

LICENSING SUB-COMMITTEE

Thursday, 11 February 2021

1.00 pm

Virtual Meeting Via Zoom

Membership: Councillors Loraine Woolley (Chair), Alan Briggs and Pat Vaughan
Substitute member(s): Councillor Jane Loffhagen
Officers attending: Democratic Services, Becky Scott (Legal Services), Rob Cuffling and Ian Cullen

A G E N D A

Please be aware that subject to regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005, the licensing authority may 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.

VIRTUAL MEETING

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join.

<https://zoom.us/j/93763073826?pwd=UUJYeGg1WINGWEs0VUw3WXZrVIRVZz09>

You may be asked to quote the following meeting ID and password:

Webinar ID: 937 6307 3826

Passcode: 835609

Or join by phone:

Dial 0330 0885830 quoting the above Webinar ID and password when prompted

SECTION A

Page(s)

1. Declarations of Interest

Please note that, in accordance with the Members' Code of Conduct, when declaring interests members must disclose the existence and nature of the interest, and whether it is a disclosable pecuniary interest (DPI) or personal and/or pecuniary.

2. Procedure for Hearings

3 - 6

3. Application for Review of Premises Licence: Zabka, 111 Portland Street.
LN5 7LJ

7 - 92



LICENSING SUB-COMMITTEE

Procedure for Hearings

- (1) The Chair will introduce him/herself and will introduce the other members of the sub-committee, the Licensing Officer, the Clerk to the sub-committee and any other officers present to advise the sub-committee.
- (2) The Chair will request all parties taking part in the proceedings to introduce themselves to the Sub -Committee.
- (3) The Chair will then ask the Licensing Officer to open the proceedings by:
 - stating the nature of the matter to be considered;
 - giving the name of the applicant or licence holder; and
 - where appropriate, the name of the premises or place concerned; and
 - outlining the application and the relevant representations and/or notices made and/or given in respect of the application.
- (4) The Chair will then ask the Licensing Officer to confirm whether or not the formal requirements in respect of the matter to be considered have been complied with.
- (5) If not satisfied as to any formal requirements, the sub-committee will decide whether to:
 - continue with its consideration of the matter; or
 - adjourn the proceedings to enable the formal requirements to be completed; or
 - dismiss the application.
- (6) The Chair will then explain the procedure the sub-committee intends to follow at the hearing and shall advise the parties of the period of time each will be allowed to make their application and/or representation. If the Chair considers that there is no need for a time limit, he should say so.
- (7) The sub-committee will then consider any representations in regard to the period of time allowed for the parties and any request made by a party for permission for another person to appear at the hearing to assist the licensing authority in regard to that party's application, representations or notice (such permission will not be unreasonably withheld).

- (8) The procedure for the hearing shall be as follows:
- (a) The applicant, or their representative, will present their case. In presenting the case the applicant, or their representative, may give evidence and may call any other person, given permission to appear by the sub-committee, to assist in the proceedings. Each shall, in turn:
 - give evidence;
 - may be questioned by any other party;
 - may be questioned by members of the sub-committee;
 - may, if necessary, be re-questioned by the applicant or their representative calling them.
 - (b) If a time limit has been imposed, the applicant and/or their representative shall not, in presenting the case, exceed the period of time allowed for this purpose.
 - (c) The other party or parties, or their respective representatives, will each, in turn, present their case(s). Where there is more than one other party, in the absence of agreement, the sub-committee will decide the order in which the cases shall be presented. In presenting the case any party, or their representative, may give evidence and may call any other person, given permission by the sub-committee to appear, to assist in the proceedings. Each shall, in turn:
 - give evidence;
 - may be questioned by any other party;
 - may be questioned by members of the sub-committee;
 - may, if necessary, be re-questioned by the applicant or their representative calling them.
 - (d) If a time limit has been imposed each other party and/or their representative shall not, in presenting the case, exceed the period of time allowed for this purpose.
 - (e) Once all parties have put their cases to the sub-committee, each party will be given the opportunity of summing up their case in the order they were presented. The Chair may propose that no more than 5 minutes will be allowed to each party for this purpose, but may take representations if any are made.
 - (f) Members of the sub-committee may ask the parties, or any persons present to assist, for any additional information or clarification required.
- (9) The Chair will then advise the parties that the sub-committee will retire to determine the application. The sub-committee will be accompanied by the Clerk to the sub-committee, whose only role will be to record the decision and the reasons for that decision. The sub-committee may, after retiring, call upon the Licensing Authority's legal representative if it requires clarification on a point of law.
- (10) The sub-committee will consider its decision. The decision of the majority of the sub-committee shall be the decision of the sub-committee.

- (11) There are timescales, depending on the nature of the application, by which the sub-committee must determine an application and the timescale will be included in the officer's report.
- (12) If the hearing requires a decision at the conclusion of the hearing then having reached a decision, the sub-committee shall reconvene to announce the decision to the parties. Before doing so, where legal advice has been sought, the legal representative will inform the parties of what advice was given and the parties shall be afforded the opportunity to comment on that advice.
- (13) If the decision does not have to be made at the conclusion of the hearing the sub-committee must make its decision within five working days beginning with the day or last day on which the hearing was held. This does not preclude the Sub-committee making its decision on the day or last day of the hearing.
- (14) The Chair will announce the sub-committee's decision together with the reasons for the decision. This will, where applicable, include details of any conditions imposed and the reasons for their imposition or, where no conditions have been imposed, the reason(s) for not doing so.

POINTS TO NOTE RELATING TO HEARINGS

- (a) Members of the sub-committee must remain throughout all of the hearing.
- (b) Members of the sub-committee must confine themselves to questions and **NOT** embark on discussions upon the merits or otherwise of the application or evidence until they consider their decision.
- (c) The strict rules of evidence do not apply so hearsay evidence is admissible.
- (d) Where a large number of interested parties are involved in a particular hearing, they will be encouraged to appoint a spokesperson or spokespersons so as to avoid duplication of evidence.
- (e) A general assumption will be made that all parties have read and understood the relevant paperwork and background documents before attending the hearing. There should be no need for parties to duplicate word for word the contents of their written submissions.
- (f) Unless indicated otherwise, the hearing will take place in public. If the public are to be excluded then full reasons for doing so will be given by the Chair.
- (g) In determining applications and representations members of the sub-committee will give appropriate weight to:
 - The argument and evidence presented by all parties;
 - The four licensing objectives of the Licensing Act 2003, namely
 - (a) the prevention of crime and disorder,
 - (b) the prevention of public nuisance,
 - (c) public safety, and
 - (d) the protection of children from harm;
 - The Statement of Licensing Policy of the City of Lincoln Council;
 - Section 182 Statutory Guidance issued by the Home Office;
 - Any steps necessary to promote the licensing objectives; and
 - Information contained in any operating schedule submitted by the applicant.
- (h) The general principles under which members of the sub-committee will consider all licensing applications are:
 - A fair and unbiased mind;
 - On its own merits;
 - Any pre-conceived opinions and resolutions will be put aside;
 - They will act without any prejudice or partiality;
 - They will consider both the interests of the public and the rights of the applicant; and
 - They will treat all applicants fairly and equally.
- (i) The sub-committee is required to give reasons for its decision. Such reasons need to be clear and include an explanation of why it has reached its decision including what it relied on to do so (e.g. what evidence was accepted, and what evidence was rejected, and why).
- (j) If, in making its decision, the Sub-Committee considered it proper to depart from the Section 182 Guidance or its own Licensing Policy it is also required to give full reasons for so departing.

SUBJECT: APPLICATION FOR REVIEW OF PREMISES LICENCE ZABKA, 111 PORTLAND STREET, LINCOLN, LN5 7LG

DIRECTORATE: COMMUNITIES & ENVIRONMENT

REPORT BY: ROB CUFFLING, LICENSING OFFICER

1. Purpose of Report

1.1 To determine an application for review of a premises licence made by Lincolnshire Police in respect of premises known as Zabka, 111 Portland Street, Lincoln, LN5 7LG.

2. The Application

2.1 On the 22nd December 2020, the Chief Officer of Lincolnshire Police made an application under Section 51 Licensing Act 2003 (“the Act”) for a review of the premises licence held by Saman Osman Ali in respect of the above premises. A copy of the application can be found at **Appendix A**.

2.2 Section 51 makes provision for a responsible authority or any other person to apply to the Licensing Authority for a review of the premises licence. In this case Lincolnshire Police, being a responsible authority, believe that, due to none compliance with licence conditions, the sale of un-licenced medicine, the sale of none priced alcohol, and the keeping of smuggled goods; the licensing objectives of prevention of crime and disorder, promoting public safety, the prevention of public nuisance and the protection of children from harm have been undermined.

2.3 The Police’s review application is supported by a number of statements and documents within annexes to **Appendix A**.

- Appendix A (i) Review application (Lincolnshire Police)
- Appendix A (ii) Witness Statement – PC Gina McConville
- Appendix A (iii) Witness Statement – David Williams
- Appendix A (iv) Photographs of seized items

3. Relevant Representations – Responsible Authorities

3.1 There have been no representations from any other responsible authorities.

4. Relevant Representations – Licence Holder / Other persons

4.1 There have been no representations from the licence holder.

5. Background

- 5.1 Saman Osman Ali has held the premises licence since May 2018 when it was transferred from the previous licensee.
- 5.2 Saman Osman Ali has also been the designated premises supervisor (DPS) since the licence was transferred in May 2018.
- 5.2 A copy of the premises licence can be seen at **Appendix B**. The licence authorises the sale by retail of alcohol for consumption off the premises.
- 5.3 The conditions attached to the licence are the mandatory conditions attached to an alcohol off licensed premises and conditions offered by the previous licence holder on initial application November 2011.
- 5.4 The notice advertising the application for the review was placed at the premises, on the Council's notice board and website on the 22nd December 2020. As far as is known the notices were in place for the full 28 day period.
- 5.5 Notices of this hearing, together with relevant documentation, were forwarded to all parties on the 20th January 2021.

6. Promotion of Licensing Objectives

- 6.1 The duty of the Licensing Authority is to promote the licensing objectives having regard to the Act and Regulations made there under, Guidance issued under S182 of the Act by the Home Office and the Council's own Licensing Policy.

7. Considerations

7.1 Section 182 Guidance and Licensing Authority Policy

- 7.2 Chapter 11 of the S182 Guidance describe the Review process and paragraphs 11.16 to 11.23 gives guidance on the powers of a licensing authority on the determination of a review (See **Appendix C**).
- 7.3 Chapter 10 of the Council's Statement of Licensing Policy refers to Reviews (See **Appendix D**).
- 7.4 Chapter 5 of the Council's Statement of Licensing Policy refers to the Licensing Objectives and paragraphs 5.2, 5.3, 5.4 and 5.5 refer to crime and disorder, public safety, public nuisance and the protection of children from harm. (See **Appendix E**).
- 7.5 The conditions attached to the licence are the mandatory conditions attached to an alcohol off licensed premises and conditions offered by the previous licence holder on initial application. If the Licensing Authority is minded to place further conditions on the premises licence, then they may only be

imposed where they are appropriate and proportionate for the promotion of one or more of the four licensing objectives (in this case crime and disorder and public safety). Conditions may not be imposed for other purposes.

7.6 Such conditions should be expressed in unequivocal and unambiguous terms in order that they are understood and not subject to legal challenge.

7.7 Lord Justice Scott Baker in the case of *Crawley Borough Council v Stuart Attenborough and Angela Attenborough* said “*Let me say a brief word in general terms. It is important that the terms of a premises licence and any conditions attached to it should be clear; not just clear to those having specialized knowledge of licensing, such as the local authority or the manager of the premises, but also to the independent bystander such as neighbours, who may have no knowledge of licensing at all.*”

7.8 Paragraphs 1.8 of the Council's Licensing Policy states:
The purpose of licensing is to control licensable activities and authorisations within the terms of the Act. Each licence application or authorisation will be considered on its own merits in the context of the four licensing objectives...

8. Human Rights Act

8.1 Article 6 – right to a fair hearing

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

The right to engage in commercial activities is a civil right –

Kaplan v United Kingdom 1980

Pudas v Sweden 1987

8.2 Article 8 – right to respect for private and family life

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Removal or restriction of a licence may affect a person's private life.

8.3 Article 1, Protocol 1 – peaceful enjoyment of possessions

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public

interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The right to engage in commercial activities under the benefit of a licence or registration is a possession

Tre Traktor Aktiebolag v Sweden 1989

9. Other Considerations

- 9.1 The Sub-Committee must determine this application and take what actions, if any, are appropriate and proportionate for the promotion of the licensing objectives identified.
- 9.2 The Sub-Committee’s determination should be made on this case’s individual merits by;
 - considering the points raised in the review application concerning the incidents and the operation and management of the licensable activities; and should be evidence-based.
- 9.3 The onus falls upon those making the application to show that the promotion of the licensing objectives is at risk.
- 9.4 The Sub-Committee should expect original evidence to be put before it by any party. It is not enough for the Sub-Committee simply to rely upon material submitted; it must apply a critical mind to the quality and reliability of that material for itself.
- 9.5 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end.
- 9.6 If the Sub-Committee is minded to impose further conditions on the licence then any such conditions should be achievable, realistic, necessary, appropriate, proportionate and within the control of the licence holder. They should be based on a proper, common sense consideration of the risks to the licensing objectives identified in the application and what can realistically be done to mitigate them.
- 9.7 This hearing is subject to Regulation 26 of the Licensing Act 2003 (Hearings) Regulations 2005 and the Sub-Committee must make its determination within a period of five working days beginning the day or the last day on which the hearing was held.
- 9.8 Therefore, the Sub-Committee does not have to make its determination at the conclusion of the day or last day of the hearing as the case may be.

10. Options

- 10.1 The authority must, having regard to the application and representations made, take such of the steps mentioned below as it considers appropriate, for the promotion of the licensing objectives.
- 10.2 Section 52(4) Licensing Act 2003, the following options are available to the Sub-Committee:
- a) to modify the conditions of the licence;
 - b) to exclude a licensable activity from the scope of the licence;
 - c) to remove the designated premises supervisor;
 - d) to suspend the licence for a period not exceeding three months;
 - e) to revoke the licence; or
 - f) take no action.
- 10.3 The Sub-Committee should note:
Conditions of the licence are modified if any of them are altered or omitted or any new condition is added.
This could include modification of the licensing hours.
- 10.4 Should the Sub-Committee consider taking a step mentioned in either a) or b) in paragraph 10.2 above, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.
- 10.5 A determination of a review does not have effect until the end of the period for appeal against the decision (within 21 days from the date of receipt of the notification of the decision).
- 10.6 The Sub-Committee is required to give reasons for its decision. Such reasons need to be clear and include an explanation of why it has reached its decision including what it relied on to do so (e.g. what evidence was accepted, and what evidence was rejected, and why).

11. List of Associated Papers

- 11.1 Appendix A (i) Review application (Lincolnshire Police)
Appendix A (ii) Witness Statement – PC Gina McConville
Appendix A (iii) Witness Statement – David Williams
Appendix A (iv) Photographs of seized items
Appendix B Copy of premises licence
Appendix C Chapter 11 S182 Guidance
Appendix D Paragraph 10 Statement of Licensing Policy
Appendix E Paragraph 5 Statement of Licensing Policy

Lead Officer: Rob Cuffling
Licensing Officer 01522 873564

This page is intentionally blank.

Appendix A (i)

City of Lincoln 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 Bill SKELLY, Chief Constable of Lincolnshire Police

(Insert name of applicant)

apply for the review of a premises licence under Section 51 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Zabka 111 Portland Street	
Post town Lincoln	Post code (if known) LN5 7LG

Name of premises licence holder or club holding club premises certificate (if known) Saman Osman ALI
--

Number of premises licence or club premises certificate (if known) 32UD/B1611

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

2) a responsible authority (please complete (C) below)

X

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 ✓ yes

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 Chief Constable Lincolnshire Police Licensing (Alcohol) Myle Cross Centre Macaulay Drive Lincoln LN2 4EL
Telephone number (if any) [REDACTED]
E-mail address (optional) [REDACTED]

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

- | | |
|---|-------------------------------------|
| | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance | <input checked="" type="checkbox"/> |
| 4) the protection of children from harm | <input checked="" type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 2)

This building has the benefit of a premises licence issued by City of Lincoln Council authorising the sale of alcohol from 0800 hours until 2300 hours daily. The premises operates as a convenience store.

This review application is submitted as being relevant to the prevention of crime and disorder, public nuisance, public safety and protection of children from harm licensing objective.

Lincolnshire Police have acquired evidence in relation to a number of offences –

That the premises has been non-compliant in regards to Annex 2 premises licence conditions thereby conducting unauthorised licensable activity, which is an offence under Section 136 Licensing Act 2003.

That medicine without English on the original packaging was found being offered for sale at the premises, thereby endangering consumers. Some of these medicines are known to require a prescription. Human Medicines Regulations 2012 has various offences in relation to unlicensed medicine.

That certain cans of beer being offered for sale in the chiller cabinet were not priced, when products have to be under the Price Marketing Order 2004.

The premises has found to have bottles of spirits which were not displaying a UK duty stamp, both on sale and in a storage area, in contravention of the Customs and Excise Management Act 1979 (fraudulent evasion of duty). Some bottles of spirits offered for sale contained UK duty stamps cut out from labels from other bottles. The keeping of smuggled goods on licensed premises is an offence under Section 144 of the Licensing Act 2003.

5 bottles of Krackoff Vodka were seized as although they contained incorporated UK Duty stamps, there were a number of concerning factors regarding the safety of the product. Enquiries are ongoing as to the provenance of this vodka and a bottle is being analysed by Trading Standards.

The Licensing Act 2003 is clearly intended to prevent crime and disorder from occurring in relation to licensed premises but also to deter and prevent criminals from operating a premises under the auspices of a premises licence granted by the local authority.

Revised Guidance issued under Section 182 of the Licensing Act 2003

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder.

2.7 Licence Holders have a responsibility to ensure the safety of those using their premises, as part of their duties under the 2003 Act.

11.23...But where the premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

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, or 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 of law. 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....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.

11.26 Where the licensing authority is conducted 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: the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration) 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.

Please provide as much information as possible to support the application (please read guidance note 3)

Lincolnshire Police and Trading Standards Officers attended ZABKA on Wednesday 9th December 2020 to carry out an inspection as part of numerous multi-agency visits in the area that day. The check uncovered the following issues:-

Medicines were found being offered for sale which had no English labelling in their original packaging. It is an offence to knowingly sell or offer for sale medicine without English on the original packaging, contrary to Regulation 269 of The Human Medicines Regulation 2012. None of the medicine would have been licenced for sale in the UK. Some of this medication is prescription only, thereby putting the public at serious risk. Please see David Williams, Lincolnshire Police Controlled Drugs Officer's statement.

Non-compliance with premises licence conditions was found, this is an offence under Section 136 Licensing Act 2003 – unauthorised licensable activity, and thereby carrying out unauthorised licensable activity each time alcohol is sold. Please see PC 642 McConville's statement.

Certain cans of beer were offered for sale without a price being displayed. The Price Marking Order 2004 states that there must be a clear selling or unit price, which is easily identifiable without having to ask the trader. Concerns around high strength beers, lack of pricing, and low price are covered by Pc 642 McConville's statement.

9 bottles of spirits of differing brands were seized from the shelving behind the counter in the premises. They were not displaying the required UK duty stamp. 3 bottles of spirits were found to contain duty stamps removed from other bottles, and a further 5 bottles of spirits were seized from a box at the bottom of the shelving unit, they also required a UK duty stamp, but failed to display one. 53 bottles of spirits were found in a storage area on the landing at the top of the stairs at the rear of the premises. They also failed to display the required UK duty stamp and were seized. Pc 642 McConville's statement covers the discovery, explanation regarding duty stamps and seizure

5 bottles of Krackoff Vodka were seized sent for testing due to a number of irregularities. The bottles showed a UK duty stamp incorporated within the label therefore destined for a UK market, however there are differing fill levels, the bar code is not recognised, there is no batch code or production date, company website not recognised. Enquiries are ongoing. Pc 642 McConville's statement covers this in more detail.

Concerns over some bottles of spirits and wine stocked were stolen from shops elsewhere. This is covered by Pc 642 McConville's statement.

Lincolnshire Police have requested invoices from Mr Ali for all the items seized as well as the beer both stored and on display. As yet no invoices have been supplied. Lincolnshire Police request that the invoices are supplied within good time prior to the hearing so that the appropriate checks can be made and to ensure the hearing isn't delayed.

Due to the likelihood of a remote hearing and the inability to present the items seized Lincolnshire Police intends to produce a booklet of photographs so that the Sub-committee can see in details the items covered by Pc 642 McConville's statement. This will be sent out in due course.

Portland Street and the surrounding area is covered by a Public Space Protection Order where it has been evidenced that anti-social behaviour and crime is carried out through the use of intoxicating substances which includes alcohol and this has had a detrimental effect for those that live in the area.

Portland Street is Lower Super Output Area (LSOA) E01026176. A LSOA is a statistical

geographical area that is home to approximately 1,500 people. Lincolnshire is split into 420 LSOAs. Using Lincolnshire Police data for the period Oct 2017-Sept 2019 for specific indicators and the ranked out of the 420 LSOAs, the indicators which stood out from the model for E01026176 are:

- The area has the second highest number of drugs offences of all LSOAs in Lincolnshire
- The fourth highest number of youth-related ASB incidents
- The fifth highest rate of residents involved in domestic abuse crimes (as victims or perpetrators)
- The eighth highest rate of children living in the area who have been involved in any crime (as a victim or a perpetrator)

In relation to the above statistics, lack of training at the premises could mean sales to drunks and children. Taking in stolen alcohol perpetuates shop theft and drug use. Buying smuggled and stolen alcohol and selling it on cheaply likely influences a large number of indicators from ASB and crime to levels of deprivation. Selling illegal unlicensed medicines of prescription strength and spirits from unlicensed sources could seriously jeopardise the health and safety of adults and children within the community.

Many of the premises surrounding Zabka have had their premises licences revoked due to serious organised criminality. Zabka is one of the only shops with the authority to sell alcohol on Portland Street, it means a busy retail business, attracting all members of society. The holder of that authority has the ability to have huge impact on the community through the individuals they serve and those individuals impact on others. The Licensing Sub-Committee have to have full confidence in the licence holder to robustly promote the licensing objectives to ensure they do not contribute and compound the already well documented issues of the highly vulnerable area, which responsible authorities, working in partnership with the community are working hard to improve.

Lincolnshire Police have evidenced that, on the balance of probabilities the Premises Licence Holder has actively undermined the licencing objectives, for his own gain at the detriment of the local community and Lincolnshire Police has no confidence that anything can be put in place to stop this happening in future as the actions fundamentally lie with the Premises Licence Holder actively committing crime. Lincolnshire Police request that the Licensing Sub-committee seriously consider a revocation of the premises licence.

Please tick ✓ yes

Have you made an application for review relating to the premises before

X

If yes please state the date of that application

Day Month Year

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

If you have made representations before relating to the 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 **X**
- I understand that if I do not comply with the above requirements my application will be rejected **X**

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 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature Pc 642 McConville
.....

Date 22/12/20
.....

Capacity Licensing Officer, Lincolnshire Police
.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)	
Post town	Post Code
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

This page is intentionally blank.

WITNESS STATEMENT**Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s.9**

URN

Statement of: **Gina McConville**Age if under 18: **Over 18** (if over 18 insert 'over 18')Occupation: **Police Constable 642**

This statement (consisting of 8 page(s) each 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:

Date 17/12/20

Tick if witness evidence is visually recorded (supply witness details on rear)

I am Police Constable 642 with Lincolnshire Police and I work in the Licensing Department. As such I attended ZABKA, 111 PORTLAND STREET, LINCOLN in the company of 3 Trading Standards Officers at 1010hrs on Wednesday 9th December 2020 to conduct an inspection. I was dressed in full Police uniform with stab vest and utility belt. This was part of a multiple multi-agency visits in the area on that date, and included officers from City of Lincoln Council Licensing and Environmental Health teams, Home Office Immigration, Trading Standards, and various departments from Lincolnshire Police.

On entering the premises I established that there were 2 female workers on the shop floor and the Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS) Mr Saman Osman ALI was in the stock room at the rear of the premises as a delivery was just arriving. I bought Mr ALI through to the front of the premises and introduced myself, the other officers present did the same. Mr ALI appeared to struggle to understand so asked if he could bring his daughter down from upstairs to translate. I agreed and followed him upstairs, I stood in the doorway of the upstairs flat whilst he asked his daughter to join us. Whilst walking up the stairs and onto the landing and before the door leading into the flat I saw boxes of spirits piled up. I noted that some of them were displaying foreign duty stamps over the caps of the bottles, I am aware that these are usually removed on legal entry into the UK, and replaced with a UK duty stamp. I looked at an individual bottle and noted there was no UK duty stamp, yet the size was such that it needed one (anything over 350ml and 30% ABV does). The bottle was Zubowka Biala Vodka. I asked Mr ALI about the vodka I had just seen and he was very quick to

Page 1 of 8

Signature:	Error! Reference source not found.	Signature witnessed by:	
------------	---	-------------------------	--

URN				
-----	--	--	--	--

Statement of: _____

reply, somewhat defensively, that it was for his personal use, not for the shop, he wasn't going to sell it, he got it from a lorry driver. Indicating that he knew it was smuggled, which was why he wasn't going to sell it, but he thought it was fine to consume himself. I informed him that it was still smuggled goods as he hadn't bought it into the county for his own use and that it would be seized.

I then went down stairs with Mr ALI and his daughter and again explained who I was and why I was at ZABKA. I then looked at the display behind the counter. I immediately noted that there were medicines in a foreign language, I looked at the packaging and saw no English writing, I explained to Mr ALI that he was not allowed to sell medicines with no English writing on the packaging, as they wouldn't be licenced for sale in this county. I noted that Ketonal was on display. My experience with Ketonal from previous seizures is that it's a painkiller and the active ingredients would require a prescription in this country. I understand it used to require a prescription in Poland, however it has recently been made a non-prescription but pharmacist authorised product over there. I noted that next to the Ketonal was the product Duomax (amoxicillinum) 1g which I understand to be an antibiotic and again the active ingredient which would need a prescription in the UK. I noted that there was only 1 box of each of these products on display yet multiple boxes of all the other products, there was room behind the Ketonal and Duomax boxes to store more. I later found more boxes of Ketonal and Duomax under the counter, out of sight from public view, leading to the conclusion that it was known that these products were different from the others as there were no other types of medicines stored there. All the medicines without English writing on the labels were seized and passed to Dave Williams the controlled Drugs Officer for Lincolnshire Police, who will produce a statement with his conclusion as to what was seized.

I then looked at the spirits displayed; noting the same size bottle of Zubowka Biala Vodka was on display as I had seen on the stairs. The first bottle of this spirit that I looked at contained a separate UK duty stamp (as opposed to one incorporated within the label) and the residue of were a foreign duty stamp would be which is explainable but less usual for a mainstream brand. The second bottle contained what at first glance appeared to be a duty stamp incorporated within the label, yet the foreign duty stamp over

Page 2 of 8

Signature:	Error! Reference source not found.	Signature witnessed by:	
------------	---	-------------------------	--

URN				
-----	--	--	--	--

Statement of: _____

the cap of the bottle. On closer inspection I could see the duty stamp wasn't incorporated within the bottles label, but was in a separate label, yet aligned with the bottles label. The duty stamp contained the letter A, which is the letter you see when it's an incorporated duty stamp, followed by the numbers which are attributable to the individual producer (in this case Smirnoff) granted that number by HMRC to produce duty stamps incorporated in their labels. At the bottom of the duty stamp was the text smirnoff.com. The conclusion being that that duty stamp had been cut out from an incorporated label from a bottle of Smirnoff Vodka and stuck on a bottle of Zubowka Biala Vodka in an attempt to deceive and make it look like duty had been paid on that bottle. The failure to remove the foreign duty stamp was another indicator of the product being smuggled. I therefore concluded that duty hadn't been paid and the goods were smuggled, the item was seized.

I then went through each spirit on the shelf and seized the following:-

5 x 500ml 37.5% ABV Alexandrion Brandy – foreign duty stamp in place, no UK duty stamp present – conclusion - non-duty paid therefore smuggled goods.

1 x 700ml 37/5% ABV Zubrowka Bison Grass Vodka - foreign duty stamp in place, no UK duty stamp present – conclusion - non-duty paid therefore smuggled goods.

1 x 700ml 40% ABV Soplica Vodka – had residue from where a foreign duty stamp would be and displayed a separate incorporated Smirnoff duty stamp cut from a Smirnoff bottle of vodka – conclusion - a deliberate attempt to deceive, non-duty paid and therefore smuggled goods.

1 x 700ml 40% ABV Zoladkowa Vodka - foreign duty stamp in place and displayed a separate incorporated Glens Vodka duty stamp, very poorly cut from a Glens bottle of vodka, with Bookers producer number on the duty stamp, it is understood Bookers are the producers of Glens – conclusion - a deliberate attempt to deceive, non-duty paid and therefore smuggled goods.

3 x 500ml 30% ABV Soplica flavoured, 2 x apricot 1 x lemon and raspberry, all had glue residue from a foreign duty stamp, yet there was no UK duty stamp – conclusion – no duty paid and therefore smuggled goods..

Signature:	Error! Reference source not found.	Signature witnessed by:	
------------	---	-------------------------	--

URN				
-----	--	--	--	--

Statement of: _____

5 x 700ml 40% ABV Zubowka Biala Vodka in a tatty Grants whiskey box at the bottom of the shelving unit at the rear of the counter. All bottles were displaying a foreign duty label and none were displaying a UK duty stamp – conclusion non-duty paid, smuggled goods.

When Mr ALI saw me looking at the bottles in the Grants box he said they were not for sale in the shop, they were for his personal use, he was just storing them there, he got them from a lorry driver. I countered this with therefore we have smuggled goods on licenced premises, no matter what the intention; the offence is made out, Section 144 Licensing Act 2003. I asked why are personal items being stored in the shop? Shouldn't they be in your residence? You're not storing other personal items in the shop from what I can see. Why are there UK duty stamped sprits being stored on the stairs and not here? Some of your personal use alcohol is stored furthest away from your residence downstairs, and the items your going to need in the shop are stored upstairs further away?. Mr ALI was unable to explain this and reiterated it was just storage and for his personal use. Having had a good look round the whole premises I can confirm that the lower value, lower ABV, large quantity product like beer and wine is all stored on the ground floor, in the store room, a rear shed and on a pallet in the enclosed yard. This pallet was not on the delivery which arrived whilst I was in attendance, 4 boxes of bottled beer arrived with that order. All high value, high ABV spirits is only stored on the stairs and landing and along with this was a pack containing multiple pouches of tobacco. When asked why the tobacco was there, as it was the only tobacco product, Mr ALI stated that there was no room for it in the shop tobacco unit so he stored it there. He then demonstrated that it was intended for the shop by picking the tobacco up, breaking open the cellophane from the multi pack and placed the tobacco in the shop tobacco unit. Leading me to believe that Mr ALI stored the high value stock destined for the shop near his flat door so it's accessible to the shop, yet less likely to be stolen and within this stock a great percentage of it was non duty paid and therefore smuggled.

When going through the alcohol on the shelves I observed a number of more bespoke spirits and wines on lower shelves that are unusual to see in a shop catering for foreign national clientele, and they were

Page 4 of 8

Signature:	Error! Reference source not found.	Signature witnessed by:	
------------	---	-------------------------	--

URN				
-----	--	--	--	--

Statement of:

singular in number or of a very small quantity, for example Dam Raiders gin (1), Plymouth gin (3) price marked at £24.99 yet costing £26 in Sainsbury's and £25.50 in Tesco for the equivalent size, Lambs Navy Rum (3), 19 Crimes The Uprising red wine (1), Campo Viejo Rioja Tempranillo red wine (1), Sorgin – French Gin (2) (one with UK Duty stamp and one where you could see the stamp removed - internet search shows it's a small batch gin and sauvignon blend at 43% ABV, and was available through mainstream channel Aldi at the end of 2018, other than that it doesn't appear to be available mainstream, bespoke sellers only, with 1 importer), The Balvenie Doublewood 12 years Whiskey (2) priced at £39 in Tesco and Amazon, with a price marked as £34.99 on the bottle.

Having seen this before in shops where they are take in stolen goods shoplifted from other shops in lieu of other goods or cash I seized the items and I have requested invoices for them. Mr ALI's business is VAT registered and would have claim VAT back on this alcohol if purchased legitimately. I understand records in relation to VAT claims have to be kept for 6 years, Mr ALI registered the company Zabka Polski Lincoln Ltd in October 2017 and became VAT registered the same month, he became premises licence holder in May 2018, he should have the invoices to prove legitimacy.

I asked Mr ALI why he had a standalone bottle of Plymouth Gin (as I had only found 1 at that time and I thought it suspicious as it was on a shelf with other random bottles), he said it was old stock he had for years and he'd struggled to sell it, I asked how many years and he said 2. I asked the Trading Standards officer to look for a manufacturing dates, she read out 7/11/19, which casts doubt on Mr ALI's explanation. I can confirm that the manufacture dates as printed on the bottles of Plymouth Gin are 2019/11/07, 2019/11/07 and 2020/04/15. Again casting doubt on Mr ALI explanation as they are not from the same batch, the bottles haven't been with him for years, why would he buy more if he struggled to sell the first, why were there not more bottles of the later batch, assuming it would be bought as a box of bottles, and why were they not all on the same shelf lined up behind each other as to other products further up his shelf display were, which would be normal for effective stock taking and turnover.

Signature:	Error! Reference source not found.	Signature witnessed by:	
------------	---	-------------------------	--

URN				
-----	--	--	--	--

Statement of: _____

I also seized wine which contained foreign duty stamp stamps yet was too low and ABV to require a UK duty stamp, and some spirits which contained either foreign duty stamps, partial foreign duty stamp or foreign duty stamp residue and a non-incorporated UK duty stamp, and although this can happen it's unusual to have most of the mainstream foreign stock being products not destined for the UK market from manufacturing. Meaning when the product is produced and they know it's destined for the UK, duty isn't paid for the county it's in as it's known to be leaving that county, it pays duty on arrival at the end destination either by being incorporated in the label or by the stand alone sticker duty stamp. Those that have a foreign duty stamp were expected to stay in the county and on removal the duty can be claimed back, but that means much more work and generally I see it on non-mainstream foreign products. I have asked Mr ALI to provide invoices for all of these products to evidence that the duty has been paid.

I also seized 5 bottles of 700ml 40% ABV Krackoff Vodka from the display shelf. Although it was bearing an incorporated duty stamp I was suspicious as it was a brand I hadn't seen before, yet it was on shelf of mainstream foreign brands. When lining the bottles up I could see the fill levels were all different, which is an indicator the bottle was hand filled as opposed to machine and is therefore more likely from to come from less legitimate sources when not a quality bespoke product. The labels were also not straight and there were visible particles in the liquid within. An internet search produced no hits for buying the product from common suppliers, the barcode is not recognised, which it should be for a UK bound product as shown by the incorporated duty stamp. There was a news article on Dublinlive stating that 13,500 litres of smuggled Krackoff vodka was seized at Dublin Port on 12 May 2020. The website on the bottle doesn't exist; there is no batch code or production data on the bottle. There were only Facebook adverts from similar small retailers selling the product for £9.99, and £10 respectively, when the duty plus VAT is £9.66. Mr ALI had it on sale for £14.99. A bottle has been sent for testing by Trading Standards, and further enquiries are ongoing with Trading Standards, Food Standards Agency, HMRC and Irish Tax and Customs. Mr ALI has been asked to provide invoices for this vodka.

Signature:	Error! Reference source not found.	Signature witnessed by:	
------------	---	-------------------------	--

URN				
-----	--	--	--	--

Statement of: _____

In the chiller cabinet I noticed that certain beers were not priced. I'm aware that all products need to be priced by law, either individual or collectively by a shelf label; you shouldn't have to ask for the price of a product from a shop worker. The beers that weren't priced in ZABKA are the mainstream brands that are imported to cater for foreign national clientele. Sadly this is common to see and there are various reasons for it. Often the beer is smuggled and to advertise the price so low would be an indicator of this. Sometimes the price changes depending on the nationality of the purchaser as test purchases have proved elsewhere. Sometimes the product can be scanned at the till to give a high price yet staff put in a discount code to bring the price down. All are attempts at ways to get an illicit product to a specific customer whilst trying to look legitimate and all are ways Lincolnshire Police have previously evidenced smuggled goods at licensing hearings. Beer above 7.5% ABV has a much higher duty rate, so it should be priced considerably higher than those below that ABV yet it's often the same price, and indicator that no duty has been paid. For example the tax (mandatory price duty plus VAT) on a can of 500ml 7.6% ABV Perla Mocna is £1.13, that's not considering any of the costs to make, house, or transport the product, or for any of the parties involved to take a profit. Yet in Zabka a can scans at £1.49, the cans of lower ABV and therefore a lower tax bracket next to it are also this price and signage near it says special offer beer for £5.00, with other signs saying 4 for £5.00 for other beers, leading customers to believe they could purchase the Perla for what would be £1.25 a can. I noted there was a very large amount of beer stored at the rear of the premise, with a pallet load waiting to be unpacked, yet a relatively small amount on display. Mr ALI told me beer was not a good seller, but his stock indicates otherwise if he is getting more delivered whilst still having a shed and storage area well stocked. I have requested invoices for Mr ALI's beer stock, in particular the Perla Mocna as the onus is on the owner to prove duty paid rather than for authorities to prove duty hasn't been paid.

I finally conducted a compliance check in accordance with Annex 2 of the premises licence.

Condition 1a) there was not a camera positioned to obtain a good facial shot on a person entering the premises.

Signature:	Error! Reference source not found.	Signature witnessed by:	
------------	---	-------------------------	--

URN				
-----	--	--	--	--

Statement of: _____

Condition 1i) the CCTV system was not housed securely.

Condition 3) there was no written policy to prevent the sale or supply of alcohol to persons under 18 years of age.

Condition 5) there was no evidence of staff training and no staff training record available to view.

Condition 6) Alcohol above ABV 5.5%, including the 7.6% ABV Perla Mocna, was found in the chiller cabinet where the public had direct access and not behind the counter or in any other location where members of the public do not have direct access.

Failure to comply with premises licence conditions means unauthorised licensable activity every time alcohol is sold, which is an offence under Section 136 Licensing Act 2003, and undermines the very licencing objectives those conditions were put in place to promote.

I left the premises with assurances from Mr ALI that he would email me invoices for the products requested. I have no doubt that I have seized non-duty paid, smuggled items and I have considerable concerns that one of the products may be unsafe and smuggled. All of which would have been bought for a price that would have been so low it should have aroused suspicions and very likely from a supplier without an Alcohol Whole Registration Scheme (AWRS) number which is an offence in itself. It should have been seen as an indicator to strongly suspect that the products weren't legitimate and checks should have been made, as part of being a responsible retailer protecting and promoting the licencing objectives. From 1st April 2017 it's an offence for any retailer to buy or otherwise receive alcohol from any source which is not registered on the AWRS. There is a duty to firstly check that the supplier's invoice carries an AWRS unique reference number, and secondly to verify that the registration is genuine on the HMRC website, and proof of these checks can be requested as evidence of due diligence activities.

Signature:	Error! Reference source not found.	Signature witnessed by:	
------------	---	-------------------------	--

URN				
-----	--	--	--	--

Statement of:

Signature:	Error! Reference source not found.	Signature witnessed by:	
------------	---	-------------------------	--

This page is intentionally blank.

RESTRICTED (when complete)

MG11

Occurrence Number:		URN			
Witness contact details: Statement of: David WILLIAMS					
Home address:	[REDACTED]				
Home telephone No.:		Work telephone No.:	[REDACTED]		
Mobile/Pager No.:	[REDACTED]	Email address:	[REDACTED]		
Preferred means of contact (specify details):	Mobile				
Best time of contact (specify details):	Daytime				
Gender:	Male	Date of Birth:	[REDACTED]		
Ethnicity code (16+1):	W 1	Place of Birth:	[REDACTED]		
Former Name:		Religion/Belief (specify):	[REDACTED]		
DATES OF WITNESS NON-AVAILABILITY:					

Witness care	
a)	Is the witness willing and likely to attend court? YES If 'No', include reason(s) on form MG6
b)	What can be done to ensure attendance?
c)	Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness? (youth under 18; witness with mental disorder, learning or physical disability; or witness in fear of giving evidence or witness is the complainant in a sexual offence case) NO If 'Yes', submit MG2 with file in anticipated not guilty, contested or indictable only cases.
d)	Does the witness have any particular needs? NO If 'Yes', what are they? (Disability, healthcare, childcare, transport, language difficulties, visually impaired, restricted mobility or other concerns?)

Witness Consent (for witness completion)	
a)	The Victim Personal Statement scheme (victims only) has been explained to me: NO
b)	I have been given the Victim Personal Statement leaflet and I DO NOT / I DO wish to make a Victim Personal Statement at this time. NO
c)	I have been given the leaflet "Giving a witness statement to the police – what happens next?" NO
d)	I consent to police having access to my medical record(s) in relation to this matter (obtained in accordance with local practice): N/A
e)	I consent to my medical record in relation to this matter being disclosed to the defence: N/A
f)	I consent to the statement being disclosed for the purposes of civil proceedings if applicable, e.g. child care proceedings, CICA: N/A

Signature of witness:		PRINT NAME:	D WILLIAMS
Signature of parent/guardian/ appropriate adult:		PRINT NAME:	
Address and telephone number if different from above:			
Statement taken by (print name):	Self	Station:	Lincoln
Time and Place Statement taken:	10am place of work		

WITNESS STATEMENT					
Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B					
Occurrence Number:		URN			
Statement of:	David WILLIAMS				
Age if under 18:	Over 18 (if over 18 insert 'over 18')	Occupation:	Controlled Drugs Officer		
This statement (consisting of 4 page(s) each 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:	D WILLIAMS		Date:	22/12/2020	
Tick if witness evidence is visually recorded <input type="checkbox"/> (supply witness details on rear)					
<p>I am employed by Lincolnshire Police as the force Controlled Drugs Officer. I work within the various legislations that regulate the use of Controlled Drugs and I am empowered by the Secretary of State for Health under section 20 (5) of the Health Act 2006 to carry out inspections for the purpose of securing the safe, appropriate and effective management and use of Controlled Drugs.</p> <p>As part of my role I have assisted and carried out inspections of premises throughout the county with members of staff from the Medicines and Healthcare Products Regulatory Agency (MHRA), in relation to the possession and sale of unauthorised medicinal products from shop premises. These products are regulated under the Human Medicines Regulations 2012 (HMR 2012) and make it an offence under regulation 46(3) and 47(1) to possess unlicensed medicines knowing or having reasonable cause to believe that the product was intended to be sold or supplied to another person within the European Economic Area. Under medicines legislation, it is unlawful for medicinal products for human use to be marketed, manufactured, imported from a third country, distributed and sold in the United Kingdom (UK) except in accordance with the appropriate licences or exemptions. The UK has three legal classes of authorised medicines: <u>General sale list (GSL)</u> medicines are suitable for sale and normal use without supervision or advice from a pharmacist or doctor and in the UK GSL medicines can be sold in most shops</p>					

Signature:	D Williams	Signature witnessed by:	
------------	------------	-------------------------	--

Occurrence Number:		URN			
--------------------	--	-----	--	--	--

Statement of: **David WILLIAMS**

(without a licence) for example Anadin, Panadol, Nurofen Ibruprofen but these have to be UK sourced, and have the marketing authorisation and correct UK packaging and leaflets, you cannot sell foreign medicines even GSL's as you would breach the HMR 2012.

Pharmacy (P) medicines can only be obtained from a pharmacy and are sold or supplied under the supervision of a pharmacist

Prescription-only medicines (POM) must be prescribed by an authorised healthcare professional, for example a doctor, dentist or independent prescriber. Genuine foreign versions of UK licensed POMS will be POMS under regulation 3(b) because even though the foreign version will not have a UK marketing authorisation, it will contain the same active ingredient as the UK licensed product and that active ingredient will be listed in column 1 of schedule 1 to the POM order.

For the medicines to be licensed for use in the UK they must be manufactured and branded in English livered writing and the enclosed patient leaflet also must be the same. The use of over stickers and translated leaflets is not allowed and is also an offence and could be classed as manufacturing. As well as the English livery the packaging will also have a PL number, this refers to the product licence and who the licence holder is.

A product will only be a medicine if it satisfies the following definition:
Any substance or combination of substances presented as having properties for treating or preventing disease in human beings

Any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.

Signature:	D Williams	Signature witnessed by:	
------------	------------	-------------------------	--

Occurrence Number:		URN			
--------------------	--	-----	--	--	--

Statement of:	David WILLIAMS
---------------	-----------------------

When medicines are manufactured the packaging, it is contained in will include a lot or manufacturing code (i.e. batch number) and an expiry date. The purpose of the batch number is so if a product must be recalled then it is often identified by the batch number. The expiry date relates to when the medication should be used by and should not be available for sale after this date. After the expiry date medicines may not be safe or as effective.

On the 9th December 2020 Officers attended the premises of Zabka, Portland Street, Lincoln. The officers attending carried out a search of the premises and seized a quantity of foreign livered medicines from display in the shop. These products were placed in two large plastic bags and sealed with an evidence seal tag. The tag numbers are Bag 1 Tag number 0479381 Police Exhibit GMM/1 and Bag 2 Tag number 0479287 Police Exhibit GMM/2. I have since examined the contents of these bags and confirm that although they appear to be medicines and supplements manufactured by licensed manufacturers they are in non-English livery. None of the boxes have a PL number on them but were labelled with a price label so were clearly for sale to the public, all the products were in date. I do not intend to comment on all the individual medicines seized from the shop as there were 190 individual products of various sorts. I have used both the British National Formulary (BNF) and the EMC as a reference; the electronic Medicines Compendium (eMC) contains up to date, easily accessible information about medicines licensed for use in the UK. The eMC has more than 14,000 documents, all of which have been checked and approved by either the UK or European government agencies which license medicines. These agencies are the UK Medicines and Healthcare Products Regulatory Agency (MHRA) and the European Medicines Agency (EMA).

Upon examination of the sealed bags there were some products that in the UK would be

Signature:	D Williams	Signature witnessed by:	
------------	------------	-------------------------	--

Occurrence Number:		URN			
Statement of:	David WILLIAMS				
<p> classed as prescription only medication (POM) these were 3 boxes of Duomox Amoxicillinum (amoxicillin) 1g tabletek (tablets) with 20 tablets in each box priced at £15:49 each box. This is a form of penicillin type drug containing Amoxycillin and in the UK isn't available in this strength. The equivalent product in the UK is only available on prescription from a GP and obtained from a pharmacy. There were also 3 boxes of Ketonal Forte 100mg tabletek Sandoz brand with 30 tablets in each priced at £13:99 each. These are an anti-inflammatory drug containing Ketoprofen the equivalent product in the UK is only available on prescription from a GP and obtained from a pharmacy. There were 3 boxes of Allegra 120mg tabletek Sanofi brand there were 10 tablets in each box priced at £3.99. These tablets contain the drug Fexofenadine which in the UK is a prescription only medication which is prescribed as an antihistamine from a GP and obtained from a pharmacy. From the other medicines that I examined what should be born in mind is that if they were to be sold in Poland they would only available from a pharmacy under the direction of a pharmacist as they have to be happy that suitable advice can be given to the person who is taking them should they be pregnant or if it is being purchased for a child as a lot of the medication was for babies and infants so they should ensure that the correct dose is given depending upon the age of the child. From the medicines that I examined I have formed the opinion that if they were licensed for sale in the UK which none were there would be a mixture of prescription only medication, pharmacy and general sales list products. </p>					

Signature:	D Williams	Signature witnessed by:	
------------	------------	-------------------------	--

This page is intentionally blank.

Appendix A (iv)

Zabka

111 Portland Street

Lincoln

Photographs from visit
and of items seized
from visit 9/12/20

Index

Page 3-5 Boxes of Zubrowka vodka on the stairs, no UK duty stamps.

Page 6 Medicines being displayed for sale on shelving unit behind the counter.

Page 7 Ketonal, one of the known prescription drugs being offered for sale, with price label, with the antibiotic Duomox next to it.

Page 8 Some of the sprits on display

Page 9-11 Zoladkowa vodka, foreign duty stamp on neck and Glens incorporated duty stamp.

Page 12-13 Soplica vodka with Smirnoff incorporated duty stamp

Page 14-15 Zubrowka Vodka with Smirnoff incorporated duty stamp

Page 16-17 Alexandrion brandy with no duty stamp

Page 18-19 Zubrowka Bison V with no duty stamp

Page 20 Grants box containing non-duty vodka and bottom of sprit display behind counter

Page 21 Plymouth gin and Balvenie Double Wood Whiskey with pricing

Page 22 Date of production on a bottle of the Plymouth gin

Page 23 Krackoff vodka - note differing fill levels and label heights. With unrecognized barcode and incorporated duty stamp.

Page 24-26 Beer and wine storerd both in the premises, in a rear shed and in the enclosed rear yard (note the pallet of beer was not one which had just been delivered)

Page 27-28 Beer being offered for sale in chiller cabinet with no pricing on certain items and with signage suggesting an offer.





























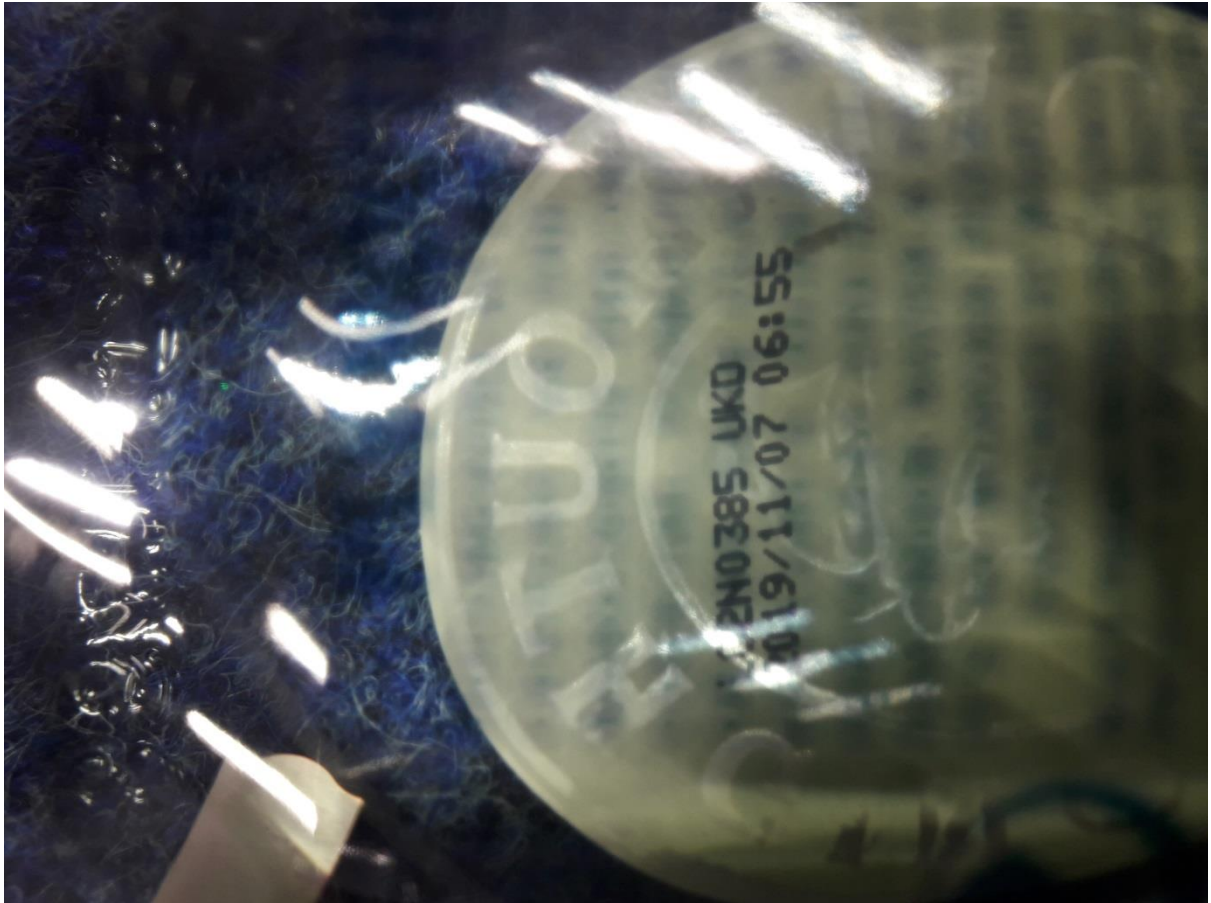










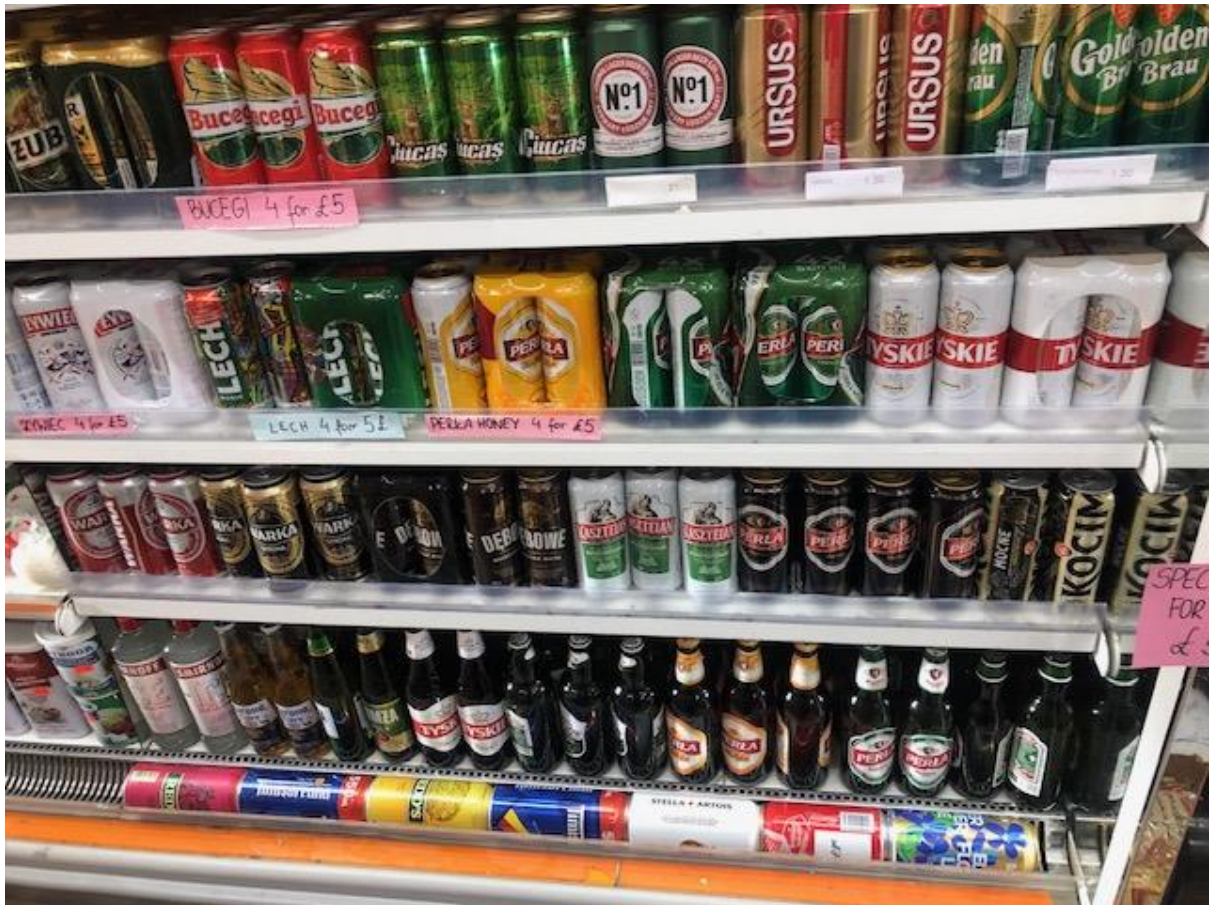














Premises licence number

32UD/B/1611

Part 1 - Premises details

Postal address of premises, or if none, ordnance survey map reference or description	
Zabka 111 Portland Street Ordnance survey map reference (if applicable),	
Post town	Post code
Lincoln	LN5 7LG
Telephone number	

Where the licence is time limited the dates
N/A

Licensable activities authorised by the licence
<ul style="list-style-type: none"> Supply of Alcohol

The opening hours of the premises
<ul style="list-style-type: none"> Seven Days a Week from 08:00 to 23:00
Non Standard Timings:
<ul style="list-style-type: none"> Christmas Day from 08:00 until 00:00 New Years Eve from 08:00 until 00:00

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies
Alcohol - Off The Premises

The times the licence authorises the carrying out of licensable activities

Supply of Alcohol

- Seven Days a Week from 08:00 until 23:00

Non Standard Timings

- Christmas Eve from 08:00 until 00:00
- New Years Eve from 08:00 until 00:00

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Saman Osman Ali

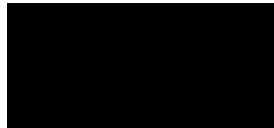


Registered number of holder, for example company number, charity number (where applicable)

N/A

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Saman Osman Ali



Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

RM3138 – Rotherham Metropolitan Borough Council

Annex 1 - Mandatory conditions

In the following mandatory conditions, a "responsible person" means – in relation to licensed premises –

- i. The holder of a premises licence in respect of the premises,
- ii. The designated premises supervisor (if any) under such a licence, or
- iii. Any individual aged 18 or over who is authorised for the purposes of this section by such a holder or supervisor.

Mandatory Alcohol Conditions

1. No supply of alcohol may be made under the premises licence-
 - a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Mandatory Age Verification

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 holographic mark, or
 - an ultraviolet feature.

Mandatory condition preventing the sale or supply of alcohol below the permitted price.

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) "valued 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.
- a) 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.
 - b) 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.

Annex 2 - Conditions consistent with the operating Schedule

1. A CCTV system shall be installed and (or alternatively where such a system is already installed) shall be maintained in working order and operated at the premises to the satisfaction of Lincolnshire Police, specifically:
 - a) There shall be a minimum of one high-resolution colour camera complete with an auto iris vari-focal lens fitted to each public entrance/exit and be capable of providing good quality head and shoulder images of 120% rotakin, including facial captures, of all persons entering/leaving the premises;
 - b) There shall be sufficient cameras able to cope with the normal operating illumination, located within the premises to cover all licensed public areas;
 - c) Police and/or authorised officer os the Licensing Authority shall be able on attendance to view an immediate playback of any incident without the necessity for download, and those images shall be of such quality and content as to provide a clear overview of the incident;
 - d) The frame rate should be maintained to an optimum of 25 frames per second (real time fps) where practicable and will not fall below 12 fps;
 - e) In addition to the control equipment an additional high-resolution (minimum 15") monitor shall be sited behind the sales counter. This will give customers and staff visible reassurance on the installation and quality of images provided;
 - f) Recordings must be kept for a minimum of 31 days and endorsed with the accurate, correct time/date (BST/GMT);
 - g) Recordings of incidents at the premises must be made secure for inspection by the police and provided on request;
 - h) There shall be a member of staff on the premises at all times they are open to the public who is capable of operating the CCTV system and providing recordings on request;
 - i) Recording equipment shall be housed securely where access and operation is strictly limited to authorised persons.

2. Whilst the use of time lapse analogue video recorders utilizing 31 numbered tapes is still acceptable, all new systems shall be fitted with a Digital Video Recorder (DVR) with a hard drive of sufficient capacity to record input from each camera at its best resolution. The DVR shall meet the following requirements:
 - a) It shall have an on board CD/DVD re-writer for evidence
 - b) recovery;
 - c) If a CD/DVD is used to transfer the digital CCTV images from a digital hard drive CCTV system then a write once CD-R/DVD-R medium shall be used;
 - d) The disc containing the recorded images shall be capable of being played back on Microsoft Windows software;
 - e) The playback software shall be written to the CD-R/DVD-R at the same time of writing the CCTV images.; and
 - f) The playback software must be able to playback the images at full screen resolution with forward, reverse replay, including pause and slow motion.

3. There shall be in place for the premises a written policy to prevent the sale or supply of alcohol to persons under 18 years of age. That policy shall require any person who appears to be under the age of 21 years to produce one of the following forms of identification:
 - a) Full UK Photo Driving Licence
 - b) Passport
 - c) A recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS)

4. A notice or notices shall be displayed in and at the entrance to the premises where they can be clearly seen and read and shall indicate:
 - a) That it is unlawful for persons under 18 to purchase alcohol or for any person to purchase alcohol on behalf of a person under 18 years of age;
 - b) That the Challenge 21 scheme is in place;
 - c) That proof of age may be requested at the premises: and
 - d) The acceptable means for proof of age shall be:
 - i. Full UK Photo Driving Licence
 - ii. Passport
 - iii. A recognised proof of age card accredited under the Proof of Age Standards Scheme (PASS)

5.
 - a) All point of sale staff shall undergo training in the Proof of Age Policy with a record kept of the date of training, signed by the member of staff and the trainer;
 - b) Training will be repeated at least every six months;
 - c) Each entry shall be retained for a period of 24 months from date of completion; and
 - d) This record shall be made available for inspection by Lincolnshire Police Officers or other parties acting on their behalf.

6. All spirits, fortified wines and strong beers, ciders and lagers (with ABV above 5.5%) shall be displayed behind the serving counter or in any other location where members of the public do not have direct access. are to be displayed behind the counter or in any other location where members of the public do not have direct access.

Annex 3 - Conditions attached after a hearing by the licensing authority

None

Annex 4 - Plans

See attached

Premises Licence Summary



CITY OF
Lincoln
COUNCIL

Premises licence number

32UD/B/1611

Premises details

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

Zabka

111 Portland Street

Ordnance survey map reference (if applicable),

Post town

Lincoln

Post code

LN5 7LG

Telephone number

Where the licence is time limited the dates

N/A

Licensable activities authorised by the licence

- Supply of Alcohol

The times the licence authorises the carrying out of licensable activities

Supply of Alcohol

- Seven Days a Week from 08:00 until 23:00

Non Standard Timings

- Christmas Eve from 08:00 until 00:00
- New Years Eve from 08:00 until 00:00

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies

Alcohol - Off The Premises

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Saman Osman Ali



Registered number of holder, for example company number, charity number (where applicable)

N/A

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol

Saman Osman Ali

State whether access to the premises by children is restricted or prohibited

Please see conditions (subject to section 145 of the Licensing Act 2003)

This page is intentionally blank.

11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 An application for review may be made electronically, provided that the licensing authority agrees and the applicant submits a subsequent hard copy of the application, if the licensing authority requires one. The licensing authority may also agree in advance that the application need not be given in hard copy. However, these applications are outside the formal electronic application process and may not be submitted via GOV.UK or the licensing authority's electronic facility.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

- 11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 11.8 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 14 of this Guidance.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.
- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

Repetitious grounds of review

- 11.12 A repetitious ground is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
 - representations considered by the licensing authority when the premises licence or certificate was granted; or
 - representations which would have been made when the application for the premises

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:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)¹⁰;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

¹⁰ See chapter 15 in relation to the licensing of live and recorded music.

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 or illegal working compliance 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 an illegal working compliance order under 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

11.29 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.

Appendix D

10 Reviews

- 10.1 A review of premises licences or club premises certificates is a means available to responsible authorities and other persons to examine the operation of the premises when it becomes problematic and is putting the licensing objectives at risk.
- 10.2 The licensing authority recommends that responsible authorities and other persons should give premises early warning of problems. By doing so operators may be able to address these problems without the intervention of formal action. It is the Licensing Authority's belief that the promotion of the licensing objectives is best achieved through mutual co-operation between all stakeholders. Reviews should therefore be mainly reserved for circumstances where early warnings of concerns and the need for improvement have gone unheeded by the management of the licensed premises. However it is acknowledge that under certain circumstances a review of the licence may be the appropriate course of action even in the first instance.
- 10.3 It should be noted that although the Licensing Authority can initiate a review it does not intend to do so in circumstances when the application should be made by another responsible authority or other person. However, there are occasions when it may wish to make such an application or make representations e.g. when there are a number of unconnected complaints that in themselves do not require another responsible body or other person to make a representation , but when taken together may undermine the licensing objectives.
- 10.4 The role of the licensing authority is to administer the process and determine the outcome at a hearing.
The steps the authority may take at a review hearing are;
- Modify (which includes adding, deleting or altering) the conditions.
 - Excluding licensable activities from the licence/certificate.
 - Remove the designated premises supervisor.
 - Suspend the licence for a period not exceeding 3 months.
 - Revoke the licence/certificate.
 - Take no action.

This page is intentionally blank.

Appendix E

5. Licensing Objectives

5.1 General

- 5.1.1 Each of the four licensing objectives is of equal importance. The Licensing Authority considers the effective and responsible management of the premises, and the instruction, training and supervision of staff in the adoption of best practice to be amongst the most essential control measures for the achievement of the licensing objectives. *For this reason it is recommended that these elements be specifically considered and addressed within an applicant's operating schedule.*
- 5.1.2 *As set out in paragraph 3.10, the Licensing Authority recommends that applicants carry out their own risk assessments in relation to the four licensing objectives in order to assist them in deciding whether any steps are required to be taken in order to meet those objectives.*
- 5.1.3 *Although not a requirement under the legislation, applicants are advised to copy any risk assessments undertaken to the responsible authorities in order that they can assess the suitability of the operating schedule. This may assist in reducing the number of representations and subsequent hearings.*

5.2 Prevention of Crime and Disorder

- 5.2.1 The Licensing Authority will carry out its licensing functions with a view to promoting the prevention of crime and disorder and will seek to ensure that licensees take measures to regulate the behaviour of persons whilst on their premises, or in the immediate vicinity of the premises.
- 5.2.2 In addition to the requirement for the Licensing Authority to promote this licensing objective, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect of the exercise of those functions on, and do all it reasonably can to prevent, crime and disorder in the City.
- 5.2.3 When addressing crime and disorder the applicant should initially identify any particular issues (having regard to their particular type of premises and/or activities) which are likely to adversely affect the promotion of the crime and disorder objective. Such steps as are required to deal with these identified issues should be included within the applicant's operating schedule.

Examples of steps the Licensing Authority advises applicants to consider and address include:

- *Physical security features e.g. use of polycarbonate, toughened or plastic drinking glasses;*
- *Procedure for risk assessment of alcohol promotions to ensure that they do not promote irresponsible drinking or potentially breach the mandatory condition on irresponsible drinks promotions;*
- *The use and numbers of SIA licensed door supervisors,*
- *Amount of seating to be provided to reduce the risk of high volume vertical drinking;*
- *Training given to staff in crime prevention and drug awareness measures,*
- *Training given to staff to prevent the sale of alcohol to those who are under age or appearing to be drunk;*
- *Training for staff to a recognised level such as the awards for personal licence holders, responsible drink retailing and designated premises supervisors;*
- *Adoption of the Retail of Alcohol Standards Group Challenge 21 or Challenge 25 policy incorporating the British Retail Consortium's Proof of Age Standards Scheme (PASS);*
- *Measures agreed with the Police to reduce crime and disorder;*
- *Measures to prevent the use or supply of illegal drugs;*
- *Search procedures;*
- *Provision of CCTV in and around the premises;*
- *Participation in the use of the Lincoln Business Improvement Group's Radio Link Scheme;*
- *Formulation of a dispersal policy;*
- *Measures to prevent glasses and bottles being taken away from the licensed premises.*

5.2.4 CCTV remains one of the most effective measures for reducing crime and disorder. The Licensing Authority expects premises that retail alcohol for consumption on or off the premises will have an effective CCTV system installed that operates in compliance with the requirements of Lincolnshire Police.

5.3 Public Safety

5.3.1 The Licensing Authority will carry out their licensing functions with a view to promoting public safety and will seek to ensure that licensees take measures to protect the safety of performers and persons attending licensable activities. The risk to public safety will vary according to the type of premises and the activities carried out.

5.3.2 Where an applicant identifies an issue in regard to public safety (including fire safety) which is not covered by existing legislation, the applicant should identify in their operating schedule the steps which will be taken to ensure public safety. *Depending on the individual style and characteristics of the premises and/or events, the following issues might be of relevance:*

- *Suggested occupancy figures (including staff and performers),*
- *Use of equipment and effects,*

- *Levels of door supervision,*
- *Measures to prevent the supply and use of illegal drugs,*
- *Physical safety features e.g. use of toughened glass, polycarbonate and plastic drink containers,*
- *Fire safety, training and evacuation procedures,*
- *Provision of CCTV.*

5.3.3 *The Licensing Authority would advise applicants applying for permissions to stage events which are likely to draw in large numbers of people and/or have an impact on the road network to have consulted with those authorities concerned with public safety and in particular with the Lincoln Events Safety Advisory Group (SAG) and Highways Authority.*

5.3.4 *SAG is not a responsible authority but is made up from representatives from bodies concerned with public safety; some of which are responsible authorities. Applicants are advised that the planning and consultation with SAG should commence at an early stage and on particularly large events promoters/organisers should commence consultation at least a year in advance of the event.*

5.3.5 *It is also advisable for applicants to read the guidance for large scale events titled HSG 195, The Event Safety Guide (for health, safety and welfare at music and similar events) commonly known as the Purple Guide.*

5.3.6 *The occupancy capacity for premises, and events as appropriate, is a fundamental factor in the achievement of the four licensing objectives (except in respect of premises licensed for the consumption of food and/or alcohol off the premises). The Licensing Authority recommends the issue of occupancy capacity (including staff and performers) to be considered and addressed within the premises' fire risk assessment.*

5.3.7 *The design and layout of premises are important in determining capacity, as is the availability and size of exits within recommended travel distances. Other factors should also be considered when assessing the appropriate capacity for premises or events. These include but are not limited to:*

- *The nature of the premises or event,*
- *The nature of the licensable activities being provided,*
- *The provision or removal of such items as temporary structures, such as a stage, or furniture,*
- *The number of staff available to supervise customers both ordinarily and in the event of an emergency,*
- *The customer profile,*
- *Availability of suitable and sufficient sanitary accommodation,*
- *Nature and provision of facilities for ventilation.*

5.3.8 *The agreement to a capacity for premises or events should not be interpreted as a requirement in all cases to also provide permanent monitoring arrangements such as door staff, attendance clickers or maintenance of attendance records. The Licensing Authority recognises that the person in charge at the premises can often readily assess the capacity of premises*

without the need to resort to such measures. However, where the capacity is likely to be reached (such as on known busy evenings) and particularly where a special event or promotion is planned, the applicant is advised to detail the additional arrangements that will be put in place to ensure that the capacity of the premises is not exceeded.

5.5 Protection of children from harm

5.5.1 The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls or centres and schools. Except as prohibited by law, access by children to all types of premises will not be limited in any way unless it is considered necessary to do so to protect them from harm. In all other cases it will be a matter for the discretion of the licensee.

5.5.2 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting them from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). The Licensing Authority is especially mindful that it must always consider the need to protect children from sexual exploitation.

5.5.3 After receiving relevant representations on limiting access by children, the Licensing Authority, when deciding whether to limit access to children or not, will judge each application on its own individual merits. *Examples, which may give rise to concern in respect of children and would likely lead to a refusal of permitting access to children under 18, would include premises –*

- *Where entertainment or services of an adult or sexual nature are provided;*
- *Where there has been a conviction of a member of the current staff at the premises for serving alcohol to a minor or with a reputation for underage drinking;*
- *Where there has been a conviction of a member of current staff at the premises for an offence which may pose a risk to children;*
- *With a known (having been provided with evidence) association with drug taking or dealing;*
- *Where there is a strong element of gambling on the premises (but not, for example, the simple presence of a small number of cash prize gaming machines); and*
- *Where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.*

5.5.4 In the case of premises which are used for film exhibitions, conditions will be imposed restricting access only to those who meet the required age limit in line with any certificate granted by the British Board of Film Classification

(BBFC) or, in specific cases, a certificate given to the film by the Licensing Authority itself.

- 5.5.5 Films that have not been classified by the BBFC may only be shown after they have been classified by the Council. The Council has delegated the function of classifying such films, using the BBFC classification guidelines prevailing at the time, to designated officers. The Council requires that films are presented for classification at least 28 days prior to the intended date of exhibition.
- 5.5.6 Where a large number of children are likely to be present on any licensed premises, the applicant will be required to include within their Operating Schedule the steps they will take to protect children from harm whilst on the premises. The Licensing Authority will expect the presence of an appropriate number of adult staff (being over 18 years of age) to ensure the children's protection from harm., The onus will be on the premises licence holder to ensure that staff members are suitable to carry out the supervision of children, which may include a criminal record check from the Disclosure & Barring Service.
- 5.5.7 The options available for limiting access by children would include:
- Limitations of the hours when children may be present;
 - Limitations or the exclusion of the presence of children under certain ages when particular specified activities are taking place;
 - Limitations on the parts of premises to which children might be given access;
 - Age limitations (below 18);
 - Requirements for accompanying adults (including for example, a combination of requirements which provide that children under a particular age must be accompanied and supervised by an adult); and
 - Full exclusion of those people under 18 years of age from the premises when any licensable activities are taking place.
- 5.5.8 The Licensing Authority will not impose any condition that specifically requires access for children to be provided at any premises. Where no restriction or limitation is imposed the issue of access will remain a matter for the discretion of the individual licensee or club, subject to the requirements of the Act.
- 5.5.9 In respect of premises licensed for the sale of alcohol, the Licensing Authority commends the Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks and compliance with the Retail Alert Bulletin.
- 5.5.10 The sale of alcohol to children and young persons under the relevant age is a criminal offence, often resulting in harm to the children and young persons concerned and disturbance and nuisance to local residents and businesses. The Licensing Authority will therefore expect licensed premises to have adequate controls in place to prevent under age sales of alcohol to children and young persons.

- 5.5.11 The Licensing Authority recognises that Lincolnshire County Council Trading Standards Service, as part of its responsibilities and duties under legislation controlling the sale of age restricted products including alcohol, provides advice and guidance on the controls and systems that may be adopted to help prevent such sales. The Licensing Authority also recognises that in liaison with the Police, the Trading Standards Service conducts covert test purchasing exercises in response to complaints and information received to check compliance with the law.
- 5.5.12 Mandatory conditions require the adoption of a proof of age scheme. The Licensing Authority commends a scheme such as the British Retail Consortium's Proof of Age Standards Scheme (PASS), the "Challenge 21" scheme, "Challenge 25" scheme or any locally or nationally approved scheme. All staff engaged in the sale or supply of alcohol should be fully trained in the application of any policy adopted.
- 5.5.13 The Designated Premises Supervisor at a licensed premises is legally responsible for ensuring that the supply of alcohol at the premises is carried on in accordance with the age verification policy. ¹The 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.
- 5.5.14 The body responsible for the interests of children is:
The Lincolnshire Safeguarding Children Board which is contactable through Lincolnshire County Council.

¹ (The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014)