



Department of Home Affairs

Rheynn Cooishyn Sthie

**POLICY CONSULTATION ON
"GENERAL ATTENDANCE"
UNDER THE LIQUOR LICENSING
AND PUBLIC ENTERTAINMENTS
ACT 2021**

November 2023

INTRODUCTORY STATEMENT BY THE MINISTER



I am pleased to bring forward a consultation on the proposed approaches to revise the "general attendance" requirements in the Islands licensing legislation.

The aim is to allow greater flexibility in meeting the general attendance requirements, while continuing to uphold the licensing objectives and standards across the industry. This consultation aims to promptly address practical issues and options for modifying "general attendance" requirements to best support the licensed hospitality industry and organisations.

The Department will evaluate the impact of any changes brought to ensure we have a framework that works for the Island and that the existing high standards across the licensed hospitality industry, built through many years of collaborative working between Government and stakeholders, are not adversely impacted. The ability for our businesses to flourish is, of course, of economic benefit to the Island, however we must also ensure that we are providing appropriate levels of risk management and that public safety is addressed.

The Department has issued and maintained the Liquor Licensing and Public Entertainments Implementation Plan, which sets out what we hope to achieve in the longer term. We remain committed to progressing the future phased work as set out in this plan further down the line.

The Department is committed to open public consultation, and any proposed changes will only be made following careful and considered engagement with key stakeholders and interested parties. We want your input so that we can understand the views of individuals, businesses, key stakeholders and all interested parties.

In light of the above, I would encourage you to take the time to read the consultation document and to let us know your views.

Thank you.

A handwritten signature in blue ink, which appears to read "Jane Poole-Wilson".

Hon Jane Poole-Wilson, MHK
Minister for Justice and Home Affairs
10 November 2023

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WHY WE ARE CONSULTING

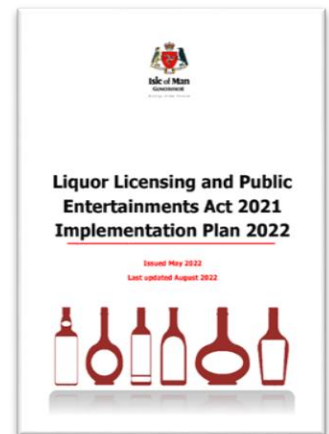
1. Overview

The Department of Home Affairs is undertaking public consultation on a new proposed approach to “general attendance” requirements as set out at section 24 *Licensee or responsible person to be on licensed premises at all times* of the Liquor Licensing and Public Entertainments Act 2021 (“the Act”) and supplemented by regulation 40 *Presence on premises: exceptions* of the Liquor Licensing and Public Entertainments Regulations 2022 (“the Regulations”).

“General attendance” refers to rules around the person or people responsible and accountable for a licensed premises (on-licence, off-licence, restaurant, club, bar, etc.) whenever the premises is open to the general public for business.

Prior to this consultation, the Department has undertaken initial discussions with stakeholders to understand the appropriate options to be consulted on.

Consultees are also invited to keep up to date with the [Department of Home Affairs Liquor Licensing and Public Entertainments Act 2021 Implementation Plan 2022](#), which sets out wider changes to be made to liquor and public entertainment licensing. The implementation plan is a “living document”, allowing for amendments and updates to be meaningfully recorded and published, such that the licensed hospitality industry may remain up to date with any upcoming changes proposed to be made by the Department.



2. Consultation materials

This written consultation commences on 10 November 2023 and will run for a period of 4 weeks.

Responses to the consultation must be submitted by 23:59pm on 08 December 2023.

Responses to the consultation can either be –

- ❓ made via the questionnaire on the consultation hub at www.consult.gov.im;
- 💻 submitted via email to GeneralEnquiries.DHA@gov.im; or
- ✉️ posted to –
 - Summer Patrick
 - Business Support Officer
 - DHA Headquarters Building
 - Tromode Road
 - Douglas
 - Isle of Man
 - IM2 5PA

If you are responding by email or post then please include the following details:

- your name;
- the address to which we can reply to you (email or postal);

- if you currently hold one of the following positions:
 - Licensee
 - Licence holder
 - Responsible Person
 - General bar staff
 - Registered door security staff; and
- whether you are responding for yourself or on behalf of a business or organisation.

3. Existing Legislation

3.1 Present framework

The current licensing framework is set under the Liquor Licensing and Public Entertainments Act 2021.

There are also a number of items of secondary legislation¹ which have been made under the Act. Taken together, these form the present framework.

Additionally, compliance with the current [Isle of Man Licensing Forum Code of Practice and Guidance on Liquor Licensing](#) issued by the [Isle of Man Licensing Forum](#) is mandated as a licence condition.

3.2 Liquor Licensing and Public Entertainments Act 2021 (“the Act”)

The Act received Royal Assent on 14 December 2021. This followed legislative progress through the parliamentary branches of the finalised Liquor Licensing and Public Entertainment Bill 2021, which was itself the result of both a detailed policy, and later Bill, consultation. Full details of the passage of that Bill can be found within the [Department of Home Affairs Liquor Licensing and Public Entertainments Act 2021 Implementation Plan 2022](#).

The Act, consisting mainly of provisions that allow for secondary law to be made under the Act, gives the legal basis upon which different parts of the new licensing framework will be implemented. These items of secondary law include Regulations, Orders and Statutory Guidance (approved via Codes of Practice). Prior to seeking the approval of Tynwald to make such new laws, the Department is required by section 59 *Consultation* of the Act to consult with the key stakeholders as identified, being the following:

- the Licensing Forum;
- the Deemsters and the High Bailiff;
- the licensing authority (if established);
- any person to whom the Regulations or Order relate, or person appearing to the Department to represent such person; and
- any other person that the Department considers appropriate.

¹ These include, but are not limited to: Liquor Licensing and Public Entertainments Regulations 2022 [SD2022/0287]; Liquor Licensing and Public Entertainments (Amendment) Regulations 2022 [SD 2022/0306]; Liquor Licensing and Public Entertainments (Amendment and Approval of Code and Guidance) Order 2022 [SD 2022/0288] and Fire Precautions (Licensed Premises and Entertainment Premises) Order 2022 [SD 2022/282]. Copies of all statutory documents can be obtained from the Tynwald Website: www.tynwald.org.im.

Section 62 *Restrictive Agreements*, section 65 *Triennial session of the Court under the Licensing Act 1995 extended* and section 66 *Period of licence granted under the Music and Dancing Act 1961 extended* of the Act came into operation on the day on which the Act passed.

The sections relating to the Licensing Court and the Licensing Court of Appeal and the structure of these took effect on 01 July 2022 on the making of an [Appointed Day Order](#).

The majority of the new licensing framework came into operation on 12 December 2022, with the Liquor Licensing and Public Entertainments Regulations 2022 (“the Regulations”).

THE CONSULTATION

4. Consultation overview

We have set out the differing options in relation to modifying the general attendance requirements in detail later in this consultation document.

We would encourage consultees to consider each of the options presented and make any comments or suggestions within the consultation response questionnaire. Additional space is provided in which consultees can make general comments which do not directly correspond to the proposals made.

A detailed summary of responses to this consultation will be produced and provided on the Consultation Hub in the weeks following the conclusion of this consultation. This will allow the Department to consider the responses and provide “We asked, You said, We did” commentary.

For the full contents of this consultation please use the index to this consultation found on page 3.

5. General attendance issue & options

Since the licensing framework took effect on 12 December 2022, officers of the Department have continued to meet regularly with the [Isle of Man Licensing Forum](#), where any concerns have been flagged in connection with the formalising of “general attendance” requirements.

The formalising of this requirement formed part of the matters consulted on in preparation for the new framework, which made it clear that for liquor licensed premises, a licensee or Responsible Person is required to be present on that premises whenever they are open. This is set out at section 24 *Licensee or responsible person to be on licensed premises at all times* of the Act 2021 (“the Act”). Regulation 40 of the new Regulations further outlines the requirements and a number of exceptions, which are:

- if the Licensee or Responsible Person is unavoidably absent for less than 2 hours and is contactable by telephone;
- if the Licensee or Responsible Person is unavoidably absent for between 2 hours and 14 days and does not have a court-issued mandatory condition to be on the premises whenever it is open (for example, a premises licensed under a public entertainment licence where the Court had not stipulated the aforementioned); or
- if the Licensee or Responsible Person is unavoidably absent for between 2 hours and 14 days and has notified the Chief Constable and has received approval from the High Bailiff for a nominated Temporary Manager.

The terminology of “unavoidable” has remained in use within the new licensing framework, brought forward from its use in the Licensing Act 1995. Consultees are now being invited to give their feedback with regards to this wording and the impact it may have on the operation of their business.

Currently, if a Licensee or Responsible Person is ever avoidably absent or absent for more than 2 hours without an approved Temporary Manager, they are considered to be in breach of the licensing law.

While little to no feedback was received in connection with general attendance matters during the original consultation on the Act and Regulations, since the legislation came into operation, the Department has received extensive feedback that the practical application of the provisions is making it difficult for Licensees and Responsible Persons to comply with the law. It has also been noted that the previous licensing regime appeared to have more flexibility in this area.

Officers from the Department have already undertaken stakeholder engagement on this matter, including with the Licensing Forum, Isle of Man Constabulary, the General Registry and the Licensing Court (via Her Worship the High Bailiff) to seek to establish what flexibility or mitigation could be considered to modify the present general attendance requirements, whilst also upholding the licensing objectives.

The licensing objectives, as set out at section 57(2) of the Act, are as follows:

- a) securing public safety;
- b) preventing crime and disorder;
- c) preventing public nuisance;
- d) protecting and improving public health;
- e) protecting children from harm;
- f) providing an environment in which the hospitality industry may flourish; and
- g) promoting high standards across the hospitality industry;

Based on the stakeholder engagement we are consulting on three options as set out below. Consultees are encouraged to consider each of the options and feedback which option with regards to the “general attendance” requirements is preferable for implementation moving forward.

Option 1

This approach would see the introduction of a new “class” of person – the “Authorised Person” (see further below suggested minimum requirements for this class). This would allow a Responsible Person or licensee to delegate the operation of a premises to a named person, authorised to be on the premises in the absence of the Licensee or Responsible Person. The final responsibility would still sit with the person delegating responsibility.

Option 1a

See above description for Option 1. Option 1a is exactly the same, except that there would be no tier of persons referred to as “Authorised Persons”. Suitable individuals would act in the same way as Authorised Persons, simply without this title.

Option 2

Where a Licence Holder and/or Responsible Person is absent from the premises for up to 5 days, no individual has to be named in charge as long as the Licence Holder/Responsible Person is contactable by phone. The Licence Holder/Responsible Person will remain ultimately accountable.

Option 1	Option 1a	Option 2
Tier 1: Licence Holder (LH)	Tier 1: Licence Holder	Tier 1: Licence Holder
Tier 2: Responsible Person (RP)	Tier 2: Responsible Person	Tier 2: Responsible Person
Tier 3: Authorised Person (AP)	Tier 3: none	Tier 3: none
Proposed regulation change (TBC)	Proposed regulation change (TBC)	Proposed regulation change (TBC)
<p>A period of not more than either 7 or 14 days (to be determined by consultation), during which the licensee/responsible person was contactable by phone <u>AND</u> had put in place a suitably trained and authorised person; or</p> <p>A period of more than either 7 or 14 days (to be determined by consultation), during which the licensee has put in place a temporary manager (in accordance with Regulation 40(4)) as currently is in place.</p>	<p>A period of not more than either 7 or 14 days (to be determined by consultation), during which the licensee/responsible person was contactable by phone <u>AND</u> had put in place a suitable individual to be left in charge of the premises in their absence; or</p> <p>A period of more than either 7 or 14 days (to be determined by consultation), during which the licensee has put in place a temporary manager (in accordance with Regulation 40(4)) as currently is in place.</p>	<p>Provide that a licensee / Responsible Person for a liquor licensed premises may be <i>unavoidably or reasonably</i> (to be determined by consultation) absent for up to 5 days whilst contactable by telephone (without the need to appoint a temporary manager); and</p> <p>Provide that if a licensee / Responsible Person for a liquor licensed premises who is to be either unavoidably absent for more than 5 days, or otherwise generally absent for any period and wishes to keep their premises open during that time, then a requirement/facility (respectively) to appoint a temporary manager would be in place.</p>

What this would look like in practice	What this would look like in practice	What this would look like in practice
<ul style="list-style-type: none"> • Minimum training requirements agreed (level 1 or 2 to be determined by this consultation) for someone to become an Authorised Person to be set out in Code of Practice. • Minimum experience requirements for authorised person to be determined by organisation. • Any vetting requirements would be the responsibility of the organisation. • Authorised person designation form – held by LH/RP within Site Management Plan. • Recorded delegation from LH/RP to AP whenever absent. • LH is still accountable during the period of absence. • Consider maximum absence periods consecutively or cumulatively. 	<ul style="list-style-type: none"> • Minimum training requirements agreed (level 1 or 2 to be determined by this consultation) for someone to be deemed as suitable to be left in charge. This will be set out in guidance supplementing the proposed Amendment Regulations. • Minimum experience requirements for the person left in charge to be determined by organisation. • Any vetting requirements would be the responsibility of the organisation. • Designation form is to be from the LH/RP direct to the individual being left in charge, to be held on the premises. • LH is accountable during the period of absence. • Consider maximum absence periods consecutively or cumulatively. 	<ul style="list-style-type: none"> • Up to 5 days, any person left in charge, essentially extending the current provision of 2 hours absence to 5 days. • Definition of unavoidable or reasonable would be required. • Consider maximum absence periods consecutively or cumulatively. • All considerations about training, experience and fitness to be left in charge for individual organisation to determine.

The Department wishes to note that the Licensing Forum are in support of Option 1, as set out above.

5.1 What this looks like for your business/organisation

Option 1

This provides for an additional tier to the current system. The licence holder is the individual accountable for the licenced premises (as now). The Responsible Person is designated by the licensee as having personal responsibility for the premises in the absence of the licensee (as now) and has to complete two levels of training and be approved through application to the Licensing Court. The Authorised Person will be trained to an agreed level and have a delegation from the Licence Holder to be in charge in the absence of the Licence Holder and Responsible Person. In scenarios where both the Licence Holder (if not a Responsible Person) and Responsible Person are absent from the premises, for up to 7 or 14 days, an Authorised Person must be left in charge of the premises. Overall accountability still falls to the Licence Holder for the period during which the Authorised Person is "left in charge". Throughout the entire period of the Authorised Person being left in charge, the Licence Holder must be able to be reached by phone.

An example of this might be that a large bar with a Licence Holder and 2 Responsible Persons also has 4 Authorised Persons to be in charge during quieter evenings or if the Responsible Person needs

to take their child to an appointment. Another example may be that a small off-licence may have one licence holder, one Responsible Person and also has one Authorised Person to be in charge every Monday afternoon for 6 hours. A further example is a sporting club that only opens three times per week and has a licence holder and Responsible person and also has two Authorised Persons to help during ad-hoc openings or for events. In all cases, the Authorised Persons will need to be trained to the agreed level, suitably experienced in the eyes of the Licence Holder, have a formal record of their status as Authorised Person in the site management plan and the Responsible Person will need to record a written delegation whenever they leave the premises when it is open. If there is an issue in the premises while an Authorised Person is in charge, they are responsible and will be point of contact for bar staff, doorkeepers and/or Constabulary but the Licence Holder/Responsible Person will be ultimately accountable.

Option 1a

In the examples outlined above, this would mean that the Licence Holder/Responsible Person will need to be content that the member of staff that they leave in charge is suitably trained and experienced and that they record a written delegation to them whenever they leave the staff member in charge. If there is an issue in the premises while a staff member is left in charge, they are responsible and will be point of contact for bar staff, doorkeepers and/or Constabulary but the Licence Holder/Responsible Person will be ultimately accountable.

Option 2

No single person will be left in charge during the absence and the Licence Holder/Responsible Person will be responsible and ultimately accountable.

For all of the options above, if the Licence Holder/Responsible Person is absent from the premises for longer than the period of time stated, a temporary manager must be put in place until their return to the premises.

5.2 Next steps

Following this policy consultation on general attendance, the Department will, as set out in section 4 to this document, produce a Summary of Responses.

Following determination of which Option to proceed with, as informed by responses to this consultation, the Department will instruct the Drafter and bring a final public consultation on a set of Amendment Regulations to the Liquor Licensing and Public Entertainments Regulations 2022, to also include accompanying guidance on example scenarios for the chosen Option, detail on statutory guidance and a revised Codes Order.

6. Confidentiality

You are not required to provide any of your personal information to complete this consultation. Should you wish to provide your personal information, please note that if you select "Publish in full", your name, organisation and answers to the questions will be published on the consultation hub. Your email will not be published.

If you select "Publish anonymously" or "Do not publish", none of your personal information will be published on the consultation hub. What this means:

- Publish in full – your first name and surname, organisation name, along with full answers **will** be published on the hub (your email will **not** be published)
- Publish anonymously – only your responses **will** be published on the hub (your name, organisation and email will **not** be published)
- Do not publish – **nothing will** be published publically on the hub (your response will only be part of a larger summary response document)

The collection and processing of your personal information in relation to this consultation are done so on the basis of your consent (Article 6(1)(a) of the Applied GDPR). Should you wish to withdraw your consent at any time, please contact the Department on (Consultation contact email address), after which your personal information will be deleted from the dataset within one calendar month.

Please note that the responses we receive will be carefully considered. Further refinement of the layout and content of the Regulations may be undertaken in light of the responses to the consultation.

Further information about the Isle of Man Government Consultation principles and guidance on these can be found here: <https://www.gov.im/consultation>

7. Reasonable adjustments and alternative formats

The Department is committed to equal opportunities and our aim is to make our documents easy to use and accessible to all.

We will take steps to accommodate any reasonable adjustments and provide such assistance as you may reasonably require to enable you to access or reply to this consultation.

If you would like to receive this document in another format or need assistance with accessing or replying to this consultation, please email GeneralEnquiries.DHA@gov.im or telephone (01624) 694305.

8. Storage of personal data

The Department will ensure that data is only retained and used in accordance with GDPR rules.

For more information regarding GDPR, visit <https://www.gov.im/about-the-government/data-protectiongdpr-on-the-isleof-man/>.

All responses submitted will be held within the Isle of Man Government's consultation hub and will be treated in accordance with the privacy policy.

9. What happens next?




We will review results from the consultation which will be used to inform the final version of the secondary legislation.

We will liaise further with respondents as necessary.

A consultation summary will be produced and made available on the Consultation Hub.

10. Any questions?

Any comments or questions about the consultation should be sent to GeneralEnquiries.DHA@gov.im or:

-  made via the questionnaire on the consultation hub at www.consult.gov.im;
-  submitted via email to GeneralEnquiries.DHA@gov.im; or
-  posted to –

Summer Patrick
Business Support Officer
DHA Headquarters Building
Tromode Road
Douglas
Isle of Man
IM2 5PA.

11. CONSULTATION SURVEY

No.	Title	General question(s)	Specific questions relating to this matter	Additional information
1	Option 1	Should the period during which a Licensee/Responsible Person can be absent from a premises be 7 or 14 days?	<ul style="list-style-type: none"> If neither 7 nor 14 days seems appropriate, what length of time is? 	This only applies where the Licensee/Responsible Person remains contactable by phone and has put in place an Authorised Person for the duration of their absence.
		What are your views on the current maximum 2 hour period for absence of a Licence Holder/Responsible Person?	<ul style="list-style-type: none"> Is this an appropriate maximum? Should it be for planned (e.g. rotas, regular childcare) or only emergency provision (e.g. attending A&E)? 	This applies where the Licence Holder/Responsible Person remains contactable and would need to be balanced against maintaining the high standards set out in the licencing objectives, operational implications and also the added flexibility that Options 1 and 1a would bring.
		What are your views on the maximum periods of absence both on a consecutive and cumulative basis?	<ul style="list-style-type: none"> What would be an appropriate period of time? 	This could be prescribed in terms of a maximum number of days in a set period, attendance during busier shifts or guidance could be issued that would indicate what would be deemed reasonable and unreasonable.
		Should the minimum training requirement for an Authorised Person be completion of solely part 1 of the Responsible Person qualification, or both parts 1 and 2?	<ul style="list-style-type: none"> If solely part 1, why would this be deemed as sufficient as opposed to completion of both parts? If both parts 1 and 2, why would this be appropriate when considering the cost and time commitment? Should the requirement vary depending on the nature of the Authorised Person's employment? I.e. type of premises, risk presented? 	<p>Part 1 of the training course is solely on-line, at a cost of £95 (plus VAT). Part 2 of the course is classroom based and costs £150 (plus VAT). The study time is approximately 8 hours per part.</p> <p>If both parts 1 and 2, training is commensurate to that of a Responsible Person, without the Authorised Person becoming registered.</p>

				Registration cost is £73 to become a Responsible Person. An Authorised Person would not need to go through the registration process.
2	Option 1a	Should the period during which a licensee/Responsible Person can be absent from a premises be 7 or 14 days?	<ul style="list-style-type: none"> If neither 7 nor 14 days seems appropriate, what length of time is? 	This only applies where the Licensee/Responsible Person remains contactable by phone and has put in place a suitable individual for the duration of their absence.
		What are your views on the current maximum 2 hour period for absence of a Licence Holder/Responsible Person?	<ul style="list-style-type: none"> Is this an appropriate maximum? Should it be for planned (e.g. rotas, regular childcare) or only emergency provision (e.g. attending A&E)? 	This applies where the Licence Holder/Responsible Person remains contactable and would need to be balanced against maintaining the high standards set out in the licencing objectives, operational implications and also the added flexibility that Options 1 and 1a would bring.
		What are your views on the maximum periods of absence both on a consecutive and cumulative basis?	<ul style="list-style-type: none"> What would be an appropriate period of time? 	This could be prescribed in terms of a maximum number of days in a set period, attendance during busier shifts or guidance could be issued that would indicate what would be deemed reasonable and unreasonable.
		Should the minimum training requirement for an Authorised Person be completion of solely part 1 of the Responsible Person qualification, or both parts 1 and 2?	<ul style="list-style-type: none"> If solely part 1, why would this be deemed as sufficient as opposed to completion of both parts? If both parts 1 and 2, why would this be appropriate when considering the cost and time commitment? 	<p>If both parts 1 and 2, training is commensurate to that of a Responsible Person, without the suitable individual becoming registered.</p> <p>Registration cost is £73 to become a Responsible Person. An Authorised Person would not need to go through the registration process.</p>

3	Option 2	Should the period during which a licensee/Responsible Person can be unavoidably absent from a premises be up to 5 days?	<ul style="list-style-type: none"> If up to 5 days does not seem appropriate, what length of time is? 	This only applies where the Licensee/Responsible Person remains contactable by phone.
		What are your views on the maximum periods of absence both on a consecutive and cumulative basis?	<ul style="list-style-type: none"> What would be an appropriate period of time? 	This could be prescribed in terms of a maximum number of days in a set period, or guidance could be issued that would indicate what would be deemed reasonable and unreasonable.
		Use of the word "unavoidable" or "reasonable".	<ul style="list-style-type: none"> Would replacement of the word "unavoidable" with "reasonable" be agreeable? What type of situations would you describe as causing an unavoidable absence? What type of situations would you describe as causing a reasonable absence? 	The Department could look to issue guidance on what absence would be deemed reasonable and what would not.
4	General feedback	Do you wish to make any other comments here in relation to this consultation?		