

# **Licensing (Scotland) Act 2005 Section 142 Guidance for Licensing Boards**

## MINISTERIAL FOREWORD



Under the terms of the Licensing (Scotland) Act 2005 Ministers may issue guidance to Licensing Boards as to the exercise of their functions under the Act. I am pleased now to be able to issue updated guidance for Licensing Boards, which will also be of use to local authorities and other licensing stakeholders affected by the Act.

Whilst section 142 of the Act requires Boards to have regard to the guidance I would like to stress that Boards will have the flexibility to operate and take decisions in light of their particular circumstances (although, in terms of section 142(4), a Board deciding not to follow the guidance must give Ministers notice of that decision together with a statement of the reasons for it). That is a fundamental principle of the Act and it is important to maintain it. The guidance does not seek to instruct boards exactly how to make the Act work. It is simply intended to assist boards as they carry out their responsibilities under the Act. Ministers wish boards and their clerks to be creative and innovative and to implement the Act in a way that best meets local needs and circumstances, which can be informed by direct engagement and dialogue with local licensing forums. Guidance that is too prescriptive would hinder that creativity.

Finally I would like to make it clear that we remain open to suggestions about how the guidance might be revised in future. With that in mind my officials have already committed to on-going engagement beyond publication of the updated guidance and we will therefore continue to engage with Boards, via SOLAR and other licensing stakeholders over the coming months, and beyond to ensure that any issues can be collectively considered and worked through. In addition, we expect that new issues may arise in light of experience gained whilst Boards develop their Licensing Policy Statements in the months ahead and we will be happy to consider and discuss any matters of concern. Any revised or new guidance will, of course, have to be laid before the Parliament, as the 2005 Act requires.

A handwritten signature in black ink that reads "Elena Whitham". The signature is written in a cursive, flowing style.

Elena Whitham MSP  
**Minister for Community Safety**

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## **1. INTRODUCTION**

### **Licensing (Scotland) Act 2005**

#### Statutory Guidance

1.1 As part of the overarching national framework for the alcohol licensing regime introduced by the Licensing (Scotland) Act 2005 (“the 2005 Act”), Scottish Ministers issued statutory guidance to Licensing Boards. The guidance is termed “statutory” as Scottish Ministers made use of the powers given to them under Section 142 of the 2005 Act to issue guidance. This guidance is frequently referred to as “Section 142 guidance”.

Section 142 of the Act provides that, in carrying out its functions, a Licensing Board must have regard to Guidance issued by Ministers under that section. However, it is recognised that the Guidance cannot anticipate every possible scenario that may arise. Licensing Boards may therefore depart from the Guidance if they have reason to do so. If Licensing Boards depart from the Guidance, section 142(4) of the Act requires that they must give the Scottish Ministers notice of the decision together with a statement of reasons for it.

1.2 The purpose of the guidance is to assist Licensing Boards in carrying out their functions under the 2005 Act. That having been said, it is hoped that the guidance will also be of interest to others involved in the alcohol licensing regime, such as new / existing licence holders and licensing solicitors.

1.3 This version of the statutory guidance (issued on 13 January 2023) replaces the version of the original statutory guidance.

#### Approach Taken

1.4 The 2005 Act has been operational for over thirteen years. Licensing Boards have gained valuable experience and expertise in administering the alcohol regime as set out under the 2005 Act.

1.5 Scottish Ministers recognise the independence of the Licensing Boards but also consider it is important for Licensing Boards to share and learn from each other’s experiences.

1.6 The Scottish Government Licensing Team recognises the important work undertaken by the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) Licensing Group to promote inter authority communication, information sharing and best practice between members of the SOLAR Licensing sub group. The Licensing Team are grateful to both the Convenor and Depute Convenor for the opportunity to attend SOLAR Licensing sub group quarterly meetings.

1.7 Throughout the guidance, where possible, examples of best practice have been set out, which it is hoped will be beneficial for all Licensing Boards to see and consider implementing in their licensing authority area as appropriate. Whilst reference may be made to specific Licensing Boards, it is acknowledged that many

Licensing Boards may be undertaking similar work but it is impractical to list what each individual Licensing Board may / may not be doing.

1.8 Going forward, the intention is to have more frequent updates to the guidance. This will be achieved through the creation of a small SG led stakeholder group that will meet twice a year to reflect legislative changes and other matters. The Licensing Team will also look to Licensing Boards to provide examples of best practice, which can be incorporated into the guidance.

#### Licensing (Scotland) Act 2005

1.9 A number of amendments have been made to the 2005 Act since it was commenced and since the issue of the last version of the statutory guidance. Some of the amendments were fairly minor and some were more substantive. The amendments made are referenced and discussed, as appropriate, within the individual chapters of the guidance.

#### Licensing Objectives

1.10 The guidance contains a separate chapter on the five Licensing Objectives which play a key role in the administration of the alcohol licensing regime. Each of the Licensing Objectives is of equal importance.

1.11 Just as legislative changes have been made to the 2005 Act since commencement, there have also been changes in the way that alcohol is both purchased and consumed.

1.12 It is much more likely that individuals purchase alcohol in off sales premises to consume at home rather than purchase and drink in on sales premises. [According to Monitoring and Evaluating Scotland's Alcohol Strategy \(MESAS\) monitoring report 2019](#), of the total alcohol sold in Scotland, 73% is now sold in the off trade. Drinking at home means less control over how much is consumed and some harms are harder to detect e.g. domestic violence. Many Licensing Boards recognise this shift and have reflected this when developing their licensing policy statements. This is an approach the Scottish Government strongly supports, and would encourage all Licensing Boards to consider.

1.13 Licensing Boards will be well acquainted with the range of reports and research material that has been published in relation to alcohol harm, not least the Scottish Government's Alcohol Framework 2018 – Preventing Harm report. Scottish Ministers' approach to reducing alcohol harm, aligned with that of the World Health Organisation (WHO), is reflected in the report.

1.14 An example of statistical information can be found on the National Records of Scotland (NRS) website. On 4 August 2022, NRS published annual figures (as at August 2021) relating to alcohol specific deaths in Scotland. The figure as at August 2021 stands at 1,245 deaths, an increase of 4.62% on the August 2020 figure of 1,190 (the corresponding figures for 2019 and 2018 being 1,020 and 1,136 respectively). The report also states "Alcohol-specific deaths have generally risen

since 2012. Before this point, deaths fell [sic] sharply from the peak of 1,417 in 2006 to 968 in 2012”.

1.15 Given the passage of time since the 2005 Act commenced, there is a wealth of information available to Licensing Board to help inform decision making/carrying out its functions e.g. documents they require to both consult on and publish including overprovision statements and licensing policy statements. It is also important that Licensing Boards fully engage at appropriate times with key partners such as Local Licensing Forums, Community Planning Partnerships, Health Boards, Alcohol and Drug Partnerships and Police Scotland. These local partners can often be a useful source of relevant and up to date information in their specific area of expertise.

1.16 The Scottish Government acknowledges that many Licensing Boards do review relevant information and actively engage with key partners. In addition, a number of Licensing Boards publish on their websites details containing the background information that has led them to adapt a particular policy. The Scottish Government commends these approaches to all Licensing Boards.

## **2. LICENSING OBJECTIVES**

### **Introduction**

2.1 This chapter provides information on the five licensing objectives. A key component of the licensing system set out in the 2005 Act is that it provides local flexibility to deal with local circumstances. However, to ensure consistency of approach, it is important that this local flexibility is balanced with a clear, effective and national framework within which Licensing Boards are required to operate. The 2005 Act established just such a national policy framework.

2.2 The 2005 Act sets out 5 high level “licensing objectives” that represent the values on which the Scottish alcohol licensing system is based, the parameters against which elements of the system should be measured and the solid foundation which Licensing Boards must have regard to in carrying out their functions under the 2005 Act.

2.3 The licensing objectives are the engine that drives the 2005 Act. They are a key feature of Licensing Board policy statements, the basis for refusal of a premises or occasional licence, the attachment of conditions, sanctions on a personal licence holder or a competent ground for review of a premises licence.

2.4 The five licensing objectives are listed below:

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

2.5 Since the implementation of the 2005 Act, Licensing Boards have been able to develop their knowledge and understanding of how to best promote the 5 licensing objectives. This will continue to be an ever evolving process, informed by local experience.

2.6 Licensing Boards are also required by the 2005 Act to produce and publish Annual Function Reports which should be drafted with a focus on explaining the work of the Licensing Board over the relevant period, in order to provide transparency and accountability to the local community. The reports are primarily about Licensing Boards showing *how* they adhere to the licensing policies and *how* they promote the licensing objectives, rather than providing a description of the Licensing Boards’ procedural approach.

### **Licensing Objectives**

2.7 The guidance offered below for each objective is given in the order in which the objectives are listed in the 2005 Act. Each objective is equally important i.e. no one licensing objective carries more weight than any other. It is recognised that whilst the licensing objectives are standalone there will also be an element of interaction between them.

### *Preventing crime and disorder*

2.8 This objective relates to the prevention of crime and disorder as a result of the sale or supply of alcohol or irresponsible operation of licensed premises. This covers behaviour such as: drunk and disorderly conduct; breach of the peace; assault and other crimes or offences which may occur within premises, outside premises, or in other settings which may have occurred as a result of the sale or supply of alcohol (see Chapters 11 and 13 for more information on control of order and other offences).

2.9 One example of a Licensing Board promoting this licensing objective can be found within Edinburgh Licensing Board's statement of licensing policy 2018 which states:

- "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".

The statement of licensing policy goes on to provide clear, concise and helpful information as to the factors an applicant needs to address in their application/ operating plan to satisfy the Licensing Board that due consideration has been given by the applicant to this specific licensing objective.

2.10 Alcohol related crime and disorder does not only occur within or immediately outside licensed premises. A significant proportion of alcohol is bought to be consumed at home or in other private dwellings. Whilst alcohol licensing alone cannot directly address issues such as domestic violence, Licensing Boards may wish to consider supporting work in this regard through partnership working. One example of a Licensing Board demonstrating a wider understanding of alcohol related crime can be found within West Lothian Licensing Board's statement of licensing policy 2018 which states:

- "The Board wishes to ensure that West Lothian is a safe place to work, live in and visit, and recognises that it is widely acknowledged that the consumption of alcohol can be a significant contributory factor in late night crime and disorder and in certain types of antisocial behaviour. Gender based violence issues also have strong associations with alcohol consumption (domestic abuse, sexual violence, human trafficking, commercial sexual exploitation and exploitation of vulnerable persons). While licensing alone cannot directly address these they are nonetheless significant issues within the crime and disorder, health, community safety and child protection agendas. The Board, in partnership with Police Scotland and other local agencies, is committed to playing its part in helping to reduce alcohol related crime and disorder and antisocial behaviour problems.



- “The Board recognises that licensing is not the primary mechanism for the control of criminal behaviour, public nuisance and antisocial behaviour once individuals have left licensed premises. Nevertheless the Board considers that licensing plays a key role in both preventing and controlling alcohol related crime and disorder and antisocial behaviour through the promotion of the licensing objectives and the monitoring of licensed premises.”

### *Securing public safety*

2.11 This objective links to a duty placed on licence holders to ensure that the public are kept safe in relation to the sale or supply of alcohol or operation of licensed premises.

2.12 The public in this context relates to a wide definition which includes customers on the premises, the premises’ staff and passers-by or persons in the vicinity of a licensed premises. For example, The Highland Licensing Board Statement of licensing policy states at Appendix 8:

- “All alcoholic and non-alcoholic drinks shall only be sold and served in cans or in plastic or polycarbonate containers. (This condition is likely to be applied at all large-scale public events such as music festivals, Highland Games and large agricultural shows, but may also be applied to other occasional licences where considered appropriate in the interest of public safety)”

### *Preventing public nuisance*

2.13 Whilst the operation of a licensed premise does not of itself inherently create public nuisance, the 2005 Act recognises that nuisance from a licensed premise can be a concern for local residents and communities and this objective therefore seeks to provide comfort that nuisance (e.g. noise, littering) and anti-social behaviour can be addressed where relevant. It is likely that the Police will be involved as the first responder to issues of public nuisance and anti-social behaviour.

2.14 It should be noted that not all noise emanating from a licenced premise should be treated as a public nuisance for the purposes of this licensing objective. For example, nuisance caused to local residents from a noisy extractor fan or ventilation system should properly dealt with under a different regulatory regime.

2.15 Fife Licensing Board’s statement of licensing policy sets out the steps one Licensing Board is taking to promote this licensing objective:

- stipulating 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 the situation or use of the premises contributing to anti-social behaviour.
- clearly setting out licence holders’ responsibilities with regard to: smoking in public places (making a cross reference to the “protecting and improving public health” and “protecting children from harm” licensing objectives);

waste generated in or by the premises being disposed of safely; and the provision of outdoor seating.

- helpful examples of control measures are given to assist applicants who may need to take account of such matters when preparing and carrying out the activities in their Operating Plan. Applicants are also reminded of the need to consult with various named bodies prior to holding any outdoor musical events or using amplified equipment.

### *Protecting and improving public health*

2.16 This licensing objective prompts those involved in the alcohol licensing regime to consider the impact of the sale and consumption of alcohol on health within the legislative framework provided by the 2005 Act. This Licensing objective, probably more so than the others, provides Licensing Boards with the opportunity to take a more strategic approach to licensing in their area, and set out their vision for their licensing area through engagement with the local community.

2.17 In this way this licensing objective encourages Licensing Boards to consider the cumulative effect of licensed premises on alcohol-related harm, within their licensing area, rather than the actions of any individual premises. Collecting harm data for localities will build a picture of the health and wellbeing of the people in the locality, and doing so on a consistent basis over time means the long term health and wellbeing of a locality can be monitored and improvements made. Local Licensing Forums are well placed to assist Licensing Boards in this task.

2.18 City of Glasgow Licensing Board is an example of one of a number of Licensing Boards which have adopted an approach of looking at alcohol and health issues at their local authority area level, and then made a policy that seeks to promote the public health objective. City of Glasgow's Licensing Board's statement of licensing policy sets out its approach to this matter:

- ".....the Licensing Board was particularly concerned by the number of areas in the city which suffer from high levels of alcohol related emergency hospital admissions and alcohol related deaths, in many cases well above the average for the country as a whole..... it was also evident that in some areas there are very few licensed premises and therefore identifying them as an overprovision locality in terms of the number and capacity of licensed premises would not be appropriate.
- "However, overprovision is only one ground for refusal, and the Licensing Board believes that in terms of the alcohol related health data it has considered, it is important to clearly set out its concern regarding the granting of an off-sales licence and the Licensing Objective of Protecting and Improving Public Health.
- "While each application will be considered on its own merits, in the view of the Board where there is evidence that the locality in which the applicant premises are situated suffers from higher than the national average levels of alcohol related health harms, .....the Licensing Board will carefully

consider whether the granting of such a licence would be inconsistent with the Licensing Objective of Protecting and Improving Public Health”.

*Protecting children and young persons from harm*

2.19 The Air Weapons and Licensing Act 2015 amended the 2005 Act to broaden out this objective - from “protecting children from harm” - to “protecting children and young persons from harm”. The 2005 Act provides that “a child” means a person under the age of 16 and “a young person” means a person aged 16 or 17. Young people are particularly vulnerable to the effects of alcohol, whether they are drinking themselves or being affected by other people drinking in their lives. Broadening out this objective gives Licensing Boards greater scope to protect young persons.

2.20 In a wider sense, the presence of this objective underlines that the responsible operation of licenced premises is not simply about avoiding the commission of criminal offences but in ensuring that the environment or atmosphere of a premise where children or young people are to be admitted is a sensible, non-threatening one where children and young persons can be in the company of adults who are consuming alcohol.

2.21 For example, in the foreword to its 2018 statement of licensing policy South Ayrshire Licensing Board commented:

- “The Board wished to strike a balance, in support of our very important objective of protecting children and young persons from harm, by suggesting that moderate on-premises consumption of alcohol in a well-run and supervised family friendly environment is better able to protect our young people than any provisions we can make to discourage families consuming excessive alcohol in their homes.”

2.22 Dundee Licensing Board, is one of a number of Licensing Boards which clearly state in its statement of licensing policy that:

- “As a general rule, children and young persons under the age of 18 will only be permitted into licensed premises which are considered to be restaurants or into other licensed premises where the primary purpose of allowing them access is to consume a meal or to attend a pre-booked and ticketed function”

2.23 North Ayrshire Licensing Board is one of a number of Licensing Boards which make specific reference in their statement of licensing policy to licensed premises requiring to provide the appropriate environment for children and young people.

- “The Board has a long-standing interest in encouraging family-friendly Premises within North Ayrshire and wishes to continue to ensure that Premises which seek to accommodate under-18s are run in such a way that they are suitable. Premises which are small and enclosed or which have few facilities, are unlikely to be accepted as able to provide the appropriate environment”

2.24 Children and young people are particularly vulnerable to the effects of alcohol – the earlier a young person begins to drink alcohol, the more likely they are to drink in ways that can be risky later in life. The 2005 Act creates a number of offences which relate to the sale or supply of alcohol to children and young persons (see Chapter 12 for more information).

2.25 Licensing Boards will wish to be mindful that children and young people can be impacted by exposure to marketing and promotion of alcohol within licensed premises. For example, Falkirk Licensing Board comments in its statement of licensing policy 2018 that:

- “Where licensed premises intend to hold events where alcohol is not provided and those events are specifically targeted at children or young persons (for, example, underage discos or parent and toddler groups), consideration should be given to taking steps to avoid any obvious promotion of alcohol.”

2.26 Whilst alcohol licensing alone cannot directly address issues such as child sexual exploitation, Licensing Boards may wish to consider supporting work in this regard through signposting licence holders to further information or through partnership working. For example, the East Lothian Licensing Board statement of licensing policy 2018 signposts parties to “*East Lothian & Midlothian Inter-Agency Guidance on Child Sexual Exploitation*”.

2.27 City of Glasgow Licensing Board’s statement of licensing policy 2018 outlines that as part of the consultation process on the draft statement of licensing policy, the Licensing Board met with representatives from Barnardo Scotland, to hear about their campaign to work with businesses in Glasgow, including licensed premises, to help them understand their role in preventing and tackling child sexual abuse. In the finalised licensing statement, the Licensing Board encourages all licence holders and operators of licensed premises to carry out a risk assessment of their premises with regard to child sexual exploitation and use it to inform their written policies and procedures, as well as in staff training and refresher training and the Licensing Board states it will also consider making this a condition of a premises licence where it is considered necessary and appropriate to do so.

### **3. LICENSING BOARDS**

#### **Introduction**

3.1 This Chapter provides information about a range of activities – including publication of reports, training and fee setting – Licensing Boards undertake under the 2005 Act.

3.2 Licensing Boards were created by the Licensing (Scotland) Act 1976. Section 5 of the 2005 Act provides for the continuation of those Licensing Boards. This means that there is a Licensing Board for each local authority area or, where a local authority area has been divided into licensing divisions, a Licensing Board for each division.

3.3 The 2005 Act also allows for a local authority area which was not previously divided into licensing divisions to subsequently make such a determination. The existing Licensing Board is dissolved and a separate Licensing Board created for each of the divisions. In a similar vein any local authority can revoke a previous determination they have made to divide their area into licensing divisions. However, if they decide to do so, there is to be a single Licensing Board for the whole of the local authority area.

3.4 If a local authority decides to make any such determination or revocation they must notify the Scottish Ministers accordingly, no later than 7 days after doing so and must publicise it in a manner the local authority sees fit. For example this may be achieved by making the information available on the local authority's and Licensing Board's websites.

3.5 Licensing Boards are independent regulatory bodies governed by the 2005 Act as amended and associated statutory instruments. Local authorities elect members from amongst their councilors to form a Licensing Board. However, a Licensing Board is a separate legal entity from the local authority within whose area it sits. Licensing Boards are expected to operate in a transparent and fair way whilst being mindful of best practice when fulfilling their statutory duties and are accountable to their local communities.

3.6 Schedule 1 of the 2005 Act sets out procedural matters relating to the membership and other administrative matters for Licensing Boards provided for by section 5 of the 2005 Act. Whilst the Scottish Ministers have a number of powers under the 2005 Act to make subordinate legislation - to in effect put more flesh on the legislative framework set out in this piece of legislation – the 2005 Act is clear that the operation of the licensing system is the responsibility of the Licensing Boards. Licensing Boards have wide discretion to determine appropriate licensing arrangements according to the needs and circumstances of their local communities and their own legal advice.

#### **Duties under the 2005 Act**

3.7 Licensing Boards are required by the 2005 Act to carry out a number of duties some of which are described below.

### *Statement of Licensing Policy*

3.8 The 2005 Act places a duty on Licensing Boards to publish what it refers to as a “statement of licensing policy” for their area for a three year period. This statement should, amongst other matters offer guidance and clarity on the policy on which a Licensing Board will base its decisions in implementing their functions under the 2005 Act. A Licensing Board may choose to publish a supplementary statement of licensing policy during the three year period that the statement of licensing policy applies. When preparing these documents a Licensing Board must consult with various people. Chapter 4 “Statement of Licensing Policy” covers this topic in more depth.

### *Overprovision Assessment*

3.9 The 2005 Act placed a duty on Licensing Boards to make an assessment of overprovision and include a statement regarding this in their statement of licensing policy. This policy provides Licensing Boards with powers to consider the unique circumstances of their area and decide whether, based on local needs, it is appropriate to restrict access to alcohol through limits on new licences, licences of a particular type, or variations of existing licences. Where it is assessed that there is overprovision a rebuttable presumption is created against granting new licences although each case is judged on its own merits and there is always the possibility of exceptions. The Air Weapons and Licensing (Scotland) Act 2015 amended the 2005 Act overprovision assessment provisions. Chapter 5 “The Overprovision Assessment” covers this in more depth.

### *Public Register*

3.10 In addition to the Freedom of Information requirements (see paragraphs 3.21 below) which Licensing Boards have to comply with, the 2005 Act places a duty on Licensing Boards to keep a licensing register containing the following information:

- premises licences, personal licences and occasional licences issued by the Licensing Board,
- the Licensing Board's decisions in relation to applications made to the Licensing Board under the 2005 Act, and
- other decisions of the Licensing Board relating to the licences mentioned in paragraph (a).

3.11 Licensing Boards are also required to make their licensing registers available for public inspection at all reasonable times. For example, the [Dundee City Licensing website](#) provides information on how to view public registers on-line and “in person”. Dundee City Licensing pages.

### *Annual Reports*

3.12 The Air Weapons and Licensing (Scotland) Act 2015 amended the 2005 Act to require Licensing Boards to prepare and publish an annual functions report and an annual financial statement no later than three months after the end of the financial year (31 March). Provision is also made in the 2005 Act which allows a Licensing Board, if they consider it appropriate, to prepare and publish a combined function and financial report and such a report must be published not later than 3 months after the end of the financial year in question.

### *Training of Licensing Board Members*

3.13 The 2005 Act provides that an 'election of Licensing Board members' must be carried out by the local authority at their first meeting after each ordinary election of the local authority. All Licensing Board members must undertake the required training within 3 months of appointment. If the local authority area is divided into licensing divisions, each of the Licensing Boards for those divisions will have an 'election of members.' Each time members are re-elected they must undergo the training again, within three months of their re-election.

3.14 Members must provide evidence of having completed their training to the clerk to the Licensing Board within four months of the member's election or re-election. Until this has been done, the member may not take part in Licensing Board proceedings. If the member fails to undergo training within three months, or to submit evidence within four months, of election or re-election, the member ceases to hold office.

3.15 Consideration should be given by the Licensing Board to co-ordinate accredited training for new and re-elected members along with other persons for which training is relevant, for example, members of the Local Licensing Forum and local Licensing Standards Officers. This could assist with gaining an understanding of each of their respective roles and build good working relations. Consideration could also be given to including information on relevant local issues alongside the training.

3.16 As with Licensing Standards Officer training (see Chapter 7), Licensing Board members training has been reviewed and a revised training specification submitted to and accredited by Scottish Ministers. As part of the training qualification project to refresh the Licensing Board Member training and the Licensing Standards Officer training both specifications were also considered by a steering group who consulted and agreed on the proposed content in particular, the Scottish Qualifications Authority who have had significant involvement in advising on and developing the training specification. The following topics require to be covered under the accredited training:

#### *Introduction to alcohol licensing*

- what the Licensing (Scotland) Act 2005 covers
- reason for the Licensing (Scotland) Act 2005
- responsibility of Licensing Board members to regulate the sale of alcohol, and premises on which alcohol is sold

#### *The 5 licensing objectives*

- what the 5 licensing objectives are
- how alcohol can impact on the 5 licensing objectives

### *The quasi-judicial process*

- role of the Licensing Board in upholding the 5 licensing objectives through policy and decision making
- decision making
- disqualification from the Licensing Board

### *The creation, monitoring and review of appropriate licensing board policy*

- creation of a statement of licensing policy
- relationship with other policies
- duty of the Licensing Board to assess overprovision and make statements of licensing policy
- monitoring of the statement of licensing policy

### *Key role of others*

- role of the Clerk
- role of the applicant and their agent
- constitution and role of the Local Licensing Forum and the Licensing Board's duty in relation to Local Licensing Forums
- constitution and role of the Licensing Standards Officer in relation to the Licensing Board and local authority
- role of the Health Board
- role of the Police
- overview of other statutory bodies involved in the licensing process
- role of the public in licensing

### *Premises and occasional licences*

- what is a premises licence
- role of premises manager
- objections
- licence conditions
- determination of a premises licence application
- review/variation/transfer of a premises licence
- provisional/temporary licence
- occasional licences

### *Personal licences*

- what a personal licence is
- action against personal licence holders

### *Licensed hours*

- what are Licensed hours
- extensions to licensed hours

### *Fees*

3.17 Fees to be charged by Licensing Boards in relation to various matters under the 2005 Act are set out in secondary legislation - The Licensing (Fees) (Scotland) Regulations 2007 as amended – by the Scottish Ministers. These fees cover a range of activities including, amongst others, annual premises licence applications,



annual premises fees, occasional licence applications. The regulations also enable Licensing Boards to set various fees in relation to more routine processes carried out under the 2005 Act.

3.18 The fees regime is intended to reflect the Scottish Government's intention for the system to be self-funding i.e. to cover both direct and indirect costs incurred by Licensing Boards. In other words, the money raised by fees should be broadly equivalent to the expenses incurred by the Licensing Board and the local authority for that area of the Licensing Board, in administering the licensing regime during that period.

#### *Engagement Strategies*

3.19 Licensing Boards should have effective engagement strategies in place to enable them to engage with and seek the views of their local community. In the case of Local Licensing Forums (see Chapter 6) who play a significant role in reviewing the operation of the licensing system in their locality, the 2005 Act requires each Licensing Board to hold, at least once in each calendar year, a joint meeting with the Local Licensing Forum for its area.

#### *Complaints*

3.20 Any complaint about a Licensing Board should be made to the Licensing Board itself in the first instance. If this does not resolve the matter, then a complaint can be made to the relevant local authority. Local authority websites provide information about their own complaints procedure. If after going through the local authority complaints procedure the matter remains unresolved then the final stage for complaints about public organisations is the [Scottish Public Services Ombudsman](#). The Ombudsman's website sets out its complaints procedure.

#### *Freedom of Information (Scotland) Act 2002*

3.21 Licensing Boards are public authorities and as such are subject to the Freedom of Information (Scotland) Act 2002 which requires them to publish information as well as respond to requests. Information is published under the publication scheme duty. All Scottish public authorities have adopted the Scottish Information Commissioner's Model Publication Scheme as the basis for deciding what information they proactively publish. [The Model Publication Scheme \(itspublicknowledge.info\)](#) for Scottish Public Authorities was updated in March 2021.

#### *Public Sector Equality Duty – Equality Act 2010*

3.22 The public sector equality duty in section 149(1) of the Equality Act 2010 requires public authorities (including Licensing Boards) to have due regard, when exercising their functions, to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

3.23 It is supported by the specific duties contained in The Equality Act 2010 (Specific Duties) Scotland Regulations 2012 (SSI 2012 No.162) as amended. The purpose of the Regulations is to place specific duties on some of these authorities (including Licensing Boards) to enable them to better perform their public sector equality duty.

3.24 To support Scottish public authorities in meeting their equality duties, the [Equality and Human rights Commission](#) has produced technical and non-statutory guidance.

## **4. STATEMENTS OF LICENSING POLICY**

### **Introduction**

4.1 This Chapter provides information on the development and preparation of statements of licensing policy (referred to in the 2005 Act as a 'statement of licensing policy'). Each Licensing Board is required by section 6 of the 2005 Act to publish a statement of licensing policy before the beginning of each licensing policy period. Whilst the 2005 Act allows Licensing Boards to delegate certain functions, they cannot delegate responsibility for determining their licensing/supplementary statement of licensing policies.

4.2 The Air Weapons and Licensing (Scotland) Act 2015 amended the 2005 Act in relation to licensing policy periods. A statement of licensing policy will generally have effect from 18 months after a local authority election (which occur, at least, every five years) until 18 months after the next local authority election. For example following local authority elections in May 2017, Licensing Boards had to have agreed and published a statement of licensing policy by November 2018 which will cover the period to November 2023 (assuming local authority elections in May 2022).

4.3 Linking the statement of licensing policies to the local authority elections enables newly appointed Licensing Board members to use the statement of licensing policy inherited from their predecessor Licensing Board during the interim period i.e. up to 18 months post the local authority election. This allows the Licensing Board to take stock following an election, take the views of others into consideration, gather evidence and set policy statements that reflect their views and aspirations whilst being mindful of the need to promote the five licensing objectives and to be consistent with the provisions of the 2005 Act.

4.4 A Licensing Board may also issue supplementary statement of licensing policies which will be with respect to the exercise of their functions during the remainder of that licensing policy period or until it is superseded by another supplementary statement of licensing policy or new statement of licensing policy. For example North Lanarkshire Licensing Board's statement of licensing policy in its preamble section states: "This policy will be applied during the period until 18 months after the next ordinary local government elections; it will be kept under review and revised, if appropriate, by the issue of supplementary statements, during this period".

4.5 The statement of licensing policy must be published before the beginning of the licensing policy period. Once published, Licensing Boards must make copies of a licensing and any supplementary statement of licensing policy for public inspection free of charge and publicise this fact. It is recommended that licensing and supplementary statement of licensing policies are made available on the Licensing Board website and/or the alcohol licensing section of the relevant local authority website.

4.6 The statement of licensing policy is an important part of an assessment of the wider considerations at play within the Licensing Board area and should set out a general approach to the making of licensing decisions, but must not ignore, or be inconsistent with, provisions in the 2005 Act. However, it must also not simply be a

repeat of what is set out in legislation or statutory guidance. It should provide a clear indication to the local community as to the Licensing Board's evidenced based policy and should seek to promote the licensing objectives (see Chapter 2 for more about the licensing objectives) set out in the 2005 Act. It is important that statement of licensing policies should be written in terms that can be easily understood by the local community as consultation with the local community (including Local Licensing Forums), is a key part of providing feedback to Licensing Boards.

### **What should, may and should not be included in a statement of licensing policy**

4.7 The statement of licensing policy should include:

- A clear indication of the Licensing Board's policy on the granting of licensed hours generally, and where different policies may apply in different localities according to local circumstances;
- A statement of their policy on overprovision (see Chapter 5 for more about the overprovision assessment) of licensed premises or particular types of premises and which localities (if appropriate) have (1) been determined to be overprovided for by the Licensing Board, or (2) are approaching overprovision, including the evidence upon which the Licensing Board relied and the material considerations taken into account;
- A note which states that where an application is made for the confirmation of a provisional premises licence (section 46 of the 2005 Act refers), that the Licensing Board may make a variation to the conditions for the purposes of "ensuring consistency with any statement of licensing policy since the licence was issued".
- A general statement on how many Licensing Standards Officers the local authority employs, their role and remit, and how they can be contacted; and
- A statement of the agreed procedures the Licensing Board has developed for handling applications, objections, representations, delegation of functions and review hearings etc. for premises and personal licences.

#### *Licensed hours*

4.8 In relation to licensed hours, the statement of licensing policy should:

- State that licensed hours will be those agreed following the Licensing Board's consideration of the operating plan and any mandatory and local licence conditions applied. Particular attention should be drawn to those premises wishing to open after 1 am since additional mandatory licence conditions will apply (see Chapter 8 for more about Premises Licences). It is important that in developing its policy on licensed hours, the Licensing Board must take account of the views of the Local Licensing Forum so that any policy published has the backing and confidence of the local

community. Further to this, following a review, reducing licensed hours can be one of the sanctions applicable against a licence holder.

- Provide a clear indication of the Licensing Board's policy in relation to licensed hours in general and outline any specific areas of the policy which may differ from that general policy e.g. where different policies may apply in different localities according to local circumstances, if appropriate. Evidence for the policy approach should be included within the statement of licensing policy (this may be in an annex to the statement of licensing policy) in the interests of transparency and openness.
- State that each application will be considered on its individual merits. However, it is important that the Licensing Board is alert to, and the statement of licensing policy recognises, the aggregate effect that a number of licensed premises may have on a community. For example, consideration should be given as to ways in which large numbers of customers leaving premises simultaneously can be appropriately managed. This might be necessary to reduce friction outside establishments, at taxi ranks and other transport sources, which can lead to disorder and disturbance.
- Observe the presumption in section 64 of the 2005 Act against 24 hour opening in Scotland for on and off sales. Licensing Boards are entitled to agree exceptions to that presumption but only if satisfied that there are exceptional circumstances justifying it. Ministers are of the view that Licensing Boards should consider "exceptional circumstances" to cover social events such as one-off local or national festivals.

4.9 A Licensing Board may extend the licensed hours in respect of the premises by such period as is specified in the extended hours application or such other period as the Licensing Board considers appropriate. Irrespective of the time period for the extended hours requested by the applicant or such other period as the Licensing Board considers suitable, the time period for the operation of the extended hours must be a maximum of one month.

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

4.11 Other considerations that may be included in the statement of licensing policy are:

- A clear indication of how the Licensing Board will take into account other strategies when developing their policy statement, for example,

Community Planning Partnerships, Local Health Improvement Plan, Alcohol & Drug Partnership, local crime prevention.

- Being clear that no statement of policy overrides the right of any person to make representations on an application or to seek a review of a licence where such provision has been made in the 2005 Act.

#### *Relationship with other strategies and regimes*

4.12 The alcohol licensing regime in Scotland does not exist in a vacuum and Licensing Boards should clearly explain how they will take into account other pertinent strategies and regimes when developing their statement of licensing policy. For example, the Western Isles Licensing Board statement of licensing policy comments that “The Board will work and appoint a Board Member to work with the Outer Hebrides Alcohol and Drug Partnership and the Outer Hebrides Community Safety Partnership in the Western Isles; the importance of such co-operation is recognised as part of the wider alcohol agenda”.

#### *Planning*

4.13 A statement of licensing policy should indicate that planning, building control and licensing regimes have separate processes and applications which have to be considered on their merits under the relevant regime. A good practice example is the City of Edinburgh’s statement of licensing policy where at Chapter 2 “Wider Context” it is stated that “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.”

#### *Transport*

4.14 A statement of licensing policy should describe any arrangements between the police and Licensing Standards Officers for reporting views or concerns to the local authority transport committee (or other bodies with responsibility for transport in their area). The police are best placed to advise on the need to disperse people from town and city centres quickly and safely to avoid high concentrations of people in particular vicinities which may lead to disorder, disturbance and pressures on public transport facilities. The use of taxi contracts, taxi marshals are examples of ways in which large numbers of people can be safely dispersed from pubs and clubs.

#### *Tourism*

4.15 Statement of licensing policies should indicate that arrangements have been put in place for Licensing Board to receive, when appropriate, reports on the local tourist economies for their area to ensure these are reflected in their considerations. A good practice example can be found within Fife’s Licensing Board’s statement of licensing policy which makes reference to and agrees with views expressed by the Fife Tourism Partnership regarding the importance of tourism to Fife and supports

the creation of high quality facilities for tourists and a vibrant night time economy in the larger settlements in Fife. Fife's statement of licensing policy also states that "the Board will seek reports from the tourism agencies on the local tourist economy to ensure that they are reflected in the Board's considerations".

4.16 The statement of licensing policy should not include:

- An intention to introduce (by means of the imposition of licence conditions) a prohibition on the sale of alcohol for consumption off the premises to those over 18 but under 21, whether in relation to some or all premises in the Licensing Board's area. However, this does not prevent a Licensing Board from imposing licence conditions restricting off-sales of alcohol to people under 21 on a case by case basis.

### **Licensing policy and the licensing objectives**

4.17 As discussed above, when preparing a statement of licensing policy or a supplementary statement of licensing policy, a Licensing Board is required by the 2005 Act to ensure that the policy stated in these statements seeks to promote the 5 licensing objectives. The 5 licensing objectives are (covered in more detail in Chapter 2):

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

4.18 Licensing Boards are required to have regard to these 5 objectives when carrying out their functions under the 2005 Act. The 5 objectives carry equal weight and importance. Inconsistency with one or more of the objectives could provide a basis for refusal of an application.

4.19 A policy must also be consistent with the principles of what constitutes a lawful policy in general administrative law terms. Licensing clerks will be familiar with *Calderwood v Renfrewshire Council* (2004) Inner House of the Court of Session.

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

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

4.22 As licensing policy has a substantial role to play in promoting how the licensing objectives might be met, inconsistency with policy may be an indicator that the refusal of the application should follow. Equally, consistency with policy may be an indicator that an application is consistent with the licensing objectives. The licensing policy is entitled to be given considerable weight. It is not merely a guideline. It is for the Licensing Board to determine whether what is proposed is inconsistent with the policy and whether the grant of the application would impact upon the rationale for the policy.

4.23 To assist Licensing Boards in their consideration of whether an application is consistent with their policy and the licensing objectives, Licensing Boards may wish to consider asking applicants to set out in their operating plan how they will address the licensing objectives and also to supply a written statement detailing how they will promote the licensing objectives. A good practice example is Falkirk Licensing Board's statement of licensing policy which says:

- "While not a requirement of the Act, the Board expects applicants for new and provisional Premises Licences and transfers of Premises Licences to accompany their applications with a written statement tailored to their particular premises setting out how they intend to conform to the 5 licensing objectives, paying particular attention to the locality in which the premises are situated and the activities to be carried out. The Board is of the opinion that a written statement demonstrates an active and thoughtful engagement with the licensing objectives".

4.24 Falkirk's statement of licensing policy goes on to say that: "The Board expects that an occasional licence will be operated in such a manner as to be consistent with the five licensing objectives. To that end, the Board requires applicants for occasional licences to submit with their application a written statement explaining how they will promote the five licensing objectives." To help applicants, Falkirk Licensing Board has attached a pro forma to the application form (available on the occasional licence page of Falkirk Council's website) to be completed and the website also indicates that "if applicants need assistance then contact one of the Licensing Standards Officers to make an appointment".

### **Matters to consider when preparing a statement of licensing policy**

4.25 It is good practice when considering a new statement of licensing policy or supplementary statement of licensing policy to evaluate the impact the previous statement of licensing policy or supplementary statement of licensing policy. The output from this evaluation exercise can help inform the development of the new statement of licensing policy or supplementary statement of licensing policy. The development of a new statement of licensing policy also provides a Licensing Board with the opportunity to consider and reflect on any emerging issues and whether this might result in the need to consider a change in policy.

4.26 In the interests of openness and transparency Licensing Boards will wish to consider including some narrative in their statement of licensing policy (perhaps as an annex) to explain the evaluation process and how this fed into the development of a new statement of licensing policy.



4.27 The 2005 Act provides that, at the request of a Licensing Board, the Chief constable, the relevant health board or the relevant local authority must provide to the Licensing Board statistical or other information that it may reasonably require for the purpose of preparing a supplementary/statement of licensing policy. Relevant information from these parties will help develop a solid evidence base on which the Licensing Board can build its licensing policy. Licensing Boards may find it helpful to discuss and agree with these parties, in advance of the information being required, what the most useful categories of information might be and in what format the information should be presented. This should ensure any potential difficulties are highlighted and resolved at an early stage.

4.28 It is important that Licensing Boards consider and evaluate any evidence gathered to ensure there is a reliable and credible basis on which to develop their policy. Local Licensing Forums may be well placed to assist Licensing Boards with this matter. Licensing Boards should give appropriate weight to the views and responses obtained.

4.29 After the initial evidence gathering process, it is good practice for Licensing Boards to publish their draft statement of licensing policy for comment. For example Argyll and Bute Licensing Board carried out a 7 week consultation on a draft statement of licensing policy in early 2020. Argyll and Bute Licensing Board helpfully also provided a list of policy changes between the existing statement of licensing policy and the proposed new draft statement of licensing policy.

4.30 Argyll and Bute Licensing Board also published a “You said, We did” document on the relevant local authority website. This provided information on the number of responses received and an outline of what the responses covered, with issues of particular note being highlighted. The document also advised the consultation feedback was considered by the Licensing Board at its June 2020 meeting and changes were made to the licensing document prior to its finalisation and subsequent publication. In cases where there may be substantial differences between the draft statement of licensing policy consulted on and the final statement of licensing policy which is published, then in the interests of openness and transparency, Licensing Boards may wish to reflect on the need to fully explain the decision making process which resulted in their arriving at the final statement of licensing policy.

4.31 When preparing a licensing or a supplementary statement of licensing policy, a Licensing Board is required by the 2005 Act to consult—

- the Local Licensing Forum for the Board's area,
- if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative,
- the relevant health board, and
- such other persons as the Board thinks appropriate.

4.32 In short, a Licensing Board should consult its local community in its widest sense. For example, Aberdeen City Licensing Board's convenor commented in her introduction to her Board's 2018 Statement of licensing policy that:

- "In order to create a policy that stakeholders could feel they had helped shape, the Board recognised that they would have to rewrite the Policy and not simply amend what had gone before. To that end, the Board carried out extensive consultation which included holding a Licensing Conference. The collaborative approach generated some very interesting feedback from the community and public-sector partners, residents and the trade which helped the Board to understand their needs and wishes."

### **Review of the statement of licensing policy**

4.33 In exercising their functions under the 2005 Act, a Licensing Board must have regard to the current statement of licensing policy and any relevant supplementary statement of licensing policy, published by the Licensing Board. Licensing Boards must keep the effectiveness and rationale of the statement of licensing policy under review and make revisions as and when appropriate.

4.34 The Air Weapons and Licensing (Scotland) Act 2015 amended the 2005 Act to place a duty on Licensing Boards to prepare and publish an annual report on the exercise of their functions no later than three months after the end of the financial year (i.e. year ending 31 March). This report should contain a statement explaining how the Board has had regard to the licensing objectives, their statement of licensing policy, and any supplementary statement of licensing policy in the exercise of their functions under the 2005 Act during the financial year.

4.35 Being able to review the statement of licensing policy means that where a decision made by the Licensing Board, inadvertently, has an unintended consequence on the local community, there is a mechanism for the Licensing Board to review this decision. Local Licensing Forums can be of particular assistance to Licensing Boards in terms of providing feedback on how a specific policy is impacting on the local community.

### **Other considerations**

4.36 There are of course many other matters that Licensing Boards can include in their statement, for example, their policy on outdoor seating areas and the suitability of take-away premises for the sale of alcohol for consumption off the premises.

## 5. OVERPROVISION

### Introduction

5.1 This chapter provides information to assist Licensing Boards to make a pro-active assessment of the overprovision of licenced premises in their licensing authority area.

5.2 Licensing Boards have two separate but directly linked responsibilities in relation to overprovision. Each Licensing Board is required to include a statement as to overprovision in its authority area within the Board's statement of licensing policy (section 7 of the 2005 Act refers) and each Board also needs to consider overprovision when determining a premises licence or premises licence variation application (see chapter 8 Premises Licences).

5.3 There have been a number of amendments made to section 7 since its commencement. The Alcohol etc. (Scotland) Act 2010 and the Police and Fire Reform (Scotland) Act 2012 made changes to the to the list of persons a Licensing Board must consult when considering whether there is overprovision (as set out at section 7(1)) in any locality). The "relevant Health Board" was added to the list of consultees and a textual amendment was made to the reference to Chief constable.

5.4 The Air Weapons and Licensing (Scotland) Act 2015 made a number of amendments to section 7. Some were technical whilst others were more substantive. To assist Boards in considering the wider scope of the protecting and improving health licensing objective, section 7 was amended to enable Boards to consider the availability of alcohol across their whole geographic area. Further amendments clarified that increased capacity can be considered separately from an increase in the number of licensed premises in terms of overprovision and that opening hours should also be considered.

5.5 Currently, section 7 of the 2005 Act requires a Licensing Board to include in its statement of licensing policy, a statement as to the extent to which the Board considers there to be an overprovision of (a) licensed premises, or (b) licensed premises of a particular description, in any locality within the Board's area, and in doing so, the Board may determine that the whole of the Board's area is a locality.

5.6 An overprovision assessment must be evidenced base. It is a matter for each Licensing Board to determine what their overprovision policy will be and how the evidence it has ingathered will be interpreted and weighted. When undertaking this work Licensing Boards should be mindful of 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. Licensing Boards Licensing Board should ensure the approach to ingathering, weighing and interpreting evidence, and consultation responses is robust, all of the relevant evidence before them is taken into account, and the rationale for regarding/disregarding that evidence in developing Licensing Policy Statements (LPS) is clearly set out.

5.7 It is also important that Licensing Boards consult widely on a draft overprovision assessment and carefully consider the views expressed by consultees prior to finalising an overprovision assessment for the Licensing Board area.

### **Purpose of overprovision**

5.8 The requirement to produce an overprovision assessment, and note this in the statement of licensing policy, is designed to:

- enable Licensing Boards to take account of changes since the publication of their previous statement of licensing policy and any subsequent supplementary statement of licensing policies which may have been issued.
- improve public and trade confidence in the licensing system by setting out clearly the grounds on which overprovision should be determined.
- recognise that halting the growth of licensed premises in localities is not intended to restrict trade but may be required to preserve public order, protect the amenity of local communities and mitigate the adverse health effects of increased alcohol consumption.
- provide potential entrants to the market with a clear signal that they may incur abortive costs if they intend to apply for a licence in a locality which a Licensing Board has declared to have reached overprovision.

### **Which licensed premises are to be included?**

5.9 Section 7 provides that premises which have only an occasional licence are to be left out of the assessment of overprovision. Additionally, section 125 of the 2005 Act provides that section 7 does not apply “in relation to premises which are used wholly or mainly for the purposes of any club of such description as may be prescribed”. Members clubs are a category of club which falls within Regulation 2 of the Licensing (Clubs) Scotland Regulations 2007 (2007/76). All other licensed premises should be included when considering whether there is overprovision of licenced premises generally or licensed premises of a particular description.

5.10 Licensed premises of a particular description may be determined in terms of their style of operation. For example Scottish Borders Licensing Board states in the overprovision section of its statement of licensing policy that:

- “The number of late night hour entertainment premises (after 1am) within Scottish Borders is currently four. The Board is of the view that any increase beyond that number could be overprovision”

### **Determining Localities**

5.11 It is for each Licensing Board to determine the localities within the Licensing Board’s area for the purposes of the 2005 Act. This flexibility allows Licensing Boards to reflect the different circumstances in different geographical areas

throughout the country, for example, a locality in a rural area might be larger than a locality in an urban area. As mentioned above, Licensing Boards can determine that the whole of the Licensing Board's area is a single locality.

5.12 The choice of locality must, however it is done, be rational, capable of justification and be consistent across the Licensing Board area. It is expected that, in the interests of openness and transparency, Licensing Boards set out the reasons for their decision making in arriving at their locality choices (e.g. as part of the consultation on a Licensing Board's draft overprovision assessment) . For example,

- North Ayrshire Licensing Board's statement of licensing policy states: "The Board's Overprovision Policy covers its whole area, although the Board has determined that there are 6 'Localities' in its area (coinciding with the 6 'Localities' used by the North Ayrshire Community Planning Partnership (CPP).

"These areas contain a total of 38 Intermediate Zones ("IZs"). IZs are the areas commonly used to gather a wide range of government statistics."

- West Dunbartonshire's statement of licensing policy states: "In its assessment of overprovision, the West Dunbartonshire Licensing Board has continued its established approach of utilising the Scottish Neighbourhood Statistics intermediate data zone (IDZ) geographies as the localities for this purpose. "The West Dunbartonshire area can be broken up in to 18 distinct IDZ localities."

5.13 City of Glasgow Licensing Board demonstrated best practice in relation to gathering local views when consulting on proposed localities in relation to its overprovision assessment. The Licensing Board indicated, through its website, that it intended to undertake visits to the proposed overprovision localities to speak directly to local residents and owners and staff of licensed premises in these areas to hear views on the impact of higher concentrations of licensed premises and to gauge whether there is support at a local level for including the area as an overprovision locality in the finalised LPS.

### **Matters to be considered in determining if there is overprovision**

5.14 In determining whether or not overprovision exists, section 7 provides for the matters a Licensing Board needs to consider:

- must have regard to the number and capacity of licensed premises in the locality
- must consult
  - the chief constable
  - the relevant health board
  - such persons as appear to the Board to be representative of the interests of (i) holders of premises licences in respect of premises within the locality, (ii) persons resident in the locality, and
  - such other persons as the Board thinks fit.

- may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality.

### *Number and capacity of licensed premises*

#### Number of licensed premises

5.15 The number of licensed premises impacts on the availability of alcohol and as many Licensing Boards recognise, the type of licensed premises is also of relevance. For example, a large supermarket and a small corner shop will each count as one licensed premises. The amount of alcohol sold by each premise will be different and the potential harms associated with the amount of alcohol sold will also be substantially different. A locality with only licensed restaurants is likely to sell less alcohol than a locality with only vertical drinking establishments. The harms associated with licensed restaurants will be less than the harms associated with vertical drinking establishments.

5.16 As discussed at Chapter 3 the 2005 Act places a duty on Licensing Boards to keep a licensing register and this can be used by Licensing Boards to determine the number of premises licensed for:

- the sale of alcohol for consumption on the premises;
- the sale of alcohol for consumption off the premises; and
- the sale of alcohol both on and off the premises.

#### Capacity of licensed premises

5.17 In the context of the 2005 Act and as set out at section 147, capacity –

- in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption on the premises (or, as the case may be, that part), the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time, and
- in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption off the premises (or, as the case may be, that part), the amount of space in the premises (or, as the case may be, that part) given over to the display of alcohol for sale.

#### *On-sales*

5.18 Many Licensing Boards comment in their overprovision assessments that they seek input from their local authority Building Standards Officers regarding capacity matters. For calculating the capacity for on-sales, Licensing Boards may wish to have regard to the parts of the Technical Handbook issued in support of the Buildings (Scotland) Regulations 2004 which relate to occupancy capacity and the number of licensed hours the premises is open. The Building Standards pages on the Scottish Government website [Building standards - gov.scot \(www.gov.scot\)](http://www.gov.scot) provides information on buildings regulations and the associated technical guidance.

### *Off-sales*

5.19 For calculating the capacity for off-sales, Licensing Boards should have regard to the Premises License (Scotland) Regulations 2007 (SSI 2007 No. 252) and regulation 5 which makes provision as to the layout plan.

5.20 In its statement of licensing policy, Stirling Licensing Board states:

- “Assessing the capacity of licensed premises is important under the Act. This is, in part, due to the fact that capacity of premises will be taken into account in assessing overprovision.

- “On sales

The Board considers that it is very important for licence holders to have a sound knowledge of the safe capacity of their premises. Capacity for on sales premises should be presented to the Board in patron numbers. The capacity should be worked out using the formula used by Building Standards, this formula does not take into account the fixtures and fitting of the premises.

“This is particularly so where the premises are large, or where they include entertainment such as live music, dances and discos. The Board expects, in respect of these types of premises, that there should be suitable capacity control measures in place. These may include stewarding, door number clickers or issuing of tickets.

- “Off sales

Again, the Board considers that it is very important for licence holders to have a sound knowledge of the capacity of their premises. Capacity for off sales premises should be presented to the Board in meters squared”.

### *Consultation*

5.21 As set out at Chapter 4 statements of licensing policy, Licensing Boards are encouraged to consult widely within their respective areas on both their statement of licensing policy and it is equally important for Licensing Boards to consult widely on their overprovision assessment. Licensing Boards may wish to consider carrying out these two consultations simultaneously. For example, Edinburgh Licensing Board published 2 consultations and commented on their web page:

- “The Edinburgh Licensing Board is consulting on the terms of its draft statement of licensing policy, having carried out an informal consultation earlier in the year. As part of this process, the Board is also consulting on its assessment of localities in the Board’s area which show characteristics of overprovision of licensed premises. These two consultations are being carried out in tandem.
- “Details of the individual localities, and the basis upon which they’ve been considered, is set out in the supporting documentation provided with this consultation”.

5.22 Chapter 6 Local Licensing Forums (LLFs) sets out the important role a LLF has to play in the alcohol licensing regime. In terms of other persons a Licensing Board may wish to consult, it is encouraging to note that LLFs and third sector organisations providing treatment services for alcohol harm within their locality, are as a matter of course being invited by many Licensing Boards to offer their views. This is an approach the Scottish Government strongly supports.

5.23 For example in its statement of licensing policy under the heading of “Development of the Pro-Active Assessment of Overprovision”, Glasgow City Licensing Board comment:

- “In particular, the Licensing Board had regard to a report from the Local Licensing Forum with evidence and recommendations as to localities where the Forum considered there to be overprovision of licensed premises or licensed premises of a particular description. A copy of the report approved by the Local Licensing Forum, together with the supporting evidence gathered, is available at:  
<https://www.glasgow.gov.uk/councillorsandcommittees/viewDoc.asp?c=P62AFQDN2U2UDNZ3DN>

5.24 As regards consultation on localities in relation to its overprovision assessment, Inverclyde Licensing Board commented in its statement of licensing policy:

- “As the determination of “localities” is largely a matter for the Board, local knowledge plays a significant part in such determinations. The Board has had extensive consultations with Inverclyde Licensing Forum, who have in turn consulted with Community Councils, premises licence holders, the Inverclyde Alcohol and Drug Partnership, the NHS, Police Scotland, Inverclyde Community Health and Care Partnership and local residents”.

5.25 In preparing their statement of licensing policy and overprovision assessment, Dumfries and Galloway Licensing Boards had 2 periods of consultation which included 2 public meetings and a Working Group was also set up to discuss Overprovision. This Group met several times and comprised of the following members: Scottish Fire and Rescue Service; Police Scotland; Alcohol and Drug Partnership (NHS) and Dumfries and Galloway Council.

#### *Other matters*

5.26 A Licensing Board’s consideration of overprovision need not be confined to only considering numbers and capacity but could take account of other factors too. Licensing Boards have considerable discretion in this area.

5.27 In considering the statutory definition of ‘capacity’, it is accepted that there are other ways of considering in a wider sense what the capacity of a premises is. While the 2005 Act does not permit any alternative definition of capacity to be used, Licensing Boards are encouraged to consider under other matters whether, for example, a relevant factor to be considered alongside capacity of premises would be the ability for stock to be resupplied quickly. In other words, a premises which was able to maintain large stock levels but only had a relatively small area for displaying



stock may then suggest a small capacity while actually they are capable of significant sales volumes.

5.28 Other matters could be such things as inequalities; the proximity of specific types of premises such as facilities for vulnerable adults with problematic alcohol use; mental health services; hospitals; schools/nurseries; sports facilities; gambling facilities. Other considerations could also include concerns regarding people visiting the locality from other areas.

5.29 In particular, inequalities is an important consideration for Licensing Boards in relation to overprovision. There is a stark inequalities gradient to alcohol harm and a growing awareness that the impact of harmful drinking and alcohol dependence is much greater for those experiencing high levels of deprivation. For example, people living in our most deprived communities are over seven times more likely to die or are more than eight times more likely to be admitted to hospital due to alcohol use than those in our least deprived communities (Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2019: NHS Health Scotland; 2019). Similarly, areas of high deprivation can have extremely high rates of alcohol-related fires and crime rates, and it can often be individuals other than the drinker who feel the effects of alcohol use, including children, family, friends, colleagues and those working in frontline services such as the Police and Health Service.

5.30 Research examining the association between the density of alcohol outlets and neighbourhood-level income deprivation in Scotland has also found that there are 40% more licensed premises in the most deprived areas of Scotland than in the least deprived (BMC Public Health 2015 Research article "A cross-sectional analysis of the relationship between tobacco and alcohol outlet density and neighbourhood deprivation" N.K. Shortt et al). By taking account of evidence on inequalities, Licensing Boards can meaningfully consider how different communities are impacted differently by alcohol, and use this to formulate their policy.

### **Assessing overprovision**

5.31 There are a number of underlying principles that the Licensing Board should take into account as they approach the development of their statement of overprovision:

- Licensing Boards should use alcohol-harm information (or potential alcohol-harm information) to identify localities and then proceed to consider the number, type and capacity of premises in those areas.
- It is the potential for undesirable consequences which is intended to be addressed through overprovision assessments as a requirement within the 2005 Act. This can be thought of as the cumulative effect of more and more licences being granted in a locality and what this means in respect of the effect on life in that area. It is the cumulative effect rather than the actions of any single operator that is key.
- If a Licensing Board considers there is at least potential for, or a reasonable basis for, concluding that there will be a risk of adverse impact

on the objectives (should more premises licences be granted), it is entitled to come to the view that there is a state of overprovision.

- Consideration should be given as to whether aggregate information and evidence from a number of sources demonstrates a link between the availability of alcohol in an area and alcohol-related harm.
- To demonstrate a “dependable causal link”, the proof of the link must be on a balance of probabilities. What this means in practice is that based on the evidence of harm in a locality, it is more likely than not that alcohol availability is a cause, or that increasing the availability of alcohol in that area will increase that harm.
- There is no simple numerical formula for pinpointing the threshold between provision and overprovision. Determining overprovision involves the application of reason and judgement in the interests of the community.

## **6. LOCAL LICENSING FORUMS**

### **Introduction**

6.1 Local Licensing Forums (“Forums”) have a crucial role at the heart of the licensing system. When operating effectively, Forums can provide Licensing Boards with helpful and community-based feedback which will enhance the local Licensing Board’s awareness of both the beneficial and detrimental impact of their policies in particular on the local community and on local trade.

6.2 Section 10 of the 2005 Act requires every local authority to establish a Forum for their area (or, alternatively, a local authority may establish a Forum for each division if a local authority area is divided into licensing divisions). Schedule 2 of the 2005 Act sets out the membership, administration and other procedural matters relating to Forums established under section 10. Sections 11 and 12 of the 2005 Act, set out the general functions of Forums and certain duties placed on Licensing Boards in respect of Forums respectively.

6.3 Licensing Boards may find it helpful to be aware that local authorities must provide administrative support (including staff, property and services) to Forums to enable Forums to effectively carry out their role.

6.4 Information in this Chapter will be useful to local authorities to help them establish, support and sustain Forums, and as background information for members of the Licensing Board to be aware of. It is not exhaustive and local authorities will wish to adopt their own individual working practices and explore innovative ways in which Forums can carry out their work, so long as they are consistent with the provisions of the 2005 Act.

6.5 The role of Forums is to keep under review the operation of the licensing system in their area along with the functions exercised by the Licensing Board and to give advice and recommendations to the relevant Licensing Board.

6.6 As the Forum for a Licensing Board’s area is a statutory consultee in respect of the formulation of the statement of licensing policy and any supplementary statement of licensing policy, the Licensing Board is encouraged to consider involving their Forum in aspects of the work Licensing Boards have to undertake. This could be in the preparation of their statement of licensing policy, any supplementary policy statement of their policy with respect to the exercise of their functions. The Forum may choose to make suggestions as to the review of policy or procedural matters.

6.7 The Forum may also make a formal written request to the Licensing Board for a review of the statement of licensing policy where there is a material change in circumstances in the Licensing Board area, for example the Forum could identify key licensing issues affecting their local authority area and develop constructive advice on how to address them – this could lead to a review of the statement of licensing policy.

6.8 The Forum could also assist with the Licensing Board's overprovision assessment through gathering evidence, analysis and consultation. Whilst not listed as a statutory consultee for the overprovision assessment, Forums come under the category of "such persons as appear to the Licensing Board to be representative of the interests of persons resident in the locality" and/or "such other persons as the Licensing Board thinks fit" and, as such, would be expected to be consulted on the overprovision assessment.

6.9 Some Forums have reviewed their Licensing Board's Annual Functions Report and Finance Report and this has been welcomed by their Licensing Board.

6.10 The role of the Forum does not include reviewing or offering advice or recommendations in relation to any particular application or case before the Licensing Board.

6.11 In the exercise of its functions, a Licensing Board has a duty to have regard to the Forum's advice or recommendations and must offer reasons to the Forum where it decides not to follow its advice or recommendations. This duty requires ongoing and regular communication between the Licensing Board and the Forum.

6.12 In general, establishing a good and close working relationship between a Licensing Board and a Forum is an important factor that can benefit the operation of a Licensing Board. Practical arrangements in support of this should be agreed between the Licensing Board and the Forum at the earliest opportunity following the Licensing Board's appointment. Such arrangements may differ in different areas, but regular meetings and communications between Licensing Boards and Forums are essential in ensuring effective channels of communication are in place.

6.13 Such arrangements should be reviewed on a regular basis to ensure that they are meeting the needs of both the Licensing Board and the Forum. There is a mandatory requirement for a minimum of one formal meeting between the Licensing Board and the Forum annually, though it would be good practice to meet more often than that to ensure the views of the Forum are fully able to be communicated to the Licensing Board.

### **Management of business**

6.14 Some Forums have found it useful to develop a work plan at the start of each year in which they set out the areas that they want to look at in the year ahead. Developing a work plan like this can give a focus to the discussions at meetings with the local Licensing Board, and provides opportunities to keep members up to date with important areas of interest.

6.15 To facilitate work that the Forum could undertake and to assist in developing a work plan, they should be provided by the Licensing Board with copies of any relevant statistics, information and reports which they may request. Information on the Licensing Board's public register would be helpful as would information available through the Licensing Board's publication scheme as required under FOI legislation.

6.16 Forums can request regular reports from the police, health and Licensing Standards Officers. Also, the chief constable must send a copy of a report annually to the Forum setting out their views on matters relating to policing in connection with the operation of the 2005 Act in the area, which should include any steps taken during the year, and the intentions for the following year, to prevent the sale and supply of alcohol to children and young people in the area. The Forum may also request a police officer to attend a meeting to discuss the report.

### **The effective Local Licensing Forum: independent, expert, trusted**

6.17 An effective Forum should be widely recognised as being both independent and expert. To ensure independence, the Forum must develop an identity that is clearly separate from the Licensing Board or any other interest or group of interests. It must have the capacity to be impartial.

6.18 The 2005 Act requires that a local Licensing Standards Officer (see Chapter 7 of this Guidance) must be a member of the Forum, providing an important link to the operation of the licensing system. The 2005 Act also requires that at least one of the members must be a member nominated by the relevant Health Board<sup>1</sup> for the Licensing Board's area. Licensing Board members may also be invited to attend or to speak to the Forum.

6.19 Forums should ideally comprise a balanced representation of relevant interests and collectively will have knowledge of licensing matters. For example, Falkirk Local Licensing Forum's membership list [Committees & council bodies - Committee ID: 229 | Falkirk Council](#) shows members with a range of relevant interests. A Forum that is dominated in terms of numbers by those who represent a specific viewpoint is unlikely to be impartial. The Forum should be able to identify key licensing issues affecting their area and be able to develop constructive advice on how to address them.

6.20 Forums may wish to consider gaining expertise, opportunities for learning and development in licensing for their members. Such opportunities may include training in licensing law (for example, Personal Licence Holder training, Licensing Board Member training), attendance at Licensing Board meetings, presentations from licensing stakeholders (such as Police Scotland, Licensing Standards Officers, the Health Board), and relevant reading materials.

6.21 As Licensing Board members are required to undergo training, consideration should be given to Licensing Board members and Forum members attending the same training together as this may assist in a shared understanding of the local position, and could assist with discussion of issues relating to the local Licensing Board area.

6.22 Forums may wish to establish links with relevant bodies responsible for developing the local alcohol action plans and strategies to reduce alcohol-related harm as well as organisations representing and supporting the responsible retail of

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<sup>1</sup> If there is more than one Health Board in the area, the one whose area contains the larger, or largest part of the Local Licensing Forum's area will nominate the Health Board representative.

alcohol (for example, Alcohol & Drug Partnerships , Community Planning Partnerships, Health & Social Care Partnerships, Pubwatch/ Shopwatch). Members of relevant bodies might be invited to sit on the Forum. [Local Licensing Forum | Angus Council](#) is an example of a Forum which has a development officer from an alcohol and drugs partnership as a member.

6.23 In producing impartial and effective advice, the Forum will gain the trust of the Licensing Board and others in the local community such as licence holders, relevant agencies and bodies, young people and local residents. In this way, the Forum will be able to fairly reflect the views of the local community and present them to the Licensing Board. The Forum is in a position to be able to support an informed conversation with the local community as to the role licensing and alcohol consumption plays in everyday life which will help to reach solutions through collaboration.

### **An inclusive and diverse approach to involvement**

6.24 The Community Empowerment (Scotland) Act 2015 is relevant to the effective functioning of Local Licensing Forums as it has a specific focus on promoting effective engagement and participation to help communities achieve greater control and influence in the decisions and circumstances that affect their lives. The seven [National Standards for Community Engagement](#) are good-practice principles designed to improve and guide the process of community engagement. They can be used to shape the participation processes of public bodies as well as shape how community organisations can involve wider community interests. The *National Standards* provide helpful information for councils, Licensing Boards and Local Licensing Forums to follow. The seven standards are:

- **Inclusion** – identify and involve the people and organisations that are affected by the focus of the engagement;
- **Support** – identify and overcome any barriers to participation;
- **Planning** – there is a clear purpose for the engagement which is based on a shared understanding of community needs and ambitions;
- **Working together** – work effectively together to achieve the aims of the engagement;
- **Methods** – use methods of engagement that are fit for purpose;
- **Communication** – communicate clearly and regularly with the people, organisations and communities affected by the engagement;
- **Impact** – assess the impact of the engagement and use what has been learned to improve future community engagement.

## Membership

6.25 Members are appointed to the Forum by the local authority. This means that the local authority needs to approve both the structure and the individuals proposed to fill that structure. There should be an inclusive, open and transparent recruitment and appointment process. Membership should be subject to regular review and refresh.

6.26 As discussed above, Schedule 2 of the 2005 Act makes provision for the membership of a Forum. A broad aim is for there to be, so far as possible, a balanced representation of all stakeholders. Forums are to consist of between 5 and 21 members, as may be determined by the relevant council.<sup>2</sup> As already mentioned above, at least one of those members must be a Licensing Standards Officer for the local authority area and at least one of the members must be a person nominated by the relevant Health Board. In appointing the “other” members, the relevant local authority has a duty to seek to ensure that the membership of the Forum is representative of the interests of persons or descriptions of persons who have an interest which is relevant to the Forum’s general functions. Where the membership is not representative, the Licensing Board should make efforts to identify and engage with the persons or bodies concerned. The 2005 Act provides that those persons include –

- holders of premises licences and personal licences (preferably both on-trade and off-trade);
- the chief constable;
- persons having functions relating to health, education or social work;
- young people;
- persons resident within the Local Licensing Forum's area.

6.27 This last category is purposefully very broad, and includes other groups who have an interest, such as persons in the recovery community, and families affected by alcohol use. Other persons will depend on the local community, for example, a Forum has included a representative from the National Union of Students Scotland as there is a significant local population of students. This same Forum met secondary school Modern Studies pupils to hear their views on licensing policy directly. With the licensing objective encompassing young persons, this Forum considered it is important for the development of the policy that the views of young persons are taken into account. This is a good example of considering how the licensing objectives might work for the local area.

6.28 The local authority should strive to keep membership of the Forum under regular review to ensure balance and to optimise engagement. A range of methods

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<sup>2</sup> The relevant council here is the council for whose area the Local Licensing Forum is established, or if the Local Licensing Forum is established for a licensing division, for the area of which the division forms part

to encourage/enhance membership will be needed to suit the different needs of participants:

- many licence holders and representatives of youth organisations and persons having functions relating to health, education or social work can be reached through representative organisations;
- in public agencies care should be taken to target the most appropriate officer, who might not necessarily be the chairperson or chief executive; and
- an innovative approach should be taken to engaging with local communities, for example, via publicity, community councils, housing associations, and other local organisations that are likely to have an interest. Other publicity tools that can be considered include:
  - the local press and any associated public meetings;
  - leaflets to explain the role of the Forum and to give notice of public meetings;
  - leaflets and posters can be placed in shops, gyms, libraries and public buildings to reach the general public;
  - leaflets can be included with letters sent to licence holders, the police and other organisations, individuals and community organisations;
  - a dedicated page on the council's web site, with a prominent link from the home page, and/or the Local Licensing Forum's own web page to give details of the Local Licensing Forum;
  - Relevant social media such as Facebook groups covering a local area and/ or Twitter pages covering a local area.

6.29 It is important to ensure that Forum members share the same core knowledge about licensing in general and the functions of a Forum in particular. The basic information which needs to be covered includes:

- the 2005 Act, in particular the functions laid down in the 2005 Act for Forums;
- secondary legislation made under the 2005 Act; and
- this Guidance.



6.30 Making sure members and potential members understand their role is crucial to the effective operation of the Forum. As previously mentioned, Schedule 2 of the 2005 Act sets out the legislative framework in terms of membership, convener, administrative support, meetings and proceedings.

6.31 For example, the convener must be mindful of time and regulate discussion so as to make sure that meetings get through their agendas. Care needs to be taken that discussions reach clear conclusions and/or stipulate clear actions to be taken, specifying who is responsible for taking matters forward. There should be regular reporting back about steps taken as a result of previous discussions and what the outcome was.

6.32 Forums may choose to prepare a document (constitution or remit) containing relevant information in one place which would assist in this regard. Information may include the above categories covered in schedule 2 of the Act and other matters not specified in the legislation, as deemed appropriate to the circumstances by the members of the Forum, and could include:

- name
- membership eligibility
- membership recruitment
- quorum
- maximum number of years of membership
- office bearers
- convener's duties
- vice convener
- administrative support
- meetings
- conduct of meetings/business
- motions and amendments
- voting; committees/sub-committees
- agendas; minutes
- reversal of previous resolutions
- adjournment of meetings
- Annual General Meeting
- special meetings
- appointment and removal of office bearers
- resignation and dismissal
- non-attendance at meetings
- alterations to the constitution and powers to make or amend rules
- geographical boundary
- contact details
- action/work plans
- annual report
- terms of reference

Click on the following web link to see an example of a constitution drawn up by [Perth and Kinross Local Licensing Forum](#).

6.33 Members should endeavour to take active steps to stay in touch with the constituency of interest that they represent so that they can convey its views to the Forum.

6.34 Establishing, supporting and maintaining an effective Forum is the responsibility of the local authority. Some actions which may assist in this activity include:

- ensuring consistency of representation, including making suitable arrangements if a member is unable to attend;
- encouraging regular attendance and taking appropriate steps when attendance falters (for example, agreeing and implementing a policy for the number of meetings a member can miss before their place on the Forum is made available to others);
- publicising agendas and minutes, perhaps on the website or through social media, and taking steps to encourage people to feed their views to their representatives;
- providing opportunities for members to meet people or groups from the constituencies they represent to discuss matters of interest.

### **Achieving a culture of participation**

6.35 As mentioned above, the *National Standards for Community Engagement* set out good practice principles for community engagement and are important in supporting organisations in putting the 2005 Act into practice, and provide helpful information for local authorities, Licensing Boards and Forums to follow.

6.36 Encouraging people to become involved in a Forum can be a challenge. It is noted that many Licensing Board functions reports describe issues such as Forums not achieving quorum and difficulties attracting new members. It is also noted that the membership of Forums can also sometimes become dominated towards a particular type of stakeholder, and are not always representative of the local community. For example, a recent Licensing Board functions report explains that despite attempts to encourage applications to join the Forum, there is a heavy imbalance toward local authority and health officials, with little engagement from the trade or general public.

6.37 Possible ways to address such challenges could include amending a Forum's constitution and making pro-active efforts to encourage applications. Carefully considering the time when meetings are held is important as a different time for meetings e.g. evening rather than daytime may increase participation. Surveys of members of Forums should be considered to assess whether members feel satisfied that they have had opportunities to participate and, if not, whether they have any suggestions of what could be improved.

6.38 It is accepted that differences of opinion/conflicts may arise and it is helpful for a Forum to consider how such situations might best be managed, particularly where a Forum experiences ongoing difficulties reaching consensus to the extent that it impacts on its ability to function effectively. It may be helpful to develop a procedure for how such situations would be handled if they arose which is agreed in advance by all members. For example the [Aberdeen Local Licensing Forum](#) has a section within its constitution entitled “*Conduct of Meetings*” which includes amongst other matters “*Convenor’s Duties*” and “*Conduct of Forum members*”.

## **Communication**

6.39 Effective communication is essential for the successful operation of the Forum, both in relation to its own internal business and its place in the opinions of the public. The seven standards for effective community engagement set out previously in relation to the *National Standards for Community Engagement* are relevant for Forums. There is a need to systematically identify what communication needs exist, and then draw up an action plan which may include:

- how those communication needs are going to be met;
- who has responsibility for the various actions required;
- what resources are needed and who will supply them.

6.40 It is important that the Forum members debate these matters and come to an agreement, especially as some aspects affect personal privacy.

6.41 Forums may wish to consider the use of video conferencing or teleconference facilities, where available, which may be particularly useful to more rural and remote communities. Account should be taken of any such needs as meetings are arranged and business is managed.

## **Summary**

6.42 An effective Forum has a vital role to play in local licensing arrangements, representing different communities of interest and ensuring that a breadth of views are considered, debated and inputted to Licensing Boards. Those involved in Forums should strive to ensure that a diversity of interests can participate, and be heard in a welcoming and supportive environment.

## 7. Licensing Standards Officers

### Introduction

7.1 This Chapter covers the general functions of Licensing Standards Officers, their roles and responsibilities and the training they are required to undertake.

7.2 The 2005 Act requires local authorities to appoint at least one Licensing Standards Officer in their area. An individual can be a Licensing Standards Officer for more than one local authority area.

7.3 A Licensing Standards Officer is neither an agent nor an employee of the Licensing Boards, however a Licensing Board should be able to rely on Licensing Standards Officers having a good understanding of the needs and aspirations of the local licensed trade. The Licensing Standards Officer should work with the trade and other stakeholders to build respect for the role by the judicious application of their powers. Licensing Standards Officers require to be able to work with persons from every background. Licensing Standards Officers do not need to be legally qualified and must not provide legal advice when offering guidance, information and assistance to interested parties.

7.4 For example a Licensing Standards Officer may be able to explain what the law actually says in relation to a particular matter but should never offer an opinion or interpretation of how the law should be applied.

7.5 The general functions of Licensing Standards Officers for a local authority area are:

- providing information and guidance concerning the operation of the 2005 Act in the area;
- supervising the compliance of the holders of premises licences or occasional licences in respect of premises in the area with the conditions of their licences and other requirements of the 2005 Act (Includes powers to issue notices to licence holders; and in relation to premises licences to make licence review applications);
- providing information to Licensing Boards about any conduct of holders of, or persons applying for, personal licences in the area, which is inconsistent with the licensing objectives; and
- providing mediation services for the purpose of avoiding or resolving disputes or disagreements between
  - (i) the holders of premises licences or occasional licences; and
  - (ii) any other persons,

concerning any matter relating to compliance with the 2005 Act as referred to in this paragraph.

7.6 Licensing Standards Officers are accountable for their actions to their local authority (as employers), and are there to serve the interests of every stakeholder interested in the operation of licensing in the Licensing Standards Officer's area. Licensing Standards Officers can be contacted by email. Contact details can be found on the licensing pages of the relevant local authority website.

### **Information and guidance**

7.7 Licensing Standards Officers often tend to be the first point of contact for most matters relating to alcohol licensing. Licensees will make requests about applications and the general working of the legislation and local policies. The public will require information to enable them to make representations, to object or complain within the terms of the legislation. Local Licensing Forums and other interested parties may also require information and guidance from Licensing Standards Officers.

7.8 Licensing Standards Officers must not give legal advice or make applications, objections or representations on behalf of any party. However, Licensing Standards Officers are usually willing to engage with anyone who wishes to object to an application in order to discuss the type of material that can be presented to the Licensing Board.

7.9 At least one Licensing Standards Officer for an area must also be a member of the Local Licensing Forum. Licensing Boards will be aware that Licensing Standards Officers may consider forming links with other groups such as Alcohol & Drug Partnerships and trade/regulatory partnerships.

### **Compliance**

7.10 Licensing Standards Officers will require to ensure that licensees carry out their business in a manner which complies with the conditions of their licences and other requirements of the 2005 Act, such as the five licensing objectives. The legislation contains wide ranging powers to enable Licensing Standards Officers to supervise compliance.

7.11 Where a Licensing Standards Officer believes a premises licence or an occasional licence is not being operated in an appropriate manner, the Licensing Standards Officer should discuss any concerns with the licence holder directly and give them an opportunity to address these concerns, working with them as necessary, to achieve the required improvements.

7.12 Should the required improvements not be made then the 2005 Act provides that the Licensing Standards Officer can issue a written warning to the licence holder setting out the improvements which require to be made. In the case of a premises licence holder, should these improvements still not be made then the Licensing Standards Officer can make a referral to the Licensing Board for a review of the premises licence.

7.13 Licensing Standards Officers have the power to enter licensed premises at any time to carry out an inspection of the premises and of any substances, articles or documents found there as the Officer thinks necessary, to determine whether the activities being carried on there are in accordance with the licence and any other requirements of the 2005 Act. They also have the power to take copies of, or of an entry in, any document found on the premises and seize and remove any substances, articles or documents found on the premises. If a document is stored in electronic form and is accessible from the premises, the Licensing Standards Officer has the power to require such a document to be produced in a form which is legible and in which it can be removed from the premises.

7.14 If any substance, article or document is seized, the Licensing Standards Officer must leave a notice on the premises stating what has been seized and why. They do not have the power to force entry to premises. Licensing Standards Officers have the power to require production of certain documentation, as the Officer thinks necessary, relating to the legislation, regulations and policies, for example, training registers, the operating plan etc. However, they do not have the power to require a person to produce any document if the person would be entitled to refuse to produce that document in any court proceedings on the grounds of confidentiality of communications. In addition, Licensing Standards Officers cannot require a person to produce any document if to do so would result in self-incrimination or incrimination of that person's spouse or civil partner.

7.15 A Licensing Standards Officer's role in no way impinges on the role of the police who are the responsible enforcing authority for criminal matters. However, Licensing Standard Officers do work with the police (and other relevant officials such as Environmental Health Officers) in ensuring the licensing objectives are adhered to and solutions are found to problems involving licensed premises.

### **Information to Licensing Boards: Personal Licences**

7.16 The Air Weapons and Licensing (Scotland) Act 2015 amended the 2005 Act with regard to the role of a Licensing Standards Officer in relation to a personal licence application and a current personal licence. Where a Licensing Board receives a personal licence application, the Licensing Board must give notification (including sending a copy of the application) to a Licensing Standards Officer for the Licensing Board's area. Within 21 days of the date of receiving this notification, a Licensing Standards Officer may provide any information to the Licensing Board in relation to the applicant that the Licensing Standards Officer considers may be relevant to the consideration of the application by the Licensing Board.

7.17 As regards existing personal licences, the 2005 Act as amended provides Licensing Standards Officers with a specific power to report conduct of a personal licence holder, who is or was working in licensed premises in their area, which is inconsistent with the licensing objectives, to the relevant Licensing Board. Where a Licensing Board receives such a report it may hold a hearing, but is under no obligation to do so.

## **Mediation**

7.18 Licensing Boards should be aware that Licensing Standards Officers utilise mediation and problem solving skills. They may be required to address issues or complaints such as a neighbour complaining regarding noise problems caused by a licensee, or a representative of the licensee, undertaking the late night deposit of bottles in bottle banks. In this example, a Licensing Standards Officer may be able to persuade the licensee to carry out this task at a more reasonable hour to resolve the issue.

## **Reporting to Licensing Boards**

7.19 In relation to particular cases, Licensing Standards Officers may be required to submit reports, objections or representations on various matters to Licensing Boards. Where appropriate, they may also be required to submit applications for review of premises licences.

7.20 Where a Licensing Standards Officer believes that one or more of the conditions relating to a premises licence or occasional licence has been breached, then the Licensing Standards Officer can take the steps outlined at paragraphs 7.11 and 7.12 above. Licensing Standards Officers also have the power to make an application for review of a premises licence on any other competent ground for review.

7.21 Licensing Boards must notify the appropriate Licensing Standards Officers of their intention to hold a review hearing in respect of a premises licence and provide the Licensing Standards Officer with a copy of the premises licence review proposal or application (unless it was s/he that submitted that particular review application). The Licensing Standards Officer receiving any such notification and information must prepare and submit a report on the proposal or application to the Licensing Board before the review hearing. The Licensing Board must take the report into account at the hearing.

7.22 Licensing Boards should be able to expect that Licensing Standards Officers will endeavour to ensure that sufficient information is placed before the Licensing Board to allow them to make a finding. Sources of information could include documentary evidence or witnesses to the matter requiring enforcement action.

## **Training**

7.23 Licensing Boards should be aware that each Licensing Standards Officer must undertake a course of training accredited by the Scottish Ministers within 18 months of being appointed to their role. It is essential that Licensing Standards Officers also receive ongoing training and are permitted to take part in relevant Continuous Personal Development opportunities (e.g. development of basic mediation skills - see below).

7.24 As with Licensing Board members training (see Chapter 3), Licensing Standards Officers (LSO) training has been reviewed and a revised training specification submitted to and accredited by Scottish Ministers.

7.25 The following topics require to be covered under the accredited LSO training albeit Section 1 introduction will not be assessed:

- Section 1 Introduction  
The reason for and the importance of the Licensing (Scotland) Act 2005  
Background to the LSO role creation and its aims
- Section 2 Legislation  
Overview of the licensing function  
Role and remit of the LSO  
Key role of others  
Licensing and operating conditions  
Protecting children and young persons from harm  
Control of order  
Miscellaneous and General  
Training
- Section 3 Associated Law
- Section 4 Responsible operation of licensed premises  
Environment  
Responsibility to staff and customers  
Community links
- Section 5 People skills and conflict management  
Basic mediation

### **National Licensing Standards Officers' Group**

7.26 Licensing Boards should be aware of the existence of the National Licensing Standards Officers Group which engages with Licensing Standards Officers across the country to share issues and best practice, and liaises with other agencies to encourage partnership working. The Group can be contacted through [Paul Fair](#) who is the current Chair of the National Licensing Standards Officers Group. Paul is an LSO with Clackmannanshire Council.



## **8. Premises Licence**

### **Introduction**

8.1 This chapter provides information on premises (including provisional and temporary) licences. Part 3 of and schedule 3 to the 2005 Act sets out the legislative framework which underpins premises licences. A number of amendments have been made to Part 3 and Schedule 3 of the 2005 Act and these are covered throughout this chapter.

8.2 The locality within which a premises is (mainly) situated will determine which Licensing Board (“the Board”) will be considered to be the “appropriate Board” – i.e. the Board which will carry out licensing functions in relation to the premises licence. Should the situation arise whereby the premises is located equally between two or more Board areas then the applicant may choose to which Board an application is made. In these, likely rare, circumstances it will be important for the relevant Boards and Licensing Standards Officer to maintain close contact with regard to the licensing of these premises.

### **Meaning of premises licence**

8.3 In the context of the 2005 Act, “premises licence”, in relation to any premises, means a licence issued by a Board under section 26(1) (issue of licence and summary) or 47(2) (temporary licence) authorising the sale of alcohol on the premises.

### **Premises Manager**

8.4 The 2005 Act provides that anyone wishing to sell alcohol on any premises, subject to the exceptions set out in the legislation, must hold a premises licence which requires to contain the name of the premises manager. The premises manager is the person responsible for running that premises. A person can only be the designated premises manager for one licensed premises.

8.5 In terms of the mandatory premises licence conditions set out at Schedule 3 to the 2005 Act, a premises manager is also required to hold a personal licence (see chapter 10 for more information on personal licences). A personal licence also requires the persons to hold a licensing qualification accredited by the Scottish Ministers. It is important that a premises manager has undertaken the appropriate training in terms of the applicable law and how to deal with customers.

8.6 In recognition of the important role carried out by a premises manager in the operation of a licenced premise, section 54 of the 2005 Act deals with circumstances where the premises manager ceases to work at the premises, becomes incapable of acting or dies or where the personal licence held by the premises manager is revoked or suspended.

8.7 The legislation provides for a “period of grace” to allow the premises to continue operating despite not having a premises manager and pending the appointment of a new premises manager. In the situations described above the 2005

Act requires the premises licence holder to inform the Licensing Board of the circumstances within 7 days. Should the notification be made within the 7 day period and an application to substitute a new premises manager is made within 6 weeks of the loss of the premises manager, then the fact that the premises are, in the meantime, operating without a premises manager will be overlooked. If no such application is received by a Board within the required timeframe, it must vary the premises licence to reflect that there is no longer any premises manager named on it. The effect of this would require the premises to stop operating as it has no premises manager.

#### *Variation to substitute new premises manager*

8.8 As discussed above, licensed premises cannot operate without a premises manager being in post. Where there is a change of premises manager, before the new premises manager can act as such, his or her name needs to be added to the licence. The 2005 Act allows for the proposed new premises manager to take up post pending the granting of an application to vary the premises licence so as to add the new premises manager's name to it. This helps to ensure that changes of premises manager can take effect quickly so as to enable businesses to continue to operate with the minimum disruption.

### **Premises licence applications**

#### *Application and notification of application*

8.9 Under the 2005 Act, any person, which includes corporate (e.g. public limited companies) unincorporated bodies (e.g. a partnership) and statutory bodies (organisations created by an Act of Parliament) as well as individuals, can apply for a premises licence. However, any individual who wants to submit an application must be 18 or over.

8.10 Each premises licence application should be tailored to the type of premises in question by reference to a compulsory draft operating plan and layout plan. The Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act such that after 30 March 2018 an individual applying for a premises/provisional premises licence, for the sale of alcohol for consumption either on or off the premises, also requires to provide a Disabled Access and Facilities Statement (DAFS), along with their application.

8.11 The DAFS must contain information about disabled access to the premises and the facilities and any other provision available to aid the use of the premises by disabled people. The form of the statement is set out in regulations (The Premises Licence (Scotland) Amendment Regulations 2018 SSI 2018 No. 49). Whilst the DAFS does not form part of the licence granted, a Board is unable to progress a licence application until this document is received.

8.12 The purpose of submitting an operating plan and a lay-out plan is to provide a Board and the local community with a clear indication, at the time of the application, of what activities will be undertaken on the premises. The 2005 Act also makes provision for applications to be accompanied by certain certificates evidencing compliance with planning, building control and food hygiene legislation in relation to the premises for which a licence application is being made.

8.13 Licensing Boards publish Statements of Licensing Policy (see Chapter 4) and licence applicants may find it beneficial to review their Board's statement as the statement should, amongst other matters offer guidance and clarity on the policy on which a Licensing Board will base its decisions in implementing their functions – in this instance considering a premises licence application - under the 2005 Act.

8.14 For example, under the promotion of the licensing objections section of its statement of licensing policy, Falkirk Licensing Board comments:

- “While not a requirement of the Act, the Board expects applicants for new and provisional Premises Licences and transfers of Premises Licences to accompany their applications with a written statement tailored to their particular premises setting out how they intend to conform to the 5 licensing objectives, paying particular attention to the locality in which the premises are situated and the activities to be carried out. The Board is of the opinion that a written statement demonstrates an active and thoughtful engagement with the licensing objectives.

8.15 The 2005 Act sets out a number of specific requirements as to the content of the operating plans, including, amongst other matters, the proposed opening hours, a statement as to whether alcohol is being sold for consumption on the premises or off the premises or both. Additionally, the legislation also provides for the form and (further detail on the) content of the operating plans to be set out in regulations - The Premises Licence (Scotland) Regulations 2007 (SSI 2007 No. 452). This instrument prescribes the form and content of the premises licence, the summary premises licence, the application form for a premises and provisional premises licence, the layout plan and operating plan.

8.16 Prior to considering a premises licence application, a Board is required by the 2005 Act to notify certain parties of all applications it receives. The Criminal Justice and Licensing (Scotland) Act 2010 made a number of amendments to the 2005 Act notification provisions. Health Boards within a Licensing Board's area are now amongst the list of parties to be notified of all premises licence applications. Boards are only required to send a copy of the premises licence application along with the notification to the Chief constable.

8.17 Notifying the Chief constable is an important information gathering process for a Board as this procedure is intended to ensure that checks are made for the existence or otherwise of any convictions for relevant or foreign offences that any applicant or those connected with the applicant may have. The legislation sets out timescales by which the Chief constable is required to respond.

#### *Relevant and Foreign Offences*

8.18 Section 129 (relevant and foreign offences) of the 2005 Act provides the Scottish Ministers with a power to prescribe by regulations what offences are to count as a “relevant offence”. The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007/513) specify those offences which are to be relevant offences for the purposes of the 2005 Act (regulation 2 and the Schedule).

8.19 The Schedule specifies a range of offences which cover violent and sexual offences, other statutory offences (e.g. relating to the misuse of drugs, betting and gambling offences, driving offences amongst others) and other common law offences (e.g. conspiracy to defraud, breach of the peace amongst others). Convictions for a “relevant offence” may result in refusal by a Board to grant a licence or the review of a licence.

8.20 This section also allows the persistent commission of a lower level offence - which would not by itself be sufficiently serious - to amount to a “relevant offence”. The Criminal Justice and Licensing (Scotland) Act 2010 amended section 129 by inserting two new sub-sections. The purpose of these insertions being that where a person has been found guilty of an offence and a probation order or order for absolute discharge has been imposed, the person is treated as having been convicted for the purposes of these provisions of the 2005 Act.

8.21 “Foreign offences” are offences under the laws of countries other than Scotland which correspond to relevant offences. Section 147(2) sets out who is a “connected person” in relation to a company, partnership or club. This ensures that checks are carried out on the persons in control of these bodies as well as the bodies themselves.

8.22 Section 130 (Effect of appeal against conviction for relevant or foreign offence) of the 2005 Act provides that the duties placed on Boards under the 2005 Act relating to relevant and foreign offences may still be carried out if the conviction is subject to appeal but the Board has discretion to postpone any action it has decided to take. It also provides that the Board’s actions will have no effect if the conviction is overturned on appeal.

#### *Objections and representations*

8.23 The 2005 Act provides that any person (whether an individual or a corporate body or unincorporated body) may object or make representations in relation to a premises licence application provided the Board does not consider that the objections or representations are frivolous or vexatious in nature. Argyll and Bute Licensing Board provide an example of what they consider would be a vexatious objection or representation on the Council’s alcohol licensing pages:

- “A theatre has established in an area close to residential housing. Certain performances at the theatre are considered to be particularly noisy by the neighbouring residents. The neighbours consider this to be a nuisance. They may, or may not have complained previously to the theatre owner. They may or may not have complained previously to the Council Environmental Health Department.
- “The owner of the theatre then applies for a licence to establish a theatre bar and sell alcohol. The neighbours notice that there happens to be an ongoing “licence application and decide to make objections/representations relating to the licensing objective of preventing public nuisance. This is designed to place pressure on the theatre owner to reduce noise. In this scenario where the noise constitutes a statutory

nuisance then the appropriate enforcement agency would be the Argyll and Bute Council's Environmental Health Department.

- “The licensing system should not be used as a convenient means of placing pressure on the applicant. The neighbours would no doubt find it difficult to establish a link between the noise and the proposed sale of alcohol. The Argyll and Bute Licensing Board would be entitled to consider the premises suitable for the sale of alcohol and leave enforcement in respect of noise problems to environmental health”.

8.24 The Criminal Justice and Licensing (Scotland) Act 2010 made a number of amendments to the objections and representation provisions within the 2005 Act. A new provision was inserted which means that an objection or representation concerning a premises licence application may include any information that the person submitting the objection or representation considers relevant to consideration of any of the grounds for refusal (set out at section 23(5) of the 2005 Act), including information in relation to the applicant, a connected person in relation to the applicant, or any person who would be an interested party in relation to the premises if the application were to be granted.

#### *Connected persons and interested parties*

8.25 As discussed above the Criminal Justice and Licensing (Scotland) Act 2010 inserted a new section (section 40A) relating to connected persons and interested parties into the 2005 Act. The policy rationale for inserting this new provision, as outlined during the parliamentary passage of what was then the Criminal Justice and Licensing (Scotland) Bill, was to tackle a concern that was highlighted to the Scottish Government by the police. Namely that there was a tier of people and organisations responsible for the operation of licensed premises who cannot be held to account for the operation of licensed premises.

8.26 The premises licence might be held by the property owner, but a tenant might be in control of operating the business on the premises. Alternatively, a management company with no property rights over the premises might be employed by the property owner to exercise management control over the business that is carried on in the premises. Prior to the insertion of section 40A, the police were unable to make representations to licensing boards on the conduct of those groups or to take action against them if offences take place on the premises. There was also no requirement on the part of the licence holder to notify the licensing board of the existence of those groups.

8.27 The new section 40A ensured that:

- the licence holder must notify the existence of those “interested parties” to the licensing board, thus enabling the board to consider the conduct of those parties in determining licence applications or considering whether to review an existing licence.
- that any changes in the details of “connected persons” are notified to licensing boards who will forward the information to the chief constable.

8.28 As a result, the licensing board and the police are kept informed of the details of, for example, the partners of firms and the directors of companies that hold premises licences, which will enable a premises licence to be reviewed if the police or the board have concerns about the conduct of the partners or directors of licence-holding partnerships or companies.

8.29 The Air Weapons and Licensing (Scotland) Act 2015 subsequently amended section 40A to remove the references to interested parties and the requirement to notify changes of interested parties. This was done in response to concerns that had been raised by stakeholders about the practicality of the term interested parties. The licence holder now only requires to provide notification in respect of connected persons.

#### *Anti-social behaviour reports*

8.30 It is no longer necessary for the chief constable to provide an anti-social behaviour report in respect of every application. Instead, a report will only be required if the Licensing Board requests one (which they may do following public objections or representations concerning a premises) or if the Chief constable chooses to provide one.

8.31 It became clear during the implementation of the 2005 Act, that the 2005 Act procedure was unnecessarily onerous and bureaucratic. Using regulatory powers, Scottish Ministers made transitional modifications that reduced the requirement for the Chief constable to provide a report on antisocial behaviour and the Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act to established a similar situation after transition. This ensured unnecessary costs are not entailed for the production of reports which are not required.

8.32 The anti-social behaviour report should detail all cases of anti-social behaviour identified, by the police, as having taken place on, or in the vicinity of the premises within one year of the date of the request as well as all complaints or other representations made to the police concerning anti-social behaviour on, or in the vicinity of the premises within one year of the date of the request. The Chief constable is required to provide the report within 21 days of receipt of the request.

8.33 If a Licensing Board requests an anti-social behaviour report from the Chief constable then it must suspend consideration of the licence application until it receives the report. On receipt of the report, the Licensing Board must provide the applicant with a copy of the report and then resume consideration of the application and determine it in accordance with section 23 of the 2005 Act.

8.34 On receipt of a notice of objection or representations in relation to a premises licence application, unless the Board considers them to be frivolous or vexatious, it is required to send a copy to the applicant and to consider the information contained therein when determining the licence application.

8.35 It is pleasing to see that many Licensing Boards provide helpful information (on the licensing pages of their respective local authority websites) for those who wish to object to a premises licence application or make representations in favour or against the license application. For example City of Glasgow Council has a page

(Alcohol Licences) on its website which signposts people to a range of information about the alcohol licensing system. One such link is to a page entitled “I’d like guidance on making an objection or representations” where information on the following can be found:

- when can I make an objection?
- what information should an objection or representation against an application contain?
- what information should a representation in support of an application contain?
- what is the deadline for submitting an objection or representation?
- how do I submit my objection or a representation?
- what happens if I submit an objection or representation?

#### *Determination of premises licence application*

8.36 Section 23 of the 2005 Act sets out the procedures a Licensing Board must follow when determining a premises licence application. The Criminal Justice and Licensing (Scotland) Act 2010, the Police and Fire Reform (Scotland) Act 2012 and the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”) have all amended this section.

8.37 Section 23(5) lists the grounds for refusal of a premises licence application. The key amendment (and majority of changes) to this provision since the 2005 Act was implemented, relate to the insertion of a new ground for refusal for a premises licence application by the 2015 Act. When a Licensing Board is determining an application and the Board considers that having regard to the licensing objectives, the applicant is not a fit and proper person to be a holder of a premises licence, then this is a ground for refusal. Where the Board refuses a licence on the fit and proper person ground, or where granting a licence would be inconsistent with one or more of the licensing objectives, the Board must state the licensing objective that the ground relates to.

8.38 In relation to the determination of a premises licence applications, the 2015 Act amends section 23 to clarify that any conviction notice supplied by the chief constable and any antisocial behaviour report by the chief constable supplied to the Board, is relevant to the specific consideration of the new fit and proper test as well as to consideration of the existing ground for refusal that the granting of the application would be inconsistent with one or more of the licensing objectives.

#### *Fit and proper person test*

8.39 The 2005 Act as implemented did not contain a “fit and proper person test” but rather focussed on the use of relevant offences and foreign offences to assess the suitability of new applicants and existing licence holders, as well as providing the ability for people to object based on matters connected to the licensing objectives.

8.40 Subsequent to the implementation of the 2005 Act, a range of stakeholders expressed the view that limiting consideration to relevant offences was unduly constraining to Licensing Boards who may have no choice but to grant licences to applicants that they consider to be a risk to the public.

8.41 This 2015 Act amendment provides greater scope to present information to Boards, and also provides Boards with greater powers to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information including police intelligence and any associations with those deemed to be unsuitable.

*Applicant's duty to notify Licensing Board of convictions*

8.42 The 2005 Act places a duty on anyone applying for a premises licence to notify, no later than one month after the date of the conviction, the Licensing Board of any convictions obtained whilst their application is pending. A person who, without reasonable excuse, fails to do so commits an offence. A person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 (£500) on the standard scale.

8.43 The Licensing Board is required to suspend consideration of the application and give notice of the conviction to the Chief constable.

8.44 Within 21 days of the receipt of a notice from a Licensing Board the Chief constable must respond to the Licensing Board either with:

- (a) a notice stating that the Chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence, or
- (b) a notice confirming the existence of the conviction and that it relates to a relevant or foreign offence.

If the Chief constable proposes to give a notice under subsection (b) above and considers that having regard to the conviction specified in the notice it is necessary for any of the licensing objectives that the application be refused then the Chief constable may include a recommendation to that effect.

8.45 On receipt of this notice from the Chief constable, the Licensing Board must resume their consideration of the licence application and determine it in line with section 23 of the 2005 Act.

*Further application after refusal of premises licence application*

8.46 Under the 2005 Act, where a Licensing Board has refused an application for a premises licence, a subsequent licence in respect of the same premises cannot be made within a year of that refusal. However the 2005 Act permits Licensing Boards, at the time of the initial refusal, to dispense with the one year limit, or where the limit has not been dispensed with, nonetheless to consider granting a re-application within the one year period where there has been a material change of circumstances.

*Issue of licence and summary*

8.47 Section 26(1) of the 2005 Act requires Licensing Boards, where they grant an application for a premises licence, to issue the applicant with a licence and a summary of the licence. Section 26(2) sets out the minimum information which must be contained in the licence (including: the name and address of (i) the holder of the licence, and (ii) the premises manager in respect of the premises to which the licence relates, and the date on which the licence takes effect). The Premises



Licence (Scotland) Regulations 2007 (SSI 2007 No. 452) as amended prescribe the form and content of the premises licence, the summary premises licence and the Disabled Access and Facilities Statement.

#### *Notification of change of name or address*

8.48 Section 48 of the 2005 Act makes provision for the notification of certain changes to be made to the Licensing Board by the premises licence holder. The Criminal Justice and Licensing (Scotland) Act 2010, the Police and Fire Reform (Scotland) Act 2012 and the Air Weapons and Licensing (Scotland) Act 2015 have made some textual changes to section 48 as enacted.

8.49 Section 48 places a duty on the holder of a premises licence to notify the relevant Licensing Board of any change in:

- the licence holders name and address,
- the name and address of the premises manager specified in the licence, or
- the name or address of any person who is a connected person in relation to the licence holder.

The premises licence holder must notify any such changes no later than one month after the change has happened. A notification of change must be accompanied by the premises licence unless that is impracticable, in which case a statement of reasons for non-production of the premises licence must be provided.

8.50 This notification process is meant to cover only actual name changes i.e. for example, where the licence holder is a company and changes its name, or the premises manager is a woman who changes her name on marriage. A change in the identity of the premises licence holder is provided for in the provisions on transfer of premises licences. If there is a new premises manager, this must be provided for by seeking a variation of the licence so as to add the new premises manager's name.

8.51 A premises licence holder who fails, without reasonable excuse to notify a Licensing Board commits an offence. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500).

8.52 On receipt of a notification of change of name or address, a Licensing Board must give a copy of the notice to the chief constable.

#### *Licensing Board's duty to update premises licence*

8.53 The aim of section 49 of the 2005 Act is to ensure that the information contained in a premises licence is kept up to date. A Licensing Board is required to make appropriate changes to the information in a premises licence when it receives the notices of change of name or address and when it varies, transfers, confirms or reviews a premises licence. If necessary a Licensing Board is required to issue a new summary of the licence.

8.54 Following amendments made by the Criminal Justice and Licensing (Scotland) Act 2010 and the Police and Fire Reform Act 2012, where a Licensing Board issues a new summary of the licence then it must send a copy to the chief constable. Where the Licensing Board is not in possession of a premises licence and:

- the licence has ceased to have effect under any provision in the 2005 Act, or
- the Board requires the licence for the purposes of making the changes described above.
- the Licensing Board may require the licence holder to produce the licence to it within 14 days from the date on which the requirement is notified.

8.55 A licence holder who fails, without reasonable excuse, to produce the licence to the Licensing Board within the required timeframe commits an offence. A person found guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale (£500).

### **Conditions of premises licences**

#### *Mandatory conditions*

8.56 All premises licences are subject to mandatory conditions set out in schedule 3 of the 2005 Act, unless schedule 3 provides otherwise. The application of these mandatory conditions is intended to ensure national consistency on those matters specified in schedule 3. The national mandatory licence conditions for premises licences issued under the 2005 Act on enactment related to the following areas:

- compliance with the operating plan;
- the premises manager;
- authorisation of sales of alcohol
- training of staff
- pricing of alcohol
- irresponsible drinks promotions
- provision of non-alcoholic drinks
- payment of annual or recurring fees

8.57 A number of amendments have been made to schedule 3 as it was enacted by subordinate and primary legislation. These are briefly set out below.

#### *Licensing (Mandatory Conditions) (Scotland) Regulations 2007 (SSI. 2007/457)*

- added two new mandatory conditions to schedule 3 relating to notices on the admission of under-18s and the provision of baby changing facilities.

#### *Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007 (SSI. 2007/546)*

- amended schedule 3 in two instances: imposed a training requirement ( in relation to the keeping of training records); and imposed restrictions on the areas within premises in which alcohol for consumption off the premises may be displayed.

#### *Licensing (Mandatory Conditions) (Scotland) Regulations 2009 (SSI. 2009/270)*

- amended the mandatory condition which restricts the display of alcohol for consumption off the premises by exempting from these restrictions visitor

attractions that mainly provided information about and promoted the history and attributes of a particular alcoholic drink,

#### *Alcohol etc (Scotland) Act 2010*

- made a number of amendments to the mandatory condition which restricts the display of alcohol for consumption off the premises; and in relation to the display of branded non-alcoholic products (products that bear a name or image of an alcoholic product such as football tops, slippers, tea towels etc.)
- inserted a new mandatory condition (section 6B) relating to the minimum price of a packages containing more than one alcoholic product.
- amended the pricing of alcohol mandatory condition to provide that that in respect of sales of alcohol for consumption off the premises, the 72 hour restriction on varying prices is only maintained in relation to the price of individual products.
- amended the irresponsible drinks promotion mandatory condition in two ways which resulted in “quantity discount” and similar promotions not being permitted for off-sales; and drinks promotions encouraging persons to buy or consume larger measures only applying to on-sales of alcohol.
- Inserted a new mandatory condition that there must be an age verification policy in relation to the sale of alcohol on the premises. This section requires that all premises have an age verification policy with the age set at a minimum of 25.

#### *Alcohol Minimum Pricing (Scotland) Act 2012*

- Inserted a new paragraph 6A into schedule 3 and this mandatory condition is that alcohol must not be sold on the premises at a price below its minimum price.

8.58 The current national mandatory licence conditions for premises licences issued under the 2005 Act as amended relate to the following areas:

- compliance with the operating plan;
- the premises manager;
- authorisation of sales of alcohol
- training of staff
- pricing of alcohol
- irresponsible drinks promotions
- provision of non-alcoholic drinks
- age verification policy
- payment of annual or recurring fees
- notices – admission of person under age of 18
- baby changing facilities
- display, or promotion of the sale of alcohol for consumption off the premises

### *Local conditions*

8.59 The 2005 Act provides a power for Boards to impose additional licence conditions to the mandatory conditions discussed above. This power could be used in circumstances where additional conditions were needed for the purposes of any of the five licensing objectives established by the 2005 Act and where some other form of activity not covered by schedule 3 was being undertaken on the premises. However, the legislation also provides that a Board may only impose additional licence conditions which do not run counter to the effect of national conditions, and which do not attempt to alter or add to those conditions to make them more onerous or restrictive.

8.60 For example, Fife Licensing Board comment in its statement of licensing policy that:

- “On any day when licensed hours extend beyond 2.00 a.m., whether by virtue of the Operating Plan, general extension or extended hours application, in premises used as nightclubs or to which the mandatory late night conditions apply, the Board will consider whether or not to impose the local conditions set out in Appendix 4(a). If applicants consider that any of the conditions should not apply to their premises they should be in a position to demonstrate to the Board why the condition is unnecessary.”

8.61 Examples of the local conditions set out at Appendix 4(a) include:

- “There shall be a 01:15 a.m. curfew with no admittance or re admittance to the premises by the public, patrons or prospective patrons after 01:15 a.m.
- The licence holder shall arrange for litter patrols in the vicinity of the premises at the terminal hour.
- Random searches will be used to check patrons for knives and other potential weapons, particularly when entering the premises”.

8.62 For example in its statement of licensing policy, North Lanarkshire Council states:

- “The Board generally imposes the “local conditions” detailed in Appendix D when it is indicated in an operating plan that children (as defined in the legislation) are to be admitted to licensed premises. The Board, however, consider individual representations and may after considering those representations decide either to delete some of the conditions or indeed add further conditions.

Examples of the local conditions to be found at Appendix D include:

- Children must not be permitted to operate any amusement with prizes or video machines which are in the licensed premises.
- Non-glass drinking vessels must be available for children.
- A minimum of two baby’s high chairs must be provided for very young children.

### *Variation of conditions*

8.63 Prior to the Alcohol etc (Scotland) Act 2010, a Board could only impose conditions in a premises licence when it granted a licence under section 27(6) of the 2005 Act or if it reviewed a premises licence under sections 36-40 of the 2005 Act. In those circumstances it could only do so on a case by case basis.

8.64 The Alcohol etc (Scotland) Act 2010 inserted a new section 27A into the 2005 Act which enables Boards to vary the conditions of premises licences in respect of all the premises in its area or vary a category or group of licences in respect of matters prescribed by the Scottish Ministers. Examples of the matters that could be prescribed include a requirement for shatter proof glasses in all premises of a particular description, CCTV in all premises in a particular town that sell alcohol for consumption off the premises, or a requirement for a specific number of door staff in city centre establishments.

8.65 A Board is only be able to exercise the power in section 27A if the Board considers it necessary or expedient for the purposes of any of the licensing objectives. Prior to making any such variation, a Board must do a number of things, namely:

- publish a notice of any proposed variation in the manner prescribed in regulations made by the Scottish Ministers.
- give notice of the proposed variation to premises licence-holders whose licences the proposed variation would apply to and to certain other persons including the local authority, relevant health board and the chief constable.
- ensure the notice states that any persons may make representations to the Board about the proposed variation and set out the date by which such representations must be made.
- requires that if a Board receives any representations, then it must hold a hearing in relation to the proposed variation.

### **Duration of a premises licence**

8.66 Premises licences issued under the 2005 Act remain in effect indefinitely as long as the premises in question continue to be used for the purpose or purposes for which the licence was granted. However, the licence can be revoked if conditions are breached and the licence also ceases to have effect if the holder dies, becomes incapable, or insolvent unless a transfer is made under section 34. A licence holder may also choose to surrender a licence.

### **Variation of a premises licence**

8.67 Provision is made within the 2005 Act, for a premises licence holder to apply, to the Board which originally granted the licence, for variations to the terms and conditions of the premises licence. The legislation also explains what is meant by a variation in relation to a premises licence for the purposes of the 2005 Act; namely a variation of:

- any of the conditions to which the licence is subject (other than those to which the licence is subject by schedule 3 (mandatory conditions)),
- any of the information contained in the operating plan contained in the licence,
- the layout plan contained in the licence, or
- any other information contained or referred to in the licence, and includes an addition, deletion or other modification.

8.68 For the purposes of the 2005 Act, a “minor variation” means—

- any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,
- where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises,
- any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and
- any other variation of such description as may be prescribed for the purposes of this subsection (29(6)).

8.69 The Licensing (Minor Variations) (Scotland) Regulations 2011 (SSI 2011/151) specify a number of variations which are to be treated as minor variations for the purposes of 29(6), namely:

- where the name of the premises is disclosed in the premises licence, any change in that name;
- a temporary or permanent reduction in the licensed hours which does not result in the premises opening any earlier or closing any later than stated in the premises licence and operating plan;
- in relation to the access of children or young persons onto the premises any variation to the operating plan so as to —
  - ⇒ increase the minimum age at which children or young persons may be allowed onto the premises;
  - ⇒ reduce the times at which children or young persons are allowed onto the premises;
  - ⇒ restrict the access of children or young persons to certain parts of the premises;
- any reduction in the capacity of the premises whether resulting from a variation to the layout plan or otherwise;
- any variation resulting in the cessation of the provision of live or recorded music at a decibel level exceeding 85 decibels;
- any variation to provide that, when the premises are fully occupied, more customers are likely to be seated than standing.

*Determination of a variation of a premises licence application*

8.70 If the application is for a minor variation then in line with section 30(2) of the 2005 Act, a Board must grant the application. If the application relates to a major

variation of the premises licence then section 30(3) places a duty on Boards to hold a hearing to consider the application. The legislation also requires that a Board's decision must be based on the statutory grounds for refusal which are set out in subsection 30(5). These are similar to the grounds for refusal of an application for a premises licence discussed above. Boards can also make their own additional variations to the licence conditions where the Boards grants the variation applied for.

#### *Further application after refusal of application for variation*

8.71 The position here is the same as that outlined above in relation to a premises licence application. In essence, a premises licence holder who has had an application for a variation refused is prevented from re-applying for the same variation within a year of the initial refusal. Section 32(3), however, permits Boards to dispense with the one year limit or, where the limit has not been dispensed with, nonetheless to consider granting a re-application within the one year period where there has been a material change of circumstances.

### **Transfer of a premises licence**

8.72 The 2005 Act provides that an application to transfer a premises licence can be submitted to a Licensing Board by either the premises licence holder or the proposed transferee.

#### *Premises licence holder application*

8.73 Section 33 of the 2005 Act as enacted has been amended by the Criminal Justice and Licensing (Scotland) Act 2010, the Police and Fire Reform (Scotland) Act 2012 and the Air Weapons and Licensing (Scotland) Act 2015. The key amendments are similar to those discussed above under a premises licence application. These relate to a chief constable being able to recommend that an application be refused if this is necessary for the purpose of any of the licensing objectives and the introduction of the "fit and proper" person test as a ground for refusal of an application.

8.74 A premises licence holder may apply to the appropriate Board for the transfer of the licence to the person named in the application - i.e. "the transferee". The transferee cannot be an individual under 18 years of age. On receipt of the application the Board must give notice of it and a copy of the application to the chief constable.

8.75 The steps the chief constable is required to undertake on receipt of this notice are not dissimilar to those undertaken in relation to a premises licence application. In essence, within 21 days the chief constable needs to respond to the Board by way of a notice. The notice either states that the transferee (or where the transferee is neither an individual or council) any connected person has been convicted of any relevant offence or foreign offence or it specifies any convictions for the aforementioned offences.

8.76 If for the purposes of any of the licensing objectives, the chief constable considers that the transfer of the premises application licence should be refused the chief constable may include such a recommendation. As a result of the Air Weapons and Licensing (Scotland) Act 2015 amendments, the chief constable can also

provide any information they consider relevant to the Board's consideration of the application in relation to a transferee, a connected person in relation to the licence holder or an interested party in relation to the licensed premises, if the application for the transfer were to be granted.

8.77 The procedure to be adopted by a Board on receipt of a chief constable's notice depends on the content of that notice. Where:

- the transferee has not been convicted of any relevant or foreign offence;
- the chief constable has not recommended, for the purposes of any of the licensing objectives, that the application be refused; and
- the chief constable has not provided any information in relation to the transferee, where the transferee is neither an individual nor a council, a connected person, or any person who would be an interested party in relation to the licensed premises if the transfer of the licence to the transferee were to be granted

then the Board must grant the application. In all other cases the Board must hold a hearing to consider and determine the application.

8.78 Where a Board is required to hold a hearing then the Board must have regard to the information contained in the chief constable's notice discussed above and if satisfied that a ground for refusal of the application applies, the Board should refuse the application. The grounds for refusal in this instance are:

- that having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence,
- that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.

#### *Transfer on application of person other than licence holder*

8.79 In terms of section 34 of the 2005 Act, an application for the transfer of a premises licence can be made by the proposed transferee (who cannot be a person under 18 years of age) rather than the premises licence holder. Such applications can only be made following certain events and by certain persons.

8.80 Section 34(3) describes the events as:

- the premises licence holder, being an individual who:
  - (i) dies, or
  - (ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000;
- the premises licence holder, being an individual, a partnership or a company, becomes insolvent,
- the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and
- the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person.

8.81 The License Transfer (Prescribed Persons) (Scotland) Regulations 2007 (SSI 2007 No.34) makes provision as to who may apply to a Board for a transfer of a



premises licence following the occurrence of each of the events listed at paragraph 91. Namely:

- Death: any executor or personal representative of the licence holder;
- Incapacity: (a) any person who has been granted a power of attorney by the licence holder; or  
(b) any person authorised to act on behalf of the licence holder by virtue of the Adults with Incapacity (Scotland) Act 2000;
- Insolvency: any person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 in relation to the licence holder;
- Dissolution: any person responsible for administering the dissolution of the licence holder.
- Transfer of business: any person to whom the business is transferred.

8.82 An application for a transfer of a premises licence under section 34 must be made to the appropriate Board within 28 days of the occurrence of one of the events discussed at paragraph 91. The procedures for dealing with an application made under section are the same as those discussed above for section 33 applications.

8.83 Section 35 makes provision for the scenario where a person applying for the transfer of a premises licence can apply at the same time for a variation to the terms and conditions of the premises licence to transfer of a premises licence also to apply at the same time for a variation to the terms and conditions of the premises licence. The text above in relation to the application to vary a premises licence and the determination of an application for a variation of a premises licence will apply to applications for variations under this section.

8.84 If the proposed transfer of the premises licence depends on a variation being obtained to the licence then the person seeking the transfer is required to make this clear. In such cases a Board must determine the application for variation prior to determining the application for transfer. If the variation is refused there is no need to proceed with the transfer application.

### **Review of a premises licence**

8.85 Sections 36 to 40 of the 2005 Act make provision for the review of a premises licence. A number of amendments have been made to the 2005 Act as enacted by the Criminal Justice and Licensing (Scotland) Act 2010 and (the majority) by the Air Weapons and Licensing (Scotland) Act 2015.

#### *Application for a review*

8.86 Any person can submit a “premises licence review application” to the relevant Board regarding a licensed premises on any of the ground for review. The Air Weapons and Licensing (Scotland) Act 2015 amended section 36 of the 2005 Act by adding a third ground for review. The grounds of review are:

- (1) are that one or more of the conditions to which the premises licence is subject has been breached, or
- (2) any other ground relevant to one or more of the licensing objectives or

- (3) not a “fit and proper person”

8.87 Depending on which ground for review is noted on the application, certain information must also be provided:

- (1) the condition or conditions alleged to have been breached.
- (2) the licensing objective or objectives to which the alleged ground of review relates.
- (3) a summary of the information on which the applicant's view that the alleged ground applies is based.

8.88 A Licensing Standards Officer (LSO) is only able to apply for a review on the ground that there has been a breach of licence conditions if the LSO has issued a written warning about the breach and the LSO is not satisfied with the action taken by the licensed premises holder in response to the written warning.

8.89 The Air Weapons and Licensing (Scotland) Act 2015 further amended section 36 to clarify that any person who makes a premises licence review application may include any information in that application that the person considers relevant to the Licensing Board's consideration of the alleged ground of review. This could include information relating to the licence holder, connected persons in relation to the licence holder or an interested party in relation to the licensed premises.

8.90 A Licensing Board may reject a premises licence review application if the Board considers the application:

- is vexatious or frivolous, or
- does not disclose any matter relevant to any ground for review.

If a Licensing Board rejects an application on one of the grounds mentioned above then it must give notice of the decision, and the reason for it to the applicant. Provision is also made for a Board to recover, from the applicant, any expenses incurred by the Board in considering a vexatious or frivolous application.

#### *Review of premises licence on Licensing Board's initiative*

8.91 Section 37 allows for Licensing Boards to initiate reviews of premises licences themselves. The grounds for review are the same as those for applications under section 36 (discussed above). Where a Licensing Board proposes to initiate a review of a premises licence, the Board must provide a written report - known as a review proposal - setting out the grounds that it considers merit such a review of the premises licence. An Air Weapons and Licensing (Scotland) Act 2015 amendment provides that a Board's proposal may include information that the Board considers relevant to its consideration of the alleged ground of review, in relation to the licence holder, connected persons in relation to the licence holder or interested parties in relation to the licenced premises.

#### *Review Hearing*

8.92 Section 38 of the 2005 Act requires a Licensing Board to hold a review hearing and determine an application for a review of a premises licence made under section 36 (or a review proposal under section 37). As discussed above, the Board

does not need to hold a review hearing if it considers the application is frivolous or vexatious or if it is not relevant to the grounds for review.

8.93 In terms of notification of a review, the Licensing Board is required:

- in the case of a premises licence review application to give notice of the hearing to the applicant, and
- give notice of the hearing and a copy of the premises licence review proposal or application to the licence holder and any LSO for the area in which the licenced premises are located (unless in the case of a premises licence review the LSO is the applicant)

8.94 As discussed earlier in the guidance, where an LSO receives a copy of a premises licence review proposal or application, the LSO must prepare and submit a report on the proposal or application to the Board before any hearing takes place. The Licensing Board must take account of this report at the hearing. Additionally a Licensing Board is empowered to request information, the attendance at a hearing of any person and the production of documents.

8.95 A Licensing Board has a range of sanctions that it may elect to impose on reviewing a premise licence. These are set out at section 39 of the 2005 Act as amended by the Air Weapons and Licensing (Scotland) Act 2015. These steps are to:

- issue a written warning to the licence holder,
- make a variation of the licence; may only apply for a period decided by the Board,
- suspend the licence for whatever period the Board may decide,
- revoke the licence.

Section 39 also provides that where a Licensing Board is satisfied at a hearing that the licence holder fails the “fit and proper” test then the Licensing Board must revoke the premises licence. Subject to the revocation of a licence being recalled, a revocation takes effect at the end of the period of 28 days beginning with the day the Board made the decision to revoke the premises licence.

8.96 The 2005 Act as enacted has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 and the Air Weapons and Licensing (Scotland) Act 2015 in relation to a Licensing Board giving notice of a decision made at a premises licence review hearing. The 2010 Act inserted a new provision (section 39A Notification of determinations) into the 2005 Act and this provision was subsequently amended by the 2015 Act.

8.97 The rationale for the 2010 Act amendment was to seek to improve the transparency of the premises licence review process provided for in the 2005 Act. It ensures that

- adequate notification of a licensing board’s decision following a review hearing is given to the licence holder and to the person who applied for a review.

- when a licensing board takes action against a licence holder following a review hearing, the licence holder is able to request a statement of reasons from the board –as already happened in the case of a premises licence application.
- a statement of reasons can be requested by a person who applies for a review of the licence, whether or not any action is taken by the board following the review hearing.

The 2015 Act textual amendments were a result of the introduction of the fit and proper person test as a ground for refusal.

8.98 The 2005 Act provides (section 40) a mechanism by which a licence holder can apply to the Licensing Board to have any variation of their premises licence or the suspension of their premises licence removed. If the Board feels that the sanction in question is no longer necessary then, in the case of these two sanctions only, it may remove the relevant sanction.

### **Recall of revocation of licence**

8.99 The 2015 Act inserted section 39B which provide for the recall of a revocation of a licence under section 39(2A). This amendment and the amendment which inserted 28 days are linked to the “fit and proper person”, also introduced by the 2015 Act. As noted during the parliamentary passage of the then Air Weapons and Licensing (Scotland) Bill, the bill on introduction had provided for the immediate revocation of a premises licence on the grounds that, having regard to the licensing objectives, the licence holder is not a fit-and-proper person to be the holder of a premises licence.

8.100 Concerns had been raised been raised that without alternative disposals available to it, the board might be reluctant to find that a person is not fit and proper to hold a premises licence. To address these concerns, two amendments were brought forward at Stage 2 of the parliamentary process. One amendment provided that a revocation under the licensing board’s powers of review would take effect at the end of a period of 28 days beginning on the day on which the board makes the decision. The rationale being that this provided a short period of grace in which the licence holder may take action to address the problems that led to the board making the findings.

8.101 The second and related amendment inserted a new section (section 39B) into the 2005 act. This section provides that when a licensing board has taken steps to revoke a premises licence on the ground that the licence holder is not a fit-and-proper person, the board must recall the revocation if the relevant application is made within that 28-day period and the board ultimately grants the relevant application. These provisions enable Boards to take robust action when a licence holder is found not to be a fit-and-proper person and they offer reasonable traders the opportunity to take prompt action to address the board’s concerns and retain their licence.

## **Conviction of licence holders etc. for relevant or foreign offences**

8.102 Relevant and foreign offences are discussed above. A premises licence holder who is charged with relevant offences is required to notify the court of the fact that they hold a premises licence. Failure to do so, within the timescales set out in section 41, and without reasonable excuse means the person is committing an offence. A person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500).

8.103 The notification required under section 41 enables the clerk of the court to comply with the duty imposed on them by section 42 of the 2005 Act – namely to give notice of the conviction to the Licensing Board. The duty only applies if the clerk is aware that the person convicted holds a premises licence.

## **Provisional and temporary premises licences**

### *Provisional premises licence*

8.104 A premises licence application can be made in relation to premises which are being constructed or converted for use as licensed premises. A premises licence granted for such premises is referred to as a “provisional premises licence”. Section 45 of the 2005 Act modifies certain provisions of the 2005 Act as they apply to applications for provisional premises licences. For example, the name of the premises manager need not be provided on the provisional premises licence application.

8.105 A provisional premises licence has no effect until it is confirmed. The Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act as enacted to increase the 2 year period in which a premises licence must be confirmed to 4 years. If the licence is not confirmed within this period it will be automatically revoked. The 4 year period can be extended if the construction or conversion work is delayed for reasons outwith the licence holder’s control.

8.106 Section 46 of the 2005 Act sets out the procedure for the confirmation of provisional premises licences. The licence holder has to apply for confirmation to the Licensing Board before the end of the 4 year period beginning when the licence was issued. Confirmation would, in practice, be sought when the construction or conversion work is completed and the premises are ready for use.

8.107 Applications for confirmation of provisional premises licence must be accompanied by:

- the provisional premises licence,
- the operating plan for the premises to which the licence relates (which must confirm the name of the premises manager),
- the layout plan for the premises, and
- the certificates required by section 50(3) [i.e. planning, building and food hygiene].

8.108 On receipt of an application, a Licensing Board must confirm the premises licence where, during the period of the provisional licence, there has been no

variation to the operating plan or layout plan (other than a variation approved by the Board already or classed as a minor variation) for the premises to which the licence relates. When confirming a premises licence, the Board may, to ensure consistency with any statement of licensing policy or any supplementary statement of licensing policy published since the licence was issued, vary any licence condition.

#### *Temporary premises licence*

8.109 Section 47 of the 2005 Act covers the scenario where premises which already have a premises licence are undergoing reconstruction or conversion work. It may be that the licence holder wishes to move into temporary premises. The 2005 Act enables the licence holder to apply to the Licensing Board for a premises licence covering the temporary premises, i.e. a temporary premises licence.

8.110 Section 47 as enacted was amended by the Criminal Justice and Licensing (Scotland) Act 2010 and the Police and Fire Reform (Scotland) Act 2012. These amendments require a Licensing Board to send a copy of the temporary premises licence to the Chief constable. The policy rationale here being it is important for the police to be made aware of the licensing conditions attached to each licence in order for the conditions of that licence to be properly enforced.

8.111 A temporary licence has effect for a period, not longer than 2 years beginning with the date of its issue, as a Licensing Board may determine. The temporary premises licence is subject to the same conditions to which the premises licence is subject to at the time the temporary licence is issued, subject to any exceptions or modification which the Licensing Board may provide for.

### **Premises licences – miscellaneous matters**

#### *Duty to keep, display and produce premises licence*

8.112 The 2005 Act provides that a premises licence holder is under a duty to ensure that the premises licence or a certified copy is held on the premises to which it relates either by the licence holder or by the premises manager. A summary of the licence must be displayed prominently on the premises.

8.113 It is an offence to fail to comply with these requirements or to fail to produce the licence or a certified copy to a police constable or a Licensing Standards Officer on request. A person who fails, without reasonable excuse, to comply with a requirement made under section 52 commits an offence. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale.

#### *Theft, loss etc. of premises licence or summary*

8.114 Provision is made within the 2005 Act for a premises licence holder to apply to the Licensing Board for a copy of a premises licence or a summary if the licence or summary has been lost, stolen, damaged or destroyed. If lost or stolen, the theft or loss must have been reported to the police by the premises licence holder.

8.115 If the relevant Licensing Board is satisfied that the premises licence or summary licence has been lost, stolen, damaged or destroyed, and the licence holder has made the necessary report to the Police then the Licensing Board must

issue to the licence holder a replacement licence or, as the case may be, a replacement summary. The “replacement” document should be in the form in which the document existed immediately before it was lost, stolen, damaged or destroyed, and should be “certified” by the Licensing Board as a true copy.

### **Notifications of determinations**

8.116 The 2005 Act places a duty on the Licensing Board to notify its decisions on applications for premises licences, applications for variations of a premises licence, transfer applications, reviews, applications for a temporary licence, and applications for provisional premises to the applicant and other specified persons (i.e. the Chief constable and in the case of the grant or refusal of a premises licence application any person who gave a notice of objections or representations under section 22 (10) of the 2005 Act.

8.117 It is open to any of the aforementioned parties, within 14 days of receiving notice of the Board’s decision, to ask the clerk of the Licensing Board for a statement of reasons for the grant or refusal of the application. The Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007/453) sets out the format (at Schedule 4) of the statement of reasons which the clerk of the Board requires to issue within 14 days of the receipt of the request for a statement of reasons. Any statement of reasons issued must be sent to the person who asked for it and any other person to whom the Board gave notice under subsection (1).

## **9. OCCASIONAL LICENCES**

### **Introduction**

9.1 This Chapter provides guidance on occasional licences which are licences which authorise the sale of alcohol. Occasional licences can be granted by Licensing Boards on application from a premises licence holder, a personal licence holder and a representative of any voluntary organisation. For example, for a premises licence holder this would be to authorise the sale of alcohol in the course of catering for an event taking place out with their licensed premises. Voluntary organisations may also apply for an occasional licence authorising the sale of alcohol at an event connected with the organisation's activities.

9.2 An occasional licence may not exceed a period of 14 days. The Licensing (Fees) (Scotland) Regulations 2007 (SSI 2007/553) provides that the fee payable in respect of an occasional licence application is £10. Occasional licences are distinct from premises licences (see Chapter 8, for more information on a premises licence) and where an occasional licence has effect in relation to a premises, a premises licence is not necessary. Licensing Boards will wish to note that the Air Weapons and Licensing (Scotland) Act (section 75) amended the 2005 Act such that those in possession of an occasional licence issued under section 56 of the 2005 Act will no longer be exempt from public entertainment licensing requirements (set out in the Civic Government (Scotland) Act 1982).

### **Procedure**

#### *Notification of application*

9.3 Licensing Boards are required to consider applications for occasional licences in line with the provisions set out at Part 4 of the 2005 Act and the Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007/453). The regulations cover, amongst other matters, procedures and timescales in connection with the processing of applications for occasional licences.

9.4 The legislation requires that prior to determining an occasional licence application a Licensing Board must within 7 days of receiving it give notice of it, together with a copy of the application to the chief constable and the Licensing Standards Officer. On the day of notification, or as soon as reasonably practical thereafter, to these parties, a Licensing Board must publish details of the application on its website for a continuous period of 7 days. Inverclyde Licensing Board is an example of one Licensing Board which has a dedicated page on its website where interested parties can find information about occasional licence applications and objection forms can also be downloaded.

9.5 The Licensing Standards Officer may, within 21 days of receipt of notice of an application, prepare and submit a report setting out their comments on the application, which may include recommendations for additional conditions to be attached by the Licensing Board.

9.6 The Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act to enable the fast tracking of some occasional licences where there is very



limited notice of the need for such a licence e.g. a funeral. This amendment reduces the length of time a Licensing Board is required to wait for comments on an occasional licence application from the Licensing Standards Officer from 21 days to a period of not less than 24 hours. This applies where the Licensing Board is satisfied that the application *requires* to be dealt with quickly and the shortened time period is not being requested in order to pressurise the Licensing Board into granting a licence.

#### *Objections and representations*

9.7 Section 58 of the 2005 Act allows any person (including Police Scotland) to make objections and representations to Licensing Boards in connection with any application made to the Licensing Board for an occasional licence under section 56 of the 2005 Act. For example, Police Scotland may wish to raise objections due to concerns about the scale, location or timing of the event. Any notice of objection or representation must be made to the Licensing Board within the 7 day period the occasional licence application has been published on the Licensing Board website.

9.8 Any person, by giving notice to the Licensing Board, may object to an occasional licence application on any ground relevant to one of the grounds for refusal or make representations to the Licensing Board in support of the occasional licence application, or as to conditions which the persons considers should be imposed.

9.9 Licensing Boards are also required by section 58 to give the occasional licence applicant notice of any objections or representations and to take account of them in determining the application. Section 58 also permits Licensing Boards to reject any frivolous or vexatious objection or representation and sets out how a Licensing Board may recover from the person who gave the notice any expenses incurred by it in considering the notice.

9.10 Licensing Boards may wish to highlight to event organisers – perhaps through information on their websites - that due to the possibility of police intervention and/or public representations, that event organisers should not rely on giving the minimum amount of notice. Event organisers will wish to be aware of the importance of early engagement with for example local police licensing officers to discuss proposals for their event.

#### *Determination of occasional licence application*

9.11 The Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act in relation to the delegation of the functions of Licensing Boards to extend the ability to delegate approval of occasional licences applications to the Clerk of the Licensing Board or a member of support staff where no objections or representations are lodged.

9.12 Where no report from a Licensing Standards Officer, or notification of objection or representation under the relevant provisions of the 2005 Act have been received by a Licensing Board, then section 59 of the 2005 Act provides that an occasional licence application *must* be granted *unless* the application requires to be refused under:

- section 56(6A) of the 2005 Act – where the occasional licence application would result in the occasional licence limit being exceeded then the Licensing Board must refuse the application. For example, the occasional licence limit for voluntary organisations is set out at section 56(6) of the 2005 Act.
- section 64(2) of the 2005 Act - a Licensing Board must refuse any occasional licence application seeking a “24 hour licence” unless it is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.
- Section 65(3) of the 2005 Act – a Licensing Board must refuse an occasional licence application where the off sale hours proposed in the application are such that alcohol would be sold for consumption outside before 10am and/or after 10pm.

9.13 In any other case, for example where a representation has been received, section 59(3) of the 2005 Act provides that the Licensing Board must consider whether any of the grounds for refusal applies and:

- if none of them applies then the application *must* be granted; or
- if any of them applies, the application *must* be refused.

The Licensing Board may hold a hearing for the purposes of determining any application under section 59(3) of the 2005 Act. Where the Licensing Board does not hold a hearing for that purpose, it must ensure that, before determining the application, the applicant is given an opportunity to comment on any notice of objection, representation or the Licensing Standards Officer’s report.

9.14 The grounds for refusal are:

- that the premises to which the application relates are excluded premises
- that the application must be refused under section 56(6A), 64(2) or 65(3) of the Act;
- that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives;
- that, having regard to:
  - the nature of the activities proposed to be carried on in the premises to which the application relates;
  - the location, character and condition of the premises; and
  - the persons likely to frequent the premises;

the Licensing Board considers that the premises are unsuitable for use for the sale of alcohol.

9.15 In determining any application the Licensing Board must take into account any report from a Licensing Standards Officer under section 57(3) of the Act.

9.16 Whether the Licensing Board grants or refuses an occasional licence, they must give notice of the grant or refusal to the applicant, chief constable, any Licensing Standards Officer for the area and any person who may have given any notice of objection or representation in respect of the application. Any person who receives such notice may request, from the Clerk of the Licensing Board, a statement of reasons to be given to them by the Licensing Board.

#### *Conditions and occasional licences*

9.17 Schedule 4 to the 2005 Act establishes the national mandatory licence conditions for occasional licences issued under this statute, ensuring national consistency on those issues provided for. Licensing Boards may also impose other conditions – in addition to the mandatory conditions - as they consider necessary or expedient for the purposes of any of the licensing objectives. In particular, those are conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with either:

- the sale of alcohol on the premises in respect of which an occasional licence has effect; or
- any other activity carried on in such premises

9.18 For example, Clackmannanshire Licensing Board's statement of licensing policy 2018 comments that:

- "In the event that an applicant seeks a licence for an eighteenth birthday party, the Board if minded to grant the application will impose additional conditions regulating entry and the sale of alcohol to reduce the risk of harm caused to young persons in attendance through consumption of excess alcohol. It will generally be recommended that the Board impose a condition requiring the employment of SIA licensed stewards for these types of events. Applicants should have regard to these considerations when applying for occasional licences for such events and should ensure that the organisers are aware of the Board's likely requirements."

9.19 South Ayrshire Licensing Board is one example of a Licensing Board's statement of licensing policy which sets out, at Appendix 4, thirteen conditions which may be attached to an occasional licence. For example, condition 2 is that no under eighteens to be allowed in the main Bar area. The licensing objectives being promoted here are "preventing crime and disorder" and "protecting children from harm".

9.20 A Licensing Board may not impose a condition which:

- is inconsistent with any mandatory or prescribed condition;

- would have the effect of making any such condition more onerous or more restrictive; or
- relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.

### **Repeated occasional licence applications**

9.21 The occasional licensing system is intended to provide flexibility in the system regulating the sale of alcohol that otherwise would result in more onerous requirements falling on those wishing to, on a temporary basis, sell alcohol. Occasional licences are not intended as a substitute for premises licences.

9.22 With this in mind, Licensing Boards will wish to consider utilising appropriate processes which are capable of identifying instances where it appears there is an attempt to operate premises under a series of consecutive occasional licences, rather than obtaining an appropriate premises licence. If such circumstances are identified, Licensing Boards may wish to consider it good practice to ask the applicant to explain why an application for a premises licence is not being made.

9.23 It is for the Licensing Board to determine what the process for this would be. For example one Licensing Board – South Lanarkshire Licensing Division Number 1 (Clydesdale area) – has set out in its statement of licensing policy 2018 the approach it will take:

- “Repeated applications for an Occasional Licences for the same unlicensed premises and which are:-
  - Not for detailed specific events; and/or
  - For activities that have been occurring (either in identical or largely similar terms) on the premises regularly for period of at least three months;

will not generally be considered to be suitable for the grant of an Occasional Licence and will not be granted by the Board under delegated authority but will require a hearing before the Board. The Board expects such premises to be operating under a premises licence.”

9.24 A Licensing Board may also look to the duration of occasional licences for a single premises over a 12 month period and suggest a policy whereby the Licensing Board becomes directly involved in the consideration of further occasional licences at that premises. For example, one Licensing Board – Perth & Kinross – has commented in its statement of licensing policy 2018 that:

- “The Board considers it reasonable for occasional licences covering up to 30 days (including into the following mornings) to be granted in any one calendar year for a single premise. Where more than 30 days are sought, the Board expects a premises licence application to be submitted. Failure to do so may result in all further occasional licence applications being submitted to the Board for consideration rather than being dealt with under delegated powers. This does not apply to places such as village halls where different organisations use the same premise”.

## Extension of licensed hours

9.25 The licensed hours for occasional licences require to be set out in the application for the licence and incorporated into the licence if granted. Section 67 of the 2005 Act provides Licensing Boards with a power to grant general extensions to licensed hours in connection with special events of local or national significance. However, licensed premises are not obliged to remain open for the period of any such extension. Section 68 of the 2005 Act which makes provision for extended hours applications does not apply to occasional licences.

## Members' clubs

9.26 By virtue of section 56(1) of the 2005 Act, the usual position is that an occasional licence may not be issued in respect of a premises which is already licenced. However, there is an exception to this in respect of a club falling within the description of regulation 2 of the Licensing (Clubs) (Scotland) Regulations 2007 (SSI 2007/76). The fact a premises licence is in effect in respect of such a club does not prevent an occasional licence being issued in respect of the club. This means, for example, that a members club which under its premises licence is normally only allowed to supply alcohol to its members and their guests, may during the period covered by the occasional licence admit members of the public and sell alcohol to them.

9.27 When an occasional licence has effect in terms of the premises, the conditions of the premises licence temporarily do not apply (see regulation 3(3) of SSI 2007/76) and the conditions of the occasional licence apply instead. This means that sales of alcohol are permitted on the club premises to persons who are not members or accompanied by a member. Such occasional licences could for example be used for community events. When the occasional licence ceases to have effect then the conditions attached to the premises licence once more come into effect.

9.28 Licensing Boards are restricted in the number of occasional licences they can issue in respect of a members' club. Regulation 3(2) of SSI 2007/76 provides that:

- a Licensing Board may issue in respect of those *premises* in any period of 12 months—
  - (a) not more than 4 occasional licenses each having effect for a period of 4 days or more, and
  - (b) not more than 12 occasional licences each having effect for a period of less than 4 days,provided that, in any period of 12 months, the total number of days on which occasional licences issued in respect of the premises have effect does not exceed 56.

## Voluntary organisations

9.29 An application for an occasional licence can also be made by a representative of a voluntary organisation. Paragraph 5 of schedule 4 (*occasional licences: mandatory conditions*) to the 2005 Act applies only to occasional licences

issued to voluntary organisations and ensures that alcohol may only be sold at events run in connection with the organisations' activities.

9.30 Licensing Boards are restricted in the number of occasional licences they can issue in respect of voluntary organisations. Section 56(6) of the 2005 Act provides that:

- a Licensing Board may issue in respect of that *organisation* in any period of 12 months—
  - (a) not more than 4 occasional licenses each having effect for a period of 4 days or more, and
  - (b) not more than 12 occasional licences each having effect for a period of less than 4 days,

provided that, in any period of 12 months, the total number of days on which occasional licences issued in respect of the organisation have effect does not exceed 56.

9.31 Many voluntary organisations will not have commercial backgrounds or ready access to legal advice. They will include, for example, individuals acting on behalf of charities, community and voluntary groups, schools, churches and hospitals all of which may stage public events at which the sale of alcohol may take place. It is critical that Licensing Boards ensure that local publicity about the system of occasional licences is clear and Licensing Boards should strive to keep the arrangements as manageable and user-friendly as possible for these groups.

## 10. Personal Licenses

### Introduction

10.1 This Chapter provides information on personal licences. Part 6 of the 2005 Act sets out the legislative framework which applies to personal licences.

10.2 Any person aged 18 years or over may apply for a personal licence provided they possess a relevant training qualification and have not been convicted of any relevant offence or forfeited a licence in the past 5 years. The Air Weapons and Licensing (Scotland) Act 2015 amended the 2005 Act to provide for an exception to the aforementioned 5 year period. If a personal licence is revoked for failure to comply with the training requirement (see below), the licence holder will not have to wait 5 years to reapply for a personal licence.

10.3 Application forms and associated guidance notes can be downloaded from Licensing Boards' website pages. A personal licence allows the individual to train staff, apply for occasional licences and to authorise or supervise the sale of alcohol. Once granted a personal licence will have effect for a period of 10 years unless it is surrendered or revoked by the Licensing Board.

10.4 Section 9 of the 2005 Act requires a Licensing Board to keep a public register containing information relating to licences issued by the Licensing Board and decisions taken by it. The Licensing Register (Scotland) Regulations 2007 (SSI 2007/33) make specific provision as to the personal licence information that should be entered in the public register.

10.5 An individual may hold only one personal licence at a time. Licensing Boards may not issue a personal licence to any person who already holds such a licence and any subsequent personal licence issued would be void. The 2005 Act does however allow for an existing personal licence holder to apply for the renewal of their licence and so no person should apply for a new personal licence on the basis that their current licence is reaching the ten year point.

10.6 The Licensing (Fees) (Scotland) Regulations 2007 (SSI 2007/553) as amended provide that the fee payable in respect of a personal licence application and a personal licence renewal application is £50. Licensing Boards can determine the fee charged for a replacement personal licence subject to the general rule that fees should be set at a level which allows the Licensing Board to recover their costs.

10.7 Personal licences granted in England and Wales are not transferrable to Scotland and vice versa as the licensing and legal systems are different. Within Scotland, a personal licence granted by one Licensing Board may be used within another Licensing Board's local authority area.

### *Premises Manager*

10.8 Each premises must have a "premises manager" who is named on the premises licence as the person responsible for running that premises. In terms of the mandatory premises licence condition set out at Schedule 3 of the 2005 Act, a

premises manager is required to hold a personal licence (see Chapter 8 for more information on premises licences).

## **Grant and Renewal**

### *Notification*

10.9 Prior to considering a personal licence application, Licensing Boards are required by the 2005 Act to notify and provide a copy of the application to the chief constable and (following an amendment to the 2005 Act by the Air Weapons and Licensing (Scotland) Act 2015) to the Licensing Standards Officer for their locality.

10.10 This is an important information gathering process for Licensing Boards as the chief constable is required to confirm to the Licensing Board, within 21 days of the date of receipt of the notification, whether or not the applicant has been convicted of a relevant offence or foreign offence.

10.11 Section 129 of the 2005 Act states that for the purposes of the Act, a “foreign offence” means any offence: under the law of any place other than Scotland; and which is similar in nature to any relevant offence. Section 129 also provides the Scottish Ministers with a power to prescribe by regulations what offences are to count as a “relevant offence” in the 2005 Act. The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007/513) specify those offences which are to be relevant offences for the purposes of the 2005 Act (regulation 2 and the Schedule).

10.12 Additionally the chief constable has the opportunity to recommend to the Licensing Board that the personal licence application should be refused on grounds relating to the 5 licensing objectives (inserted by the Criminal Justice and Licensing (Scotland) Act 2010) and/or to provide any further information to the Licensing Board that the chief constable considers relevant to their consideration of the application (inserted by the Air Weapons and Licensing (Scotland) Act 2015).

10.13 The notification process also provides the Licensing Standards Officer, with an opportunity to pass within 21 days any information in relation to the applicant that s/he considers would be relevant to the Licensing Board’s consideration of the application. For example, this could include reference to previous conduct by the applicant that was inconsistent with the 5 licensing objectives.

### *Determination of personal licence application*

10.14 Section 74 sets out the procedure that Licensing Boards must undertake when considering personal licence applications. Licensing Boards can delegate the determination of a personal licence application to: any member of the Board; any committee established by the Board; the clerk of the Board or a member of support staff *unless* the applicant has been convicted of a relevant or foreign offence.

10.15 A number of amendments have been made to section 74 since the 2005 Act was implemented. The key changes have been made by the Air Weapons and Licensing (Scotland) Act 2015. The changes made - along with the changes mentioned above – are linked to the re-introduction of a “fit and proper” test into the alcohol licensing regime.



10.16 The introduction of this test allows greater scope to present information to Licensing Boards which in turn will aid them when making decisions about applicants, licence holders and connected persons. It also provides Licensing Boards with greater powers to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information including police intelligence and any associations with those deemed to be unsuitable.

10.17 In essence if the conditions set out at section 74(2) and section 74(3) are all met, in relation to the applicant, then a Licensing Board must grant the application. If any of these conditions are not met, in relation to the applicant, then the Licensing Board must refuse the application.

10.18 Provision is also made within section 74 for a Licensing Board to hold a hearing to determine whether or not a licence application will be granted. Whether or not a hearing will be held is generally dependent on the conditions at sections 74(2) and (3) being met and the content of the notice(s) above) submitted to the Licensing Board by the chief constable and/or the Licensing Standards Officer.

10.19 A Licensing Board *must* hold a hearing to determine a personal licence application where the conditions in 74(2) and (3) have all been met but the chief constable's notice contains a recommendation that s/he considers that it is necessary for the purposes of any of the licensing objectives that the personal licence application be refused.

10.20 There are two situations set out in section 74 where a Licensing Board *may* hold a hearing to determine a personal licence application provided all the conditions set out in sections 74(2) and (3) are met. These are:

- a notice from the chief constable specifying any convictions of the applicant for a relevant or foreign offence but the notice does not contain a recommendation that for the purposes of the licensing objectives the application should be refused; or
- a notice from the chief constable does not contain a recommendation that for the purposes of the licensing objectives the application should be refused but either the chief constable and/or the Licensing Standards Officer provides information that they consider may be relevant to consideration by the Licensing Board of the application.

10.21 Where a hearing is held, then the Licensing Board must have regard to the notices and information submitted by the chief constable and/or the Licensing Standards Officer when considering and determining a personal licence application. If the Licensing Board is satisfied that a ground for refusal applies, it should refuse the application, or if not so satisfied, grant the application.

The grounds for refusal are -

- that having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence,

- that it is otherwise necessary to refuse the application for any of the purposes of the licensing objectives.

10.22 There is a further occasion provided by section 74 when a Licensing Board *may* hold a hearing to consider and determine a personal licence application. This relates to an amendment to the 2005 Act made by the Criminal Justice and Licensing (Scotland) Act 2010. The amendment enables a Licensing Board to refuse the application *or* hold a hearing to decide whether or not to grant the application, *if* the applicant already holds a personal licence *or if* a previous personal licence held by the applicant had been surrendered or expired in the previous three years before a new application was made.

10.23 If a hearing is held, the Licensing Board can grant or refuse the personal licence application. In reaching a view, the Licensing Board are required to have regard to the circumstances in which the personal licence previously held expired, or was surrendered.

10.24 An applicant whose application for a personal licence has been refused has a right of appeal to the Sheriff.

#### *Issue of a personal licence and changes made to a personal licence*

10.25 Where a Licensing Board grants a personal licence application, it must issue a personal licence to the applicant in the prescribed form. The Personal Licence (Scotland) Regulations 2007 (SSI/2007/77) sets out the form and content of the personal licence.

10.26 When issuing personal licences, Licensing Boards may use the unique local authority identifiers as a prefix to the Licence number they issue for each personal licence. In cases where a local authority area covers a number of licensing divisions (each with its own Licensing Board), it would be good practice to adopt unique referencing numbering for each licensing division to identify the Licensing Board area for which licences are issued.

10.27 Where certain changes have been made to the terms or effect of a personal licence, (for example, where it has been renewed, suspended or a change of details has been notified), the Licensing Board *must* make the necessary amendments to the licence. The Licensing Board may require the personal licence holder to present the licence for amendment within 14 days. Failure by the licence holder to comply with this obligation, without reasonable excuse, is an offence. A person guilty of such an offence) is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500).

#### *Renewal of personal licence*

10.28 Personal licences are generally valid for ten years with the possibility of renewals for further ten year periods. Licensing Boards must notify personal licence holders, of licences granted by them, not later than 9 months before the licence expiry date that the licence will cease to have effect unless renewed.

10.29 Section 78 sets out the steps an individual must take to apply for the renewal of a personal licence. Applications for renewal require to be made to the Licensing Board which originally granted the licence. Applications for renewal can only be lodged with the relevant Licensing Board within a two-month period beginning three months before the personal licence's expiry.

10.30 A Licensing Board requires to process a personal licence renewal application in broadly the same manner as it is required to process a personal licence – i.e. akin to the process outlined in the *Determination of personal licence application* section above.

#### *Notification of Licensing Board determinations*

10.31 Once a Licensing Board has granted or refused a personal licence or personal licence renewal application then it is required to notify both the applicant and the chief constable. Either of these parties can contact the Clerk to the Licensing Board and ask the Board to give a statement of reasons for the grant or refusal of the application. The Licensing Board must issue such a statement to both parties.

#### **Replacement of a personal licence**

10.32 Section 92 provides for the situation where a Licensing Board receives an application for a replacement personal licence from an individual they issued a personal licence to. If the Licensing Board is satisfied that the original personal licence has been lost, stolen, damaged or destroyed and the applicant has reported the loss or theft to the Police then the Licensing Board *must* issue a replacement personal licence. A replacement personal licence is a copy of the personal licence held by the applicant in the form it existed immediately prior to the loss and is has been certified by the Licensing Board to be a true copy.

#### **Duties placed on personal licence applicants/holders**

10.33 Part 6 places a number of duties on personal licence applicants/holders.

##### *Licensing Qualification*

- Section 74 lists certain conditions that must be met before a Licensing Board can consider a personal licence application. One of these conditions is that an applicant must have a licensing qualification.

##### *Notification of offences*

- Section 75 places a duty on a personal licence applicant to notify the Licensing Board, of any relevant or foreign offence that the applicant has been convicted of in the period between making their application and it being determined by the Licensing Board. The notification must take place no later than one month after the date of the conviction.

- An individual who:
  - without reasonable excuse, fails to notify the Licensing Board commits an offence. An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£2,000).

#### *Surrender of void personal licence*

- Section 76 makes provision for the issuing of a personal licence to an applicant by the Licensing Board. This section provides that a person who holds a void personal licence must surrender it to the Licensing Board. A personal licence is void if, at the time it is issued by the Licensing Board to an individual, that individual already holds a personal licence.
- An individual who:
  - without reasonable excuse, fails to surrender a void licence to the Licensing Board; or
  - passes off a void personal licence as a valid personal licence knowing that the licence is void
 commits an offence. An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£2,000).

#### *Duty to notify court of personal licence*

- Section 80 provides that if a personal licence holder is charged with a relevant offence the person must notify the court of the existence of the licence and produce the licence to the court.
- An individual who:
  - without reasonable excuse, fails to comply with these requirements
 commits an offence. An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500).

#### *Duty to notify Licensing Board of convictions*

- Section 82 provides that if a personal licence holder is convicted of a relevant offence or foreign offence, s/he must, within one month, notify the Licensing Board which issued the licence and, if different, the Board for the area in which the licence holder is working, of the conviction. Details are given of the form the notice should take and what actions a Licensing Board should take if they are aware that the personal licence holder is working in licenced premises in another Board area.
- A licence holder who:
  - without reasonable excuse, fails to comply with these requirements
 commits an offence. An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500).

### *Licence holder's duty to undertake training*

- Section 87 makes it mandatory for all personal licence holders to undertake prescribed training every five years and to provide the relevant Licensing Board with evidence that they have undertaken this training (see paragraph 10.31 below). Failure to undertake the necessary training will result in a personal licence being revoked.

### *Updating of personal licence*

- Section 88 requires a licence holder to notify the relevant Licensing Board of any change of name or address within one month and s/he must enclose the personal licence (or a statement of reasons for failure to produce the licence) with such notice.
- A licence holder who:
  - without reasonable excuse, fails to comply with these requirements commits an offence. An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500).

### *Surrender of void replacement personal licence*

- Section 92 requires that a person who holds a void replacement licence must surrender it to the Licensing Board. A replacement licence is void, if when issued, the personal licence it in respect of which it was issued is not lost, stolen, damaged or destroyed.
- A person who
  - without reasonable excuse, fails to comply with these requirements; or
  - passes off a void replacement personal licence as a valid licence, knowing that the licence is voidcommits an offence. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£2,000).

### *Duty to produce licence*

- Section 93 applies where the personal licence holder is working on licensed premises. A constable or Licensing Standards Officer may require the holder to produce his or her personal licence.
- A licence holder who:
  - without reasonable excuse, fails to comply with these requirements commits an offence. An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500).

## **Training qualifications – personal licence holder**

10.34 Alcohol licensing qualifications support those working in the licensed trade in Scotland. They allow individuals to show that they can work responsibly and that they understand how the licensing process applies to their jobs.

10.35 As discussed above, certain conditions must be met before a Licensing Board can determine a personal licence application. One of these conditions is that the applicant hold a licensing qualification, that is accredited by the Scottish Ministers. Further information can be found in the updated '[Licensing \(Scotland\) Act 2005: liquor personal licence holder training accreditation](#)' document, published by the Scottish Government in December 2022.

10.36 Under the 2005 Act, all personal licence holders must complete "refresher" training within five years of the date that their licence was issued (and each subsequent five years thereafter) and provide evidence of having done so to the Licensing Board which issued the personal licence no later than 3 months after the expiry of the five year period. Should a personal licence holder fail to undertake the necessary training they will have their personal licence revoked.

10.37 A duty is also placed on Licensing Boards to notify, within the required timescale, holders of personal licences granted by them of the refresher training requirements. Please see the updated '[Licensing \(Scotland\) Act 2005: liquor personal licence holder training accreditation](#)' document, published by the Scottish Government in December 2022.

### **Court's duty to notify Licensing Board of Convictions**

10.38 Section 81 provides that where an individual is convicted of a relevant offence, the clerk to the Court must notify the relevant Licensing Board of the conviction as soon as is reasonably practical after the conviction. This is subject to the clerk being aware the individual concerned holds a personal licence.

### **Licensing Board receives conviction notification**

10.39 Section 83 sets out the procedure to be followed by a Licensing Board when a personal licence holder has been convicted of a relevant of foreign offence. The procedure involves notifying the chief constable who is required to respond within 21 days. Depending on the content of the notice sent by the chief constable, a Licensing Board may:

- take no further action in relation to the conviction;
- hold a hearing where the chief constable and licence holder are given an opportunity to be heard;
- if satisfied it is necessary for the purposes of any of the licensing objectives the Licensing Board can make an order to revoke, suspend, endorse the a personal licence;
- where at the hearing the Licensing Board is satisfied that having regard to the licensing objectives, the licence holder is not a fit and proper person to be a holder of a personal licence then the Licensing Board must revoke the personal licence.

- When an order is made, the Licensing Board must notify the licence holder concerned, the chief constable; and if different, the Licensing Board which issued the personal licence. The licence holder has a right of appeal to a Sheriff against orders made under section 83(9) or (9A).

### **Conduct inconsistent with licensing objectives**

#### **Power of chief constable to report such conduct to the Licensing Board**

#### **Power of Licensing Standards Officer to report such conduct to the licensing Board**

10.40 Section 84 sets out the procedure that a Licensing Board must follow in the course of reviewing a premises licence under section 33 of the 2005 Act. If the Licensing Board finds a personal licence holder was acting on the premises in question in a manner that was not consistent with the licensing objectives then:

- a hearing must be heard by the relevant Licensing Board;
- the licence holder and any other persons the Licensing Board consider are appropriate are given an opportunity to be heard;
- if satisfied it is necessary for the purposes of any of the licensing objectives the Licensing Board can make an order to revoke, suspend, endorse the a personal licence;
- where at the hearing the Licensing Board is satisfied that having regard to the licensing objectives, the licence holder is not a fit and proper person to be a holder of a personal licence then the Licensing Board must revoke the personal licence;
- When an order is made, the Licensing Board must notify the parties listed at section 84(8). The licence holder has a right of appeal to a Sheriff against orders made under section 84(7) or (7A).

10.41 Section 84A enables the chief constable to report a personal licence holder to the Licensing Board for actions which are inconsistent with any of the licensing objectives. Where this is done the Licensing Board *must* then hold a hearing to consider what action if any should be taken against the personal licence holder.

10.42 Section 84B provides Licensing Standards Officers with a specific power to report conduct of a personal licence holder, who is or was working in licensed premises in their area, which is inconsistent with the licensing objectives, to the relevant Licensing Board. Where the Licensing Board receives such a report it *may* hold a hearing but is under no obligation to do so. If a Licensing Board elects to hold a hearing, to consider what action if any should be taken against the personal licence holder, the process followed will be similar to that set out at paragraph 10.40.

## Endorsements

10.43 Section 85 provides for the expiry of endorsements of a personal licence after 5 years. An endorsement for the purposes of this section is an endorsement of a personal licence by a Licensing Board as a result of

- an order made by the Licensing Board receiving a notice of conviction;
- the Licensing Board finding in the course of a review hearing that the licence holder whilst working in a licenced premises acted in a manner which was inconsistent with any of the licensing objectives.

10.44 A personal licence holder may apply to the relevant Licensing Board, once the endorsement has expired, to have it removed. When a Licensing Board receives such an application it must remove the endorsement if it has expired. An expired endorsement is to be disregarded whether or not it has been removed from the licence.

10.45 Section 86 provides that when a personal licence holder receives 3 endorsements to their licence under sections 83 and 84 then the Licensing Board which issued the personal licence *must* hold a hearing to consider what action is taken against the licence holder.

- at any hearing a Licensing Board may give the licence holder and any other person(s) as the Licensing Board considers appropriate an opportunity to be heard; and
- if the Licensing Board considers it necessary to do so for the purposes of any of the licensing objectives make an order;
- an order can be made: suspending the licence for any period not exceeding six months or revoking the licence.
- the Licensing Board must give the licence holder notice of the order and of the reasons for making it;

The licence holder has a right of appeal to the Sheriff against any order made.



## 11. Control of Order

### Introduction

#### General

11.1 Part 7 of the Act concerns the control of order in connection with licensed premises. Part 7 introduces two mechanisms for the purposes of the control of order: exclusion orders and closure orders (including emergency closure orders). Licensing Boards have functions as regard closure orders, but no direct role as regards exclusion orders. However, in so far as it may be useful for Licensing Boards to have an understanding of exclusion orders, this Chapter of the Guidance provides an overview of the operation of exclusion orders.

#### Closure Orders and Emergency Closure Orders

11.2 Section 97 to 101 of the Act concern 'closure orders' and 'emergency closure orders'. These are orders which require a licensed premises to be closed for such period as may be specified in the order (section 97(3) of the Act).

##### *Closure Orders*

11.3 Licensing Boards may make a closure order under section 97(1) of the Act. Licensing Boards can only do so on the application of a senior police officer<sup>3</sup>. The form of such an application is set out in Parts A and B of schedule 1 of the Licensing (Closure Orders) (Scotland) Regulations 2007 (SSI 2007 No. 35) (the 'Closure Order Regulations').

11.4 Before it can grant an application, the Licensing Board must be satisfied that closure of the premises is necessary in the interests of public safety by reason of the likelihood of disorder on, or in the vicinity of, the premises. That request would normally result in a hearing at which the licence holder can make submissions concerning the proposed "Closure Order" and it is a matter for the Licensing Board to decide whether to grant the Order or not.

11.5 A closure order made by a Licensing Board is to be in the form set out in Part C of schedule 1 of the Closure Order Regulations. A closure order comes into force in relation to a licensed premises when a constable gives notice of the order to a 'responsible person' (section 97(6) of the Act). The period for which the closure order has effect will be specified in the order. For these purposes a 'responsible person' is defined in section 101 of the Act as:

- in the case of a premises in respect of which a premises licence has effect:
  - the premises licence holder, or
  - the premises manager,
- in the case of premises in respect of which an occasional licence has effect, the person who holds the occasional licence, and

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<sup>3</sup> A senior police officer for these purposes means a constable of, or above, the rank of superintendent (section 147(1) of the Act).

- in either case, any person working at the premises in a capacity (whether paid or unpaid) which authorises the person to close the premises.

11.6 Additionally, a constable of, or above, the rank of inspector must terminate a closure order if the constable is satisfied that it is no longer necessary in the interests of public safety for the premises to be closed (section 98(1) of the Act). The constable, must ensure that notice of the termination is given to the Licensing Board which made the closure order (section 98(2)(b) of the Act)<sup>4</sup>.

11.7 In respect of control of order, it is clear that good practice is essential to ensure the mechanisms within the 2005 Act can be used appropriately. Good practice should involve an effective working liaison and system of communication between the police, Licensing Standards Officers and managers of licensed premises. Many Licensing Boards' Statements of Licensing Policy emphasise the importance of good working relationships with partner agencies such as Police Scotland and in a similar vein many Licensing Boards encourage licensees to proactively engage with Police Scotland.

11.8 For example in relation to "Preventing Crime and Disorder", West Lothian Licensing Board comments in its statement of licensing policy that:

- "The Board expects premises licence holders to co-operate and liaise with Police Scotland where required to ensure that consistency with this licensing objective is upheld in the operation of the premises at all times. Applicants are encouraged to discuss crime prevention procedures in their premises with Police Scotland".

11.9 It is recognised that a great deal will depend on the willingness of licensees, premises managers and premise users to engage in a partnership approach. Those licensees who fail to take a socially responsible attitude are more likely to place themselves at a greater risk of police action under these powers than those who actively cooperate.

11.10 Section 12A of the 2005 Act imposes a duty on every chief constable to send a report to the Licensing Boards in the chief constable's police area. The report should, amongst other matters, set out the chief constable's views on the policing issues relating to the 2005 Act during that year and the following year. For example, the Annual Licensing Report 2020-21 submitted by Chief constable Iain Livingstone QPM to the Clackmannanshire Licensing Board stated that:

- "During 2020/2021 there has been no necessity to apply for a closure order nor implement an emergency closure order in the Clackmannanshire area".

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<sup>4</sup> Notice must also be given to a responsible person (section 98(2)(a) of the Act).

## *Emergency closure orders*

11.11 Where time is of the essence it is possible for emergency closure orders to be made under section 97(2) of the Act. An emergency closure order can be made by a constable of, or above, the rank of inspector. In such cases, the constable makes the closure order rather than the Licensing Board (and therefore the constable does not need to have applied to the Licensing Board under section 97(1) of the Act for an order to be made by the Licensing Board). The constable can make the order if they reasonably believe that:

- (a) there is, or is likely imminently to be, disorder on, or in the vicinity of, any licensed premises,
- (b) closure of the premises is necessary in the interest of public safety, and
- (c) the risk to public safety is such that it is necessary to do so immediately and without making an application under section 97(1) of the Act (i.e. an application to the Licensing Board for a closure order).

Under regulation 5 of the Closure Order Regulations, when an emergency closure order is made under section 97(2) of the Act, the officer who has made the order must give notice of the order to the Licensing Board in the area of which the premises in question are situated. This notice must be given as soon as practicable after the order has been made. An emergency closure order is to be in the form set out in Part 1 of schedule 2 of the Closure Order Regulations. The period of closure specified in an emergency closure order cannot exceed 24 hours, however that period can be extended under section 99 of the Act.

Section 99(1) of the Act, contains a power for a constable of or above the rank of Inspector to extend the original emergency closure order period by a further period not exceeding 24 hours. The constable must reasonably believe that the following conditions are met in relation to the premises:

- that there continues to be, or is likely to continue to be, disorder on, or in the vicinity of, the premises,
- that extending the original closure period is necessary in the interests of public safety, and
- the risk to public safety continues to be such that it is necessary to extend the closure period immediately and without making an application under section 97(1) of the Act (i.e. an application to the Licensing Board for a closure order).

11.12 An extension of an emergency closure order has no effect unless a constable has given notice of the extension to a responsible person before the expiry of the period during which the original emergency closure order has effect. Such notice is to be in the form set out in Part 2 of schedule 2 of the Closure Order Regulations. As mentioned above in respect of closure orders, who is a responsible person is set out in section 101 of the Act.

11.13 Regulation 5 of the Closure Order Regulations requires that the Licensing Board in the area of which the premises in question is located must be notified when the period of an emergency closure order is extended under section 99(1) of the Act. A constable of, or above, the rank of inspector must terminate an emergency closure order if the constable is satisfied that it is no longer necessary in the interests of

public safety for the premises to be closed (section 98(1) of the Act). The constable must give notice to a responsible person (section 98(2)(a) of the Act) and the Licensing Board in the area of which the premises is situated (regulation 5 of the Closure Order Regulations).

11.14 Emergency closure orders may only be made where it is necessary in the interests of public safety. These powers should not be used where it has been possible to anticipate the disorder arising, for example, in connection with intelligence about likely future disorder at a football fixture or in connection with a demonstration. In those circumstances the appropriate course then is for the police to apply to the Licensing Board for a closure order in respect of the premises under section 97(1) of the Act.

11.15 Licensing Boards may wish to be aware that emergency closure orders are likely to be used as a last resort. Decisions to close licensed premises may have an impact on the business involved, and possibly on the livelihoods of licence holders, managers, and members of staff or may disrupt an event that has been planned for a considerable period of time.

11.16 Any decision to deploy the powers available to make an emergency closure order under the Act in respect of premises to which a premises licence relates will in most cases lead to a review of the licence by the Licensing Board. This will involve a hearing to determine whether or not it is necessary for the promotion of the licensing objectives to exercise its powers to take any steps in relation to the licence including its revocation.

11.17 A decision by the Licensing Board to proceed on that basis will therefore involve police attendance at the hearing and the preparation of material relating to the review.

### **Voluntary co-operation**

11.18 On many occasions, other options will be available to the police, some of which are discussed below.

11.19 Licensing Boards may wish to be aware that the police, whenever possible, may seek the voluntary co-operation of licensees, premises users, and named premises managers in resolving incidents of disorder or potential disorder rather than move directly to a closure order.

11.20 If police officers are aware that any premises are showing signs of problematic behaviour relating to disorder, excessive drunkenness or noise which is disturbing local residents, they may decide to provide early warnings and reminders to premises licence holders, and named premises managers of their responsibilities and duties under licensing law; and of the police powers of closure.

11.21 Where, despite warnings, licensed premises exhibit problems over a period of time, but no single instance is sufficient in itself to justify closure action, the police may seek a review of the premises licence under Part 3 of the Act.

11.22 Where the police attend an incident, following complaints about disorder, or attend at the request of the licensee or Licensing Standards Officer, and a constable of or above the rank of Inspector reasonably believes that closure is necessary under the terms of the Act, police officers may choose to advise the licence holder, and named premises manager, and premises user immediately. Police officers may then give the licence holder, manager, or premises user an opportunity to close the premises voluntarily, on police advice, until the following day. If police advice is disputed or rejected, it may become necessary for action to be taken to make a closure order. When giving advice to close voluntarily, police officers may wish to make clear that they are not engaging in a negotiation. The view of the constable of or above the rank of Inspector will be final.

11.23 However, even if the licensee, or named premises manager is willing to close voluntarily, it will remain open to the constable of or above the rank of Inspector to decide to serve a closure order, if he or she judges that to be the right course of action in all the circumstances. It is recognised that circumstances could arise which necessitate such action.

11.24 Against this background, Licensing Boards and police officers may wish to be aware that a decision not to make a closure order or to agree to voluntary closure will not prevent a later decision by the police to seek a review of the premises licence by a Licensing Board, if that course of action is judged appropriate. Section 36 of the Act allows any person to apply to the appropriate Licensing Board for a review of the licence on any of the grounds specified in that section. Police officers may wish to be aware of this mechanism as this may be the appropriate avenue for them in the first instance where they are aware of problems that may arise with a licensed premises which are not imminent. This may reduce the need for a closure order.

### **In the vicinity of licensed premises**

11.25 A closure order made by the Licensing Board or an emergency closure order made by a constable of or above the rank of Inspector may be made on grounds of disorder on or in the vicinity of the premises. A question therefore arises as to how far from the premises incidents can take place which can be considered to be "in the vicinity" of a particular premises. Whether or not an incident was "in the vicinity" of the licensed premises is ultimately a matter of fact to be decided by the courts. However, there should be a causal connection between any disorder or likely disorder and the closure of the licensed premises. Premises cannot be closed under these provisions unless "closure is necessary in the interests of public safety". Accordingly, closure of those particular premises must directly impact on the danger to the public safety being caused by the disorder, or likely disorder, taking place or expected imminently to take place on, or in the vicinity of, the premises. The disorder and the necessity for closure of the premises must therefore be connected. This issue also arises in the context of any extension of a closure order.

11.26 Some licensees, premises users, and named premises managers of licensed premises may consider it unfair that they should be held accountable for incidents taking place outside their immediate control. However, as explained in paragraph 11.2 of this Guidance, closure orders are not designed as penalties but as a means of ensuring public safety.

## **Likely disorder**

11.27 A further question arises when any future disorder is likely to take place and would justify a closure order being made. Section 97 of the Act requires that the disorder should be likely (or in the case of emergency closure orders, likely imminent). As noted in the geographical context, there also has to be a causal connection between the likely disorder and the need to close the particular licensed premises involved. As regards emergency closure orders, any expected incident must be imminent, in which case closure of the licensed premises should diminish the probability that disorder will take place.

## **Length of emergency closure order**

11.28 An emergency closure order cannot have effect for more than 24 hours (section 97(5) of the Act). This does not mean that the length of the closure should automatically be set for 24 hours on every occasion. The criteria for making an emergency closure order places an obligation on the constable of or above the rank of inspector to close the premises for the period they estimate it would take to end the threat to public safety, or as the case may be, the nuisance to the public. In practice, therefore, closure orders could last between 30 minutes and 24 hours depending upon the circumstances of each case.

11.29 If, for example, a closure is made at 9 pm on a Monday evening because of disorder caused by gangs fighting in a public house, closure might only be appropriate for up to the time when the premises licence requires the premises to close, perhaps midnight. This could be because the constable of or above the rank of inspector reasonably believes that there is a threat of gang members (those not arrested) returning to the premises before closing time but after the police have left. However, if the threat is not expected to have subsided by closing time, it may be appropriate to impose a closure for a period extending into the following day.

11.30 Any extension under section 99(1) of the Act to an emergency closure period may be for a further period of only up to 24 hours from the end of the original closure period.

11.31 There is no appeal mechanism for licensees against the imposition of an emergency closure order.

## **Enforcing a closure order**

11.32 The Act does not require the licence holder or the police to clear the premises of customers following the service of a closure order, however, it is assumed that normally premises would empty, as it would be an offence under section 97(7) of the Act for a responsible person to allow any licensed premises to be open in breach of a closure order. The closure relates to the premises. If an individual who is drunk or disorderly is asked to leave by a responsible person or a constable and then refuses to leave, they commit an offence (section 116 of the Act). Where a constable is asked for assistance to remove such a customer, the officer is under a statutory duty to provide that assistance (section 116(4) of the Act).

11.33 Licensing Boards may wish to be aware that the police may propose a phased emptying of larger premises for the purpose of safe dispersal, for example, to keep disorderly gangs separate or because it is in the interests of public safety to keep law-abiding customers inside for a temporary period while those involved in antisocial behaviour outside are dispersed by the police.

11.34 The police officers involved should recognise that closing premises will sometimes involve putting a potentially volatile and disgruntled group of customers onto the streets. In this context, where possible, it is good practice to ensure that other licensed premises nearby are warned of the action being taken and of licence holders' and others' obligations not to allow disorderly conduct on their premises. As stated above, under the Act, police officers are under a duty, when requested by a licence holder or other person as referred to above, to assist in ensuring that drunken or disorderly persons are expelled from licensed premises, and police officers should therefore offer assistance when necessary in preventing the entry of troublemakers to other licensed premises who might be seeking to cause new problems elsewhere.

11.35 Additional police assistance may be required to clear the resulting crowd, particularly where large capacity venues are involved. The availability of that assistance is likely to be taken into consideration before any decision is made to make a closure order.

#### **Antisocial Behaviour etc. (Scotland) Act 2004**

11.36 Licensing Boards may wish to be aware that Antisocial Behaviour may also be tackled under section 26 of the Antisocial Behaviour etc. (Scotland) Act 2004 a senior police officer (officers of or above the rank of Superintendent) can authorise service of a closure notice in respect of a premises. The effect of such an authorisation is that a constable will serve on the relevant premises a closure notice. A closure notice prohibits access to the premises by any person other than a person who habitually resides in the premises or the owner of the premises. Failure to comply with the notice amounts to an offence.

11.37 A senior police officer (officers of or above the rank of Superintendent) may, in a case involving antisocial behaviour) only authorise service of a closure notice where that officer has reasonable grounds for believing that at any time during the immediately preceding 3 months a person has engaged in antisocial behaviour on the premises; and that the use of the premises is associated with the occurrence of relevant harm; and is satisfied that –

- the local authority for the area in which the premises are situated has been consulted; and
- reasonable steps have been taken to establish the identity of any person who lives on, has control of, has responsibility for or has an interest in the premises.

(Relevant harm is defined at section 40 of that Act as significant and persistent disorder or significant, persistent and serious nuisance to members of the public).

## **Exclusion Orders**

11.38 Licensing Boards may wish to be aware of exclusion orders, to which sections 94 to 96 of the Act relate. Section 94(2) of the Act provides that, where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises, the court by or before which the person is convicted of the offence may, in addition to any sentence imposed or other disposal in respect of the offence, make an order prohibiting the person from entering:

- (a) the licensed premises concerned, and
- (b) such other licensed premises (if any) as the court may specify in the order, except with the appropriate consent.

This formal exclusion order process is of course separate from any informal arrangement which is made between a licensed premises, or a set of licensed premises such as in a local Pubwatch scheme, to bar a particular individual.

11.39 The Act also provides that the premises licence holder for the licensed premises concerned may themselves, by summary application to the sheriff made no later than 6 weeks after the date of the conviction, seek an order prohibiting the person convicted from entering the licensed premises concerned. Section 94(4) of the Act sets out those conditions that must be considered by the sheriff.



## **12. Sale and Supply of Alcohol to Children and Young Persons**

### **Introduction**

12.1 This chapter provides information about the sale and supply of alcohol to children and young persons. For the purposes of the 2005 Act, “child” means a person under the age of 16 and “young person” means a person aged 16 or 17.

12.2 As discussed in Chapter 2, for the purposes of the 2005 Act, one of the five licensing objectives is “protecting children and young persons from harm”. The term “young persons” was added to this objective by the Air Weapons and Licensing (Scotland) Act 2015. The broadening out of this objective gives Licensing Boards greater scope to protect young persons.

12.3 “Harm” in the context of the 2005 Act is the harm that children and young persons suffer through their own drinking. This may take place within licensed premises, or through alcohol obtained from off-sales premises, either by the young person themselves or by someone else. Children and young people are particularly vulnerable to the effects of alcohol – the earlier a young person begins to drink alcohol, the more likely they are to drink in ways that can be risky later in life.

12.4 It is clear that children and young persons need protection from environments which are unsuitable and potentially harmful. They need to be prevented from being placed in a position where it is easy for them to circumvent the law and obtain alcohol. There are a number of ways in which the 2005 Act seeks to ensure that the licensing system protects children and young people.

### **On-sales premises**

12.5 Children and young persons can be impacted by the drinking behaviours they observe in adults as well as being exposed to the marketing and promotion of alcohol within a licensed premises. It is a matter for Licensing Boards to decide what environments may be suitable for access for children and young persons. For example Orkney Islands Area Licensing Board Statement of Alcohol Licensing Policy states “The Board requires applicants who submit operating plans including children and young persons to ensure that they are not given access to premises when activities such as adult entertainment are taking place”.

12.6 As discussed at Chapter 8 (premises licence) the purpose of a licence applicant having to submit an operating plan and a lay-out plan is to provide a Licensing Board and the local community with a clear indication, at the time of the application, of what activities will be undertaken on the premises. The Premises Licensing (Scotland) Regulations 2007 (SSI 2007/452) stipulates that a layout plan must show:

- any area on the premises set aside specifically for the use of children and young persons; and
- any area on the premises to which children and young persons will have access.

12.7 The form of an operating plan is set out at schedule 5 to the 2007 Regulations. The form contains a section relating to on-sales where children and young persons will be allowed to access the premises. The applicant is required to provide a statement which covers the following points:

- the terms under which they will be allowed entry;
- the ages of children or young persons to be allowed entry;
- the times during which children and young persons will be allowed entry;
- the parts of the premises to which children and young persons will be allowed entry

12.8 Falkirk Licensing Board statement of licensing policy says: “Where an application for a new or provisional premises licence or a non-minor variation to a premises licence is made, the Board may, prior to determining the application, wish to visit the premises. This will usually be the case where either or both of the following apply: objections or representations have been received; the variation seeks an increase in the access for children and young persons”.

12.9 Argyll and Bute Licensing Board’s statement of licensing policy says “The Board will impose appropriate conditions on a premises licence or in granting an occasional licence where children and young persons are to be allowed entry. Conditions will seek to ensure the safety and wellbeing of children and young persons on the premises”.

### **Off-sales premises**

12.10 An applicant for a licence which authorises off-sales only does not require to provide a Licensing Board with the information outlined at paragraphs 5 and 6.

12.11 “The Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS): alcohol report 2018” shows that 13 and 15 year old who have ever had a drink, were most likely to get alcohol:

- from their home (37% for 13 year olds; 28% for 15 year olds);
- from a friend (25% for 13 year olds; 34% for 15 year olds); or
- from a relative (31% for 13 year olds; 31% for 15 year olds).

Direct purchase from a licensed premises was rare:

- from a shop – 4% for 13 year olds, 7% for 15 year olds;
- from an off-licence – 2% for 13 year olds, 3% for 15 year olds;
- from supermarket, pub, club – 3% for 13 year olds, 4% for 15 year olds.

12.12 This would suggest that measures such as the introduction of an age verification policy (Challenge 25) and test purchasing have helped to significantly reduce underage sales in shops and pubs. However, the figures highlight that a

significant percentage of 13 and 15 year olds are obtaining their alcohol from relatives, friends or the home (whether with or without parental/ carer permission).

12.13 For example Clackmannanshire Licensing Board's statement of licensing policy states that one of the factors the Board will consider in relation to considering licence applications against the protecting children and young people from harm objective is: "appropriate measures (e.g. good quality staff training, age verification policy) to ensure children do not purchase or consume alcohol on the premises (unless such consumption is permitted by a young person in terms of the restricted provisions of Section 105(5) of the Act".

12.14 This is more difficult to control, however, improvements are possible. A good example of trying to reduce proxy purchasing of alcohol is the award-winning campaign, "[You're Asking For It](#)". The campaign was created in 2015 by the Scottish Alcohol Industry Partnership in collaboration with Police Scotland, North Lanarkshire Council and the Scottish Government. This coalition of partners worked together to design and deploy a creative campaign to assist retailers eliminate incidences of an adult knowingly purchasing alcohol for a minor to consume. Several test campaigns lead to an enhanced trial across the entire local authority area of North Lanarkshire in 2017. These proved the effectiveness of the campaign. The campaign has run in different parts of Scotland since but was halted due to. The campaign evolved and from 16th May 2022 (soft launch) to 14th August 2022 the 'It will cost you' integrated campaign ran nationally throughout Scotland. This was the first time the campaign had been delivered as a national campaign. The campaign was run as a partnership between the Scottish Alcohol Industry Partnership, Police Scotland and Community Alcohol Partnerships. It was coordinated by a Steering Group involving representatives from these organisations plus the Scottish Government.

## **Offences**

12.15 Part 8 of the 2005 Act covers Offences, a number of which relate to children and young persons:

- sale of alcohol to a child or young person (section 102)
- allowing the sale of alcohol to a child or young person (section 103)
- sale of liquor confectionary to a child (section 104)
- supply of alcohol to a child (section 104A)
- supply of alcohol to a young person (section 104B)
- purchase of alcohol by a child or young person (section 105)
- consumption of alcohol by a child or young person (section 106)
- unsupervised sale of alcohol by a child or young person (section 107)
- delivery of alcohol by or to a child or young person (section 108)
- sending a child or young person to obtain alcohol (section 109)
- duty to display notice (section 110)

12.16 The majority of these offences have been in place since the 2005 Act was implemented. Minor amendments have been made to these sections by the Criminal Justice (Scotland) Act 2010 (repeal of the word knowingly; where criminal conduct has been allowed to take place in terms of the listed offences, an offence

will be committed whether or not the person involved has knowledge of the conduct taking place) and The Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019.

12.17 Sections 104A and 104B, which created new offences of supplying alcohol to children or young people for consumption in a public place, were inserted into the 2005 Act by the Air Weapons and Licensing Scotland Act 2015.

## 13. Other Offences

### Introduction

13.1 Part 8 of the 2005 Act sets out offences relating to children and young people (covered in chapter 12 of this guidance), drunken and disorderly conduct and miscellaneous offences. Other offences are set out at sections 1 and 141 respectively. This chapter does not deal with offences relating to the rights of entry and inspection or non-compliance with administrative requirements with which Licensing Boards will be well versed.

### Prohibition of unlicensed sale of alcohol

13.2 The 2005 Act makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold. Section 1 establishes that a licence is required to sell alcohol unless the premises are exempt as defined in section 124 or to trade. Examples of “exempt” premises are, “an aircraft, a hovercraft or a railway vehicle while engaged on a journey” and “a vessel while engaged on an international journey”.

13.3 Anyone who sells alcohol or allows alcohol to be sold in breach of the conditions described in section 1 commits an offence. Section 195(2) of the Criminal Justice and Licensing Act 2010 repeals the word “knowingly” from a range of offences in the 2005 Act (including this offence). Where criminal conduct has been allowed to take place in terms of the listed offences, an offence will be committed whether or not the person involved has knowledge of the conduct taking place. A person guilty of such an offence is liable on summary conviction to a fine not exceeding £20,000, imprisonment for a period not exceeding 6 months or both.

#### *Drunkenness and disorderly conduct*

13.4 A number of offences fall under this heading:

- Drunk person entering or in premises on which alcohol is sold (section 111)
- Obtaining of alcohol by or for a drunk person (section 112)
- Sale of alcohol to a drunk person (section 113)
- Premises manager, staff etc. not to be drunk (section 114)
- Disorderly conduct (section 115)
- Refusal to leave premises (section 116)

### *Drunk persons entering or in premises on which alcohol is sold*

13.5 Section 111 makes it an offence for:

- a drunk person to attempt to enter (unless they reside in the premises) any premises in which alcohol is lawfully sold.
- a person, whilst on premises in which alcohol is lawfully sold, to be drunk and incapable of taking care of himself or herself.

A person committing an offence under this section can be arrested without warrant by the police. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale (£200).

### *Obtaining of alcohol by or for a drunk person*

13.6 Section 112 makes it an offence for any person to buy or attempt to buy alcohol for someone who is drunk or to help a drunk person to obtain or consume alcohol. The offences only apply where the alcohol is to be consumed on premises in which alcohol is lawfully sold. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

### *Sale of alcohol to a drunk person*

13.7 Section 113 makes it an offence for the premises manager and any other person working on the premises, in which alcohol is lawfully sold, to sell alcohol to someone who is drunk. A person guilty of a such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

13.8 In seeking to promote each of the licensing objectives, many Licensing Boards' Statements of Licensing Policy contain information regarding "control measures" which the Licensing Board and the Licensing Standards Officer encourage license holders to put in place. For example Highland Licensing Board's current statement of licensing policy provides examples of control measures such as:

In the interest of protecting and improving public health:

- making available information promoting moderate drinking, awareness of units of alcohol and recommended guidelines;
- having a policy to deal with patrons who have consumed excessive alcohol (where not already required by the local condition on staff duty of care).
- ensuring staff awareness of offences such as sale of alcohol to a drunk person

### *Premises manager, staff etc. not to be drunk*

13.9 Section 114 makes it an offence for the premises manager and anyone else who working on the premises, in which alcohol is lawfully sold, to be drunk on the premises. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

### *Disorderly conduct*

13.10 Section 115 makes it an offence for any person while drunk: to behave in a disorderly manner or to annoy others with offensive language on premises in which alcohol is lawfully sold. A person guilty of behaving in a disorderly manner is liable on summary conviction to: (a) a fine not exceeding level 3 on the standard scale

(£1,000), (b) imprisonment for a term not exceeding 60 days, or (c) both. A person guilty of annoying others with offensive language is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

13.11 It is also an offence for the premises manager and anyone else working on premises, in which alcohol is lawfully sold, to allow disorderly conduct on the premises. Provision is made for a “due diligence” defence for a person charged with this offence. It will be a defence where: the accused or an employee or agent of the accused, can prove that they took all reasonable precautions and exercised due diligence not to commit the offence; or that there were no lawful and reasonably practical means by which the accused could prevent the conduct giving rise to the offence. A person found guilty of this offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

#### *Refusal to leave premises*

13.12 Section 116 makes it an offence for a disorderly person to refuse to leave premises, in which alcohol is legally sold, when asked or for any person to refuse to leave licensed premises at closing time when asked. Certain authorised persons are allowed to use reasonable force to remove from any premises on which alcohol is sold a person who is behaving in a disorderly manner but refuses to leave when asked. “Authorised persons” are the premises manager and anyone else who works on the premises who has been authorised by the premises manager for the purposes of this section.

#### *Miscellaneous Offences*

13.13 A number of offences fall under this heading:

- Offences relating to sale of alcohol to trade (section 117)
- Prohibition of unauthorised sale of alcohol on moving vehicles (section 118)
- Delivery of alcohol from vehicles etc. (section 119)
- Prohibition of late-night deliveries of alcohol (section 120)
- Keeping of smuggled goods (section 121)

#### *Offences relating to sale of alcohol to trade*

13.14 Section 117, as enacted, made it an offence for a person to sell alcohol to trade otherwise than from premises used exclusively for the purpose of selling to trade. The Criminal Justice and Licensing Act 2010 amended this section to correct an unintended consequence – i.e. if, for example, a restaurant owner wished to buy alcohol for their restaurant from a supermarket instead of the wholesaler, the restaurant owner would, under the 2005 Act as enacted, be committing an offence. The amendment means it is no longer an offence for a licensed premises to sell to the trade. A person guilty of an offence under section 117 is liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5,000).

13.15 The sale of alcohol, no matter what the quantities, to trade does not require to be carried out under and in accordance with an alcohol licence. Wholesalers who sell alcohol to non-trade as well as trade will require a premises or occasional licence and any non-trade sales will be bound by the terms of the specific alcohol licence.

### *Prohibition of unauthorised sale of alcohol on moving vehicles*

13.16 Section 118 deals with, for example, “party buses” and “stretch limousines” that provide alcohol. It makes it an offence for any person to sell alcohol on any vehicle whilst it is moving unless authorised to do so. As mentioned above, section 195(2) of the Criminal Justice and Licensing Act 2010 repeals the word “knowingly” from certain offences in the 2005 Act (including this offence). In terms of the 2005 Act, “vehicle” means a vehicle intended or adapted for use on roads. A person guilty of an offence under this section is liable on summary conviction to: (a) a fine not exceeding £20,000, (b) imprisonment for a term not exceeding 3 months, or (c) both.

### *Delivery of alcohol from vehicles etc.*

13.17 Section 119 deals with deliveries of alcohol (does not include any alcohol being delivered to a trader for the purposes of that person's trade) and requires that all such deliveries and carrying of alcohol in vehicles is properly and clearly recorded. Offences are committed where:

- the quantity, description and price of the alcohol sold and name and address of the person to whom the alcohol is to be delivered is not recorded in a day book nor in a delivery book or invoice carried by the person delivering the alcohol prior to despatch by the person who sold the alcohol;
- a person carries in a vehicle in use for the delivery of alcohol, following a sale of alcohol by them and the quantity, description and price of the alcohol was not entered in the day book and delivery book/invoice;
- a person delivers the alcohol to an address not entered in the day book and delivery book/invoice;
- a person refuses to allow a constable or a Licensing Standards Officer to examine any vehicle or any day book and delivery book/invoice.

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

### *Prohibition of late-night deliveries of alcohol*

13.18 Section 120 applies where alcohol is sold on any relevant premises for the consumption off the premises. For the purposes of Part 8 of the 2005 Act “relevant premises” means: any licensed premises; any exempt premises on which alcohol is sold; and any premises used for the selling of alcohol to trade. Offences are committed where:

- a responsible (see section 122 for a definition) person delivers or allows the alcohol to be delivered to any premises (other than licenced premises) between the hours of midnight and 6am.

As mentioned above, section 195(2) of the Criminal Justice and Licensing Act 2010 repealed the word “knowingly” from certain offences in the 2005 Act (including these offences). A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

### *Keeping of smuggled goods*

13.19 Section 121 makes it an offence to keep or allow to be kept on any licensed premises any goods which have been imported without payment of duty or which



have otherwise been unlawfully imported. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000). A power is also granted to the courts to order the forfeiture or destruction of such goods.

### **Offences by bodies corporate etc**

13.20 Section 141 deals with offences committed by companies, partnerships and other bodies. It effectively provides for certain persons responsible for the management or control of these bodies to share criminal responsibility for offences committed with their consent or connivance or due to their neglect.

### **Defence of due diligence**

13.21 Section 141B of the 2005 Act provides a defence to certain offences where the person accused had no knowledge that the offence was being committed and exercised all due diligence to prevent the offence being committed. This provision was inserted into the 2005 Act by the Criminal Justice and Licensing (Scotland) Act 2010.

### **Vicarious liability of premises licence holders and interested parties**

13.22 This is a technical area and it might be helpful to say a few words about the policy rationale for inserting section 141B into the 2005 Act. This was discussed during the Stage 2 consideration of what was then the Criminal Justice and Licensing (Scotland) Bill ("the Bill").

13.23 The Scottish Government considers that those who operate licensed premises must carry a high degree of responsibility for the operation of their premises and the actions of their staff. No licence holder should be able to evade responsibility by staying away from their premises without fear of being convicted of an offence arising from an act or omission by a member of their staff while they are absent.

13.24 As discussed during Stage 2 of the Bill, that problem was addressed in the 2005 Act, which ensures that there is a person directly responsible for the sale of alcohol on a licensed premises in the form of a designated premises manager, who must hold a personal licence.

13.25 However, it is also the case that for a significant proportion of the licensed trade, the operational structure is that head office dictates the policies that must be pursued on individual premises. Often, managers have no freedom about what signage is used or what products are placed on offer. Therefore, whether or not the manager is the designated premises manager, how the premises operate is dictated from elsewhere. In effect, the licence-holding company can simply continue by sacking managers and not being held responsible for their actions.

13.26 At the time the Bill was progressing through Parliament, the licence holder could escape punishment by claiming ignorance of the conduct in question and could not be held to account for failures to introduce adequate management systems and

staff training. Section 141B, which was drafted in consultation with the police, ensures that premises licence holders can be held liable for a number of offences committed by members of their staff. Section 141B also ensures that premises licence holders are correctly afforded a defence of due diligence, where they can demonstrate the consistent steps that they took to prevent those offences from being committed.

## 14. Excluded and Exempt Premises

### Introduction

14.1 As outlined at Chapter 8 a premises licence is tailored to the individual premises by means of an operating plan, licensing objectives risk assessment and a layout plan. For the purposes of the 2005 Act, “premises” means any place and includes a vehicle, vessel or moveable structure. Some premises are excluded from holding a licence and some premises are exempt from holding a licence.

14.2 The Criminal Justice and Licensing (Scotland) Act 2010 made minor amendments to sections 127 (trains) and 128 (ferries) of the 2005 Act by repealing the word “knowingly” from the offences set out in those sections. Where criminal conduct has been allowed to take place in terms of the listed offences, an offence will be committed whether or not the person involved has knowledge of the conduct taking place.

### *Excluded premises*

14.3 Section 123 provides that certain premises are excluded from the alcohol licensing regime and consequently the sale of alcohol would not be permitted on these premises. Motorway service stations are prohibited from holding a premises licence. Premises used as a petrol station, or parts of a premises used as a petrol station, are prohibited from holding a premises licence. Premises are used as a petrol station if they are used for the:

- retail sale of petrol
- retail sale of diesel
- sale of motor vehicles
- maintenance of motor vehicles

14.4 However, in certain circumstances a Licensing Board may be prepared to consider a premises licence application.

14.5 For example in its statement of licensing policy, Midlothian Licensing Board state:

- “An application for a premises licence must be refused if the subject premises are ‘excluded premises’. Excluded premises are defined as motorway service stations and, with certain qualifications, garage premises or petrol/derv filling stations. These premises are not excluded if the applicant can demonstrate that local residents are reliant to a significant extent for the premises to be a principal source of petrol/derv or groceries.
- “In determining such an application the Board will expect the applicant to provide sufficient information to enable it to consider the locality in which the premises are situated, the other sources of petrol or derv and/or groceries in the locality and the extent to which the persons resident in the locality are, or are likely to become, reliant to a significant extent on the premises as a principal source of petrol or derv, or groceries.

14.6 Licensing Board clerks will be familiar with the 2011 BP Oil (UK) Limited v City of Edinburgh Licensing Board and City of Glasgow Licensing Board case. A link to the judgement is provided on the [Scottish Courts and Tribunals Service](#) website. This case law is important in assisting Licensing Boards in their use of provisions in section 123.

#### *Exempt premises*

14.7 As mentioned in Chapter 13 Other Offences Section, the 2005 Act makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold. Section 1 establishes that a licence is required to sell alcohol unless the premises are exempt as defined in section 124 or to trade. Section 124 covers the following premises:

- an examination station at an airport designated for the purposes of this section in an order made by the Scottish Ministers,
- an approved wharf at a port or hoverport so designated,
- an aircraft, a hovercraft or a railway vehicle while engaged on a journey,
- a vessel while engaged on—
- →an international journey, or
- →a journey (other than an international journey) forming part of a ferry service, and
- premises which are occupied (whether indefinitely or temporarily) for the purposes of the armed forces of the Crown, except while being used for other purposes.

14.8 Under section 124, the Scottish Ministers may designate an airport, port or hoverport as exempt premises. No ports or hoverports are presently so designated. The Licensing (Designated Airports) (Scotland) Order 2007 [SSI 2007/97] exempts from the requirement of the 2005 Act those airports which handle a significant amount of international traffic. Aberdeen, Edinburgh, Glasgow, Glasgow Prestwick, Inverness and Sumburgh airports are so designated.

14.9 It is however important to note that the exemption only applies to premises in the “examination station” of the airport, that is the area beyond the security controls to which only passengers arriving or departing have access (airside). Premises before security controls (landside) will be subject to the provisions of the 2005 Act and an application in respect of them will need to be made to the Licensing Board in the same way as for other premises.

## **Annex A Coronavirus Legislation**

### **Coronavirus (Scotland) Act 2020**

1. The aim of the Coronavirus (Scotland) Act 2020 (“the 2020 Act”) was to respond to the emergency situation caused by the coronavirus pandemic. The Coronavirus (Scotland) Bill was introduced to the Scottish Parliament on 31 March 2020 and followed the parliament’s emergency bill procedure. All three stages of the Bill took place on 1 April and following agreement of the Parliament, the Bill completed the parliamentary process on 1 April 2020. Royal Assent was granted on 6 April 2020 and the alcohol licensing provisions came into force on 7 April 2020.

### **Licensing (Scotland) Act 2005: temporary modifications**

2. The alcohol licensing regime as set out in the Licensing (Scotland) Act 2005 (“the 2005 Act”) contains a considerable number of strict timescales and deadlines with little or no discretion available to the relevant authorities if they are not adhered to. Schedule 5 contains temporary modification to the law in relation to alcohol licensing Coronavirus (Scotland) Act 2020 (legislation.gov.uk). The Scottish Government considers the alcohol licensing provisions in the 2020 Act to be a pragmatic response to the coronavirus outbreak.

#### **The temporary modifications cover:**

##### *Requirement to hold a hearing*

Paragraph 1 of schedule 5 of the 2020 Act sets out modifications to the operation of provisions in section 133 of the 2005 Act relating to requirements falling on Licensing Boards to hold hearings.

##### *Premises Licences*

Paragraph 2 sets out modifications to the operation of provisions in the 2005 Act relating to premises licences.

##### *Personal Licence holders*

Paragraph 3 sets out a number of modifications to the operation of provisions in the 2005 Act relating to personal licence holders.

##### *Licensing Boards etc.*

Paragraph 4 modifies the operation of a number of provisions in the 2005 Act relating to Licensing Boards.

##### *Modification of duties of Licensing Standards Officers*

Paragraph 5 sets out a number of modifications to the operation of provisions in the 2005 Act relating to Licensing Standards Officers.

##### *Notification by the Chief constable*

Paragraph 6 modifies the operation of a number of provisions in the 2005 Act relating to the Chief constable of Police Scotland being required to respond within 21 days to a notice from a Licensing Board. The purposes of the response is to provide information to Licensing Boards in respect of various licensing matters.

### *Interpretation*

Paragraph 7 has the effect of modifying section 147 (interpretation) of the 2005 Act as if there were inserted a definition of “coronavirus” into that Act.

### *Modification of the Licensing (Procedure) (Scotland) Regulations 2007*

Paragraph 8 modifies the operation of the Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007/343).

### Licensing (Scotland) Act 2005: extension and expiry of temporary modifications

Section 12 of the 2020 Act as enacted, provided that, amongst other provisions, the temporary modifications to the alcohol licensing regime would expire on 30 September 2020, unless the Scottish Parliament approved regulations providing for its effect to continue to 31 March 2021. The 2020 Act also provided that the Scottish Parliament could approve regulations allowing one further extension until 30 September at which point any remaining provisions in the Act would expire.

The Coronavirus (Scotland) Acts (Amendment Of Expiry Dates) Regulations 2020  
SSI 2020/299

The Coronavirus (Scotland) Acts (Amendment Of Expiry Dates) Regulations 2021  
SSI 2021/152

Coronavirus (Extension and Expiry) (Scotland) Act 2021

The Coronavirus (Scotland) Acts (Amendment Of Expiry Dates) Regulations 2022  
SSI 2022/113

The 2020 and 2021 regulations extended the temporary modifications made to the 2005 Act by the 2020 Act to 31 March 2021 and 30 September 2021.

As mentioned above, section 12 of the 2020 Act provided that the temporary modifications to the alcohol licensing regime would expire on 30 September 2021. The Coronavirus (Extension and Expiry) (Scotland) Act 2021 (“the 2021 Act”) extended the majority of the alcohol licensing provisions until 31 March 2022.

The temporary modification which allowed for licensing board meetings to be held in private for a reason relating to Covid expired on 30 September 2021 made to Paragraph 12(2) of schedule 1 to the 2020 Act which provided that a Licensing Board does not have to meet in public if it cannot do so as a result of the coronavirus outbreak was expired by the 2021 Act and did not continue to be the law after 30 September 2021.

The 2021 Act also allowed secondary legislation to be used to extend Part 1 (which includes the unexpired alcohol licensing provisions) of the 2020 Act further, to 30 September 2022. The Parliament agreed to this by approving the 2022 regulations.

### Coronavirus (Recovery and Reform) Scotland Act 2022

A non-emergency Bill was introduced to the Scottish Parliament on 25 January 2022 following on from a 12 week public consultation. The purpose of the Bill is to embed reforms in Scotland’s public services and justice system that, though necessitated by the Covid pandemic, have delivered improvements for service users and improved

efficiency. The Bill will also help build resilience against future public health threats. The Bill was passed by the Scottish Parliament on 28 June 2022, with Royal Assent being granted on 10 August 2022.

*Alcohol licensing: section 23 how hearings may be held*

This section makes similar provision to alcohol licensing as is made for civic licensing by section 21 of the Act, replicating the temporary modifications to the 2005 Act made by paragraph 1 of schedule 5 of the Coronavirus (Scotland) Act 2020. A new section 133A is inserted into the 2005 Act, giving a Licensing Board the ability to hold a licensing hearing through remote facilities, as well as in person, or through a mixture of both (often called a “hybrid” format). Subsection (2) of section 133A defines “remote facilities” for these purposes, a definition which would include telephones and video conferencing software. Subsection (1A) of section 133A ensures that any views which participants at a licensing hearing may offer with regard to the appropriate format for the hearing must be taken into account by a Licensing Board, prior to finalising its decision on the format. This applies to anyone who notifies the Board of their intention to participate, such as the licence holder or an objector.

Equivalent provision is then made for Licensing Board meetings by amendments to paragraph 12 of schedule 1 of the 2005 Act. In addition, because the existing paragraph 12(2) requires that Licensing Board meetings are held in public, a new paragraph 12(2A) is inserted in order to clarify that this requirement for public access is complied with, where a remote or hybrid meeting is held, by the Board enabling the public to observe the meeting remotely – for example through the public provision of a web link to the meeting.

The Coronavirus (Scotland) Acts (Saving Provision) Regulations 2022

- Part 4 of these Regulations makes saving provision in respect of the expiry of section 6 and schedule 5 of the first Scottish Act, insofar as they modified the Licensing (Scotland) Act 2005 (“the 2005 Act”).
- Regulations 5 and 6 make general saving provision relating to the first Scottish Act for the purpose of supporting the subsequent particular saving provision, set out in regulations 7 to 10, which relate to the modifications of the 2005 Act. Regulation 7 saves the modification to section 45 (provisional premises licence) of the 2005 Act made by paragraph 2(5) of schedule 5 of the first Scottish Act. Section 45 provides that a Licensing Board can grant a provisional premises licence, which if not confirmed within 4 years is treated as revoked. The modification is saved only in respect of an application to extend the 4 year period which was made before the end of September 2022.
- Regulation 8 saves the modification to section 54 (dismissal etc. of premises manager) made by paragraph 2(6) of schedule 5 of the first Scottish Act. Where one of the events mentioned in section 54(2) of the 2005 Act occurs, the premises licence holder must notify the Licensing Board within 7 days, and must apply to substitute another person as the premises manager within 6 weeks. Paragraph 2(6) of schedule 5 modified these requirements to increase the 7 day period to 28 days and increase the 6 week period to 3 months. The modification is saved only in relation to a section 54(2) event occurring before the end of September 2022.

- Regulation 9 saves the modification to section 77 (period of effect of personal licence) made by paragraph 3(2) of schedule 5 of the first Scottish Act. A personal licence may be extended for 10 years if a renewal application is granted. The modification is saved only where an application has already been made but has not yet been determined, and the licence has expired, but remains in effect immediately before the end of September because of the effect of the modification.
- Regulation 10 saves certain modifications to sections 9A (annual functions report) and 9B (annual financial report) made by paragraph 4(2) and (3) of schedule 5 of the first Scottish Act. Sections 9A and 9B provide respectively that Licensing Boards must prepare and publish annual functions reports and annual financial reports within 3 months of the end of the financial year. The modifications are saved to allow the Board to be able to delay publication until the 31 December 2022.



## Annex B Index of defined expressions

The expressions in the left-hand column of the table are defined or otherwise explained by the provisions of the 2005 Act specified in the right-hand column.

Expression	Interpretation provision
alcohol	section 2
alcoholic drink	section 147(1)
applicant	section 147(1)
area	section 147(1)
capacity (in relation to licensed premises)	section 147(1)
certified copy (of premises licence or summary)	section 55
chief constable	section 147(1)
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closure order	section 97(3)
community council	section 147(1)
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council	section 147(1)
emergency closure order	section 97(4)
excluded premises	section 123(2)
exclusion order	section 94(6)
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expiry date (of a personal licence)	section 77(7)
extended hours application	section 68(3)
foreign offence	section 129(2)
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licensed hours	section 62(1)
licensed premises	section 147(1)
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licensing qualification	section 91(1)
licensing register	section 9(1)
liquor confectionary	section 147(1)
locality	section 7(2)
operating plan	section 20(4)
occasional licensing	section 56(1)
occasional licence application	section 56(4)
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<b>Expression</b>	<b>Interpretation provision</b>
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personal licence application	section 72(2)
personal licence renewal application	section 78(4)
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premises licence	section 17
premises licence application	section 20(3)
premises licence review	section 36(2)
premises licence review proposal	section 37(2)
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provisional premises licence application	section 45(2)
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selling to trade	section 147(2)
senior police officer	section 147(1)
strength of alcohol	section 147(1)
subject premises	section 147(1)
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variation – minor (of such a licence)	section 29(6)
vehicle	section 147(1)
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