

REPORT – CONSULTATION ON POLICY – AMPLIFIED MUSIC AND VOCALS IN LICENSED PREMISES

1. Purpose

- 1.1 To provide the Board with an overview of the current position regarding its policy on amplified music and vocals in licensed premises;
- 1.2 To provide the Board with a report on the responses received to its consultation on the terms of its current policy regarding amplified music in licensed premises;
- 1.2 To set out the potential options available to the Board;
- 1.3 To confirm what steps require to be taken in the event the Board decides to amend its existing policy.

2. Main Report**Background**

- 2.1. The Edinburgh Licensing Board's first Statement of Licensing Policy published in November 2007 specified at paragraph 6.2 of the policy, in considering additional conditions to be attached to premises licences: "where the operating plan indicates that music is to be played in a premises, the board will consider the imposition of a condition requiring amplified music from those premises to be inaudible in residential property". The wording was amended following representations made to the Board to include the word "always" between the words "will" and "consider", in the policy statement agreed by the Board in November 2010, and the amended form of wording has remained in place ever since (attached as **appendix 1**).
- 2.2. Whilst the policy is clear in stating that the Board "will always consider", in practice the condition that "amplified music and vocals shall be inaudible in neighbouring residential property" is usually attached to premises licences following request by the Council's Licensing Standards Officers, following consideration of applications for variation of existing licences or for new licences, where the operating plan includes recorded music and/or live performances as activities to be provided on the premises. In the vast majority of such cases, applicants and licence holders indicate their agreement to the condition being attached, and it is so attached without any specific discussion taking place at Board meetings in relation to same.
- 2.3. Licensed premises which operate with the condition attached therefore do so on the basis of the use of amplified music and vocals in their premises being controlled by means of a specific licensing condition. This places an additional responsibility upon such premises

REPORT – CONSULTATION ON POLICY – AMPLIFIED MUSIC AND VOCALS IN LICENSED PREMISES

beyond having regard to how the premises licence holder will promote the “Preventing Public Nuisance” licensing objective set out in the Licensing (Scotland) Act 2005 and referred to in the Board’s Statement of Licensing Policy

- 2.4. Prior to the 2005 Act licensing regime coming into effect, the control of amplified music and vocals in licensed premises was achieved by means of a similar condition being attached to Regular Extensions of permitted hours. That condition was time-specific and could only be applied to premises licensed under the Licensing (Scotland) Act 1976 operating after 11.00pm as the 1976 Act did not permit the attachment of the condition during normal permitted hours to most types of liquor licences.
- 2.5. In agreeing the terms of its Statement of Licensing Policy or any Supplementary Statement of Policy, the Board must consult on any changes to the policy, and ensure that the policy seeks to promote the licensing objectives all as set out at section 6 of the 2005 Act.

Consultation - overview

- 2.6. At its meeting on 1st August 2016 the Board received a preliminary report on the results of its consultation. The Board agreed to note (1) that the consultation period had concluded and the extent of the responses received; and (2) that it would receive a more detailed report at its next meeting. The Board agreed that it would not be necessary to hear oral evidence from interested parties at the next meeting, but would instead proceed in the first instance on the basis of the written representations received. Further procedure would then be considered having regard to the terms of such representations.
- 2.7. The basis upon which the consultation was carried out, being a recommendation from the Licensing Forum to consult on the terms of a representation made to the Forum by the Music Is Audible (MIA) group, is attached at **appendix 2**.
- 2.8. MIA had asked that consideration be given to an amendment to the existing policy, whereby a condition requiring that amplified music “shall not be an audible nuisance in neighbouring residential premises” would be considered by the Board, rather than the current form of wording.
- 2.9. The consultation was carried out between 21st April to 22nd July 2016, A copy of the consultation letter is attached at **appendix 3**. The consultation was also advertised online on the Council’s consultation hub. The consultation process has brought in over 500 responses. Copies of the responses have been circulated to Board members in

REPORT – CONSULTATION ON POLICY – AMPLIFIED MUSIC AND VOCALS IN LICENSED PREMISES

advance of the meeting to allow sufficient opportunity to consider their terms.

- 2.10. In terms of volume of responses received, a significant majority (501 out of a total of 526) are supportive of the MIA's suggested amendment to the Board's current policy. Assessing these in more detail, Board members will note that a significant majority of these responses in support of amendment to policy set out that support in very brief terms. A smaller number of responses have provided more detail as to why the consultees consider the amendment to policy is necessary, in support of the live music sector in Edinburgh.
- 2.11. Specific responses in support of change to the policy include those from the Scottish Licensed Trade Association on behalf of the licensed trade; and representations from cultural organisations such as the Leith Theatre Trust and the Traditional Music Forum. In addition, MIA representatives have submitted a separate response, which they have circulated by email around Board members in advance of the meeting.
- 2.12. When agreeing at its meeting on 14th March 2016 with the Forum's recommendation to the Board to consult on the terms of Paragraph 6.2 of the Board's Statement of Licensing Policy and the amendment suggested by the MIA group, the Board agreed that as part of the consultation the views of community councils should be sought, and there have been responses received in particular from:-
- Southside
 - Stockbridge and Inverleith
 - Tollcross
 - New Town and Broughton
 - Morningside

These responses have all been provided in advance to Board members as set out at Paragraph 2.9 above.

The Edinburgh Association of Community Councils, the liaison organisation for community councils in the Edinburgh local authority area, has also responded on behalf of a number of community councils to confirm its support and adoption of the response provided by Morningside. In addition there have been responses provided from the Grassmarket Residents' Association and the Southside Association. These responses have all asked the Board to leave its current policy unchanged, and have been circulated in advance of the meeting.

- 2.13. The Board has received a response from the Licensing Forum, one of its statutory consultees in terms of section 6 of the 2005 Act. The Forum has confirmed its the majority view that the existing Board policy on amplified music in licensed premises should remain

REPORT – CONSULTATION ON POLICY – AMPLIFIED MUSIC AND VOCALS IN LICENSED PREMISES

unchanged. A copy of the response has been provided to the Board (**appendix 4**).

- 2.14. The City of Edinburgh Council has been consulted as part of the overall consultation, and has provided separate responses. The Council's Culture and Sport Director has provided a response (**appendix 5**), supporting the terms of the amendment to policy suggested by MIA. In setting out the basis for supporting the amendment, the suggestion of trialling the amendment for a period has been made.
- 2.15. The response from the Council's Place Directorate (**appendix 6**), sets out the position from the perspective of the Council's Licensing Standards Officers. The response sets out in detail the context within which the LSOs operate in dealing with noise complaints, etc and the subsequent actions taken. The response does not indicate a particular preference in terms of current policy or the suggested amendment, but sets out points for consideration in relation to each.
- 2.16. An Equalities and Rights Impact Assessment was commenced in relation to the Board's consultation on this aspect of its Statement of Licensing Policy and further detail on the assessment will be provided to the Board. No significant issues were identified which would impact upon the protected characteristics as defined in the Equality Act 2010. In the event that the Board makes a decision to amend its policy on amplified music and vocals in licensed premises, the impact of such change can be monitored and reported upon to the successor Board, when that Board is considering the terms of its overall Statement of Licensing Policy during 2017/18.

Options

Status Quo

- 2.17. Should the Board choose to leave the wording of the policy unchanged, it remains open for applicants and licence holders to respond to any request from the Council's LSOs for the condition to be attached, to present a case to the Board why it should not be so attached. It also remains an option for licence holders to apply to the Board for variation of the condition where it is currently attached to their licence.

Revision of Policy

- 2.18. The Board previously agreed at its March 2016 meeting that the overall review and publication of a new Statement of Licensing Policy would be most appropriately tackled by its successor Board, from May 2017 onwards with a new policy statement to be published at the latest by November 2018. Whatever action is taken by the Board

REPORT – CONSULTATION ON POLICY – AMPLIFIED MUSIC AND VOCALS IN LICENSED PREMISES

following this consultation, it will still be a relevant matter for consideration by the successor Board as part of that overall review.

- 2.19. As the MIA group's initial representation to the Licensing Forum focused in particular on premises in Edinburgh with the capacity to provide live performances, the Board may wish to give particular consideration to such venues at the present time. In practice the amplified music and vocals condition has been attached to premises where live performances and/or recorded music have been confirmed as activities in the operating plan. The Board may wish to consider whether the amended condition as suggested in the consultation might be appropriate for consideration in connection with venues offering live music in particular. By way of context, there are around 300 premises of that type in the Board's area.
- 2.20. The consultation proceeded on the basis that the Board was being asked to consider the alternative form of wording as suggested by the MIA group, via the Licensing Forum and no alternative options were consulted upon. If the Board were minded to consider other options to address the issue as a result of responses received to this consultation then it may be that a further meeting of the Board would be required to allow officers to investigate any alternatives proposed and advise Board on the feasibility of such alternatives, by way of a further report to Board.

Further procedure if Policy Revised

- 2.21. In the event that the Board decides to amend its policy, there may be a further requirement to consult with the Board's statutory consultees. This will be with the Licensing Forum and Health Board at minimum – depending upon the terms of such amendment. In any event, any change will require that the Board publishes a supplementary Statement of Licensing Policy, incorporating the amendments in terms of section 6 of the 2005 Act.
- 2.22. Section 27A of the 2005 Act affords the Board the power to vary premises licences in a particular area, within the whole Board area and/or in relation to premises of a particular description. In view of the risks associated with making a "blanket" variation, without the possibility for representations to be made by those who may be affected by it, it is suggested that it would be more appropriate for the Board to consider major variation applications, submitted by licence holders who wished to vary the condition currently attached to their licences, on a case by case basis.

REPORT – CONSULTATION ON POLICY – AMPLIFIED MUSIC AND VOCALS IN LICENSED PREMISES

3. Recommendation

3.1 The Board is asked:-

- (a) To note the terms of the consultation responses submitted in more detail;
- (b) To decide on the basis of the responses received whether to take any action with regard to the current Statement of Licensing Policy and if so, what action should be taken;
- (c) In the event that it is considered necessary to explore further options, to call for a further report, exploring the feasibility of such options;
- (d) To instruct the depute clerks to take all appropriate action with regard to the Statement of Licensing Policy, in the event that the Board decides to amend the existing policy

4. Background/Appendices

- 4.1 Minutes of Meeting – 14th March 2016
- 4.2 Minutes of Meeting – 1st August 2016
- 4.3 Appendix 1 – current wording of paragraph 6.2 of Statement of Licensing Policy
- 4.4 Appendix 2 – amended wording as proposed by Music Is Audible, with details of representation made to Licensing Forum
- 4.5 Appendix 3 – copy letter sent to consultees
- 4.6 Appendix 4 – copy response (email) on behalf of Licensing Forum
- 4.7 Appendix 5 – copy response from Director of Culture and Sport
- 4.8 Appendix 6 – copy response from Licensing Standards (Place Directorate)

Depute Clerk of the Licensing Board
24th August 2016

Licensing Board consultation - policy on amplified music in licensed premises

Current wording of policy – see bold print below:

- 6.2 Where relevant representations are made, the Board will make an objective judgement as to whether other conditions may need to be attached to a licence to secure achievement of the licensing objectives. Any such conditions will be consistent with section 27 of the Act. Any conditions arising as a result of representations will primarily focus on the impact of the activities taking place at the licensed premises, on those attending the premises and members of the public living, working or engaged in normal activity in the vicinity of the premises, and will cover matters that are within the control of the licenceholder. **In particular where the operating plan indicates that music is to be played in premises, the Board will always consider the imposition of a condition requiring amplified music from those premises to be inaudible in residential property.**

Licensing Board consultation - policy on amplified music in licensed premises

Recommendation from Edinburgh Licensing Forum (see bold print below)

Encouraging Live Music in Edinburgh –

Recommendation to the Licensing Board following upon a presentation to the Licensing Forum on Tuesday 1st December 2015 and open discussions and debate on the matter thereafter.

Noted that Edinburgh's current licensing policy in effect requires amplified music to be wholly inaudible from neighbouring properties.

The music sector in Edinburgh has reported that these rules are not conducive to a flourishing live music and cultural scene.

The Music is Audible working group explained they would like to have enhancing Edinburgh's current licensing policy enhanced as follows:

Existing: 'The Board will always consider the imposition of a condition requiring amplified music from those premises to be inaudible in residential property' In practice the LSO normally suggests to the Board that this condition be applied. The Board then put it to the applicant who in almost all cases routinely accepts the condition. No legal arguments are made against the imposition of the condition.

Proposed that the policy should be slightly more flexible: **"Amplified music...shall not be an audible nuisance in neighbouring residential premises"**.

It was suggested that this proposed wording would create a better environment for musicians, promoters and residents in the city and that an updated policy would provide clearer guidance for Licensing Standards Officers when they assess whether noise created by music is indeed a nuisance.

The suggested guidance for this approach has been taken from the Scottish Government's guidance which was issued to accompany the statutory nuisance provisions of the Public Health (Scotland) Act 2008. Section 3 provides 'There are 8 key issues to consider when evaluating whether a nuisance exists' and goes on to provide definitions of these issues, which are listed as: impact, locality, time, frequency, duration, convention, importance and avoidability.

Noted that although the following items have already been agreed it was stressed that there should be:-

Changing terminology so that both venues and residents are seen as clients in a mediation process;

Raise awareness (for councillors and officers) on the impact noise complaints have on the city's cultural and economic environment;

The Council encourages residents to talk to the venue about their concern as a first step and provide guidance to all music venues on their option in the event of a noise complaint;

The Council considers the Agent of Change principle for local conditions.

The meeting appeared very supportive of the "Agent of Change principle*)" and the decision was to recommend to the Licensing Board that they carefully consider, in a positive way, the recommendations of the Music is Audible group and consult widely on the proposals particularly with Community Councils before reaching any conclusions.

Supplementary

The Forum were also made aware of the low number of noise complaints and that the LSO's would provide further data to them about this and further that no premises has had their premises licence reviewed for breach of the noise condition since 2012.

*The Agent of Change Principle is not complicated or controversial, it's simple common sense: Agent of Change says that the person or business responsible for the change is responsible for managing the impact of the change.

This means that an apartment block to be built near an established live music venue would have to pay for soundproofing, while a live music venue opening in a residential area would be responsible for the costs. A resident who moves next door to a music venue would, in law, be assessed as having made that decision understanding that there's going to be some music noise, and a music venue that buys a new PA would be expected to carry out tests to make sure its noise emissions don't increase.

Date 26th April 2016

Our Ref

Dear Consultee

**LICENSING (SCOTLAND) ACT 2005
CONSULTATION ON STATEMENT OF LICENSING POLICY
AMPLIFIED MUSIC IN LICENSED PREMISES**

The City of Edinburgh Licensing Board has agreed to consult on the terms of its Statement of Licensing Policy, specifically about amplified music in licensed premises.

The policy statement is located on the Council's website, at the following location:-
http://www.edinburgh.gov.uk/info/20023/licences_and_permits/960/edinburghs_licensing_board

The relevant paragraph on which the Board is seeking views is at paragraph 6.2. of the Statement of Licensing Policy (see separate extract).

The Board has been asked to consider an alternative form of wording, as set out in a recommendation from the Edinburgh Licensing Forum (see separate document from Forum).

At this stage the Board has not reached a view on whether or not to amend its policy, and welcomes comments on the current wording of paragraph 6.2, and the terms of the proposed amendment.

Responses should be sent in writing, by post, email or fax, marked "Licensing Board Policy Consultation" and sent to: Licensing, City of Edinburgh Council, 249 High Street, Edinburgh (Liquor.Licensing@edinburgh.gov.uk). The consultation period ends on **22nd July 2016**, so if you want to ensure your comments are considered, please send in your response in good time for that date.

Yours faithfully

Nick Fraser
Depute Clerk of the Licensing Board

Nick Smith, Clerk of Licensing Board
If telephoning please call ~ Nick Fraser, Depute Clerk of Licensing Board
2.1 Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG
Tel: 0131-529 4424 Fax: 0131-529 6220
Email: nicholas.fraser@edinburgh.gov.uk

From: Isla Burton
Sent: 19 August 2016 14:29
To: Liquor Licensing
Cc: Rosaleen Harley
Subject: FW: Board consultation on amplified music in licensed premises

Importance: High

Dear Sirs

Please amend the submission from the Licensing Forum to the following:

8 members voted to retain the current condition

5 members voted to amend the condition to that proposed for consideration by the Forum after its meeting of 1 December 2015.

5 members did not express a preference.

Police Scotland commented that “from a police perspective, any dilution of the noise condition is likely to result in an increase in noise disruption for residents therefore more complaints to the council and police regarding this. As such considered this may jeopardise the 'preventing public nuisance' objective”.

Hope this doesn't cause too much hassle.

Isla

From: Isla Burton
Sent: 09 August 2016 14:24
To: Liquor Licensing

Cc: CHRIS WIGGLESWORTH; Dennis Williams; Graeme Arnott; James Nicholson; John Murphy; Kenneth Fairgrieve; Robin Morris; Samuel Piacentini; John Lee (SGF); Jim Sherval; Peter Swanson; Rosaleen Harley; John Young; Marshall Bain ; Bridget Stevens; Norman Tinlin, Fairmilehead CC; Penny Richardson; Jenna Kelly; Sgt John Young
Subject: Board consultation on amplified music in licensed premises

Dear Sirs

Regarding the Licensing Board's consultation on amplified music, Edinburgh Licensing Forum members voted as follows:

9 members voted to retain the current condition

5 members voted to amend the condition to that proposed for consideration by the Forum after its meeting of 1 December 2015.

4 members did not express a preference.

Isla Burton (on behalf of Edinburgh Licensing Forum)

Please note that I do not work on Wednesday mornings.

Isla Burton | Housing and Regulatory Services | Directorate of Place | City of Edinburgh Council | Tel 0131 469 5796 or 07525 909 320 | isla.burton@edinburgh.gov.uk | www.edinburgh.gov.uk/licensingforum

Councillor Eric Milligan
Room 3.09
City Chambers
High Street
Edinburgh
EH1 1YJ

Date 9 August 2016

Our ref LH/KC

Dear Councillor Milligan

Edinburgh Licensing Board – consultation on amplified music in licensed premises

I am writing in my capacity as Director of Culture on behalf of the Culture Service, to offer our viewpoint on the proposed amendment to the condition attached to licensed premises that currently requires amplified music from those premises to be inaudible in residential property. Whilst this is a condition that the Board can 'consider' attaching, it appears to be almost routinely applied and accepted by venues wishing to gain a licence.

You will, of course, be aware from your position on the Culture and Sport Committee that a considerable amount of time and energy from our service has gone in to supporting the *Music Is Audible* short life working group established by the Committee to look into this issue.

Our position is that we support the view of the music sector in Edinburgh which reports that the current condition is not conducive to nurturing a flourishing live music and cultural scene. These views have been echoed by numerous others – the grass roots cultural scene through the *Desire Lines* process and Cultural Policy Review, the *University of Edinburgh's Live Music Census* conducted in June 2015, and the report by the *Music Venues Trust*, which was commissioned by the Council. We also understand that there has been considerable feedback in favour of the proposed amendment through the recent consultation process.

Lynne Halfpenny, Director of Culture, Place, City Strategy and Economy

Level 2.6 Waverley Court, 4 East Market Street, Edinburgh EH8 8BG

Tel 0131 529 3657 lynne.halfpenny@edinburgh.gov.uk



INVESTORS
IN PEOPLE | Gold

We feel that the suggested amendment is a practical and reasonable solution, developed by a music and cultural sector that wants a positive environment for its work and a fair balance to co-exist alongside residential neighbours. Music is an audible art form and the proposed wording that amplified music 'shall not be an audible nuisance in neighbouring residential premises' is practical and rooted in law – it offers guidance taken from the Scottish Government issued to accompany the Public Health (Scotland) Act 2008, and provides a framework of guidance for our LSO's in assessing complaints – impact, locality, frequency, duration, convention, importance and avoidability. Indeed, these appear to be definitions which are applied during the Festivals period, a point made frequently by the sector during the course of this project and we are seeking to secure this positive interpretive attitude for all twelve months of the year going forward.

We are aware that this amendment to our Licensing condition is one part of a package of measures aimed at encouraging live music in the city but is a very significant one – support for the changed statement and practice would illustrate the city as an enabler, a listener eager to foster an environment for culture to thrive at all levels in a rapidly changing world.

The work we have carried out, commissioned and supported, reveals a range of issues that in the medium to long term can be seen as worrying trends for cities wanting to embrace successful cultural practice and celebration: the increasing gentrification of urban environments means that artists find it harder to live and produce work in the city environment; increasing rents and low wages for artists; lack of access to adequate rehearsal and performance spaces.

It has also highlighted the sensitivities around this issue from all sides, as our recent consultation with Community Councils and the Licensing Forum demonstrates. On balance we do not feel that the music and wider cultural sector is seeking to create a nuisance, rather enable a more considered playing field that will allow both parties rights room to coexist.

As local authorities we have a duty to all of our residents and feel that the proposed amendment would offer a sensible way of managing the provision of amplified music in our city.

Should the Board wish to consider a trial period of say 18 months to 2 years under the revised proposal, this may offer a degree of comfort to all parties that the situation could be monitored and considered further on practical evidence.

If I or my colleagues can offer any further assistance in your consideration of this matter, please do not hesitate to contact me.

Yours sincerely



Lynne Halfpenny
Director of Culture

AMPLIFIED MUSIC AND VOCALS NOISE CONDITION CONSULTATION

The amplified music and vocals condition was originally introduced in Edinburgh under the Licensing (Scotland) Act 1976. Under this Act the condition was routinely applied to any premises that varied or extended their hours to operate beyond 11 pm. The condition would apply only to the additional hours granted beyond 11pm.

In 2008, prior to the introduction of the Licensing (Scotland) Act 2005, the then Edinburgh Licensing Board agreed that the same condition would be introduced as a local condition and would apply to all hours that a licensed premises was open. The Board will recollect that this condition has thereafter been included in subsequent 2011 and 2014 Board policy documents. The condition was strengthened in 2014 to include the words '**will always consider the imposition of a condition**'.

As a local condition, it would be the role of the Licensing Standards Officers (LSOs) to ask for the condition to be applied to any licence for applications that include the intention to provide amplified music and vocals on the premises. This is reflected in the Licensing Board Statement of Licensing Policy, which states:

Licensing Board - policy on amplified music in licensed premises

Where relevant representations are made, the Board will make an objective judgement as to whether other conditions may need to be attached to a licence to secure achievement of the licensing objectives. Any such conditions will be consistent with Section 27 of the Act. Any conditions arising as a result of representations will primarily focus on the impact of the activities taking place at the licensed premises, on those attending the premises and members of the public living, working or engaged in normal activity in the vicinity of the premises, and will cover matters that are within the control of the licence holder. **In particular where the operating plan indicates that music is to be played in premises, the Board will always consider the imposition of a condition requiring amplified music from those premises to be inaudible in residential property.**

In practice members will know from their time on the board that the condition is routinely applied, without objection from applicants or their legal agents having been received.

The noise condition which is subsequently applied to a licence by the Licensing Board states:

All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises

The actual wording of the condition is objective as opposed to being subjective. If an LSO listening within a neighbouring residential property is able hear any amplified music or vocals from the licensed premises, then the condition is being breached. This is straightforward, and means that the findings of LSOs attending a noise complaint are not reliant on any personal judgement.

Under the Licensing (Scotland) Act 2005, one of the stated roles of the LSO is “to provide mediation services for the purpose of avoiding or resolving disputes or disagreements between the holders of premises or occasional licence and any other persons”. Licensing Standards has always taken the view that noise complaints should be resolved by means of mediation whenever possible. Noise complaints are only referred to the Licensing Board when:

1. The Premises Licence Holder does not participate fully in the mediation process, or continues to play amplified music and vocals to be played at a level where it can be heard within any of the neighbouring residential premises; or
2. Both the Licensing Standards Officers and Premises Licence Holder have made all reasonable efforts but have been unable to resolve the matter. It is then referred to the Licensing Board for its consideration and direction. An example would be where an acoustic analysis is required, but the premises is unwilling to solely bear the cost of this and is looking for the resident to contribute.

Since the LSOs came in to post in June 2008 they have dealt with 1156 noise complaints. Of these, 1144 were resolved by the LSOs. The remainder of 14 were referred to the Licensing Board, resulting in 13 written warnings and a suspension of amplified music and vocals for just one premises. Therefore only a small number of complaints (for a breach of the condition) that have been referred to the Licensing Board since the new Act came into force, representing 1.2% of the total noise complaints dealt with. As shown below, since 2013, all complaints have been resolved by the LSOs without referral to the Board (see Table 1 below).

Table 1

Year	No. complaints	Resolved by LSOs	Referred to Licensing Board	Action taken by Licensing Board	No. licences revoked as a result of breach of noise condition
2008	28	28	0		0
2009	109	109	0		0
2010	158	155	3	3 written warnings	0
2011	118	114	4	3 written warnings 1 suspension of amplified music and vocals	0
2012	121	117	4	4 written warnings	0
2013	201	198	3	3 written warnings	0
2014	176	176	0		0
2015	184	184	0		0
2016	61	61	0		0
Totals	1156	1142	14	13 written warnings 1 suspension of amplified music and vocals	0

In the recommendation from the Music Is Audible group, regarding the proposed wording of an amended noise condition (**'Amplified music...' ...shall not be an audible nuisance in neighbouring residential premises'**) it is suggested that the Licensing Board should take into account the statutory nuisance guidance provisions of the Public Health (Scotland) Act 2008.

For the Licensing Board's information, this guidance was provided by the Scottish Government under the Public Health (Scotland) Act 2008 to assist with the application of the new and amended statutory nuisance provisions of the Environmental Protection Act 1990. It was not provided to deal with any noise or nuisance issues under the Licensing (Scotland) Act 2005 and guidance does not give any advice which would assist in understanding what an 'audible nuisance' might be.

Member of the Board will of course have to balance their experience of dealing with complaints about noise issues from licensed premises, the case made for change by MIA group and the feedback from the consultation.

Looking at the current condition the Board may wish to consider the following points:

- it provides a high level of protection to nearby residents.
- sets a clear and specific level that can be understood by officers, licensees and residents.
- provides a level playing field for all liquor-licensed premises.
- it can however be inflexible and does not take account of other issues such as the time of day the noise occurs.
- there are only a small number of complaints each year, which would question the need maintaining this stringent condition

When looking at the proposed new condition the Board may wish to consider the following points;

- It may introduce an element of flexibility when compared to current condition
- there is a risk that an amended condition may reduce protection available to residents living near licensed premises
- it would not set a specific noise level that can be easily understood by all stakeholders
- would be difficult to assess and enforce as it would require detailed noise monitoring and then a subjective assessment of whether that level of noise constitutes an 'audible nuisance'. Experience of LSO's is that this subjective approach is less likely to satisfy the complainant
- will mean that residents who make complaints in the future will likely have to accept some level of noise before a threshold for nuisance is reached.

Members of the Board will be aware that the current condition is attached to several hundred licences already in force. Any change in Board policy would not affect that condition unless those premises licence holders seek major variation of their licence to remove or alter the condition. LSOs would be legally obliged to enforce the actual conditions on any licence and equally the public could

call for a review of the licence if they felt a condition was being breached. In that context members are requested to take detailed legal advice on how any change to the conditions might be introduced.