

DECISION-MAKER **LICENSING (LICENSING & GAMBLING) SUB COMMITTEE**

SUBJECT

HEARING TO CONSIDER AN APPLICATION FOR REVIEW OF A
PREMISES LICENCE

BITTERNE EXPRESS, 27 ST. CATHERINES ROAD
SOUTHAMPTON SO18 1LL

DATE OF HEARING **THURSDAY 11TH MAY 2017- 11:00am**

REPORT OF

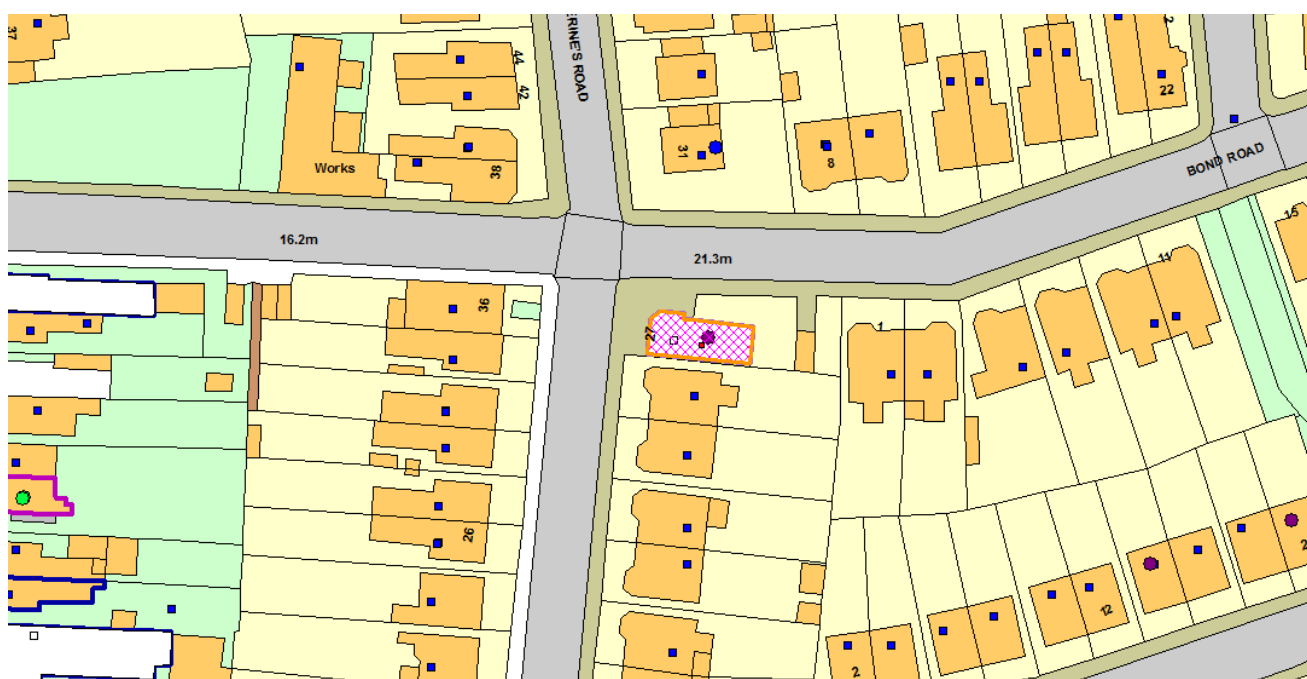
SERVICE DIRECTOR – TRANSACTIONS & UNIVERSAL
SERVICES

E-mail

licensing@southampton.gov.uk

Application Date : 17th March 2017 Application Received 17th March 2017

Application Valid : 17th March 2017 Reference : **2017/01032/01SRAP**



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Representations from Responsible Authorities

Responsible Authority	Satisfactory?
Children Services - Licensing	Yes
Hampshire Fire And Rescue - Licensing	Yes
Environmental Health - Licensing	Yes
Public Health - Public Health Manager	Supporting Review
Planning & Sustainability - Development Control - Licensing	YES

Police - Licensing	Supporting Review	
Trading Standards - Licensing	Applicant	
<i>Other Representations</i>		
<u>Support for Premises</u>		
Name	Address	Contributor Type
Mrs Heather Munday	24A Bond Road, Bitterne Park, Southampton, SO18 1LQ	Resident Support of premises

Legal Implications

1. Part 3 of the Licensing Act 2003 provides that a responsible authority or any other person may apply for review of a premises licence.
2. In such circumstances, the applicant for the review must serve a copy of the review application on the holder of the premises licences, the licensing authority and each of the responsible authorities.
3. On receipt of an application for review, officers will consider its validity under delegated powers. Reasons for rejection, in whole or in part, include:
 - that the grounds for review are not relevant to one of more of the licensing objectives and;
 - that the application is frivolous, vexatious or repetitious, unless it is made by a responsible authority.
4. The licensing authority must display a prescribed notice of the review application on the outside or adjacent the premises, on the authority's website and at the Civic Centre; the notice must remain on display for 28 days and any interested party or the responsible authorities may make representations in that period.
5. The licensing authority is then required to hold a hearing to consider the review.
6. In doing so the sub-committee must give appropriate weight to:
 - the steps that are appropriate to promote the licensing objectives; the representations (including supporting information) presented by all the parties;
 - its own statement of licensing policy
 - the Statutory Guidance
7. In determining an application for review, the legislation provides that the sub-committee may take any (or none) of the following steps, as it considers necessary:
 - modify the conditions of the licence;
 - exclude a licensable activity from the scope of the licence
 - remove the designated premises supervisor;
 - suspend the licence for a period not exceeding three months
 - revoke the licence.

8. The Licensing Act 2003 provides for appeal to the Magistrates' Court against the sub-committee's decision in relation to an application for review by the premises licence holder and any other party who made a representation to the application.
9. In considering this application the sub-committee will sit in a quasi-judicial capacity and is thus obliged to consider the application in accordance, in particular, with both the Licensing Act 2003 (Hearings) Regulations 2005 (as amended) and the rules of natural justice. The practical effect of this is that the sub-committee must make its decision based on evidence submitted in accordance with the legislation and give adequate reasons for reaching its decision.
10. The sub-committee must also have regard to:
 - **The Crime and Disorder Act 1998**
Section 17 of the Crime and Disorder Act 1998 places the sub-committee under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
 - **The Human Rights Act 1998**
The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the sub-committee to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the sub-committee that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the sub-committee which affects another's rights must be no more onerous than is necessary in a democratic society. The matters set out in this report must be considered in light of the above obligations.
11. Copies of the application for review and the representations to it are annexed to this report.

SUMMARY

Application form (trading standards) – Pages 7-13

Additional Evidence (trading standards) – Pages 14-25

Public Health Support of Review – Pages 26-29

Hampshire Constabulary Support of review – Pages 30-44

Ms. Heather Munday Support of Premises - Page 45

Premises Licence Holder	Mr. Meheindhan Navakumar from 15/09/15
Designated Premises Supervisor	Mr. Meheindhan Navakumar from 15/09/15

Licensable Activities.

Supply by retail of alcohol	The opening hours of the premises
Monday 08:00 - 23:00	Monday 08:00 - 23:20
Tuesday 08:00 - 23:00	Tuesday 08:00 - 23:20
Wednesday 08:00 - 23:00	Wednesday 08:00 - 23:20
Thursday 08:00 - 23:00	Thursday 08:00 - 23:20
Friday 08:00 - 23:00	Friday 08:00 - 23:20
Saturday 08:00 - 23:00	Saturday 08:00 - 23:20
Sunday 10:00 - 22:30	Sunday 10:00 - 22:50

The application for review relates to the licence holder failing to meet the licensing objectives, to prevent crime and disorder, in that on two occasions he did not comply with mandatory conditions.

Conditions attached to current licence – excluding mandatory conditions.

EMBEDDED CONDITIONS FROM CHILDREN AND YOUNG PERSONS ACT 1933

It is a condition of your licence that you comply with the extant provisions of the Children and Young Persons Act 1933, as amended.

EMBEDDED CONDITIONS FROM THE LICENSING ACT 1964

Alcohol shall not be sold or supplied except during permitted hours.

In this condition, permitted hours means:

- (a) On weekdays, other than Christmas Day, 08:00 to 23:00
- (b) On Sundays, other than Christmas Day, 10:00 to 22:30
- (c) On Christmas Day, 12:00 to 15:00 and 19:00 to 22:30
- (d) On Good Friday, 08:00 to 22:30

The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;

- (b) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (c) the sale of alcohol to a trader or club for the purposes of the trade or club;
- (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;

Conditions attached to current licence (after a hearing by the licensing authority)

1. The Premises Licence Holder must be able to identify who supplied alcohol present at the premises and supply written details (including name, address and telephone number of supplier and date of supply/price paid) to an authorised officer within 24 hours of receiving a request to do so. Delivery notes, invoices, receipts and similar records should be retained for a minimum period of 24 months and made available on request to an authorised officer.
2. The holder of the premises licence shall ensure that every individual who appears to be under 25 years of age seeking to purchase or be supplied with alcohol at or from the premises shall produce means of identification acceptable to the Licensing Authority proving that individual to be 18 years of age or older. If the person seeking alcohol is unable to produce acceptable means of identification, no sale or supply of alcohol will be made to or for that person. Notices regarding the store's Challenge 25 policy must be displayed.
3. All staff who sell alcohol will be trained to NCPLH (National Certificate of Personal Licence Holder) level. All sales of alcohol must be directly supervised and authorised by a Personal Licence Holder until such staff have achieved training to NCPLH level.
4. That staff must be trained regarding appropriate precautions to prevent the sale of alcohol to persons under the age of 18 and records are kept of such training, which are signed and dated by the member of staff who has received the training. Staff will receive refresher training every six months as a minimum and records, signed and dated by the member of staff will be kept of this refresher training. Records of training will be available for inspection by Hampshire Constabulary, the Licensing Authority, Trading Standards and other Responsible Authorities on request.
5. The holder of the premises licence shall keep a written record, namely a refusals book, of those incidents where a person who a member of staff believes to be under the age of 18, and is unable to produce acceptable means of identification proving that they are of 18 years or more, attempts to purchase alcohol and is refused. The record shall include details, in English, of the date, time, a brief description, including estimated age, of the person who attempted to purchase the alcohol, the type of alcohol and the name of the person who refused the sale. Staff shall be trained in the use of the refusals book and it should be kept in a readily accessible place known by all members of staff. The record will be regularly checked by the premises licence holder or the designated premises supervisor to ensure that all staff are completing records and, and this person will sign and date the record as evidence that they have checked it. The refusals book will be available for inspection by Hampshire Constabulary, the Licensing Authority, Trading Standards and other relevant authorities on request.
6. A CCTV system shall be installed and maintained in the licensed premises to the satisfaction of the Licensing Authority, Hampshire Constabulary and Trading Standards.

As a minimum, it shall enable surveillance of both external and internal areas of the premises including entrances and exits. Recordings from the system shall be of a quality acceptable as evidence in a court of law and shall be securely retained at the licensed premises for a minimum period of 30 days after the recording, and shall be surrendered to Hampshire Constabulary, the Licensing Authority, or Trading Standards immediately on request. The Premises Licence Holder and staff must be capable of operating the CCTV system.

Southampton City Council

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Southampton City Council's Trading Standards Service

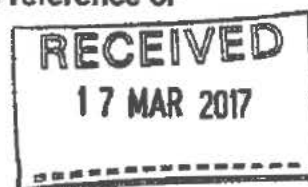
(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description

Bitterne Express, 27 St. Catherines Road



Post town Southampton

Post code (if known) SO18 1LL

Name of premises licence holder or club holding club premises certificate (if known)

Meheindhan Navakumar

Number of premises licence or club premises certificate (if known)
2005/00349/01SPRC

Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

- | | |
|---|--------------------------|
| a) a person living in the vicinity of the premises | <input type="checkbox"/> |
| b) a body representing persons living in the vicinity of the premises | <input type="checkbox"/> |
| c) a person involved in business in the vicinity of the premises | <input type="checkbox"/> |
| d) a body representing persons involved in business in the vicinity of the premises | <input type="checkbox"/> |

- 2) a responsible authority (please complete (C) below) ☒
- 3) a member of the club to which this application relates (please complete (A) below) ☐

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

☐

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address
Lucas Marshall
Trading Standards Service
Southampton City Council
Civic Centre
Southampton
SO14 7LY

Telephone number (if any)

E-mail address (optional)

@southampton.gov.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

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

☒
☐
☐
☐

Please state the ground(s) for review (please read guidance note 1)

That the Premises Licence Holder, Meheindhan Navakumar, failed to meet the Licensing Objective, to Prevent Crime & Disorder, in that on two occasions he did not comply with the mandatory condition on his Premises Licence which bans the sale of alcohol below the cost of duty + vat, which constitutes an offence under Section 136 of the Licensing Act 2003 for an unauthorised sale of alcohol.

That the Premises Licence Holder, Meheindhan Navakumar, failed to meet the Licensing Objective, to Prevent Crime & Disorder, in that he failed to provide traceability information relating to the alcohol which he had sold below duty + vat, an offence under Regulation 19(1) of the Food Safety & Hygiene (England) Regulations 2013, which was also in breach of a condition on his Premises Licence which requires provision of such traceability information to an authorised Officer within 24 hours of such a request.

Please provide as much information as possible to support the application
(please read guidance note 2)

From November 2016 to February 2017 Southampton City Council's Trading Standards Service, Licensing Department and Hampshire Constabulary were involved in an exercise aimed at establishing whether licensed premises were acting in accordance with a mandatory condition on their premises licence, that alcohol will not be sold below the cost of duty + vat.

Sale of alcohol in breach of this condition constitutes an unauthorised sale, which is an offence under Section 136 of the Licensing Act 2003. Alcohol sold below duty + vat is also likely to be duty evaded stock, as it is not financially viable to sell it for below this price.

The exercise involved:

- Southampton City Council's Licensing Department writing to licensed premises to advise/remind them that the condition was in place.
- Trading Standards and Hampshire Constabulary conducting test purchases of alcohol to ascertain whether the condition was being breached.
- Warning/advising those premises which failed the first test purchase exercise, and requesting invoices relating to the alcohol sold below duty + vat.
- Conducting a second test purchase at those premises which failed the first.

The intention was to deal with those premises which failed both test purchases by way of Licence Review.

The products which were targeted were strong Polish beers, particularly Karpackie 9% 500ml cans and Perla Mocna 7.6% 500ml cans, the reasons being:

- That information gathered during inspections of premises indicated that these products were liable to be sold below duty + vat
- And that these products are particularly appealing to street drinkers and alcoholics, where price will strongly dictate how much they consume.

In November 2016 Southampton City Council's Licensing Department sent a letter of advice regarding the condition to premises including Bitterne Express, 27 St Catherine's Rd, Southampton. (a copy of this letter is attached).

On 14th December 2016 Trading Standards made a test purchase of 4 cans of Perla Mocna 7.6% 500ml beer at that premises: it was sold for £4 (the duty plus VAT minimum price for this product is £4.36).

On 22nd December 2016 I hand delivered a warning letter to the premises (a copy of this letter is attached) and requested invoices relating to the Perla Mocna. The Premises Licence Holder and Designated Premises Supervisor, Meheindhan Navakumar was not present so I spoke to him by phone and advised regarding the condition. He agreed to provide invoices for the Perla Mocna by 3rd January 2017. Whilst there I advised that the cigarette gantry was not compliant in that the cigarettes and tobacco within were not adequately covered, as required under the Tobacco Advertising and Promotion (Display) (England) Regulations 2010 (as amended), and were visible to customers. Beers which were not labelled in English, as required under the Food Information Regulations 2014, were also displayed for sale at the premises, as had been the case during an inspection that I had conducted in June 2016, when I had advised that these be removed from sale.

On 7th February 2017 I still had not received the invoices from Mr Navakumar so I visited Bitterne Express. Before announcing myself to the member of staff present I asked her how much the Perla Mocna was. She told me that it was £4 for 4 cans, so I

made a purchase: despite repeat advice and warnings the condition had been breached again. Polish labelled beers were still displayed for sale and meat products were found at the premises which were past their use by date, an offence under the Food Safety & Hygiene (England) Regulations 2013.

On 10th February I sent a letter to Mr Navakumar inviting him to attend interview (a copy of this letter is attached). I phoned him regarding the importance of the interview however as of yet he has not attended, or provided invoices relating to the Perla Mocna. It is an offence under Regulation 19(1) of the Food Safety and Hygiene (England) Regulations 2013 to fail to supply traceability information, such as invoices, for food and drink. There is also a condition on the licence which was imposed following previous sales of illegal alcohol at the premises, that "the Premises Licence Holder must be able to identify who supplied alcohol present at the premises and supply written details (including name, address and telephone number of supplier and date of supply/price paid) to an authorised officer within 24 hours of receiving a request to do so. Delivery notes, invoices, receipts and similar records should be retained for a minimum period of 24 months and made available on request to an authorised officer". Clearly this condition has been breached

During conversation with a member of staff, Mohan, at Bitterne Express on 14th February 2017 he informed me that Mr Navakumar had not been to the shop for the last 3 weeks. As Designated Premises Supervisor he should be present, and ensuring that the premises is complying with the Licensing Objectives and is properly managed.

Clearly advice and warnings have been ineffective in ensuring compliance at this premises. I would therefore ask that the Premises Licence is suspended for a period of time, as a deterrent to further offences, that Mr Navakumar is removed as Designated Premises Supervisor, and that the following condition is imposed on the Premises Licence to assist in prevention of sale of alcohol below duty + vat:

"Beer of over 7.5% will not be sold from the premises".

Please tick yes

Have you made an application for review relating to this premises before ☐

If yes please state the date of that application

Day Month Year

--	--	--	--	--	--	--	--

If you have made representations before relating to this premises please state what they were and when you made them

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent
(See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature

Date 17th March 2017

Capacity Trading Standards Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Lucas Marshall
Trading Standards Service
Southampton City Council
Civic Centre
Southampton
SO14 7LY

Post town
Southampton

Post Code
SO14 7LY

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) @southampton.gov.uk

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.
6. See separate guidance for responsible authorities' details.

LICENSING TEAM

Southampton and Eastleigh Licensing Partnership

Southampton City Council
Civic Centre
Southampton SO14 7LY

Please address all correspondence to:
**Licensing – Southampton City Council,
PO Box 1767, Southampton SO18 9LA**



Direct dial: 023 8083 3002
Our ref: [premises reference]

E-mail: licensing@southampton.gov.uk
Please ask for: Licensing

To premises licence holders – off licences

November 2016

IMPORTANT – THE CONTENTS OF THIS LETTER MAY AFFECT YOUR BUSINESS

Dear Sir or Madam,

LICENSING ACT 2003 – MINIMUM PRICING AND TEST PURCHASING

As you will be aware, the conditions of your licence to sell alcohol include requirements, amongst others, that you do not sell or supply alcohol below the minimum permitted price and that you have an age verification policy in place to ensure that alcohol is not sold or supplied to anyone under the age of 18. It is also an offence to keep smuggled goods of any description on licensed premises.

Recent test purchase operations by Trading Standards and Hampshire Constabulary have revealed a number of premises where alcohol has been sold to persons under the age of 18 and smuggled alcohol has been sold below the minimum legal price for that product. If you are able to purchase alcohol for less than the total of duty plus VAT, it is likely to be non-duty paid, smuggled goods.

Such alcohol also has a disproportionately high negative impact on public health and public order problems, including street drinkers.

This has resulted, so far, in a premises licence being revoked on review by the Licensing Committee.

The Licensing Act 2003 provides for maximum penalties as follows:

- Sale or supply of alcohol to or for a person under 18: unlimited fine
- Sale or supply of alcohol below the minimum price: unlimited fine and/or six months' imprisonment
- Keeping smuggled goods on licensed premises: £1000 fine

In addition, licences of premises where such offences are discovered are likely to be reviewed, potentially resulting in their revocation. Home Office Guidance makes it clear, in particular, that the sale of smuggled goods from and other criminal activity at licensed premises is particularly serious and that revocation of the licence should be seriously considered on the first occurrence.

Trading Standards and Hampshire Constabulary will be carrying out further test purchase operations in the future, and intend, where appropriate, to bring reviews of licences if offences are found.

A copy of this letter is being sent all holders of premises licences where alcohol is restricted to its sale for consumption off the premises.

Further information, including a calculator to give indicative minimum prices for alcohol is available at www.southampton.gov.uk/premlic

On the reverse of this letter you will find the text of the mandatory licence conditions which apply to your business.

Yours faithfully,



Licensing Manager

MANDATORY CONDITIONS

Age verification policy - from 1 October 2014

- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.

Alcohol minimum permitted price - from 28 May 2014

- 1 A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 2 For the purposes of the condition set out in paragraph 1 —
 - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) “permitted price” is the price found by applying the formula —
$$P = D + (D \times V)$$
where—
 - (i) *P* is the permitted price,
 - (ii) *D* is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) *V* is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence —
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
- 3 Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- 4
 - (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
 - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Trading Standards Service

Southampton City Council
Civic Centre
Southampton SO14 7LY

Direct dial: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]@southampton.gov.uk

Please ask for: Lucas Marshall
Our ref:
Your ref:

22nd December 2016

Meheindhan Navakumar
Bitterne Express
27 St Catherines Road
Southampton
SO18 1LL

Dear Mr Navakumar

Licensing Act 2003

Consumer Protection from Unfair Trading Regulations 2008

Food Safety and Hygiene (England) Regulations 2013

I am writing to advise you regarding a breach of a condition of your premises licence which took place at, Bitterne Express, 27 St Catherines Road, Southampton on 14 December 2016. Your premises licence is subject to a mandatory condition which bans the sale of alcohol at below the cost of duty plus VAT. Any sale of alcohol below this price is unauthorised and as such constitutes an offence under section 136 of the Licensing Act 2003. If you are able to obtain alcohol below this price it is also indicative that it is illegal, duty evaded product, and sale of such product constitutes an offence under the Consumer Protection from Unfair Trading Regulations 2008.

This mandatory condition has been in place since May 2014. You were advised regarding the condition by Southampton City Council's Licensing Team when it came into place in 2014 and you were further advised on the requirements by the Licensing Team by way of letter more recently in November 2016. If your licence has been issued since May 2014, the condition is also clearly written on your premises licence, but, in any case, your licence is subject to it.

Despite the above advice, on 14 December 2016, Southampton City Council's Trading Standards Service made a test purchase of alcohol at less than duty plus VAT at (premises), namely 4 cans of Perla Mocna 7.6% 500ml beer which was sold for £4 (the duty plus VAT minimum price for this product is £4.36). It is therefore alleged that you have committed an offence under Section 136 of the Licensing Act 2003.

The test purchase was part of a joint exercise with Licensing and Hampshire Constabulary, to detect non-compliant premises. The sale of strong beers at illegally low prices has a detrimental effect with regard to competition with compliant traders, and consumption by alcoholics and street drinkers, who favour such products.

As a non-compliant premises, you will initially be dealt with by way of this warning letter. I would strongly advise that you revise your pricing immediately, and only source alcohol from legitimate wholesalers. A further test purchase will be made and, if you are found to be in breach of the condition again, your licence will be subject to review, when the Licensing Committee would have the option, amongst other sanctions, of revoking it.

I would also ask that you provide original invoices for the above alcohol to me by 3rd January 2016. It is an offence under the Food Safety and Hygiene (England) Regulations 2013 to fail to provide traceability information.

If you require further advice please contact me by e-mail: [REDACTED]@southampton.gov.uk or on 023 8083 4930. If you provide your e-mail address to me I can send you a duty plus VAT calculator, to assist you in complying with the terms of your licence.

Yours sincerely

[REDACTED]
Lucas Marshall
Trading Standards Officer

John Burke
Licensing Manager

PC Alex Boucouvalas
Hampshire Constabulary

Trading Standards Service
Southampton City Council
Civic Centre
Southampton SO14 7LY

Direct dial: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]@southampton.gov.uk

Please ask for: Lucas Marshall
Our ref:
Your ref:

6th January 2017

Meheindhan Navakumar
Bitterne Express
27 St Catherines Road
Southampton
SO18 1LL

Dear Mr Navakumar

Licensing Act 2003
Consumer Protection from Unfair Trading Regulations 2008
Food Safety and Hygiene (England) Regulations 2013
Food Information Regulations 2014

On 22nd December I hand delivered a letter to your premises, Bitterne Express, 27 St. Catherines Rd, Southampton. The letter was a warning regarding the sale of alcohol below the cost of duty + vat, in breach of a mandatory condition on your premises licence. In that letter I also requested copies of invoices relating to your purchase of Perla Mocna beer, as I was concerned that it may be illegal duty evaded product, and asked that these should be provided by 3rd January: it is an offence under the Food Safety and Hygiene (England) Regulations 2013 to fail to supply these.

You were not present at the premises on 22nd December so I spoke to you by phone. I explained the content of the letter, and that I required the above invoices by 3rd January, which you agreed to provide. Whilst speaking to you I also advised that your cigarette gantry was not compliant in that the cigarettes and tobacco within were not adequately covered. You agreed to come into the shop that day to remedy this and amend the pricing of your beer accordingly.

On 3rd January, having not received your invoices, I visited Bitterne Express. Again you were not present so I spoke to you by phone. You stated that you had not retrieved the invoices for the Perla Mocna from your accountant, but should have these by 13th January. Regarding your cigarette gantry this was still non-compliant, with cigarettes clearly visible, despite the fact that you could easily have remedied this by dropping the external cover. I also found Polish beer which was not compliant with the Food Information Regulations 2014 in that it was not labelled in English – I had advised you regarding this during my routine inspection of the premises on 27th June 2016.

It concerns me greatly that you do not appear to be able, or willing, to heed basic advice. When told that you are committing offences you do not take simple actions to prevent doing so. I would strongly advise that you put more input into your business and try to become a responsible, law abiding, trader. The repercussions of not complying with the law are serious and can have a profound effect on your Premises Licence: one of your Licensing Objectives is to prevent Crime and Disorder, and if you fail to do so your Premises Licence can be taken to review.

I will visit your premises on 13th January and I would ask that you are present with your invoices.

If you require further advice please contact me by e-mail: lucas.marshall@southampton.gov.uk or on 023 8083 4930. If you provide your e-mail address to me I can send you a duty plus VAT calculator, to assist you in complying with the terms of your licence.

Yours sincerely

[REDACTED]

Lucas Marshall
Trading Standards Officer

Trading Standards Service
Southampton City Council
Civic Centre
Southampton SO14 7LY

Direct dial: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]@southampton.gov.uk

Please ask for: Lucas Marshall
Our ref: 17/00068/FOODST
Your ref:

10th February 2017

Meheindhan Navakumar
Bitterne Express
27 St Catherines Road
Southampton
SO18 1LL

Dear Mr Navakumar

Licensing Act 2003
Food Safety and Hygiene (England) Regulations 2013
Food Information Regulations 2014

On 14th December 2016 alcohol, Perla Mocna beer, was sold at below duty + vat at Bitterne Express, 27 St Catherines Rd, Southampton, in breach of a mandatory condition on your Premises Licence. A letter of advice/warning was sent to your premises regarding this matter on 22nd December. I also requested traceability information, invoices, regarding your purchase of the Perla Mocna to be delivered to me by 3rd January 2017.

Having not received the invoices I visited Bitterne Express on 3rd January. The invoices were not available. You explained over the phone that these were with your accountant, but you would obtain them by 13th January. Whilst at the premises I conducted a brief food inspection and found that Polish beers were displayed for sale which were not labelled in English, as required under the Food Information Regulations 2014 - I had advised you regarding this requirement during my routine inspection of the premises on 27th June 2016.

As of this time I have still not received the requested invoices. It is therefore alleged that you have committed an offence under Regulation 19(1) of the Food Safety and Hygiene (England) Regulations 2013 to fail to supply traceability information relating to the Perla Mocna.

On 7th February I visited Bitterne Express. Whilst there I noted that you had Perla Mocna beer for sale. I asked the shop assistant how much it was, and she told me that it was £1.09 per can, or 4 for £4. The duty + vat liable on 4 cans of Perla Mocna is £4.36. I purchased 4 cans of the beer for £4. It is alleged that you have, again, committed an offence under Section 136 of Licensing Act 2003 for making unauthorised sales of alcohol. I conducted a food inspection and again found Polish beers which were not labelled in English, and two packets of ham which were past their use by date, 5th Feb, displayed for sale, constituting an offence under Food Safety and Hygiene (England) Regulations 2013.

I would like to arrange a formal interview with you to discuss the above matters. This interview will be audio recorded in accordance with the Police and Criminal Evidence Act 1984 and associated Codes of Practice, and you are advised to seek legal advice if you wish to do so. You are entitled to have your solicitor present at the interview. The interview will be conducted at The Gateway, One Guildhall Square, Southampton, SO14 7FP. Please contact me on 02380 834930 or by e-mail to arrange a convenient date. Please bring invoices relating to your purchase of the Perla Mocna which was sold from your premises to the interview.

Yours sincerely

[REDACTED]

Lucas Marshall
Trading Standards Officer

c [REDACTED]

Trading Standards Service
Southampton City Council
Civic Centre
Southampton SO14 7LY

Direct dial: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]@southampton.gov.uk

Please ask for: Lucas Marshall
Our ref: 17/00068/FOODST
Your ref:

10th April 2017

Licensing Department
Civic Centre
Southampton
SO14 7LS



Dear Sir/Madam

Licensing Act 2003

Further to my application for review of the Premises Licence for Bitterne Express, 27 St Catherines Road, Southampton I would add the following:

On 23rd March 2017 I conducted an interview with the Premises Licence Holder, Mr Navakumar. During the interview he claimed that he is present at Bitterne Express for 5-6 evenings per week, however he had been away for a period of a few weeks looking after his brother whilst his Mother was in Sri Lanka, and this coincided with the breaches of the mandatory alcohol pricing condition, which took place in December 2016 and February 2017.

Mr Navakumar provided an invoice for his purchase the Perla Mocna beer that had been sold at his premises below the cost of duty + vat, in breach of the pricing condition. Article 18(2) of Regulation (EC) No. 178/2002 requires food business operators to have in place systems and procedures which allow traceability information, such as invoices, to be made available to the competent authorities on demand. This legislation does not prescribe a time frame for the information to be produced, however guidance given by Food Standards Agency states that food businesses should have their records sufficiently organised and available to be produced within a short timescale. Mr Navakumar produced this information three months after it had originally been requested, so he should be regarded as having failed to meet this requirement, an offence under Regulation 19(1) of the Food Safety & Hygiene (England) Regulations 2013. Additionally there is a condition on his Premises Licence which requires Mr Navakumar to provide traceability information within 24 hours of a request by an authorised Officer. Clearly he had breached this condition.

The invoice provided gave a price for the Perla Mocna beer as £1.25 per can, however it was being sold for only £1 per can. It seems unlikely that Mr Navakumar would make a loss of 25 pence on each can, as this is not financially viable. I have enclosed a statement from HMRC Officer David Fryer in which he states that the price is indicative that the beer has come from an illicit supply source. Keeping smuggled alcohol on the premises is a serious matter and Home Office Guidance states that revocation of a licence should be considered in the first instance that it is found. During interview Mr Navakumar claimed

that he was making a loss on each can of the Perla Mocna. He has now ceased selling the product.

Mr Navakumar said that some of prices for the goods that he sells are on their electronic point of sale system, however some, including the Perla Mocna, had to be entered manually. He blamed his staff for charging the incorrect price for the products.

Other conditions on the premises licence were discussed during the interview.

One such condition relates to provision of staff training regarding prevention of under age sales, and the keeping of records of such training. Mr Navakumar could not evidence that training had been given to staff as records had not been kept.

There is a condition that staff who sell alcohol are trained to National Certificate of Personal Licence Holder (NCPLH) level, and if they are not then their sales of alcohol sales will be supervised by a personal licence holder. Staff member Mariana, who had sold alcohol below duty plus VAT, was not trained to NCPLH level and was unsupervised at the time that she made the sale, in breach of this condition.

Yours faithfully



Lucas Marshall
Trading Standards Officer



Cc

Meheindhan Navakumar, Bitterne Express, 27 St Catherines Road, Southampton, SO18 1LL
Meheindhan Navakumar, 

Force Licensing Team, Hampshire Constabulary, Southampton Police Office, Civic Centre,
Southampton SO14 7LY

WITNESS STATEMENT
ENGLAND AND WALES ONLY
(Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B)
Statement of: David Glynn Fryer

URN:
Age if under 18: Over 18 (If over 18 Insert 'over 18') **Occupation:** Officer of HM Revenue and Customs

This statement (consisting of two pages signed by me) is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signature: ¹
Date: 08/03/2017

Indicate if witness evidence is visually recorded² Y/N (If YES, see guidance)

3

I am employed by HM Revenue and Customs (HMRC) as a Criminal Investigator.

I lead on Investigating Criminal Excise duty evasion in Central Southern England for HMRC.

Excise duty is levied on alcohol, tobacco and fuel oils.

I have been asked by Lucas Marshall of Southampton Trading Standards to provide an excise duty calculation with regards to four 500 millilitre cans of "Perla Mocna" lager which were purchased from Bitterne Express, 27 St Catherines Road, Bitterne, Southampton on the 14th December 2016 and 7th February 2017.

To find the excise duty on one can of 500ml "Perla Mocna" lager you first have to convert the calculation to Hectolitres.

$$(1 \times 0.5)/100 \times 1 = 0.005 \text{ hl}$$

The bulk Hectolitre figure is multiplied by the ABV amount, in this case 7.6%.

$$0.005 \times 7.6 = 0.038 \text{ hl\%ABV}$$

The current duty rate is obtained from Part 12, Volume 1 of the Tariff.

Multiply the hl%ABV amount by the current Beer duty rate. The duty rate in 2016 is £23.85

$$\text{The duty rate on one 500ml can is therefore } £23.85 \times 0.038 = £0.90$$

The excise duty is then subject to Value added tax of 20%.

$$£0.90 \times 20\% = 18\text{p} \quad £0.90 + 18\text{p} = £1.08$$

Therefore the minimum excise duty on a four 500mls cans of "Perla Mocna" at 7.6% ABV is

Date: 08/03/2017

Signature: David Fryer
(Signature of witness)

Signature: Enter Name
(Signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY
Page 1 of 2

Statement of: David Glynn Fryer

URN:

4 times **£1.08** which equals **£4.32**.

These calculations do not include any VAT charged on the actual purchase price of the product, nor production or transport costs and is just the Excise duty due to HMRC.

It is therefore not financially viable to sell this product for less than £4.32 and would be an indication that these goods have come from an illicit supply source.

Date: 08/03/2017

Signature: David Fryer
(Signature of witness)Signature: Enter Name
(Signature witnessed by)**STATEMENT OF WITNESS: ENGLAND AND WALES ONLY**
Page 2 of 2

[REDACTED]

From: Denley, Sally
Sent: 18 April 2017 10:45
To: Licensing
Cc: Marshall, Lucas; Bates, Phil; Boucouvalas, Alex
Subject: Bitterne Express
Attachments: Bitterne Express License Reviewamended letter.docx

Dear Sirs,

Please find attached amended letter in support of the licensing review.
There was an error in paragraph two that has now been amended. (*in italics*).

Bw
Sally

Sally Denley
Public Health Development Manager
Southampton City Council

Tel: [REDACTED]
Email: [REDACTED]@southampton.gov.uk

[REDACTED]



Direct dial: 023 [redacted]
Email: [redacted]@southampton.gov.uk
Please ask for: Sally Denley

Fax: [redacted]
Minicom: [redacted]
Our ref: [redacted]

Licensing Department
Civic Centre
Southampton
SO14 7LS

Date: 12 April 2017

Dear Sirs,

Re: Bitterne Express License Review

Public Health, Southampton City council are writing in support of Trading Standards Service, Southampton City Council application to review the above premises license on the following grounds:

1. The prevention of crime and disorder

The Prevention of Crime and Disorder

The above premises have been selling 4 cans of Perla Mocna beer for £4.00 which is below the price of duty + VAT, which is £1.09 on this product. There is a mandatory condition on all alcohol licenses stating that alcohol cannot be sold below duty + VAT.

It is known that low cost, high strength Polish lagers are favoured by those most vulnerable to alcohol abuse who in turn suffer increased levels of morbidity and mortality as a result to alcohol. The persistently high rate of alcohol attendances and admissions to hospital places immense strain on an already overburdened health service in Southampton.

The rate of alcohol specific admissions in Southampton is significantly higher than the England average for males and significantly higher than the England average for females. Premature death and health inequalities linked to alcohol abuse is an increasing problem in the City.

We are concerned that premises who do not adhere to licensing regulations are fuelling the health issues related to heavy alcohol consumption as well as contributing to issues around crime and disorder and would support the following condition:

"Beer, lager and cider over 7.5% will not be sold from these premises".

Yours faithfully

[redacted signature]

Sally Denley
Public Health Development Manager

[REDACTED]

From: Denley, Sally
Sent: 13 April 2017 15:38
To: Licensing
Cc: Marshall, Lucas; Boucouvalas, Alex; [REDACTED] Bates, Phil
Subject: Bitterne Express
Attachments: Bitterne Express License Review.docx

Dear Lucas,

Please find attached letter in support of your application to review.

Bw
Sally

Sally Denley
Public Health Development Manager
Southampton City Council

Tel: [REDACTED]
Email: [REDACTED]



SOUTHAMPTON
CITY COUNCIL

Direct dial: 023 [redacted]
Email: [redacted]@southampton.gov.uk
Please ask for: Sally Denley

Fax:
Minicom:
Our ref:

Date: 12 April 2017

Licensing Department
Civic Centre
Southampton
SO14 7LS

Dear Sirs,

Re: Bitterne Express License Review

Public Health, Southampton City council are writing in support of Trading Standards Service, Southampton City Council application to review the above premises license on the following grounds:

1. The prevention of crime and disorder

The Prevention of Crime and Disorder

The above premises have been selling cans of Perla 500 ml beer at £1.20, which is below the price of duty + VAT, which is £1.28 on this product. There is a mandatory condition on all alcohol licenses stating that alcohol cannot be sold below duty + VAT.

It is known that low cost, high strength Polish lagers are favoured by those most vulnerable to alcohol abuse who in turn suffer increased levels of morbidity and mortality as a result to alcohol. The persistently high rate of alcohol attendances and admissions to hospital places immense strain on an already overburdened health service in Southampton.

The rate of alcohol specific admissions in Southampton is significantly higher than the England average for males and significantly higher than the England average for females. Premature death and health inequalities linked to alcohol abuse is an increasing problem in the City.

We are concerned that premises who do not adhere to licensing regulations are fuelling the health issues related to heavy alcohol consumption as well as contributing to issues around crime and disorder and would support the following condition:

"Beer, lager and cider over 7.5% will not be sold from these premises".

Yours faithfully

[Redacted signature]

Sally Denley
Public Health Development Manager



Hampshire Constabulary

Police Licensing
Civic Centre
Southampton
Hampshire
SO14 7LY

Licensing Manager
Southampton City Council
Civic Centre
Southampton
SO14 7LY

Telephone: 101
Direct Dial: 0238 [redacted]

Fax number:
Minicom TextRelay: 18001 101

Email: [redacted]@hampshire.pnn.police.uk

Our ref: 44100017866
Your ref: 2005/00349/01SPRC

13/04/2017

Dear Southampton City Council,

I am writing to confirm receipt of the application for premises licence review for Bitterne Express, 27 St. Catherine's Road, Southampton, SO18 1LL submitted by Southampton City Council Trading Standards Service and the further submission dated the 10th April 2017.

Hampshire Constabulary supports this review application and makes representation on behalf of the Chief Officer of Police under the following licensing objectives.

- 1) The prevention of crime and disorder.
- 2) Public Safety

Hampshire Constabulary works closely with Southampton City Council. We confirm that as described in Mr Marshall's application, we have been working hard to deter the criminality surrounding the supply of high strength smuggled alcohol from our licensed premises at illegally low prices.

In January 2011, the government launched a crackdown on the availability of cheap alcohol (Annex 1) by seeking to make it a criminal offence to sell alcohol below the cost of duty and VAT for that product.

From 28th May 2014, it has been a mandatory condition of all premises licences issued under Licensing Act 2003 to supply alcohol below this cost. Alcohol supplied in contravention of this mandatory licence condition is a criminal offence under section 136 of The Licensing Act 2003 – unauthorised licensable activities.

In early 2014 Southampton City Council wrote to all premises licensed under the act, including these premises, warning them of the impending changes and the consequences of non-compliance. (Annex 2)



Hampshire Constabulary

In November 2016 Southampton City Council again wrote to these premises warning the licence holder about the requirement to meet minimum prices and of impending test purchasing.

On the 14th December these premises failed a test purchase exercise supplying alcohol at illegally low prices. Yet despite a further and final hand delivered warning letter from Mr Marshall, alcohol was again supplied to Mr Marshall on the 7th February 2017 at illegal prices which is quite frankly, unacceptable.

We have paid particular attention to the witness statement of Mr Fryer, a criminal investigator of HM Revenue & Customs which notes alcohol supplied from this premises on a number of test purchases which show indications of illicit sourcing.

It is clear to Hampshire Constabulary that the licence holder has displayed no regard to the continual warnings that Mr Marshall and Southampton City Council has delivered on the issue of cheap alcohol and numerous other regulatory compliance issues.

At this point I would like to highlight a number of points to the Licensing Authority. Cheap alcohol has continued to be a priority to the government and only some days ago (7th April 2017), HM Home Office issued revised guidance under section 182 of the Licensing Act 2003 which pays due regard to this issue.

Section 10.55 (Annex 3) makes it clear that it is the responsibility of the licence holder, the DPS and any personal licence holder making an authorisation to ensure that no alcohol is supplied less than the permitted price.

Section 11.27 (Annex 4) identifies criminal activity which should be treated particularly seriously for premises licence reviews. The sale or storage of smuggled alcohol is one of these activities where guidance states that revocation even in the first instance should be seriously considered by licensing authorities.

Section 11.18 (Annex 5) that licensing authorities should take into account already issued warnings of responsible authorities that have failed as part of a stepped approach. This is a key issue of this case.

Based on Mr Marshall's findings, Hampshire Constabulary has little faith that Meheindhan Navakumar is an appropriate licence holder. Serious improvements and a change in attitude to regulatory compliance is required. I ask the Licensing Authority to note that the premises licence already has a number of licence conditions which are not being adhered to. Should the licensing authority choose not to revoke the premises licence, a suspension of the premises licence and the imposition of an additional licence conditions (Annex 6) seems to be required in order to make extensive changes to the operation of this business.

Yours sincerely,

Constable 25323 A BOUCOUVALAS
Force Licensing Department

Annex 1)



1. Home (<https://www.gov.uk/>)

News story

Crackdown on availability of cheap alcohol

From: Home Office (<https://www.gov.uk/government/organisations/home-office>) and The Rt Hon James Brokenshire MP (<https://www.gov.uk/government/people/james-brokenshire>)

Part of: Alcohol sales and misuse (<https://www.gov.uk/government/policies/alcohol-sales>)

First published: 18 January 2011

This was published under the 2010 to 2015 Conservative and Liberal Democrat coalition government

Retailers will be banned from selling alcohol below the rate of duty + VAT under new plans announced by the Home Office today.



To tackle the growing concern over how cheaply some alcoholic drinks are being sold, the government intends to introduce a new proposal which would prevent retailers from selling a 1 litre bottle of vodka (37.5 per cent abv) for less than £10.71 and a 440ml can of lager (4.2 per cent abv) for less than £0.38.

This is an important first step in delivering the government's commitment to ban the sale of alcohol below cost.

Minister's quote

James Brokenshire minister for crime prevention, said: 'We know that pricing controls can help reduce alcohol-related violent crime and this is a crucial step in tackling the availability of cheap alcohol.

'In nearly half of all violent incidents the offender is believed to be under the influence of alcohol. That's why we believe it is right to tackle the worst instances of deep discounting.

'By introducing this new measure we are sending a clear message that the government will not stand by and let drink be sold so cheaply that it leads to a greater risk of health harms or drunken violence.'

As part of the considerations of how to achieve the coalition commitment to deliver a ban on below cost sales the Home Office carried out a review of alcohol pricing over the summer.

The review of pricing and associated research reports, also published today, not only shows the complex nature of this issue but demonstrates a link between a rise in the price of alcohol and a reduction in alcohol harms.

Notes to editors

1. The government's review of pricing and associated research reports can be found in the alcohol pricing section (<http://www.homeoffice.gov.uk/drugs/alcohol/alcohol-pricing/>) of this website.

2. Examples of duty + VAT on a selection of alcoholic drinks:

Product: Can of lager

Volume: 440 ml

Strength (% abv): 4.2

Duty: £0.32

Duty + VAT: £0.38

Product: Bottle of cider

Volume: 1 litre

Strength (% abv): 4.5

Duty: £0.33

Duty + VAT: £0.40

Product: Bottle of wine

Volume: 750 ml

Strength (% abv): 12.5

Duty: £1.69

Duty + VAT: £2.03

Product: Bottle of whisky

Volume: 700 ml

Strength (% abv): 40

Duty: £6.66

Duty + VAT: £8.00

Product: Bottle of vodka

Volume: 1 litre

Strength (% abv): 37.5

Duty: £8.93

Duty + VAT: £10.71

3. For more information ring the Home Office press office on 020 7035 3535.

Published: 18 January 2011

From: Home Office (<https://www.gov.uk/government/organisations/home-office>) The Rt Hon James Brokenshire MP (<https://www.gov.uk/government/people/james-brokenshire>)

Part of: Alcohol sales and misuse (<https://www.gov.uk/government/policies/alcohol-sales>)



Dear Sir/Madam,

IMPORTANT – KEEP THIS LETTER WITH YOUR LICENCE OR CERTIFICATE

Dear Sir or Madam,

LICENSING ACT 2003 – CHANGES TO MANDATORY CONDITIONS

You will be aware that the Government has powers to prescribe up to nine additional mandatory conditions for premises licences and club premises certificates, in addition to the three mandatory licence conditions relating to designated premises supervisors, films and door supervisors set out in the Licensing Act 2003.

With effect from 28 May 2014, the Home Secretary has imposed an additional mandatory condition prohibiting the sale of alcohol at a price below the total of duty plus VAT.

Set out overleaf are all the additional mandatory conditions to which premises licences or club premises certificate may be subject, whether or not they appear on your current licence or certificate:

The Licensing Authority, the Police and Trading Standards recommend that a policy under condition 4 (Age Verification) should be in accordance with the well-established Challenge 21 or Challenge 25 procedures. Acceptable forms of identification are a PASS accredited ID card, passport, photo card driving licence or national ID card.

When it is necessary to reissue a licence or certificate, the appropriate mandatory conditions will be included on that document. You must keep this letter with your licence or certificate for reference.

If you wish the conditions to be shown on your current licence or certificate now, you can return both parts of the licence or certificate to us, together with the fee of £10.50, for an updated licence to be issued.

Further information, including links to the legislation, the revised Licensing Act 2003 Statutory Guidance and Home Office guidance on these mandatory conditions is available on the City Council's web site at www.southampton.gov.uk/licensing - please follow the link to Alcohol and Entertainment. A calculator for the duty and VAT is available on the web page.

Please note that the section 136 of the Licensing Act 2003 makes non-compliance with these mandatory conditions an offence punishable, on summary conviction, by imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or both.

You may wish to take advice on these responsibilities from your own independent legal adviser.

For the purposes of the mandatory conditions, unless otherwise defined:

- "relevant premises" means either licensed premises or premises in respect of which there is in force a club premises certificate
- "responsible person" means, in relation to licensed premises, the holder of a premises licence, the designated premises supervisor, or any individual aged 18 or over who is authorised by such a holder or supervisor, and, in relation to club premises certificates, any member or officer of the club present on the premises in a capacity which enables him to prevent the supply in question.

Yours faithfully

[REDACTED]
Licensing Manager
for Head of Legal and Democratic Services

1. Irresponsible promotions - from 6 April 2010 - on sales/supply only

- (1) *The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.*
- (2) *In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—*
- (a) *games or other activities which require or encourage, or are designed to require or encourage, individuals to—*
 - (i) *drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or*
 - (ii) *drink as much alcohol as possible (whether within a time limit or otherwise);*
 - (b) *provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);*
 - (c) *provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;*
 - (d) *provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—*
 - (i) *the outcome of a race, competition or other event or process, or*
 - (ii) *the likelihood of anything occurring or not occurring;*
 - (e) *selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.*
-

2. Alcohol dispensed directly into the mouth - from 6 April 2010 - on sales/supply only

The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

3. Free tap water for customers - from 6 April 2010 - on sales/supply only

The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

4. Age verification policy - from 1 October 2010 - on and off sales/supply

- (1) *The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.*
- (2) *The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.*
-

5. Choice of small measures - from 1 October 2010 - on sales/supply only

The responsible person shall ensure that—

- (a) *where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—*
 - (i) *beer or cider: ½ pint;*
 - (ii) *gin, rum, vodka or whisky: 25 ml or 35 ml; and*
 - (iii) *still wine in a glass: 125 ml; and*
 - (b) *customers are made aware of the availability of these measures.*
-

6. Alcohol minimum permitted price - from 28 May 2014 - on and off sales/supply

1 A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2 For the purposes of the condition set out in paragraph 1 —

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) "permitted price" is the price found by applying the formula —

$$P = D + (D \times V)$$

where—

(i) *P* is the permitted price,

(ii) *D* is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) *V* is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence —

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

3 Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4 (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

ANVEL 3)

LICENSING TEAM

Southampton and Eastleigh Licensing Partnership

Southampton City Council
Civic Centre
Southampton SO14 7LY

Please address all correspondence to:
Licensing – Southampton City Council,
PO Box 1767, Southampton SO18 9LA



Direct dial: 023 8083 3002
Our ref: [premises reference]

E-mail: licensing@southampton.gov.uk
Please ask for: Licensing

To premises licence holders – off licences

November 2016

IMPORTANT – THE CONTENTS OF THIS LETTER MAY AFFECT YOUR BUSINESS

Dear Sir or Madam,

LICENSING ACT 2003 – MINIMUM PRICING AND TEST PURCHASING

As you will be aware, the conditions of your licence to sell alcohol include requirements, amongst others, that you do not sell or supply alcohol below the minimum permitted price and that you have an age verification policy in place to ensure that alcohol is not sold or supplied to anyone under the age of 18. It is also an offence to keep smuggled goods of any description on licensed premises.

Recent test purchase operations by Trading Standards and Hampshire Constabulary have revealed a number of premises where alcohol has been sold to persons under the age of 18 and smuggled alcohol has been sold below the minimum legal price for that product. If you are able to purchase alcohol for less than the total of duty plus VAT, it is likely to be non-duty paid, smuggled goods.

Such alcohol also has a disproportionately high negative impact on public health and public order problems, including street drinkers.

This has resulted, so far, in a premises licence being revoked on review by the Licensing Committee.

The Licensing Act 2003 provides for maximum penalties as follows:

- Sale or supply of alcohol to or for a person under 18: unlimited fine
- Sale or supply of alcohol below the minimum price: unlimited fine and/or six months' imprisonment
- Keeping smuggled goods on licensed premises: £1000 fine

In addition, licences of premises where such offences are discovered are likely to be reviewed, potentially resulting in their revocation. Home Office Guidance makes it clear, in particular, that the sale of smuggled goods from and other criminal activity at licensed premises is particularly serious and that revocation of the licence should be seriously considered on the first occurrence.

Trading Standards and Hampshire Constabulary will be carrying out further test purchase operations in the future, and intend, where appropriate, to bring reviews of licences if offences are found.

A copy of this letter is being sent all holders of premises licences where alcohol is restricted to its sale for consumption off the premises.

Further information, including a calculator to give indicative minimum prices for alcohol is available at www.southampton.gov.uk/premlc

On the reverse of this letter you will find the text of the mandatory licence conditions which apply to your business.

Yours faithfully,

[Redacted Signature]
Licensing Manager

MANDATORY CONDITIONS

Age verification policy - from 1 October 2014

- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.

Alcohol minimum permitted price - from 28 May 2014

- 1 A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 2 For the purposes of the condition set out in paragraph 1 —
 - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) “permitted price” is the price found by applying the formula —
$$P = D + (D \times V)$$
where—
 - (i) *P* is the permitted price,
 - (ii) *D* is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) *V* is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence —
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
- 3 Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- 4
 - (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
 - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

- 10.52 As well as making the drinks available in the above measures, the responsible person must also make customers aware of the availability of these measures by displaying them on printed materials available to customers on the premises. This can include making their availability clear on menus and price lists, and ensuring that these are displayed in a prominent and conspicuous place in the relevant premises (for example, at the bar). Moreover, staff must make customers aware of the availability of small measures when customers do not request that they be sold alcohol in a particular measure.
- 10.53 This condition does not apply if the drinks in question are sold or supplied having been made up in advance ready for sale or supply in a securely closed container. For example, if beer is only available in pre-sealed bottles the requirement to make it available in 1/2 pints does not apply.
- 10.54 The premises licence holder or club premises certificate holder must ensure that staff are made aware of the application of this condition.

Ban on sales of alcohol below the permitted price

- 10.55 The relevant person (the holder of the premises licence, the designated premises supervisor (if any) in respect of such a licence, the personal licence holder who makes or authorises a supply of alcohol under such a licence, or any member or officer of a club present on the premises in a capacity which enables the member or officer to prevent the supply in question) shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 10.56 The permitted price is defined as the aggregate of the duty chargeable in relation to the alcohol on the date of its sale or supply and the amount of that duty multiplied by a percentage which represents the rate of VAT chargeable in relation to the alcohol on the date of its sale or supply. Detailed guidance on how to make this calculation and a calculator to determine permitted prices for each product are available on the Home Office website.
- 10.57 Where there is a change to the rate of duty or VAT applying to alcohol (for instance, following a Budget), the relevant person should ensure that the permitted price reflects the new rates within fourteen days of the introduction of the new rate.
- 10.58 It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.

Exhibition of films

- 10.59 The 2003 Act provides that where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (currently only the British Board of Film Classification (BBFC)) or by the licensing authority itself.
- 10.60 The effect of paragraph 5 of Schedule 1 to the 2003 Act is to exempt adverts from the

Reviews arising in connection with crime

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;

- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Review of a premises licence following closure order

- 11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 or section 38 of and Schedule 6 to the Immigration Act 2016. The relevant time periods run concurrently and are as follows:
- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review – the determination must be made before the expiry of the 28th day after the day on which the notice is received;
 - the hearing must be held within ten working days, the first of which is the day after the day the notice from the magistrates' court is received;
 - notice of the hearing must be given no later than five working days before the first hearing day (there must be five clear working days between the giving of the notice and the start of the hearing).

Review of a premises licence following persistent sales of alcohol to children

- 11.30 The Government recognises that the majority of licensed premises operate responsibly and undertake due diligence checks on those who appear to be under the age of 18 at the point of sale (or 21 and 25 where they operate a Challenge 21 or 25 scheme). Where these systems are in place, licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol within very quick succession of one another (e.g., where a new cashier has not followed policy and conformed with a store's age verification procedures). However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this appropriate.

licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or grant.

- 11.13 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.
- 11.14 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.
- 11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

Annex 6)

High strength alcohol products

No beers, ciders or lager of 6.5%ABV or over shall be sold by retail.

Heather Munday
24A Bond Road
Bitterne Park
Southampton
SO18 1LQ

Phone :++ [REDACTED]

Email: [REDACTED]

Licencing Team
So'ton and Eastleigh Licencing Partnership
Southampton City Council
PO BOX 1767
Southampton
SO18 9LA

06/01/17

Ref: Licence review of London Off Licence, 27 St Catherine's Rd, Southampton SO18 1LL

Dear Sirs,

I have been an occasional customer at London Off Licence on St. Catherines Road for over 4 years. I live under 100 yards away on Bond Road.

The London Off Licence Southampton is within my line of sight. I have never observed no anti-social behaviour emanating from this shop.

I have never experienced any disturbance arising as a result of the in question shop being there. However abused and nearly mugged as a result of TESCO trading nearby, whilst the London Off licence shop was shut.

This situation has arisen because of TESCO being allowed to remain open for longer and the impersonal service and frequent turnover of staff serving unsavoury people without proper vetting. I have to walk past TESCO about once a week at about 11.30 pm.

I get 38 pounds of state pension a week and live below the bread line. The shop under review has helped me out many times. The people running it are very nice and helpful. I have witnessed only once that a patron was turned away, because of foul language. There are no problems arising from the shop at all. The shop serves the community and has done so with nothing but merit for years.

Please could You not close one of the last bastions of the family run small business in favour of Tesco's.

Regards,

Heather A. Munday

