

**REPORT – 30<sup>th</sup> JULY 2018**  
**UPDATE ON INITIAL CONSULTATION – STATEMENT OF LICENSING POLICY**

**1. Purpose**

Having carried out an initial consultation on its current Statement of Licensing Policy:-

- 1.1 To advise the Board of further steps to be carried out in connection with the review of the Board's Statement of Licensing Policy ("the policy"), other than in relation to the Board's assessment of overprovision which is discussed in a separate report to the Board.
- 1.2 To provide the Board with information relating to the hearing sessions held by the Board on 4<sup>th</sup> and 10<sup>th</sup> May 2018 which followed on from the written responses received to the Board's initial informal policy consultation and which have already been reported to Board on 29<sup>th</sup> January 2018.
- 1.3 To seek the Board's views on the terms of a proposed draft updated Statement of Licensing Policy (attached at Appendix One) and thereafter to continue consideration of the draft to the Board's next meeting proposed for 13<sup>th</sup> August 2018 to allow a finalised draft to be considered by the Board for the purposes of formal consultation.

**2. Preparation of Statement of Licensing Policy**

- 2.1. The Board is required by section 6 of the Licensing (Scotland) Act 2005 ("the Act") to publish a Statement of Licensing Policy ("the policy") setting out how it will exercise its functions. The Board must ensure that its policy promotes the licensing objectives set out in the Act.
- 2.2. The Board is entitled to ask for statistical information to be provided by the following:-
  - Chief Constable
  - Health Board
  - The Councilto assist it in its preparation of the new policy. Such information should assist the Board in ensuring that the policy is based on evidence that is connected with the licensing objectives.
- 2.3. The Board must ensure that when preparing its policy it consults at minimum with the following:-
  - The Licensing Forum
  - The Health Board
  - Such other persons as the Board thinks appropriate
- 2.4. The content of the policy is a matter for the Board having regard to the terms of statutory guidance. It must not be inconsistent with the terms of the Act and it must promote the licensing objectives.

- 2.5. The existing policy was agreed in November 2013 and was due to expire on 30<sup>th</sup> November 2016. The Board's current policy can be viewed at the following link [http://www.edinburgh.gov.uk/downloads/file/3083/licensing\\_board\\_policy\\_november\\_2013](http://www.edinburgh.gov.uk/downloads/file/3083/licensing_board_policy_november_2013). The Air Weapons and Licensing (Scotland) Act 2015 amended the frequency by which policy statements must be published. Boards are now required to ensure publication within 18 months of local authority elections – in this instance, by 4<sup>th</sup> November 2018.
- 2.6. The new policy must include an overprovision assessment in terms of section 7 of the Act. The assessment requires to be prepared on the basis of evidence gathered from appropriate sources, and consulted upon before final inclusion in the policy. The assessment is the subject of a separate report to Board.
- 2.7. Under section 142 of the Act, Scottish Ministers may issue guidance to Licensing Boards. The current Guidance which includes reference to preparation of Statements of Licensing Policy was issued in April 2007 and has not been revised since its introduction despite several legislative changes and updated case law. The current Statutory Guidance can be viewed at the following link:- <http://www.gov.scot/Publications/2007/04/13093458/0>
- 2.8. The Scottish Government are currently reviewing the terms of the statutory guidance and meantime have issued draft revised Chapters in relation to licensing policy statements and overprovision assessments to Licensing Boards in February 2018. It is important to note that these draft revised Chapters of the Guidance have not yet received the Parliamentary approval required for guidance referred to in section 142 and are therefore not provided on a statutory basis. However it is recommended that the draft revised guidance be considered at this time in conjunction with the statutory guidance given it reflects the current legislative position. Copies of both these chapters are attached at Appendix Two
- 2.9. The Board will note that its policy should seek to promote the five licensing objectives set out in the Act. When determining its policy the Board must have regard to the statutory guidance detailed at paragraph 2.7 above and also give appropriate weight to the views of those consulted. A Statement of Licensing Policy may set out a general approach to a Board's decision making but must not ignore or be inconsistent with, the provisions of the Act.

### **Policy – Initial Consultation**

- 2.10. The Board agreed on 25<sup>th</sup> September 2017 to carry out an initial, informal consultation, encouraging participation from as wide a range of consultees as possible. The Board asked for responses on the terms of its existing policy, and any other relevant matters. The Board highlighted the following as topics it had a particular interest in, but encouraged consultees not to be restricted by those topics in providing their responses:-

- Children and young persons' access to licensed premises
- Use of outdoor drinking areas
- Licensing of "pop-up" bars
- Extended use of occasional licences
- Overprovision
- Extended Hours for events

2.11 The Board agreed to consider the terms of its current policy in light of the representations received, with a view to preparing an updated draft policy for a period of further, formal consultation later in 2018. The initial consultation started on 30<sup>th</sup> October 2017 and closed on 22<sup>nd</sup> December 2017. Details of the consultation were published on the Council's Consultation Hub, were sent out to a wide range of consultees and were set out in all communications sent from the Council's Licensing Service. The Board held its annual joint meeting with the Licensing Forum on 7<sup>th</sup> December 2017. The Board encouraged the Forum to respond to the initial consultation. Whilst responses were received from Forum members in an individual or organisational capacity, no response was submitted on behalf of the Forum itself. Copies of all responses received including a late response from Council officers (Place) were provided to the Board at its meeting on 29<sup>th</sup> January 2018 and are attached again at Appendix Three.

2.12 The Board had also agreed at its meeting that there would be merit in holding hearings once the initial consultation period concluded. The Board at its meeting in January 2018 also agreed to hold an informal workshop on Overprovision. A summary of this event is provided to the Board as an appendix to the separate report on the Assessment of Overprovision.

2.13 The Board held two hearings over two separate days to allow for further oral evidence to be provided. These took place on 4<sup>th</sup> and 10<sup>th</sup> May 2018 and proceeded on the basis of hearing from those who had responded to the initial consultation. The Board also invited the Convener of the Licensing Forum to attend and speak on behalf of the Forum. A summary providing detail of matters raised by those parties and discussed with the Board during the hearings is attached at Appendix Four.

2.14 Following the hearings, two further responses were received, the first being from the Green Party Group Convener and the second from GRASS (Grassmarket Residents Association). These are attached at Appendix Five. The GRASS response attached a copy of a report prepared in 2010 "Here Comes the Night". Copies of this document can be made available to Board members if required.

### 3. **Consultation – written responses and hearings**

3.1 Consultation responses gathered during the Board's informal consultation can generally be divided into three categories:-

- 1) Licence holders and trade representatives including licensing solicitors
- 2) Community representatives and individual citizens
- 3) Police/ NHS Lothian , Edinburgh Alcohol and Drug Partnership (EADP) , Council officers, and other organisations including Alcohol Focus

A number of consultee responses focused primarily on overprovision, however the majority also included views on the other areas highlighted by the Board namely:-

- Children and young persons' access to licensed premises
- Use of outdoor drinking areas
- Licensing of "pop-up" bars
- Extended use of occasional licences
- Extended Hours for events

## 3.2 Responses to these issues included the following views:-

### Children and Young persons' access to licensed premises

Generally trade responses encourage the Board to maintain a flexible approach to access to premises for children and young people and highlights the growing trend within Edinburgh away from “ public house “ type premises towards premises with a food led offering which provides a more informal and relaxed atmosphere for family dining. Edinburgh as a tourist destination is also highlighted in these responses.

NHS Lothian also supports the Board's current scrutiny of application relating to children's access and the policy of site visits to such premises which NHS Lothian also suggest allows the Board to focus on the current trend of premises to move away from alcohol sales towards where alcohol is ancillary to food based offerings.

Police Scotland, along with others, have suggested a more rigid approach be adopted by the Board in the Policy to include where no access should be granted to children, areas of premises where access will be restricted to and also that the Board should indicate suitable terminal hours for children and young persons in premises which could vary depending on the type of premises. Council offers suggest examples of appropriate areas could be included by the Board in its section of the policy relating to licensing objectives.

At the present time the draft policy has not been updated in this regard as it may be that the Board would wish to consider all of the informal responses received and whether further responses during formal consultation, including the Licensing Forum's position, would assist the Board's consideration in this regard.

### Use of outdoor drinking areas

As with above, trade responses generally request that the Board maintain the current approach to outside areas and suggest that some flexibility should be considered for longer areas where such areas are not located proximate to residential properties. Community response refer to particular issues relating to noise nuisance and the number of smokers in outside areas.

Police Scotland firmly support the current 22.00 terminal hour. Police Scotland would also like the Board to consider a suitable terminal hour for outdoor drinking areas in respect of occasional licences and pop up bars as this can vary significantly. They also suggest that licence holders be reminded of their responsibilities to minimise nuisance and the addition of control measures for outside areas such as CCTV, stewards/ dedicated staff and plastic/polycarbonate containers.

At the present time the draft policy has not been updated in this regard as it may be that the Board would wish to consider all of the informal responses received and whether further responses during formal consultation, including the Licensing Forum's position, would assist the Board's consideration in this regard.

### Licensing of “Pop up” bars

Some trade responses, particularly from licence holders suggested that the proliferation of licences for pop up bars was to the detriment of those premises licence holders who paid for full licences and their annual fees. It is also suggested that if such licences are to be provided then the Board should explore ways to make the offering of these priorities for existing licence holders.

Responses received from Council officers highlight that a number of applications for pop up bars have been received where such premises are operating on a semi-permanent basis and often relate to premises which would not meet the requirements of a full premises licence. It is suggested that where repeat applications are being received for such premises then these should be referred to the Board for scrutiny.

Police Scotland support the position of greater scrutiny of such applications.

The Board is also asked to acknowledge and have regard in its Policy to the Protocol which the Council is developing for the use of public spaces. The report to Council's Transport and Environment Committee attaching a copy of the Protocol can be viewed at the following link:

[http://www.edinburgh.gov.uk/meetings/meeting/4342/transport\\_and\\_environment\\_committee](http://www.edinburgh.gov.uk/meetings/meeting/4342/transport_and_environment_committee)

The draft policy has been amended to reflect a more robust approach by the Board to the licensing of "pop up bars" by updating the delegation to the Convener to consider such applications where appropriate and refer to the Board as the Convener considers necessary.

## Extended use of occasional licences

Concerns raised by Police Scotland and Council officers where occasional licences are being applied for over a lengthy period of time with no application made for a premises licence and suggest that such applications be the subject of increased scrutiny by the Board. Council Officers suggest an indicative limit on the number of applications which the Board consider appropriate for occasional licences should be given. Alcohol Focus suggest that this is an issue which is being faced by licensing boards across the country.

It is also suggested that the Board take a more robust approach to late occasional licences regarding when the Board will accept licence applications within 28 days of the date applied for and the policy wording has been updated in the revised draft policy for the Board's consideration.

Both Police Scotland and Council officers suggest it would also be beneficial if the Board were to agree a number of "pool" conditions to be attached to occasional licences. These conditions reflect those generally asked for by Police and Licensing Standards Officers (LSOs) on a regular basis when replying to consultations on individual applications.

The Depute Clerks have liaised with Police Scotland and the Council's LSOs in this regard and the draft revised policy has been updated to include reference to the "pool" conditions which are attached as an appendix to the draft updated policy. It is suggested that this will allow greater awareness for applicants prior to submitting applications of the likely conditions to be attached to their licences. Police Scotland have also asked that the mandatory conditions for occasional licences be included within the policy and it is proposed that a link be added to the online version of the policy which will direct applicants to these conditions.

It is also suggested that the Board could make its position clearer in relation to occasional licences for events related to schools and youth organisations where children and young people will be present.

The trade has asked the Board to maintain its current approach of allowing premises where a provisional premises licence has been granted by the Board but before confirmation has

been obtained to apply for occasional licences as such a facility is viewed as significant in allowing businesses to commence trading as soon as possible.

Again, the draft policy has not been updated beyond the matters detailed as amended above as it may be that the Board would wish to consider all of the informal responses received and whether further responses during formal consultation, including the Licensing Forum's position, would assist the Board's consideration in this regard.

### Extended hours for events

A number of issues were raised during the informal consultation in relation to extended hour's applications. These include:-

Both the trade and Police Scotland refer to consistency of approach by Board members when considering applications for extended hours. It is proposed that the Scheme of Delegations be updated to include a delegation to the Convener to consider applications for Major Events which may be considered contentious or complex.

The Board is also asked by Police Scotland and Council officers to consider developing guidelines as to what will constitute an event of national or local significance. Some examples as previously suggested by the Board have been included in the revised draft policy to take account of this suggestion.

Police Scotland also suggest that the Board make clear that extended hours applications should be exceptional rather than the norm given Edinburgh's generous trading hours. Generally trade responses encourage the Board to grant applications for extended hours where it can be determined that such applications are not inconsistent with the Licensing objectives.

Again, the draft policy has not been updated beyond the matters detailed as amended above given the Board may wish to consider all of the informal responses received and whether further responses during formal consultation including the Licensing Forum's position would assist the Board's consideration in this regard.

### Additional issues raised during the informal consultation

A number of other issues were raised by consultees during the informal consultation period.

These included:-

Amplified music - Generally the trade responses welcome the Board's revised policy in relation to amplified music in licensed premises. Community responses suggest that the Board may wish to review the policy and its effectiveness and this view is also reflected in the response received from the Council officers.

Board members may wish to consider that the current revised policy was put in place in September 2016 following extensive public consultation throughout most of 2016 including oral evidence sessions with interested parties. It is suggested that Board members may wish to take into account the relative newness of this policy and given the very detailed consultation which was carried out by the Board less than two years ago proceed to formal consultation with the current policy unchanged. However, given that the amplified music policy was agreed by the previous Board, it may be that this Board would wish to indicate that a review and evaluation of the current approach will be undertaken during its lifetime.

Licensed hours – Police Scotland suggested a review of licensed hours as regards whether 0300 hours is a suitable terminal hour for premises outside the City Centre and also whether the Board should make some distinction between trading hours in the city centre and residential areas. Some community responses also make reference to the curtailment of trading hours by the Board. Trade responses are generally supportive of the Board's policy and flexible approach to trading hours.

The Board will be aware that each application is considered on its individual merits and there are various premises throughout the city where the Board have granted licences with the terminal hour restricted where the Board has considered it appropriate to do so. It may be that the Board would wish to continue with this case by case basis approach.

Toughened glass – Police Scotland and NHS Lothian suggest the Board may wish to review its policy on toughened glass. The Board may wish to seek further information from Police Scotland prior to considering this recommendation further during the formal policy consultation. In the meantime reference to the use of such glass has been added to the Licensing objectives. (Securing Public Safety)

Theft of alcohol -NHS Scotland made recommendation regarding stores rearranging their layouts where theft of alcohol has occurred. It may be that the Board is of the view that the deterrence of shoplifting is a matter for individual premises to have regard to rather than Board policy.

Licensing Forum – some references have been made by consultees to information on the Licensing Forum. As the establishment of a Licensing Forum is the responsibility of the Council this is out with the scope of the Board's jurisdiction. However a link to relevant information about the Forum on the Council's website has been added to the draft policy.

Suggested action by the Board in respect of trade waste, flyposting, smoking.etc – Whilst the Board can encourage premises to have regards to the effective operation of their premises to address the issues raised by consultees, these issues are all regulated by separate legislation and accordingly the Board is expressly prohibited by the Act from attaching conditions to licences where their activities fall under other statutory regimes.

Board's administrative procedures – a number of responses from the community suggest that information available during the consultation process on applications could be improved by increased availability of information online and the creation of online public registers. The Board has already expressed a desire to improve the quality of information available online and officers will seek to progress IT improvements during the formal consultation period with a view to updating the Board prior to the final version of the updated policy being agreed. It is also suggested that the agreement of pool conditions for occasional licence applications may assist with addressing some of the processing times referred to by trade representatives in responses. Board members may also wish to give further consideration during the formal consultation to the current scheme of delegation and any further amendments which may be appropriate.

Personal licences – the Board will be aware that Scottish Government have indicated that the training requirements for Personal Licence holders are being reviewed to take account of the renewal application process for Personal Licence holders which is scheduled to commence as from September 2018. In the meantime the suggestion from Council officers that those Personal licence holders who failed to timeously carry out five year refresher training should be encouraged to undertake the refresher training at the same time as submitting applications for new licences has been incorporated within the draft revised policy..

Last lodging dates – Council officers in Place Licensing suggest that these be removed. It is suggested that the Board would also wish to be clear on the views of applicants. Any reference to these in trade responses support the continued use of last lodging dates as providing applicants with certainty in relation to the timescales within which applications will generally be processed by the Board

Layout of the Board's current policy statement – some consultees have suggested that the Board's [policy be presented in a more "user friendly" and accessible format and the Board has endorsed this approach during the informal consultation process. The proposed draft of the revised policy has therefore been updated to take account of these comments with Chapters introduced and the contents of the policy regrouped under the most relevant Chapter headings. It is intended that brief explanatory notes will also be provided at the start of each chapter if the Board considers this helpful. A copy of the proposed draft updated policy is attached at Appendix Four.

In relation to all of the above issues the Board, may also wish, where appropriate to do so, to seek the specific views of the Licensing Forum during the formal consultation period.

3.3 A number of other suggestions relate to issues that are already the subject of specific requirements within the Act such as operating plans, layout plans, activities in licensed premises etc. In these instances applicants require to comply with statutory requirements and the Board are unable to deviate from the legislative position.

3.4 Where the draft has been revised to take account of issues raised during the informal consultation then these have been highlighted in italics for the Board's information. The policy has also been updated to take account of changes in licensing legislation which include the introduction of a new civic licensing regime in respect of sexual entertainment venues previously licensed by the Board in respect of adult entertainment.

## **4. Next Steps**

4.1 The draft Statement of Policy has been revised as detailed at Paragraph 3 above and is attached at Appendix One.

4.2 If the Board consider that there are further revisions that they would wish to make at this stage to the draft Policy then these will be incorporated into the finalised draft to be provided to the Board at its next meeting.

4.3 If there are also specific issues which the Board may wish to seek views on during the formal consultation period then it is suggested that these could be included within a covering letter which will be prepared to accompany the draft revised policy and circulated to consultees.

4.4 If the Board is minded to proceed as outlined above, a report will be prepared for the next meeting to include the procedures required by the Board to commence formal consultation.

## **5. Recommendations**

5.1 The Board is asked to:-



- (a) consider the written responses received to the informal consultation on the Board's Statement of Licensing Policy detailed at Appendix Three and Five.
- (b) consider the summary detailing oral evidence provided to the Board during hearings held following written responses received to the informal consultation detailed at Appendix Four.
- (c) consider the terms of the proposed draft revised policy for formal consultation attached at Appendix One;
- (d) considers if there are any other matters relating to the draft policy which the Board may wish to consult on; and
- (e) agree a further report, including a finalised draft revised Policy, will be provided to the Board at its next meeting for the purpose of formal consultation.

## 6. Appendices

Appendix One – Proposed draft revised Statement of Licensing Policy

Appendix Two - Scottish Government Draft revised Guidance – Chapters Two and Three

Appendix Three -Written responses to the Board's informal consultation (available at

[http://www.edinburgh.gov.uk/download/meetings/id/55996/item\\_81\\_%E2%80%93\\_initial\\_consultation - statement of licensing policy - responses and next steps](http://www.edinburgh.gov.uk/download/meetings/id/55996/item_81_%E2%80%93_initial_consultation_-_statement_of_licensing_policy_-_responses_and_next_steps)

Appendix Four – Summary of oral evidence from Board Hearings on 4<sup>th</sup> and 10<sup>th</sup> May 2018

Appendix Five– Two further late responses received

## 7. Background

- 7.1 Report to Licensing Board – 25<sup>th</sup> September 2017
- 10.2 Report to the Licensing Board – 29<sup>th</sup> January 2018
- 10.3 Licensing (Scotland) Act 2005 sections 6 and 7 (as amended)

Morag A Leck

**Depute Clerk of the Licensing Board**



**LICENSING (SCOTLAND) ACT 2005**

**STATEMENT OF LICENSING POLICY**

**2018**

**Adopted by the City of Edinburgh Licensing Board  
on**

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# 1. INTRODUCTION

1.1 The Board is the licensing authority for the City of Edinburgh local government area [**which will be shown in a map to be attached as an appendix to this policy**] for the purposes of the Licensing (Scotland) Act 2005 [**link to be provided**]. The Act regulates the sale of alcohol and the premises on which alcohol is sold, and connected purposes. The Board is responsible for considering applications for :

- premises licences and provisional premises licences
- occasional licences and extended hours
- personal licences
- variations of licences
- transfers of licences

in the Board's area for:

- the sale of alcohol by retail
- the supply of alcohol in members' clubs.

1.2 Within the Board's area there is a total of **1,917** licensed premises as at **31 March 2018. This comprises 439 on-sales, 513 off-sales and 965 premises offering both on-sales and off-sales.**

1.3 The Act requires the Board to carry out its various licensing functions so as to promote the five licensing objectives,:

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health and
- protecting children and young persons from harm

The objectives have an important role in the Board's decision making, for example:-

- attaching conditions to the grant of a premises licence or occasional licence
- refusal of an application for the grant of a premises licence or of an occasional licence;
- their breach may lead to the imposition of sanctions on a personal licenceholder or provide grounds for the review of a premises licence.

1.4 The Act further requires that the Board's published statement of licensing policy sets out the policies the Board will generally apply to promote the licensing objectives when making decisions on applications. More detail on the Board's consideration of each of the licensing objectives is set out in Chapters 21 – 26.

1.5 This statement has been prepared in accordance with the provisions of the Act. It will be adopted by the Board to take effect **November 2018** and will remain in force until no later than 18 months after the next Scottish local authority elections. The Board will prepare and publish supplementary statements of licensing policy when necessary. The Board will continue to have regard to legislative changes introduced by the Scottish Government and to any updated guidance issued.

- 1.6 ***The Board will be required to publish annual Functions Reports, setting out how it exercises its functions in terms of the Act. The format of such reports has yet to be agreed, subject to any guidance to be issued by Scottish Government.***
- 1.7 ***The Board publishes an annual Finance Report, setting out the details of income received from licence application fees and annual premises licence fees, and the expenditure incurred by the Board in the financial year. Details of Finance Reports will be published on the Board website [link]***
- 1.8 As set out in the guidance, In exercising its licensing function the Board will have due regard to the role and responsibilities of other authorities within the local government area, including those with responsibility for:
- planning controls
  - positive measures to create a safe and clean city environment, in partnership with local businesses and transport operators
  - a positive and robust approach to binge drinking and underage drinking
  - the provision of close circuit television (CCTV) surveillance, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols
  - designating parts of the local authority area as places where alcohol may not be consumed publicly;
  - enforcement of the law concerning disorder and anti-social behaviour
  - greater use of the powers to deal with those who commit offences, such as prosecution of persons selling alcohol to persons who are drunk or under-age, as well as of adults who purchase alcohol for consumption by persons under age and of those under age persons who purchase for self supply.
- 1.9 This policy does not seek to undermine the right of any individual to apply under the terms of the Act and in the light of policies adopted by the Board and to have such an application considered on its individual merits. If there are no grounds for refusal the Board must grant the application. The policy does not seek to override the right of any person to make representations on an application or to seek a review of a licence where provision has been made for this in the Act.

## 2. THE WIDER CONTEXT

- 2.1 Having regard to the Council's cultural strategies, a diverse provision is welcomed for the benefit of the local communities. The Board will seek to ensure that cultural events are not discouraged through the imposition of unreasonable restrictions. However, a balance will be struck between the desirability for such entertainment and the wider cultural benefits arising against the need to protect children and young persons from harm and the natural concern to prevent public nuisance and disturbance from premises and in neighbourhoods.
- 2.2 In administering its responsibilities in respect of licensing the Board believes that it is important that it does not operate in isolation. Due regard will be given to the policies and decisions of the Council and of neighbouring local authorities.
- 2.3 The Equality Act 2010 replaces previous anti discrimination legislation. It sets out the ways in which it is unlawful to treat a person. It introduces the Public Sector Equality Duty which requires that public authorities (as defined in the 2010 Act and which includes the Board) have due regard to:
- the need to eliminate discrimination
  - advance equality of opportunity
  - foster good relations between different people when carrying out their activities
- The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires that the Board take various steps to enable better performance of the general equality duty. This includes reporting on the mainstreaming of the general equality duty, publishing equality outcomes and reporting progress on meeting the outcomes and impact assessing both new and existing policies. ***The Board's Equalities Policy and Equalities Outcomes are published on the Board's website – [link to be provided]***
- 2.4 The Board continues to work closely with the Edinburgh Alcohol and Drug Partnership (EADP), a significant consultee in considering the content of this Statement of Policy. The importance of such closer working is recognised as part of the wider alcohol agenda, especially in relation to the public health and child protection licensing objectives. The EADP continues to supply the Board with data relevant to its consideration of the licensing objective of protecting and improving of public health.
- 2.5 The Board will have regard to any strategy of the Scottish Government designed to address the social, health and crime and disorder issues raised by the misuse of alcohol.
- 2.6 The Board will avoid duplication with other regulatory regimes and will not use its powers under the Licensing (Scotland) Act 2005 to arrive at outcomes that can be achieved under other legislation or by other enforcement agencies.
- 2.7 In particular, the Board's licensing functions will be discharged separately from the Council's functions as the local planning authority. The Board recognises that planning and licensing regimes are separate and that the processing of licensing applications should be an exercise distinct from the processing of planning applications. Notwithstanding that, consultations with the Council's Planning service are carried out on all licensing applications to underpin the common approach referred to below. The Board as the licensing authority will not be bound by decisions made by the Council as the local planning authority. Applicants for licences will be reminded that planning permission may be required for certain uses and that planning consents may carry conditions.



- 2.8 It is essential that planning permission is obtained prior to an application for a premises licence, or alternatively that a certificate of lawful use or development has been obtained in terms of the proposed activities and trading hours.
- 2.9 In general, planning permissions authorise a broad type of use of premises, whereas licences are granted for a particular type of activity. A planning permission may cover a number of activities that can have a wide range of different impacts in the locality.
- 2.10 There is a presumption of a common approach in the reasoning behind planning and licensing decisions and conditions attached to planning permissions may relate to one or more of the five licensing objectives. Where this is the case, operating plans should make reference to those planning conditions.
- 2.11 All premises for which a licence is being sought will be expected to comply so far as is reasonably practicable with the building standards requirements in force at the time of their construction, or at the time of any alteration. This is particularly relevant in respect of the licensing objectives relating to public health and public safety. Where construction work is proposed or completed, the applicant should be able to produce appropriate certificates issued by the local authority.
- 2.12 Other statutory requirements may apply to the provision of any activities at a premises and the responsibility for compliance lies with the licenceholder. For example if the activity involves the preparation and/or sale of food then it is the responsibility of the applicant to ensure that all appropriate food safety legal requirements are met. It is not appropriate for the decision on a licence application to address these matters. A responsible licenceholder will conform to all relevant legislation.
- 2.13 There is considerable overlap between the licensing regime and the wider health and safety regulatory regimes. Many specific licensing requirements relate to matters potentially affecting public health and public safety, two of the licensing objectives. Applicants should keep this in mind when drawing up their operating plan.

### 3. HOW THE BOARD WORKS

- 3.1 When assessing applications for premises licences, the Board must be satisfied that the measures proposed in the applicant's operating plan aim to achieve the five licensing objectives.
- 3.2 The Board will expect individual applicants to address the five licensing objectives in their operating plan. It will expect the plan to have regard to the nature of the area where the premises are situated, the type of premises, the activities to be provided, the arrangements made in respect of children and young persons on the premises, operational procedures and the concerns of the local community. The Board will expect the plan to demonstrate how it is intended that the premises will be good neighbours to residents and to other venues and businesses. To supplement the information given in the plan the Board will ask applicants to supply a statement in writing detailing how the applicant will promote the objectives. The Board will expect premises licence holders to ensure that the statement of licensing objectives attached to their licence remains relevant to the operation of the premises, particularly in the event of significant changes to their operation.
- 3.3 In respect of each of the five licensing objectives, the Board will expect applicants to provide evidence that suitable and sufficient measures, as detailed in their operating plan, will be implemented and maintained, relevant to the individual style and characteristics of their premises and activities. Reference will require to be made to additional measures to be taken on an occasional or specific basis, such as when a special event or promotion is planned, which is likely to attract larger audiences.

***Following amendment of the Act to require new premises licence applications to include a disabled access and facilities statement, the Board agreed that the Council's LSOs would consider the terms of statements provided by applicants to ensure they contained all of the necessary information. The Board agreed that LSOs would highlight concerns about the content of particular statements to the Board, when applications were being considered.***

- 3.4 The Council will itself make applications for premises and occasional licences. When this is the case, the Board will consider the matter from an entirely neutral standpoint. If relevant representations are made, they will be given full and equitable consideration by the Board. It is permissible under the Act for the Council to seek premises licences in its own name, and it may seek to do this for public open spaces, which are used for a variety of cultural and community events. This approach may facilitate the use of such areas for licensable activities and may alleviate the need for organisations, performers and entertainers to seek individual licences, for 'one off' events. Any such premises licences would be subject to appropriate conditions to ensure that the use of these spaces does not adversely impact upon any of the licensing objectives and subject to any separate licensing requirements.
- 3.5 The Board will not accept any premises licence application which fails to satisfy statutory requirements as to matters to be included in or to accompany an application. Any such application will be returned to the applicant. The Board intends eventually to hold plans of premises electronically and will expect all applications to be accompanied by an electronic copy of any plans to be submitted.
- 3.6 The Board will dispose of its business in an open, fair and transparent manner. Hearings

will be conducted in as informal a manner as possible. Guidance will be made available to those persons who wish to apply for a licence, to make representations or to lodge objections.

- 3.7 The Board will remain at all times mindful of the need to be accessible to all and assistance will be available on request to those who require any special arrangements to be made. This is reflected in the Board's Equality Outcomes ***referred to in Chapter 2 above, and set out on the Board's website – [link]***. The Board will normally hold its meetings in the Dean of Guild Room in the City Chambers, High Street, Edinburgh. Timescales are laid down for applications to the Board and these are publicised on the Website. An appropriate number of staff are employed to ensure an efficient disposal of business. The Board meets on a regular basis as laid down in the Rules as adopted from time to time and the meeting dates are publicised on the Website.

***Information about how Board meetings are conducted, the procedures followed when applications are being considered and the order in which people attending the Board would normally be invited to speak are all set out in information as provided on the Board's website – [link]***

- 3.8 In accordance with the Act, all members appointed to the Board have been trained in accordance with the Licensing (Training) (Scotland) Regulations 2007 which require members within three months of being elected or re-elected as a member of the Board to undertake an accredited course of training .
- 3.9 The Board is committed to the use of e-government technology and to applying the benefits of this to ensure continuous improvement in the Board's operation Applications for premises licences, variations and transfers, occasional licences and appropriate fees can now be submitted on-line. Details are available on the Council's website ***[link]***
- 3.10 Applications are advertised for the statutory periods on the Website ***[link]***. The Board is committed to ongoing improvements to the Website and encouraging wider use of the internet to inform the public of public notices.

## 4. NOTIFICATION OF APPLICATIONS, AND RESPONSES TO THEM

- 4.1 The Board will give notice of each premises licence and relevant variation application it receives to those persons specified in the Act, namely:
- each person with a notifiable interest in neighbouring land
  - any community council within whose area the premises are situated
  - the Council
  - the relevant health board, being NHS Lothian
  - the Chief Constable
  - Scottish Fire and Rescue Service as enforcing authority in terms of section 61 of the Fire (Scotland) Act 2005.

In providing notice, the Board is committed to ensuring that application details are provided in a clear, concise and understandable way, both by means of Site Notices provided to applicants for display, and also by means of notification to those detailed above, and by online notification.

- 4.2 The Board expects the Chief Constable to consider all applications and to provide one of the statutory notices as appropriate. Where the Chief Constable considers that it is necessary for the purposes of any of the licensing objectives that the application be refused, a recommendation to that effect may be included in the notice. The Board recognises the benefit of antisocial behaviour reports in connection with the consideration of applications, and will continue to call for these from the Chief Constable from time to time, recognising his entitlement to provide such reports where he considers them necessary.
- 4.3 The Board will consider all relevant representations or objections from any person. Objections or representations which are regarded as frivolous or vexatious may not be considered and in the case of an application for the review of a licence may be rejected by the Board if it does not disclose any matter relevant to any ground for review.
- 4.4 Where an objection or representation in respect of a premise licence application or a variation application is received late, after the specified date for receipt, the Board will normally treat the objection as not made unless the objector has provided an explanation for late receipt. If the Board decides there are good reasons to treat the objection as made, consideration will be given in the interests of justice to a continuation of the hearing into the application, objections and representations to a future meeting of the Board.
- 4.5 The Board expects the Council's Place Directorate (Building Standards Section) to advise the Board in relation to applications for provisional premises licences regarding suitability. This will enable a pro-active approach to be adopted permitting applicants sufficient notice of any issues that may require to be addressed within premises prior to completing construction or renovation when it would be likely to be too late to incorporate changes into the design at the stage of confirmation.

## 5. TEMPORARY LICENSING – OCCASIONALS AND EXTENDED HOURS

## Occasional Licence applications

- 5.1 An occasional licence authorises the temporary sale of alcohol on premises other than licensed premises. It may be applied for by:
- the holder of a premises licence
  - the holder of a personal licence
  - a representative of any voluntary organisation to cover a period of up to 14 days.
- 5.2 The Board recognises the right of any person to object to an application for an occasional licence in terms of section 58 of the Act. The Board's Scheme of Delegation ([Appendix 1](#)) sets out the basis upon which the Board will consider applications for Occasional Licences. The Board recognises that there are particular applications which, whether or not the subject of objections, require detailed consideration at a Board meeting, for example applications which are considered to be contentious or may have particular complications requiring further attention. Individual Board members or the Clerk may refer such applications to the Convener for further consideration and a final decision on whether or not to refer the application to the Board for a section 59 hearing.
- 5.3 The Board is concerned to ensure that the availability of Occasional Licences as a short-term means of licensing premises is not abused. Where premises are intended for long term use for the sale of alcohol, the Board expects applications to be submitted for provisional or premises licences. Where an operator obtains a provisional premises licence the Board recognises the availability of occasional licences as a means of providing short term cover for the sale of alcohol from premises which have been practically completed and give rise to no public safety concerns. This will allow the licence holder to secure appropriate section 50 certificates and obtain confirmation of the provisional premises licence. The Board expects licence holders to take all reasonable steps to secure confirmation as soon as possible and reserves the option to refuse applications for repeated occasional licences where there are concerns about the suitability of the premises, having regard to any of the licensing objectives.

***During consultation it has been suggested to the Board that consideration be given to placing a limit on the number of occasional licences to be granted via the Board's scheme of delegation, beyond which any further applications would be reported to the Board for more detailed scrutiny. The Board has not as yet decided on a specific number – individual circumstances may require consideration on their particular merits.***

- 5.4 Event organisers are encouraged to provide as much notice as possible of their event to the Board. The minimum period for consideration to be given to an application is 28 days. This is to allow publication of details of the application on the Board's website for a continuous period of 7 days and notification of the application to the Chief Constable and LSOs. The Chief Constable has 7 days to respond and LSOs have 21 days to decide if they wish to submit a notice or report. The Board expects applicants to provide layout plans **for outdoor areas** in support of their applications **and in any other case** where there is likely to be any doubt over the extent of the



premises for which the licence is sought.

- 5.5 The Board recognises that the Act allows for applications to be dealt with on a shortened timescale, where the Board is satisfied that the application requires to be dealt with quickly. Where applicants wish to apply on this basis, the Board would expect applicants to provide a written submission as to why the shortened timescale should be agreed. The Board expects that applicants seeking the relaxation of the timescale requirement would be able to demonstrate that there are exceptional reasons for doing so. Consideration of reasons will be dealt with in terms of the Scheme of Delegation at [Appendix 1](#).

***The Board has noted comments provided during consultation about the shortened notice procedure for applications, and has expressed its own concerns about the use of this facility by applicants. The Board agrees that requests will only be considered where applicants have provided detailed written submissions relevant to the notice period and in the absence of such information, normal notice procedures will be applied.***

- 5.6 The grant of an occasional licence will be subject to the Mandatory Conditions. ***These are detailed in Appendix 9 to the policy.***

- 5.7 An applicant for an occasional licence must demonstrate that they have made adequate provision to fulfil the requirements of the licensing objectives and in particular the objectives relating to securing public safety and the protection of children and young persons. This might include supervisors at entrance and exit points, public notices regarding the rules relating to the entry of children and young persons to an event and adequate delineation of the area for the sale and consumption of alcohol by means of a barrier. Appropriate conditions in terms of section 60 of the Act will be attached by the Board to any occasional licence issued and the Board will take a very serious view of any breaches of conditions attached.

***As part of the consultation process, Police Scotland and Council's LSOs have provided a set of "pool" conditions to be attached to occasional licences, covering the conditions regularly requested by police and LSOs. The benefit of agreeing a set of "pool" conditions is that applicants and all other interested parties have a better understanding of the conditions which are likely to be requested by statutory consultees – see Appendix 8***

- 5.8 In order to ensure that the objective of securing public safety is addressed the Board will circulate relevant applications for occasional licences to the Council's Place Directorate (Building Standards Section) and request reports highlighting matters which the Board may need to take into account in its consideration of the application.

#### Extended Hours applications

- 5.9 Extended hours applications allow for an extension of licensed hours and operate only for a period of up to one month. If the Board receives a number of applications to extend licensed hours it will expect the applicant to consider whether an application should be made to vary the premises licence and operating plan.

***The Board has received representations during the initial consultation period about the use of extended hours applications by licence holders. The Board's existing extended hours policy for festive and festival periods (referred to in more detail at Chapter 11 Hours Of Trading below) has been highlighted by police in particular, as an example of generous licensing hours during those periods.***

***Consultees are generally in agreement that a consistent approach to consideration of extended hours applications would be preferable. Trade representatives have highlighted the potential for grant of applications where there is no inconsistency with the licensing objectives.***

***It has been suggested during consultation that the Board considers what constitutes an event of national or local significance and/or what information the Board would expect applicants to provide in support of events hosted on premises where extended hours are applied for.***

***Examples of such events include: - Halloween, St Patrick's Day, Superbowl***

5.10 The Board may make a determination under section 67 of the Act to extend licensed hours to enable premises to remain open longer for certain special occasions or large public events. In addition to consulting the Forum the Board will give notice to the LSOs and to the Chief Constable and will request observations on the issues of crime prevention, public safety and the protection of children and young persons in particular. It will notify its determination to the Chief Constable, to holders of licences and other relevant parties and will take appropriate steps to publicise the determination as widely as necessary.

5.11 As with applications for occasional licences as set out above, the Board recognises that the Act allows for applications for extended hours to be dealt with on a shortened timescale, where the Board is satisfied that the application requires to be dealt with quickly. Where applicants wish to apply on this basis, the Board would expect applicants to provide a written submission as to why the shortened timescale should be agreed. The Board expects that applicants seeking the relaxation of the timescale requirement would be able to demonstrate that there are exceptional reasons for doing so. Consideration of reasons will be dealt with in terms of the Scheme of Delegation at [Appendix 1](#).

***As with the comments set out in connection with shortened notice period for occasional licence applications above, the Board agrees that requests will only be considered where applicants have provided detailed written submissions relevant to the notice period and in the absence of such information, normal notice procedures will be applied.***

## 6. HOW THE BOARD CONSIDERS APPLICATIONS

- 6.1 In assessing the following matters, the Board will have regard to the licensing objectives and will expect applicants to pay similar regard to their terms as set out in Chapters 21 – 26 below. The Board will also have regard to any reports on whether an applicant is a fit and proper person to hold a licence.
- 6.2 When considering whether any licence should be granted, the Board will assess the likelihood of the grant having an adverse impact. The Board will take into account relevant matters including :
- the nature of the premises, activities to be carried on and whether amplified music will be played
  - the potential number and profile of the customers likely to attend the premises
  - the proposed hours of operation
  - whether children and young persons are to be admitted to the premises and the arrangements made for them
  - the means of access to the premises including the location and adequacy of customer entrances and exits
  - the level of public transport accessibility for customers either arriving or leaving the premises and the likely means of public or private transport that will be used by them
  - the likely level of car parking demand on principal roads and surrounding residential streets in comparison with the existing situation, its effect on local residents and on residential parking and emergency access
  - the provision of toilet facilities and ventilation of the premises
- 6.3 Where it is possible to take steps to mitigate or prevent any potential impact the Board may still be able to grant a licence subject to conditions; each case will be considered on its merits.
- 6.4 When considering any application for premises, which have been previously licensed, or in any review of an existing licence, the Board will take into account the impact on local residents as borne out by any history of complaints and investigations into these and the antisocial behaviour report made available by the Chief Constable. The Board will also consider measures put into effect by the applicant to mitigate any adverse impact.

- 6.5 It is the Board's intention to provide a speedy, efficient and cost effective service to all parties involved in the licensing process.
- 6.6 Decisions on licensing matters will be taken in a transparent manner and in accordance with an approved scheme of delegation, aimed at underlining the principles of timely, efficient and effective decision making.
- 6.7 Delegations will be made by the Board in accordance with the Act. A table setting out how the Board intends to delegate its various licensing functions comprises [Appendix 1](#) to this statement.
- 6.8 In order to maintain an overview the Board will receive regular reports regarding the use of delegated decision making powers, as referred to in chapter 1 above.
- [The Board will be required to publish annual functions reports. The exercise of delegated functions may be considered for inclusion in these reports]***
- 6.9 The Board will normally meet in public session, although members may retire into private session to consider their decision. All decisions will be delivered by the Convener in public.

## 7. ATTACHING CONDITIONS

- 7.1 The Mandatory Conditions to be attached to all premises licences are referred to ***[in the appendix 10]***. The Board expects premises licence holders to ensure that sufficient arrangements are put in place to ensure adherence to the Mandatory Conditions, and, in relation to premises operating later hours beyond 1.00am, the Late Night Conditions ***[also referred to in appendix 10]***.
- 7.2 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 shall not be an audible nuisance in neighbouring residential premises. In addition, where an ATM is made available for use on licensed premises the Board will always consider the imposition of a condition that the ATM should not be located in any part of the premises where alcohol is available for purchase and consumption so that a customer wishing to use the ATM must cease drinking in order to do so.
- 7.3 The Board recognises that all applications should be considered on their own merits. Any condition attached to a licence will be derived either from the licenceholder's operating plan or a representation and will be tailored to each individual premises.
- 7.4 The Board understands applicants may suggest conditions which they consider are necessary to achieve the five licensing objectives.
- 7.5 If an applicant volunteers a prohibition or restriction in their operating plan because their assessment has determined such prohibition or restriction to be appropriate, such prohibition or restriction if adopted by the Board will be attached as a condition of the licence and will be enforceable as such.

## 8. THE BOARD'S ASSESSMENT OF OVERPROVISION

[THIS PART OF THE POLICY IS TO BE UPDATED, FOLLOWING CONSIDERATION BY THE BOARD OF A SEPARATE REPORT ON THE ASSESSMENT OF OVERPROVISION – REPORT TO BOARD ON 30 JULY 2018]



## **8 OVERPROVISION**

- 8.1** *Overprovision of licensed premises in a particular locality impacts on the promotion of the licensing objectives. The Board is under a duty in terms of section 7 of the Act to include in this policy document a statement of the extent to which it considers there to be overprovision of licensed premises or overprovision of licensed premises of a particular description, in either case in any locality within the area of the Board. The approach to the definition of locality will be flexible, recognising that different areas throughout the city exhibit a variety of characteristics.*
- 8.2** *Following consideration of representations received in the course of consultation on this statement, the Board has determined that the locality comprising the Grassmarket, Cowgate and other streets leading into these main thoroughfares is overprovided with premises offering the facilities of traditional pubs where consumption of alcohol is the principal attraction and premises offering off-sales. [Appendix 2](#) to this statement details the locality by street names. In this locality there is a presumption against the grant of any further licences of the description stated although all applications continued to be considered on their own merits. In particular the Board is willing to consider applications for restaurants, hotels and other premises which it determines would not increase the problems deriving from the current high concentration of licensed premises in the locality and which will either fill gaps in existing service provision or will significantly enhance the quality of life for residents and visitors alike.*
- 8.3** *The Board has carefully considered the many recommendations received in respect of its policy on overprovision; in respect that the Forum has recommended that seven new localities based on intermediate zones should be determined as overprovided with licensed premises (Tollcross; Dalry and Fountainbridge; Southside and Canongate; Old Town and Leith Street; South Leith; Leith Docks; and Portobello detailed on the plans annexed in [Appendix 2](#)), the Board agrees meantime to recognise that these new localities are areas of serious, special concern. In these areas, the Board in coming to a decision will rely on the information supplied in connection with the individual application and will judge each application on its merits taking account of the type, size and capacity of premises and paying close attention to licensed premises of particular descriptions, which have distinct styles of operation, recognising that they may have a greater impact on a local community. In addition the Board will call for reports showing the extent to which there are licensed premises within a location constituted by a 250 metre radius around the proposed premises, together with schedules describing the details of premises in that location.*
- 8.4** *In furtherance of its already established approach to overprovision, the Board acknowledges that public nuisance and overall levels of disturbance arising from the density of licensed premises in a locality are likely to be increased, where particular premises are of a size enabling a very large*

*number of patrons to be inside at one time. The Board has a particular concern about large drinking establishments, which are used primarily for the sale and consumption of alcohol and provide little or no seating for patrons. The Board defines these premises as those with a capacity for 200 or more patrons, whether seated or standing at any particular time.*

**8.5** *The Board would be concerned if evidence was presented in connection with a large premises of the following matters :*

- *noise and disturbance on the streets on several nights during the week and particularly at weekends*
- *high levels of bad behaviour in public places, particularly at night, with much of it being associated with excessive drinking of alcohol*
- *high numbers of pedestrians on the pavements which spill on to the roads*
- *high volumes of litter associated with fast food outlets*
- *fouling of doorways, alleys and private gardens and courts by urination and vomiting*
- *difficulty in providing and maintaining adequate street cleaning and refuse collection services*
- *traffic congestion caused by dropping off and picking up people at licensed premises*
- *long queues and long waiting times at taxi ranks which contribute to nuisance disorder and occasionally crimes of violence*
- *the views of a significant proportion of the public who avoid areas in the vicinity of large premises because of the fear of crime and disorder.*

**8.6** *The Board is concerned at the high number of existing off-sales premises and intends to examine any applications for more such licences to assure itself that the application will not undermine the licensing objectives.*

## 9. CAPACITY OF PREMISES

- 9.1 The Board has maximum occupancy limits set by building standards officers from the City of Edinburgh Council's Place Directorate for the purposes of assessing overprovision. In most circumstances the Board would expect this capacity to represent a practical occupancy capacity acceptable to applicants so as to ensure the safety of persons in the premises and safe escape in the case of an emergency. If there are additional concerns about crime and disorder or public nuisance, the Board may consider setting a lower maximum occupancy limit than that recommended by officers.
- 9.2 The Board will expect applicants to consider various factors when assessing the appropriate capacity for premises or events. These include:
- the design and layout of the premises
  - the location, availability and size of entrances and exits, including particularly emergency exits
  - the nature of the premises or event
  - the nature of the activities being provided, including the noise in the neighbourhood
  - the provision or removal of 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 age of the customers
  - the attendance by customers with disabilities, or whose first language is not English
  - the availability of suitable and sufficient sanitary accommodation
  - the nature and provision of facilities for ventilation.
- 9.3 The Board will expect the operating plan of premises with a capacity of 200 or more patrons, whether seated or standing, to designate all parts of the premises as either seated or standing areas, as part of their description of the activities engaged in at their premises.
- 9.4 The determination of a capacity for premises or events should be interpreted as a requirement to ensure an adequate supervision of the premises at all times. There should be constant arrangements to verify the number of persons present, such as door staff or attendance clickers. The Board requires large capacity premises to ensure that door supervisors are particularly vigilant about numbers entering or leaving the premises, denying entry to those who are drunk or disorderly on arrival. Where the capacity is likely to be reached, such as on known busy evenings and particularly where a special event or promotion is planned, licenceholders will be expected to have additional arrangements in place to ensure that the capacity of the premises is not exceeded.

The Board considers that the most appropriate means of assessing off-sales capacity is by means of reference to measurement of shelving space in linear metres, as provided in the Scottish Government guidance. The Board continues to expect licence holders and applicants seeking licences providing off-sales to specify the capacity in the operating plan, in linear metres.

- 9.5 Each case will be considered on its merits but the Board will consider very carefully the type, size and capacity of licensed premises in the particular locality in respect of which the application is made.

## 10. HOW PREMISES OPERATE

- 10.1 Within the operating plan for premises on which alcohol will be sold, a premises manager must be specified. The Board will expect the premises manager to have the day to day responsibility for running the premises and to be present at the licensed premises on a regular basis when alcohol is being sold. The Board expects that there will be in place appropriate arrangements for monitoring by the premises manager and details of these arrangements should be recorded in the operating plan. The premises licenceholder is expected to ensure that the premises manager has experience commensurate with the size, capacity, nature and style of the premises.
- 10.2 The premises manager must hold a personal licence. The Board has noted a level of non-compliance with premises licence Mandatory Condition 4 and the prohibition on the sale of alcohol on the premises at any time when there is no premises manager in respect of the premises. The Board will hold a hearing to consider a review application or proposal whenever such non-compliance comes to its attention.
- 10.3 Within all licensed premises, whether or not alcohol is to be sold, the Board will expect there to be proper management arrangements in place which will ensure that there is an appropriate number of responsible, trained persons on the premises and will also ensure compliance with all statutory responsibilities and the terms and conditions of the premises licence.
- 10.4 The Board acknowledges that need, in the sense of the commercial demand for further licensed premises, is not a licensing policy matter. Licensing decisions will not therefore be based upon this issue. The issue of overprovision of licensed premises is dealt with elsewhere in this policy.
- 10.5 The Board has considered the issue of whether a licence holder is under a duty to trade. It has also considered the terms of section 28 of the Act stating that a premises licence ceases to have effect where the premises cease to be used for the sale of alcohol. It is aware that on one interpretation this could be read as requiring an application for a new premises licence in the situation where premises have ceased to trade and are being actively marketed for sale. The Board has determined in the absence of a definitive legal interpretation that it will require an application for a new premises licence where the premises have not been used for the sale of alcohol for a period exceeding one year and the circumstances suggest that there is no active marketing of the premises for sale or lease. The Board will ask the LSOs to ascertain where possible, the reason for closure of the premises, with a view to then deciding whether or not to review the premises licence. Where the premises are situated in a locality where the Board is assessing overprovision these factors will also be relevant.
- 10.6 Where it comes to the attention of the Board that the activities in any licensed premises are not in accordance with the operating plan, the premises licence holder should be asked to explain why not and, if appropriate, make an application to vary their premises licence. Failing this the Board may advise the premises licence holder that the Board intends to review or revoke the licence by means of a review proposal. Where the licenceholder determines to abandon activities specified in the operating plan or otherwise changes the nature of the business conducted in premises, the Board considers that a variation of licence is essential to ensure compliance with the Mandatory Conditions.
- 10.7 The Board expects those involved in arranging the transfer of a premises licence to adhere to the timescales laid down by the Act. In particular, with regard to transfer applications

made by a person other than the premises licence holder in terms of section 34 of the Act, the Board expects applicants to ensure that their applications are lodged within the 28 day period specified in terms of section 34(1). Where the application is made on the basis of the business carried on in the licensed premises having transferred (in terms of section 34(3)(d)) the Board expects applicants to be able to demonstrate to the Board the basis upon which the business transfer has been effected. Where the statutory timescale within which a section 34 transfer application may be made has expired and the premises licence has ceased to have effect or ceased to be capable of transfer, the Board will consider taking steps to have the premises licence reviewed.

## 11. HOURS OF TRADING



- 11.1 This section primarily relates to premises where alcohol is sold with or without any other licensable activity. Reference is made to Chapter 12 of this statement of policy which relates to licensed hours for sales of alcohol for consumption off the premises. The Board expects that all applicants for all types of licensed premises will consider hours of trading to be an important issue when preparing their operating plans.
- 11.2 In determining its approach to the hours of trading, the Board has given full consideration to what is stated in the Guidance. In particular, the Board has noted the Guidance that in considering applications for licensed hours Boards may wish to consider applications for up to 14 hours as being reasonable but local circumstances and views of local licensing forums should always be considered.
- 11.3 The Board recognises the importance of taking into account all the statutory licensing objectives laid down in the Act in its assessment of any application for a licence, including consideration of the hours of trading. In addition, the Board is aware that there is a strong view in some areas against allowing later opening of licensed premises. This view is particularly strong in mixed residential and commercial areas.
- 11.4 The Board will consider a restriction on opening hours as one mechanism of combating anti social behaviour, if appropriate.
- 11.5 The Board recognises the value and necessity of a level playing field when determining hours of trading. In its experience the granting of extended hours in recognition of a particular style of trading merely leads to trade competitors adopting the same arguments in seeking similar hours and a process ensues which leads to the extended hours becoming the norm. The Board is anxious that this should not happen in Edinburgh.
- 11.6 The Board reaffirms its view that the following hours of operation are reasonable and balance the differing expectations of trade and public. The general outcome of consultation on this aspect of Board policy is public satisfaction with the current hours and trade dissatisfaction. On balance the Board is satisfied that it should adhere to the current hours. The Board is aware that for most premises there could be up to 16 trading hours but it feels that for historic reasons it should depart from the Guidance.

Opening hour - every day

off sales premises 10am

all other premises 9am (except Sundays when the opening hour will be 11.00am)

Terminal hour – every day

10pm : off sales premises

1 am : licensed premises

3 am : licensed premises offering restaurant facilities, and those offering entertainment (except adult entertainment - 1am and casinos - 6am) and members' clubs

6am: premises licensed for casino operation

- 11.7 The Board recognises that during certain periods further extensions of the terminal hour would be appropriate. Accordingly, during the period of the Edinburgh Festival and Fringe as set from year to year, and during the Christmas and New Year period (18 December to 3 January in each year) a 2 hour extension to the usual terminal hour of the premises concerned is regarded as acceptable in the normal course of events. However this will only apply where the operating plan for particular premises contains a statement of intention by the licenceholder to take advantage of extended trading in these periods. Where the operating plan for premises does not indicate an intention to take advantage of extended trading an application for those premises seeking extended hours for the period will have to be made and this will have to set out the specific days and hours when trading is intended. This period may include days when there are preliminary performances preceding the commencement of the full Fringe programmes.
- 11.8 Applicants will be expected to give due consideration to the impact their patrons may have after leaving their premises, taking into account the likely exits of patrons from the nearby licensed establishments.
- 11.9 The following issues should be considered:
- the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance, public health and children and young persons
  - the proposed hours when any music, including incidental music, will be played
  - the hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises
  - the existing hours of licensable activities and the past operation of the premises if any and hours of licensable premises in the vicinity
  - whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night
  - the capacity of the premises
  - the type of use, recognising that premises which sell alcohol, play music for dancing, provide late night refreshment or takeaway food, are more likely to be associated with crime and disorder and public nuisance than restaurants, theatres, cinemas or other performance venues
  - the hours at which noise may occur and the disturbance of nearby residents' rest, relaxation and sleep.
- 11.10 When preparing operating plans applicants should give consideration to the principle of winding down periods at the end of the night. By gradually increasing the lighting and winding down entertainment such as loud music before the end of the permitted hours, thereby creating a calmer ambience, patrons leaving the premises may be inclined to behave less boisterously after they have left licensed premises. In addition patrons may be inclined to leave the premises spasmodically in small groups on a gradual basis rather than simultaneously.
- 11.11 Restricted licensing hours may be appropriate in cases where licensed premises are situated in the vicinity of residential property or where the trading hours of the premises and competing businesses are likely to lead to undue pressure on public transport systems or additional public nuisance, disorder or anti social behaviour and where licensed premises include external areas. Where the whole circumstances of particular

premises dictate, including promotion of the licensing objectives, the Board will consider restricting the opening hours so that an earlier terminal hour will apply. The Board may impose different restrictions on hours for different licensable activities and for different days of the week.

- 11.12 Consideration will always be given to an applicant's individual case and the Board will take into account any proposals the applicant has to minimise the risk of nuisance or disorder being caused or exacerbated by customers departing from the premises.
- 11.13 Where no relevant representations are received from either a responsible body or any interested party and there is no departure from the Board's adopted policies, the Board will consider granting an application in accordance with the terms of the operating plan.
- 11.14 The Board believes that by adopting an approach which is sufficiently flexible, it is possible to ensure that:
- all areas of the city, its businesses and residents will be treated equitably and arbitrary restrictions will be avoided
  - restrictions on the hours of trading will only be applied where this is necessary in order to promote the Board's policy and the licensing objectives
  - restrictions are not placed on hours of trading which may contribute to rapid binge drinking near closing time.

## 12. OFF-SALES

- 12.1 Applicants for licences for premises which are to be used for the sale of alcohol for consumption off the premises will be expected to address the five licensing objectives in their operating plan.
- 12.2 The Board is concerned to ensure that all possible steps are taken in this area to promote the licensing objectives. It will ensure that the regulations concerning display of alcohol for consumption off the premises are observed in the layout of premises. The Board will monitor developments in the area of test purchasing and will take appropriate action as part of its wider alcohol agenda.
- 12.3 With regard to the licensed hours for the sale of alcohol for consumption off the premises, they are as laid down in the Act between 10 am and 10pm each day. There is no discretion to permit licensed hours outwith these times. The Board may take the view in particular circumstances that the permitted terminal hour of 10pm should be restricted. Reference is made in this connection to Chapter 11, which refers to the policy on opening hours of licensed premises and also to the provisions of the Act at section 65. Each case will be taken on its merits, considering all the licensing objectives, in particular those relating to crime, children and young persons, public health and public nuisance. The Board is concerned to promote best practice in this area and will consider most carefully whether late opening hours are justified. Reference is made also to Chapter 24 of this policy relating to public nuisance.
- 12.4 The Board will insist on certain premises licensed to sell alcohol for consumption off the premises installing an effective CCTV system covering both the interior and exterior of the premises complying with current legislative requirements. Reference is made to the Chapter of this policy relating to the prevention of crime and disorder objective.

## 13. OUTSIDE AREAS

- 13.1 The Board recognises the growing trend for outside seating areas in licensed premises. It will expect any licenceholder who intends to provide outside seating, tables and chairs or other such facilities to hold a premises licence which includes the outside area. These areas should be shown on the required plan of the premises and will be taken into account in the overall assessment of capacity, particularly in relation to exits and sanitary facilities.
- 13.2 When applicants propose to provide outside seating, tables or other facilities in any outdoor area, whether covered or not, they will be expected to ensure that the use of such areas will not cause disturbance or nuisance to the occupiers of other premises in the vicinity. The Board is of the view that 10pm is the appropriate terminal hour for the operation of outside areas. This is also the terminal hour for sales for consumption off licensed premises. In non-residential areas during festive and Festival periods the Board recognises that premises licence holders may wish to operate outside areas to a later time.
- 13.3 The Board will give consideration to **a later** terminal hour in appropriate circumstances, having regard to the locality of premises, their proximity to residential areas, and subject to the licence holder obtaining the necessary tables and chairs permit from the Council. The Board will consider a degree of flexibility for certain days of the week and times of year after careful consideration of the circumstances.
- 13.4 The Council operates a scheme whereby a permit may be obtained under the Roads (Scotland) Act 1984 allowing an applicant to occupy the footway with tables and chairs. The Board expects that licenceholders will not only comply with any conditions of such a permit in respect of the tables and chairs but will also put into place effective management controls, supervision and other measures to ensure that the use of such areas by patrons or by any other persons does not have a negative impact in the vicinity. The commencement and terminal hours of operation granted by the Board will normally reflect the times set out in the permit issued by the Council.
- The Council has adopted a Protocol for the use of outdoor areas, agreed by the Council's Transport and Environment Committee in March 2018 and the Board will have regard to this. Details of the Protocol are provided on the Council's website [link]***
- 13.5 Given that the regulatory authority for tables and chairs permits is the Council, the Board's ability to deal with complaints is limited. Where specific difficulties arise as a result of complaints with regards the use of tables and chairs, the board will consider referral of the complaint to the Council's Environmental Wardens for consideration of restriction or removal of the permit.
- 13.6 The Board may decide to visit premises which apply to offer outside seating areas and will monitor all such operations carefully. The Board recognises that the proliferation of outside areas is a matter of public concern and will take a robust line with any licenceholder in breach of a condition of a premises licence relating to the external area.
- 13.7 The Board encourages licence holders and applicants to ensure that layout plans attached to premises licences provide a clear delineation of outside areas intended for use with the premises, whether licensed for the sale of alcohol or not.

13.8 Reference is made to the Chapter of this policy relating to the public nuisance objective.



## 14. SMOKING AND NUISANCE

- 14.1 The Board acknowledges that control of smoking is not a matter within the responsibilities of licensing Boards. The LSOs will monitor the control of smoking in particular premises closely and will liaise appropriately with other Council officers. It is anticipated that they will take a robust line in any situation where complaints are received from nearby residents about nuisance, including noise.
- 14.2 The health risks associated with smoking and with passive smoking continue to be well publicised; licenceholders will require to be aware of their own statutory responsibilities, public opinion generally, the expectations of their patrons and the legislation concerning smoking in public places.
- 14.3 The Board expects that licenceholders will have regard to good practice. It is their responsibility to ensure that patrons do not create a nuisance or disturbance for residents living nearby. This includes noise arising as a result of patrons smoking outside the premises and any associated littering of the area. Where appropriate the Board may impose conditions requiring effective monitoring of the smoking area and restricting patrons from taking drink into the smoking area. Where no effective solution is achieved the Board may consider restricting the hours of operation of the premises.
- 14.4 Every business has a duty to ensure that waste is disposed of securely and to keep their premises clear of all litter generated by staff and customers; the Board expects licenceholders to be aware of their responsibilities and of the possibility of statutory street litter control notices being served in the case of non compliance. Where appropriate, a condition requiring licenceholder to provide litter bins in the vicinity of the premises may be imposed.

## 15. OUTDOOR ENTERTAINMENTS INVOLVING PUBLIC ENTERTAINMENT

- 15.1 The [Civic Government \(Scotland\) Act 1982](#) provides at section 41 that a public entertainment licence shall not be required in respect of licensed premises within the meaning of the Licensing (Scotland) Act 2005 in which public entertainment is being provided during the licensed hours within the meaning of the Act.

***The 1982 Act was amended by the Air Weapons and Licensing Scotland Act 2016 to the effect that the exemption from Public Entertainment licensing would not apply to premises licensed by means of occasional licences. Organisers of events or persons otherwise seeking to licence temporary use of premises where public entertainment is to be provided, as per the Council's Public Entertainment Resolution [LINK] will be required to ensure that they obtain a public entertainment licence from the Council, and do so in sufficient time to permit the Board to consider the application for occasional licence.***

***As referred to in Chapter 13 on the use of outdoor areas, the Board will have regard to the Protocol for the use of outdoor areas, agreed by the Council's Transport and Environment Committee in March 2018, for the use of outdoor areas where public entertainment is provided.***

## 16. ADULT ENTERTAINMENT

- 16.1 The Board intends to continue to encourage improved standards in licensed premises offering adult entertainment. The Board encourages those premises licence holders who offer adult dance entertainment to have regard to the terms of the Board's Guidance on Dance Entertainment as attached at [Appendix 3](#). Licence holders are encouraged to comply with the terms of this guidance. The LSOs will monitor the operation of this guidance.
- 16.2 The Board will expect licence applicants and licence holders offering adult entertainment to show evidence of having given consideration to the promotion of all the licensing objectives, in particular those relating to the protection of children and young persons, the prevention of crime and disorder and the prevention of public nuisance.
- 16.3 Where the operating plan for a premises licence application identifies that adult entertainment will take place in the premises, the Board will have particular regard to the location of the premises in relation to places of religious worship, schools, youth clubs or other premises where significant numbers of children and young persons are likely to congregate.
- 16.4 All applications involving adult entertainment will be considered on their own merits.
- 16.5 ***The Civic Government (Scotland) Act 1982 having been amended, licensed premises which provide adult entertainment which falls within the definition of "sexual entertainment" as set out in section 45A of the 1982 Act will require to obtain a separate sexual entertainment venue licence from the Council.***

***[The Board may wish to consider the continuing relevance of its guidance at appendix 3 to the statement of licensing policy, on adult dance entertainment, in the event such activity may be conditioned by means of SEV licensing.]***

## 17. TAKE-AWAYS

17.1 Premises which supply hot food and hot drink for consumption off the premises (take-aways) and which are open after 11pm can attract large groups of customers and act as a focus of noise and disturbance. The Board considers that having regard to the terms of section 42(4)(a) of the [Civic Government \(Scotland\) Act 1982](#) (“the 1982 Act”), premises selling alcohol require an additional late hours catering licence to permit the facility of take-away food and refreshment between the hours of 11pm and 5am. The 1982 Act refers to a late hours catering licence not being required in respect of the use as such of (alcohol) licensed premises. The Board considers that where takeaway food is being provided beyond licensed hours, a late hours catering licence should be obtained from the Council, since the Board’s role and the licence issued by it is limited to the sale of alcohol from the premises.

17.2 ***In September 2016 the Council’s Regulatory Committee adopted a new policy on hours of operation for Late Hours Catering premises. In view of the Board’s position as above for the previous Council policy on late hours catering, the Board may wish to adopt a similar approach to the new policy. The details of the new policy are attached as appendix 5 to the Board’s statement of licensing policy, replacing the previous version.***

The Board acknowledges the significance of this policy and will expect applicants to accept that similar hours of operation should apply to take-away operations falling within its area of licensing responsibility. This will both ensure a level playing field within the city and promote the licensing objectives, particularly preventing public nuisance and preventing crime and disorder. The Board notes that at the time of preparation of this statement, the Council is undertaking a review of its policy on Late Hours Catering licensing, and will have regard to the outcome of that review.



## 18. MEMBERS' CLUBS

- 18.1 Members' clubs will require to meet the criteria prescribed in the Licensing (Clubs) (Scotland) Regulations 2007. The Board expects that members' clubs will take positive steps to address discrimination on the grounds of age, sex, race, disability, gender identity, sexual orientation, marital status, religion or belief.
- 18.2 When members' clubs apply to the Licensing Board they will be asked to certify whether or not they comply with the criteria referred to in the Regulations in order to benefit from the exemptions. If they do the members' clubs will have to submit to the Board a copy of their written constitution and rules. They will be subject to inspections by LSOs, who will check clubs for compliance.
- 18.3 Members' clubs are subject to the same provisions regarding access by children and young persons as other licensed premises. They require to specify in their operating plans whether or not it is proposed that children and young persons are to be allowed entry to the premises and, if so, to specify the terms, to include the times, the ages of such children and young persons and the parts of the premises to which they would be permitted access. Appropriate conditions relating to access by children and young persons may be attached by the Licensing Board.
- 18.4 The Board has decided that premises licences granted to member's clubs will be subject to additional conditions:-
- The club shall, in conducting the business of the club carried on in the premises, take all reasonable steps to ensure compliance at all times with the terms of the club's written constitution and rules as exhibited to the Board. Any alteration to this written constitution and rules made by the club from time to time shall be notified to the Board within one month of any alteration taking effect.
  - No member of the club may invite more than 10 other persons on to the premises to be supplied with alcohol at any one time.
  - Where a person referred to in Regulation 2(2)(d)(iii) of the Licensing (Clubs) (Scotland) Regulation 2007 is admitted to the premises, there is to be entered in a book kept for the purpose:- the date of admission; the name and address of the person; and the name and address of their club

# 19. REVIEW OF PREMISES LICENCES

- 19.1 A licence may be reviewed on the application of any person on the grounds specified in section 36 of the Act. The Board will not commence a review hearing in terms of section 38 of the Act until it is satisfied that grounds have been established which necessitate proceeding with a hearing. The Board may continue consideration of a review application at an initial stage, in order to allow investigations or other appropriate steps to be carried out. A review will include consideration being given to the suspension, revocation or variation of a licence or alternatively to the issue of a written warning. Where there are issues identified in the course of a review hearing which highlight concerns about personal licence holders, the Board will also give consideration to holding separate hearings on their licences.
- 19.2 The Board may reject a premises licence review application if it does not disclose any matter relevant to any ground for review or if it is vexatious or frivolous. ***This preliminary decision will be delegated to the Convener for consideration in terms of the scheme of delegation provided at Appendix 2***
- 19.3 Where grounds have been established which merit a review hearing, the Board will expect to receive a report from the Council's LSOs (other than when the review application is LSO-led) on the terms of the review, and any other matters relevant to the affected premises. The Board encourages premises licence holders to work with the Council's LSOs and, where appropriate, Police Scotland when there are concerns about the operation of premises, identified during the review hearing.
- 19.4 With regard to premises licence review proposals, the Board may make a review proposal in respect of particular premises within its area. It will do so when circumstances are brought to its attention suggesting conduct which is inconsistent with the licensing objectives.
- 19.5 In respect of the requirement to make a review proposal, triggered by a premises licence holder's conviction for a relevant offence, the Board will have regard to the nature of the offence and the relevance or otherwise to the operation of affected premises within the Board's area, in deciding the course of action to be taken in relation to the premises licences. The Board reserves the option to issue a nominal written warning where the conviction is considered to be of minimal relevance.

## 20. PERSONAL LICENCES

- 20.1 Any individual may seek a personal licence whether or not they have current employment or business interests associated with the use of the licence.
- 20.2 The Board will grant a personal licence if it is satisfied that the applicant:
- is over 18 years of age
  - possesses a relevant licensing qualification
  - has not had a personal licence revoked in the previous five years, ending with the day on which the application was received,
  - has not been convicted of any relevant offence or foreign offence
- 20.3 The Board will give notice of any personal licence application to the Chief Constable and Licensing Standards Officers, who must give notice to the Board in one of the forms laid out in section 73 of the Act. Where such notice is received, the Board will hold a hearing at which it will consider carefully whether it is satisfied that the grant of a licence would not breach the objectives of the Act. ***The Board will also consider the fit and proper status of applicants, where this has been highlighted by statutory consultees.*** It will consider the seriousness and relevance of any conviction, the period that has elapsed since the offences were committed and any mitigating circumstances. If not so satisfied the Board will refuse the application.
- 20.4 The Board expects that personal licence holders will ensure that they comply with the requirements of mandatory refresher training every five years, beginning with the expiry of the five year period from their licence being issued. The Board expects personal licence holders to provide an appropriate certificate confirming that they have completed the mandatory training together with their existing personal licence, in order that an amended version of their licence can be issued to them. Where a personal licence holder fails to comply with these requirements, the Board will revoke their licence in terms of section 87(3) of the Act.

***Where those who have had their personal licence revoked in such circumstances, and wish to apply for a new licence, the Board recommends applicants to demonstrate that they have taken appropriate steps to update their training record, rather than seeking to rely on training which may five years old or more.***

***[Renewal of Personal Licences – awaiting updates from Scottish Government, including the outcome of SG consultation]***

## THE FIVE LICENSING OBJECTIVES

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health
- protecting children and young persons from harm

## 21 OVERVIEW

- 21.1 The following sub-sections set out the Board's policy relating specifically to the five licensing objectives:
- preventing crime and disorder
  - securing public safety
  - preventing public nuisance
  - protecting and improving public health
  - protecting children and young persons from harm
- 21.2 In each section relating to the objectives, the Board has defined its intended outcome. Each section lists the influencing factors on the achievement of that objective but, because of the wide variety of premises and activities to which this policy applies, the lists provided are not exhaustive. Applicants will know their own premises best and will be expected to address all aspects relevant to the individual style and characteristics of their premises and the licensable activities for which they are seeking authorisation.
- 21.3 In each sub-section, a list of possible control measures is provided. This is intended to be of assistance to applicants, but again, is not intended to be an exhaustive list. Many control measures achieve more than one objective but have not necessarily been listed under each objective.
- 21.4 The selection of control measures should be based upon a risk assessment of the premises, the proposed activities and the type of customers expected to attend, for example their age range and numbers. Risk assessment is considered to be good practice and a useful tool in the instruction and training of staff, as well as a sound basis for review by the licenceholder, in the event of requiring to make application for a variation or in response to changing circumstances or conditions at the premises.
- 21.5 Additional measures may be necessary on an occasional or specific basis such as when a special event is planned which is intended to, or likely to, attract larger audiences or audiences of a different nature; this can have a significant impact on the achievement of the licensing objectives.
- 21.6 The Board encourages applicants and licenceholders to ensure that they have adequate arrangements in place for the effective and responsible management of the premises and for instruction, training and supervision of staff. This is considered to be an essential control measure for the achievement of all the licensing objectives.



## 22 PREVENTING CRIME AND DISORDER

- 22.1 The City of Edinburgh Council together with other agencies supports a strategy aimed at making the city a safe place to live in and visit. The Board is committed to further improving the quality of life for the people of the city by continuing to adopt policies and to introduce measures designed to increase community safety and to reduce crime, the fear of crime and disorder.
- 22.2 There are already in existence a wide range of measures for preventing and reducing crime and disorder. The Act reinforces the duty of the Board to make this a top priority.
- 22.3 The promotion of the licensing objective to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. Applicants will be expected to demonstrate in their operating plan that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and the activities at those premises.
- 22.4 The applicant should be able to demonstrate that all those factors, which impact on crime and disorder, have been considered. These include:
- underage drinking
  - drunkenness on premises
  - public drunkenness
  - illegal possession and/or use of drugs
  - violent behaviour
  - anti-social behaviour
  - litter
  - unauthorised advertising
- 22.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating plan, having regard to their particular type of premises and/or licensable activities:
- effective and responsible management of premises
  - training and supervision of staff
  - adoption of best practice guidance where available, including those relating to drinks promotions and safe drinking/units guidance.
  - acceptance of accredited proof of age cards for instance PASS or locally approved cards
  - provision of effective CCTV in and around the premises, which complies with all current legislative provisions and provision of external lighting and other security measures
  - employment of Security Industry Authority licensed door supervisors
  - provision of litterbins outside premises
  - membership of local pubwatch schemes or similar organisations
  - responsible advertising

- distribution of promotional leaflets and posters.

- 22.6 Close circuit television makes a significant contribution to addressing antisocial behaviour across the city of Edinburgh. In recent years extensive investment in public space CCTV across the city has assisted in the identification and prosecution of criminals and provided reassurance to residents. With an extensive network of cameras, CCTV cameras are a vital part of the City of Edinburgh Council's strategy to tackle antisocial behaviour as well as contributing to the development of safer communities. These cameras are designed both to prevent and to detect anti social behaviour. Where CCTV is installed the Board will expect cameras to be left on for a minimum of thirty minutes after the terminal hour and that the licensing section of the Council is immediately informed of any fault in the operation.
- 22.7 The Board is aware of the condition relating to the installation of CCTV in late opening premises, which is contained in regulations made by Scottish Ministers. In order to ensure the greatest possible degree of protection for the public this Board intends to consider conditions which go beyond those published by Scottish Ministers where circumstances dictate. In particular the Board will expect to see CCTV installed in and around certain off sales premises. Reference is made to Chapter BLANK of this policy in this connection.
- 22.8 In 2006 the Council made byelaws prohibiting the consumption of alcohol in designated public places. These were adopted as part of the overall strategy to make safe all the public areas within the city. The text of the byelaws is available on the Council's Website ***[LINK]***

## 23 SECURING PUBLIC SAFETY

- 23.1 The Board is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. To this end, applicants will be expected to demonstrate in their operating plan that suitable and sufficient measures have been identified and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and the licensable activities for which the licence is being sought.
- 23.2 When addressing the issue of public safety, an applicant must demonstrate that those factors which impact on standards of public safety have been considered. These include:
- the occupancy capacity of the premises
  - the standard of maintenance of the building having regard to its age and the design and layout of the premises, including the means of escape in the event of fire
  - the structural stability of the premises
  - the adequacy of vehicular access to the premises by the fire and rescue service
  - the safety of gas and electrical installations
  - the nature of the activities to be provided, in particular the sale or supply of alcohol and the provision of music and dancing, including whether those activities are of a temporary or permanent nature
  - the hours of operation differentiating the hours of opening from the hours when alcohol is sold, if different
  - customer profile for instance age, disability
  - the use of special effects such as lasers, pyrotechnics, smoke machines and foam machines
- 23.3 The following examples of control measures are given to assist applicants who may need to take account of them in their operating plan, having regard to their particular type of premises and/or activities :
- suitable and sufficient risk assessments, including compliance with the requirements of the Fire (Scotland) Act 2005
  - effective and responsible management of premises, including installation of a CCTV system which complies with current legislative requirements in and around premises
  - provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons
  - appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons
  - adoption of best practice guidance
  - implementation of crowd management measures
  - proof of regular testing and certification where appropriate of procedures, appliances and safety systems.

23.4

In order to ensure that the objective of securing public safety is addressed the Board will circulate relevant applications for occasional licences and all applications for variations of license to the Council's department of city development and request reports highlighting matters which the Board need to take into account in its consideration of the application.

***Police Scotland and NHS Scotland have highlighted the potential use of toughened glass in certain circumstances and in certain premises, connected particularly with promotion of the securing public safety and preventing crime and disorder licensing objectives, but also relevant to the protecting and improving public health licensing objective.***

## 24 PREVENTING PUBLIC NUISANCE

- 24.1 The Board believes that licensed premises may have a significantly adverse impact on communities, through public nuisances which arise from their operation. It wishes to maintain and protect the amenity of residents and occupiers of other businesses from the potential consequence of the operation of licensed premises, whilst recognising the valuable cultural, social and business importance that such premises provide.
- 24.2 The Board will interpret public nuisance in its widest sense and will take it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.
- 24.3 The Board acknowledges the provisions of section 65 of the Act in relation to off-sales by shops, stores, supermarkets and other premises selling alcohol for consumption off the premises. The Board may permit the hours during which alcohol is sold to match the normal trading hours during which other sales take place, unless there are reasons for not doing so, such as disturbance or disorder attributable to the location and / or the premises. Reference is made in this connection to Chapter BLANK of this policy, relating to off-sales and to Chapter BLANK relating to hours of trading.
- 24.4 However, applicants need to be aware that the Board may apply stricter conditions, including controls on licensed hours, where premises are in residential areas; where their activities may impact on residents or other business premises; and where relevant representations have been received.
- 24.5 The Board believes that the impact licensed premises can have on a neighbourhood is significantly influenced by the times when those licensed premises are open. The Board may stipulate shorter hours when considering a premises licence application, if it considers this to be appropriate depending on where the premises are situated or the likelihood of their becoming a source of antisocial behaviour. The Board will consider each case on its merits but may be inclined to stipulate a terminal hour as early as 6pm for the sale of alcohol in appropriate circumstances.
- 24.6 Applicants will be expected to demonstrate in their operating plan that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and character of their premises and events.
- 24.7 When addressing the issue of prevention of public nuisance, the following facts are relevant:
- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices, care homes and places of worship
  - the hours of opening, particularly between 23.00 and 07.00
  - the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises

- the design and layout of premises and in particular the presence of noise limiting features and a CCTV system, which complies with current legislative requirements
- the occupancy capacity of the premises
- the availability of public transport
- the wind down period between the end of the licensable activities and the closure of the premises
- the last admission time

24.8

The following examples of control measures are given to assist applicants who may need to take account of them in their operating plan, having regard to their particular type of premises and/or activities:

- effective and responsible management of premises
- appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, for instance to ensure that customers leave quietly
- control of operating hours for all or parts of the premises, for instance garden areas, including deliveries and disposal of glass
- adoption of best practice guidance
- installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- management of people, including staff and vehicular traffic and resulting queues, arriving and leaving premises
- liaison with public transport providers
- siting of external lighting, including security lighting and installation of an effective CCTV system which complies with current legislative requirements
- management arrangements for collection and disposal of waste and empty bottles
- effective ventilation systems to prevent nuisance from odour and noise from air conditioning units.

## 25 PROTECTING AND IMPROVING PUBLIC HEALTH

- 25.1 The Board recognise the main strategic aim of the Scottish Government's Alcohol Strategy is to reduce per capita consumption of alcohol. The Board wishes to see premises thriving in the city but this cannot be at the expense of public health and wellbeing. The Board will have particular regard to the views of the relevant bodies responsible for, and interested in, the protection and improvement of public health in the City of Edinburgh. It will continue its representation on the Edinburgh Alcohol and Drugs Partnership and take advice from appropriate bodies, including those represented on the Forum. The critical importance of such close liaison is recognised as part of the wider alcohol agenda, particularly in relation to the public health and child protection licensing objectives.
- 25.2 Applicants will be expected to demonstrate in their operating plan that suitable and sufficient measures have been identified and will be implemented and maintained to protect patrons' health. This will include such measures as making available information with regard to sensible drinking, the effects of excessive alcohol consumption and contact points where assistance is available to address problem drinking.
- 25.3 A major concern about excessive alcohol consumption is its impact on people's health. There is ignorance of the advisable daily and weekly units of alcohol which may be consumed. There is also ignorance of the number of units in commonly consumed drinks, although some manufacturers are taking an initiative in this regard and publishing information on the labels of their products. The Board considers that greater awareness of this issue would be achieved by more overt displaying of information. It wishes to impress upon licence holders the importance of this issue and will expect prominent informative signage to be displayed in appropriate places within their premises. If necessary, and as the result of a relevant representation, such a requirement may be imposed by way of a condition on a premises licence.
- 25.4 The measures identified by an applicant may depend on the individual characteristics of the premises for which the licence is sought. The Board will be receptive to conditions which are proposed by individual applicants in respect of the promotion of this licensing objective. This might include the use of drink mats with sensible drinking messages and the use of posters on areas of circulation and in the toilet areas.
- 25.5 The Board is very aware of the risk of harm to children and young persons' health and this will be of paramount consideration when determining applications. Children and young persons may be adequately protected from harm by the action taken to protect adults but they also may need special consideration. It is recognised that no policy can anticipate every situation but applicants will be expected to demonstrate that they have given particular care to introduce measures designed to protect children and young persons' health while in or around their premises.
- 25.6 Licence applicants, door supervisors where employed and premises managers, as

well as other staff employed in the premises, must remain vigilant at all times to the risks of excessive consumption; there should be established practice within the premises to ensure that a standard approach is taken where patrons' demeanour demonstrates an excessive consumption of alcohol. There should also be a clear understanding of the offences committed in connection with the service of alcohol to children and young persons or persons who are drunk.

- 25.7 In terms of schedule 3 of the act applicants must provide a wide selection of reasonably priced non alcoholic beverages during the whole period the premises are open. They are also encouraged to provide food on the premises, so that patrons may eat at the same time as consuming alcoholic beverages if they wish.
- 25.8 Adequate ventilation and sanitary provision must be provided by the applicant to the satisfaction of the Board.



## 26 PROTECTING CHILDREN AND YOUNG PERSONS FROM HARM

- 26.1 The Board will seek advice from and have particular regard for the views of the most relevant body in the city of Edinburgh. This is currently the Edinburgh Child Protection Committee. The City of Edinburgh Licensing Forum will be another body from whom the Board will seek advice on achieving this objective.
- 26.2 The Board wishes to see family friendly premises thriving in the city; it will welcome applications from those who wish to operate a licensed premises which accommodates children and young persons. In determining any such application the risk of harm to children and young persons will be a paramount consideration for the Board. Following a recommendation from the Forum, the Board has agreed that where licence holders and applicants make applications seeking access or increased access to premises for children and young persons, where the Board considers it appropriate to do so it will carry out site visits of the premises to assess their suitability prior to considering applications.
- 26.3 Where applicants wish to operate such premises, the Board expects them to appreciate that this places additional responsibilities upon them, at the same time recognising that parents and other adults accompanying children and young persons also have responsibilities. Applicants will be expected to demonstrate that suitable and sufficient measures have been identified and will be implemented and maintained to protect children and young persons from harm
- 26.4 Applicants will be expected to demonstrate in their operating plan that suitable and sufficient measures have been identified and will be implemented and maintained to protect children and young persons from harm, relevant to the individual style and character of their premises and the licensable activities for which a licence is being sought.
- 26.5 When addressing the issue of protecting children and young persons from harm, the applicant must demonstrate that those factors, which may particularly impact on harm to children and young persons, have been considered. These factors include whether:
- entertainment or services of an adult or sexual nature are commonly or regularly provided
  - members of the current staff at the premises have been convicted for serving alcohol to children and young persons or offences against children and young persons
  - there has been a known association with drug taking, drug dealing or other criminal activity on the premises, and
  - the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided there
- 26.6 The following examples of control measures are given to assist applicants who may adopt them in any combination, taking into account the individual style and character of their premises:

- effective and responsible premises management ***which may include the requirement for a policy on child protection***
- appropriate instruction, training and supervision of those employed
- consideration of imposing a requirement for a Disclosure Scotland check
- consideration of imposing a limitation on the hours when children and young persons may be present
- consideration of imposing a limitation of the parts of the premises where children and young persons may be present
- consideration of imposing a requirement for children and young persons to be accompanied by an adult
- acceptance of only accredited proof of age cards e.g. passport, photographic driving licence or PASS scheme cards
- through enforcement and revocation based on complaints, police reports or related enforcement activity, measures to ensure children and young persons are not exposed to incidences of violence or disorder

***[Barnardos highlighted consideration of premises having child protection policies in place]***

26.7 The Board is aware of, and will apply, the relevant conditions included in the regulations issued by the Scottish Government and will have regard to the Guidance. The Board also expects that holders of a premises licence which allows children and young persons entry to the premises will seek to ensure that:

- accompanying adults are able to take responsibility for and supervise the children at all times
- children's food and drinks must be served in suitable and safe containers
- any stairs on the premises are risk assessed and where necessary shall be adequately guarded by a gate or other suitable means
- all heating appliances are risk assessed and where necessary shall be adequately guarded
- all electrical plug sockets in areas accessible to children shall be adequately protected
- all furniture and fittings shall be of safe design having regard to their use by children
- there is an accessible wash-hand basin with piped supplies of hot and cold water. Hot water shall be thermostatically controlled to 43°C
- the floor covering in the public toilets shall be a non-slip and easily cleaned material
- a menu shall be available at all times that children are allowed on the premises with either a children's section or indicating that half portions are available for children
- no gaming machines may be situated in the part of the premises accessible to children and young persons except in accordance with the provisions of the Gambling Act 2005

26.8 In addition, the Board expects that holders of a premises licence which caters for children under 5 years seek to ensure that :

- paper or plastic cups are available for children under 5 years

- a minimum of two high chairs that allow stable seating and have suitable safety restraints are provided
- adequate, clean and safe baby changing facilities will be provided that are accessible to both genders.
- a lidded, leak proof bin marked 'for the disposal of nappies' shall be provided
- the premises comply with the law on breast-feeding in public areas

26.9

The Board have imposed in most premises licences and occasional licences where children and young persons are admitted a condition creating an area adjacent to any bar of the premises where children and young persons are not allowed to stand or sit. The Board is aware that the terms of this condition are not identical in all licences and wishes to emphasise it expects that licenceholders subject to a condition in these general terms operate and manage their premises to ensure that children and young persons are not encouraged to stand or be seated adjacent to bars.

**DELEGATION OF LICENSING FUNCTIONS**

Licensing (Scotland) Act 2005 Schedule 1 paragraph 10 and named sections of the Act

	<b>Subject Matter</b>	<b>Licensing Board</b>	<b>Convener or Member of the Board</b>	<b>Clerk of the Board and Deputes</b>
1	Determination of the Board's policy for the purposes of the licensing policy statement or supplementary licensing policy statement	✓		
2	Determination, for the purposes of the licensing policy statement or supplementary statement, whether there is over provision of licensed premises or overprovision of licensed premises of any particular description, in any locality	✓		
3	Determination of a premises licence application	✓		
4	Determination of a premises licence variation application other than a minor variation	✓		
5	Determination of a premises licence variation application where the variation sought is minor (section 30(2))		✓	✓
6	Determination of an application for the transfer of a premises licence where the applicant has been convicted of a relevant offence or foreign offence and notice received under section 33(6)(b)	✓		
7	Determination of an application for the transfer of a premises licence where notice received		✓	✓

	<b>under section 33(6)(a)</b>			
8	<b>Determination of a personal licence application or a personal licence renewal application where the Board has received a notice from the Chief Constable under section 73(3)(b)</b>	✓		
9	<b>Determination of a personal licence application or a personal licence renewal application where the conditions of section 74 are met and the Board has received a notice from the Chief Constable under section 73(3)(a)</b>		✓	✓
10	<b>Making a premises licence review proposal (section 37 or section 44)</b>	✓		
11	<b>Conducting a hearing under the Licensing (Scotland) Act 2005 and taking any of the following steps following hearing: issuing a written warning to a premises licenceholder; revoking or suspending a premises licence; making a variation of the premises licence; revoking, suspending or endorsing a personal licence</b>	✓		
12	<b>Making a closure order (section 97)</b>	✓		
13	<b>Application for provisional premises licence (section 45)</b>	✓		
14	<b>Refusing an application for confirmation of a provisional premises licence</b>	✓		
15	<b>Granting an application for confirmation of a provisional premises licence</b>		✓	✓
16	<b>Application for temporary premises licence (section 47)</b>		✓	✓
17	<b>Determination of requests</b>		✓	✓

	for shortened notice period for occasional licences (section 57(5))			
18	Determination on referral of contentious or complex applications for occasional licence to the Board (paragraph 12.2)		✓ (Convener only)	
19	Determination of an application for an occasional licence where there is notice of objection or representations in relation to it or notice from the Chief Constable recommending refusal of the application (section 56)		✓	
20	Granting an occasional licence application where there is no notice of objection nor representations in relation to the application or no notice from the Chief Constable recommending refusal of the application (section 56)		✓	✓
21	Determination extending licensed hours (section 67)	✓		
22	Determination of an application for extended hours where there is notice of objection from the Chief Constable or report from the LSOs (section 70)		✓	✓
23	Determination of requests for shortened notice period for extended hours applications (section 69(5))		✓	✓
24	Determination of an application for extended hours where there is notice of objection from the Chief Constable or report from the LSOs, for major events which may be considered contentious or complex		✓ Convener only	
25	Determination of whether applications for review of premises licence are		✓ Convener only	

<b>vexatious or frivolous</b>			
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**THIS PART OF THE POLICY IS TO BE UPDATED FOLLOWING CONSIDERATION BY THE BOARD OF A SEPARATE REPORT ON OVERPROVISION – REPORT TO BE CONSIDERED ON 30 JULY 2018**

**STREETS AND PREMISES FALLING WITHIN OVERPROVISION AREA (REFERRED TO IN PARAGRAPH 8 ABOVE)**

**GRASSMARKET  
COWGATE  
COWGATEHEAD  
GEORGE IV BRIDGE  
WEST BOW  
WEST PORT  
CANDLEMAKER ROW  
MERCHANT STREET  
BLAIR STREET  
NIDDRY STREET  
NIDDRY STREET SOUTH  
VICTORIA TERRACE  
VICTORIA STREET  
INDIA BUILDINGS  
BLACKFRIARS STREET  
FORREST ROAD  
TEVIOT PLACE  
BRISTO PLACE**



CITY OF EDINBURGH LICENSING BOARD  
GUIDANCE ON DANCE ENTERTAINMENT  
IN LICENSED PREMISES

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This guidance has been adopted by the City of Edinburgh Licensing Board in order to promote the licensing objectives in licensed premises where any form of dance entertainment is provided. The Board expects the operating plans of premises offering dance entertainment to indicate that due regard has been taken to the terms of the guidance. Failure to do so may be taken into account in a review of the premises licence. This guidance has not been drafted in the manner of a legal document with interpretation clauses. Words and expressions used should therefore be given their usual and normally accepted meaning. Licence holders should seek further guidance from the Licensing Board if in doubt as to the requirements of the following guidance or if they wish to seek exemption from any of the stated requirements either generally or in respect of a particular occasion or event. In terms of [paragraph 16.5](#) above, the Board awaits the outcome of Scottish Government consultation on these matters, and will consider appropriate amendment of its guidance in light of any subsequent legislative change.

1. **Code of Conduct**

The licence holder shall have in place a code of conduct for behaviour of staff and customers, copies of which shall be available to staff and customers. The code will deal with matters such as information for the dancers on distance to be maintained from customers during a dance, prohibitions on sexual behaviour and propositioning, and what to do if a customer breaches the rules.

2. **The Dancers**

The licence holder should maintain a register of dancers engaged to perform in the licensed premises. The register should show the name, age and current address of the dancer. The licence holder should require photographic proof of identity which should be via the production of the dancer's passport if available. Foreign Nationals must be asked for their passport and the licence holder should take appropriate steps to ensure that there are no restrictions on the dancer's entitlement to stay and work in the United Kingdom. No dancer, below the age of 18, should be engaged.

2. **Changing Facilities**

The licence holder should provide suitable changing facilities for the dancers to comply with the following basic standards:-

- a) the facilities should have a minimum floor area of 1.86m<sup>2</sup> per dancer engaged to perform at any one time;

- b) the facilities should be secure, private and for single sex use only and should not be accessible by patrons;
- c) the facilities should be located near to, but not within, sanitary conveniences;
- d) the facilities should include private and lockable storage units for each dancer for the safe-keeping of valuables and clothing;
- e) the facilities should include a plentiful supply of wholesome chilled drinking water for all dancers;
- f) a strict no smoking policy should be enforced.

### 3. **Performances**

Dancers should generally only perform in the open public areas of the licensed premises which should at all times be appropriately stewarded and covered by CCTV cameras. There shall be no private booths. Dancers' genitalia should be covered with clothing at all times. There should be no touching between dancers and patrons at any time during a performance, the only contact allowed being the hand to hand payment of money at the conclusion of the performance. Any advertising of performances outwith the licensed premises whether by way of newspaper advertisements or notices at the premises may only depict dancers clothed as aforesaid. Performances involving the removal of clothes should not be visible from outwith the premises.

### 4. **Supervision**

The licensed premises should be appropriately stewarded by personnel licensed by the Security Industry Authority. Stewards should be provided in all public dance areas in addition to at least one steward positioned at each entrance to and / or exit from the premises. All public dance areas and entrances and exits should be monitored constantly while the premises are open to the public via the use of CCTV. CCTV should be provided of a high quality to ensure that individuals may be clearly identified whilst in any part of the premises. Licence holders should ensure that the CCTV cameras operate properly whenever dancers are performing on the premises. CCTV recordings should be retained for a period of at least 2 months and made available to the Licensing Standards Officers when required.

### 5. **General Health and Safety Issues**

#### **A. Risk Assessment**

A risk assessment should be undertaken and appropriate control measures should be implemented in respect of

- the precise work activities required of dancers
- the personal safety of dancers
- the use of chemicals which may come into contact with dancers' skin.

This is not an exhaustive list and licence holders should ensure that all hazards are assessed.

In addition, the premises should be subject to a fire risk assessment to the standard of the Fire Precautions (Workplace) Regulations 1997 as amended. This assessment should be recorded and kept available for inspection by a duly authorised fire safety officer of the Scottish Fire and Rescue Service.

## **B. Ventilation**

All dance areas and the changing facilities provided for dancers should be mechanically ventilated with fresh or purified air. There should be at least ten air changes per hour.

## **C. Temperature**

All dance areas and the changing facilities provided for dancers should be maintained with a minimum temperature of 25 Celsius / 72 Fahrenheit. A thermometer should be provided in all rooms used by dancers. Portable LPG heaters are not an acceptable form of permanent heating.

## **D. Lighting**

All dance areas, changing facilities provided for dancers and sanitary conveniences should have lighting of a sufficient standard to enable dancers and others to move around safely.

## **E. Cleanliness**

All dance areas, changing facilities provided for dancers and any furniture, fittings etc should be kept clean. The surfaces of floors, walls and ceilings of all dance areas, changing facilities and other parts of the licensed premises to which dancers have access should be capable of being kept clean.

## **F. Sanitary Conveniences**

Sanitary conveniences should be provided in accordance with the requirements of the Workplace (Health Safety & Welfare) Regulations 1992. The facilities should be for the exclusive use of dancers and should provide privacy and security from intrusion by members of the opposite sex and from patrons.

## **G. Washing Facilities**

Wash hand basins and showers should be provided in accordance with the requirements of the Workplace (Health Safety & Welfare) Regulations 1992 and the currently approved Code of Practice made thereunder. Such facilities should be for the exclusive use of staff and should have a supply of warm, or hot and cold water and provide privacy and security from intrusion by members of the opposite sex and from patrons. Washing facilities should be provided in the immediate vicinity of the sanitary conveniences and the changing facilities.

## **H. Condition of Floors**

Every floor used for dancing or for access to the dancing areas should be of a construction suitable for the intended uses and should be kept free from obstruction and from any substance that may cause a dancer to trip or slip.

## **I. Facilities to Eat Meals**

Eating facilities to include a table, chairs, kettle and sink with hot and cold water should be provided. Good hygiene standards should be maintained in the facility

## **6. Public Order Issues**

In the interests of providing for and maintaining public order and safety in the premises during the hours when they are open to the public, the licence holder should ensure that empty glasses and bottles are regularly cleared from areas to which the public have access. Any receptacles provided on the premises for the collection, or disposal by patrons, of empty bottles should be of solid construction, emptied regularly by staff and designed so that bottles already deposited therein cannot be retrieved by patrons. No glasses or bottles should be permitted in cloakrooms, sanitary conveniences or dance floors located on the premises. Sufficient shelves, ledges, tables and counters should be provided on the premises to accommodate glasses and bottles before collection.

## **7. Compliance**

Licence holders should seek their own professional advice if they are in any doubt as to whether their premises comply with the requirements of the guidance. Advice on health and safety issues may be sought from the City of Edinburgh Council's Environmental Health Services. The council's licensing standards officers will visit the premises from time to time to check for compliance with all aspects of this guidance.

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## LIST OF CONSULTEES RESPONDING TO CONSULTATION ON DRAFT STATEMENT OF LICENSING POLICY

In developing this statement, the Board has consulted widely and given due consideration to the views of those who responded to that consultation process. There are many organisations and people who have a stake in the leisure industry, including providers, customers, residents, law enforcers and the emergency services, all of whom have views and concerns that require consideration in the promotion of the licensing objectives.

[Appendix 4](#) to this statement details the consultation responses received and considered by the Board

The Board is required to have regard to the Guidance and to consult with :

- the Forum
- such other person or persons who appear to the Board to be representative of:
  - holders of premises and personal licences
  - persons having functions relating to health, education or social work
  - young people
  - persons resident within the licensing forum's area
  - such other persons as the Board thinks appropriate, and
- the relevant health board for the Board area.

***[DETAILS OF CONSULTEES WILL BE ADDED IN AT CONCLUSION OF THE CONSULTATION PROCESS]***

## LATE HOURS CATERING – COUNCIL POLICY ON HOURS OF OPERATION - UPDATED

[file:///H:/LHC\\_Policy\\_Sept\\_16%20\(3\).pdf](file:///H:/LHC_Policy_Sept_16%20(3).pdf) (currently located on Council website)

### CITY OF EDINBURGH COUNCIL – LATE HOURS CATERING POLICY Policy on Hours of Operation

#### **Petrol Stations, Supermarkets and Retail Shops**

Provided the premises are not being used primarily as a fast food takeaway premises and there are no environmental issues to address there will normally be a recommendation to grant the licence from 11pm to 5am.

#### **Takeaway premises**

All premises are categorised by location and in order to prevent crowd migration from clubs to takeaway premises, no Late Hours Catering licences will be granted with a closing hour beyond 3am.

#### **City Centre**

Where a premises is located within Ward 11 (Edinburgh city centre) the licence will not generally be granted beyond:

2am (Sundays to Thursdays)

3am (Fridays and Saturdays)

Hours may be restricted in areas which are significantly residential or where previous complaints or compliance issues have been identified.

#### **Premises situated on arterial and main bus routes but out with City Centre Ward 11**

Where premises are situated on arterial routes giving access and egress from the city the licence will not generally be granted beyond:

1am (Sundays to Thursdays)

2am (Fridays and Saturdays)

This may be restricted in areas which are significantly residential or where previous complaints or compliance issues have been identified.

### **Outwith City Centre**

Where premises are located outwith City Centre (Ward 11) the licence will not generally be granted beyond:-

12pm (Sundays to Thursdays)

1am (Fridays to Saturdays)

### **Tenement style property**

Where premises are located in tenement style property, the licence will not generally be granted beyond:

12 Midnight.

In this regard consideration will be given to additional hours provided the applicant can evidence the consent of neighbours having been obtained in respect of the hours applied for.

Tenement style property is defined as property when residential accommodation is located above the applicant premises (e.g. a takeaway shop located below flats).

### **Residential Streets**

When premises are located in residential locations or situated in areas where there is a history of complaints the licence will not generally be granted beyond:

12 midnight (Fridays and Saturdays only)

Residential streets areas are defined areas where there are no other businesses operating.

### **Premises falling into more than one category**

Where premises fall within more than one of the categories the category that allows the least number of trading hours would apply. In these circumstances it would open to an applicant to make an application to be considered as an exception to the policy.

**Festival and Festive periods**

During the Festival and Festive periods premises can request an additional hours trading. Accordingly, during the period of the Edinburgh Festival and Fringe as set from year to year, and during the Christmas and New Year period (18 December to 3 January in each year) a 1 hour extension to the usual terminal hour of the premises where such an hours have been included in the application will generally be considered suitable for granting. An application must be made to include this additional hours trading.

**British Summer Time**

British Summer Time has no effect on the number of hours during which premises are licensed to operate. This means that premises will continue to operate their normal hours and will not extend or reduce hours to take account of changes to British Summer Time. i.e. the beginning or, as the case may be, ending of British Summer Time is to be disregarded for the purposes of determining the time at which that period of licensed hours ends and accordingly, the period ends at the time it would have ended had British Summer Time not begun or ended.



**List of Arterial and Bus Routes considered suitable for later hours**

<b>Road</b>	<b>Street Names</b>
B900	Broughton Road
B901	Montagu Terrace
A1	London Road/Regent Road
A199	Salamander Street/Seafield
A1140	Portobello Road
A70	Gorgie Road/Dalry Road/Slateford Road
A71	Calder Road
A700	Melville Drive
A701	Minto Street
A702	Bruntsfield Place/Morningside Road
A7	South Bridge/Nicolson St/Dalkeith Road
A8	West Coates / St Johns Road / Corstorphine Road / Glasgow Road
A90	Dean Bridge/Queensferry Road
A900	Leith Street/Leith Walk
A901	Lower Granton Road/Lindsay Road/Commercial Street
A902	Ferry Road
A903	Granton Road

## APPENDIX 6

Definitions:- In sections A and B of this statement the following words shall have the meaning set out:-

“Act” means the [Licensing \(Scotland\) Act 2005](#) as amended from time to time

“Board” means the City of Edinburgh Licensing Board constituted in terms of section 5 and schedule 1 of the Act

“Chief Constable” means the Chief Constable of Police Scotland

“Council” means the City of Edinburgh Council constituted in terms of the Local Government etc. (Scotland) Act 1994 and subsequent legislation

“Forum” means the City of Edinburgh Licensing Forum established by the Council in terms of section 10 and schedule 2 of the Act

“Guidance” means the Guidance for Licensing Boards and Local Authorities issued by the Scottish Ministers in terms of section 142 of the Act on 4 April 2007

“Late Night Conditions” means the conditions of licence specified in the [Licensing Conditions \(Late Opening Premises\) \(Scotland\) Regulations 2007](#)

“LSOs” means the Licensing Standards Officers appointed by the Council in terms of section 13 of the Act

“Mandatory Conditions” means the conditions of licence specified in Schedules 3 and 4 to the Act and in Regulations all as amended from time to time

“Rules” means the rules and procedures set down and agreed by the Board from time to time, in terms of Schedule 1 to the Act

“Website” means the Board’s website at

**LICENSING STANDARDS OFFICERS**

LSOs are an integral part of the monitoring and compliance regime under the Act. Their role is :

- providing information and guidance concerning the operation of the Act to licenceholders, members of the public and other interested persons
- supervising compliance with licence conditions, Board policies and other requirements under the Act by premises licenceholders and holders of occasional licences.
- providing mediation services in order to avoid or resolve disputes or disagreements between the holders of premises or occasional licences and other persons concerning issues of compliance.

There is a firm commitment to ensuring that the LSOs are enabled to carry out their functions efficiently. This will include LSOs participating in licensed trade schemes such as Pubwatch and UNIGHT, as well as the Forum. LSOs will work alongside the trade, and are available for the most part during the licensed hours enjoyed by the trade in Edinburgh.

The Board recognises the interests of both citizens and businesses and will work closely with its partners, to assist licenceholders to comply with the law and the five licensing objectives it seeks to promote. Proportionate but firm action will be taken against those who commit offences. The Board expects enforcement agencies to adopt a similar approach and will seek to work actively with them to enforce the licensing legislation. In particular the Board intends to work closely with the police, sharing information where appropriate in order to enhance the promotion of the five licensing objectives.

## POOL CONDITIONS – OCCASIONAL LICENCES

**Edinburgh Licensing Pool Conditions**

V1.1 January 2018

**Management / Supervision**

1. The applicant or another suitably trained person with managerial responsibility is present throughout the event and when alcohol is served. A contact phone number will be readily available at all times.
2. The applicant will ensure that their contact details including a contact phone number, or those of a personal licence holder if application is made in their name, will be readily available at all times for Police, Licensing Standards Officers or other Authorised Officers
3. A personal licence holder is present for supervision at all times **and/or** at each bar whilst open for trade. **(delete as appropriate)**

**Inspection**

4. The occasional licence and / or public entertainment licence (delete as appropriate) is to be kept on the premises and made available for inspection when requested by a Licensing Standards Officer, Police Officer or other Authorised Officer, and any reasonable request by them is complied with.

**Children & Young People**

5. Children **and/or (delete as appropriate)** Young Persons will be prevented from gaining immediate access to any bar area.
6. Children will not be permitted access to the premises after **(insert Time)** hours. Young persons will not be permitted access to the premises after **(insert Time)** hours.
7. Children and / or Young Persons **(delete as appropriate)** permitted within the venue must be accompanied by a responsible adult at all times.
8. If not already provided, baby-changing facilities will be made available for children under the age of 5 years, in accordance Licensing Board's Policy concerning the Protecting Children and Young Persons from Harm objective.

**Training**

9. All staff employed in a position involving the sale or service of alcohol to undergo a minimum of two hours training prior to commencing duty (as defined in the Licensing (Training of Staff)(Scotland) Regulations 2007) with a record of this training being kept at the location and available for inspection by Police or Licensing Standards Officers.

10. The serving of alcohol by all staff must be undertaken in a responsible and safe manner

### **Signage**

11. A notice advising that children and young persons **are/are not (delete as appropriate)** admitted is displayed at the point of entry.
12. Signage must be displayed at the entrance to each designated area listing the conditions of entry.
13. Appropriate signage must be clearly displayed, at every point of sale of alcohol, relative to age restrictions, alcohol provision and the relevant conditions of the licence. Signage should clearly identify:
  - No under 18s served alcohol
  - A Challenge 25 policy
  - The closing time of individual bars
  - Responsible drinking message
  - Be clearly legible

### **Stewards**

14. Appropriate stewarding to be provided to supervise admission, monitor occupant capacity and ensuring **supervision / control of patrons (delete as appropriate) using the facility / attending the event (delete as appropriate)**. All those persons engaged in such duties to be registered as door stewards with the Security Industry Authority, and authorisation must be clearly displayed.
  - Appropriate steps are taken to supervise admissions to the event and to objectively monitor the occupant capacity.
  - There is a written policy in respect of the management of dispersal.

### **Noise**

15. All amplified music and vocals to be controlled to the satisfaction of the Director of Place - Updated
16. All amplified music and vocals shall be so controlled as to be inaudible in the nearest neighbouring residential premises /or noise sensitive premises / after **(insert time – Normally 23:00hrs) (delete as appropriate)**.
17. Music and vocals performances are not permitted.
18. Amplified Music and vocals are not permitted.

### **Outside areas**

19. The licensed area complies with the area permitted by the relevant tables and chairs permit and it is clearly defined and enclosed by suitable barriers and controlled so that no drinks are allowed to be taken from it
20. At least one designated member of staff to be present within the area at all times to supervise admissions and to objectively monitor the occupant capacity, and to have an effective means of communication with the premises.
21. The use of the tables and chairs area shall cease (insert time) hours each evening
22. All street furniture including tables and chair, barriers, etc must be off the street and in storage by (insert time) hours
23. The designated area will be regularly serviced and must be kept clear of empty receptacles, unattended glassware and all refuse removed.
24. The licensed area is fully monitored and recorded by CCTV.
25. All drinks / Alcoholic drinks will be supplied or decanted into plastic or paper containers. to (delete as appropriate)
26. All drinks being consumed in the external licensed area will be supplied or decanted into plastic or paper containers.
27. Supply of alcohol will only be permitted to persons seated at tables / and as an ancillary to a substantial meal. (delete as appropriate)
28. No alcohol should be removed from the delineated licensed area / or taken between two licensed areas. (delete as appropriate)
29. Staff to be trained in conflict resolution in order to deal with drunks, under-age sales, beggars and problematic customers attempting to use tables, beg or steal from customers or alternatively appropriate SIA registered stewards to be employed.
30. All Tables and Chairs are removed from the street in accordance with the relevant Tables and Chairs Permit's approved hours of operation.
31. All patrons must be seated.

### **Events**

32. A site plan (specific to name of event) showing the proposed licensed area is provided to the City of Edinburgh Council Licensing Board and there are no changes to this prior to, or during, the event.
33. Appropriate steps must be taken to ensure that the number of patrons within the public area does not exceed the agreed capacity of the premises.

34. The Alcohol Management Plan, Drug Awareness Policy, Medical Plan, Event Plan, Stewarding Plan (delete as appropriate) submitted prior to the event will be adhered to for the duration of the event
35. Appropriate stewarding will be in place to provide adequate control of the premises and is to be in accordance with the Stewarding Plan submitted to the EPOG for the event. The said Stewarding Plan will be adhered to for the duration of the event.
36. Appropriate provision is to be made in order to care for persons refused entry to the event due to intoxication or being under the influence of other substances – such persons are not to be left unattended
37. All persons shall be subject to a 'Challenge 25' assessment and where any doubt exists they will be required to show proof that they are 18 years of age or over.
38. The applicant will comply with all reasonable / lawful requests made by authorised officers of the Council and/or Police Officers
39. All reasonable requests, which do not have an operational impact, made by the Police or other council official should be complied with. All requests of an operational nature must be directed through the MACC.
40. A daily written record to be maintained by security staff/ bar staff, to detail refusals and incidents and state circumstances.

Details of mandatory conditions – Occasional Licences

***To be added***



Mandatory Conditions – Premises Licences

***To be added***

Mandatory Conditions – Late Night Premises

***To be added***

T: 0131-244 2358  
E: Alex.kelly@gov.scot

Our ref:  
22<sup>nd</sup> February 2018

Dear Licensing Board,

Under the terms of the Licensing (Scotland) Act 2005 Ministers may issue guidance to Licensing Boards as to the exercise of their functions under the Act. I am issuing two updated chapters for the guidance. As a temporary measure these are being issued on a non-statutory basis.

You may be aware that Scottish Government officials have been working on updating the current liquor licensing guidance, assisted by stakeholders. As Boards will already be working on updating licensing policy statements, work on the parts of the guidance relating to licensing policy statements, and overprovision assessments has been prioritised.

We considered that it would be of assistance to issue drafts of the chapters that we have updated so far, as emerging guidance at this stage. i.e. the original chapters 2 and 3, which relate to licensing policy statements and overprovision assessments respectively. These have been amended to take into consideration the further Acts that have impacted upon the licensing regime since the original guidance was issued. The intention has been to work with the grain of the existing guidance, so that updated guidance does not undermine work that is already in progress.

I would like to stress that a non-prescriptive approach has been taken to drafting the revised guidance, which affords Boards the flexibility to operate and take decisions in light of their particular circumstances. The guidance does not seek to instruct boards exactly how to make the Act work. It is simply intended to assist boards as they carry out their responsibilities under the Act. Ministers wish boards and their clerks to be creative and innovative and to implement the Act in a way that best meets local needs and circumstances.

Ongoing work will continue on the remainder of the guidance, so over the next few months, we would hope to complete an update of the overall guidance, and then move to issue it on a statutory basis.

Yours sincerely

Alex Kelly, Alcohol Licensing Policy Project Manager

## **Statements of Licensing Policy Background**

6.1 This chapter provides guidance on the development and preparation of statements of licensing policy (referred to as a ‘licensing policy statement’), which Section 6 of this Act requires every Licensing Board to publish, before the beginning of each ‘licensing policy period’.

6.2 A licensing policy statement should provide the policy on which Licensing Boards would base their decisions in implementing their functions under this Act. It may set out a general approach to the making of licensing decisions, but must not ignore, or be inconsistent with, provisions in the Act.

6.3 The ‘licensing policy period’ is the period between each relevant date.

6.4 The ‘relevant date’ means the date occurring 18 months after an ordinary election of councillors for local government areas takes place under Section 5 of the Local Government etc. (Scotland) Act 1994.

6.5 A licensing policy statement will generally have effect from 18 months after a local government election until 18 months after the next local government election. For example, in the case of a local government election in May 2017, followed by the next election scheduled for May 2022, the licensing policy statement would, in the usual case, last from November 2018 until November 2023.

Licensing Boards may decide that the licensing policy period to which the statement relates is to begin on an earlier date than it normally would. If they do so, they must publicise the date on which they have decided the licensing policy period is to begin.

6.6 Newly appointed Licensing Boards can use the policy inherited from their previous Licensing Board during the interim period. The alignment of licensing policy statements to local elections allows the Licensing Board to take stock, take the views of others into consideration, gather evidence and set policy statements that reflect their views and aspirations.

6.7 In exercising their functions under this Act a Licensing Board must have regard to the current licensing policy statement and any relevant supplementary licensing policy statement, published by the Licensing Board. Licensing Boards may wish to consider keeping the effectiveness and rationale of the licensing policy statement under review and to make revisions as and when appropriate.

6.8 A Licensing Board may also issue supplementary licensing policy statements. This may be due to unanticipated or emerging issues. If it decides to do so, it must publish the statement (referred to under this Act as a ‘supplementary licensing policy statement’).

6.9 The supplementary licensing policy statement will be with respect to the exercise of their functions during the remainder of that licensing policy period or until it is superseded by another supplementary licensing policy statement or licensing policy statement i.e. until 18 months after the next local government election.

6.10 There is no limit to the number of supplementary licensing statements which can be published during the licensing policy period.

6.11 Licensing Boards cannot delegate responsibility for determining their licensing policy statement or supplementary licensing policy statements.

### **Licensing Objectives**

6.12 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must ensure that the policy stated seeks to promote the 5 licensing objectives set out in this Act, which for the purposes of this Act are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health; and
- Protecting children and young persons from harm

Licensing Boards must also have regard to these 5 objectives when carrying out their functions under this Act. The 5 objectives carry equal weight and importance.

Inconsistency with one or more of the objectives could provide a basis for refusal of an application.

A policy must also be consistent with the principles of what constitutes a lawful policy in general administrative law terms. In particular –

“...such a declared policy may be objectionable if certain conditions are not fulfilled. A policy must be based on grounds which relate to and are not inconsistent with or destructive of the purposes of the statutory provisions under which the discretion is operated. Moreover, the policy must not be so rigidly formulated so that, if applied, the statutory body is thereby disabled from exercising the discretion entrusted to it. Finally, the individual circumstances of each application must be considered in each case whatever the policy may be. It is not permissible for a body exercising a statutory discretion to refuse to apply its mind to that application on account of an apparent conflict with policy.”

See **Calderwood v Renfrewshire Council**, 2004 SC 691

To have a licensing policy statement is a statutory requirement. It is bolstered by statutory consultation procedure. It has weight in 2 ways when a Licensing Board carries out its functions under the Act. First, a Licensing Board must ensure that it seeks to promote the licensing objectives in making policy. Second, the Licensing Board must have regard to the Policy in the exercise of their functions.

As the licensing policy must seek to promote the licensing objectives, it must not be inconsistent with the licensing objectives. If the licensing objectives pull in one direction and policy in the opposite, then the objectives rule. If both tend to the same view then policy simply reflects the licensing objectives.

Where an application comes before a Licensing Board which is contrary to the licensing policy, this does not necessarily mean that the application should be refused. It would only be to refuse the application if it was inconsistent with the licensing objectives. Policy is an expression of how those objectives can be met. Inconsistency with policy can therefore be an important factor in deciding whether there is an inconsistency with the licensing objectives.

Licensing policy is an important part of an assessment of the wider considerations at play within the Licensing Board area. **As licensing policy has a substantial role to play in promoting how the licensing objectives might be met, inconsistency with policy may be an indicator that the refusal of the application should follow. Equally, consistency with policy maybe an indicator that an application is consistent with objectives.** The licensing policy is entitled to be given considerable weight. It is not merely a guideline. The Licensing Board is entitled to expect conformity unless there is a positive or specific reason to justify departure from it. It is for the Licensing Board to determine whether what is proposed is inconsistent with the policy and whether the grant of the application would impact upon the rationale for the policy.

## **Preparation of policy statements**

6.13 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must consult on the proposed policy statement(s) with:-

- the Local Licensing Forum for the Licensing Board's area;
- if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2 of this Act. (i.e. holders of premises licences and personal licences, the Chief Constable, persons having functions relating to health, education or social work, young people, person's resident within the Forum's area); then the Licensing Board must consult such person or persons as appear to it to be representative of those interests of which the membership is not representative;
- the relevant health board; and
- such other persons as the Licensing Board thinks appropriate.

6.14 Licensing Boards must make reasonable efforts to identify and engage with the persons or bodies concerned and have regard to their views. The terms of the Act do not prevent them from consulting other bodies or persons before determining their policies. The Licensing Board may wish to consider consulting widely on their proposed policies. There are a variety of methods of seeking views and gathering evidence to enable Licensing Boards to develop a formal consultation document, such as pre-consultation exercises, evidence sessions and making use of the existing policy as a basis for review. It is important that Licensing Boards consider

and evaluate any evidence gathered to ensure there is a reliable and credible basis on which to develop their policies. Licensing Boards should give appropriate weight to the views and responses obtained.

6.15 After the initial evidence gathering process Licensing Boards may wish to consider publishing their draft policy for comment and take cognisance of responses.

6.16 Licensing Boards may wish to consider clarifying the reasons for their decision making in arriving at their licensing policy statement.

6.17 The licensing policy statement must be published before the beginning of the licensing policy period. Once published the Licensing Boards must make copies of a licensing policy statement or a supplementary licensing policy statement available for public inspection free of charge. Licensing Boards must also publish the fact that the statement has been published and publicise details of the arrangements for making copies available for public inspection.

#### **What the Licensing Board may require:**

6.18 For the purpose of preparing a licensing policy statement or supplementary licensing policy statement, the Licensing Board may require statistical or other information from:-

- the chief constable;
- the relevant health board, or
- the relevant council

This must be provided to the Licensing Board on request, provided it is a reasonable request for the purposes of preparing such a statement.

#### **What must be included:**

6.19 Having carried out their duty to assess overprovision under Section 7 of this Act, Licensing Boards must, in particular, include a statement in their licensing policy statement as to the extent to which the Board considers there to be overprovision of licensed premises, or licensed premises of a particular description, in any locality within the Licensing Board's area. If a Licensing Board decides that there is no overprovision, they must include a statement to this effect. (see Chapter 7 for further information).

#### **Contents which Licensing Boards may consider:**

6.20 Considerations may include:-

- providing a clear indication of the Licensing Board’s policy and may set out a general approach to the licensing process and the making of licensing decisions.
- stating clearly that licensing is about regulating the sale of alcohol and premises on which alcohol is sold, and for connected purposes within the terms of the Act.
- bearing in mind that no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence where such provision has been made in the Act.
- including a general statement on the role and remit of Licensing Standards Officers.
- Including, in accordance with section 46(6) and (7) of the Act, a note which states that where an application is made for the confirmation of a provisional premises licence, that the Licensing Board may make a variation to the conditions for the purposes of “ensuring consistency with any licensing policy statement since the licence was issued”. This may be relevant if a supplementary licensing policy statement is subsequently issued after a provisional licence was issued.

### **Licensed Hours**

- state that Licensed hours will be those agreed following the Licensing Board’s consideration of the operating plan and any mandatory and local licence conditions applied. Particular attention should be drawn to those premises wishing to open after 0100 hours since mandatory licence conditions will apply. (The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007). In developing its policy on licensed hours the Licensing Board may wish to take account of the views of those represented by the Local Licensing Forum.
- provide a clear indication of the Board’s policy in relation to licensed hours in general and outline any specific areas of the policy which may differ from that general policy e.g. where different policies may apply in different localities according to local circumstances, if appropriate. Evidence for the policy approach should be included.
- state that each application will be considered on its individual merits, but the licensing policy statement should provide information on the Licensing Board’s policy on licensed hours. Licensing policy statements should recognise that licensed hours are important not only to individual licensed premises but can have a wider impact for an area. For example, consideration should be given as to ways in which large numbers of customers leaving premises simultaneously can be appropriately managed. This might be necessary to reduce friction outside establishments, at taxi ranks and other transport sources, which can lead to disorder and



disturbance. Licensing hours should not unnecessarily inhibit the development of local licensing economies.

- observe the requirement set out in section 64 of the Act which provides a presumption against routine 24 hour opening of licensed premises. In terms of Section 64 (2) of the Act, the Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.
- Licensing Boards should be willing to consider “exceptional circumstances” for a special event or occasion to be catered for on the premises or a special event of local or national significance.

In such circumstances, the Licensing Board may extend the licensed hours in respect of the premises by such period as is specified in the extended hours application or such other period as the Licensing Board consider appropriate. Such an extension of licensed hours has effect for such period as is specified in the application or such other period as the Licensing Board consider appropriate; but in either case the period must not exceed one month.

It is unlikely that “exceptional circumstances” would be justified in the case of premises where there were routine requests to sell alcohol for 24 hour periods. In considering applications for licensed hours Licensing Boards may wish to consider applications for up to 14 hours as being reasonable but local circumstances and views of those represented by Local Licensing Forums should always be considered. Any application for licensed hours for more than 14 hours should require further consideration of the effect of granting extra operating hours.

### **Relationship with other strategies**

- Provide clear indications of how the Licensing Boards will take into account other matters or strategies relating to alcohol when developing policy statements.

### **Transport**

- describe any arrangements agreed between the police and Licensing Standards Officers for reporting views or concerns to the local authority transport committee (or other bodies with responsibility for transport in their area).
- The police are best placed to advise on the need to disperse people from town and city centres quickly and safely to avoid high concentrations of people in particular vicinities which may lead to disorder, disturbance and pressures on public transport facilities.

### **Tourism, planning and building control**

- indicate that arrangements have been made for Licensing Boards to receive, when appropriate, reports on the local tourist economy for the area to ensure that these are reflected in their considerations.
- indicate that planning, building control and licensing regimes have separate processes and applications which have to be considered on their merits under the relevant regime. Licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee, nor should they seek to challenge decisions taken by that committee. Similarly, the granting by the Licensing Board of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building warrants /completion certificates where appropriate. Licensing Boards may wish to give consideration to relevant processes and communication arrangements between the regimes to avoid duplication and inefficiency'

### **Duplication**

- include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation covering health and safety at work and fire safety will place a range of duties on the self-employed, employers and operators of venues. Such obligations should not be repeated in the licensing regime.

### **What should not be included:**

6.21 Licensing Boards may not, in their licensing policy statement, or supplementary policy statement, indicate an intention to introduce a restriction on the sale of alcohol for consumption off the premises to those over 18 but under 21, whether in relation to some or all premises in its area. However, this does not prevent them from imposing licence conditions restricting off-sales of alcohol to people under 21 on a case by case basis.

## **The Overprovision Assessment**

### **Approach to licensing and overprovision**

7.1 This chapter provides guidance to assist Licensing Boards to discharge their duty to assess overprovision of licensed premises in their area, which Section 7 of this Act requires every Licensing Board to include in their Licensing Policy Statement, a statement as to the extent to which the Licensing Board considers there to be an overprovision of:

- licensed premises, or
- licensed premises of a particular description, in any locality within the Board's area.

Licensing Boards may reach the conclusion that there is no overprovision. If so, they must include a statement to this effect in their Licensing Policy Statement.

A statement regarding overprovision within a licensing policy statement has an important role. Inconsistency with policy is a powerful indicator that the refusal of the application should follow.

7.2 In Section 7 of this Act, references to “licensed premises” do not include references to any premises in respect of which an occasional licence has effect, therefore these should be left out of the assessment of overprovision.

7.3 Members' clubs should also be discounted for the purposes of overprovision assessments carried out by Licensing Boards provided they meet the criteria in terms of regulations made under Section 125 of this Act.

7.4 Consultation is required to be carried out by the Licensing Board. This may disclose that communities are placed under stress only by licensed premises sharing certain characteristics: for example, a concentration of off-sales in a residential area. Therefore proper regard should be given to the contrasting styles of operation of different licensed operations and the differing impact they are likely to have on the promotion of the licensing objectives.

7.5 Licensed premises of a particular description may be determined in terms of their styles of operation. Information may be gleaned from operating plans for this purpose. The Licensing Board should decide how it wishes to categorise premises by description. For example: they may consider utilising the definition of categories contained in the Town and Country Planning (Use Classes) (Scotland) Order 1997 or other types of classification.

7.6 The overprovision assessment should be evidence based, with the Licensing Boards having the flexibility to decide whether there was overprovision generally in relation to licensed premises, only overprovision in relation to a particular identifiable sector or that there was no overprovision, in any locality.

7.7 It is for the Licensing Board to determine what the overprovision policy will be and how the evidence will be interpreted and weighted. When doing so, they must seek to promote the licensing objectives.

7.8 This approach:

- allows Licensing Boards to take account of changes since the last licensing policy statement;
- improves public and licensed trade confidence in a system by setting out clearly the grounds on which overprovision should be determined;
- recognises that halting the growth of licensed premises in localities is not intended to restrict trade but may be required to preserve public order, protect the amenity of local communities, and mitigate the adverse health effects of increased alcohol consumption resulting from growing outlet density.
- provides potential entrants to the market with a clear signal that they may incur abortive costs if they intend to apply for a licence in a locality which the Licensing Board has declared to have reached overprovision.

### **Determining Localities**

7.9 It is for the Licensing Board to determine the “localities” within the Licensing Board’s area for the purposes of this Act. Licensing Boards can determine that the whole of the Licensing Board’s area is a single locality. The choice of locality is flexible to reflect the different circumstances in different geographical areas throughout the country.

The choice of locality must, however it is done, be rational and capable of justification in the event of a legal challenge.

7.10 The process by which the selection exercise to determine the “localities” is carried out is largely a matter for the Licensing Board. The selection of appropriate localities is based on having a broad understanding of provision across the Board’s area. Licensing Boards may wish to make use of their own local knowledge/understanding of areas. They may wish to carry out informal consultation with interested parties and/or make use of their existing licensing policy statement in order to assist them to come to a view as to which localities may be appropriate to include in their licensing policy statement.

Information may be obtained from a number of stakeholders, such as the relevant health and/or social care body who may be able to provide, amongst other things, data on alcohol related mortality and hospital admissions. The chief constable may be able to identify problematic areas where it can be demonstrated that crime, disorder and nuisance are caused by customers of a particular concentration of licensed premises and/or suggest areas in which the number of licensed premises or premises of a particular description are potentially approaching overprovision.

7.11 It is not necessary to divide the whole of the Licensing Board's area into separate localities. A locality could, for example, consist of a particular town, a city centre, a street, a collection of streets, a council ward, datazone(s) – (Scottish Index of Multiple Deprivation) or the whole of the Licensing Board's area.

The Licensing Board may wish to consider making an initial assessment by closely scrutinising the premises across the whole of their area, then proceed to determine those localities it proposes to examine. After carrying out the initial assessment, the number of premises, or premises of a particular description in those localities should be identified, then the Licensing Board should determine the capacities and have regard to other matters it thinks fit and fulfil its duty to consult.

### **Matters for the Licensing Board to have regard to**

7.12 In considering their policy on overprovision and whether there is overprovision in any locality, the Licensing Board –

- must have regard to the number and capacity of licensed premises in the locality/localities;
- may have regard to such other matters as the Licensing Board thinks fit including, in particular, the licensed hours of licensed premises in the locality/localities; and
- must consult the persons specified in Section 7(4) of this Act. Those persons are: the chief constable, the relevant health board, such persons as appear to the Licensing Board to be representative of the interests of – (i) holders of premises licences in respect of premises within the locality, (ii) persons resident in the locality, and such other persons as the Board thinks fit.

### **Capacity of licensed premises**

For the purposes of the overprovision assessment, the operating capacity of premises licensed to sell for on-sale consumption should be taken from the operating plan. The definition of capacity for on-sales and off - sales is set out in section 147 of the Act.

“Capacity”, in relation to licensed premises, means –

(a) in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption on the premises (or, as the case may be, that part), the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time, and

(b) in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption off the premises (or, as the case may be, that part), the amount of space in the premises (or, as the case may be, that part) given over to the display of alcohol for sale.

Based on these definitions the proposed methodology for calculating capacity for on-sales and off-sales is set out below:

**On-sales**

The Buildings (Scotland) Regulations 2004 assessment methods set out in the Technical Handbooks issued in support of these regulations.

**Off-sales**

The maximum linear measurement, in metres, of the frontage used to display alcohol, including the areas utilised for off-shelf seasonal or any other promotional displays.

Licensing Boards should be consistent when using terminology for measurement.

**Other matters as the Licensing Board thinks fit**

- Licensing Boards may have regard to such matters as they think fit including, in particular, the licensed hours of licensed premises in a locality. Other considerations may include the relevant circumstances in the area or the proximity of specific types of premises, such as facilities for vulnerable adults with alcohol addiction issues.

**The Licensing Board may not delegate certain functions**

7.13 Although Licensing Boards may authorise certain others to exercise some of their functions on their behalf . In accordance with Schedule 1 paragraph 10(2) , they may not delegate, amongst other things, the following functions:

- determining the Board’s policy for the purposes of a licensing policy statement or supplementary licensing policy statement.
- determining for the purposes of any such statement, whether there is overprovision of licensed premises, or premises of any particular description, in any locality.

**Duty to consult and gather evidence**

Licensing Policy Statement

7.14 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must consult -

- the Local Licensing Forum for the Licensing Board’s area;
- if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2 of this Act. (i.e. holders of premises licences and personal licences, the chief constable, persons having functions relating to health, education or social work, young people, person’s resident within the Forum’s area); then the Licensing Board must

consult such person or persons as appear to it to be representative of those interests of which the membership is not representative;

- the relevant health board; and
- such other persons as the Licensing Board thinks appropriate.

### Overprovision Assessment

In considering whether there is overprovision in any locality, for the purpose of the statement, the Licensing Board must consult -

- the chief constable,
- the relevant health board,
- such persons as appear to the Licensing Board to be representative of the interests of –
  - holders of premises licenses in respect of premises within the locality,
  - persons resident in the locality, and
- such other persons as the Licensing Board thinks fit.

7.15 The duty of the Licensing Board to consult prior to the formulation of overprovision assessments illustrates the importance of partnership working in the achievement of the licensing objectives.

7.16 As well as consultation with representative bodies and organisations, Boards may wish to hold well-publicised ‘open meetings’ in particular localities, at which members of the community can be afforded an opportunity to express their views on the formulation of policy.

7.17 The results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality.

Factors which the Licensing Board may take into account include:

- the information provided by the chief constable;
- subject to the constraints of data protection legislation, CCTV footage supplied by the chief constable or another source which illustrates disorder associated with the dispersal of customers in any locations;
- evidence gathered from local residents of anti-social behaviour associated with licensed premises;
- information from the local authority’s Environmental Health Department about noise complaints which can be attributed to the operation of licensed premises in a locality;
- data supplied by the relevant health and/or social care body, for example, alcohol related mortality or morbidity.

It has long been Scots licensing law that for a Licensing Board to make a finding that a harm will arise because of or in consequence of the sale of alcohol, there must exist a causal link between the alleged cause and the alleged harm.

The dependability of the 'causal link' is based on the quality and nature of the evidence used.

Causation must be per caselaw on a more than "but for" basis as licensing is a civil law matter, the proof of the link must be on a balance of probabilities, that is "more likely than not". Once you show that link and develop the licensing policy statement (and overprovision assessment) based on it, these documents will inform the future consideration of licence applications, and will carry considerable weight.

The onus then falls on the applicant to show that their application should still be an exception.

7.18 The overprovision assessment must be based on credible evidence of a causal link between the engagement of one or more of the licensing objectives and a concentration of licensed premises or of licensed premises of a particular description in a locality.

7.19 Licensing Boards, on gathering information and evidence, must consider the fine detail and the local issues, applying appropriate weight to their findings during their decision-making process.

7.20 Consideration should be given as to whether aggregated information and evidence from a number of sources points towards a particular conclusion.

7.21 In considering their policy on overprovision and whether there is overprovision in any locality, the Licensing Board should not take into account:

- the manner in which individual premises in a locality are managed, since it is possible that well-managed premises may act as a magnet for anti-social behaviour, or may eject a substantial number of customers who collectively produce disorder and nuisance to a degree which is unacceptable;
- any concerns as to the quality of management of individual premises, which should be addressed separately through other statutory mechanisms.
- The need or demand for licensed premises in a locality. Commercial considerations are irrelevant.

7.22 If a Licensing Board comes to a conclusion that there is a causal link between the alleged cause and the alleged alcohol related harm in a locality to such an extent that it would be clearly inconsistent with any of the licensing objectives, the Licensing Board should include details of this in their licensing policy statement, which incorporates the overprovision assessment. A Licensing Board may wish to express this in such a way that interested parties are left in no doubt as to the reasons for



adoption of the policy, specifying the relevant locality, and including information on the evidence upon which the Licensing Board relied and the material considerations which were taken into account.

7.23 The licensing policy statement or supplementary licensing policy statement (see Chapter 6 for an explanation of these terms) should identify the factors taken into account in the overprovision assessment and it should make it clear however that each application will be decided on its merits.

### **The effect of the overprovision assessment**

7.24 When determining premises licence applications and applications for major variations, Licensing Boards should amongst other things, take into consideration the provisions under Section 23(5)(e) and 30(5)(d) of this Act respectively. These specifically relate to grounds for refusal, in the context of overprovision. Licensing Boards can refuse an application if they consider that there would be overprovision in the locality as a result of the application being granted.

7.25 The application need not be the subject of an objection for the application to be refused.

7.26 The effect of an overprovision policy, included in a licensing policy statement, is to create a rebuttable presumption against a grant of an application.

There may be exceptional cases in which an applicant is able to demonstrate that the grant of the application would not undermine the licensing objectives, or the objectives would not be undermined if the applicant's operating plan were to be modified or the grant of the licence was made subject to appropriate conditions.

If overprovision is established, Licensing Boards may (but are not obliged to) identify the matters that they consider specific and relevant to rebutting the presumption against grant. Licensing Boards may expect that applicants seeking a licence in such circumstances should provide robust and reliable evidence as to why the benefit to the licensing objectives, through the grant of their application, outweighs any detriment to the licensing objectives and the overprovision policy. In such circumstances, Licensing Boards may have grounds not to follow their own policy.

It is important to note that upholding the objectives is not something which, in itself, rebuts the presumption against grant created by overprovision. Every application granted by the Licensing Board is tested against the licensing objectives. If the Licensing Board considers that any application is inconsistent with one or more of the licensing objectives (regardless of overprovision) it is a ground for refusal and the application would fail.

7.27 As the application of the policy must leave room for exceptions, the policy statement should not set a numerical quota of licensed premises or premises of a particular description for any locality.

7.28 If a Licensing Board has determined that there is no overprovision in any locality, it is still entitled to refuse an application based on overprovision.

## Summary

7.29 The formulation of the statement on overprovision required by section 7 of the Act involves the following process:

- the selection of appropriate localities based on a broad understanding of provision across the Board's area;
- the identification of the number of licensed premises or premises of a particular description in those localities, including their capacities and may have regard to any such matters the Board thinks fit, including, in particular, licensed hours;
- consultation with the relevant persons;
- an assessment of the information gathered from those persons, taking into account only relevant considerations and material which has a proper evidential base to consider if there is a dependable causal link between the operation of licensed premises in a locality or localities and relevant harms; and
- reaching a decision as to whether it can be demonstrated that, having regard to the number and capacity of licensed premises or licensed premises of a particular description in a locality and other matters, it is undesirable to grant further licences or further licences for premises of a particular description, in any locality within the Licensing Board's area.
- including a statement on overprovision in the Licensing Board's published licensing policy statement.

It is important to identify and agree the proposed locality or localities before lawfully and rationally carrying out a consultation to allow consideration to be given to issues/concerns that may be raised and any assessment of overprovision.

Licensing Boards may review an overprovision statement at any time. For example, when new developments or new evidence comes to their attention. If they decide to amend it, they should publish a supplementary licensing policy statement and publicise the date on which it is to begin.

When Licensing Boards subsequently consider applications, they must consider the most recent licensing policy statement and act lawfully with regard to the legal principles underpinning the right to appeal and observe the correct legal tests in their decision making. Each application is to be considered on its own merits.

Licensing Boards, in the context of carrying out an overprovision assessment, should therefore be mindful of the five grounds of appeal under this Act:

- that the Licensing Board erred in law;
- that the Licensing Board based its decision on an incorrect material fact;
- that the Licensing Board acted contrary to natural justice;
- that the Licensing Board exercised its discretion in an unreasonable manner; and
- in the case of review hearing, that the decision was disproportionate.

## APPENDIX FOUR

### LICENSING BOARD HEARINGS – CONSULTATION RESPONSES

#### **SESSION 1 – 4<sup>th</sup> May 2018 (Cllrs Norman Work; Joanna Mowat; David Key; Cammy Day; Gillian Gloyer)**

The Convener introduced the session, welcoming everyone in attendance. The Depute Clerk, Morag Leck, explained the process to be followed during the sessions: the Board would hear from those who had contributed to the initial consultation on the Board's Statement of Licensing Policy, regarding the terms of the written representations made by them. Board members would then have the opportunity to ask questions of those in attendance, to clarify any of the points made.

The Depute Clerk confirmed that the Edinburgh Licensing Forum had not submitted a formal contribution to the consultation process at this stage, but Rosaleen Harley was present in her capacity as Convener of the Licensing Forum to provide an update on the Forum's consideration of the Board's policy and consultation.

**Rosaleen Harley** explained that the mix of representatives at the Forum meant that it took time to reach consensus among Forum members and that the timings of Forum meetings added to the difficulty. The Forum had received presentations on a number of topics, including from Police Scotland and the Edinburgh Alcohol and Drugs Partnership. The Forum had had detailed discussions about matters such as:-

- Policy on the use of Occasional Licences
- Pop-up bars and venues
- Organised pub-crawls and tours
- Bring Your Own Bottle (BYOB) establishments

She confirmed the Forum was meeting later in the day and that the Forum's views would be gathered for future communication to the Board.

Councillor Key asked Ms Harley for clarification about the Forum's concerns regarding BYOB premises. She explained that whilst the Forum was aware this was not an area of responsibility for

the Board, the Forum was still interested in the way these premises operated, particularly regarding responsible consumption of alcohol on the premises. She confirmed this had been raised by one of the trade representatives on the Forum.

The Convener noted that with regard to temporary licensing of premises and the use of occasional licences for that purpose, the Board encouraged applications to be made for full licences rather than operating by means of occasionals. He suggested that with a BYOB operation he was not so sure this was something the Board could deal with.

Councillor Mowat asked if there were specific concerns from the Forum about outside drinking areas, noting the reference to pop-up bars, etc. Rosaleen Harley explained that the Forum had concerns that when assessing localities for possible overprovision, were the capacities of outside areas being taken account of by the Board?

**Roger Colkett** was present for the Tollcross Community Council. He referred to the terms of the community council's representation. With regard to amplified music and vocals, he suggested that what seemed to be happening was that whenever a licence holder applied for variation of their licence they were applying for a change of the licensing condition as a matter of course, as if it were obligatory to do so. He advised that when the change to policy had been considered by the Board, community councils had been assured that the change of condition would only happen in particular cases.

Councillor Day asked Mr Colkett whether the community council had a view on the areas of serious special concern as referred to in the Board's policy. Did he agree with extending these areas to make them overprovision localities? Mr Colkett advised that the community council had a concern that there were so many off sales licences for shops that sold food across the city. This had the effect of normalising the sale of alcohol and it also potentially prompted impulse buying.

**Tracey Stewart** of Rowan Alba advised that she was not just speaking for that organisation, but also on behalf of Leith In Action Group. She referred to a consultation which had been carried out in the Leith area which had included input from licensees. It had been intended to put forward the details

of that consultation as a representation to the Board at the time, but a Council reorganisation had prevented that from happening. There had been a keenness to ensure that the work carried out as part of that consultation exercise was not lost, which was why a representation was now being made to the Board.

Councillor Day advised that he recalled the previous Board membership had received the report. He noted the conclusions of the report. In particular with regard to pre-loading, where alcohol was being bought in supermarkets and consumed at home before people went out, how would the Board deal with that? Did Ms Stewart think the simple answer was to declare the Leith area as being an overprovision locality? Ms Stewart advised she didn't really think she was equipped to comment upon overprovision. Councillor Day asked, in terms of her role, whether an increase in licensed premises would help or hinder that role. Ms Stewart gave the example of a small off sales premises building up a local relationship with alcohol-dependent customers, looking out for them and encouraging them to stick with lower strength alcohol. They provided a helpful link in the community. She noted in the particular example that the shop had now closed. Customers would therefore go elsewhere including to supermarkets where there might not be the same local concern for customers.

Councillor Mowat noted one of the report's recommendations referred to preventing sale of alcohol in community centres and schools. She asked whether this had been in response to specific concerns about situations where events were organised in these venues where children were present or whether it was a more general concern than that. Tracey Stewart advised she thought this had referred to events where children were present in particular, but could check that further.

**Fran Wasoff** was present for the New Town and Broughton Community Council. She made the general point that the community council felt there should be a fairer balance between the community and licence holders. She referred to the way in which variation applications were dealt with by the Board, specifically regarding amplified music and vocals in premises. It was the NTBCC's view that they didn't see why the old condition was changed, and in their view it should revert to the previous form of wording. This was on the basis that whoever was responsible for noise should be the ones who should have to deal with the noise. She made the point that residents did not know where to go, if they had to make a noise complaint and how to make a complaint.

With regard to overprovision, she advised the NTBCC considered parts of the New Town to be overprovided – including George Street, Rose Street and some of the cross streets between.

She advised that it was not always easy to get information about licensing applications due to be considered by the Board. Application details were set out in a column to the right-hand side of the application lists made available online, but gave no indication about the location of premises in relation to neighbouring properties. For anyone wanting to see full application details, they had to make an appointment to come in to the Council offices to view them. This was a disincentive for being involved in the process. She advised the community council felt that there should be better availability of application details.

Regarding premises terminal hours both inside and outside premises, the Board should bear in mind that where premises operated until 1am, this was extended until 3am during the festivals. This had an impact upon residents living in the vicinity of premises, where there was potential at the festivals time of year for people to be still congregating outside premises until around 4am.

Councillor Day agreed that noise coming from pubs should be the responsibility of the pub proprietor, but asked about the situation where someone moved in beside a pub which had been operating for a considerable period of time and it would perhaps be expected they would know they were moving in beside premises that would likely be noisy. Fran Wasoff suggested that it was difficult to find out about such other things as people hanging around outside premises late at night, etc. She suggested one of the nice things about Edinburgh was that there were residential properties in the city centre and this was something that should be kept. Councillor Day noted the comment about being able to make noise complaints, but suggested the information for how to do so was easily available on the Council website. Fran Wasoff advised the concern was about the implications of the change of policy on amplified music and vocals: there had been a shift in the burden of responsibility about how this should be dealt with. Councillor Day noted the community council written representation had referred to smokers outside pubs, etc. and asked how the Board could deal with that. Fran Wasoff advised this had been included to highlight it as an issue. Perhaps something could be included in a premises' operating plan as to how a licence holder would control the area outside their premises. She agreed this was a tricky area.

The Convener agreed with the comments made about information being made available on applications, suggesting there were some times when the Board only got the detail about how premises would operate when actually hearing from agents presenting behalf of applicants.

**Marie McArthur** was present for the Old Town Community Council. She advised that the CC area was still a residential area. She questioned whether the Grassmarket was still an overprovision area. Residents were awaiting word on two hotel premises proposed for either end of the Grassmarket area. The Depute Clerk was asked to confirm the current status of the Grassmarket as an overprovision locality. Mrs Leck confirmed that the area was designated in the Board's policy statement as being overprovided for in terms of traditional pubs and off-sales premises. Councillor Day advised that there still had to be a balance struck with the economic needs of the city. If the area was to remain an overprovision locality, should the Board have a tougher line on that?

He asked for the OTCC view on pop-up bars and why these were considered by the CC to cause problems. Marie McArthur advised they would want to see the Board have a more robust policy in place for these. She gave the example of the former Khushis premises in Victoria Street, which had been licensed by means of occasionals during festival periods.

Councillor Mowat advised she was aware the OTCC had concerns about unregulated drinking in the area, with persons sitting drinking in the vicinity of the Grassmarket. She asked Marie McArthur for her top three priority matters she would want to see the Board changing. Ms McArthur referred to the earlier comments about amplified music and vocals, noting that this was a work in progress. She then highlighted the amount of tables and chairs located in the Grassmarket area and that some of the areas occupied by tables and chairs were very large, almost doubling the size of restaurant premises, etc. She noted that almost every one of the premises in the Grassmarket had two outdoor seating areas. Finally with regard to licensed hours, she suggested there was no need for late terminal hours of 3, 4 or 5am.

**Penny Richardson** was present for the Stockbridge and Inverleith Community Council. She referred to the terms of the SICC representation and confirmed that a more detailed response would follow



on from any further consultation carried out by the Board. Councillor Mowat advised that the SICC response was helpful as it set out their comments according to the chapter headings of the policy statement. She asked whether there was anything about the licensing impact on the SICC area which the community council would particularly want the Board to take account of. Penny Richardson advised that she thought community voices would be better heard by the Board. It was considered that there was overprovision in the SICC area and she suggested that NHS Lothian keep an eye on the health statistics for the area. She suggested the SICC would welcome the Board controlling licensed hours in the area, restricting terminal hour to 11pm. She referred to the future opening of licensed premises in the locality which would result in large increases in visitors to those premises, particularly the new rugby venue in Raeburn Place. She also commented about the Board giving consideration to different licensing hours depending on nature of properties adjacent to licensed premises. She confirmed SICC was about to reply to the Scottish Government consultation on the Procedure Regulations. Anything that helped people to know how to be informed about applications, etc. was preferable.

The Convener noted that the Board had previously granted licences for the premises in Raeburn Place – stand and retail units - which were referred to by Penny Richardson.

Councillor Day asked for clarification about the Stockbridge area being an overprovision locality. Nick Fraser confirmed that it may have been recommended to the Board as being an area considered to have overprovision characteristics, but the Board had not designated it as such in its previous Policy Statement.

Councillor Day asked Penny Richardson if there were one or two things the Board could do in the SICC area to improve licensing, what those would be. She asked that the Board keep listening to the concerns of local residents regarding suggested changes to licences and licensing hours, and that it would be preferable to have better information available about the location of applicant's premises at the Board. Councillor Day noted comments made about outside areas in particular and agreed that maybe the Board needed to look at the operation of these and consider their proximity to residential properties.

Penny Richardson concluded by asking that the Board put in place an improved system for easier access to licence application details, rather than having to call in to view applications under council officer observation.

## SESSION 2

**4<sup>th</sup> May 2018 (Cllrs Norman Work; Joanna Mowat; Cammy Day; Gillian Gloyer)**

**Aidan Collins and Sean McCollum** were in attendance for Alcohol Focus Scotland and referred to the terms of the AFS representation made to the consultation. Reference was made to Edinburgh having the highest alcohol premises licence outlet density in Scotland. Since 2012 there had been a 22% increase in off-sales premises in the Edinburgh area, amounting to an additional 101 off-sales premises. Aidan Collins referred to the statistics on harms connected with alcohol, comparing the areas with highest statistics for alcohol harms with those with the highest number of licensed premises, suggesting a link between the two. He referred to the seven areas of “serious, special concern” as referred to in the Board’s Statement of Licensing Policy. He suggested to the Board the Board should consider whether the situation in each area was better or worse than before. If the situation was worse, the Board should consider designating these as overprovision localities.

He went on to refer to community involvement in the licensing process, which was something that AFS were looking to encourage. He suggested the Board try to ensure accessibility of Board policies, etc. so that communities were able to become better involved.

Councillor Work referred to the number of off-sales premises, such as supermarkets, being built in the Edinburgh area and asked whether it was AFS’s position that there was a link between overprovision and accessibility to premises, and levels of crime. Aidan Collins referred to the data gathered by CRESH and suggested this was a robust source of data, which showed statistically significant links between outlet density and crime levels. (*Copies of the CRESH report were circulated to Board members for consideration*) Councillor Work went on to refer to the recent introduction of Minimum Unit Pricing as a means of addressing problems. Aidan Collins advised that price of alcohol was just one of the possible influences on those problems.

Councillor Gloyer asked AFS to comment on on-line sales of alcohol and how the Licensing Board might deal with that. Aidan Collins confirmed this was a difficult issue and AFS had highlighted this to Scottish Government, whose response had been that AFS should raise this with Licensing Boards. It had been suggested Boards could try to build in licensing conditions when considering the grant of premises licences, but the overall issue was accepted as being a difficult one for Boards.

Councillor Day noted AFS comments about the financial cost deriving from alcohol consumption, but invited AFS comments on the economic benefits of licences for the city, arising from hotels and bars and tourism connected with those. Aidan Collins referred to the financial pressures on the NHS and policing, connected with impacts arising from alcohol consumption. There was a cost arising from lost working days where employee productivity was affected by alcohol consumption. He accepted that there was a tourism benefit from licensed premises, but referred to the need to reduce alcohol-related harms which, in Scotland, were significant anyway. Whilst there were some valid arguments around benefits to the night-time economy, he questioned what was going to be prioritised; the alleged financial gain or the health and wellbeing of people in communities affected by licensed premises. He gave the example of a new supermarket potentially creating jobs, but there was a potential for closure of businesses in local communities.

Councillor Day expressed concerns about the existing policy and the reference to areas of serious, special concern. He asked AFS what they recommended the policy should state in this regard. Aidan Collins advised that AFS were not so much concerned about what was stated in the policy, as they were about what procedure should be followed. He advised it had been his understanding that these areas would require further consultation. There should be more transparency about the evidence submitted to the Board and the policy created from that. The Board should assess the areas of serious, special concern and whether these had been effective. By not declaring these as overprovision localities this had disempowered the Board. He advised he didn't have enough knowledge to go into the specifics beyond that. The Board should look at outlet density, health and crime statistics and community intelligence.

Councillor Day referred to the responsibility for the city, to ensure it remained a vibrant and viable location to visit. There needed to be a balance with the well-being of the city. He then went on to ask for AFS views about occasional licences and whether there was a concern about these being used as a way of getting around having to obtain a premises licence. Aidan Collins advised AFS had hosted workshops around the country and one of the issues highlighted at these had been occasional licences being exploited. He advised the workshops had also highlighted children and young persons' access to licensed premises, and particularly family-oriented events, where alcohol was being sold. There appeared to be an emerging trend for occasionals to be applied for in these

cases, and he suggested this was something the Board should have regard to, including requiring applicants to set out how they anticipated children being at events, etc. With regard to the issue of numerous applications being made for occasional licences by an applicant in lieu of an application for premises licence, he suggested the Board should have a trigger point set out in the policy, that would allow for someone to be automatically called to appear before the Board after a certain number of applications had been made.

Councillor Mowat referred to the CRESH map identification of areas of overprovision. She highlighted the problem of statistical information about health harms and the difficulty of being able to link these with overprovision. Aidan Collins suggested the CRESH map provided the Board with a good starting point, but that the Board should then go to local communities and others to get more information about their experience of alcohol-related impacts. Councillor Mowat suggested it all came back to evidence when trying to identify overprovision areas; everything else was, to an extent, anecdotal. The Board should have a policy in place which was meaningful for those affected by alcohol-related harms. Aidan Collins suggested it was reasonable to say the CRESH report provided strong evidence. He highlighted that it would be a legitimate policy for areas with lower outlet densities but with higher harm statistics still to be considered, even compared with places with higher outlet densities: it wasn't just a numbers game. The Board should work with the EADP, Community Planning partners and others to obtain evidence. When looking at communities with problems the question should be asked, why is that happening?

Councillor Work referred to mental health and the impact alcohol had upon that, with alcohol effectively acting as a depressive drug. AFS acknowledged this was a complex area and encouraged the Board to speak with those affected and who were seeking treatment, and with mental health professionals.

The Board then heard from **David Williams**, attending on behalf of the Edinburgh Alcohol and Drugs Partnership. He referred to the representation made by the EADP, which he explained consisted of representatives from health, police and alcohol and drug treatment services. The EADP supported steps taken to deal with the affordability, accessibility and availability of alcohol. The thrust of the EADP's strategy was preventative, but also involved consideration of treatment and recovery for those affected by the availability of cheap alcohol. The EADP recognised the limits of Board powers

but was keen to encourage their use. He advised there was detailed evidence available about alcohol's impact upon young people, upon those with incipient problems and those with low level mental health issues. For people in the throes of dependency it could be difficult to find the motivation to stop drinking.

He highlighted that there were around 449 licensed premises within a 10 minute walk of the Grassmarket, providing a continuous pressure for those trying to deal with alcohol problems and alcohol dependency. He suggested it was almost getting to the stage of not being possible to buy food without the possibility of buying alcohol also being available. Councillor Work noted the comments made about acceptability of alcohol and asked what the Board could do about that. David Williams suggested that consideration of children and young persons' access to premises could be looked at. He referred to the number of licensed premises where alcohol is available and seen as normal. There could possibly be more information on health impacts, and the advertising and marketing of alcohol.

Councillor Day asked about opening hours of premises and whether there was any evidence available of considerable adverse effects in the city connected with festival times of year, etc. David Williams suggested that it may be possible to gather such evidence, for example looking at A&E admissions figures for alcohol-related incidents. Councillor Day then went on to ask about underage drinking and the impact of deprivation upon alcohol consumption, inviting David Williams to comment. He confirmed that alcohol addiction was much more common in areas of deprivation and that alcohol-related health harms associated strongly with these areas. Referring to earlier discussions he highlighted the possibility with fewer premises but more health harms still providing a basis for overprovision.

Councillor Day advised the report was helpful in terms of the statistical information and detail of alcohol-related impacts. He asked what in particular the EADP would want to see in the new policy statement. David Williams highlighted the problem of off-sales, referring to there being a high level of off-sales premises. The EADP would want overprovision to be considered in areas where there were high levels of alcohol-related hospital admissions.

Councillor Mowat asked whether it was the EADP view that the problems with alcohol were connected more with off-sales rather than on-sales? David Williams suggested that people being treated for alcohol dependency were more likely to be using off-sales premises. He noted that around 70% of all alcohol sales in Scotland were made by off-sales premises. Many people would pre-load with alcohol purchased from off-sales, then turn up later at the pub and get into fights, etc. The police can provide evidence of the impacts upon the night-time economy. He suggested that another issue was that for some consumption of alcohol was at such a level that they could not physiologically and emotionally cope with the impacts it was having on them.

Councillor Mowat referred to the example of off-sales premises providing alcohol to those with problems, but doing so with an awareness of those problems and trying to be supportive of their needs. David Williams advised that he accepted that there were responsible retailers, but ultimately they were providing alcohol to individuals.

The Board heard next from **Niall Hassard** from TLT Solicitors. He advised that in preparing for the meeting he had looked at the Scottish Government annual licensing statistics. At 31 December 2007 there were 1929 premises licences. As at August 2017 there were 1979. He suggested the breakdown of figures was quite interesting, noting in 2007 this consisted of 629 off-sales and 1300 on-sales and combined other categories and in 2017, 544 off-sales and 1435 on-sales and combined. He felt this was useful plotting trends. *(Mr Hassard advised that he was happy to forward a copy of these statistics to the Board after the hearing – see <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubLiquor> for these statistics )* He advised it was not his place to suggest what constituted overprovision, being something for the Board to decide. What he was trying to do was provide an insight on overprovision from a trade perspective. He explained that clients would assess the viability of a site having regard to Planning, Licensing and all other costs. In his experience he had seen instances where applications did not come forward because of overprovision localities, etc. Most licensing boards used Intermediate Data Zones as a means of gathering statistical information on health harms, etc. and then using that to inform their decisions. He suggested there was perhaps too much reliance placed upon IDZs as the appropriate means for designating overprovision localities.

The Convener asked Niall Hassard for his views about the signing arrangements for occasional licences and the suggestion from TLT that there was a lack of consistency in decision-making. He advised that it seemed to TLT that following the restructuring of the Licensing Service in the Council and arrangements with the Licensing Board signing rota, some difficulties had arisen with the overall context of applications. He referred to the example of a first application for occasional licence being put forward for consideration, which attracted comments and for which a response was provided on behalf of clients. The application was then granted. A second application was then made, with no intervening change of circumstances, for new dates. That application was refused. A statement of reasons could then be requested, which may set out the concerns of the individual Board member. However he pointed out that every decision was being made by “the Board” rather than by individuals. He advised the same concerns arose with regard to applications for Extended Hours.

Councillor Gloyer asked what Niall Hassard suggested the Board should do? He advised that he would be asking for more narrative from the Board in its policy. Each Board member was signing as “the Board” and it would be preferable that they were aware of the context of previous applications, etc. in making a particular decision.

Councillor Mowat referred to overprovision and the requirement for the Board to agree a policy. She referred to the way licensed premises in Edinburgh were policed in the city centre area and the city centre’s relatively low permanent residential population. She pointed out that there were over 400 residents in the Grassmarket area and over 400 licensed premises within walking distance of the Grassmarket: a ratio of almost 1:1. As an established residential population, was it being suggested that for licensing purposes their concerns should be set aside? Niall Hassard replied not at all – he suggested however that it might be easier for the police to deal with policing an area with a density of premises rather than being more spread out. There were some benefits to having an identifiable night-time area. Regarding the point about the number of residents and number of venues, he pointed out Edinburgh is a European capital city, and a huge draw for people to come and visit. The premises in the vicinity of the Grassmarket were not sustained by the small number of residents in that area, rather the vast numbers of tourists who come in to the city. He compared Edinburgh with Aberdeen city centre which had a similar concentration of premises, with police, street pastors and taxi marshalls in the area. He understood that there was some benefit to these organisations from operating in a more concentrated area.



Councillor Day referred to the use of occasional licences for events and suggested that a number of applications were irrelevant, and he asked whether they were worth TLT and their client's time? He referred to overprovision and the representation made by TLT on behalf of Greene King. He asked whether it was accepted the Board had to strike a balance between Edinburgh being a leading capital city for licensing purposes, against the estimated £200 million cost impact upon police and health arising from alcohol. Niall Hassard accepted there was a balance to be struck. Councillor Day noted a comment in the representation suggesting that in considering overprovision the Board should not have regard to licensed hours. Niall Hassard referred to the recent change to the law. With regard to licensed hours there was no duty to trade and it may be the case with premises that they did not actually use their existing hours to the full extent. As an example he referred to nightclub premises with unused daytime hours. The ability for Boards to make use of information regarding licensed hours in their overprovision assessments was permissive rather than obligatory. He went on to refer to licence "types" where some Boards have used 1976 Act terms to try and identify licence categories, which he suggested was not always a useful comparison for the way that modern premises trade. He suggested it was still open to the Board, for example, to limit the number of premises operating until 3am, as a particular aspect of an overprovision locality.

Councillor Day referred to comments about children and young persons' access to premises and the suggestion of not imposing unduly restrictive terminal hours on premises in this regard. He suggested that it was still reasonable for the Board to use this option, referring to site visits, members' local knowledge, etc. Niall Hassard advised he could think of premises where there was children and young persons' access, but which was not used by the premises during particularly busy periods, e.g. rugby internationals. He advised that this topic had been highlighted just to ensure the Board wasn't unduly restrictive about this area of licensing.

Councillor Day referred again to occasional licences and extended hours applications and asked whether it would be more straightforward if the policy statement simply said that the Board was taking a blanket approach with applications by saying we were not going to grant them, and applicants shouldn't try asking for them. Niall Hassard advised that might be easier for the Board, but not necessarily a positive step. Some Boards have policies to limit numbers of applications, etc. – but there was a danger that this might stifle innovation. To limit the use of occasional licences in a

city like Edinburgh where there was perhaps one month in the year when there wasn't a recognised festival of some sort going on could be problematic.

Councillor Gloyer referred to there being a problem with the way in which occasional licence applications are notified, where there was a very limited opportunity for residents to comment on them. This was in contrast to the requirements when an application for premises licence was being made, and Councillor Gloyer suggested this might partially explain the difference in approach taken by Board members when considering occasional licence applications. Niall Hassard referred to two distinct modes of operation for occasional licences: occasionals used for a particular event, and occasionals used to effectively allow premises to operate as a permanently licensed venue. The latter was something that lots of boards were looking at, and certain boards had "trigger points" beyond which applications would be called in for consideration at a Board meeting.

He advised that in some cases applicants would be looking to start up their business by obtaining a provisional premises licence. They would obtain Planning permission, seek to get the business up and running and obtain a provisional premises licence, then apply for occasionals to allow the premises to operate having already received Board scrutiny of the provisional premises licence application. Councillor Mowat noted this method, but advised she was not entirely comfortable with premises seeking to operate with only a provisional premises licence in place and occasionals on top of that, rather than having a full premises licence in place. She appreciated there could be difficulties with obtaining a section 50 Building Standards certificate, but this was something that was being looked at within the Council.

### SESSION 3

**10 May 2018 (Cllrs Norman Work; Mary Campbell; Joanna Mowat; Cammy Day; Lezley Marion Cameron; Callum Laidlaw)**

**Jo Scott** was present on behalf of both the Southside Association and Southside Community Council. She advised of the concern, for a number of years, of the proliferation of licensed premises in the area, particularly pubs, off-sales premises and food outlets. She referred to the problem of noise from pub premises in streets with tenement properties, where the noise echoed across the streets. She suggested that the Southside area should be considered to be a sensitive area because of this. She understood that businesses with premises licences brought in money to the area, but suggested that there should be balance struck. She highlighted the huge numbers of students and young people who came into the area every year.

Councillor Campbell asked whether Jo Scott considered anything specific needed to be added to the Board's policy. She replied that she thought very late licences were not a good idea in a tenemented area where people needed to be able to get to sleep. She advised that residents could understand, and just about tolerate, busier and later operating of premises during the festivals period of the year. At other times of year though, there should be earlier closing. She also highlighted problems with noisy premises, where licensees should be keeping doors closed to prevent noise escaping.

Councillor Mowat asked if there were any particular premises types that caused problems in the area? Jo Scott replied that there weren't particular premises types as such that caused problems, although residents would not want to see very large premises being opened up in the area. She suggested that the new arrangements for music in premises had caused some problems.

Councillor Day referred to the policy on amplified music and vocals and highlighted the Agent of Change principle, where someone moved into a property above long-established licensed premises where music, etc. was played and noise might be expected. Jo Scott advised that whilst that was accepted, there were a lot of long-term residents in the area, some of whom considered moving because of noise. She didn't think that was fair. The busy nature of the centre of Edinburgh was having the effect of pushing residents out of the centre. She referred to the 24 hour economy and advised that it needed to be controlled. Councillor Day asked if there was one thing that she

thought the Board could do that would help. She replied that fewer licences of all sorts would be a good thing. There should also be better arrangements for clearing up the streets, involving Environmental Health and licence holders.

Councillor Laidlaw referred to outside drinking areas and people smoking outside premises and asked what the community view was on that. Jo Scott advised that where there were groups of people smoking outside premises this blocked pavements and created a lot of noise. Patrons often left glasses outside. There was also trouble with youths in the vicinity. Overall she suggested it was a bad idea.

Councillor Work asked whether it would help if residents knew who they could contact to deal with problems. Jo Scott advised that it could be a considerable amount of time before anyone arrived to deal with a complaint, which then involved inviting council officers into the home. There could be a long time spent waiting around for action to be taken.

**Jill Powlett-Brown** was attending for Morningside Community Council. She advised that she supported the comments which had been made by Jo Scott. She highlighted the terms of the Morningside CC letter, and particularly the point about “delivery only”, which was connected with Late Hours Catering premises. MCC was concerned about the spread of licensed premises in a residential area. Councillor Day asked whether there were specific issues affecting the MCC area in particular? Jill Powlett-Brown advised there wasn't a huge amount of issues with alcohol per se, but that there was a proliferation of fast-food outlets which was a concern, and the littering arising from those. Smoking outside premises was less of a concern. The main issue was levels of noise, in what was otherwise a residential area.

Councillor Cameron noted there had been reference to concerns about a “party city culture” spreading and asked for clarification about what was meant by that. Jill Powlett-Brown advised that MCC would not want to see the party city culture driven out of the city centre and into residential areas. She referred to the way in which the Board's amplified music policy had been reworded. Councillor Cameron asked if a distinction was being made by the MCC between residents' parties in their own gardens, and hen and stag parties. Jill Powlett-Brown advised that residents were more

likely to be sensitive to neighbours' concerns. There was not a large population of "weekenders" in the MCC area, but it was better that their activities took place in the city centre area. Councillor Cameron asked if MCC had a concern that premises in the area were taking bookings for parties in function rooms, etc. Jill Powlett-Brown replied that the MCC would be if they were out of control, but this didn't seem to be the case at present.

Councillor Campbell asked whether the MCC were concerned about particular types of premises in their area? Jill Powlett-Brown advised there was a concern about the possibility of overprovision. There was also a concern about the number of fast-food outlets in the area, particularly those springing up below residential properties.

Councillor Mowat clarified if it was the view there was presently a good balance of premises for the population in the area, but that there was a possible concern if the number of premises increased and Morningside became a destination for licensed premises in its own right? Jill Powlett-Brown agreed with that and suggested the area was possibly reaching a point of overprovision now.

The Board heard next from **John Lee**, Scottish Grocers' Federation, a trade association representing around 5,300 stores, representing around 41,000 jobs in Scotland. He advised the retail market in Scotland is hyper-competitive and referred to the moves by the larger companies into the convenience store range. More and more small stores had to offer a wider range of products, and alcohol was an important part of the mix. Alcohol sales amounted to an average of around 14% of stores' turnover. About 80% of all convenience stores were licensed. The main aim of SGF was to ensure responsible retailing and that members comply with licensing requirements. They had issued guidance to members following the introduction of Minimum Unit Pricing. He referred to the introduction of a Community Alcohol Partnership in the Portobello area of Edinburgh. The SGF had conducted a campaign to highlight the problem of proxy purchasing. The SGF provided a considerable resource for members, to ensure compliance and the sale of alcohol, responsibly.

Councillor Campbell asked about shelving in convenience stores, and whether SGF were seeing any particular significant trends in that area. John Lee advised that where stores were considering alterations or refits, this could affect their alcohol display areas, which potentially brought them into

major variation territory. If a store had one eye on overprovision because there was an overprovision policy in place, that might have the effect of preventing them making the application and therefore restricting opportunities for refits and refurbishments. If stores were unable to modernise that might affect profitability and sustainability.

Councillor Day advised that it was appreciated the work that SGF did. He noted that SGF disagreed with Alcohol Focus Scotland regarding the link between alcohol-related problems and availability. John Lee advised that they were not convinced by the density argument. It was difficult to be able to point to particular premises when considering issues of health. He suggested that inequality was more of an issue in connection with health, rather than the number of licensed premises in an area. He appreciated the Edinburgh Licensing Board having historically taken a pragmatic approach in that regard. He referred to online shopping being something that was on the increase, and something that convenience stores didn't really provide. He referred to evidence suggesting around 29% of the population did online shopping, with around 22% doing so frequently or extensively. Orders could be placed with a range of up to 150 miles

Councillor Day noted that deprivation could be an issue with regard to alcohol-related health issues, but suggested that availability of alcohol didn't help that and could have an impact. He referred to his ward where nearly every shop was selling alcohol. The more accessible alcohol was for sale, the more likely it was people would make use of it. John Lee advised that alcohol was a highly controlled substance. It was licensed for sale, not restricted, with licensed hours, licensed premises managers, mandatory staff training and that sale of alcohol was more controlled than some of the media might lead us to believe. He suggested that density of premises was not shown to have an impact on price. Whether alcohol in general was too cheap remained to be seen, depending on how Minimum Unit Pricing played out. Convenience stores could not sell alcohol as cheaply as the large supermarket stores could.

Councillor Laidlaw referred to the possibility of restrictions on the sale of certain high strength beers, etc. and what the SGF view was on the imposition of a condition on smaller retailers. John Lee advised that MUP would result in certain product ranges disappearing altogether, such as high strength ciders. What consumers would then switch to instead was unknown. He suggested that MUP was likely to have a big impact here.

Councillor Laidlaw asked whether it was SGF view that the Board should wait and see what the impact of MUP was. John Lee referred to the Scottish Government having put in place an evaluation body, with NHS leading. He advised SGF were part of that exercise. There was a five year sunset clause on the MUP provisions, allowing Scottish Government to go back and assess evidence as to the success of MUP.

Councillor Work was concerned about MUP delaying the Board taking its own action with these matters. The Board had put restrictions in place in the past. The Board had to put a policy in place for five years, and he asked what the SGF views were on the principle of the Board putting its own restrictions in place. John Lee advised that he felt that the impact the Board was seeking would be met by MUP anyway.

Councillor Cameron asked what impact MUP was having on SGF members' stock and was this something that was being tracked? John Lee confirmed SGF were trying to track this and were happy to share this information with the Board. It seemed to be the case that it was having an impact on high strength ciders.

Councillor Mowat asked whether it was difficult to obtain sales data from members. She suggested it would be better for SGF members' interests if they were provided, if they didn't want to see further restrictions imposed. There were two options – overprovision or price. It would be better for SGF members to respond assiduously to MUP evidence gathering, to be able to make their arguments regarding overprovision. John Lee encouraged the Board to link up directly with Scottish Government, in terms of the working group set up. The evaluation process would be much more robust, taking in Scotland-wide data. The Scottish Government data would be robust and all stakeholders would be comfortable with it. Some SGF members didn't have electronic systems and it would be difficult trying to get individualised data from around 5000 convenience stores.

Councillor Mowat asked if it was being suggested that SGF were not going to be involved in providing the data on MUP and that they were going to be relying on the Scottish Government? Was SGF representing a different outlet to supermarkets, and if so were they going to be able to bring in evidence on the segment of the market they represented? John Lee advised that SGF had never been asked before. The Scottish Government was looking across the retail sector.

**Paul Togneri** was in attendance for the Scottish Beer and Pub Association, representing brewers and pub associations across Scotland. The SBPA covered a range of large and small businesses. They represented around £120 million in wages and around 8,000 employees. This represented a substantial economic contribution. Over the past few years there had been a number of impacts upon pubs, including the smoking ban, changes to the drink-driving limit, pension auto enrolment, the increase in the minimum wage and the revaluation of premises business rates. Overprovision was a key concern of the SBPA, and their feeling was it sent out a message to businesses that an area was closed for business. There had been a move away from vertical drinking establishments in the pub trade. To do that required investment. Members had concerns that with overprovision in place, investments would not come down the line. The association was grateful the Board takes applications on their merits. An overprovision policy might prevent applications coming in the first place which might otherwise have benefits.

Councillor Day advised he was not convinced that by the Board changing its overprovision policy, this would change investment. He highlighted the impact of alcohol on health costing the public pursue around £200 million per year. He referred to extended hours and the SBPA's comments on that, and the Police Scotland position. He accepted there was an economic contribution to the city, but there had to be a balance between that and the impact on health.

Councillor Campbell referred to premises located on the ground floor of tenements and community council concerns about the impacts of amplified music, etc. Paul Togneri advised he understood those concerns, but one of the positive steps the Board took was in connection with the Music Is Audible group, amending its policy on amplified music in licensed premises. The SBPA encouraged good communications between premises and their neighbours and to be mindful of neighbouring residents. There was no place for irresponsible licence holders, failing in connection with the licensing objectives. Bad premises were bad for the industry as a whole. Where genuine complaints were made, he hoped these could be satisfactorily concluded. SBPA provided support to members to ensure they were compliant with legislation, in the same way as the SGF. With regard to terminal hours, Edinburgh has had a pragmatic and well-suited policy for the city with 1am for pubs and 3am for nightclubs. The Edinburgh policy on operating hours has attracted investment by SBPA



members. If there was an issue with particular problem premises, their operating hours could be looked at. Every application should be considered on its merits.

Councillor Laidlaw suggested that Edinburgh has very generous hours. The Board had to have regard to residential areas in the city. He asked whether the SBPA would want the Board to look at particular parts of its policy. Paul Togneri asked the Board to consider its policy on earlier opening hours and on outdoor drinking. For the former, pubs were looking to provide breakfasts, brunches, etc. and wanted to have the potential to change licensed hours.

Councillor Mowat expressed concerns about this, since pubs were already looking to change hours to have families coming in later. The principle of families in pubs where appropriate was fine, but it seemed the Board was in the position of being expected to give more and more hours. There was a possible tension with earlier opening of premises – while it was possible to consider doing so, could premises not do so without selling alcohol? Paul Togneri advised this was possible in some circumstances, but some premises wanted to be able to, for example, offer Bucks Fizz with breakfasts. It was increasingly difficult for premises to be able to operate profitably.

Councillor Work referred to the availability of stronger beers and wondered whether extra training should be provided to staff to address this. Paul Togneri confirmed all members received rigorous training. He suggested it would be interesting to see how MUP worked out and the impact it had. For the on-trade in general there was good training in place to ensure the consumption of alcohol in a controlled environment, with staff having a duty of care to those in premises. All members were encouraged to have good working relations with LSOs and police. There had been a huge shift of sales from on-sales to off-sales.

**Jim Sherval and Elisabeth Oldcorn** were in attendance for NHS Lothian. Jim Sherval advised that it seemed there had been something of a loss of control of the off-sales trade in Edinburgh. There had been an increase in the Edinburgh population, but not by as much as predicted. Meanwhile there had been a huge increase in provision of licensed premises. He felt that some of the areas of serious, special concern should have been declared as overprovision localities. There were concerns about provision levels in the city centre, Leith and Gorgie/Dalry and Fountainbridge. He suggested

IDZs were a reasonably acceptable way of setting boundaries for overprovision localities. He accepted that when considering the public health licensing objective it was difficult to link with specific premises. Overprovision was the more effective preventative measure for dealing with alcohol-related impacts. There was only currently a small area of overprovision. Alcohol as a substance was a major contributor to some of the challenges we currently have. Edinburgh as a whole was drinking much more than the rest of the country.

Councillor Day referred to the NHS Lothian representation and the reference to links between alcohol availability and health. Jim Sherval referred to the CRESH report. Alcohol-related deaths were higher in higher outlet density areas. There was a general relationship between the two, though he accepted there were some anomalies.

Councillor Day referred to the NHS Lothian comment about application details sometimes being too brief and was more information needed? Jim Sherval advised that more information about applications would help, to know what premises were for and he was sure that community councils would welcome that too. Councillor Day asked about MUP and the five year assessment of its effectiveness – should the Board await the outcome of that, or take action now? Jim Sherval advised MUP was not a magic bullet, being part of a complex issue. He didn't think the Board should just sit back. He hoped that it would help, but it wasn't possible to know for certain. There was some baseline information available about heavy drinkers and what they were actually drinking.

Councillor Day advised that Board members had all gone through training and knew the significance of the public health licensing objective. Maybe it was time the Board was bold and started making some different decisions on applications? Jim Sherval explained his comment about the public health licensing objective had been to highlight that it was difficult to link the objective to individual harms that might arise from premises which didn't even exist, for which applications were being made. Refusal of an application in an overprovision area was much more difficult to appeal against.

Councillor Campbell noted the terms of the EADP representation and the 21 areas identified in it and invited Jim Sherval to provide more comment on that. He confirmed that they had been chosen because of high health harms in these areas arising from alcohol. He advised that around 6 years

ago he had thought the entire city should be an overprovision locality. He confirmed the EADP report was a partnership report, looking at crime and health statistics to arrive at these areas.

Councillor Mowat noted that more data was required at local level and asked whether it was just not possible to obtain this in some areas? Jim Sherval advised alcohol-related hospital admissions data was something that could be obtained reasonably well. This was data which could be linked to a particular postcode. NHS was not so good at asking people who presented in hospital with alcohol-related injuries, what premises they were drinking in. Data gathering was reliant on clinicians “ticking the box” when preparing reports. Councillor Mowat asked about looking at hospital admissions data, where more deprived areas seem to have a correlation with alcohol-related admissions. Jim Sherval advised deprivation can have an impact. Income levels tended to be a marker of life course in general. He suggested however that even though the wealthier parts of the city are healthier, they still did not necessarily compare well with the rest of the UK.

Councillor Laidlaw noted the terms of the recent statistics. He suggested that one of the problems with overprovision was that it could be a blunt instrument – one of the problems is in drilling down where there might be specific wards with problems, but it was then necessary to try and understand the issues where they are. He thought the Board would benefit from more information from NHS Lothian. He referred to the example of an application for a new restaurant and the possible implications of an overprovision policy being in place. Whether the new restaurant would have adverse health impacts, seemed less clear. He noted there seemed to be an assumption that there were more problems with people consuming alcohol at home. Jim Sherval referred to off-sales and advised there had been an enormous increase in the past 20 years. He thought the Licensing system dealt fairly well with on-sales. He suggested it was better for the Board to have an overprovision policy in place, rather than carrying out individual overprovision assessments.

Councillor Campbell noted the statistical information used by the Glasgow Licensing Board for its overprovision assessment, including statistics available on incidents of alcohol-related disorder and health statistics and asked Jim Sherval whether he considered these provided a valid basis for making an assessment. He advised that he considered the statistics used together provided a robust basis. He suggested it was also possible to use local knowledge.

**Chief Inspector Gillian Geany and Sergeant John Young** were in attendance from Police Scotland. Gillian Geany referred to the police recommendations listed at the end of their representation. She highlighted occasional licences, noting that there had been 2568 granted in the year, 88% more than Aberdeen and 69% more than Dundee. There was a large volume of applications for licences for pop-up bars in Edinburgh. Some of these could stay in operation by means of occasionals for a long time. This caused a lot of administrative work, where it was often necessary to ask applicants to provide more detail about their applications. She referred to the possibility of the Board agreeing on local conditions to attach to licences, applicants could then agree these. It was otherwise inefficient to provide police responses to the same thing time and time again, and local conditions would help this. She referred to the problem of applications coming in well below the 28 day period for making an application, and suggested the Board should look at what it considered to be exceptional circumstances for shortening notice periods.

Councillor Laidlaw referred to applications for Extended Hours and asked for police comment on these. Gillian Geany advised a reduction in extended hours would be welcomed. She suggested perhaps the Board consider approving a list of specific events in its policy for which extended hours would be considered. Otherwise there was potential for a domino effect of premises applying for extended hours that other premises get. The policy referred to the possibility of operating up to 16 hours and in some cases up to 18 hours. She questioned why there was a need for more hours. She suggested premises should be able to operate events, etc. within existing licensed hours. She suggested it should be for premises to show a need for the extra hours being granted by the Board. She asked the Board to consider greater consistency in its decision-making.

Councillor Work advised the Board had been looking at extended hours in more detail and querying why late hours were needed for events which were taking place during the day. There were some late night events which could be justified, for example the Superbowl, and where there were ticketed events. Gillian Geany agreed it was for the Board to decide on these matters, but there were some occasions where applications were being made for things like holiday weekends, where there was no particular event taking place. With regard to the Superbowl, being on a Sunday night, there was a requirement to deploy a sergeant and eight officers. These officers were being taken into the city centre, from other areas in Edinburgh.

Councillor Mowat asked about police resourcing for the city centre for the weekend, noting that there would normally be an inspector, two sergeants and 30 officers on duty for the weekend. She considered those were significant numbers. The city paid for these, to some extent. She asked whether the police had a capacity to be able to deal with additional events. Gillian Geany advised that at night times, officers from outlying areas required to come in to the city centre during extra busy times, potentially leaving fewer officers available in outlying areas. Councillor Mowat asked, if the Board was granting more occasional licences for events, etc. would that potentially have the effect of reducing the service available to outlying areas and Gillian Geany confirmed that was the case.

Councillor Campbell noted that with regard to Scottish Government Guidance, Edinburgh Licensing hours were long and she asked whether these hours compounded problems in the city centre. Should the Edinburgh Board be pulling back its licensing hours? Gillian Geany advised that the longer hours compounding problems could be demonstrated by referring to the alcohol-related crime statistics. John Young referred to extended hours applications, advising the Edinburgh has more generous licensing hours than anywhere else in Scotland. He advised he had seen a trend of applications for extended hours being made for all sorts of sporting events, public holidays, and sometimes for longer than one day, such as over the Halloween weekend.

Gillian Geany referred to the Board's policy on a 2200 cut-off for outside drinking. She suggested this worked well. She suggested the same approach should be taken with occasional licences, where in some instances later hours were permitted. Regarding children and young persons' access, Police Scotland supported the use of site visits by the Board to assess suitability of premises. She suggested that a 2200 terminal hour for children's access going towards 2300, with 0100 for young persons' access, should be written into the policy.

The police were supportive of the use of toughened glass in premises in certain circumstances. With regard to overprovision, Gillian Geany advised that Police Scotland felt the Board should remove the special, serious concern areas from the Board's policy statement.

Councillor Mowat asked whether it would be easier for the policing of outside drinking areas if these were included within premises licence areas, rather than only subject to the Council's Tables and Chairs Policy. John Young advised that licensing these would require the applicants to demonstrate consideration of the licensing objectives. He suggested it would be better if the Board's policy was more specific on what the Board would expect of applicants.

**Andrew Mitchell**, Regulatory Services Manager was present from the Council's Place Directorate and referred to the police and health comments, and advised that Licensing Place was supportive of the view that applicants should provide more information in support of their applications. Applicants should ensure that their applications are submitted in good time. He referred to the use of occasional licences and advised there were examples of premises using hundreds of occasionals to operate, placing pressures on council staff as well as on the police. He encouraged the Board to emphasise the importance of statutory timelines for applications. He suggested that for the use of extended hours applications it would be beneficial if the Board policy contained better guidelines for these. With large numbers of applications for occasional licences being made, this took up a lot of council officer and police time and it would be beneficial if the Board would consider this in the policy, including potential for limiting numbers of applications.

With regard to the Board's policy on amplified music in premises following the Music is Audible presentation to the Board, and the Board's decision to change its policy, he advised that Licensing Place was still supportive of that change to policy. It had been anticipated around 30-40 premises would apply for the change of licensing condition. In fact it had become something that agents routinely asked for, for their clients. Around 166 premises had the new condition attached, where their operation was not relevant to live music. He suggested it might be useful for the Board to go back to the public on this and assess the effects of the change to policy.

Councillor Campbell noted some elements of the licensed trade considered that applications took too long to be processed. Andrew Mitchell referred to comparison with the situation in Glasgow, where applications could take longer. Edinburgh operated an informal rule of having last lodging dates for applications, where if they were received by a certain date they would be added to the list for consideration by the Board on a certain date. He suggested there were pressures on Council

officers arising from this, and the volume of liquor licensing applications had a distorting effect on other licensing service provision.

Councillor Campbell asked, with regard to excessive use of occasional licences, if Licensing Place had a number in mind. Andrew Mitchell suggested twelve might be a reasonable cap, but varying this depending on individual premises. There was a difference between occasionals being used for one off events, and ones being used for continuous periods. There were some commercial business where their premises were running continually on occasional licences.

**John McNeill**, Public Safety, advised that Planning Change of Use was required for situations where structures were erected for events, etc. where they were in place for more than 28 days in a calendar year. He referred also to the Building Standards legislation as having a relevance in this regard. Mrs Leck advised the Board that if limits were to be considered for the use of occasional licences, legal advice would be provided to the Board about that, and how that may be achieved having regard to the legislation. John McNeill referred to the Council's Public Spaces Protocol, going through the Transport and Environment Committee, where the Council would be looking for support from the Board regarding the use of public spaces and the licensing of these areas by means of occasional licences.

Councillor Mowat asked about the licensing of outdoor drinking areas and whether it was preferable for these to be within premises licence areas, or subject only to the Council's Tables and Chairs regime.

**Tom Veitch**, Licensing Standards Officers Team Leader advised there should be a match-up between the two. There have been occasions in the past where there has been a mismatch between licensed areas and the corresponding Tables and Chairs permit. Licence holders should be required to have both in place and have them matched up. Councillor Mowat asked if there was a way of making the process easier in the Council and Tom Veitch advised LSOs were consulted on Tables and Chairs permits and these were carefully checked to ensure that they matched up, so far as possible.

**Catherine Scanlin**, Licensing Manager pointed out that as licensing and Tables and Chairs permits were dealt with by two different departments in the Council, this caused some difficulties. She

advised applicants received a lot of support from the Licensing Team. She referred to the forthcoming Festivals period, which would be an extremely busy time for the Licensing Team. There were occasions when applicants might have been dealing with other parts of the Council for months in connection with organising their events or premises, but then coming to Licensing at the last minute and expecting their licence application to be dealt with in a very short space of time.

John McNeil advised that it didn't tend to be the small application volume, big events that caused problems, but instead the big application volume, small event premises that did. Big events tended to be better planned out and organised.

Andrew Mitchell advised that Licensing Place was under pressure from applicants to push their applications through. It would be beneficial for the Board to put into its policy statement that it was the responsibility of applicants to get their applications in timeously. He was aware that there were agents who would ask about the signing rota for applications to find out which Board member was on duty for a particular week, which he felt was not helpful.



**Edinburgh Licensing Board - consultation on Statement of Licensing Policy  
Response from Edinburgh Green Group of Councillors**

31 October 2017

**1. Introduction**

- 1.1. The Green Group of Councillors welcome the opportunity to comment on this initial informal consultation on the Edinburgh Licensing Board's statement of policy, and will also aim to provide responses to later stages in the consultation process.
- 1.2. The Green Group of Councillors has had a presence on Edinburgh Licensing Board since 2012, and we take our responsibilities as a member of that board extremely seriously. In addition, the Scottish Green Party agreed a new policy on Action on Alcohol in 2016, which is attached as an appendix to this response.

**2. Process**

- 2.1. We support the proposal of the Board holding evidence sessions on specific policy topics in 2018, before consulting on the terms of a new draft policy in mid-2018. Allowing key stakeholders to give oral evidence on issues of policy will allow better scrutiny of specific proposals, and is likely to lead to a more robust policy.
- 2.2. In addition, the board should work to become more accessible to the Edinburgh public. Some measures that would help in this regard include:
  - 2.2.1. ensuring that the actual content of liquor licence applications is published online (with personal information redacted) to allow residents and community councils to comment;
  - 2.2.2. introducing the webcasting of Board meetings;
  - 2.2.3. accurate recording of the names of Board members voting for and against each proposal in the minutes of meetings, and
  - 2.2.4. working to improve the neighbour notification process, including facilitating online notifications.

**3. Overprovision**

- 3.1. The Board should strengthen its policy on overprovision, and that policy should be explicitly evidence-based. Specifically we would support:
  - 3.1.1. Requesting licensed premises to provide the board with data on the volume of alcohol sold. While the board does not currently have the power to require this information, it would be a good first step to ask for it. This could then be provided to key stakeholders such as NHS Lothian, the police and the licensing forum.;
  - 3.1.2. Reports prepared on outlet density for the board have traditionally included a map with a radius of XXXXX around the application site. This is not the same distance used in standard statistical analysis by NHS Lothian and others, and the board should standardise their approach to the intermediate zone data used by NHS Lothian and others. The discrepancy between the two approaches could be used in an appeal against refusal on the grounds of overprovision;
  - 3.1.3. The board should take advice from the Edinburgh Licensing Forum and the Edinburgh Drug and Alcohol Forum on which areas should be designated as overprovided for, and in these areas there should be a presumption against new licences for off-sales, or for vertical drinking establishments;
  - 3.1.4. The board should also consider listing some areas as chronically overprovided for, and in these areas there should be a presumption against new licences for off-sales or

VDEs, and in addition there should be a presumption against the renewal of licences of certain types that are likely to contribute to overprovision;

- 3.1.5. The board should consider developing a city-wide policy, in collaboration with the Edinburgh Alcohol and Drug Partnership, on reducing the availability of alcohol, in order to reduce the harm caused by the over-consumption of alcohol;
- 3.1.6. The board should also consult on reducing the maximum number of hours a licenced premises can remain open from 16 hours out of any 24, as at present, to 14 hours, which is the recommendation of Alcohol Focus Scotland and others;
- 3.1.7. The board should consider listing the categories of 'licensed premises of a particular description (under section 7 of the Act) which they consider to contribute to overprovision. We would suggest that off-sales (including supermarkets, but excluding specialist shops such as delicatessens) and vertical drinking establishments should be included in this category;
- 3.1.8. The board should move into line with other Licencing Boards across Scotland and receive display information in metres squared;

#### **4. Protecting children from harm**

- 4.1. The board should have a policy of requiring a site visit for all premises that are requesting children's access for the first time, in order to determine the suitability of the premises for children.
- 4.2. The board should set a policy that the normal terminal hour for children in licenced establishments is 8pm. For restaurants and food led establishments this may be extended to 11pm where they are accompanied by an adult and consuming a meal. For young people, the normal terminal hour should be 1am when accompanied by an adult and consuming a meal;
- 4.3. The board should ensure that policy hours for children are set as times, rather than until terminal hour, to ensure that for occasional licenses and seasonal variations, the access for children remains constant unless an except is granted;

#### **5. Duty to trade**

- 5.1. The board should require licenced premises that have not been trading for longer than six months to require a fresh license application to be made;

#### **6. Delegated powers / consistency of approach**

- 6.1. The board should take steps to try to develop a more consistent approach to the consideration of applications dealt with on a delegated basis. This may be through the development of more detailed policy or guidelines regarding the consideration of occasional licences and extended hours applications.
- 6.2. The policy should reflect that occasional licenses for consecutive periods of 14 days should not be granted en bloc, but rather should be determined one by one, to allow the police to object to the grant of any subsequent license should a problem arise in the initial 14-day period.
- 6.3. Extended hours applications should not normally be granted if they would mean that the premises were open for more hours in one day than is determined in policy. A premises could, should they so wish, delay their opening time in order to ensure that the total number of hours they were open in any one day remained within policy.

#### **7. Antisocial behaviour**

- 7.1. In relation to smoking and nuisance, we suggest that the board adopt a policy that where licenses premises are the subject of numerous complaints from neighbours in this regard, and a premises license review application is sought, the board will consider imposing an

earlier terminal hour. We understand this sometimes happens, but writing this into the board's statement of policy may help to underline the unacceptability of licensed premises causing excessive noise and antisocial behaviour.

We trust you are able to take these comments into account. For further information please contact:

Melanie Main and Steve Burgess  
Co-conveners, Green Group of Councillors on Edinburgh Council

#### *Appendix one – Scottish Green Party policy on alcohol*

##### *7.2.14 Action on Alcohol*

*7.2.14.1 The Scottish Green Party recognises the serious impact of the overconsumption of alcohol on public health; crime; community safety and our economy and its disproportionate effect on the most disadvantaged areas. We recognise the need to rebalance Scotland's relationship with alcohol;*

*7.2.14.2 Our rebalancing of this relationship and our approach to alcohol policy will be explicitly evidence-based, with a focus on the approaches that have most potential to prevent and reduce harm to individuals and communities. To this end, we will focus on addressing the three issues which the World Health Organisation regards as the most effective factors in reducing alcohol-related harm, namely: price, availability and marketing;*

*7.2.14.3 We support the introduction of a minimum price per unit of alcohol. That price should be set at a level that takes into account the health and social costs of alcohol-related harm and the impact that price has on alcohol consumption. Initially we support a minimum price of at least 50p per unit, but this should be regularly reviewed in light of evidence of its effectiveness in reducing consumption and harm, and to ensure alcohol does not become more affordable over time;*

*7.2.14.4 We support the introduction of a social responsibility levy, set in relation to the additional revenue raised by a minimum unit price, so that alcohol producers and retailers contribute to the wider cost of their activities on the community;*

*7.2.14.5 We believe that alcohol duties should be reviewed as part of a pan-EU agreement linking alcohol duty to the strength of each product. The review should examine, inter alia, whether duties, particularly on high strength cider and spirits, are too low and whether the evidence supports the reintroduction of the duty escalator, which raised alcohol duties above inflation each year.*

*7.2.14.6 The licensing system has a key role in reducing the availability of alcohol. Licensing Boards will be required to make decisions based on the evidence of availability and alcohol-related harm to health, community safety and crime. We will also develop a national policy on reducing the*

*availability of alcohol.*

*7.2.14.7 We will make the licensing system more transparent, accessible and accountable to local people, with Community Councils having statutory rights of consultation. As part of that we will require licensed premises to provide details of the quantity of alcohol sold;*

*7.2.14.8 We believe alcohol marketing has no place in childhood. All children should play, learn and socialise in places that are healthy and safe, protected from exposure to alcohol advertising and sponsorship;*

*7.2.14.9 We will establish an independent body to regulate alcohol marketing;*

*7.2.14.10 We support the removal of alcohol advertising from cinema screenings where non-18 certificate films are showing, and before 9pm on television;*

*7.2.14.11 We support the removal of alcohol advertising from public places including billboards and public transport;*

*7.2.14.12 We support the phased removal of alcohol sponsorship of sports, music and artistic events;*

*7.2.14.13 We support mandatory unit, calorie and ingredient labeling and prominent health warnings on all alcohol products. Pg. 77 of 93 DRAFT Version 0.5b  
Compiled by James Thornbury for the Standing Orders Committee*

*7.2.14.14 We recognise the valuable role that pubs can play in the life of a community. We believe that this is particularly important in the case of smaller communities, and that it is best provided for by independent pubs rather than those controlled by large chains. We recognise the positive benefit to a community which well run pubs and other licensed venues can provide.*

*7.2.14.15 We support the right of communities to be consulted before existing pubs are subject to a change of use, closure or demolition. We would seek to ensure that communities are able to exercise the option to take over a pub and operate it as a community owned enterprise rather than see it closed.*

*7.2.14.16 We support reform for tied pubs to ensure that licensees have a fair deal from suppliers.*

*7.2.14.17 We believe that the dominance of a small number of multinationals over the alcohol industry, both in production and in sales, has exacerbated the harmful effects of alcohol. We celebrate the resurgence of small independent brewers in Scotland. We wish to encourage businesses that are based on quality rather than volume sales.*

Mr Nick Fraser  
Clerk to the Licensing Board  
City of Edinburgh Council  
Waverley Court  
4 East Market Street  
Edinburgh EH8 8BG

GRASS (Grassmarket Residents Association)

Dear Mr Fraser

We are writing as the community group representing the Grassmarket area of the city centre to comment on our experience of the operation of the 2013 alcohol licensing policy locally.

After years of campaigning including the publication of the 'Here Comes the Night' report describing the experience of local people of living within a late night economy, the Grassmarket community very much welcomed the Board's decision to include it as an area of over-provision in its 2013 statement of policy. Since then a number of new licensed premises have appeared. We note that the policy at present presumes against the grant of further licences although 'all applications continue to be considered on their merits especially if they either fill gaps in existing service provision or significantly enhance the quality of life for residents and visitors alike.' We find it difficult to understand how premises such as 88 Grassmarket which involve the loss of a retail outlet and are yet another example of standard tourist fare fulfil these conditions.

The situation will be exacerbated shortly with the development of two large hotels in King's Stables Road and in Victoria Street. It is our understanding that if planning permission is granted for a hotel' being given an alcohol licence is an almost foregone conclusion. Virgin Hotels, the prospective operators of the 225 bed hotel planned for India Buildings, are promising several, live music and bar venues as part of the complex.

This raises another issue which we and the Old Town Community Council have identified – the difficulty of identifying licensing applications in advance of a hearing. Unlike the planning portal which is excellent, there is no way of tracking applications other than spotting the notification form in windows etc which are often awkwardly placed for the passer-by to read.

In our experience operating the licensing system effectively is as much about enforcement as devising new policies. There has been an increase in pop-up bars and restaurants especially during the Festival. Some operators with external table licences increasingly encroach on public space even moving street furniture to allow room for more tables. There are regular applications for ever later catering licences by newsagents which appear to be granted as a matter of course. All of this affects local residents adversely especially at night.

At a time when there are signs that the Council is starting to place more weight on residential amenity, a review of the licensing system is more than welcome and GRASS should like to be consulted formally about the proposals coming out of the review.

Yours sincerely

Elspeth M Wills

On behalf of GRASS