

# **ARGYLL AND BUTE LICENSING BOARD**



## **THE LICENSING (SCOTLAND) ACT 2005**

### **STATEMENT OF LICENSING POLICY JUNE 2020**

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## Section 1: Introduction

- 1.1 The *Licensing (Scotland) Act 2005* (the 2005 Act) regulates the sale and supply of alcoholic liquor in Scotland and the licensed premises on which alcohol is sold.
- 1.2 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.
- 1.3 As the Board are required to publish a new Licensing Policy Statement for each licensing policy period, this Policy Statement will cover the period from 23rd June 2020 up to the period ending 18 months after the next Local Government Elections, although it may be reviewed at any time if there is a sufficient reason to do so.
- 1.4 As was the case in previous reviews this revised Policy Statement incorporates the findings of a wide range of consultees.

**Comment [MG1]:** Change in implementation date.

## Section 2: Context

- 2.1 Argyll and Bute is the second largest local authority area in Scotland. It covers an area of 691,000 hectares (approximately 2670 square miles) bounded by the urban areas of Helensburgh and Dunoon, the Clyde, Loch Lomond to the east, the Mull of Kintyre to the south, Atlantic Islands to the west, and the Sound of Mull and Appin to the north. We are lucky to live and work in such a beautiful and diverse area that really does have something for everyone. We recognise that our geography, coupled with a declining population, presents us with unique challenges.
- 2.2 We have a population of 86,260, with an average population density of just 0.12 persons per hectare which means it has the fifth sparsest population density of the 32 Scottish local authorities. Argyll and Bute also has more inhabited islands than any other Scottish local authority, with approximately 17.4% of the population living on islands and 80% the population living within one kilometre of the coast.
- 2.3 The importance of the natural environment is indicated by the 120 Sites of Special Scientific Interest within the area. Combined, these cover almost 10% of Argyll and Bute's land area. Additionally, almost 30% of the Loch Lomond and the Trossachs National Park area falls within the local authority's boundaries.
- 2.4 The changing demographic profile of the area presents one of the area's greatest challenges. Over the 10 year period from 2016, the proportion of 0-15 year olds is projected to fall by 6.4%, working age population by 36.3%, and the proportion of the population of

pensionable age to increase by 30%.

- 2.5 Argyll and Bute's economy is predominantly service-based. Over 87% of employee jobs in the area are provided within the service sector. 14.9% of employee jobs in Argyll and Bute are in tourism-related activities. Argyll and Bute has relatively high levels of employment in agriculture and fishing, and low levels of employment in manufacturing and finance. Unemployment rates in Argyll and Bute are below the national average although, because of the high levels of seasonal employment in the area, rates vary according to time of year.
- 2.6 The health and well-being of a large number of people in Scotland is being harmed, directly or indirectly, by excessive alcohol consumption and the extent of social harms related to alcohol is increasingly recognised. However it is also recognised that the alcohol industry that contributes greatly to the economy of Scotland. The whisky industry, in particular, plays an important role in Argyll and Bute, providing much needed employment in some of our more rural and isolated communities and through attracting visitors to Scotland.

### **Section 3: The Licensing Objectives**

- 3.1 The provisions of the *Licensing (Scotland) Act 2005* are intended to work alongside other policies of the Scottish Government, including measures to tackle anti-social behaviour and the programme of work set out in the Plan for Action on Alcohol Abuse which seeks to tackle under-age drinking, binge drinking and the wider problems associated with alcohol misuse. Section 4 of the 2005 Act sets out 5 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:
- a) Preventing crime and disorder
  - b) Securing public safety
  - c) Preventing public nuisance
  - d) Protecting and improving public health
  - e) Protecting children and young persons from harm

#### **Preventing Crime and Disorder**

- 3.2 The Board wishes to see Argyll and Bute as 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. In relation to premises licences all applicants must clearly demonstrate how they will address the problems of:
- 1) underage drinking;
  - 2) drunkenness on premises;
  - 3) public drunkenness;
  - 4) illegal possession and/or use of drugs;

- 5) violent behaviour;
- 6) anti-social behaviour;

### **Securing Public Safety**

- 3.3 The Board wishes to promote public safety so that any person visiting or working on or in the vicinity of licensed premises is not endangered.

### **Preventing Public Nuisance**

- 3.4 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. In particular applicants should address noise levels, light pollution, noxious odours and accumulations of waste, This provision applies both to the licensed premises and to any outdoor area used for the purpose of the business and particularly at premises located within residential or mixed business and residential areas. It is the view of the Board that such problems can be prevented or mitigated by effective management procedures.

### **Protecting and Improving Public Health**

- 3.5 The Board recognises the link between consumption of alcohol and public health and will collate information from the relevant authorities responsible for the protection and improvement of public health and will require annual reports from these bodies.
- 3.6 Minimum Unit Pricing of alcohol (MUP) legislation (brought into force in May 2018) requires the price of a unit of alcohol to be set by the Scottish Ministers and this is monitored by Licensing Standards Officers.
- 3.7 Operating plans must 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 of the excess consumption of alcohol and contact points where assistance can be obtained for drink problems.
- 3.8 Licensees should ensure that their staff are capable of identifying vulnerable people.

### **Protecting Children and Young Persons from Harm**

- 3.9 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 and young persons 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.

## Section 4: Board Business

- 4.1 The aim of this Policy Statement is to promote consistency of decision-making and to provide applicants with an indication of how the Board is likely to approach certain matters and deal with and determine applications. There is a presumption that the Board will follow the terms of this Policy in its determination of individual applications. It remains open, however, for an applicant to seek the grant of an application which is contrary to the terms of this Policy Statement. In such circumstances, an applicant will be required to demonstrate to the Board good reasons why the Board's Policy Statement should not be followed.
- 4.2 Argyll and Bute Licensing Board is a separate statutory body from Argyll and Bute Council. The Board is supported by a Clerk who gives administrative support and professional advice. The Clerk to the Board is Argyll and Bute Council's Head of Governance and Law.
- 4.3 The Licensing Board administers all licensed premises within the electoral boundaries of the area. It deals with applications for premises licences, transfers and variations of licences as well as occasional and extended hours licences etc under the *Licensing (Scotland) Act 2005*.
- 4.4 The Argyll and Bute Licensing Board is made up of 10 elected members of Argyll and Bute Council, who are appointed to the Board by the Council. All members of the Licensing Board complete accredited training, as required by the Act. The Licensing Board meets 5 times a year and all meetings are open to the public, unless stated otherwise, and papers are available in advance.
- 4.5 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.
- 4.6 A draft procedure has been drawn up setting out the process which will be followed at any hearing which requires to take place before the Licensing Board. A copy of the draft procedure is attached as **Annex 2**.
- 4.7 The authority to exercise certain functions in respect of some matters under the 2005 Act has been delegated to the Clerk/Depute Clerk or the Chair/Vice-Chair of the Licensing Board. The Board's Scheme of Delegation is attached at **Annex 3** and can also be accessed on Argyll and Bute Council's website, accessible from the 'Law and Licensing' section.
- 4.8 Licensing boards now have a duty to produce annual reports: the Annual Financial Report must be published no later than three months after the end of the financial year. It should contain details of relevant income

received during the financial year; details of relevant expenditure incurred in respect of the Board's area during the year; and an explanation of how the amounts in the report were calculated. Relevant income, for example, would be premises licence application fees, personal licence fees or fees charged in respect of an application to vary a premises licence. Relevant expenditure, for example, would be the salary cost of a Licensing Standards Officer in respect of his/her duties under the alcohol licensing regime or the costs for the Board in administering the alcohol licensing regime. Copies of the Board's annual financial reports are available on the Council's website, accessible from the 'Law and Licensing' section.

## **Section 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 other things, what activities can be undertaken on the premises and the licensing hours.

### **Liaison with Licensing Standards Officers**

- 5.2 The Board expects that applicants for a grant, transfer or variation of a premises licence will liaise with the Licensing Standards Officer for their area as part of the application process. The Licensing Standards Officer can assist with advice and information on Board policy and liaison with the Council's licensing team. Contact should be made with the Licensing Standards Officer as early as possible in the application process. Contact details for the Licensing Standards Officers are available on the Council's website, accessible from the 'Law and Licensing' section.

### **Operating Plans**

- 5.3 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* (as amended) and should contain, amongst other things, the following information:
- (1) A description of all 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;
- (7) Information about the person who is to be the premises manager;
- (8) Information on the controls and management arrangements which are in place to control excessive noise from the licensed premises in relation to live and amplified music, patron noise and general activities (e.g. emptying glass bottles into bins etc.); and
- (9) Premises which intend to provide home deliveries of alcohol are reminded that they must include home deliveries as a specific activity on their operating plan. The Board will also encourage submission of details of how the deliveries will operate. These details should include the hours of delivery, the steps which will be taken to verify the age of the person ordering, payment arrangements and arrangements to protect the safety of those delivering alcohol. In addition, the licence holder should ensure that staff engaged in making deliveries of alcohol have received adequate training and that the statutory provisions in relation to the day book, delivery book and invoices are properly applied. The Board also reminds licence holders and premises managers that the 2005 Act prohibits the delivery of alcohol to any premises, other than licensed premises, between the hours of midnight and 0600 hours.

5.4 An application for a premises licence or provisional premises licence must also be accompanied by a disabled access and facilities statement. The prescribed form for this can be found on the Council's website, accessible from the 'Law and Licensing' section. Failure to provide such a statement is not a good ground for refusing an application, but it does mean that the application cannot be processed.

### **Fit and Proper Person Test**

5.5 When the Board is determining an application for a premises licence, the Board may now refuse the application if they believe, having regard to the licensing objectives, that the applicant is not a 'fit and proper person' to be the holder of a premises licence. If they do so then they must state the licensing objective that the ground for refusal relates to. In addition, 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 of refusal that the application would be inconsistent with one or more of the licensing objectives. Similar provisions also apply to applications for personal licences, and the transfer and review of a premises licence.

### **Offences**

- 5.6 When the Board receives a notice of conviction in relation to a premises or personal licence holder (or a person connected to the premises licence holder) they must initiate a review of the licence and only need to hold a hearing where the Chief Constable has made a recommendation that it is necessary. Where the Chief Constable has not made such a recommendation then the Board may either make a premises licence review proposal, (and hold a hearing), or decide to take no further action in relation to the conviction.

### **Other Matters**

- 5.7 The Board expects licensed premises to be operated in a manner which will promote the five licensing objectives. In addition to the matters set out in **5.3** above, it is essential that applicants provide a written statement with their application which specifically describes the practical arrangements to be implemented in order to achieve each of the licensing objectives, as appropriate in terms of the size and nature of the premises. In particular, this statement should describe the arrangements for protecting children and young persons from harm.

- 5.8 The Board expects applicants to have regard to the following issues in addressing the licensing objectives:

(i) **Preventing Crime and Disorder**

- An effective crime prevention strategy;
- Staff training in 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). In particular the Board will expect the Operating Plan to include arrangements for referral to Police Scotland when the use or supply of drugs on the premises is suspected;

- An effective violence reduction strategy available for inspection. This could include matters such as a glassware policy, anti-violence awareness patrols by staff in premises, toilet supervision, dispersal policy at the end of core hours. 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/ Police Scotland;
- 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 hour 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); and
- f) inspecting all parts of the premises for patrons (e.g. toilets).

## **(ii) Securing Public Safety**

- Licensees must make regular assessments of the occupancy level of the premises as the maximum level approaches and must apply appropriate control measures to ensure that the maximum level is not exceeded. The licensee should keep written records of the control measures applied in these circumstances and keep them available for inspection by the Licensing Standards Officer or other relevant officer.
- All licensed venues, other than premises open for the main purpose of providing a meal, to have an effective weapons and drugs search policy;
- All licensed venues, other than those premises open for the main purpose of providing a meal, to have an effective glass management policy - which will include the use of toughened or plastic glasses to reduce the possibility of injury; regular clearing of all glassware; and, with the exception of premises which have dedicated outside drinking areas, prohibition of patrons taking glassware outside the premises;
- An effective policy on dealing 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.
- An effective fire evacuation policy and be able to demonstrate training and test evacuations;
- An effective accident recording system;
- The Board supports the use of CCTV systems and encourages licensees to use these wherever possible.

## **(iii) Preventing Public Nuisance**

- All licensed premises, particularly those providing amplified music or speech, should have a policy on minimising noise pollution, which should include having all servicing and deliveries undertaken at times suitable to the local community (see **10.2** and **11**);
- All licensed premises providing live or amplified music must have effective arrangements in place to overcome disturbance to other properties outwith the licensed premises from excessive noise emissions (see **10.2** and **11**);

- All licensed premises should demonstrate their commitment to a cleaner environment in and around their premises, for example, by the provision of cigarette bins, etc.

**(iv) Protecting and Improving Public Health**

- All licensed premises should display anti-drunkenness materials, as appropriate to their premises along with information on units of alcohol in the context of recommended guidelines.

Free materials are available at:

[www.alcohol-focus-scotland.org.uk](http://www.alcohol-focus-scotland.org.uk); [www.noidnosale.com](http://www.noidnosale.com)  
[www.infoscotland.com/alcohol](http://www.infoscotland.com/alcohol); [www.drinkaware.co.uk](http://www.drinkaware.co.uk)  
[www.saferScotland.co.uk](http://www.saferScotland.co.uk)

- 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. The Board acknowledges that smoking is not a licensing matter but one for other legislation. The Board agrees that licence holders will be aware of their own statutory responsibilities concerning smoking in public places.

**Comment [MG2]:** Proposed addition – see Response 6.

**(v) Protecting Children and Young Persons from Harm**

- An effective policy in regard to preventing sales of alcohol to persons under the legal age;
- A designated member of staff, responsible for ensuring that the policy is appropriately applied in the premises;
- All premises and occasional licence holders must have an age verification policy in relation to the sale of alcohol on their premises. The law has set a minimum age of 25 years for the policy where it appears to the person selling the alcohol that the customer may be under the age of 25 years. As a result, customers in any premises licensed for the sale of alcohol, including pubs, clubs, restaurants, supermarkets, shops and any licensed community venue should be asked to produce proof of age identification where they appear under the age of 25 to prove that they are over the age of eighteen and can lawfully purchase alcohol;
- The Board encourages the use of a refusals register where all refusals of service are recorded; and

- Specific details of the arrangements in place for looking after children.

**NOTE:** Where reference is made to the requirement of a policy or plan in this section, a copy of those documents should be submitted with the application.

## Section 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 It is for the Licensing Board to determine the "localities" within the Board's area for the purposes of the 2005 Act and in doing so the Board may determine that the whole of the Board's area is a locality
- 6.4 In considering whether there is overprovision in any locality as described above, the Board **must** have regard to the number and capacity of licensed premises in the locality and **may** have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality.
- 6.5 Having conducted an extensive consultation exercise in 2015/2016, the Board reached the view that there were no particular areas which should be regarded as separate localities for the purpose of assessing possible overprovision.
- 6.6 Further, at their meeting on 17<sup>th</sup> November 2015, the Board agreed that there was no overprovision within the Argyll and Bute Council area, but agreed that overprovision should be monitored and reviewed in the 5 identified locations of Campbeltown, Dunoon, Helensburgh, Oban and Rothesay, particularly in regard to off-sales, and that these areas be designated as "areas of concern" in terms of overprovision; to be monitored through regular and robust reporting systems.

## Section 7: Capacity of Premises

- 7.1 For the purposes of an overprovision assessment, the operating capacity of licensed premises will be particularly important. The

definitions of operating capacity for off-sales and on-sales premises are set out in Section 147 of the 2005 Act:

#### Off-Sales

*'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

*'the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time'.*

- 7.2 The Board will determine capacity in accordance with Building Standards Regulations. Applicants are advised to consult with Argyll and Bute Council's Building Standards Service if they are in any doubt as to the capacity of their premises.
- 7.3 The Board will also have discretion to impose capacity limits on specific areas within the licensed premises (e.g. function rooms) as appropriate, in consultation with Argyll and Bute Council's Building Standards Service.
- 7.4 As detailed at **5.8(ii)**, licence holders are encouraged to have a policy that details how occupancy will be managed at any given time - having regard to maximum capacity. This should specify the provisions in place for monitoring the number of persons present to ensure that the occupancy capacity is not exceeded. Licensees must make regular assessments of the premises as the maximum occupancy level is approached and must apply appropriate controls to ensure that level is not exceeded.

## **Section 8: Licensing Hours**

### **General Issues**

- 8.1 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.

### **Off-Sale Premises**

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

## On-Sale Premises

- 8.3 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 **11am**. Applicants need to demonstrate a clear operational need for opening prior to 11am.

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 licensing objectives, the presumption against 24 hour drinking, the guidance for Licensing Boards and Local Authorities issued by the Scottish Government and that mandatory conditions specified by Regulation apply to those premises opening after 1am, 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	1am

Premises that wish to be open outwith standard hours must demonstrate measures that promote the licensing objectives.

## Seasonal Variations

- 8.4 Applicants should be aware that the Board anticipate that applicants will only apply for the licensed hours that they intend to operate. 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 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.
- 8.5 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. For guidance, the Board is likely to consider the following variation acceptable:

*'The Management reserve the right to open the business one hour later than the commencement of licensed core hours or close one hour earlier than termination of core hours on any day of the week during winter months i.e. 1<sup>st</sup> October to 31<sup>st</sup> March.'*

## Principal Activity

- 8.6 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.

- 8.7 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.

### **Terminal Hour**

- 8.8 The Board is aware that there is a strong view against allowing later terminal hours 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 and young persons;
- the proposed hours when any music, including incidental music will be played;
- the hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises;
- the existing hours of licensable activities and the past operation of the premises, if any;
- 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 generally more likely to be associated with crime and disorder and public nuisance than restaurants, cinemas or other performance venues.

- 8.9 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.

### **Early Opening**

- 8.10 The Board considers that the commencement of on-sales of alcohol before 11am is likely to be inconsistent with the licensing objective protecting and improving public health. Exceptionally the Board may allow early opening to permit the provision of breakfast facilities for shift workers from nearby factories, markets, etc.

- 8.11 On a case-by-case basis the Board may agree to the hours starting at or before 11am. if the licence holder satisfies the Board that there is a need for this, arising from the particular circumstances of the premises. The Board would expect evidence, and not simply anecdotal evidence, that there is an actual need for the hours already licensed.

8.12 Where applicants seek the grant or variation of a premises licence to permit on-sales before 11am:

(a) The Operating Plan will have to indicate an intention to provide certain facilities, e.g. the provision of cooked meals throughout the early opening period (snacks and crisps are not considered to constitute 'meals');

(b) The applicant will require to satisfy the Board that there is a demonstrable demand from patrons to provide those facilities. It is not sufficient to refer generally to 'customer demand'. What is required is evidence that there is a quantifiable demand.

8.13 If the Board is later satisfied that early opening is not appropriate in a particular premises, it may seek to review the premises licence on the basis that early opening is not consistent with any of the licensing objectives.

#### **Extended Hours Applications**

8.14 In order to allow sufficient time for processing the application and to ensure timescales are met for the requisite consultations, an application for extended hours should be submitted at least **35 days** prior to the date of the proposed event. Where an application is submitted between **35 and 28 days** of the date of the proposed event then no guarantee will be given that the application will be processed and determined in sufficient time. Any application received within **28 days** of the proposed event will be automatically returned.

8.15 Upon submission of an application, the Board may extend the licensed hours in respect of a 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:

- a special event or occasion to be catered for on the premises;  
or
- a special event of local or national significance.

8.16 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 detailed information to enable a decision to be made. This will include:

- a) the hours sought;
- b) a 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;

## Section 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.

9.2 An occasional licence has effect for such a period of not more than 14 days as the Licensing Board may determine.

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.

### Festive Hours

8.17 The Board will agree annually the specific dates over the Christmas and New Year period, between which it will consider applications to extend on sales licensed hours. These dates will normally cover a period of approximately three weeks over the festive period.

8.18 There will be a general presumption in favour of extending licensing hours during the specified period however extended hours applications **must** be with the Board at least **35 days** prior to the date on which the extended hours event is being held. This timescale is to allow for statutory reports the Board must consider in determining each application. Due to the volume of applications received during this period, this Policy will be strictly adhered to and any applications received later than the 35 day period will be automatically returned.

8.19 Prevailing local late night conditions will still apply, such as the night-time curfew, curtailment of music at a certain time and stewarding. Similarly, normal restrictions relating to children (such as the terminal hour on all other nights covered by this "relaxation") will still apply. Children will also be allowed to attend family events under parental supervision until 0100 hours on 31st December/1st January to welcome the New Year.

8.20 The Board will aim to notify the dates and policy approach for the next festive period to licensees and to Police Scotland prior to the end of August.

### Urgent applications

8.21 The Board may reduce the time period for receiving comments from the Chief Constable and the Licensing Standards Officer in respect of an application from 21 days to a minimum of 24 hours where the Licensing Board is satisfied that the application requires to be dealt with as a matter of urgency (e.g. catering for a funeral).

**Comment [MG3]:** See Response 4 – correction of minor typo.

- 9.3 The 2005 Act does not provide a definition of what constitutes a voluntary organisation. In assessing whether an organisation is a voluntary organisation, the Board will have regard to the tests set out in the guidance available from the Scottish Council for Voluntary Organisations. A copy of the relevant guidance is attached as **Annex 4**. A copy of the organisations constitution will require to be submitted along with the application for an occasional licence.
- 9.4 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.
- 9.5 The Board expects that an occasional licence will be operated in such a manner as to be consistent with the five licensing objectives. With this in mind, an application for an occasional licence will require to include a brief statement by the applicant of what measures they intend to have in place to address each of the licensing objectives. Further guidance will be provided in relation to this matter along with the application process but it is intended to cover matters such as an ID scheme, provision of a soft drinks area for young persons, a dispersal policy, regular toilet checks and so on.
- 9.6 In order to allow sufficient time for processing the application and to ensure time scales are met for the requisite statutory consultation and advertising, an application for an occasional licence should be submitted at least **35 days** prior to the date of the proposed event. Where an application is submitted between **35 and 28 days** of the date of the proposed event then no guarantee will be given that the application will be processed and determined in sufficient time. Any application received within **28 days** of the proposed event will be automatically returned.
- 9.7 The Board considers that activities such as dances, discos, 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, quiz nights or private parties are generally 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.
- 9.8 The applicant should specify the area to which they intend the sale and consumption of alcohol under an occasional licence to apply. This may require in certain activities associated with the event requiring to be licensed under other licensing regimes (e.g. a Public Entertainment Licence). It is the duty of the applicant to enquire whether additional licensing controls are applicable. The Licensing Standards officers can offer guidance on this matter.

9.9 The Board considers the commencement of the sale of alcohol should normally be no earlier than 11am.

9.10 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 entertainment –*

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

*Where there is entertainment -*

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

9.11 Where an application seeks licensed hours which are outwith the Board's policy, then the applicant will require to provide clear and detailed justification as to why the additional requested hours are appropriate and necessary in the particular circumstances.

9.12 Every occasional licence is subject to the mandatory conditions prescribed by the 2005 Act. These cover matters such as:

- All premises and occasional licence holders must have an age verification policy in relation to the sale of alcohol on their premises. The law has set a minimum age of 25 years for the policy where it appears to the person selling the alcohol that the customer may be under 25 years. Customers in any premises licensed for the sale of alcohol should be asked to produce proof of age identification where they appear under the age of 25 years to prove that they are over the age of 18 and can lawfully purchase alcohol.
- Tap water fit for drinking must be available free of charge;
- An occasional licence issued to a voluntary organisation must be in relation to an event in connection with that organisation's activities, e.g. fundraising.

9.13 In addition to the foregoing, the Board will also consider whether it is necessary to impose additional local conditions to promote the licensing objectives. The following are proposed as standard core local conditions, some or all of which **may** be attached to an occasional licence:

1. Children are defined in the Act as a person under the age of 16 years and young persons are defined as being 16 and 17 years old. All children under 16 years of age must be supervised by a responsible adult, who must be at least 18 years of age, for the duration of the event.

2. No admission to the event after midnight.
3. Where young persons are to be admitted to the event, there must be a separate area for the sale of soft drinks.
4. The licence holder must be familiar with the legal requirements of selling alcohol under the occasional licence and shall ensure that all persons selling or serving alcohol are aware of their duties and responsibilities.
5. Licensed Stewards must clearly be identified by badges, armbands or a recognisable uniform and be appropriately trained.
6. The number of persons permitted entry to the premises shall not exceed the approved capacity limit for the premises.
7. The volume of any music or live performance should be gradually reduced at least 30 minutes prior to the terminal hour, at which time it must cease.
8. No-one will be permitted entry to the event with alcohol.

9.14 For major events (e.g. music festivals, Cowal Games, the Mod) the Board may decide to apply ad-hoc local conditions depending on the scale and nature of the event.

9.15 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 is conscious, however, that such persons are in charge of events where alcohol is being dispensed and sold and may be running a number of such events during the course of a year. Having regard to the licensing objectives, the Board will impose a condition on the grant of occasional licences which will require any person selling, pouring or delivering alcohol in terms of the occasional licence to either hold a training qualification, or alternatively to be trained to the standard prescribed in the *Licensing (Training of Staff) (Scotland) Regulations 2007*. The Board will impose such a condition on events such as weddings, birthday parties and other celebratory events or concerts or large public events where the consumption of alcohol often forms a significant aspect of the occasion. The Board will not impose it on small community events, such as PTA fundraisers, where the consumption of alcohol is ancillary to the event. The determination of whether such a condition should be imposed is delegated to the Chair of the Board, in consultation with the Clerk.

**Comment [MG4]:** Proposal to delete this paragraph – see consultation Responses 2 and 7.

#### **Public Entertainment Licences**

9.16 Premises with a premises licence or an occasional licence for the sale of alcohol under the 2005 Act have both up until now been exempt from the requirement also to hold a public entertainment licence. However, for premises with only occasional licences, that exemption

has been removed i.e. when an occasional licence is in force it will not negate the requirement for a public entertainment licence and/or late night catering licence issued under the *Civic Government (Scotland) Act 1982* where appropriate.

### **Urgent Applications**

- 9.17 There is a provision within the Licensing (Scotland) Act 2005 which enables the Board to reduce the length of time required to receive comments from the Chief Constable and the Licensing Standards Officer in respect of an application for an occasional licence. The period is reduced from 21 days to a period of not less than 24 hours where the Licensing Board is satisfied that the application requires to be dealt with quickly (e.g. catering for a funeral).

### **Premises with a Provisional Licence – Additional Requirements**

- 9.18 The Board recognises that holders of provisional premises licences are legally entitled to apply for occasional licences for the premises to which the provisional licence applies. In recent years, this mechanism has increasingly been used by provisional licence holders as a means of enabling them to open their premises for the sale of alcohol before they are ready to apply for confirmation of the provisional licence.
- 9.19 The Board is concerned that in circumstances where the provisional licence holder is not yet in a position to apply for confirmation, this may strongly indicate that the condition of the premises themselves is such that they are not yet suitable for use for the sale of alcohol. This in turn may raise issues of public safety for patrons frequenting the premises to consume alcohol or buy alcohol to take away.
- 9.20 Consequently, and in order to verify that there is no risk to public safety as a result of the condition of the premises, the Board will require any holder of a provisional licence who applies for an occasional licence for the premises to which the provisional licence applies to submit, with their application for the occasional licence, either a building standards certificate containing the information prescribed in Section 50(6) of the 2005 Act, or a permission for the temporary occupation or use of the premises granted under Section 21(3) of the *Building (Scotland) Act 2003*.
- 9.21 It is recognised that in all cases where an occasional licence is sought the Board must satisfy itself, amongst other things, that the condition of the premises is such that they are suitable for the sale of alcohol and there is no risk to public safety. The Board would normally rely on Police Scotland and the Licensing Standards Officer to verify this when they are consulted on the application. However, for the reasons given above, it is considered appropriate and reasonable that this additional form of verification (submission of a building standards certificate or a permission for temporary occupation or use) is provided by the applicants in the case of premises with a provisional licence but not yet ready for confirmation of the provisional licence.

## Section 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 2005 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 expects 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:
  - Alcohol must not be sold on the premises at a price below its minimum price;
  - A package containing 2 or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale on the premises;
  - Where the price at which any alcohol sold on the premises is varied, the variation must only be brought into effect at the beginning of a period of licensed hours, and no further variation may be brought into effect before the expiry of a period of 72 hours, beginning with the coming into effect of the earlier price variation.
  - An irresponsible drinks promotion must not be carried on or in connection with the premises. This will include promotions aimed at persons under 18, supply of free or reduced price alcoholic drinks (eg. buy 1 get 1 free), supply of unlimited amounts of alcohol for a fixed price, encouraging patrons to buy or consume a larger measure of alcohol than they had otherwise intended to buy or



- Tap water fit for drinking must be provided free of charge on request and other non-alcoholic drinks must be available for purchase at a reasonable price in all on-sales premises.
- There must be an age verification policy in relation to the sale of alcohol on the premises.
- The licence holder must pay the recurring fees for holding the licence, as required.
- In on-sales premises, a reasonably visible sign should be displayed stating whether persons under the age of 18 years are permitted on the premises and on which parts of the premises they are permitted to be (where relevant).
- Where on-sales premises are to admit children under the age of 5 years old, there are to be on the premises facilities for baby changing which are to be accessible to persons of either gender.
- Any premises which operate after 1am on any occasion must have a person trained to the satisfaction of the Licensing Board in administering first aid on the premises from 1am until the premises close.

### **Mandatory Conditions – Certain Premises**

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

- (a) will regularly provide at any time in the period between 1am and 5am:
  - (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 1am until the premises close;
- (2) there must be effective 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 and properly maintained;
- (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 1am until the premises close.

## **Section 11: Discretionary Conditions**

- 11.1 Noise: If required by the Board to do so, licensed premises must provide a documented noise management plan submitted to and agreed by the Licensing Board to control noise nuisance to the nearest sensitive noise receptors.
- 11.2 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.

## **Section 12: Public Awareness Materials**

- 12.1 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 are in a 125ml, 175ml and 250ml glass and relate that to the daily/weekly recommended limits. Most of these materials are available from health boards and connected associations free of charge.
- 12.2 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.

## **Section 13: Access by Children & Young Persons to Licensed Premises**

### **General Principles**

- 13.1 The Board wishes to encourage family friendly licensed premises where there is an environment where families can socialise safely together. The Board will therefore generally welcome applications from those who wish to operate licensed premises which accommodate children and young persons. It is important that measures are put in place to ensure that children admitted to on-licensed premises are not exposed to harmful drinking practices, therefore where premises elect to allow children and young persons onto the premises, they need to ensure that they are protected from harm and are catered for appropriately in doing so. The Board also recognises that some activities associated with premises that sell alcohol for consumption on the premises may, in certain circumstances, give rise to concerns for the health and welfare of children and young persons.
- 13.2 The Board is committed to protecting children and young persons from harm. Licensees making applications for premises licenses or variations to the terms on which children and young persons are permitted access to premises will therefore need to demonstrate to the Board how they will promote this particular licensing objective.
- 13.3 Licensees must include within the operating plan consideration as to whether the premises are suitable for children and young persons. Children are defined in the Act as a person under the age of 16 years and young persons are defined as being 16 and 17 years old. If children and young persons are to be admitted, adequate standards need to be in place to ensure the venue provides a safe and suitable environment. The Board would expect an applicant to demonstrate an understanding of the additional responsibilities placed on them when children and young persons are on the premises and to demonstrate that suitable and sufficient measures are in place to protect children and young persons from harm. Failure to fully address this issue may result in the Board refusing to allow access for children and young persons, particularly when the primary purpose of the premises is the supply of alcohol.
- 13.4 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.

### **Particular Activities**

- 13.5 The Board strongly recommends that children and young persons should not have unsupervised access to pool tables, dart boards or gaming machines in licensed premises. 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.

### **Terminal Hour – Bar Counters**

- 13.6 Where children and young persons are permitted entry to premises, the Board may place a limit on the hours when they can be present. Children under the age of 16 must be excluded from any room where there is a bar counter after 10pm except during private functions, for the purpose of viewing live entertainment, or where the child is in the room for the purpose of taking a meal. This will not apply to any child who is in the bar solely for the purpose of passing to or from some other part of the premises being a part to or from which there is no other convenient means of access or egress. The Board will require that whilst in any room with a bar counter all children must be in the company of, or supervised by, an appropriate responsible adult (unless the children are those of the licence holder or children who are resident on the premises). In addition, children must not be permitted to sit or remain at the bar counter at any time.

### **Terminal Hour – Meals**

- 13.7 The terminal hour for children and young persons on licensed premises will generally be 10pm **but only if** they are accompanied by an appropriate responsible adult over the age of 18 years **and** they are on the premises for the purposes of taking a meal. It may be that young persons can remain on the premises beyond this hour but that will be a matter for the Board to determine on an individual basis having regard to factors such as the nature of the establishment, the type of facilities provided, etc. as detailed below.
- 13.8 In relation to premises which are family-orientated and operate principally for the provision of food (where 75% or more of the floor area is given over to dedicated restaurant facilities), the Board is of the view that the terminal hour **may be** extended by the Board beyond 10pm (with the exception of any bar area), if the licence holder demonstrates that this is justified and that suitable and sufficient measures are in place to protect children and young persons from harm. In such cases the Board will generally only look to review, restrict or enforce the terminal hour set out in the Operating Plan where there is a concern that the protecting children from harm objective is not being met.

### **Terminal Hour – Private Functions**

- 13.9 Where a private function (e.g. wedding, christening, birthdayparty, etc.) is being held on a licensed premises and children and young persons are to be attending the function, then the Board is of the view that it is generally permissible for children and young persons to remain for the duration of the private function provided due regard is had to the licensing objective of protecting children and young persons from harm.

### **Terminal Hour – Outside Drinking Areas**

- 13.10 The default terminal hour for children and young persons in outside drinking areas will be 8pm unless otherwise agreed by the Board (see **15** below). However where licensed premises are hired for the exclusive use of a pre-booked event and if the premises are not in close proximity to residential areas, then a later terminal hour is likely to receive positive consideration by the Board.

### **Baby Changing Facilities**

- 13.11 The Board reminds licence holders that it is a mandatory condition that premises admitting children under 5 years old have baby changing facilities accessible to both genders.

### **Age Verification**

- 13.12 The Board further reminds licence holders of the mandatory condition to have an age verification policy in place setting out the steps which are to be taken to establish the age of a person attempting to buy alcohol if it appears to the person selling the alcohol that the customer may be under the age of 25 years old (or such older age as may be specified in the policy).

## **Section 14: Off-Sales Premises**

- 14.1 In respect of premises which sell alcohol solely 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 clearly identify the alcohol display area by delineating it in the layout plan and it will then be for the Board and the applicant to agree on the defined area. In particular, the Board may determine that in certain premises (e.g. supermarkets, mini-markets, etc.) the display area should not be located close to the entrance of the premises or checkout areas. 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, etc.

**Comment [MG5]:** Consider re-wording of this paragraph in line with comments in Response 2.

- 14.2 In relation to the opening hours of such premises, the Board may impose a terminal hour prior to 10pm as stipulated in the 2005 Act. Each case will be taken on its merits but the Board is concerned to ensure that the licensing objectives relating to preventing crime and disorder, protecting children and young persons from harm, protecting and improving public health, and preventing public nuisance, in particular, are promoted and will consider carefully whether later opening hours, up to 10pm, can be justified.

## **Section 15: Outside Areas**

- 15.1 In any outside area, whether or not applicants propose to provide outside seating, tables and other facilities (covered or otherwise), regard should be had to the need to ensure that the use of such areas will not cause disturbance or nuisance to the occupiers of neighbouring premises.
- 15.2 If no significant issues are identified, the default terminal hour for outside areas will be 10pm, but for children and young persons it will be 8pm. However, if any significant issues are identified the Board may decide to impose an earlier terminal hour or to require the implementation of effective management controls in the interests of public order or public safety. Outside areas will be permitted to operate for sale and/or consumption of alcohol no earlier than 11am.
- 15.3 The Board expects an operating plan to include or exclude the use of an outside 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 should be incorporated within the operating plan. In particular, sufficient additional staff to supervise the area must be provided as required.
- 15.4 Depending on the location, nature and size of the premises, licence holders may be required to delineate the outside area by some appropriate means such as a wall, bollards, markers, etc. to distinguish between licensed premises and public areas. 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 outside area after a specified time each evening.

### **Pavement Cafés**

- 15.5 For the purpose of this section, pavement cafés are considered to be tables and chairs placed on public pavements where food and/or drink can be consumed by customers.
- 15.6 The Board may specifically require that all tables, chairs, parasols and other moveable furniture must be cleared from any outdoor drinking area within 30 minutes of the conclusion of the permitted hours applicable to that outside drinking area. In addition, tables in that area must be regularly cleared of all used crockery and glassware.
- 15.7 The Board expects that premises licence holders will not only comply with any conditions relevant to the pavement café area of their premises, but will also put in place effective management controls, supervision and other measures to ensure that the use of such areas by patrons or by any other persons does not have a negative impact in the vicinity or obstruct the public footpath. The Board will take a robust approach with any premises licence holder in breach of a relevant condition or who does not have effective management controls in place.

- 15.8 It is the responsibility of the applicant to ensure that they obtain any planning consent that may be required for the pavement café area. In addition, the applicant must have regard to and comply with the terms of the Pavement Café Guidelines issued by Argyll and Bute Council's Roads and Amenity Services.

## **Section 16: Procedures for Applications, Objections, Hearings**

- 16.1 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
  - (e) the Health Board
- 16.2 Any person may submit an objection or representation to the Board. The objection must relate to one of the 5 licensing objectives and relate to specific premises.
- 16.3 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.

## **Section 17: Attempts to Influence Board Members**

- 17.1 It is an offence for an applicant to attempt to influence a member of the Board; this will include approaches from a third party on behalf of an applicant. It should be noted that elected members have a dual role; acting as elected members of Argyll and Bute Council and as appointed members of the Licensing Board which is a separate legal body, with a specific role and responsibilities.
- 17.2 If this situation arises the Board Member will immediately report the matter to the Clerk to the Board. The Clerk will in turn notify Police Scotland and if proceedings are brought for the alleged offence the Board will not determine the application until after the proceedings are concluded. If the applicant is convicted of the offence, the Board may refuse to consider the application.

## **Section 18: Licensing Register**

- 18.1 The Board's Clerk will maintain a Register which contains information in relation to premises licences, personal licences and occasional licences issued by the Board. The Register also contains information in relation to decisions of the Board .
- 18.2 The Register is available for perusal on Argyll and Bute Council's website or can be made available during normal working hours at the Clerk's office, Kilmory, Lochgilphead.

## **Section 19: Local Licensing Forum**

- 19.1 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 in writing 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.

## **Section 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 by members of the public, the club 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 (amongst others): 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 Police Scotland 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;
  - 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 the Board's policy in relation to occasional licence applications, which will be applied to members clubs.

## Section 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 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, 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.

## **Section 22: Licensing Standards Officers**

- 22.1 There are 2 Licensing Standards Officers employed by Argyll and Bute Council. These officers are separate from the Licensing Board and their role is to provide guidance to interested parties; ensure compliance by the holders of premises licences and occasional licences; and to provide mediation to avoid or resolve disputes. They will also participate

in the Argyll and Bute Local Licensing Forum.

- 22.2 The Licensing Standards Officers will work with the public, the Council's partners, the Alcohol and Drugs Partnership and the business community in seeking to promote the 5 licensing objectives and ensuring compliance with the law.
- 22.3 Licensing Standards Officers have a new general function of being able to provide information to licensing boards about the conduct of personal licence holders or applicants for a personal licence which is inconsistent with the licensing objectives. Licensing Standards Officers now also have 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 Board. Where a licensing board receives such a report, it may hold a hearing, but is under no obligation to do so.

### **Section 23: Duplication**

- 23.1 The Board is committed to avoiding duplication with other regulatory regimes so far as possible and will not use its powers under the Act to arrive at outcomes that can be more effectively achieved under other legislation or by other enforcement agencies.

### **Section 24: Relationship With Other Strategies**

- 24.1 The Board will endeavour to secure proper integration with other strategies, including:
- ✓ Local crime prevention
  - ✓ Alcohol and drugs strategy
  - ✓ Community safety
  - ✓ Joint HealthProtection Plan
  - ✓ Planning
  - ✓ Transport
  - ✓ Tourism
  - ✓ Equality and
  - ✓ Cultural strategies.

## ANNEX1: SETTLEMENT & ISLAND POPULATIONS ARGYLL AND BUTE

SETTLEMENT	POPULATION
Ardishaig	1,290
Bowmore	720
Campbeltown	4,670
Cardross	2,110
Dunbeg	610
Dunoon	9,140
Garelochhead	3,700
Helensburgh	15,610
Innellan	1,210
Inveraray	560
Kilcreggan	1,270
Lochgilphead	2,300
Oban	8,490
Port Bannatyne	1,140
Port Ellen	810
Rosneath	1,240
Rothesay	4,390
Tarbert	1,130
Tighnabruaich	520
Tobermory	1,010

<b>ISLAND</b>	<b>POPULATION</b>
Bute	6,498
Coll	195
Colonsay	124
Danna	1
Davaar	-
Easdale	59
Erraid	1
Gigha	6
Gometra	2
Inchtavannach	3
Innischonan	5
Iona	177
Islay	3,228
Jura	196
Kerrera	34
Lismore	192
Luing	195

Lunga (Luing)

-

<b>ISLAND</b>	<b>POPULATION</b>
Mull	2,800
Oronsay	8
Sanda	-
Seil	551
Shuna (Luing)	3
Tiree	653
Ulva	11
<b>Total</b>	<b>14, 942</b>

## **ANNEX 2: Argyll and Bute Licensing Board Hearing Note of Procedure for Review of Premises Licences/Personal Licences**

1. The Chair will welcome everyone, outline this procedure and confirm that the Licence Holder and all other parties accept the hearing procedure.
2. The Chair will invite the Licence Holder or their agent to confirm their status, the nature of the application and any initial comment.
3. The Chair will then ask for statements in support of any reports lodged e.g. from Police Scotland, Licensing Standards Officer, etc.
4. Any party that has made a representation, or their agent, will be given the opportunity to speak in support of their case.
5. The Licence Holder, or their agent, will have the opportunity to question the party making the representation, or their agent, on matters related to the representation.
6. The Licence Holder, or their agent, will be given the opportunity to speak in support of their licence.
7. Any party making a representation, or their agent, will have the opportunity to question the Licence Holder, or their agent, on matters relating to their presentation.
8. Members of the Board, through the Chair, may ask questions of any party.
9. The parties making representations, or their agents, will have the opportunity to sum up.
10. The Licence Holder, or their agent, will have the opportunity to sum up.
11. The Chair will confirm that everyone has had a fair hearing.
12. The Board will debate the application and may decide to retire at any time during the Hearing to receive advice or to deliberate on the application. The Board will then determine the application in the presence of all parties.
13. In cases where a period of suspension is ordered, the Licence Holder, or their agent, will be given the opportunity to be heard in relation to the commencement date and the duration of the suspension.
14. The Board will debate and determine the commencement date and the duration of the suspension.
15. Parties will be advised verbally of the decision and notified that written confirmation will be received from the Clerk to the Board within 7 days.

## **ANNEX 3: THE ARGYLL AND BUTE LICENSING BOARD SCHEME OF DELEGATION**

### 1. Delegation to the Clerk or Depute Clerk of the Licensing Board:

- 1.1 The Board agreed that decisions in respect of the following matters are delegated to the Clerk or the Depute Clerk of the Licensing Board or person(s) appointed to assist the Clerk (where stated). It was noted that the Clerk and Depute Clerk may elect not to use their delegated powers in a particular case, in which case the matter will be referred to the Licensing Board.
- 1.2 Any application for a minor variation of a premises licence (Section 29 of the 2005 Act).
- 1.3 Any application to substitute a new premises manager (Section 31 of the 2005 Act).
- 1.4 Any application to transfer a premises licence where the transferee has not been convicted of any relevant or foreign offence.
- 1.5 Any application for confirmation of a provisional licence where no variation (other than a minor variation) has been made to the operating plan or layout plan for the premises to which the licence relates since the provisional licence was issued or since a variation of the provisional premises licence was granted.
- 1.6 Any application for a personal licence or renewal of a personal licence where the applicant has not been convicted of a relevant or foreign offence and the Chief Constable has not recommended that the application be refused.

### 2. Delegation to the Chair of the Licensing Board (in the event of the Chair being unavailable for any reason, the delegation is to the Vice-Chair):

- 2.1 Any application for an occasional licence where no objections or representations have been received nor a notice recommending refusal from the Chief Constable or any report from the Licensing Standards Officer recommending refusal.
- 2.2 Whether to impose a condition in relation to the grant of an occasional licence which requires any person selling, pouring or delivering alcohol in terms of the occasional licence to either hold a training qualification, or alternatively be trained to the prescribed standard, as detailed at **9.15**. In exercising this delegated power, the Chair shall consult with the Clerk of the Board.
- 2.2 Any application for extended hours where no objections or representations have been received nor a notice recommending refusal from the Chief Constable or any report from the Licensing Standards Officer recommending refusal.



### 3. Delegation to the Chair and one other Member:

- 3.1 Any application for an occasional licence or extended hours which has attracted representations or objections shall be determined by the Chair and one other Member of the Board in conjunction with the Clerk or Depute Clerk in the first instance. If there is no consensus, a third Member can be consulted.

### 4. General:

- 4.1 Any matters which are not the subject of a specific delegation in terms of this Scheme of Delegation and not prescribed by the *Licensing (Scotland) Act 2005* shall be determined by the Licensing Board at a meeting arranged by the Clerk in consultation with the Chair of the Licensing Board.

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## ANNEX 4: SCOTTISH COUNCIL OF VOLUNTARY ORGANISATIONS

### Defining Voluntary Organisations; What is a voluntary organisation?

SCVO defines voluntary organisations as non-profit driven, non-statutory, autonomous and run by individuals who do not get paid for running the organisation. Some voluntary organisations are recognised by the Inland Revenue as charities.

There are no agreed hard and fast rules for distinguishing the boundary line between voluntary and other organisations. However, the following exclusions are based on the notion that the voluntary sector represents a unique value system. Even within the set of organisations that hold to this value system, there are particular exclusions made for pragmatic reasons. Exclusions

There are two key tests that we have used to distinguish voluntary organisations from other organisations:

*Does the organisation represent a for-profit driven rather than public benefit motivation?*

*Does the organisation aim to satisfy an exclusive and private objective (or conviction) rather than a shared benefit?*

The first test excludes the following:

- Private sector organisations – A key feature of voluntary organisations is that they are ultimately directed by individuals who do not make their living from their involvement in running the organisation. This naturally excludes most private sector businesses.
- Financial institutions – such as large building societies and friendly societies (eg Standard Life). These organisations are mutuals, but their overriding aim is to generate profit, rather than address a social need.

The second test excludes the following:

- Political parties and groups campaigning on a method of governance rather than to address a particular social need. It can be argued that at the grand level of things, political groups set up to address social need in its widest sense and are thus voluntary associations. However, public opinion has long determined that political activity is not seen as a public, rather than private, objective, and as such political parties are conventionally considered distinct to the voluntary sector. Nevertheless, certain civic participation groups and pressure groups campaigning on a specific social need, on behalf of excluded groups are included.

- Note that there are a significant number of Scottish charities set up as quangos or quasi non-governmental organisations. These organisations are essentially controlled by the public sector and set up by statute. Consequently, they also cannot be regarded as voluntary sector.

Academic sector, such as universities and colleges are also excluded. It is argued that these organisations are predominantly funded by the public sector.

- Faith based organisations, such as churches which are charitable, have a primarily religious motivation. Some faith-based organisations also set up projects that are separately constituted to address specific social needs, and these are included as voluntary sector. However, religious activity in isolation is not regarded as voluntary sector as it is an exclusive and private objective, similar to political motivation.
- Organisations officially recognised as trade unions are excluded from our definition on pragmatic grounds. The main trade unions have their own voice as a sector and are often politically motivated. However, some smaller unions of individuals, such as professional associations or business support groups are included in this voluntary sector definition.
- Private independent schools – some private schools are financially exclusive. Even if they redirect all their profit back into the school, they are arguably not driven for public benefit. Those schools which are clearly not aimed at public benefit are excluded from our voluntary sector definition.

Other terms used to describe the sector

The 'social economy' is a term increasingly used in relation to the voluntary sector. The phrase social economy is used to describe the economic dimension of voluntary sector activity. But while it can lead to a policy focus on some specific parts of the sector, it is not limited to those organisations that most closely emulate private sector operations known as social enterprises.

The 'Third Sector' is another term used to refer to the voluntary sector. A perspective based on work carried out by the CBS Network (2002) defines the Third Sector as all constituted organisations, plus the family economy, as set apart from the statutory and private sectors, and as such voluntary organisations are predominant within it. Regulated voluntary sector.

The 'regulated voluntary sector' is a subset of the voluntary sector, that comprises voluntary sector charities, housing associations and credit unions. Each of these type of organisation is subject to regulation and their presence is thus recorded by the UK Inland Revenue, Communities Scotland or the UK Financial Services Authority respectively. This makes it possible to carry out a more detailed statistical analysis of this part of the sector. All statistics in this almanac specifically relate to the regulated voluntary sector, unless otherwise indicated.