



**LICENSING (SCOTLAND) ACT 2005**

**STATEMENT OF LICENSING POLICY**

**2018**

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

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# 1.INTRODUCTION

*Short summaries will be provided for each chapter in the final document.*

*To assist consultees when considering the draft revised policy the main changes to the draft from the current policy are set out in Italics.*

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 from .....**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 is required to publish an annual Functions Report, setting out how it exercises its functions in terms of the Act. Details of Functions reports will be published on the Board website. ( link)***
- 1.7 ***The Board is required to publish 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] The Board can set fees for applications for premises licences and variations (non minor) up to a maximum fee prescribed by Scottish Government. All other fees are set by Scottish Government.***
- 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 Diversity and Rights 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. Please see the additional supplementary questions document accompany the draft revised policy and this section will be further updated following formal consultation.***
- 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***

***The Board is also seeking views on the types of events viewed as major national or local events and this is referred to further in the supplementary questions document.***

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.

***The Board is aware that an amended policy in relation to amplified music in licensed premises has been in place since September 2016 .The Board is seeking the views of consultees as to whether the Board should commence the ingathering of information on the effectiveness of its policy since the change in 2016 and whether an evaluation and specific review of this aspect of the Board's policy should be undertaken.***

- 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 SEPARATE REPORTS ON THE ASSESSMENT OF OVERPROVISION – REPORTS TO BOARD ON 30 JULY and 13<sup>th</sup> AUGUST 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. ***The Board recognises that when considering appropriate licensed hours for applications then consideration will require to be given to the specific location of the applicant premises on a case by case basis.***
- 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.

***The Board is aware that responses to the informal consultation have suggested that there may no longer may be public satisfaction with the general approach to the same opening hours for similar licensed premises across the city depending on location and the following section on licensed hours may be updated following consideration of responses to formal consultation and also the Board's accompanying supplementary questions document.***

- 11.6 The Board is of the 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. ( **see also Supplementary Questions document** )
- 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 in response to the informal consultation]***

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 (including where appropriate, applications for “pop up “ bars)		✓ (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		✓	

<b>applications for review of premises licence are vexatious or frivolous</b>		<b>Convener only</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***