legibly in black ink or typed in black in a font of a size equal to or larger than 16</li> <li>• At on or near the site of the premises to which the application relates where it can be conveniently read from the exterior of the premises by the public AND</li> <li>• In the case of premises covering an area of more than 50 metres square, one further notice every 50 metres along the external perimeter of the premises abutting any highway AND</li> <li>• At the offices, or main offices, of the licensing authority in a central and conspicuous place.</li> </ul>
How – ⑥	<p><b>By the Licensing Authority</b></p> <ul style="list-style-type: none"> <li>• On the authority's website.</li> </ul>
How long - ★	<ul style="list-style-type: none"> <li>• For a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the authority.</li> </ul>
How long - ☼	<ul style="list-style-type: none"> <li>• For a period of no less than seven consecutive days starting on the day after the day on which the authority received the application under section 53A/the notice under section 164(4).</li> </ul>

Contents – ⑤	<ol style="list-style-type: none"> <li>1. Address of the premises.</li> <li>2. The dates between which responsible authorities and any other persons may make representations.</li> <li>3. The grounds of the application for review.</li> <li>4. The postal address and, where applicable, the worldwide web address where the register of the relevant licensing authority is kept and where and when the grounds of the review may be inspected.</li> <li>5. That it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.</li> <li>6. PLUS additional contents (if any) listed in column 5.</li> </ol>
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**Appendix B –Notification to Responsible Authorities and others**

Type of Application	Electronic Applications	Non-electronic applications
Application for premises licence (section 17)	✓ To Responsible Authorities How - ⑦ What - ④	✓ To Responsible Authorities How - ⑧ What - ⑤
Application for a provisional statement (section 29)	✓ To Responsible Authorities How - ⑦ What - ④	✓ To Responsible Authorities How - ⑧ What - ⑤

Type of Application	Electronic Applications	Non-electronic applications
Application for variation of a premises licence (section 34)	✓ To Responsible Authorities How - ⑦ What - ④	✓ To Responsible Authorities How - ⑧ What - ⑤
Application for a minor variation of a premises licence (section 41A)	✓ To Responsible Authorities (if considered necessary) How - ⑦ What - ④	✓ To Responsible Authorities(if considered necessary) How - ⑧ What - ⑤
Application for a club premises certificate (section 71)	✓ To Responsible Authorities How - ⑦ What - ④	✓ To Responsible Authorities How - ⑧ What - ⑤
Application for variation of a club premises certificate (section 84)	✓ To Responsible Authorities How - ⑦ What - ④	✓ To Responsible Authorities How - ⑧ What - ⑤

<b>Type of Application</b>	<b>Electronic Applications</b>	<b>Non-electronic applications</b>
Application for a minor variation of a club premises certificate (section 86A)	✓ To Responsible Authorities How - ⑦ What - ④	✓ To Responsible Authorities How - ⑧ What - ⑤
Application for a review of a premises licence (section 51)	The Licensing Authority is responsible for giving notice of applications (see column 3)	✓ To Responsible Authorities To Holder of Premises Licence How - ⑨ What - ⑥
Application for a review of a club premises certificate (section 87)	The Licensing Authority is responsible for giving notice of applications (see column 3)	✓ To Responsible Authorities To the Club How - ⑨ What - ⑥

Type of Application	Electronic Applications	Non-electronic applications
Summary review of premises licence: serious crime and disorder (section 53A)	N/A	✓ To Responsible Authorities To Holder of Premises Licence How - ①② What - ⑦
Review of premises following closure order (section 167)	N/A	✓ To Responsible Authorities To Holder of Premises Licence How - ①① What - ⑧
Application for the inclusion of the alternative licence condition with an application for a premises licence (reg 10(2))	✓ To the Police How - ①② What - ⑨	✓ To Police How - ①③ What - ⑨
Application for the inclusion of the alternative licence condition with an application to vary a premises licence (reg 12(2))	✓ To the Police How - ①② What - ⑨	✓ To Police How - ①③ What - ⑨

Type of Application	Electronic Applications	Non-electronic applications
Application to vary a premises licence solely to include the alternative licence condition (reg 13A)	✓ To the Police How - ①② What - ⑨	✓ To Police How - ①③ What - ⑨
Application to vary a premises licence to specify an individual as premises supervisor (section 37)	✓ To the Police To the Designated Premises Supervisor (if any) How - ①② What - ⑨	✓ To Police To the Designated Premises Supervisor (if any) How - ①③ What - ⑨
Application for the transfer of a premises licence (section 42)	✓ To the Police How - ①② What - ⑨	✓ To Police How - ①③ What - ⑨
The giving of an interim authority notice (section 47)	✓ To the Police How - ①② What - ⑨	✓ To Police How - ①③ What - ⑨



How - ⑦	<p><b>By Licensing Authority</b></p> <ul style="list-style-type: none"> <li>No later than the first working day after the application was given to the authority.</li> </ul>
What - ④	<ol style="list-style-type: none"> <li>Copy of the application together with any accompanying plan or document.</li> </ol>
How - ⑧	<p><b>By the Applicant</b></p> <ul style="list-style-type: none"> <li>On the same day as the day on which the application was given to the authority.</li> </ul>
What - ⑤	<ol style="list-style-type: none"> <li>Copy of the application together with its accompanying plan, document or other information.</li> </ol>
How - ⑨	<p><b>By the Applicant</b></p> <ul style="list-style-type: none"> <li>On the same day as the day on which the application for review was given to the authority.</li> </ul>
What - ⑥	<ol style="list-style-type: none"> <li>Copy of the application for review with its accompanying plan, document and other information/accompanying documents, if any.</li> </ol>
How - ⑩①	<p><b>By Licensing Authority</b></p> <ul style="list-style-type: none"> <li>Within 48 hours of the time of the receipt of the application.</li> </ul>
What - ⑦	<ol style="list-style-type: none"> <li>A copy of the application and of the certificate given under section 53A(1)(b).</li> </ol>
How - ⑩①	<p><b>By Licensing Authority</b></p> <ul style="list-style-type: none"> <li>Within the period of one working day starting on the day after the day on which the authority received the notice under section 165(4) from the magistrates' court.</li> </ul>
What - ⑧	<ol style="list-style-type: none"> <li>Notice of the review, dates between which responsible authorities and any other persons may make representations, the closure order and any extension of it, any order made under section 165(2).</li> </ol>

How - ①②	<b>By Licensing Authority</b> <ul style="list-style-type: none"> <li>On the first working day after the application was given to the authority.</li> </ul>
How - ①③	<b>By the Applicant</b> <ul style="list-style-type: none"> <li>On the same day as the day on which the application was given to the authority.</li> </ul>
What - ④	1. Copy of the application or notice together with its accompanying documents (if any).

#### Appendix C – Temporary Event Notices

Type of Temporary Event Notice	Electronic Notices	Non-Electronic Notices
Standard TEN	<p>(1) No later than 10 working days before the date on which the event period begins</p> <p><b>By the Applicant</b> to the:</p> <ul style="list-style-type: none"> <li>Licensing Authority</li> </ul> <p>(2) No later than the end of the first working day after the day on which the notice was given to the authority</p> <p><b>By the Licensing Authority</b> to</p> <ul style="list-style-type: none"> <li>Police</li> <li>Environmental Health</li> </ul>	<p>No later than 10 working days before the date on which the event period begins</p> <p><b>By the Applicant</b> to the:</p> <ul style="list-style-type: none"> <li>Licensing Authority</li> <li>Police</li> <li>Environmental Health</li> </ul>
Late TEN	(1) No later than 5 working days, but no earlier than 9 working days before the date the event	No later than 5 working days before the day on which the event period begins:

Type of Temporary Event Notice	Electronic Notices	Non-Electronic Notices
	<p>period begins</p> <p><b>By the Applicant</b> to the:</p> <ul style="list-style-type: none"> <li>• Licensing Authority</li> </ul> <p>(2) No later than the end of the first working day after the day on which the notice was given to the authority</p> <p><b>By the Licensing Authority</b> to</p> <ul style="list-style-type: none"> <li>• Police</li> <li>• Environmental Health</li> </ul>	<p><b>By the Applicant</b> to the:</p> <ul style="list-style-type: none"> <li>• Licensing Authority</li> <li>• Police</li> <li>• Environmental Health</li> </ul> <p>AND it is given to at least one of those persons no earlier than 9 working days before the day on which the event period begins.</p>

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## PROTOCOL (C) – DISCLOSURE OF REPRESENTATIONS

### Purpose

1. The purpose of this Protocol is to set out the Licensing Authority's Statement of Licensing Policy on Representations.

### Right to Make Representations

2. Any person can make representations in respect of a Licensing Application but there are important rules that need to be followed or else the Licensing Authority may not be allowed to take them into account.
3. If the Council receives "relevant representations" to an application for a premises licence, provisional statement, variation of a premises licence, minor variation of a premises licence, review of a premises licence, club premises certificate, variation of a club premises certificate, minor variation of a club premises certificate, review of a club premises certificate, the Council must hold a hearing to consider them. If no "relevant representations" are received, the Council must grant the application. **It has no choice.**
4. "Relevant representations" must:
  - a. Be about the likely effect of the grant or issue on the promotion of the licensing objectives;
  - b. They must be made by a responsible authority or any other person (e.g. a resident, neighbour, business, councillor);
  - c. They must be made within the prescribed period;
  - d. They must not have been withdrawn;
  - e. In the cases of representation made by any person who is not a responsible authority, they must not be frivolous or vexatious (in the opinion of the Licensing Authority);
  - f. If they relate to the identity of the proposed premises supervisor, they can only be made by the police and must comply with section 18(9)(b) of the 2003 Act;
  - g. If the application is for a premises licence following the issue of a provisional statement for a similar activity, the representation must not be excluded under section 32 of the 2003 Act, because they could have been made at the time of the application for a provisional statement.

## Time Limits

- The time limits for making representations are strict. Most representations must be made at any time during a period of 28 consecutive days starting on the day after the day on which the application was given to the Licensing Authority by the Applicant (there is a shorter period in the case of Reviews following a Closure Order). This means:

Day		Examples	
0	Day application given to the Licensing Authority	Tuesday, May 7	Friday, August 9
1	Next day	Wednesday, May 8	Saturday, August 10
...	Count 28 days	...	...
28	Last day to make representations	Tuesday, June 4	Friday, September 6

- In the case of an application for review following a closure order, the time limit is shorter. Representations must be made at any time up to and including seven days starting on the day after the day on which the Licensing Authority received notice in relation to the closure order and any extension to it.

### What if my representations are late?

- You should assume that late representations will not be considered and ensure that your representations are received in time.

#### - No one has made any relevant representations in time

- If no relevant representations are made in time by anybody, there will not be a hearing and the Licensing Authority **MUST** grant the application. Late representations will not be considered in these circumstances.

#### - Somebody has made relevant representations in time and others have made late representations

- If relevant representations are made by somebody in time, there will usually be a hearing, unless they are withdrawn or unless the Licensing Authority, the Applicant and each person who has made relevant representations in time agree that a hearing is unnecessary. Someone who made late representations will not be a party to the hearing, will not have a right to appear at the Hearing (except as a member of the public observing the hearing), and the Licensing Authority is not obliged to have regard to their late representations.
- If there is a hearing, the Licensing Authority considers that it has a discretion to consider late representations provided that they are otherwise relevant. They must be about the effect on the promotion of the licensing objectives and not be frivolous or vexatious.

The Licensing Authority feels that if its discretion is engaged, good decision making requires that it considers all material circumstances before a decision is made. The Licensing Authority will approach the exercise of its discretion in the following manner:

- Your written late but otherwise relevant representations will be included in the papers for consideration at the hearing;

- 
- b. You will not have the right to appear and participate in the hearing;
  - c. You may request the right to appear and participate in the hearing. If you want to appear and participate in the hearing, you should tell the Licensing Authority five working days before the date of the hearing. The Licensing Authority will notify the Applicant and the other parties about your request. The Hearing will consider your request and make its decision as part of the preliminary business. It will listen to your reasons for the request and the views of the Applicant and other parties, before making a decision.
  - d. In exceptional cases, the Licensing Authority may of its own accord consider that you should have a right to appear and participate in the hearing without the need for you to make a request. This is only likely to be the case where you raise significant issues not raised by anyone else and where it would be an affront to good decision making to consider them without a discussion at a hearing in which you are allowed to participate. In such exceptional circumstances, both you, the Applicant and other parties will be notified of the Licensing Authority's initial view five days before the hearing. The Hearing will consider the issue and make its final decision as part of the preliminary business. It will listen to your views and the views of the Applicant and other parties, before making a decision.

### **Representations must be in writing or email**

11. Representations must be in writing or by email (unless made by a responsible authority in relation to a minor variation).

### **When are Representation made?**

12. Representations must be MADE within the prescribed period (i.e. received by the Licensing Authority).
  - a. If representations are made by e-mail, this will be the time when a clear and legible email is delivered to the Licensing Authority which is capable of being accessed, read, and printed.
  - b. In the case of a hard document, it must be addressed to the Licensing Authority and left at or sent by post to the Civic Centre.
  - c. If the document is left at the Civic Centre, it must be left at the Civic Centre within the prescribed period.
  - d. If the document is sent by post, it must be delivered to the Civic Centre within the prescribed period. It must be properly
    - addressed
    - with postage (first or second class) pre-paid
    - posted
  - e. Representations cannot be made anonymously.

Unless the contrary is proved, it will be deemed to have been made at the time at which the letter would be delivered in the ordinary course of post.

This means that you need to post it so that the usual expectation was that it would have been delivered to the Licensing Authority within the prescribed period, depending on whether you sent it first or second class.

You must of course take into account days when there is no usual postal delivery such as Sundays and Bank Holidays. If you expect something to be delivered within two days, it would

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not be appropriate to post it on a Saturday when the following Monday is a Bank Holiday. Delivery in the ordinary course of post would be deemed to be on the following Tuesday.

- f. To avoid problems, you should make your representations promptly and not wait until the last moment.

### **What will happen to representations once they are received?**

13. The Licensing Authority will consider your representations and decide whether or not they are “relevant representations”.
14. We will consider whether the representation is about the likely effect of the grant or issue on the promotion of the licensing objectives. Representations by a local businessperson about commercial damage caused by competition would not be relevant. Representations by a local businessperson that nuisance caused by new premises would deter customers, and the steps proposed to prevent the nuisance were inadequate, would be relevant.
15. If we consider that they are not relevant to the licensing objectives, we will tell you in writing what are our reasons for that decision as soon as possible before making a decision on the application.
16. We will also consider whether or not the representations are frivolous or vexatious. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, without reasonable cause or justification. Frivolous representations would be essentially categorised by a lack of seriousness. They would also cover minor issues in relation to which no remedial steps would be warranted or proportionate.
17. If we consider that they are frivolous or vexatious we will tell you in writing what are our reasons for that decision as soon as possible before making a decision on the application.
18. In borderline cases, we will give you the benefit of the doubt.
19. The fact that we have not rejected a representation at this stage does not mean that we have decided that the representations are justified. It simply means that there will be a hearing at which you, the Applicant, responsible authorities and other persons who have made representations will be able to amplify and clarify their views, before a final decision is made.
20. If you disagree with our decision, you may complain through our corporate complaints procedure. You may also challenge our decision by judicial review.

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## **Will my representations be made public, and will the Applicant be told about them?**

21. There are four provisions that mean that your representation may be made public:

- a. The Licensing Act 2003 (Hearings) Regulations 2005;
- b. Freedom of Information Act 2000, Data Protection Act 1998 and Environmental Information Regulations 2004.

### **- The Licensing Act 2003 (Hearings) Regulations 2005**

22. Under these regulations, we must send copies of all relevant representations to the Applicant.
23. The regulations also say that all hearings shall take place in public (which means that your representations will usually become public) but that we can exclude the public from all or part of a hearing where we consider that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

### **- Freedom of Information Act 2000, Data Protection Act 1998 and Environmental Information Regulations 2004**

24. These Acts and regulations contain further rights to access information held by the Licensing Authority. There are a number of exemptions that may apply. While it is unlikely that anyone would need to rely on this legislation to require access to your representations (since the provisions already referred to are extensive), you should be aware that this legislation could also apply to your representations and require the Licensing Authority to disclose them.

### **Licensing Authority's Approach to Disclosure of Your Representations**

25. The legislation referred to creates a presumption in fairness to the Applicant and in the public interest of transparency and openness that your representations will be disclosed to the Applicant and the public.
26. We will NOT usually EXCLUDE or REDACT any information that is given to the Applicant. As a matter of fairness, there is a presumption that an Applicant should be fully aware of the details of the persons who has made representations in relation to the application.
27. We will attempt however to EXCLUDE or REDACT certain sensitive information from information that is available for the public but not information that is given to the Applicant. This applies to:
  - a. Your signature;
  - b. Your telephone number;
  - c. Your email address;
  - d. Your postcode;
28. We will NOT usually EXCLUDE or REDACT your name and address. We consider that it will generally be in the public interest to be transparent and open as to who made representations.



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29. We do however think that it will assist and avoid misunderstandings if persons making representations were to use the form attached to the Schedule to submit personal details with their representations.

**Can I request that my details are not disclosed?**

30. We can decide to withhold more of your personal details (such as your name and address) and instead give only minimal details (such as your street name or general location within a street). However we can only do so where the circumstances justify such action. We cannot do this in all cases. We cannot set out all the circumstances that may be relevant. One example may be that you consider that you or your family might suffer some detriment were the details disclosed.
- You must tell us why you feel that we should do this. The form in the Schedule has a place for you to do this.
  - If we decide that we cannot comply with your request, we will tell you and give you an opportunity to consider your position and/or withdraw your representation before we disclose it.
31. If you are reluctant to make representations because of fears of intimidation or violence if your personal details, such as name and address, are divulged, please tell us. Where we consider that you have a genuine fear of intimidation and may be deterred from making representation on this basis, we will consider if there is an alternative approach. One solution may be for you to give details to a responsible authority as to how you consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified. These will be exceptional circumstances. It may not be the case that your fears arise from divulging your details to the applicant; rather they may arise from divulging your details to the public. It may not be the case that you fear intimidation or violence from the applicant but rather from others; but that disclosure to the Applicant raises the risk of your details becoming more widely known. Again:
- What is important is that you tell us exactly what your fears are
    - The form in the Schedule has a place for you to do this.
    - If we decide that we cannot comply with your request, we will tell you and give you an opportunity to consider your position and/or withdraw your representation before we disclose it.
32. If either of these circumstances applies to you, you should contact us promptly and not wait until the time for making representations has almost expired
33. It may be that the applicant disagrees with our decision. If so, we will listen to their views. It may be that we change our mind. If we do change our mind having heard what the applicant has said, we will tell you and give you an opportunity to consider your position and/or withdraw your representation before we disclose it. It may be that we feel that the final decision should be made at the hearing rather than by Licensing Officers.

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## Am I likely to be contacted if I make representations?

34. After relevant representations are made and before a hearing, applicants may wish to try and understand and/or address issues raised by the representations with a view to agreeing a way forward. This may result in the Applicant amending the application or proposing conditions. The Applicant will often wish to have discussions with persons who have made relevant representations. The Licensing Authority wishes to encourage such mediation with both responsible authorities and other persons. It will be beneficial and enable the hearing to focus on the more important issues where agreement has not been possible.
35. Residents who have made relevant representations may feel uncomfortable about engaging in discussions with applicants or their representatives. Such discussions should be non-confrontational and capable of being mediated. If residents begin to feel uncomfortable with the way the process is going, they are entitled to politely and non-confrontationally terminate the discussions. They can also tell the Licensing Authority about their concerns. We will consider whether we can do anything about the concerns.
36. While we do encourage such discussions:
  - Persons are under no obligation to participate. They may decline to participate at all. They can state that on the form in the Schedule. They can also discontinue discussions at any time.
  - Persons are entitled to state how they want such discussions to take place by letter, email, telephone conversation and face-to-face discussion and what is the most convenient time. Again that can be stated on the form

Ap. Ref.:	Rep. No.:
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**Schedule**

**Form to be completed by persons making representations  
(Other than by Responsible Authorities)**

<b>My Name:</b>	
<b>My Address:</b>	
<b>* My Postcode of my address:</b>	
<b>My Address for correspondence (if different):</b>	
<b>* My Postcode for correspondence:</b>	
<b>* My Tel. No. (Day):</b>	
<b>* My Tel. No. (Evening):</b>	
<b>* My Mobile No.:</b>	
<b>* My E-mail address:</b>	
<b>The Premises Concerned are:</b>	

I wish to make representations in respect of the application in respect of these premises. The representations are attached.

I understand that my representations will generally be copied to the Applicant or their representatives and are likely to be made public by the Licensing Authority.

I also understand that the Applicant or their representative may contact me to discuss the representations.

The information marked with an asterisk (\*) will be redacted before this information is disclosed to the Applicant or made public, and will only be used by the Licensing Authority to contact me or as set out below.

**How I wish to be Contacted** (# - delete as appropriate      † - tick all that apply)

I am happy to be contacted by the Applicant or their representative to discuss and try to resolve my concerns #

-or-

I do not wish to be contacted by the Applicant or their representative to discuss and try to resolve my concerns #

I prefer to be contacted: by personal visit  † by post  † by e-mail  † by telephone in the day  † by telephone in the evening  † by mobile phone  †

I prefer to be contacted: \_\_\_\_\_ (please state preferred time)

**Disclosure of Name and Address** (# - delete as appropriate      † - tick as appropriate)

I have no objection to my Name and Address being disclosed. ##

-or-

I object to my Name and Address being disclosed to #-:

The Applicant  †

Another Responsible Authority  †

The Public  †

BECAUSE:

(Give a full explanation)

**Fear of Intimidation or Violence** (‡ - delete this section if not applicable)

I am reluctant to make representations because I fear intimidation or violence if my personal details are divulged BECAUSE ‡:

(Give a full explanation as to why you fear intimidation and violence and from who, you fear it. If you have any suggestions as to how these concerns can be addressed, please state them.) ‡

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

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Ap. Ref.:	Rep. No.:
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**Representations**

<b>Premises:</b>	
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(Please write your representations here – continue on further sheets if needed)

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Ap. Ref.:	Rep. No.:
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**Form to be attached to representations by the Licensing Authority before disclosure**

<b>Premises:</b>	
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The Person making representations does not want their personal details to be disclosed. The Licensing Authority is satisfied that they have put forward good reasons. The Licensing Authority therefore discloses the following minimal details:

(include details such as street name or general location within a street)
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-or-

<b>Name:</b>	
<b>Address:</b>	
<b>Address for correspondence (if different):</b>	

The Person making representations does not wish to be contacted by the Applicant or their Representative

-or-

The Person making representations is willing to be contacted by the Applicant or their Representative. They prefer to be contacted by personal visit  † by post  † by e-mail  † by telephone in the day  † by telephone in the evening  † by mobile phone  †

(† - tick as appropriate)

The relevant contact details are:-

(include details for preferred method(s) of contact)
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They prefer to be contacted \_\_\_\_\_  
(preferred time)

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## **PROTOCOL (D) – TIMESCALES FOR NEGOTIATION**

### **Background**

1. The Licensing Authority encourages discussions between Applicants, responsible authorities and other persons who have made representations in respect of an application. This will often result in agreement between some of the parties as to the best way forward. That is very welcome.
2. Often, however, such discussions are only concluded very late in the day and do not always involve all persons who have made representations, especially residents. Hearings are arranged, residents make arrangements to attend, members assemble to find that the issues have been resolved and the hearing is a formality and quickly over.
3. Any inconvenience is partly a consequence of the strict timetable that exists, but all parties can play their part to minimise the inconvenience. That is the purpose of this protocol.

### **Timetable**

4. Regulations set out the timetable that must be followed by the Licensing Authority.
5. The starting point from which time runs begins with the day after the end of the period during which representations may be made or notice given (“the start date”) – the day after the date that appears in the published notices.
6. Hearings must start within a prescribed period of time and, if to be held on more than one day, they must be consecutive working days. In most cases, hearings must start within a period of 20 working days beginning with “the start date”. In some cases it is a shorter period – e.g. 5 working days in respect of the cancellation of an interim authority, 7 working days in respect of a Temporary Event Notice, 10 working days in respect of reviews following a closure order.
7. Notice of a hearing must be given no later than 10 working days before the date on which the hearing starts. In some cases it is a shorter period – e.g. 5 working days in respect of reviews following a closure order, 2 working days in respect of the cancellation of an interim authority or in respect of a Temporary Event Notice.
8. Parties must give notice to the Licensing Authority whether they intend to attend and/or be represented at the hearing and whether they consider a hearing is unnecessary no later than 5 working days before the date on which the hearing starts. In some cases it is a shorter period – e.g. 2 working days in respect of reviews following a closure order, 1 working day in respect of the cancellation of an interim authority or in respect of a Temporary Event Notice. Parties also have to give notice within these time limits where they wish permission for any other person to appear at the hearing (other than a representative). This means people such as witnesses, other residents and witnesses.
9. Representations can be withdrawn by giving notice no later than 24 hours before the (first) day on which the hearing is to be held. Otherwise, they can only be withdrawn orally at the hearing.
10. The Licensing Authority may dispense with a hearing only if all parties have given notice to the Licensing Authority that they consider a hearing to be unnecessary (see para. 8).

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11. The Licensing Authority can extend these time limits where it considers it to be necessary in the public interest. The Licensing Authority may also adjourn a hearing to a specified date or arrange for the hearing to be arranged on specific additional dates where it considers this to be necessary for its consideration of representations or notices. (Its powers to extend the time limits or adjourn are restricted in the case of reviews following a closure order and summary reviews).



The following Table shows a timetable for a hearing in respect of a new application that includes Easter

0	Last date for Representations etc.		20	Mon, 25 Mar
1	START DATE		19	Tues, 26 Mar
2			18	Wed, 27 Mar
3			17	Thurs, 28 Mar
		GOOD FRIDAY		Fri, 29 Mar
				Sat, 30 Mar
				Sun, 31 Mar
		EASTER BANK HOLIDAY		Mon, 1 Apr
4			16	Tues, 2 April
5			15	Wed, 3 April
6			14	Thurs, 4 April
7			13	Fri, 5 April
				Sat, 6 April
				Sun, 7 April
8			12	Mon, 8 April
9			11	Tues, 9 April
10		Last day for notice of hearing	10	Wed, 10 April
11			9	Thurs, 11 April
12			8	Fri, 12 April
				Sat, 13 April
				Sun, 14 April
13			7	Mon, 15 April
14			6	Tues, 16 April
15		Last day for party to give notice to LA	5	Wed, 17 April
16			4	Thurs, 18 April
17		[Aim to complete negotiations]	3	Fri, 19 April
				Sat, 20 April
				Sun, 21 April
18		Last time for withdrawing representations by notice	2	Mon, 22 April
19			1	Tues, 23 April
20	Last date on which hearing must start		0	Wed, 24 April

("Working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales)

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## **Target to Complete Negotiations**

12. All parties should use their BEST ENDEAVOURS to complete all negotiations no later than 3 working days before the start of the hearing.
13. They should advise the Licensing Authority on that day of what their final position is. That will allow time for persons to withdraw their representations by notice who wish to do so. It will also allow parties to indicate whether they now consider that a hearing is unnecessary.
14. If an Applicant considers that an agreement has been reached, that all persons who made relevant representations will withdraw their representations, and/or that all parties feel that a hearing is unnecessary, they should ensure that the Licensing Authority receives all notices to enable the hearing to be cancelled and the licence granted without a hearing.
15. Unless the Licensing Authority feels it is not necessary, they will advise persons who have made relevant representations of the position 2 working days before the start of the hearing.

N.B. A hearing will still take place if there are any relevant representations that have not been withdrawn and all parties have not indicated that a hearing is unnecessary.

## **Inclusiveness**

16. All parties have equal status in the determination of applications whether they are applicants, responsible authorities, residents, neighbouring businesses, or ward councillors; and whether they regularly appear in licensing matters or are appearing for the first time. Nobody will be treated more or less favourably than any other. Their views and representations will be accorded equal respect.
17. All parties should adopt this approach in their dealings with other parties.
18. Applicants should attempt to negotiate and mediate with all parties with a view to resolving an issue to everyone's satisfaction.

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## **PROTOCOL (E) – MINOR VARIATIONS**

### **Purpose**

1. The purpose of this Protocol is to explain how the Council will deal with minor variations to premises licences and club premises certificates.

### **Why is this Important?**

2. There is a streamlined procedures for dealing with minor variations:
  - a. The Applicant has to display details of the application at the Premises on a WHITE notice (to distinguish from blue notices for full variations and new applications).
  - b. The Notice has to be displayed only for 9 working days (as opposed to 28 consecutive days).
  - c. There is no requirement for a press notice.
  - d. The Council only notifies Responsible Authorities direct if they consider it necessary to do so.
  - e. The Council is not required to include details on its website.
  - f. The Council is required to consult those Responsible Authorities as it considers appropriate. This will be done if there is any doubt about the impact of the proposed variation on the licensing objectives and specialist advice is needed. The views expressed will be taken into account.
  - g. Other Persons have 10 working days to make representations (as opposed to 28 consecutive days) beginning on the first working day after the day on which the Council receives the application.
  - h. The Council must grant the minor variation if the variation could not have an adverse effect on the promotion of the licensing objectives.
  - i. Otherwise the Council must reject the applications.
  - j. There is no provision for a hearing.
  - k. The decision must be made within 15 working days. If it is not determined within 15 working days, the application is deemed to be rejected.
  - l. A fee of £89 is payable (as opposed to the one of the higher scale fees).
  - m. There is no right of appeal to the magistrates' court against the grant or rejection of an application for a minor variation.
3. Notwithstanding these streamlined procedures, it is the Council's practice to include details on its website. The Council will notify ward councillors if applications raise any particular issues that may interest them.

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## What is a Minor Variation?

4. A Minor Variation is a variation of a Premises Licence or a Club Premises Certificate which could not have an adverse effect on the promotion of any of the licensing objectives. The legislation uses the words “could not” rather than “will not” or “does not”. The Licensing Authority does not have to be satisfied that there will not be an impact on the licensing objectives before rejecting a minor variation but rather that there could not be an adverse effect on the promotion of the licensing objectives.
5. The following changes cannot be dealt with as a minor variation (instead they must be dealt with as a full variation except in the case of (a) and (b)):
  - a. An application to extend the period for which the licence has effect (must be a new application);
  - b. An application to vary substantially the premises to which the licence/certificate relates (must be a new application);
  - c. An application to specify an individual as the premises supervisor;
  - d. An application to add the supply of alcohol as an authorised activity;
  - e. An application to authorise the supply of alcohol at any time between 11pm and 7am;
  - f. An application to authorise an increase in the amount of time on any day during which alcohol may be supplied;
  - g. An application to include the alternative licence condition.

## Delegations

6. The determination of Minor Variations has been delegated to Officers, whether or not “relevant representations” are made.
7. “Relevant Representations” are representations which are about the likely effect of the grant of the application on the promotion of the licensing objectives.
8. If relevant representations are made, Applicants should be aware that it is more likely that the application will be rejected or not-determined within 15 working days. Instead the Applicant will have to make an application for a full variation that may result in a hearing. Applicants are encouraged to have discussions with the Licensing Authority and appropriate Relevant Authorities prior to making applications for Minor Variations, if the application might raise any issues.
9. If there is any doubt, Applicants should make an application for a full Variation.

## Examples of Minor Variations

10. Statutory Guidance suggests that minor variations will generally fall into one of four categories:

- a. Minor changes to the structure or layout of premises:
  - i. Must have no adverse impact on the licensing objectives.
  - ii. Changes that could potentially have an adverse impact include:
    1. Increasing the capacity for drinking on the premises;
    2. Affecting access between the public part of the premises and the rest of the premises or the street or public way, block emergency exits or routes to emergency exists;

- 
3. Impeding the effective operation of a noise reduction measure such as an acoustic lobby.
- iii. The impact may come from the cumulative effect of a successive number of small layout changes.
- b. Small adjustments to licensing hours:
    - i. Extension of hours for the supply of alcohol to between 11pm and 7am will never be a minor variation;
    - ii. An increase in the amount of time during which alcohol may be supplied will never be a minor variation;
    - iii. Applications to reduce licensing hours for the supply of alcohol will normally be a minor variation;
    - iv. Applications to move (without increasing) licensing hours between 7am and 11pm for the supply of alcohol will normally be a minor variation;
    - v. Other applications to vary the licensing hours will be considered on a case by case basis.
  - c. The removal of out of date, irrelevant or unenforceable conditions or additional of volunteered conditions:
    - i. The Licensing Authority cannot impose conditions in the case of a minor variation. If the Council feels that the minor variation would impact on the licensing objections unless conditions are imposed, the application will be refused.
    - ii. Applicants may volunteer conditions as part of the minor variation process. They arise from their own risk assessment or informal discussions with Responsible Authorities or the Licensing Authority.
    - iii. Amendments of conditions because of a change in the circumstances that led to the conditions being attached or a change in legislation that invalidates conditions or clarification of unclear or unenforceable wording.
  - c. The addition of certain licensable activities:
    - i. Removal of a licensable activity will normally be a minor variation;
    - ii. The addition of the supply of alcohol as a licensable activity will never be a minor variation;
    - iii. Other licensable activities will be considered on a case by case basis and in the light of licence conditions put forward by the Applicant.

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## **PROTOCOL (F) – PROMOTIONS**

### **Background**

1. Holders of Premises Licences often allow other organisations or persons to use or operate on Licensed Premises. The type of arrangement varies from long term leasing to a tenant to an on-day event by promoters. Most events cause no concerns but, on a few occasions, when alcohol is supplied, irresponsible promotions may occur or drunkenness and disorderly conduct may take place, which will not promote the licensing objectives.

### **Obligations that Apply**

2. The supply of alcohol can only take place where it is authorised by a premises licence, a club premises certificate or temporary events notice. Where there is an authorisation, the supply must comply with the terms of the authorisations, including conditions.
3. There are a number of people who have obligations to ensure that a licenses premises are properly managed:
  - a. The premises licence holder (in the case of a Premises Licence);
  - b. The Club (in the case of a Club Premises Certificate);
  - c. The premises user (in the cast of a Temporary Event Notice);
  - d. The Designated Premises Supervisor (in the case of a Premises Licence). Unless the alternative licence condition applies, there must be a Designated Premises Supervisor holding a personal licence (that has not been suspended) in relation to all Premises Licences at any time when alcohol is supplied;
  - e. Personal Licence Holders (in the case of a Premises Licence). Every supply of alcohol under a Premises Licence must be made or authorised by a Personal Licence Holder;
  - f. The Management Committee of community premises where the alternative licence condition applies. This provides that every supply of alcohol must be made or authorised by the management committee.
  - g. Staff employed to supply alcohol.
4. These people have primary responsibility to ensure that licensed premises are operated properly.

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## Mandatory Conditions

5. As well as the general requirement to comply with the terms of the authorisation, there are a number of mandatory conditions that apply to

Premises Licences and Club Premises Certificates that establish a set of minimum standards in the way that alcohol is sold. Responsibility for ensuring that these mandatory conditions are adhered to are placed on the “responsible person” – the premises licence holder, the Designated Premises Supervisor or someone over 18 authorised by them. The mandatory conditions cover:

- a. Banning irresponsible promotions;
- b. Alcohol not to be dispensed directly into the mouth;
- c. Provision of free tap water suitable for drinking;
- d. Requirement of an age verification policy\*;
- e. Opportunity to choose smaller measures.

\* Only condition d. applies to off-licences.

## Enforcement - Offences

6. To encourage compliance with these obligations, there are a number of offences for which these persons can be prosecuted:

- a. Carrying on or attempting to carry on an unauthorised licensable activity – 6 months’ imprisonment or a fine of £20,000 or both.
- b. Knowingly allowing a licensable activity to be carried on without authorisation – 6 months’ imprisonment or a fine of £20,000 or both.
- c. Allowing disorderly conduct on licenses premises – level 3 fine.
- d. Selling or attempting to see alcohol to a person who is drunk – level 3 fine.
- e. Sale of alcohol to children – level 5 fine.
- f. Allowing the sale of alcohol to children – level 5 fine.
- g. Persistently selling alcohol to children - £20,000 fine.
- h. Allowing consumption of alcohol by children – level 5 fine.
- i. Delivering of alcohol to children – level 5 fine.
- j. Unsupervised sales by children – level 1 fine.

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## **Enforcement – Closure**

7. There are various powers to make closure orders:
  - a. Magistrates' Closures Orders – Closure of Premises in a Geographical Area where there is expected to be disorder.
  - b. Police Closure Orders – Closure of Identified Premises for Disorder and Public Safety or Prevention of Noise Nuisance & Subsequent Review.
  - c. Police Closure Notices – Identified Premises for Persistently Selling Alcohol to Children.
  - d. Closure Notices and Closure Orders – Closure of Identified Premises for Unauthorised Sale of Alcohol.

## **Enforcement – Review**

8. There is also power for a Responsible Authority or any other person to apply for a review of a Premises Licence or a Club Premises Certificate. Where an application is made there will be a hearing. On a review, there is power to modify the conditions (permanently or temporarily for up to three months), exclude a licensable activity/qualifying club activity from the scope of a licence (permanently or temporarily for up to three months), remove a designated premises supervisor, suspend a licence for up to three months, revoke the licence or withdraw a certificate.

## **Ensuring the Proper Operation of the Premises**

9. The Council will take robust action to ensure that premises are operated properly and do not harm the licensing objectives.
10. In particular, where the licence holder allows a third party to operate from the premises, the Council will expect Licence Holders and Designated Premises Supervisors to ensure that the premises are operated properly and do not harm the licensing objectives.
11. The Council considers that Licence Holders and Designated Premises Supervisors cannot simply wash their hands of their responsibilities by allowing other persons or organisations to operate from the premises. Licence Holders and Designated Premises Supervisors will remain responsible for ensuring the proper operation of the Premises.
12. Licence Holders and Designated Premises Supervisors should consider whether such premises are appropriately supervised by a Personal Licence Holder employed by them at all times.
13. They should ensure that the arrangements with the Promoters are properly documented in a contract that identified the respective responsibilities and the provision of named Personal Licence Holders present throughout the promotion.
14. Licence Holders and Designated Premises Supervisors should monitor and ensure that the premises are operated properly throughout the promotion.



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15. Licence Holders and Designated Premises Supervisors should ensure that should difficulties arise there can be no dispute as to who was responsible for the management of the premises at the time in question. If there is any uncertainty, the Council will consider that responsibility will lie with the Licence Holder and the Designated Premises Supervisor.

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## **PROTOCOL (G) – HOW TO MAKE REPRESENTATIONS**

### **Representations are Important in the Licensing System**

1. In most cases, if no relevant representations are made, the Licensing Authority is obliged to grant an application for a new licence or an application to vary an existing licence. If there are no relevant representations, the Licensing Authority has no discretion to decide whether or not an application or variation should be granted. The only exception is for application for minor variations<sup>1</sup> where the licensing authority's discretion not to grant it is not dependent on receiving representations.
2. Its power to impose conditions is also limited. It can impose the statutory mandatory conditions (relating to a designated premises supervisor and authorisation of the supply of alcohol by a personal licence holder (in respect of the supply of alcohol)); prescribed conditions about irresponsible promotions, prohibition of dispensing alcohol directly into the mouth, free tap water, age verification policy (including for off-sales), availability of smaller measures of certain drinks (in respect of the supply of alcohol); restriction of the admission of children (in respect of films); and authorisation of door supervisors (where required). It can only impose additional conditions that are consistent with the operating schedule that the applicant submitted with the application.

### **Who can make representations?**

3. Representations can be made by a responsible authority<sup>2</sup> or any other person. There is no requirement that you live or work within a fixed distance from the premises.

### **Can representations object or support an application?**

4. Yes – the term is “representations” and not “objections” or “support”.
5. The Licensing Authority wants your views whether you support or oppose an application. Both points of view will be taken into account and will allow a decision to be taken in the light of all relevant considerations.
6. A sole relevant representation will trigger a hearing. If the only relevant representations are in support, it is possible that the Applicant will ask you to withdraw your representation or agree that a hearing is unnecessary, so that the Licensing Authority can proceed quickly to grant the application.

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<sup>1</sup> See Protocol E

<sup>2</sup> See Protocol H

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## **How will I know about applications that I may be interested in?**

7. Protocol B sets out details of the various steps that will be taken to give publicity to licensing applications. Depending on the type of application, these steps may include:
  - Site Notice
  - Press Notice
  - Details on the Council's website
  - Notification to responsible authorities
  - Notification to ward councillors
  - Neighbour notification.

## **Is there a time limit for making representations?**

8. Yes – this is very important. If you do not submit your representations within the prescribed time limit, it is unlikely that your representations can be considered. Even if in the particular circumstances it can be considered, you will not be a party to the application and will not have a right to appear at a hearing or appeal to the magistrates' court.
9. Protocol B sets out in detail the time limits for making representations. The deadline will be stated in the notices and on the Council's website. Broadly, you will have 28 consecutive days or 10 working days in the case of a minor variation or 7 days in the case of a review following a closure order. The timetable starts on the day after the day on which the application was given to the Licensing Authority. Can I make anonymous representations?
10. No – you must tell us your name and address. In most cases, these details will be given to the Applicant. In exceptional circumstances, we can withhold these details if you have given us good reason to do so. Protocol C explains this in more detail and what you need to do if you have concerns. It also explains how you can indicate that you do not want to be contacted or how you prefer to be contacted.
11. There is a form attached to Protocol C which you should use to make your representation.

## **How can I make a representation?**

12. Your representation must reach us within the time limit.
13. Your representation must be in sent in writing, by email or through the Council's website. You do not have to send us a hard copy of representations made by email or through the Council's website.

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## Can you disregard my representation?

14. We can disregard a representation if it does not fall with the definition of a “**relevant representation**”.
  - It must be “about the likely effect of the grant on the promotion of the licensing objectives”.
  - It must be made within the prescribed time limit.
  - It must not have been withdrawn by you.
  - If you are not a responsible authority, it must not be, in our opinion, **frivolous** or **vexatious**.
  - Only the chief officer of police can make a representation about the identity of the proposed designated premises supervisor.
  - There are restrictions on making representations following the issue of a provisional statement if they could have been made in respect of the application for the provisional statement and where there have been no material changes.
15. We will tell you what our reasons are for considering that your representations are frivolous or vexatious.

## What should my representation cover?

16. It must be “about the likely effect of the grant on the promotion of the licensing objectives”. The licensing objectives are:
  - The prevention of crime and disorder;
  - Public Safety;
  - The prevention of public nuisance;
  - The protection of children from harm.
17. You should look at the full details of the application on our website. You can find out the proposed activities and the opening hours. All applications will have an **operating schedule** which sets out how the Applicant proposes to operate the business and the steps that are proposed to promote the four licensing objectives.
18. You should also look at our **statement of licensing policy** which sets out our approach.
19. You should also look at the **Secretary of State’s statutory guidance** on the Licensing Act, which we have to have regard to when making licensing decisions.
20. Remember, explicitly link your representations to one or more of the licensing objectives and/or the Secretary of State’s statutory guidance and/or our statement of licensing policy.

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21. Tell us as much as you can to explain all the circumstances that led to your representation.
  22. Try to be specific to the premises if this is possible.
  23. If you are making representation about cumulative impact in a cumulative impact area, try to state what the effect of the cumulative impact on you is and what is likely to be the effect of the grant of the application.
  24. Talk to other people about problems that you fear and see if they have any evidence about it (e.g. the police).
  25. Keep a diary or photographic evidence of any incidents that you have experienced.
  26. We need to be satisfied about the effect on the licensing objectives and one of the ways that you can help us is to show that there is an evidential and causal link between your representations and the effect on the licensing objectives.
  27. Try to get other people living in the area, or businesses operating nearby, or other “responsible authorities” (e.g. the police, environmental health) to back you and provide you with evidence or make representations themselves.
  28. Look on our website about what else is going on the area or what applications have been granted or refused in the past. You can look at the specific property history as well as details about other applications in the neighbourhood.
  29. Contact your MP or local councillor to see if they will make representations. However, you should not contact direct councillors who are members of Licensing Committee and who may be responsible for holding a hearing. If they engage in discussions with you outside a formal hearing, they may not be able to sit on a hearing.
  30. If you are unhappy with the proposal, consider whether any amendment or conditions might address your concerns.
  31. If you support the proposal, explain how you feel that the proposed application might help to promote the licensing objectives.
  32. We hope that you will be willing to discuss your representations with the Applicant, responsible authorities and others who have made representations. That is a way of trying to resolve issues and finding a way forward that might address any concerns. This is addressed further in Protocol C which allows you to inform us as to whether and how you are willing to do that.

### **Ask us**

33. Finally, remember, if you are unsure about the procedure, ask us for advice. We cannot write a representation on your behalf. But we will do what we can to assist you in finding your way through this often confusing system.

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## PROTOCOL (H) – DELEGATIONS AND WHO IS/ACTING FOR THE RESPONSIBLE AUTHORITIES

### Delegations – Who decides?

1. The Licensing Act 2003 refers to the Licensing Authority and in the context of the Folkestone & Hythe District Council this means Folkestone & Hythe Council, whose legal name is “Folkestone & Hythe District Council”.
2. Generally there are a number of bodies that can make decisions in the name of the Council. These are:
  - the full Council (when all the elected councillors meet);
  - the Leader of the Council, Cabinet and individual Cabinet Members (in respect of executive matters);
  - Committees and Sub-Committees of the Council (in respect of non- executive matters); and
  - Officers of the Council (in respect of both executive and non-executive matters).
3. The appropriate body in respect of any particular matter depends, firstly, on legislation (the Local Government Act 1972, the Local Government 2000 and (in this case) the Licensing Act 2003, and regulations made by the Secretary of State) and, secondly, on decisions made by the Council and the Leader of the Council, which are recorded in the Council's Constitution (called [The Constitution of the District Council of Folkestone and Hythe](#)).
4. Part 5 of The Constitution sets out how the Council will deal with its Licensing Functions.
  - a. The full Council is responsible for approving the Statement of Licensing Policy. It is prepared by the Cabinet under the oversight of a Cabinet Member for submission to Council.
  - b. The Licensing Committee, Licensing Sub-Committees or the Director of Place are responsible for exercising all other Licensing functions. The Council will usually only exercise these functions where Licensing Committee is unable to do so because of the number of its members who are unable to participate.
  - c. Most applications and licensing decisions will be made by a Licensing Sub-Committees or on the delegated authority of the Director of Place. Generally, a Licensing Sub-Committee will decide matters if there are representations or objections. A Table included in the Statement of Licensing Policy sets out in more detail who will generally decide a particular matter. However, the Director of Place has the right to refer the matter to a Licensing Sub-Committee or the Licensing Committee, if they consider it appropriate, even though they could have made a decision in their own capacity. The Table is attached at Appendix A.
  - d. Although authority has been delegated to the Director of Place, it is not necessary that they make the decisions directly. The Constitution provides that officers in the department can make decisions in the name of the Director of Place in accordance with arrangements made from time to time by them.

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### **Proper Officer**

5. The Director of Place is also a “Proper Officer” of the Council for the purpose of the Council’s licensing functions in addition to any other proper officer designated under The Constitution.
6. The Constitution provides that officers in their department can exercise their “Proper Officer” function in the name of the Director of Place in accordance with arrangements made from time to time by them.
7. The Proper Officer responsibility is mainly relevant in respect of the authentication of documents.

### **Substitute Officer**

8. The Regulatory Services & Corporate Contracts Lead Specialist has been appointed to act instead of the Director of Place, in the event of their being for any reason unable to act or of their post being vacant, whether as “proper” or other “statutory officer” or a Delegated Officer (unless Licensing Committee makes other provision).

### **Responsible Authorities**

9. The Licensing Act 2003 refers to persons or bodies called “responsible authorities”. A responsible authority has certain rights and powers under the Licensing Act (e.g. to receive notice of certain applications).
10. Under the Licensing Act there are 10 categories of responsible authorities, shown in the following Table:

	Paragraph <sup>1</sup>	Description	Name [...] <sup>2</sup>
1.	(za)	The Licensing Authority  [Any other Licensing Authority in whose area part of the premises is situated]	Folkestone and Hythe Council and Kent County Council
2.	(a)	Chief Officer of Police	Chief Constable of Kent Police
3.	(b)	Fire and Rescue Authority	Folkestone and Hythe Fire and Rescue Authority
4.	(bb)	Local Authority with public health functions	Folkestone and Hythe Council and Kent County Council
5.	(c)	Health and Safety Enforcing Authority	Folkestone and Hythe Council  <b>or</b> The Health and Safety Executive

<sup>1</sup> Of sections 13(4) and 69(4) of the Licensing Act 2003

<sup>2</sup> Names in brackets refer to possible additional responsible authorities where the premises are partly in Folkestone and Hythe and partly in the area of an adjacent local authority. You should make enquires of those authorities to find out addresses etc.



	<b>Paragraph<sup>1</sup></b>	<b>Description</b>	<b>Name [...] <sup>2</sup></b>
6.	(d)	Local Planning Authority	Folkestone and Hythe Council and Kent Council
7.	(e)	Local Authority with environmental health functions	Folkestone and Hythe Council and Kent Council
8.	(f)	Recognised bodies relating to protection of children from harm	Kent Safeguarding Children Multi-Agency Partnership and Folkestone and Hythe Council and Kent Council
9.	(h)	Persons with responsibilities with regard to vessels	

	Paragraph <sup>1</sup>	Description	Name [...] <sup>2</sup>
10.	(i)	Other prescribed persons: (1) Local Weights and Measures Authority <sup>3</sup>	Folkestone and Hythe Council  and  Kent County Council

11. The contact details for these bodies are set out in Appendix 6. Up to date details will be published on the [Council's website](#).

### Folkestone & Hythe as a Responsible Authority

12. Folkestone & Hythe Council is a responsible body in a number of separate capacities as well as being the Licensing Authority: - planning, environmental health, and environmental protection. All three functions as well as the licensing authority function are the ultimate responsibility of the Director of Place. In order to avoid conflicts of interest, internal arrangements seek to avoid a dual-hatted approach. The following table sets out who is responsible for the various functions on a day-to-day basis:

Function	Officer Responsible
Licensing Authority (as determining authority)	Director of Place
Licensing Authority (as responsible authority)	Regulatory Services and Corporate Contracts Lead Specialist
Local Planning Authority	Chief Planning Officer
Environmental Health	Environmental Health Senior Specialist
Environmental Protection	Environmental Protection Senior Specialist

<sup>3</sup> Regulation 7 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 (SI 2005 No 42)

## Appendix A – Table of Delegations

<b>Matter to be dealt with</b>	<b>Sub-Committee</b>	<b>Officers</b>
Application for personal licence	If a police objection	If no objection made
Application for personal licence with unspent Convictions	All cases	
Application for premises licence/club premises certificate	If a relevant representation made	If no relevant representation made
Application for provisional statement	If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate	If a relevant representation made	If no relevant representation made
Application for a minor variation of premises licence/club premises certificate		All cases
Application to vary designated premises supervisor	If a police objection	All other cases
Request to be removed as designated premises supervisor		All cases
Application for transfer of premises licence	If a police objection	All other cases
Applications for interim authorities	If a police objection	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc		All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application	All cases	
Determination of application to vary premises licence at community premises to include alternative licence condition.	If a police objection	All other cases
Determination of a police objection to a temporary event notice	All cases	

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## **PROTOCOL (I) – HEARINGS AT LICENSING COMMITTEE**

### **Purpose of this Protocol**

1. The purpose of this Protocol is to give guidance to Applicants, Responsible Authorities and other people who have made representations about what to expect at Hearings. It supplements the document “Procedure at Licensing Sub-Committee” which is sent to all parties before a Hearing.
2. There are certain rules that have to be followed. These are set out in the Licensing Act 2003 (Hearings) Regulations 2005 [SI 2005 No 44] (as amended). However, within those rules, the licensing authority has a lot of discretion as to how hearings will be conducted.

### **Overall Approach**

3. Our overall approach is to conduct a hearing that is:
  - Fair
  - Open, clear, and accountable
  - Treats everyone equally, whatever their status.

### **When will there be a hearing?**

4. There are many different situations where a hearing will be held. There is a full list in Schedule 1 to the Hearing Regulations. In most case this will be where somebody has made relevant representations to an application for the grant or variation (other than a minor variation) of a premises licence or club premises certificate.

### **Who is a “party” to a hearing?**

5. The Hearing Regulations refer to a “party” or “parties” to a hearing. These people have a special role in relation to a hearing. These are the people to whom we have to give notice of the hearing. They are listed in Schedule 2 to the Hearing Regulations. In the case of an application for a new licence or an application to vary a licence it will be:
  - The Applicant
  - Persons who have made “relevant representations”.
6. We explain in Protocols C and G more details about who can make, what are, and how to make “relevant representations”.
7. We also explain in Protocol C about who we will tell about your representations and what you should do if you have concerns about disclosure of your personal details.

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### **When will a hearing take place?**

7. The Hearing Regulations set time limits within which hearings should start. They are set out in Schedule 1 to the Hearing Regulations. In the cases of an application for a new licence or an application to vary a licence, the hearing must be start within 20 working days beginning with the day after the end of the period for making representations. In some cases, the period is shorter.
9. If the hearing is to be held on more than one day, the days must usually be consecutive working days.
10. These are strict time limits and so it will not be possible to accommodate everyone's preferences. However, if there are dates or times that are inconvenient to you or dates or times that are particularly suitable for you please let us know why as soon as possible (and preferably when you submit your representations). We cannot promise you that we will be able to accommodate your wishes, but we will take them into account.
11. Hearings will usually take place on working days in the day time at the Civic Centre or other council premises. If you feel that different arrangements should be made, again please let us know why as soon as possible (and preferably when you submit your representations). We will consider what you say.

### **Who will be told about the hearing?**

12. Once a hearing has been arranged, we have to give a notice of hearing stating the date, time, and place of the hearing to certain people. The people are listed in Schedule 2 to the Hearing Regulations.
13. In the case of an application for a new licence or an application to vary a licence it will be:
  - The Applicant; and
  - Persons who have made "relevant representations".

### **When will people be told about the hearing?**

14. In the case of an application for a new licence or an application to vary a licence, we must give the notice of the hearing no later than ten working days before the day of the first day on which the hearing is to be held.
15. In some cases, we are allowed a shorter period to give the notice of hearing.

### **What further information is given with the notice of hearing?**

16. In addition to the date, time and place of the hearing, we must also give:
  - Details of a party's right of attendance, assistance, and representation;
    - Details of the party's rights at the hearing;
  - Details of the consequences if a party does not attend or is not represented at the hearing;
  - Details of the procedure to be followed at the hearing;

- 
- Details of any particular points on which the Licensing Authority considers that it will want clarification at the hearing from a party;
  - Copies of documents listed in Schedule 3 to the Hearings Regulations. In the case of an application for a new licence or an application to vary a licence, we have to give copies of the “relevant representations”. These will include the details of your name, address and contact details, as explained in Protocol C. That protocol also explains what you should do if you have concerns about disclosure of your personal details.

### **What do you have to do if you have received a notice of hearing?**

17. You should reply to us. In the case of an application for a new licence or an application to vary a licence, you should reply to us no later than 5 working days before the first day on which the hearing is to be held. The Hearing Regulations set a shorter period for certain hearings.
18. You should tell us:
  - Whether you intend to attend or be represented at the hearing;
  - Whether you consider a hearing to be unnecessary;
  - If, in addition to yourself and your representative, you wish someone else to appear at the hearing, you must ask for our permission. You must tell us that person’s name and give us a brief description of the points or points on which that person may be able to assist us in relation your application or representations. This covers a witness, expert, or any other person that you wish to be heard at the hearing. We cannot unreasonably withhold permission.

### **Must there be a hearing?**

19. We can only dispense with a hearing, in the case of an application for a new licence or an application to vary a licence, if:
  - The Applicant AND each person who has made “relevant representations” agree that a hearing is unnecessary and have given us notice that they consider that a hearing is unnecessary; and
    - We agree that a hearing is unnecessary.
20. We will then give notice to all parties that the hearing has been dispensed with.

### **Can representations be withdrawn?**

21. Any party can withdraw their representations.
22. If you want to withdraw your representations, there are two ways to do this. You must:

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- Either give us notice no later than 24 hours before the first day on which the hearing is to be held; or
  - withdraw your representation orally at the hearing.
23. If there are no remaining representations, the hearing will be cancelled, and the application will be granted by officers. If there are still representations remaining, and the remaining parties have not agreed that a hearing is unnecessary, then the hearing will proceed.

### **Negotiations**

24. The time between making relevant representations and the hearing is the main period during which negotiations between the parties may take place to ascertain whether it might be possible to reach agreement as to the best way forward.
25. These are explained further in Protocol D and suggests target dates to complete negotiations.

### **Our discretions about time limits**

26. The Hearing Regulations give us the power to extend time limits for a specified period where we consider it to be necessary in the public interest.
27. They also give us power to adjourn a hearing to a specified date or arrange for a hearing to be held on specified additional dates, where we consider this to be necessary for our consideration of any representations.
28. If you want us to exercise these discretions, ask us as soon as possible and give us your reasons.
29. If we exercise these discretions, we will give notice to the parties.
30. We cannot adjourn without fixing a further date (otherwise called adjournments sine die). There are some further restrictions on the exercise of these discretions, but they do not apply in the case of an application for a new licence or an application to vary a licence.

### **Who will the hearing be before?**

31. The hearing will usually be before a Licensing Sub-Committee. This consists of three councillors who are members of the Council's Licensing Committee. If possible, it will be cross-party and include the chair or vice-chair of the Licensing Committee. The members are selected by the Council's Service Head Democratic Services by rotation.
32. It is possible for an application to be considered by the full Licensing Committee or full Council. These situations are likely to be very rare. The full Council will only deal with the matter if Licensing Committee is unable to deal with a matter because of the number of members who have a conflict of interest.
33. At meetings of the Licensing Sub-Committee, there will also be a licensing officer, a legal officer, and a democratic services officer. Their role is to assist the Sub-Committee, but they are not members of the Sub-Committee and do not make the final decision. The final decision is the responsibility of the three councillors.

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## **Is the hearing in public?**

34. All hearings will be in public unless the sub-committee decides to exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
35. This means that generally anyone may attend and observe a hearing. Please let us know as soon as possible if you think that a large number of people are likely to attend. This is so that we can ensure that there is sufficient space available.
36. We are likely to exclude the public once everyone has had their say and make our decision in private. We will also exclude parties and their representatives at that time. The only people present will be the three councillors and the three officer advisors.
37. We can also exclude the public during the hearing itself. This will be where a party wants to present confidential or sensitive information. We will only do this if we think it is in the public interest. If any party wants us to consider doing this, you should tell us as soon as possible.
38. We can also specifically require any person attending the hearing who in our opinion is behaving in a disruptive manner:
  - To leave the hearing; and we can:
  - Refuse to permit that person to return; or
  - Permit that person to return only on such conditions as we may specify.

Such an excluded person may, before the end of the hearing, submit in writing any information which they would have been entitled to give orally had they not been required to leave.

Under this power we can exclude parties and representatives in addition to members of the public.

## **What can parties do?**

39. Parties may attend the hearing.
40. Parties may be assisted or represented at the hearing by any person whether or not that person is legally qualified.
41. Parties may address the hearing.
42. Parties may question any other party, with our permission.
43. Parties may give further information in support of their application or representations, in response to a point of clarification that we have already identified in our notice of the hearing (see paragraph 16).
44. We may ask questions of any party or other person appearing at the hearing.



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45. If you want us to take into account documentary or other information produced by you in support of the application or representation, you should send it to us before the hearing. If you only produce it at the hearing, we can only consider it if the other parties consent. You should make sure that the other parties are fully aware of your case well before the date of the hearing; otherwise, if they feel that they have not had sufficient notice, they are likely to apply for an adjournment.
  46. However, we are required to disregard any information given by a party or by any other person to whom permission to appear has been given (e.g. a witness) which is not relevant to:
    - Their application or representation or the application or representation of the party requesting their appearance, and
    - The promotion of the licensing objectives.
    - Parties should therefore ensure that information is relevant to these two matters.

### **What happens if parties do not attend?**

47. If you have told us that you do not intend to attend or be represented, the hearing may proceed in your absence.
48. If you have not told us that you do not intend to attend or be represented and you do not attend, we may:
  - Either adjourn the hearing to a specified date, where we consider it to be necessary in the public interest; or
  - hold the hearing in your absence.
49. If we do hold the hearing in your absence, we will still consider at the hearing the application or representations made by you. If we adjourn the hearing, we will notify parties of the new hearing.
50. It would be very helpful if you tell us whether you intend to attend. If you face difficulties on the fixed date, tell us about your reasons so that we can take them into account.

### **How will a hearing proceed?**

51. Except where the Hearing Regulations set out the procedure to be followed, we are allowed to determine the procedure to be followed.
52. At the beginning of the hearing, we have to explain the procedure that we will follow.
53. We will also consider requests by parties for other persons to be allowed to appear. (See paragraph 18). We cannot unreasonably withhold permission.
54. A hearing will take the form of a discussion led by us.
55. Although a party may ask questions of another party, with our permission, that questioning should not amount to cross-examination.

- If a party wants to cross-examine a party, you should first ask our permission. We can only permit cross-examination if we consider that it is required to enable us to consider the representations or application.
  - If you feel that you are being cross-examined where permission has not been given, raise the matter with the chair at the hearing.
  - The chair of the hearing will intervene to stop cross-examination that has not been authorised.
56. We are required to allow all parties an equal maximum period of time to respond to points of clarification, question parties and address the hearing.
- We will not usually set these maximum periods at the beginning of the hearing;
  - We also do not intend to specifically time how long parties spend exercising their rights.
  - We will act when parties seem to be bringing in irrelevant matters or are becoming repetitious.
  - We reserve the right to impose time limits, if we consider it necessary.
  - If any parties feel that they have not been given sufficient time, raise the issue with the chair.

57. The following Table contains an outline of the procedure that will

<b>OUTLINE OF PROCEDURE TO BE FOLLOWED</b>
The Chair will open the meeting and introduce members of the Committee and Officers to all present. The Chair will explain the nature of the decision to be taken and the procedure (as detailed below) to be followed, emphasising that the role of the subcommittee is to determine the application in an impartial and even-handed manner, and in accordance with the relevant provisions of the Licensing Act 2003, National Guidance, and the Licensing Authority's own policy.
The Licensing Officer will outline the application together with any relevant representations and their relevance to the Local Authority Licensing Policy Statement and Statutory Guidance.
Members may ask questions of the Officer.
The Applicant or the person representing them will be invited to address Committee. The Chair will at all times be mindful of the requirement to permit the parties equal time so far as is possible.
Members and then parties may ask questions of the Applicant
Responsible Authorities will be invited to address the committee.
Members and then parties may ask questions of the Responsible Authorities.

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<p>Interested Parties will be invited to address the committee. Where there are a number of parties making similar representations, the Chair will expect the parties to nominate a spokesperson to make the representations.</p>
<p>Members and then parties may ask questions of the Interested Parties</p>
<p>The Chair will invite the Applicant and parties to summarise their points if they wish.</p>
<p>The Chair will confirm that all parties are satisfied they have had adequate opportunity to present their case.</p>
<p>Members of the Committee will retire to discuss and make their decision and will be accompanied by the legal advisor and the licensing officer (whose roles are to assist the Committee with advice; they are not part of the decision making process).</p>
<p>The Chair will relay the decision and the reasons for the decision and details of any conditions placed upon the Licence (if granted) under the licensing objective that they relate to.</p>
<p>Written notification of the decision together with information regarding the right of a party to appeal against the decision will be sent out.</p>
<p>Where additional persons have been permitted to appear at the hearing under Regulation 8(2) of the Hearings Regulations such persons shall be invited to address the committee after the party who requested their attendance has addressed the committee and answered any questions.</p>

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## **APPENDIX 2 - MANAGEMENT OF PREMISES Live Music, Dancing and Theatre**

The Licensing Authority recognises that as part of implementing local authority cultural strategies, account should be taken of the need to encourage and promote a broad range of entertainment such as live music, dancing, and theatre.

Conditions appropriate for the promotion of the licensing objectives will be attached to premises licences/club premise certificates for activities of this nature. The Licensing Authority is aware of the need to avoid unnecessary or disproportionate measures that could deter live music, dancing, and theatre by imposing indirect costs of a substantial nature.

Folkestone & Hythe District Council has a number of open public spaces and buildings licensed. Persons that wish to use the premises licence for those spaces/premises must seek the permission of the Council before holding any event as it is an offence to carry on or attempt to carry on a licensable activity without or not in accordance with relevant authorisation. All premises that have applied for a licence are listed in a public register: this can be viewed at [Folkestone & Hythe District Council](#).

### **Live Music Act 2012**

The Live Music Act received Royal Assent in March 2012 which made changes to the Licensing Act 2003 from 1<sup>st</sup> October 2012.

See Deregulation of Regulated Entertainment

### **Deregulation of Regulated Entertainment**

The purpose for the deregulation of regulated entertainment is to remove unnecessary regulations and burdens on business and the voluntary sector. It is also in place to encourage the performance of more live music.

You require a licence for any entertainment that occurs after 23.00 and for most forms of entertainment in the presence of an audience of more than 500 people (with a few exceptions) All sexual entertainment requires a licence.

Live unamplified music is deregulated between 08.00 and 23.00 on any premises.

Live amplified music is deregulated between 08.00 and 23.00 providing the audience does not exceed 500.

Recorded music is deregulated between 08.00 and 23.00 in an on-licensed premises provided the audience does not exceed 500. Unlike Live music deregulation of recorded music does not apply to workplaces.

Live music and Recorded music can become licensable in an on-licensed premises if the Licensing Authority removes the effect of the deregulation following a licence review.

### **Exemptions**

The new exemptions apply to Local Authorities, Schools, Hospitals, Community Premises, Circuses, Greco-Roman or Freestyle Wrestling, Incidental Film. Local Authority, Hospitals and Schools Live music or recorded music between 08.00 and 23.00 at the non-residential premises of a local authority provided that;

- 
- The audience does not exceed 500, and
  - The organiser gets consent for the performance on the relevant premises from the local authority concerned.

Any entertainment provided by or on behalf of a health care provider on their own hospital premises between 08.00 and 23.00.

Church Hall, Village Hall, Community Hall, or other similar community premises Live music or recorded music between 08.00 and 23.00 in these premises that is not licensed to sell alcohol, provided that;

- The audience does not exceed 500, and
- The organiser gets consent for the performance from a person who is responsible for the premises.

#### Travelling Circuses

- Any entertainment (excluding films and boxing or wrestling entertainment) taking place at a travelling circus, provided.
- It takes place within a moveable structure that accommodates the audience, and
- That the travelling circus has not been located on the same site for more than 28 consecutive days

#### Wrestling

A contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling deregulation between 08.00 and 23.00, provided that the audience does not exceed 1000.

#### Incidental Film

Incidental film – exhibition of moving pictures if it is incidental to some other entertainment activity.

#### Exhibition of films in community premises

- No licence required for “not-for-profit” film exhibition held in community premises between 08.00 and 23.00 provided that the audience does not exceed 500 and the organiser.
- Gets consent to the screening from a person who is responsible for the premises; and
- Ensure that each such screening abides by the age classification ratings

### **Entertainment of a Sexual Nature**

The Licensing Authority along with the Responsible Authorities have concerns that the licensing objectives are engaged by the operation of premises where nudity, partial nudity or adult entertainment of a sexual nature is carried on. Applicants are required to state in their Operating Schedule that they propose to offer nudity, partial nudity, or adult entertainment of a sexual nature.

Other than in the context of film classification, censorship of the content of regulated entertainment is a proper function of licensing law and cannot be properly related to the licensing objectives. The Council as the Licensing Authority does not seek to censor the content of regulated entertainment and the matters of Indecency is covered by other legislation.

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The council in its role as the Licensing Authority seeks to regulate the location of premises offering nudity, partial nudity, or adult entertainment of a sexual nature, in pursuit of the licensing objectives of the prevention of crime and disorder and prevention of public nuisance. It seeks to regulate the way in which this type of entertainment is conducted in order to prevent crime and disorder, promote public safety, and protect children from harm.

The protection of children from harm includes the protection of children from moral, psychological, and physical harm. This includes wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.

Dance that is sufficiently sexual in nature continues to be regulated. Performances of dance which are “relevant entertainment” within the meaning of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) are not deregulated, regardless of the size of the audience or the time of day. “Relevant entertainment” is defined in the 1982 Act as a live performance or live display of nudity that, ignoring financial gain, can be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.

In almost all cases where a performance of dance is potentially licensable as both the provision of relevant entertainment (under the 1982 Act) and regulated entertainment (under the 2003 Act), the 1982 Act disapplies the entertainment licensing regime in the 2003 Act in favour of its stricter regime for the control of sex establishments. However, an authorisation under the 2003 Act rather than the 1982 Act will continue to be required where:

- the premises are not licensed as a sex entertainment venue under the 1982 Act, and;
- relevant entertainment has been provided at those premises on no more than 11 occasions in any 12-month period, with none of those occasions lasting longer than 24 hours or taking place within a month of any other such occasion.

It is also possible that adult entertainment may take place at certain times on the premises. Section 182 Revised Guidance clause 2.23 gives an example that a premise may operate as a café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00pm.

It is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities, and licensing authorities will need to consider this point carefully. This would broadly include topless bar staff, striptease, lap-, table- or pole dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language.

When considering applications within this policy, the Licensing Authority will have particular regard to whether the premises are in the vicinity of the following:

Residential accommodation;

- Schools;
- Places of worship;
- Other premises where entertainment of a similar nature takes place;
- Community centres;

- 
- Youth clubs;
  - Any other premises in the vicinity as appear necessary to the Licensing Authority on the facts of each application.

Where appropriate, the Licensing Authority will also take into account the cumulative effect of a number of such premises on the character of the area in question.

Where such applications are made, the applicants are required to state in their Operating Schedule that they propose to offer nudity, partial nudity, or adult entertainment of a sexual nature (currently Box N of the application form). The following matters may be necessary to promote the licensing objectives and applicants should consider whether any of the following measures are reasonably required:

- A code of conduct for performers and appropriate disciplinary procedures, developed in consultation with the police and the Council;
- Rules of conduct for customers, developed in consultation with the police and the Council;
- Procedures to ensure that all staff employed in the premises have pre-employment checks including suitable proof of identity, age and (where required) permission to work;
- The prevention of views into the premises;
- The prohibition of exterior advertising of the adult entertainment of a sexual nature at the premises along with a prohibition of leafleting or touting for business; and
- The exclusion of persons under 18 from the premises when such activities are taking place.

Conditions will be imposed, as may be necessary, requiring that all service is to seated customers; prohibiting the participation of customers in performances and maintaining a minimum distance of one metre between performers and customers, and between performers during performances. There will also be conditions on the installation and operation of CCTV and retaining recordings of performances and on the employment of supervisors. The Licensing Authority may attach other conditions as appropriate.

Applications for premises which provide music, dance, and late-night refreshment, that do not specify that there will be nudity, partial nudity or adult entertainment of a sexual nature, services or other entertainment which may give rise to concern in respect of children in the relevant part of the application (currently Box N on the application form) will be asked to accept a “no nudity and no adult entertainment of a sexual nature” condition.

Where a premises user gives notice of an event under a temporary event notice in the form as prescribed in regulations made under the 2003 Act the user will be required to describe key aspects of the proposed event. This must include whether they will be undertaking any relevant entertainment as defined in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (i.e. displays of nudity designed to sexually stimulate any member of the audience including, but not limited to lap dancing and pole dancing)

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## **The Operating Schedule**

The operating schedule explains how an applicant proposes to operate and promote the four licensing objectives. It is part of the application form for a Premises License, Club Premises Certificate, or a full variation.

### **What should be included in an operating schedule**

The operating schedule should show how the licence holder will comply with the legislation and promote the four licensing objectives:

- Prevention of crime and disorder
- Ensuring public safety
- Prevention of public nuisance
- Protection of children from harm

It should take account of:

- The type, size, location, and opening hours of the premises
- The nature of the area in which the premises are situated
- The licensable activities to be provided
- The age profile and nature of anticipated clientele
- Any necessary operational procedures
- The needs of the local community

It must be completed in line with our statement of licensing policy.

By law, an operating schedule must include:

- The licensable activities to be carried out on the premises
- The times that the relevant licensable activities will take place
- The times that the premises will be open to the public
- The length of time that the licence is required (if it is for a limited period only)
- If the sale of alcohol is for consumption on or off the premises, or both
- The steps that will be taken to promote the licensing objectives
- Any other matters required by regulations or guidance

Other things to include in the operating schedule

To help us make a decision the applicant could also include:

- A description of the style and character of the business
- What seating is provided
- The type of activities available on the premises, whether licensable or not
- What type of dancing and/or music there will be, if any.
- If this will involve dancing and/or music by members of the public, professional performers, or both
- If the entertainment will involve striptease, lap-dancing or other forms of dance that may involve movements, acts, or displays of a sexual, or adult nature

### **Preparing an operating schedule**

We recommend that applicants are aware of our expectations and those of the responsible authorities. We would advise to seek our views and those of the responsible authorities before formally submitting an application.



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The applicant should also take account of the Statement of Licensing Policy and any Guidance published by the Secretary of State. We also recommend taking account of key local strategies and plans.

To help with measures that the applicant may want to consider promoting the licensing objectives, and that may want to include in the operating schedule, we provide a Pool of Model Conditions. This is not an exhaustive list of all measures to include in an operating schedule, and not all measures will be appropriate to every application.

**Why the operating schedule is so important.**

You should be aware that we will use what you say in your operating schedule to produce the conditions that we will attach to your licence, if granted.

You should therefore make sure that the steps to be taken are realistic and within your control. If we grant a licence with conditions attached requiring the implementation of such steps, the conditions will be enforceable in law, and it will be a criminal offence if you fail to comply with them.

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## APPENDIX 3 – POOL OF CONDITIONS

### Mandatory Conditions

The Licensing Act 2003 imposes certain mandatory conditions on premises licences and club premises certificates.

Premises Licences and Club Certificates that have authorisation for the supply of alcohol for consumption on the premises have a 5 further mandatory licensing conditions which came into effect on 6<sup>th</sup> April 2010 and October 2010.

In May 2014, a condition was imposed to ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than permitted price.

These conditions will appear on the premises licence and club certificates along with the mandatory conditions that already appear since the Licensing Act 2003 came into force.

### Pool of Conditions

#### Conditions relating to Crime and Disorder

##### Text/Radio Pagers.

The Licensee will join the ..... scheme operating in the area and will ensure that

- Radio equipment is kept in working order at all times
- The pager link be activated, made available to, and monitored by the designated premises supervisor or a responsible member of staff at all times that the premises are open to the public
- Any police instructions/directions are complied with whenever given, and
- All instances of crime and disorder are reported via radio by the designated premises supervisor or a responsible member of staff to an agreed police contact point

##### Licensed Door Supervisors.

Where the condition is imposed on the provision of door supervisors the following may also be applied depending upon the circumstances affecting the premise

- a. The Licensee will employ sufficient SIA registered door staff to deal with any likely contingency.
- b. Any employed door staff will wear a name badge as identification.
- c. Each door supervisor will carry proof of their registration with the Security Industry Authority.
- d. Door supervisors will be stationed at a location either inside or outside the premises and at times to be determined by the licensee as being appropriate, but the Licensing Authority would expect such staff to be provided
- e. Door supervisors are required to undertake body searches then at least one female supervisor should be available to undertake the body searches of female customers.

Where door supervisors are required, the Licensee will keep records showing the names of the supervisor and the date/time that they were employed.

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### Bottle bans

The licensee will ensure that:

- a. No bottles containing beverages of any kind, whether open or sealed, shall be given to customers on the premises whether at the bar or by staff serving away from the bar.
- b. No customers carrying open or sealed bottles shall be admitted to the premises at any time that the premises are open to the public (Note: this will not include those customers carrying sealed bottles for the purposes of consumption off the premises).

An exception to these conditions will be bottles containing wine sold for consumption with a table meal by customers who are seated in an area set aside from the main bar area for the consumption of food.

### Plastic containers and toughened glass

The licensee will ensure that only plastic or toughened glass containers will be used for the supply of beverages.

### CCTV

The licensee will ensure that CCTV is installed and maintained under the auspices and guidance of the police crime prevention officer.

### Open containers are not taken from premises

The licensee will ensure that no customers shall take glasses or open bottles from the premises.

### Restrictions on drinking areas

The licensee will ensure that no alcoholic drinks will be consumed in the area marked (in red) on the plan (numbered.....) whilst activity is taking place.

### Proof of age cards

The licensee shall introduce a policy requiring the production of "proof of age" for any sale that takes place where there is any suspicion that the customer is under 18. Such proof may include a pass conforming to the PASS accreditation system, photo driving licence, student cards and passports.

### Crime prevention notices

The licensee will ensure that suitable notices are displayed warning customers of the prevalence of crime which may target them, for example, pick pockets or bag snatchers, the need to guard their property and leaving property unattended. The licensee will be directed over the provision of such notices by the Police crime prevention officer.

### Drinks promotions

The licensee will not introduce or carry on any irresponsible sales promotion or discounting of prices of alcoholic beverages.

### Signage

The licensee will ensure that:

- a. A sign indicating the normal hours during licensable activities are permitted to take place to be displayed on or immediately outside the premises.
- b. Any restrictions of the admission of children to be displayed on or immediately outside the premises.

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### High Volume Vertical Drinking establishments (HVVD's)

The licensee will ensure the adherence to

- A prescribed capacity
- An appropriate ratio of tables and chairs to customers based on the capacity
- The presence of SIA registered security teams to control entry for the purpose of compliance with the capacity limit

### **Conditions relating to Public Safety (including fire safety)**

#### Disabled people

The licensee will ensure that

- a. When disabled people are present adequate arrangements exist to enable their safe evacuation in the event of an emergency.
- b. Disabled people on the premises are made aware of those arrangements.

#### Escape routes

The licensee will ensure the proper maintenance of all escape routes and exits including external exits. This will require that such exits be kept unobstructed, in good order with non slippery and even surfaces, free of trip` hazards and clearly identified. In premises where chairs and tables are provided all internal gangways must be kept unobstructed.

The licensee will ensure that:

- (a) All exit doors are easily openable without the use of a key, card, code, or similar means.
- (b) Doors at such exits are regularly checked to ensure that they function satisfactorily, and a record of such checks are kept.
- (c) Any removable security fastenings are removed whenever the premises are open to the public or occupied by staff.
- (d) All fire doors are maintained effectively self-closing and shall not be held open other than by approved devices (for example, electromagnetic releases operated by smoke detectors).
- (e) Fire resisting doors to ducts, service shafts and cupboards shall be kept locked shut.
- (f) The edges of the treads of steps and stairways are maintained so as to be conspicuous.

#### Safety checks

The licensee will ensure:

- a. That safety checks are carried out before the admission of the public.
- b. Details of such checks are kept in a log book.
- c. Curtains, hangings, decorations, and upholstery
- d. Hangings, curtains, and temporary decorations are maintained in a flame retardant condition.
- e. Any upholstered seating meets on a continuous basis the pass criteria for smouldering ignition source 0, flaming ignition source 1 and crib ignition source 5 when tested in accordance with section 5 of BS5852:1990.

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- f. Curtains, hangings, and temporary decorations are arranged so as not to obstruct exits, fire safety signs or firefighting equipment.
  - g. Temporary decorations are not used without a review of the Fire risk assessment and prior notification to the Licensing Authority.

#### Accommodation limits

The licensee will ensure that any capacity limit imposed under this licence/certificate is not exceeded.

The person responsible for the day to day management of the premises should be aware of the number of people on those premises and required to inform any authorised person on request.

#### Fire action notices

The licensee will ensure that notices detailing the actions to be taken in the event of fire or other emergencies including how the fire brigade are summoned are prominently displayed and protected from damage and deterioration.

#### Outbreaks of fire

The licensee will ensure that the Fire Brigade must be called at once to any outbreak of fire, however slight, and the details recorded in a fire log book.

#### Loss of water

The licensee will ensure that the local fire control centre is notified as soon as possible if the water supply to any hydrant, hose reel, sprinkler, drencher, or other fire extinguishing installation is cut off or restricted.

#### Access for emergency vehicles

The licensee will ensure that access for emergency vehicles is kept clear and free from obstruction.

#### First aid

The licensee will ensure that

- a. Adequate and appropriate supply of first aid equipment and materials is available on the premises.
- b. If necessary, at least one suitably trained first aider shall be on duty when the public are present and if more than one suitably trained first aider that their respective duties are clearly defined.

#### Lighting

The licensee will ensure that

- a. In the absence of adequate daylight the lighting in any area accessible to the public, members or guests shall be fully in operation when they are present.
- b. Fire safety signs are adequately illuminated.
- c. Emergency lighting is not altered.
- d. Emergency lighting batteries are fully charged before the admission of public, members or guests.
- e. In the event of the failure of normal lighting, where the emergency lighting battery has a capacity of one hour, arrangements are in place to ensure that the public, members

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or guests leave the premises within 20 minutes unless within that time normal lighting has been restored and the battery is being recharged; and, if the emergency lighting battery has a capacity of 3 hours, the appropriate period by the end of which the public should have left the premises is one hour.

#### Temporary electrical installations

The licensee will ensure that:

- a. Temporary electrical wiring and distribution systems are not provided without prior inspection by a suitable qualified electrician.
- b. Temporary electrical wiring and distribution system shall comply with the recommendations of BS 7671 or where applicable BS 7909.
- c. Where they have not been installed by a competent person, temporary electrical wiring and distribution systems are inspected and certified by a competent person before they are put to use.

#### Indoor sports entertainments

The licensee will ensure that

- a. If necessary, an appropriately qualified medical practitioner is present throughout the sports entertainment involving boxing, wrestling, judo, karate or other sports entertainment of a similar nature.
- b. Where a ring is involved, it is constructed and supported by a competent person and inspected by a competent authority and any material used to form the skirt around the ring is flame retardant.
- c. At any wrestling or other entertainment of a similar nature members of the public do not occupy any seat within 2.5 metres of the ring.
  - d. At water sports entertainment, staff are adequately trained in rescue and life safety procedure and stationed and remain within the vicinity of the water at all material times.

#### Alterations to the premises

Premises should not be altered in such a way as to make it impossible to comply with an existing licence condition without first seeking a variation of the premises licence proposing the deletion of the condition relating to the public safety in question.

#### Special effects

Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience and performers and staff. Special effects which should be considered include:

- Dry ice machines and cryogenic fog
- Smoke machines and fog generators
- Pyrotechnics including fireworks
- Real flame
- Fire arms

- Motor vehicles
- Strobe lighting
- Lasers
- Explosives and highly flammable substances

These special effects must only be used on the provision of a suitable and sufficient risk assessment and prior notification to the licensing authority.

**Conditions relating to theatres, cinemas, concert halls and similar places (promotion of public safety) -Premises used for closely seated audiences**

Attendants

- a. The number of attendants on each floor in a closely seated auditorium should be as set out in the table below.

Number of members of the audience present on a floor	Minimum number of attendants required to be present on that floor
1 – 100	One
101 – 250	Two
251 – 500	Three
501 – 750	Four
751 -1,000	Five
And one additional attendant for each additional 250 persons (or part thereof)	

- b. Attendants shall not be engaged in any duties that would hinder the prompt discharge of their duties in the event of an emergency or entail their absence from that floor or auditorium where they are on duty.
- c. Any attendant shall be readily identifiable to the audience (but this need not entail the wearing of a uniform).
- d. The premises shall not be used for a closely seated audience except in accordance with seating plan(s), a copy of which is available at the premises and shall be shown to any authorised person on request.
- e. No article shall be attached to the back of any seat which would reduce the clear width of seat ways or cause a tripping hazard or obstruction.
- f. A copy of any certificate relating to the design, construction and loading of any temporary seating shall be kept available at the premises and shall be shown to any authorised person on request.

Standing and sitting in gangways

- a. Sitting on floors shall not be permitted except where authorised in the premises licence or club premises certificate.

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- b. Waiting or standing shall not be permitted except in areas designated in the premises licence or club premises certificate.
  - c. In no circumstance shall anyone be permitted to
    - i. Sit in any gangway
    - ii. Stand or sit in front of any exit, or
    - iii. Stand or sit on any staircase including any landings

#### Drinks

Except as authorised by the premises licence or the club premises certificate, no drink shall be sold to or be consumed by a closely seated audience except in plastic and paper containers.

#### Balcony fronts

Clothing or other objects shall not be placed over balcony rails or upon balcony fronts.

#### Special effects

Any special effects or mechanical installation shall be arranged and stored so as to minimise any risk to the safety of the audience, the performers, and staff. Special effects include:

- Dry ice machines and cryogenic fog
- Smoke machines and fog generators
- Pyrotechnics including fireworks
- Real flame
- Fire arms
- Motor vehicles
- Strobe lighting
- Lasers (see HSE guide “the radiation safety of lasers used for display purposes [HS(G)95] and BSEN 60825: Safety of Laser Products)
- Explosives and highly flammable substances

In certain circumstances it may be necessary to require that certain special effects are only used with the prior notification of the Licensing Authority or [inspection by] fire authority.

#### Scenery

Any scenery should be maintained as being flame retardant.

#### Safety curtain

Where a safety curtain is provided it should be arranged so as to protect the audience from the effects of a fire or smoke on stage for some sufficient time to enable the safe evacuation of the auditorium.

Where a stage with a proscenium arch is not equipped with a safety curtain, any curtains provided between the stage and the auditorium should be heavyweight and be made of non combustible material inherently or durably treated flame retardant fabric.



### Ceilings

All ceilings in those parts of the premises to which the audience are admitted should be inspected by a suitably qualified person who will decide whether a further inspection would be necessary and a certificate concerning the conditions of the ceilings forwarded to the Licensing Authority.

### Seating

Where the potential audience exceeds 250 all seats in the auditorium should, except in boxes accommodating not more than 8 persons, be either securely fixed to the floor or battened together in lengths of not fewer than 4 or more than 12.

### **Premises used for film exhibitions**

#### Attendance – premises without a staff alerting system

Where the premises are not equipped with a staff alerting system the number of attendants present should be as set out in the table below.

Number of members of the audience present on the premises	Minimum number of attendants required to be on duty
1 – 250	Two
And one additional attendant for each additional 250 members of the audience present (or part thereof)	
Where there are more than 150 members of audience in any auditorium or on any floor	At least one attendant shall be present in any auditorium or on any floor

#### Attendance – premises with a staff alerting system

a. Where premises are equipped with a staff alerting system the number of attendants present should be as set out in the table below.

Number of members of the audience present on the premises	Minimum number of attendants required to be on duty	Minimum number of other staff on the premises who are available to assist in the event of an emergency
1 – 500	Two	One
501 – 1,000	Three	Two
1001 – 1,500	Four	Four
1,501 or more	Five plus one for every 500 (or part thereof) persons over 2,000 on the premises	Five plus one for every 500 (or part thereof) persons over 2,000 on the premises

- b. Staff shall not be considered as being available to assist in the event of an emergency if they are:
- The holder of the premises licence or the manager on duty at the premises  
or
  - A member of staff whose normal duties or responsibilities are likely to significantly effect or delay his response in an emergency situation
  - A member of staff whose usual location when on duty is more than 60 metres from the location to which he is required to go on being alerted to an emergency situation.

- c. Attendants shall, as far as reasonably practicable, be evenly distributed throughout all parts of the premises to which the public have access and keep under observations all parts of the premises to which the audience have access.
- d. The staff alerting system shall be maintained in working order.

Minimum lighting

The level of lighting in the auditorium should be as great as possible consistent with the effective presentation of the film and the level of illumination maintained in the auditorium during the showing of films would normally be regarded as satisfactory if it complies with the stands specified in BS CP1007(maintained lighting for cinemas).

Flammable films

No flammable films should be allowed on the premises without the prior notification of the licensing authority/fire authority.

**Conditions relating to Prevention of Public Nuisance**

Hours

- a. Any appropriate restrictions on opening hours
- b. Any appropriate restrictions when certain licensable activities can take place
- c. Any appropriate restrictions on parts of the premises that might be used for certain licensable activities at certain times.

Noise

- a. Noise impact assessment of the licensed activities at the premises must be carried out to the satisfaction of the licensing authority. Proposed steps to prevent noise must, if necessary, also be submitted for inclusion within the operating schedule.
- b. The following licensed activities that have the potential to create public nuisance shall not be permitted unless they are done so in accordance with the controls below: For example

<i>Playing of amplified, pre-recorded music</i>	<i>Music shall only be played in the main function suite and shall go on no later than 23</i>
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- i. a noise limiting device shall be installed, fitted, and maintained in such a manner as to control all sources of amplified music at the premises.
- ii. All [external doors / windows] must be kept closed, other than for access and egress, in all rooms when events involving amplified music or speech are taking place.
- iii. The [doors / windows] at [specify] shall be fitted with [double /secondary] glazing in order to improve the sound attenuation of the premises.

- iv. No music or speech shall be relayed via external speakers other than for events with the prior approval of the licensing authority.
- vi. A [sound trap lobby / acoustic door / automatic door closer] shall be installed to [describe the location].
- vii. A scheme of soundproofing the [relevant parts] of the premises must be agreed with the licensing authority and the work completed to the licensing authorities satisfaction.
- viii. [Openings / specify] in the external fabric of the premises must be acoustically sealed to the satisfaction of the licensing authority.
- ix. An alarm shall be fitted to [all external windows / fire doors] which alerts staff when [they / it] are opened without authorisation.
- x. The specification, location and orientation of all permanently fixed speakers shall be agreed with the licensing authority.
- xi. No fireworks or other pyrotechnics shall be used other than with the prior consent of the licensing authority.
- xii. Noise from the premises shall not result in exceedances of the following noise levels expressed as [x minute Lead] at [stated location];

Frequency Range	From a hours to b hours	From y hours to z hours
[Whole range]	x dBA	y dBA
[63Hz octave band]	x dBA	y dBA
[125 Hz octave band]	x dBA	y dBA

- xiii. Prominent, clear notices shall be displayed at [all exits / in the beer garden] requesting customers to respect the needs of local residents and leave the premises and the area quietly.
- xiv. The [garden / patio] must not be used by customers after the hours of xx.xx.
- xv. The car park must be securely locked to prevent access to customers' cars between xx.xx and yy.yy.
- xvi. Disposal of waste bottles into external receptacles where the noise will be audible to neighbouring properties must not occur between xx.xx and yy.yy
- xvii. Arrangements must be put in place to ensure that waste collection contractors do not collect refuse between xx.xx and yy.yy.

- xviii. Staff must be given adequate training to prevent them causing unnecessary noise when they leave the premises and prominent, clear notices displayed at all points where staff leave the building must instruct them to respect the needs of local residents and leave the premises and the area quietly.
- xix. The licensee or a nominated representative shall receive and respond to complaints throughout the duration of all noisy events.
- xx. No inflatable play equipment shall be used without the agreement of the Licensing Authority with respect to its hours of use and other conditions as may be appropriate.
- xxi. The [car park/ garden] shall be managed to ensure that it is not used for [ball games /skateboarding/ other noisy recreational activities].

#### Litter and Waste

An adequate number of waste receptacles for use by patrons shall be provided in positions agreed with the licensing authority and it shall be the responsibility of the licensee to empty and dispose of the collected refuse at a frequency to be agreed with the licensing authority. The licensee shall comply with the Voluntary Code of Practice for The Fast Food Industry (DEFRA 2003) or any document which supersedes this.

#### Lighting

Any artificial lighting on the premises must not cause nuisance due to glare unless it is considered necessary by the local Police force to prevent crime and disorder.

#### Noxious smells

The licensee shall endeavour to ensure that there are no noxious smells emitted from the licensed premise so as to cause a nuisance to nearby properties and that the licensed premise is properly vented.

### **Conditions relating to the Protection of Children from Harm**

#### Access for children to licensed premises – in general

Children under the age of 18 years shall not be permitted to licensed premises where there has been a known association (having been presented with evidence) with or likely to give rise to:

- Heavy or binge or underage drinking
- Drugs
- Significant gambling
- Any activity or entertainment (whether regulated entertainment or not) of a clearly adult or sexual nature

No child under the age of 12 shall be allowed in a premise unaccompanied by an adult after 11.00pm in the evening in cases where that premise, is not serving alcohol for consumption on the premises, but where the public are allowed on that premises after that time.

#### Age restrictions – specific

The hours of the day during which age restrictions should and should not apply.

Types of event or activity in respect of which no age restrictions may be needed

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Types of event or activity which give rise to a more acute need for age restrictions than normal.

#### Age restrictions – cinemas

Films should be classified in the following way:

U – Universal. Suitable for audiences age 4 years and over.

PG – Parental Guidance. Some scenes may be unsuitable for young children.

12A – passed only for viewing by persons aged 12 years or older or persons younger than 12 when accompanied by an adult.

15 – Passed only for viewing by persons aged 15 years and over. 18 – Passed only for viewing by persons aged 18 years and over.

The licensee must ensure that immediately before each exhibition at the premises of a film passed by the British Board of Film Classification there shall be exhibited on screen for at least 5 seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising a film, of the statement approved by the Board indicating the classification of the film.

#### Theatres – performances especially for children

An attendant to be stationed in the area(s) occupied by the children, in the vicinity of each exit, provided that on each level occupied by children the minimum number of attendants on duty should be one attendant per 50 children or part thereof.

#### Children in performances

In addition to the requirements of the Children (Performances) Regulations 1968, as amended the licensee shall ensure that with regard to the:

venue – the backstage facility should be large enough to accommodate safely the number of children taking part in any performance.

Fire safety – all chaperones and production crew on the show should receive instruction on the fire procedures applicable to the venue prior to the arrival of the children.

Special effects – it may be inappropriate to use certain special effects including smoke, dry ice, rapid pulsating or flashing lights which may trigger adverse reactions especially in the case of children

Care of children – theatres, concert halls and similar places are places of work and may contain a lot of potentially dangerous equipment, it is therefore important that children performing at such premises are kept under adult supervision at all times including transfer from stage to dressing room or anywhere else on the premises. It is also important that the children can be accounted for at all times in case of an evacuation or emergency.

#### **The Portman Group: practice on the naming, packaging, and promotion of alcoholic drinks**

The Portman Group was set up in 1989 by the UK's leading drinks producers and its purpose is

- To promote responsible drinking
- To help prevent misuse of alcohol
- To encourage responsible marketing
- To foster a balanced understanding of alcohol related issues.

The licensee shall comply with the Portman Group's retailer alert bulletins.

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For more information of such Bulletins access the Portman Group's website on [www.portmangroup.org.uk/codeofpractice/63.asp](http://www.portmangroup.org.uk/codeofpractice/63.asp) or contact the Group on 020 7907 3700 or by writing to the Portman Group, 7-10 Chandos Street, London, W16 9DG.

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## **APPENDIX 4 - POLICY CONSULTATION**

The Licensing Authority's Policy has been drawn up after consultation with the following organisations and individuals.

**To be completed following the consultation period.**

Following adoption of this Policy, the Council will keep it under constant review.

## APPENDIX 5 – RESPONSIBLE AUTHORITIES

As well as the Licensing Team, Responsible Authorities must receive copies of the application and supporting documentation for grant and variation applications. Police need to be provided with applications for transfer of premises licences and vary designated premises. Temporary event notices need to be provided to both the Police and Environmental Health.

### Licensing Team

Folkestone & Hythe District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent CT20 2QY **01303 853660**  
[licensing@folkestone-hythe.gov.uk](mailto:licensing@folkestone-hythe.gov.uk)

### Police Licensing (East Division)

Canterbury Police Station,  
Old Dover Road,  
Canterbury  
Kent  
CT1 3JQ  
**01622 690690**

### Environmental Health

Folkestone & Hythe District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent CT20 2QY  
**01303 853000**

### Social Services

Kent County Council  
Invicta House,  
County Hall,  
Maidstone,  
Kent  
ME14 1XX  
**03000 416161**

### Trading Standards

Kent County Council,  
Invicta House,  
County Hall,  
Maidstone,  
Kent  
ME14 1XX  
**03000 416161**

### Kent Fire & Rescue

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

### Planning Development Management

Planning  
Folkestone & Hythe District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent CT20 2QY  
**01303 853000**

### Primary Health Care Trust

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

Copies of applications will be sent to the necessary responsible authorities by local authorities if the applications are submitted via the GOV.uk website.

The Responsible Authorities as defined in the Licensing Act 2003 are able to comment on applications made under the Licensing Act 2003 and apply for a review of a licence in certain circumstances.

Failure to serve these documents within 48 hours of submitting the application to the Licensing Service may result in the application being delayed or rejected.



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## APPENDIX 6: RESOURCES

### Folkestone & Hythe Council Policies

<https://www.folkestone-hythe.gov.uk/planning/planning-policy>

<https://www.folkestone-hythe.gov.uk/adopted-development-plans-and-policies>

<https://www.folkestone-hythe.gov.uk/your-council/policies-plans-and-documents/policydocuments>

[https://www.folkestone-hythe.gov.uk/media/3337/Folkestone-and-Hythe-Taxi-Policy-with-appendices-2020/pdf/Folkestone\\_and\\_Hythe\\_Taxi\\_Policy\\_with\\_appendices\\_2020\\_Final\\_Version.pdf](https://www.folkestone-hythe.gov.uk/media/3337/Folkestone-and-Hythe-Taxi-Policy-with-appendices-2020/pdf/Folkestone_and_Hythe_Taxi_Policy_with_appendices_2020_Final_Version.pdf)

<https://www.folkestone-hythe.gov.uk/licensing/alcohol-and-entertainmentlicences/apply-for-a-temporary-event-notice>

<https://www.folkestone-hythe.gov.uk/community/pspo/2019-2021>

[Safer in Kent: The Community Safety and Criminal Justice Plan](#)

### National resources:

British Beer & Pub Association, Drugs & Pubs: [A guide to keeping a drug free pub For information about drugs](#)

Licensing Act 2003 applications can be accessed and submitted electronically via the Councils website or directly via [www.ukwelcomes.businesslink.gov.uk](http://www.ukwelcomes.businesslink.gov.uk)

A copy of the [Licensing Act 2003](#)

Guidance issued by the [Secretary of State under section 182 of the Licensing Act 2003](#).

Portman Group Code of Practice is available from [www.portman-group.org.uk](http://www.portman-group.org.uk)

[Safer Clubbing Guide](#)

[Safer nightlife advice and guidance](#)

Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances [www.streetartnetwork.org.uk/publications](http://www.streetartnetwork.org.uk/publications)

Tackling Antisocial behaviour available from [www.together.gov.uk](http://www.together.gov.uk)

