

Argyll and Bute Council
Comhairle Earra Ghaidheal agus Bhoid

Customer Services
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8 May 2013

NOTICE OF MEETING

A meeting of the **LOCAL LICENSING FORUM** will be held in the **COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD** on **WEDNESDAY, 15 MAY 2013** at **10:00 AM**, which you are requested to attend.

Douglas Hendry
Executive Director - Customer Services

BUSINESS

1. **APOLOGIES FOR ABSENCE**
2. **MINUTES**
Local Licensing Forum held on 26 February 2013 (Pages 1 - 4)
3. **REVIEW OF LOCAL LICENSING POLICY**
 - (a) Argyll and Bute Licensing Policy Statement 2010 - 2013 (Pages 5 - 28)
 - (b) Licensing Policy Statement 2013 Step-by Step Guidance to Preparing an Evidence Based Overprovision Assessment - Notes by West Dunbartonshire Licensing Board Clerk (Pages 29 - 38)
4. **DATE OF NEXT MEETING**

LOCAL LICENSING FORUM

Kenneth Harrison
James Robertson
J Russell Buchanan
Tim Saul
Sheila Johnston
Iain J MacNaughton
Cath Cakebread
Roanna Clark
Elaine Garman
Charles Reppke
Raymond Park

Inspector Stuart Watson
Calum MacLachlainn
Martin Donovan
Fred Bruce
Raymond Boyle
David Greenwell
Catherine Dobbie
Caroline Smith
Eric Dearie
Susan Mair

Contact: Shona Marshall Tel. No. 01546 604407

**MINUTES of MEETING of LOCAL LICENSING FORUM held in COMMITTEE ROOM 1,
KILMORY, LOCHGILPHEAD
on TUESDAY, 26 FEBRUARY 2013**

Present: Kenneth Harrison (Chair)

Chief Inspector Marlene Baillie, Strathclyde Police
Calum MacLachlainn, Licensed Trade
J Russell Buchanan, Ex Licensee
Martin Donovan, Licensed Trade
Fred Bruce, Community Representative
Raymond Boyle, Community Representative
Cath Cakebread, Argyll and Bute Addition Team Manager
Roanna Clark, Young Scot
Sarah Nicolson, Young Person
Raymond Park, Licensing Standards Officer

Attending: Graeme Forrester, Argyll and Bute Council
Shona Marshall, Argyll and Bute Council
John Woods, Alcohol Focus Scotland
Heather Murray, Strathclyde Police
Alana Maclaughlin, Young Person

Prior to the start of the meeting, the Chair informed Members that every calendar year of the Licensing Forum a new chair must be appointed. This had been omitted from the Agenda.

The Chair ruled, and the Forum agreed, that this additional Item be dealt with as a matter of urgency.

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Inspector Stuart Watson, Tim Saul, Sheila Johnston, Iain MacNaughton, David Greenwell, Elaine Garman and Eric Dearie.

2. APPOINTMENT OF CHAIRPERSON

As it was the first meeting of the year, the Forum was required to appoint a Chairperson and Graeme Forrester invited nominations. Calum MacLachlainn proposed that Kenneth Harrison be appointed as Chair and this was seconded by Fred Bruce.

Accordingly Kenneth Harrison was appointed as Chair for the year 2013 and he took the Chair.

3. MINUTES

(a) NOTE OF INQUORATE MEETING OF LOCAL LICENSING FORUM - 11 APRIL 2012

The Minutes of the meeting of the Local Licensing Forum held on Wednesday 11 April 2012 were approved as a correct record.

(b) NOTE OF INQUORATE MEETING OF LOCAL LICENSING FORUM - 18 JULY 2012

The Minutes of the meeting of the Local Licensing Forum held on Wednesday 18 July 2012 were approved as a correct record.

(c) NOTE OF INQUORATE MEETING OF LOCAL LICENSING FORUM - 17 OCTOBER 2012

The Minutes of the meeting of the Local Licensing Forum held on Wednesday 17 October 2012 were approved as a correct record.

(d) JOINT MEETING OF ARGYLL AND BUTE LICENSING BOARD AND LOCAL LICENSING FORUM - 19 DECEMBER 2012

The Minutes of the Joint Meeting of Argyll and Bute Licensing Board and Local Licensing Forum held on Wednesday 19 December 2012 were noted.

4. FEEDBACK FROM LICENSING BOARD ON REVIEW OF LICENSING POLICY STATEMENT

There was tabled a paper titled "Review of the Licensing Board Policy" regarding a meeting which took place on Tuesday 19 February 2013. Representatives of the Licensing Board (LB) were invited, the aim of the meeting being to investigate the methods used by other Boards to construct an evidence based statement of licensing policy.

The paper highlighted points of discussion at the meeting which would help identify practical issues which may arise when reviewing the policy.

Members of the Forum expressed their dismay and disappointment at this review meeting having been held without any representation from the Local Licensing Forum (LLF) being present. It was also queried why the offer of attendance by the LLF Chair had been turned down.

It was pointed out that the purpose of the LLF was to review the operation of the Licensing (Scotland) Act 2005 in their area and how the Licensing Board (LB) operated in the area, and also to keep under review the exercise of the Local Licensing Board's functions.

Members understood the remit of the LLF as being to consider each section of the Licensing Board Policy and present any updates or suggestions for change to the LB for consideration. The range of expertise within the Forum membership had been recognised at recent meetings, and it had been hoped that a small group, representative of the LLF, could meet with representatives of the LB to discuss the way forward for the policy review and what could be attainable.

R Park, LSO, explained that in his role as an employee of Argyll and Bute Council he had a duty to ensure that licensed premises complied with legislation and report to the LB when necessary. He and his colleague E Dearie had taken time to review sections within the policy documentation relevant to their area of expertise. As a result, 64 potential changes had been identified. He felt that this would assist and significantly reduce the time taken by the LB or LLF to review the policy.

G Forester explained that it had been the intention of the LB to bring a proposed

policy to the Forum for consideration and comment.

Following lengthy discussion it was again pointed out by some Members of the Forum that it was the role of the LLF to review the policy which would then be presented to the LB for consideration, as had been the protocol followed for the last policy review. The LLF was particularly keen to include recommendations on health improvement.

The Chair pointed out that it would have to be ensured that the Licensing Board Policy would not be open to legal challenge. He also referred to a useful document produced by West Dunbartonshire Council which provided guidance on how to produce an evidence based policy.

Decision

1. Agreed that "Review of the Local Licensing Board Policy" be placed as an Agenda Item on future meetings of the Forum, taking into account the deadline for submission of a Policy by November 2013.
2. Agreed that a copy of the Licensing Board Policy be circulated to members of the LLF to consider and bring back any recommendations, additions, updates or changes to the next meeting of the LLF for deliberation.
3. Agreed that the importance of attending LLF meetings to enable the Policy document to be updated be reinforced to Forum members.

5. LICENSING (SCOTLAND) ACT 2005, SECTION 12A: CHIEF CONSTABLE'S REPORTS TO LICENSING BOARDS AND LOCAL LICENSING FORUMS

A report by the Chief Constable to the Licensing Board and Licensing Forum for the year April 2011 to March 2012 was considered.

It was noted that this report had been carried forward from previous meetings for consideration and contained historical information.

Chief Inspector Marlene Baillie explained that although a National Police Force had been created, each local authority area in Scotland would have a local policy plan. The Local Licensing Forum would continue to receive an update on relevant local issues.

Decision

1. Noted the report and that the information it contained was now historical.
2. Agreed that a verbal police update be given at future meetings of the Forum and placed as an Item on the Agenda.

6. DRAFT ARGYLL AND BUTE ALCOHOL AND DRUG PARTNERSHIP STRATEGY 2013 - 2016

A report on the Draft Strategy 2013 – 2016 by Argyll and Bute Alcohol and Drug Partnership (ADP) was considered. The closing date for submissions had been 31 January 2013.

Decision

Noted the report.

7. FUTURE ITEMS FOR DISCUSSION

The Forum considered Items for discussion at future meetings of the Forum.

Decision

Agreed that the Local Licensing Forum Agenda contain only the Item “Review of the Licensing Board Policy” until the deadline for submission of the policy had passed.

ARGYLL AND BUTE LICENSING BOARD

THE LICENSING (SCOTLAND) ACT 2005

**STATEMENT
OF LICENSING POLICY**

2010-2013

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1.

INTRODUCTION

The law relating to liquor licensing in Scotland changed with the implementation of the Licensing (Scotland) Act 2005. The Act came fully into force on 01 September 2009 but this was preceded by a transitional period which began on 01 February 2008

The administration of liquor licensing is carried out by Licensing Boards and Section 6 of the 2005 Act requires all Licensing Boards to publish a statement of their licensing policy. It is intended that this policy will be applied by the Board in exercising its functions under the 2005 Act.

The policy must be reviewed every 3 years but it should also be kept under review during this period, in consultation with stakeholders, when it is open to the Board to publish a supplementary statement of their policy.

This policy statement has been prepared by Argyll and Bute Licensing Board and, as part of this process, the Board has consulted with a range of organisations with an interest in this matter.

2.

CONTEXT

Argyll and Bute is an area of outstanding beauty and varied geography – stretching from Helensburgh and Cardross in the east to Tiree in the west. The cultural diversity of local communities reflects this geographic diversity.

There are 25 inhabited islands, more than any other local authority area in Scotland. The islands are not well interconnected because links tend to be with the mainland.

The mainland is divided by long sea lochs that cut deep inland and further fragment already remote and sparsely populated areas. This extends road links, with long drive times, and very often only one road connects settlements.

Ferries are an essential part of everyday life. 17% of the population live on islands reliant on a ferry. Air links are becoming more prominent as airport improvements are completed at Oban and on Coll and Colonsay.

The area is very sparsely populated - an area that is 10% of Scotland houses only 92,000 people. This has an impact on the range of services that are available and increases the cost of delivery. Communities are often very self-reliant, but do lack access to many of the services that are often taken for granted.

The changing population profile is a significant challenge as younger people leave the area to attend university or seek work. Simultaneously, the older population is on the increase, partly because of higher life expectancy and partly because the area is seen as an attractive retirement destination.

Affordable housing is a significant issue as many properties are sold at inflated prices for second, holiday or retirement homes.

The main employers are public sector, tourism, construction and agriculture/fishing. There are higher than average levels of self-employment, with a significant proportion of this in tourism.

The Board further recognises the contribution which licensed premises make to the economy of Argyll and Bute in relation to employment and service to tourism which is vital to the area. At the same time, the Board is aware that alcohol misuse can damage the economy in terms of decreased productivity and extra demands on public services such as police, social work and health.

3.

THE LICENSING OBJECTIVES

The provisions of the Licensing (Scotland) Act 2005 are intended to work alongside other policies of the Scottish Government, including the strategic approach set out in the Scottish Government publication “Changing Scotland’s Relationship with Alcohol: A Framework for Action”. The Act sets out five licensing objectives on which the licensing system is based and Licensing Boards must take these into consideration when carrying out their functions. Each has equal weighting and they are as follows :-

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

Preventing Crime and Disorder

The Board wishes to see Argyll and Bute a safe place to live in and to visit. It is committed to improving the quality of life for the people in the area by ensuring that licensed premises are run in such a way as not to contribute to crime and disorder. Applicants should be able to demonstrate in relation to their premises, that they will address the problems of -

- (a) underage drinking;
- (b) drunkenness on premises;
- (c) public drunkenness;
- (d) illegal possession and/or use of drugs;
- (e) violent behaviour;
- (f) anti-social behaviour;
- (g) litter, and
- (h) noise

Securing Public Safety

The Board wishes to ensure that the safety of any person visiting or working on or in the vicinity of licensed premises is not threatened.

Preventing Public Nuisance

The Board wishes to protect and maintain the amenity of residents and occupiers of businesses from the adverse consequences of the operation of licensed premises.

Protecting and Improving Public Health

The Board recognises the link between consumption of alcohol and public health and will have regard to the views of the relevant authorities responsible for the protection and improvement of public health and will take advice from these bodies.

Operating plans are expected to demonstrate that suitable and sufficient measures have been identified and will be implemented and maintained to protect public health. This will include such measures as making available information with regard to sensible drinking, the effects consumption of excess alcohol has and contact points where assistance can be obtained for drink problems.

Protecting Children from Harm

The Board wishes to promote family friendly premises. Applicants who wish to operate such premises should appreciate the additional responsibilities upon them whilst at the same time recognising that parents and other adults accompanying children also have responsibilities. The issue of under-age drinking is taken very seriously by the Board and applicants and licensees are reminded that they and their staff must comply with all other legislation in relation to children and young persons including not selling or allowing the sale of alcohol to children and young persons. The Board also recognises that parental alcohol abuse may lead to harm both direct and indirect to children.

4.

BOARD BUSINESS

The Board in exercising its functions will consider each application on its individual merits and will give due consideration to an application regardless of whether it conforms to all of the requirements set out in the Policy Statement.

The Board is committed to conducting its business in an open and transparent manner. Information and assistance will be made available to those who wish to apply for a licence, to make representations or to object to an application. It is also strongly recommended, however, that any applicant, objector or representor seeks independent legal advice. The Board also recognises the need to ensure that the licensing process is accessible to all. Assistance will be made available on request for those who require special arrangements to access any part of the process.

It is intended that the Board will develop regulations setting out their procedures in detail.

In addition, the Board will develop a Scheme of Delegation setting out those applications and other matters which are required to be considered by the Board and those matters which can be determined by the Clerk to the Board.

5.

PREMISES LICENCES

5.1 Any premises that wishes to sell alcohol for consumption on or off the premises must have a premises licence. An application for a premises licence must be accompanied by an operating plan which will take account of the requirements of this Policy, an appropriate layout plan relevant to the scale of the business and the appropriate fee. Each licence will be tailored to the particular premises and will set out, amongst others, what activities can be undertaken on the premises and the licensing hours.

5.2 **Operating Plans**

The operating plan is a crucial document and applicants should pay particular attention to its completion. The plan must be in the prescribed form as set out in The Premises Licence (Scotland) Regulations 2007 and should contain, amongst others, the following information :-

- (1) A description of the activities to be carried on in the premises;
- (2) A statement of the times during which it is proposed that alcohol be sold on the premises;
- (3) A statement as to whether the alcohol is to be sold for consumption on the premises, off the premises, or both;
- (4) A statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises;
- (5) A statement as to whether children or young persons are to be allowed entry to the premises and, if so, a statement of the terms on which they are allowed entry, including, in particular –
 - (i) the ages of children or young persons to be allowed entry,
 - (ii) the times at which they are to be allowed entry, and
 - (iii) the parts of the premises to which they are to be allowed entry.
- (6) Information as to the proposed capacity of the premises, and
- (7) Information about the person who is to be the premises manager.

5.3 **Other Matters**

The Board expects licensed premises to be operated in a manner which seeks to promote the five licensing objectives. Accordingly, in addition to the matters set out in 5.2, operating plans will set out what measures are proposed by the applicant to actively address each of the licensing objectives. The following are suggested as matters to be considered by the applicant :-

- (i) **Preventing Crime and Disorder**
 - A written crime prevention strategy;
 - Staff training in respect of the prevention of crime and disorder;

- Crime prevention measures such as security patrols, advice notices/signs and/or other material demonstrating anti-theft messages/strategies, regular toilet checks demonstrated by the existence and operation of these measures by way of documented check sheets;
- Carry out regular security briefings for staff and appropriate records kept for inspection. Periodic reviews of no less than every 18 months undertaken and amendments made as deemed necessary;
- Every licensed venue to demonstrate their commitment to prevent crime and disorder on a wider community basis, for example, PubWatch Scheme
- A written violence reduction strategy available for inspection. Periodic reviews of no less than every 18 months undertaken and amendments made as deemed necessary;
- House Policy – Licensees are encouraged to have a policy which stipulates the standards to be adhered to and gives guidance to staff on how the business must be conducted. This could be included within the staff training manual;
- Operating Procedures Manual – Licensees are encouraged to have a Manual which stipulates the operating procedures staff must comply with to include aspects of being a responsible retailer of alcohol;
- The Board encourages the upkeep of an incident book or register which lists incidents where staff and management have dealt with a situation by preventing it escalating into a more serious incident.
- Conflict management training and appropriate records kept for inspection by appropriate officers of the Council/Strathclyde Police;
- Adequate seating should be provided. The Board recognise that establishments unwilling to provide adequate seating are in effect promoting vertical drinking which is known to increase consumption of alcohol;
- Much public disorder and nuisance occurs at or immediately after the terminal hours for the supply of alcohol. Licensees should ensure that they and their staff have sufficient measures in place to minimise the impact of the terminal hour, and to ensure patrons exit the premises as quickly as possible in good order and as quietly as possible. Measures to be adopted may include;
 - a) limiting the amount of alcohol sold just before the terminal hour (eg. only permitting a group to purchase one round, not two);
 - b) making sure all patrons know well in advance the last time for purchasing alcohol is approaching;

- c) covering bar taps once the terminal hour has passed;
- d) raising the lighting level;
- e) reducing the level of music noise and altering the type of music played (eg slow ballads), all of which will assist in reducing patron boisterousness; and
- f) inspecting all parts of the premises for patrons (eg toilets).

(ii) Securing Public Safety

- Details as to how occupancy will be managed at any given time - having regard to maximum capacity;
- All licensed venues other than premises open for the main purpose of providing a meal - a weapons and drugs search policy;
- All licensed venues other than premises open for the main purpose of providing a meal - an effective glass management policy either by clearing all glassware regularly or by operating an alternative glass scheme, including provision for the prevention of customers taking glassware outside the premises;
- A written policy on how to deal with customers who may become incapacitated or vulnerable due to drink or drugs;
- The provision of first aid facilities and an area in which incapacitated persons can be placed pending the attendance of emergency services.
- A written fire evacuation policy and be able to demonstrate training and test evacuations;
- A written accident recording system;
- The Board supports the use of CCTV systems and encourages licensees to make use of these wherever possible.

(iii) Preventing Public Nuisance

- All licensed premises open after 11 pm should have a policy on minimising noise pollution, which should include having all servicing and deliveries undertaken at times suitable to the local community;
- All licensed premises should demonstrate their commitment to a cleaner environment in and around their premises.

(iv) Protecting and Improving Public Health

- All licensed premises should display anti-drunkenness materials, if appropriate to their premises along with information on units of alcohol in the context of recommended guidelines. Sources of free materials in this regard are :-

www.alcohol-focus-scotland.org.uk

www.infoscotland.com/alcohol

www.drinkaware.co.uk

www.safer-scotland.co.uk

www.noidnosale.com

- All licensed premises should have in place a workplace alcohol policy in order to raise awareness, minimise harm and ensure that staff are able to access help without fear of losing their job if a problem arises.
- In relation to smoking outside licensed premises, licensees should have measures in place to address issues such as noise nuisance, litter, disorder and smoke drifting into neighbouring premises.

(v) **Protecting Children from Harm**

- A written policy in regard to preventing sales of alcohol to persons under the legal age;
- The Board encourages the use of a refusals register where all refusals of service are recorded;
- The operation of a “no ID, no sale” scheme;
- Training in respect of under age sales.

6. **OVERPROVISION**

- 6.1 Section 7 of the 2005 Act requires the Licensing Board to include a statement on overprovision within this policy.
- 6.2 The Licensing Board must state the extent to which it considers there to be overprovision of:
- (a) Licensed premises; or
 - (b) Licensed premises of a particular description.
in any locality within the Board’s area.
- 6.3 Having consulted with the Chief Constable of Strathclyde Police and the Local Licensing Forum, the Board does not consider that there any particular areas which should be regarded as separate localities for the purpose of assessing possible overprovision.
- 6.4 The Board does not consider that there is any evidence of a saturation point having been reached in respect of licensed premises generally or in respect of any particular type of licensed premises which would indicate a current difficulty with overprovision.
- 6.5 The Board recognises that whilst overprovision is not considered to be an issue at this time (November 2010), the situation should be monitored and Strathclyde Police and the Local Licensing Forum will be asked to give a view on the matter on an annual basis throughout the duration of this policy.

7.

CAPACITY OF PREMISES

For the purposes of the overprovision assessment, the operating capacity of licensed premises will be particularly important. The definition of operating capacity for (off-sales) and (on-sales) is set out in the 2005 Act -

Off-Sales

- The amount of space given over to the display of alcohol for sale.

On-Sales

- The maximum number of customers who can be accommodated in the premises at any one time.

8.

LICENSING HOURS

Whilst each application will be considered on its merits, the following sets out the Board's policy on licensing hours. Applications for hours at times outwith the Board's policy will require to demonstrate that the additional requested hours are appropriate in the circumstances.

8.1 Off-Sale Premises

The licensing hours for the sale of alcohol for consumption off the premises (off-sales hours) are 10 am to 10 pm each day. The Board has no discretion to permit licensed hours outwith these times. In determining applications and licensed hours within these times, the Board will have particular regard to the promotion of licensing objectives.

8.2 On-Sale Premises

For applications relating to premises licences including extensions of hours, the licensed hours for the sale of alcohol for consumption on the premises shall generally be no earlier than 11 am. Applicants need to demonstrate a clear operational need for opening prior to 11.00am.

Licensed hours for on-sales premises in particular can have an impact not only within the individual premises but also within the locality in which the premises are situated. Taking into account the five licensing objectives, the presumption against 24 hour drinking and the guidance for Licensing Boards and Local Authorities issued by the Scottish Executive and that mandatory conditions specified by Regulation apply to those premises opening after 1 am, the Board considers the following to be appropriate for the terminal hour beyond which alcohol must not be sold on the premises or parts of the premises :-

Sunday to Thursday	12 midnight
Friday & Saturday	1 am

Premises that wish to remain open beyond the foregoing terminal hours must justify the need for late hours and demonstrate measures that promote the licensing objectives.

- 8.3** Applicants should be aware that premises are expected to remain open for the licensed hours they apply for and which are granted by the Board. The Board recognises, however, that at certain times of the year demand may diminish to the point where it is no longer economically viable for premises to remain open, particularly on weekday evenings. The Board expects that any premises licence applicants ensure that if they anticipate being affected by this and wish to close early, for example during the winter months, that this is specifically referred to in their operating plan. Licence holders of existing premises licences who may wish to close early or open later should make application for the appropriate variation to their operating plan.
- 8.4** In determining applications where more than one activity takes place in the premises, the Board will have regard to when the activities take place and the principal activity taking place. The Board may impose further conditions to ensure other activities do not take place or remain ancillary to the principal activity for those licensed hours.
- 8.5** Premises operating as hotels should note that if they wish to serve alcohol to residents beyond the ordinary licensed hours, they must specify the hours during which they wish to do so in their operating plan.
- 8.6** The Board is aware that there is a strong view against allowing later opening of licensed premises particularly in mixed residential and commercial neighbourhoods. In this regard operating plans must consider the impact their patrons may have after leaving their premises:-
- the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance, public health and children;
 - the proposed hours when any music, including incidental music will be played;
 - the hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises;
 - the existing hours of licensable activities and the past operation of the premises if any;
 - the capacity of the premises;
 - the type of use, recognising that premises which sell alcohol, play music for dancing, provide late night refreshment or takeaway food, are more likely to be associated with crime and disorder and public nuisance than restaurants, cinemas or other performance venues;
- 8.7** Restricted licensing hours may be appropriate in cases where licensed premises are situated in the vicinity of residential property. Additionally where the trading hours of licensed premises and other businesses in the area may lead to additional public nuisance, disorder or anti-social behaviour, then restricted licensing hours may be appropriate.

8.8 Extended Hours Applications

It should normally be possible for applicants for premises licences to anticipate special occasions which occur regularly each year such as major local events. The Board expects premises licence holders to apply for a variation to their operating plans in respect of extended hours applications required for seasonal events, such as Christmas and New Year.

8.9 Upon submission of an application, the Board may extend the licensed hours in respect of premises by such period as is specified in the application or such other period as it considers appropriate; but in either case the period must **not** exceed one month. The Board will normally only do so in connection with -

- (i) a special event or occasion to be catered for on the premises, or
- (ii) a special event of local or national significance.

Where the hours sought fall outwith the on-sales hours specified above, the applicant will have to demonstrate the hours requested are appropriate in the circumstances. The applicant should provide to the Board sufficient information to enable a decision to be made. This will include :-

- (a) hours sought;
- (b) the description of the special event or occasion;
- (c) what activities are proposed to take place during the hours sought;
- (d) when each activity will take place;
- (e) why the event or occasion is considered to be special, and
- (f) why the event or occasion cannot take place within the on-sales hours specified above.

9.

OCCASIONAL LICENCES

9.1 It is possible to make an application for an occasional licence authorising the sale of alcohol on premises which are not licensed premises. This may be made by :-

- (i) the holder of a premises licence;
- (ii) the holder of a personal licence;
- (iii) a representative of any voluntary organisation.

An occasional licence can only last up to a maximum of 14 days.

9.2 Voluntary organisation is not defined within the Act. The Board considers, that in order to fulfil the definition of a voluntary organisation, then the organisation ought to be able to supply the Board with a copy of its constitution and it would also be expected that it would have in place office bearers, such as a chair and secretary.

9.3 The holders of premises or personal licences may make unlimited applications. However, there are restrictions on the number of applications a voluntary organisation can make. In any twelve month period, the Board may not issue more than four licences each lasting four days or more, and not more than twelve licences each lasting less than four days; and during that period the total number of days on which occasional licences have effect must not exceed fifty-six.

9.4 In order to allow time to consult with the Police and other interested parties, applications should be submitted as far in advance of the event as possible. In order to avoid any difficulties and to ensure that there is sufficient time for processing the application and consulting with the Police, application should be submitted a minimum of 35 days in advance of the event.

9.5 The Board considers that activities such as dances, discos and dinner dances, wedding receptions and parties where a disco or band is provided are generally acceptable for the granting of an occasional licence. Annual events or competitions may also be acceptable; however, darts, domino or pool competitions, karaoke evenings, or private parties where there is no significant entertainment are not considered acceptable activities. Where live entertainment is not an integral part of the function then this would also not be acceptable - eg. background piano music.

The Board considers the commencement of the sale of alcohol should normally be no earlier than 11 am. For the terminal hour beyond which alcohol must not be sold on the premises, the Board considers the following to be appropriate.

Where there is no specific entertainment –

Monday, Tuesday, Wednesday	11 pm
Thursday, Friday and Saturday	12 midnight
Sunday	11 pm

Where there is specific entertainment –

Monday, Tuesday, Wednesday	11 pm
Thursday, Friday and Saturday	1 am
Sunday	12 midnight

- 9.6 Applications for licensed hours outwith the Board’s policy will require to demonstrate that the additional requested hours are appropriate in the circumstances.
- 9.7 The Act and Regulations set out mandatory conditions and the Board will also consider on an individual basis whether it is necessary to impose additional conditions to promote one or more of the licensing objectives and/or this Policy Statement.
- 9.8 The Board is aware that the 2005 Act does not require the office-bearers of voluntary organisations who apply for occasional licences to obtain an appropriate training qualification. The Board recognises, however, that such persons are in charge of events where alcohol is being dispensed. Having regard to the licensing objectives, the Board wishes to give consideration to making it a condition that such persons undertake some form of limited training (possibly provided by Licensing Standards Officers). It is recognised that this would require to be implemented over a period of time.

10. **MANDATORY CONDITIONS**

10.1 The 2005 Act recognises that Licensing Boards must have the flexibility to deal with local circumstances but this must be balanced with a clear and effective national framework within which Boards must operate. Accordingly, there is a requirement that all premises licences issued will be subject to certain mandatory conditions which are set out in Schedule 3 of the Act. These conditions include the following :-

- No alcohol is to be sold on the premises where
 - there is no premises manager for the premises;
 - the premises manager does not hold a personal licence or it has been suspended;
 - the licensing qualification held by the premises manager is not appropriate.
- Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by the premises manager or another personal licence holder. The Licensing Board considers it good practice for the alcohol authorisation to be in a written format so that the premises manager or other personal licence holder (or member of staff so authorised) can evidence the authorisation if needs be. Further information on alcohol authorisation can be obtained from the Licensing Standards Officer.

- Pricing of Alcohol
 - variation of prices (the price of alcohol cannot be varied within 72 hours, starting at the start of the day);
 - an irresponsible drinks promotions must not be carried on or in connection with the premises. This will include promotions aimed at persons under 18, supply of free alcoholic drinks (eg. buy 1 get 1 free), supply of unlimited amounts of alcohol for a fixed price, rewarding or encouraging patrons to drink alcohol quickly or being offered as a prize (unless in a sealed container and consumed off the premises);
- Water fit for drinking must be provided free of charge on request.
- Any premises which operate after 1 am on any occasion must have a person trained to the satisfaction of the Licensing Board in administering first aid on the premises from 1 am until the premises close.

10.2 Mandatory Conditions – Certain Premises

There are certain conditions which must be imposed in respect of premises operating after 1 am and which have a capacity of at least 250 people and which -

- (a) will regularly provide at any time in the period between 1 am and 5 am -
 - (i) live or recorded music with a decibel level exceeding 85 dB;
 - (ii) facilities for dancing, or
 - (iii) adult entertainment, or
- (b) when fully occupied are likely to have more customers standing than seated.

The conditions to be imposed are :-

- (1) There must be a personal licence holder present on the premises from 1 am until the premises close.
- (2) There must be written policies in place in relation to the evacuation of the premises and the prevention of the misuse of drugs on the premises.
- (3) A CCTV system must be installed on the premises.
- (4) There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises, and
- (5) A licensed door steward must be positioned at every entrance to the premises, from 1 am until the premises close.

11. **DISCRETIONARY CONDITIONS**

The Board can also impose such other conditions as they consider necessary or expedient to promote the licensing objectives or to give effect to the provisions of this Policy Statement. The decision whether to impose a condition will be made on an objective basis, taking account of any representations and any other relevant information available to the Board.

12. **PUBLIC AWARENESS MATERIALS –
SAFE LIMITS AND DRINK-DRIVING**

Licensees are encouraged to use materials such as posters, beer mats etc which promote moderate consumption of alcohol along with awareness of units of alcohol and the recommended guidelines – eg, a wine list would state how many units in a small, large glass and bottle and relate that to the daily/weekly recommended limits. Most of these materials are available from health boards and connected associations free of charge. Drink-driving can have a catastrophic effect on families and licensed establishments can play a part in prevention by displaying anti drink-driving materials, supplying reasonably priced soft drinks, promoting awareness of campaigns such as designated driver schemes and offering free soft drinks to designated drivers.

13. **ACCESS BY CHILDREN TO LICENSED PREMISES**

Licensees must include within an operating plan consideration as to whether the premises are suitable for children. If children are to be admitted adequate standards need to be in place to ensure the venue is a suitable environment for children.

Premises which wish to accommodate families with children require to ensure the environment is safe and suitable. The Board would expect an applicant to demonstrate an understanding of the additional responsibilities placed on them when children are on the premises and to demonstrate that suitable and sufficient measures are in place to protect children from harm.

The Board will not normally grant a premises licence or occasional licence where children could have unsupervised access to pool tables, darts boards or gaming machines. The parts of the premises to which children and young persons are allowed entry will require to have a suitable character and atmosphere. Premises or parts of premises which are very small and enclosed are unlikely to be able to provide an appropriate environment. In addition, premises which have very few facilities are unlikely to comply with the Board's requirements.

The Board will impose appropriate conditions on a premises licence or in granting an occasional licence where children are to be allowed entry. Conditions will seek to ensure the safety and wellbeing of children on the premises.

14. **OFF-SALES PREMISES**

In respect of premises which sell alcohol for consumption off the premises, it will be a condition that displays of alcohol on those premises is confined to a single area. The applicant must show the alcohol display in the layout plan and it will then be for the Licensing Board and the applicant to agree on the defined area. The only exception to the foregoing is that the Board may agree to alcohol being displayed in other areas provided they are inaccessible to the public – eg. behind the counter, locked display cabinet.

In relation to opening hours of such premises, the Board may impose a terminal hour prior to the 10 pm limit defined in the Act. Each case will be taken on its merits but the Board is concerned to ensure that the licensing objectives relating to crime, children, public health and public nuisance, in particular, are promoted in this area and will consider carefully whether later opening hours can be justified.

15. **OUTSIDE SEATING AREAS**

Where applicants propose to provide outside seating, tables and other facilities in any outdoor area (covered or otherwise) regard should be made to the need to ensure that the use of such areas will not cause disturbance or nuisance to the occupiers of premises in the vicinity.

The Board expects an operating plan to include or exclude the use of an outside seating area. If included, effective management controls, supervision and other measures to ensure that the use of the area by patrons does not have a negative impact on the vicinity will be considered and incorporated within the plan. This will include clear delineation of the area by way of a wall or other permanent structure. Conditions as determined by the Board relating to the specific circumstances of the premises will be attached to any grant; this may include the exclusion of the use of glassware within the area after a specified time each evening.

16.

PROCEDURES THE BOARD HAS DEVELOPED FOR HANDLING APPLICATIONS, OBJECTIONS, HEARINGS

The Board must give notice of a premises licence application to -

- (a) each person defined to be a neighbour;
- (b) any Community Council within whose area the premises are situated;
- (c) Argyll and Bute Council;
- (d) the Fire and Police authorities.

Any person may submit an objection or representation to the Board. The objection must relate to one of the five licensing objectives and relate to specific premises. An objection lodged on the general basis of opposing the use of alcohol or to licensed hours on a Sunday will be considered to be frivolous and will be rejected without consideration.

The Board has developed a leaflet entitled “How to object to a liquor licence application” and this is available free of charge from the Clerk’s office or it can be downloaded from the Licensing Board’s pages on the website maintained by Argyll and Bute Council.

When considering an application for premises which have been previously licensed or in any review of an existing licence, the Board will take into account any relevant evidence, especially the impact on local residents and businesses and will also look at the measures proposed by the applicant to mitigate any adverse impact.

17.

ATTEMPTS TO INFLUENCE BOARD MEMBERS

It is an offence for an applicant to attempt to influence a member of the Board. If this situation arises the Board Member will immediately report the matter to the Clerk to the Board. This will include approaches from a third party on behalf of an applicant.

The Clerk will in turn notify the Procurator Fiscal and if proceedings are brought for the offence the Board is unable to determine the application until after the proceedings are concluded and if the applicant is convicted of the offence, the Board may refuse to consider the application.

18. **LICENSING REGISTER**

The Board's Clerk will maintain a Register which contains information in relation to the premises, personal and occasional licences processed which will include a decision outcome in relation to each application.

The Register is available for perusal by members of the public during normal working hours at the Clerk's office, Kilmory, Lochgilphead.

19. **LOCAL LICENSING FORUM**

The Board recognises the importance of the establishment of the Local Licensing Forum in Argyll and Bute and will endeavour to work closely with it. The Board will

- (i) take account of the advice or recommendations made by the Forum;
- (ii) where after consideration the Board decides not to follow the advice or recommendations made by the Forum, reasons for the decision will be given to the Forum;
- (iii) provide the Forum with any relevant statistical information provided it is easily available within the Clerk's office;
- (iv) meet with the Forum at least once per calendar year

20. **MEMBERS CLUBS**

- 20.1 The Licensing (Clubs) (Scotland) Regulations 2007, by virtue of section 125 of The Licensing (Scotland) Act 2005, now regulate the sale of alcohol in licensed members clubs in Scotland and each club is required to operate under the grant

of a premises licence. Each club should be non-profit-making with a constitution and limited access to members of the public, and in submitting an application for a premises licence should submit a copy of its current constitution.

20.2 The Board expects clubs to reflect certain operational requirements in their constitution and may impose conditions on a premises licence to that effect on the following matters (though not limited to) :-

- that the business and affairs of the club shall be under the management of a committee or governing body who shall be elected for not less than one year by a general body of members;
- that the committee or governing body shall hold periodic elections and meetings;
- that correct accounts and books shall be kept showing the financial affairs and intromissions of the club;
- that no member of the committee or governing body and no manager or staff employed in the club shall have any personal interest in the sale of alcoholic liquor in the premises or in the profits arising from;
- that there shall be a definable subscription payable in advance by members of the club;
- that no persons shall be allowed to become honorary or temporary members of the club or be relieved of the payment of a regular entrance fee or subscription, except those possessing certain qualifications defined in the constitution;
- that a maximum of 3 visitors per member shall be permitted in the club premises provided they are signed into the club by that member into a book kept for that purpose by the club;

Clubs must keep their constitutions updated and, when revised, submit a copy of the revised constitution to the Clerk's office. Clubs must also ensure their constitution, accounts and entry book are available for inspection by a Licensing Standards Officer and officers of the Police authority at all reasonable times.

20.3 Section 125 of the 2005 Act allows for exemptions in relation to the licensing of members clubs. These exemptions are:

- inclusion in assessments for overprovision in the Board's area;
- ground of refusal of premises licence application relating to overprovision;
- ground of refusal of premises licence variation application relating to overprovision;

- requirement for operating plan to contain information as to the premises manager;
- requirement for the name and address of premises manager to be specified in the premises licence;
- requirement for there to be a premises manager for the premises; and
- requirement for sales of alcohol under the premises licence to be authorised by a personal licence holder.

20.4 An additional development brought about by the 2005 Act is the inclusion of members clubs in the occasional licence provisions. The Licensing (Clubs) (Scotland) Regulations 2007 now permit members clubs to apply for occasional licences on similar terms as voluntary organisations, and the fact that a premises licence is in effect in respect of premises used wholly or mainly for the purposes of a club, is not to prevent an occasional licence being issued in respect of those premises.

A Licensing Board may issue in respect of those club premises in any period of 12 months –

- a) not more than 4 occasional licences 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 days.

20.5 Section 9 – Occasional Licences - above details Board policy in relation to occasional licence applications which will be applied to members clubs.

21.

EXCLUDED PREMISES – GARAGES

21.1 The Act stipulates that certain premises are excluded from authorising the sale or supply of alcohol. This includes motorway service stations and premises or parts of premises used as a garage. Premises are used as a garage if they are used for one or more of the following :-

- (a) the retailing of petrol;
- (b) the retailing of diesel;
- (c) the sale of motor vehicles; and
- (d) the maintenance of motor vehicles

21.2 Notwithstanding the foregoing, however, if a premises (or parts of a premises) are used as a garage they will be able to apply for an alcohol licence if the local community is (or is likely to become) reliant to a significant extent on the premises as a principal source of either fuel or groceries. The effect of this exemption is not limited to rural areas, as there may be instances in urban or other areas where the community is reliant on the premises as their local shop.

21.3 In determining an application for such a premises licence, the Licensing Board expects the applicant to provide sufficient information to enable the Board to consider :-

- (i) the locality in which the premises are situated,
- (ii) what other sources of (a) fuel and/or (b) groceries are in that locality, and
- (iii) the extent to which persons resident in that locality are, or are likely to become, reliant on the premises as the principal source of (a) fuel, or (b) groceries.

21.4 Factors the Licensing Board may consider include :-

- the number of, and distance to other licensed premises
- the number of premises selling fuel or groceries in the locality;
- the distance to the nearest other premises selling fuel or groceries;
- the opening hours of other premises selling fuel or groceries in the locality;
- the number and/or percentage of persons resident in the locality who are, or are likely to become, reliant on the premises, and
- to what extent, as the principal source of (a) fuel or (b) groceries, with particular reference to weekly groceries rather than convenience goods.

21.5 The Board will have regard to the five licensing objectives when determining such applications and in determining what, if any, conditions it may impose – eg, it may be considered appropriate to restrict the display of alcohol to a particular area within the premises.

22.

LICENSING STANDARDS OFFICERS

- 22.1 Licensing Standards Officers will be employed by Argyll and Bute Council and will have the functions set out in the Act. Their role will be three-fold – guidance, mediation and compliance. They will also be a member of the Local Licensing Forum for the Argyll and Bute area.
- 22.2 Licensing Standards Officers will work with the public, the Council’s Partners, Argyll & Bute Alcohol & Drug Partnership and the business community in seeking to promote the five licensing objectives and ensuring compliance with the law.
- 22.3 At the time of drafting this Policy, there is one licensing Standards Officer in post with the appointment of additional officers being kept under constant review.

23.

RELATIONSHIP WITH OTHER STRATEGIES

- 23.1 The Board will endeavour to secure proper integration with local crime prevention, community safety, health, planning, transport, tourism, race equality and cultural strategies.

LICENSING POLICY STATEMENT 2013**STEP-BY-STEP GUIDANCE TO PREPARING AN EVIDENCE BASED
OVERPROVISION ASSESSMENT****Notes by West Dunbartonshire Licensing Board Clerk****1. An evidence based Policy or not?**

Consider whether you either want or need to get the evidence to support a policy. On the one hand it might be perceived that an evidence-based policy ties the Board's hands. Thus there is an attraction in having wide policies, perhaps stressing the importance of local knowledge and potentially giving something to hang any decision onto. On the other hand, the arguments for an evidence based policy are:-

- Section 3 provides that the Board must ensure the policy promotes licensing objectives. At least one Senior Counsel has given the opinion that a Board cannot ensure without gathering evidence. Arguably the evidence should underlie all of the policy, not just the overprovision section of it;
- in determining individual applications the onus is on the Board to demonstrate that any issue flows from the sale of alcohol in the particular premises. This may be very difficult to do. For example, it is very difficult to show that alcohol related deaths and other health problems are linked to one particular premises. By way of contrast the development of a policy can result in wider issues being fully considered, then reversing the onus onto the applicant to demonstrate why the policy should not be followed;
- there is an increasing focus from the Scottish Government and others on changing Scotland's relationship with alcohol. Liquor licensing, being the sole means of controlling the availability of alcohol is increasingly being viewed as a key part of this. The joined up thinking arising out of the Community Planning agenda will increasingly put pressure on Board members to look at the wider issues arising through the use of alcohol in their communities;
- a vague 'catch all' policy still needs to be clearly linked to the decision in question – *Watson v Western Isles LB* 18 January 2011;
- decisions made 'on the hoof' using local knowledge are more likely to attract challenge than those made on the basis of an evidence based policy. Different Sheriffs can easily come to different decisions on the use of local knowledge – contrast the two recent cases of *Tesco v Glasgow LB* 15 October 2012, and *Sabti v North Ayrshire LB* 24 August 2012.

2. When to start?

Start the gathering of information process at least nine months before the policy is due.

3. Advance work

Speak to contacts in the local Alcohol and Drugs Partnership and Police to ascertain that they are both willing and able to provide the required statistics.

4. Power to require information

If resistance is encountered, note that Section 6(5) allows the Licensing Board to request the Chief Constable, Council and Health Board to provide the Board with such statistical or other information as the Board may reasonably require for the purposes of preparing a Licensing Policy Statement.

5. Who leads in gathering information?

The gathering of statistical evidence can either be done by the Board or by the Licensing Forum. While the Forum has Police and Health membership, the route to be chosen will probably depend on the capacity and the willingness of the Forum to take this role.

6. Who gets the information?

It is recommended that the local Alcohol and Drugs Partnership (ADP) takes the lead in obtaining the statistical evidence to be gathered.

7. What is the key information to get?

The main statistical evidence which should be gathered is:-

- alcohol related deaths;
- alcohol related hospital admissions/or emergency admissions;
- alcohol related crimes;
- alcohol related Police incidents.

8. What areas should be used?

Boards should use intermediate data zones for the gathering of evidence and not use more ad-hoc areas (eg town centre).

This information is already gathered by every Health Board and Police Authority. Most data, including the health data, is only available for specific data zones. Such individual data zones can be amalgamated into intermediate data zones which better represent existing communities. These are approximately two to six thousand in population, depending on whether an area is rural or urban.

9. Choosing a comparator

It is important that an appropriate comparator is obtained. The obvious comparator is to compare health data with the Scottish average and Police data with the Force average. However, it should be noted that if Scotland is the sick man of Europe for alcohol problems, then such a comparator may not be particularly meaningful. Nevertheless, for 2013 the Scottish average might have to be used by most Boards. If seeking to use a UK or Europe wide comparison, it is advised that you contact Alcohol Focus Scotland to ascertain whether comparable UK or European data is available and, if so, from where.

10. Standardising the data for comparison

For ease of analysis it is recommended that the data is standardised (eg the local data is converted into the same basis as the national data to enable direct comparison). This might be to normalise the number of cases to a figure representing the number per a 100,000 population.

11. Other useful data

Other data which is useful includes:-

- Environmental Health – noise and other nuisance cases involving licensed premises;
- fires – there is a clear link between alcohol and fires and details of the number of fire related fatalities and fire raising can be obtained from the Firemaster;
- addiction rates;
- figures from Police on sobriety of arrestees (noting that these will be an under estimate as warrants are normally exercised in the morning when persons are most likely to be found sober);
- percentage of children and families social work cases involving addiction;
- percentage of Criminal Justice cases involving addiction;
- percentage of Accommodated Children and Young People cases involving addiction;
- percentage of domestic violence cases involving alcohol;
- alcohol related deaths – these are recorded across 408 local authority areas in the UK for both males and females and a figure can be obtained as to where your Authority ranks;

- local surveys – these might include surveys on where alcohol was bought, analysis of test purchase failures etc;
- national data on the volume of alcohol sold in Scotland, the trends in sales relating to the On-Sales and Off-Sales sector – MESAS (Monitoring the Effectiveness of Scotland’s Alcohol Strategy). Data was prepared by the NHS in 2011 and 2012. This is freely available on the internet;
- studies showing the link between alcohol related problems, the availability of alcohol and the number of licence premises – Alcohol Focus Scotland have done work on consolidating the information available and this can be found in their fact sheet 1 at www.alcohol-focus-scotland.org.uk/licensing-toolkit;
- trend analysis is also useful to obtain. In other words, it is useful to ascertain whether the problem is getting better or worse. For example, this trend analysis might include a graph showing hospital admissions attributable to alcohol misuse for successive years;
- local Police surveys taken during inspections of the number of patrons in on-sales premises, comparing this to capacity to measure the extent to which premises were trading to their capacity;
- in September 2012 Alcohol Focus Scotland published details of the cost of alcohol to each local authority area. Again, this is available on the Web.

Not all of this information may be available, check with the ADP, Police and Social Work to see what they can provide.

12. Categories of Licensed Premises

Determine the categories of licensed premises which are to be examined. Use of the categories detailed in the Statutory Guidance is not recommended for an Overprovision Policy. It is essential to be able to clearly determine whether a particular application fits within the relevant category. The Statutory Guidance classifications are not sufficiently clear. For example, its use of ‘vertical drinking establishment’ might imply that an application with a 51% seated area was outwith this, but not within any other category. The use of the ‘hybrid premises’ category is also problematic. For this reason it is recommended that the categories used are tied to the Planning Use Classes. This could result in the following categories being looked at:-

- *sui generis* use as a public house – paragraph 3(5)(h) of the Town and Country Planning (Use Classes) (Scotland) Order 1997. This also includes use as a hotel or hostel licence for the sale of alcoholic liquor to persons other than residents or persons other than consuming meals on the premises (exclusion from Class 7, Use Classes Order);
- restaurants – Class 3, Use Classes Order;
- nightclubs – Class 11(d), Use Classes Order;

- town hotel – Class 7, Use Classes Order;
- supermarkets – these are mainly Class 1, Use Classes Order, but may contain other uses in addition;
- off-sales and local convenience stores - Class 1, Use Classes Order.

13. The number of premises

Count up the number of licence premises per category in each of the intermediate data zones.

14. Capacity

Count up the on-trade and off-sales capacity in each of the intermediate data zones. While the 2005 Act requires the capacity to be obtained this is unlikely to be of much help in determining if there is overprovision, particularly for on-sales. Many on-sales trade at massively below their capacity. A Police survey of capacity showed that different on-sales areas in West Dunbartonshire were trading at between 3% and 12% of capacity. Capacity does provide a benchmark for the future once an Overprovision Policy has been made.

15. Advance consultation

Informal consultation with Licensing Forum, Health Board and Police – in advance of a formal consultation process it would be worthwhile to hold an informal consultation to check that all relevant data had been gathered and to inform the preparation of an Issues paper for full consultation.

16. Public consultation

At this stage the issue is whether to consult on a draft proposal or to put out an Issues paper summarising the evidence and the issues on which views are sought. The local Citizens Panel could be used for consultation. Licensing Forum members should also be encouraged to get as full a consultation as possible from the groups that they represent.

17. How to determine if there is overprovision?

For the purpose of determining overprovision the key areas of data are probably:-

- alcohol related deaths per intermediate data zone;
- alcohol related hospital admissions/or emergency admissions per intermediate data zone;
- alcohol related crimes per intermediate data zone;
- alcohol related Police incidents per intermediate data zone.

If the figures show that an area is above the Scottish average for alcohol related deaths and hospital admissions then this substantiates a finding that there is overprovision of licensed premises within that area and a policy is necessary to protect and improve public health. If the figures for alcohol related crimes for an intermediate data zone are above the average (Scottish or Police Force area) this will support an Overprovision Policy based on preventing crime and disorder and securing public safety. If the figures for alcohol related Police incidents in an intermediate data zone are above the comparator then this would support an overprovision area based on securing public safety and preventing nuisance.

There are two different ways on which an Overprovision Policy might be framed:-

1. The West Dunbartonshire approach was that if an intermediate data zone was above average for three out of the four statistics then there was overprovision in that area.
2. Another approach might be to hold that there may be overprovision for different reasons across different areas. For example:-
 - an area which was above average for all four characteristics might have overprovision for the crime and disorder, public safety, nuisance and public health objectives;
 - an area which had above average health figures but below average crime and disorder figures might be an overprovision area purely for the health objective.

This would result in layers of overprovision. It would, however, mean that when dealing with a particular application, the applicant would know the exact reason for the overprovision and would be able to focus on the figures for this particular objective.

The number of premises in a particular area or the capacity is not particularly material, the key issue being whether there are health, crime etc problems in an area.

18. Direct causal link between premises and overprovision

The Statutory Guidance is unhelpful as it refers to there being a direct causal link between the problems in an area and the number of premises in that area. It is thought this goes further than the Act and it is hoped that this will be removed prior to October 2013 when new Guidance is introduced. It may apply to traditional town centre type problems of a town centre reaching a limit for crime and disorder problems on a Friday and Saturday night. However, when 69% of all alcohol is sold by off-sales (75% of this from the four main supermarket chains) it is increasingly difficult to make a link between the number of premises and the problems in a locality. Often areas of deprivation have significant alcohol related problems but few licensed premises. Surveys such as the one in Whitecrock, Clydebank demonstrated that most persons bought alcohol outwith the area in the local Asda, meaning that there was no causal link between the problems occurring

in Whitecrook and the number of premises in that area. In most areas customers are likely to travel up to 2 miles to buy alcohol from supermarkets. The way that West Dunbartonshire Licensing Board got round the 'causal link' problem was to have one overprovision area which encompassed 15 out of their 18 intermediate data zones. Thus it did not matter if the person bought alcohol in one intermediate data zone and drank it another. The 18 intermediate data zones were, however, retained as sub zones for statistical purposes.

19. Mapping the overprovision area

Maps will be available showing each intermediate data zone and these can be obtained through the ADP/Health Board. Sometimes the names given to an intermediate data zone might not truly reflect the local naming of the area and the Board can change the name of any intermediate data zone.

20. The importance of fully exploring the pros and cons of overprovision

When recommending policy to the Board it is important that the Board is fully aware of the implications of the recommendation. For example, an Overprovision Policy might, in the long term, improve the areas health and economic development. However, in the short term, it might stop a new supermarket which might bring new employment and be seen as a key component of a regeneration proposal. Alternatively, it might make it more difficult to open up a local shop providing accessible groceries in areas of deprivation. All this information should be put to a Board to enable it to fully weigh up the pros and cons of making an Overprovision Policy. This ensures that if the Board make such a policy they are fully bought into it and are more likely to consistently apply it in full knowledge of its impact.

21. Include in Policy the evidence required to overcome the Policy

A policy creates a presumption and the onus will be on an applicant to overcome the presumption that the policy will be followed. It is helpful for Boards to give guidance to applicants on the evidence it would expect from them when seeking to persuade the Board to disapply the policy. The West Dunbartonshire policy indicates that it expects applicants to give robust and factual evidence against each licensing objective to demonstrate why the benefits in granting the application outweigh the Board's Overprovision Policy.

22. Using the evidence for other increases in alcohol sales, outwith overprovision

Overprovision only applies to an increase in the number of premises in terms of Section 23(5)(e). It does not apply to other applications which increase the supply of alcohol. Thus it does not apply to applications to vary a premises licence (eg from pub to supermarket), to increases in capacity, to increases in hours and to applications for home deliveries etc. Such applications could be refused under 23(5)(c) that granting the application would be inconsistent with one or more of the licensing objectives. A Licensing Policy Statement could provide that the same evidence underlying its overprovision assessment creates a presumption that any application which increases the availability of alcohol will be refused under Section 23(5)(c) as inconsistent with one or more of the licensing objectives, on the basis of

the evidence obtained for the overprovision assessment. In other words, in an intermediate data zone where there was overprovision as a result of health problems, there would also be a presumption that increases in capacity etc would be refused under the health objective. This should be detailed in the policy.

23. Overprovision across the whole of a Board's area?

The health statistics in particular may give reasons for having an Overprovision Policy covering the entire Board area. Section 7 does however refer to the Board making a statement "as to the extent to which there is overprovision in any locality within the Board's area". The word "within" might suggest that the overprovision area is smaller than the entire Board area. This was the view taken by Sir Crispin Agnew QC. To be safe, any Board wanting to make such a policy should try to exclude some small part of their area.

24. Subsequent reduction in premises - deal with this scenario in your Policy

Overprovision provides a snap shot of the problems in a locality at that time. At present there is no statistical evidence available to demonstrate the level to which the number of premises would have to be reduced to remove overprovision. What happens if you have lost one or two premises? Does that automatically mean that there is room for these to be replaced by others? The West Dunbartonshire approach was to provide that if this occurred then the Board reserved the right to reconsider the overprovision situation, taking into account the capacity being replaced and the location of the new premises. Only if the figures had improved to an acceptable level would such an application find favour.

25. Applications outwith the overprovision area which draw trade from it – cover this in Policy

To get round an Overprovision Policy it is likely that new applications will be made in areas outwith the overprovision area. Some of these applications may well have a trade draw from within the overprovision area. For example, an off-sales or supermarket just outside an overprovision area will almost certainly attract custom from the overprovision area. Similarly a nightclub may attract trade from the entire local authority area and wider. On the other hand, a local community pub may not attract significant trade from outwith its immediate locality. The West Dunbartonshire approach was to provide that if new applications outwith the overprovision area have significant trade draw from an overprovision area then the Board reserved the right to consider these against overprovision. How trade draw is established is as follows. Firstly, for a new supermarket these inevitably have to provide a retail impact assessment as part of the planning process which defines the extent of trade draw and the impact on nearby towns. This retail impact assessment could be used by a Board (or the Board ask for its own retail impact assessment from the applicant) to ascertain trade draw. For an off-sales a comparison of the walking or driving distances to other nearby off-sales will provide a measure of trade draw. As regards pubs and nightclubs this is largely determined on the basis of local knowledge.

26. Update the information regularly

Once a policy is in place, continue to provide updated statistical information to the Board.

27. Considering applications against an Overprovision Policy

When applications are received contrary to policy it is helpful to applicants (and avoid future challenge) if the applicants are directed to the publicly available evidence which underlies the Board's Licensing Policy Statement. They can then be in no doubt as to the hurdles they need to overcome.

28. Normal legal hoops for a Policy

Finally, the Licensing Policy Statement will need to comply with normal legal hoops. These include:-

- Elder v Ross & Cromarty District Licensing Board 1990 SLT307 – the policy must be based on grounds which relate to and are not inconsistent with or destructive of the purposes of the Statutory Provisions under which the discretion is operated;
- Brightcrew v Glasgow City Licensing Board 2011 SC1846 – the function of the Act is the licensing of the sale of alcohol and the Board's policy must be based on these purposes;
- Brightcrew – the Board cannot, through a policy, impose a condition that could not be imposed under Section 27(7) eg relates to a matter such as planning, building control or food hygiene which is regulated under another enactment;
- the policy must have a proper basis, in fact - Cinderella Rockerfellas Limited v Glasgow DLB1994 SCLR591;
- note, however, that the weight to be given to factors is for the Board to determine – Hughes v Hamilton District Council 1991 SLT628. This applies as much to development of policy as to determining applications.

29. Further reading

Alcohol Focus Scotland – Licensing Resource Toolkit – Factsheet 1 – using evidence to support policy and decision making (quote same web address mentioned in page 4).

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