

Consultation on:

**Licensing (Scotland) Act
2005 – Section 142
Draft Revised Guidance for
Licensing Boards**

March 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

Consultation on: Licensing (Scotland) Act 2005 – Section 142

Draft Revised Guidance for Licensing Boards

Background

1. The main piece of legislation that controls the sale of alcohol in Scotland is the [Licensing \(Scotland\) Act 2005](#) (the Act).

Further primary legislation that has impacted upon the licensing regime in Scotland, since the introduction of the Act, includes:

- [Alcohol etc. \(Scotland\) Act 2010](#)
- [Criminal Justice and Licensing \(Scotland\) Act 2010](#)
- [Alcohol \(Minimum Pricing\) \(Scotland\) Act 2012](#)
- [Air Weapons and Licensing \(Scotland\) Act 2015](#)

2. As well as the above primary legislation, the licensing regime in Scotland is also underpinned by secondary legislation. The Scottish Ministers have powers under the Act to make secondary legislation to supplement the Act and these powers are exercised from time to time.
3. A range of secondary legislation, related to alcohol licensing, has been made since the first guidance was issued. The Act, the associated explanatory notes and the regulations and orders made under the Act can be viewed at the Office of the Public Sector Information (OPSI) website at the following address: - <http://www.opsi.gov.uk/legislation/scotland/about.htm>
4. Operation of the Licensing system is the responsibility of Licensing Boards, which are independent regulatory bodies governed by the Act. Councils elect members from among their councillors to form their Licensing Board, which is a completely separate legal entity from the Council.
5. Licensing Boards are primarily responsible for regulating the sale of alcohol to the public within their particular area. The Licensing Boards carry out a range of functions. For example, granting and reviewing licences to sell alcohol.
6. Under section 142(1) of the Act, the Scottish Ministers may issue guidance to Licensing Boards as to the exercise of their functions under the Act. In the exercise of their functions, a Licensing Board must have regard to guidance issued to them by the Scottish Ministers under that subsection of the Act.
7. The Scottish Parliament approved the first draft of 'Guidance for Licensing Boards' on 7 March 2007 and it was then issued to Licensing Boards on 4 April 2007.
8. The Scottish Ministers may modify any guidance issued by them under section 142(1) of the Act.

9. The Scottish Government is continuing to work towards reviewing and improving licensing law and practice, which includes modifying guidance and Regulations to bring them up to date, and to ensure that they are fit for purpose.
10. The initial guidance for Licensing Boards has not been substantially amended since it was issued to them. The current guidance can be viewed at [Licensing \(Scotland\) Act 2005 - Section 142: Guidance for Licensing Boards](#). To provide clarity for Licensing Boards we are committed to updating the existing guidance, aiming for it to reflect the range of relevant primary and secondary legislation enacted since the initial guidance was issued.
11. Scottish Government officials, with assistance from a working group formed from members of the Council of the Scottish Region of the Institute of Licensing and others, such as Alcohol Focus Scotland and other health professionals, have reviewed the existing guidance and have prepared a 'Draft Revised Guidance for Licensing Boards', which is included at Annex A.
12. The Council of the Scottish Region of the Institute of Licensing includes Local Authority Licensing Solicitors/Clerks from The Society of Local Authority Lawyers and Administrators in Scotland – Licensing Working Group (SOLAR) and representatives from the NHS, Police Scotland, trade solicitors, Licensing Standards Officers and a licensing advocate.
13. A non-prescriptive approach has been taken to drafting the revised guidance, with the intention of affording Licensing Boards the flexibility to operate and take decisions in light of their particular circumstances. The draft revised guidance does not seek to instruct Licensing Boards exactly how to exercise their functions under the Act. It is simply intended to assist Licensing Boards as they carry out their responsibilities under the Act. Scottish Ministers wish Licensing Boards and their Clerks to be creative and innovative and to implement the Act in a way that best meets local needs and circumstances.
14. Scottish Ministers must lay any subsequent guidance issued by them under Section 142(1) of the Act before the Scottish Parliament.

Purpose of this Consultation

15. The purpose of this consultation is to invite views on the 'Licensing (Scotland) Act 2005 – Section 142 Draft Revised Guidance for Licensing Boards – v 0.1', included at **Annex A**.
16. For the avoidance of any doubt, it should be noted that there is no requirement for this particular version of the draft revised guidance to be laid before the Scottish Parliament and it does not have legal effect for Licensing Boards at this stage. Any subsequent revised guidance, once it has been finalised, will be laid before the Scottish Parliament prior to it being issued. Furthermore, we are not seeking comments on the Licensing (Scotland) Act 2005 or any associated primary or secondary legislation in this particular consultation.

17. The draft revised guidance is a technical document issued specifically for Licensing Boards to support them in the exercise of their functions under the Act. One of the purposes of the guidance is for the Scottish Ministers to give guidance to Licensing Boards on the effect of the complex areas of, and interactions between, the legislative provisions. Respondents to this consultation should be mindful of this and that the guidance cannot go beyond what the legislation provides for and is focused on providing further explanation of the legislation.
18. Although the guidance is for Licensing Boards, others such as, local authorities, Police Scotland, Local Licensing Forums, Licensing Standards Officers and the licensed trade and their representatives may find it useful.
19. We would welcome comments on:
- 1 - any areas within the draft revised guidance which you found were unclear.
(Please specify the paragraph number. We would also welcome suggestions of alternative wording, for our consideration.)
 - 2 - other issues which you believe should be taken into account within the draft revised guidance

Responding to this Consultation

20. We are inviting responses to this consultation by 11/06/2019.
21. Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/justice/draft-revised-guidance-for-licensing-boards>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 11/06/2019.
22. If you are unable to respond using our consultation hub, please complete the Respondent Information Form to: Licensing.Consultation@gov.scot or

Criminal Law, Practice and Licensing Unit,
Scottish Government,
GW15.
St Andrew's House,
Edinburgh, EH1 3DG

Handling your response

23. If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

24. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any requests made to it under the Act for information relating to responses made to this consultation exercise.
25. If you are unable to respond via Citizen Space please complete the Respondent Information Form included in this document at **Annex B**.
26. To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

27. Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.
28. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

29. If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at Licensing.Consultation@gov.scot

Scottish Government consultation process

30. Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.
31. You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.
32. Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:
 - indicate the need for policy development or review
 - inform the development of a particular policy
 - help decisions to be made between alternative policy proposals
 - be used to finalise legislation before it is implemented.

33. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

**Annex A - Consultation on: Licensing (Scotland) Act 2005 – Section 142
Draft Revised Guidance for Licensing Boards**

**Licensing (Scotland) Act 2005 – Section 142
Draft Revised Guidance for Licensing Boards
- v 0.1**

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1. Introduction

This revised Guidance has been prepared and issued in accordance with section 142 of the Licensing (Scotland) Act 2005 ('the Act'). It updates and replaces the earlier Guidance issued to Licensing Boards in April 2007. This updated Guidance reflects the range of secondary legislation that has been approved by Parliament since the first version was issued.

The Act, the associated explanatory notes and the regulations and orders made under the Act can be viewed at the Office of the Public Sector Information (OPSI) website at the following address: -

<http://www.opsi.gov.uk/legislation/scotland/about.htm>

This Guidance is a technical document issued specifically for Licensing Boards to support them in the exercise of their functions under the Act. It should be read alongside the Act.

One of the purposes of it, is for the Scottish Ministers to give Guidance to Licensing Boards on the effect of the complex areas of, and interactions between, the legislative provisions. In some areas the Guidance is therefore necessarily detailed so as to provide as much assistance as possible to those exercising functions under the Act and those who are subject to the provisions of it.

Although this Guidance is for Licensing Boards, others such as local authorities, Police Scotland, Local Licensing Forums, Licensing Standards Officers and the licensed trade and their representatives may find it useful.

Section 142 of the Act provides that, in carrying out its functions, a Licensing Board must have regard to Guidance issued by Ministers under that section. However, it is recognised that the Guidance cannot anticipate every possible scenario that may arise. Licensing Boards may therefore depart from the Guidance if they have reason to do so. If Licensing Boards depart from the Guidance, section 142(4) of the Act requires that they must give the Scottish Ministers notice of the decision together with a statement of reasons for it. Departure from the Guidance may give rise to an appeal or judicial review, and the reasons given could be relevant if the courts are asked to consider the lawfulness of any decision taken.

2. The licensing objectives

2.1 The licensing objectives are the central most important principles of the Act. They act as five central pillars which underpin multiple processes in the licensing system. Duties are placed on Licensing Boards and licence holders in relation to the objectives. Licensing Boards, for example, are required to ensure their policy statements seek to promote these objectives. Licence holders can be subject to consequences under the Act if their conduct is inconsistent with these objectives. Applications can be refused by the Licensing Board if the granting of the licence would be inconsistent with one or more of the licensing objectives. The five licensing objectives are:

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

Each licensing objective has equal weighting in terms of the Act and should have equal weighting in terms of the Licensing Board's policy statement as well as the Licensing Board's consideration of individual applications.

What are the licensing objectives?

2.2 The licensing objectives should be viewed as an ongoing aspiration as opposed to a fixed standard. Knowledge and understanding of how to promote the objectives will necessarily evolve over time, informed by local experience. The purpose of "objectives" in that wider sense is that these are goals to be achieved and continually worked towards. Decisions of a Licensing Board should be in accordance with their current licensing policy statement, which can be updated in line with the objectives as the need arises.

2.3 The objectives are **licensing** objectives and therefore should not be seen as being a wider set of all-purpose "public interest" objectives that can be used to address perceived harms that lie outside the sale and regulation of alcohol, which the scope of the Act specifically relates to. This distinction serves to underline the parameters within which a Licensing Board should operate and stay within its essential function of being the regulator of the sale and supply of alcohol from licensed premises. The remit of the Licensing Board, for example, should not include their having regard to matters which are regulated under other enactments such as planning or building standards.

2.4 However, whilst the primary purpose of the objectives is about alcohol, it should be noted that on a procedural level, the Act and relevant orders or regulations made under it sometimes refer to what might be seen as non-licensing matters, such as the requirement to produce a disabled access statement with a new premises licence application, or the requirement to state certain activities within an operating plan that are not necessarily linked to the sale or supply of alcohol other than they happen to occur on a premises where alcohol may be sold. Licensing Boards should be aware therefore that on that practical basis, they may have interaction with

matters which may not on the face of it directly relate to the sale of alcohol. For example, an application to vary the layout of an existing premises may have no impact at all on alcohol sales or consumption yet the Licensing Board still has a duty to follow the process set out in the Act as regards applications to vary a premises licence.

Preventing crime and disorder

2.5 This licensing objective relates to the prevention of crime and disorder as a result of the sale or supply of alcohol or irresponsible operation of licensed premises. This would include, for example, the occurrence of offences under the Act such as offences concerning children and young persons, drunkenness and disorderly conduct, as well as technical offences. It also relates to crimes such as breach of the peace and assault and other offences which may occur on premises, which may have occurred as a result of the irresponsible sale or supply of alcohol. Crime and disorder may occur in licensed premises which may not be a direct result of the sale or supply of alcohol. (See Parts 7 and 8 of the Act and Chapters 11 to 13 of this Guidance).

Securing public safety

2.6 This objective links to a duty placed on licence holders to ensure that the public are kept safe in relation to the sale or supply of alcohol or operation of licensed premises. This would include the premises itself being safe so far as it relates to the sale or supply of alcohol. The "public" in this context is not necessarily referable only to customers of a premises but may also include the premises' staff and passers-by or persons in the vicinity of a licensed premises. Matters that licence holders would have regard to in order to uphold this objective would include assessing vulnerabilities of their customers, monitoring patterns of sale or consumption and ensuring that there is positive interaction with the public.

Preventing public nuisance

2.7 This objective seeks to afford protection against public nuisance which arises from the irresponsible sale or consumption of alcohol, for example noise/nuisance arising from drunkenness. Whilst the operation of licensed premises does not of itself inherently create public nuisance, the Act recognises that nuisance from licensed premises can be a concern for local residents and communities and this objective therefore seeks to provide comfort that nuisance can be addressed where relevant. Not all noise from a licensed premises should be treated as a public nuisance for the purposes of this licensing objective. For example, noise associated with a ventilation or extractor fan used in a restaurant is a form of potential nuisance properly dealt with under separate regulatory regimes.

Protecting and improving public health

2.8 This objective prompts those involved in the licensing regime to consider the impact of the sale and consumption of alcohol on health. Alcohol is a drug and it has been licensed by Parliament because its consumption can have deleterious effects. The objective can be observed and promoted through steps to assess and counter

problematic consumption, which may have undesirable affects for individuals, families and wider society.

Licensing Boards are required to consult with the relevant Health Board¹ when preparing their statement of licensing policy and should take account of the issues that they raise.

Protecting children and young persons

2.9 Under the Act, a ‘child’ is someone under the age of 16 and a ‘young person’ is someone aged 16 or 17. This objective seeks to protect children and young persons from the negative effects of the consumption of alcohol. In furtherance of this objective, the Act creates a number of offences which relate to the sale or supply of alcohol and children and young persons (See Part 8 of the Act and Chapter 12 of this Guidance). In a wider sense, the presence of the objective underlines that the responsible operation of licensed premises is not simply about avoiding commission of these criminal offences but in ensuring that the environment or atmosphere of a premises where children or young people are to be admitted is a sensible, non-threatening one where children and young persons can be in the company of adults who are consuming alcohol. The objective also underlines wider licensing concerns such as “proxy purchases” where an adult may be irresponsibly obtaining alcohol to supply to a child or young person (See sections 104A and 104B of the Act and Chapter 12, paragraphs 12.16 to 12.19 of this Guidance), as well as concerns surrounding home deliveries.

Licensing objectives within the Act

2.10 The Act refers to the objectives throughout, and the Act creates different relationships between the objectives and various matters such as -

- Licensing Board’s licensing policy statements – the obligation is for the board to ensure that their policy **seeks to promote** the licensing objectives.
- Premises Licences – grounds for refusal of a premises licence, occasional licence or variation include where the granting of the application would be **inconsistent** with one or more of the licensing objectives.
- Premises Licences – grounds for refusal of a premises licence or transfer also include, where **having regard** to the licensing objectives, the Licensing Board consider that the applicant or the transferee is not a fit and proper person to be the holder of a premises licence.
- Premises Licence Conditions – a licensing board may impose such other conditions (i.e. other than the mandatory conditions) that they consider **necessary or expedient** for the purposes of any of the licensing objectives.

¹ Under section 147(1) of the Act, the “relevant Health Board”, in relation to a Licensing Board, means (a) the Health Board for the Licensing Board’s area, or (b) if the Licensing Board’s area forms part of the area of more than one Health Board, each such Health Board.

The same test applies to the attaching or variation of conditions on determination of occasional licence and extended hours applications.

- Premises Licence Reviews – The grounds for review of a premises licence include, where **having regard** to the licensing objectives, the Licensing Board consider that the licence holder is not a fit and proper person to be the holder of a premises licence. They also include **any other ground** relevant to one or more of the licensing objectives. The Licensing Board, if satisfied that a ground for review is established may take such steps as set out in the Act as the Licensing Board considers **necessary or appropriate for the purposes** of any of the licensing objectives.
- Personal Licence Reviews – a personal licence may be subject to a review if the Licensing Board make a finding in the course of a premises licence review that a personal licence holder acted **in a manner which was inconsistent** with any of the licensing objectives or the chief constable considers that a personal licence holder has acted **in a manner which is inconsistent** with any of the licensing objectives and makes a report to the Licensing Board. In determining a review the Licensing Board can take steps if satisfied it is **necessary** for the purpose of any of the licensing objectives or where **having regard** to the licensing objectives, they are satisfied that the person is not a fit and proper person to be the holder of a personal licence.
- Personal Licences – grounds for refusal of a personal licence include, where **having regard** to the licensing objectives, the Licensing Board consider that the applicant is not a fit and proper person to be the holder of a personal licence.
- Inspections - the Act empowers the police and Licensing Standards Officers to conduct inspections of premises to assess the **likely effect** of the grant of the application on the licensing objectives, or if an existing premises under review, the **effect** the selling of alcohol in accordance with the premises licence is having on those objectives.

2.11 Different tests create separate thresholds which require to be met before the licensing objective is engaged. For example, the test of "necessary or expedient" in relation to imposing a licence condition is different from "necessary or appropriate" in relation to whether to take any steps on the review of a licence. Similarly, the test at a review hearing for a premises licence is "necessary or appropriate", whereas the test/ground for refusal of a personal licence application at a review hearing is "necessary".

3. Licensing Boards

Licensing Boards

3.1 Licensing Boards are independent regulatory bodies governed by the Act. Councils elect members from among their councillors to form their Licensing Board, which is a completely separate legal entity from the Council.

3.2 Licensing Boards were first created by the Licensing (Scotland) Act 1976. Section 5 of the Act provides for the continuation of those Licensing Boards which were already in existence. That is both Licensing Boards for each council area or, where a council area has been divided into licensing divisions, a Licensing Board for each division.

The Act also allows any council whose area has not been divided into licensing divisions to subsequently make such a determination that their area is to be divided. Should they wish to do so, the existing Licensing Board is dissolved, and there will be a separate Licensing Board for each of the divisions. It also allows any council to revoke any previous determination they have made to divide their area into licensing divisions (whether under section 5(2) of the Act or under section 46(1) of the Local Government etc. (Scotland) Act 1994) however. If they decide to do so, there is to be a single Licensing Board for the whole of the council's area.

If a council decides to make any such determination or revocation they must notify Scottish Ministers accordingly, no later than 7 days after doing so and must publicise it in a manner as the council sees fit.

3.3 The Scottish Ministers have powers under the Act to make secondary legislation which supplements the Act, for instance in relation to the procedure that Licensing Boards are to follow or what is a 'relevant offence' for the purposes of the Act. These powers are exercised from time to time and this Guidance refers to such secondary legislation where relevant. Operation of the licensing system is the responsibility of Licensing Boards.

3.4 Schedule 1 of the Act makes provision about the constitution of Licensing Boards, their procedure and other administrative matters relating to them. Licensing Boards have wide discretion to determine appropriate licensing arrangements according to local needs and circumstances and their own legal advice.

3.5 Licensing Boards are listed in Part 3 of schedule 1 of the Freedom of Information (Scotland) Act 2002 as a Scottish public authority.

Fees

3.6 Section 136 of the Act enables the Scottish Ministers to make regulations to make provision for the charging of alcohol licensing fees by Licensing Boards in respect of applications under the Act, and otherwise in respect of the performance of functions by Licensing Boards, councils and Licensing Standards Officers under the Act.

3.7 The Licensing (Fees) (Scotland) Regulations 2007 (SSI 2007 No. 553)² set out the fees applicable.

3.8 Licensing Boards charge fees for a range of activities such as applying for premises licences, annual fees for premises licences, applying for personal or occasional licences, and transferring or varying existing licences.

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

3.10 After the fees regime came into force in 2008, stakeholders in the licensed trade queried the disparities between fee levels in different local authorities and suggested that Boards should be more transparent about these figures to demonstrate that their fees regime is based upon cost recovery (unless they choose to make a deficit).

Duties of Licensing Boards to produce Annual Reports

Functions Report

3.11 Section 9A of the Act places a duty on Licensing Boards to prepare and publish an annual report on the exercise of their functions no later than three months after the end of each financial year. This report must contain a statement explaining how the Licensing Board has had regard to the licensing objectives, and their licensing policy statement and any supplementary licensing policy statement (including the duty to assess overprovision) in the exercise of their functions during the financial year.

3.12 The report must also include a summary of the decisions made by (or on behalf of) the Licensing Board during the financial year, and information about the number of licences held under the Act in the Licensing Board's area (including information about the number of occasional licences issued during the year).

3.13 Licensing Boards may also wish to include such other information about the exercise of their functions under the Act as they consider appropriate. The report should be drafted with a central focus on explaining the work of the Licensing Board, during the relevant period, to local communities. The use of plain English should be promoted and information provided in a clear and concise manner wherever possible. Licensing Boards may wish to consider utilising web-links to direct interested parties to more detailed associated information.

² As amended by The Licensing (Fees) (Scotland) Amendment Regulations 2018 (SSI 2018 No. 256).

Financial Report

3.14 Section 9B of the Act places a duty on Licensing Boards to prepare and publish an annual financial report no later than three months after the end of each financial year. The report must contain details of the relevant income received by the Licensing Board during the financial year, details of the relevant expenditure incurred in respect of the Licensing Board's area and an explanation of how the amounts in the report were calculated.

3.15 Relevant income and relevant expenditure are defined in section 9B of the Act. For example, these would include details of relevant income received from premises licence fees and relevant expenditure incurred for the salary cost of a Licensing Standards Officer in respect of their duties under the alcohol licensing regime.

3.16 The Act provides Licensing Boards with the relevant powers to request information from the Council to assist them to prepare these reports and to publish a combined functions and financial report.

4. Statements of Licensing Policy

Background

4.1 This Chapter provides Guidance on the development and preparation of statements of licensing policy (referred to as a 'licensing policy statement'), which Section 6 of the Act requires every Licensing Board to publish, before the beginning of each 'licensing policy period'.

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

4.3 The 'licensing policy period' is the period between each relevant date.

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

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

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

4.6 Newly appointed Licensing Boards can use the policy inherited from their previous Licensing Board during the interim period, i.e. up to 18 months post local government election. The alignment of licensing policy statements to local elections allows the Licensing Board to take stock, take the views of others into consideration, gather evidence and set policy statements that reflect their views and aspirations.

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

4.8 The supplementary licensing policy statement will be with respect to the exercise of their functions during the remainder of that licensing policy period or until it is superseded by another supplementary licensing policy statement or new licensing policy statement.

4.9 In exercising their functions under the Act a Licensing Board must have regard to the current licensing policy statement and any relevant supplementary licensing policy statement, published by the Licensing Board. Licensing Boards may

wish to consider keeping the effectiveness and rationale of the licensing policy statement under review and to make revisions as and when appropriate.

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

4.11 Whilst delegation of certain functions is possible under paragraph 10 of schedule 1 of the Act, Licensing Boards cannot delegate responsibility for determining their licensing policy statement or supplementary licensing policy statements.

Licensing Objectives

4.12 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must ensure that the policy stated seeks to promote the 5 licensing objectives set out in the Act, which (as set out Chapter 2 of this Guidance) are:

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

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

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

A policy must also be consistent with the principles of what constitutes a lawful policy in general administrative law terms. Among other cases, in particular, see the comments made by Lord Weir in the case of **Elder v. Ross and Cromarty District Licensing Board** (1990) SLT 307–

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

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

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

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

Preparation of policy statements

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

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

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

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

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

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

Provision of statistical or other information:

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

- the chief constable;
- the relevant Health Board, or
- the relevant council.

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

What must be included:

4.19 In accordance with section 7 of the Act, Licensing Boards must, in particular, include a statement in their licensing policy statement as to the extent to which the Board considers there to be overprovision of licensed premises, or licensed premises of a particular description, in any locality within the Licensing Board's area. If a Licensing Board decides that there is no overprovision, they must include a statement to this effect (see Chapter 5 of this Guidance for further information).

What Licensing Boards might include in their licensing policy statement:

4.20 Considerations may include:-

- providing a clear indication of the Licensing Board's policy and may set out a general approach to the licensing process and the making of licensing decisions.
- stating clearly that licensing is about regulating the sale of alcohol and premises on which alcohol is sold, and for connected purposes within the terms of the Act.
- bearing in mind that no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence where such provision has been made in the Act.
- including a general statement on the role and remit of Licensing Standards Officers.

- including, in accordance with section 46(6) and (7) of the Act, a note which states that where an application is made for the confirmation of a provisional premises licence, that the Licensing Board may make a variation to the conditions for the purposes of “ensuring consistency with any licensing policy statement since the licence was issued”. This may be relevant if a supplementary licensing policy statement is subsequently issued after a provisional licence was issued.

Licensed Hours

- state that Licensed hours will be those agreed following the Licensing Board’s consideration of the operating plan and any mandatory and local licence conditions applied. Particular attention should be drawn to those premises wishing to open after 0100 hours since mandatory licence conditions will apply³. In developing its policy on licensed hours the Licensing Board may wish to take account of the views of others, for example those represented by the Local Licensing Forum.
- provide a clear indication of the Licensing Board’s policy in relation to licensed hours in general and outline any specific areas of the policy which may differ from that general policy e.g. where different policies may apply in different localities according to local circumstances, if appropriate. Evidence for the policy approach should be included.
- state that each application will be considered on its individual merits. Licensing policy statements should recognise that licensed hours are important not only to individual licensed premises but can have a wider impact for an area. For example, consideration should be given as to ways in which large numbers of customers leaving premises simultaneously can be appropriately managed. This might be necessary to reduce friction outside establishments, at taxi ranks and other transport sources, which can lead to disorder and disturbance. Licensing hours should not unnecessarily inhibit the development of local licensing economies.
- observe the requirement set out in section 64 of the Act which provides a presumption against routine 24 hour opening of licensed premises. In terms of Section 64(2) of the Act, the Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.
- Licensing Boards can consider the circumstances for extending hours, which may include extending hours for a special event or occasion to be catered for on the premises or a special event of local or national significance.

In such circumstances, the Licensing Board may extend the licensed hours in respect of the premises by such period as is specified in the extended hours

³ The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 (SSI 2007 No. 336) provides the mandatory licence conditions for late opening premises.

application or such other period as the Licensing Board consider appropriate. Such an extension of licensed hours has effect for such period as is specified in the application or such other period as the Licensing Board consider appropriate; but in either case the period must not exceed one month.

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

Relationship with other strategies

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

Transport

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

Tourism, planning and building control

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

Duplication

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

What should not be included:

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

5. The Overprovision Assessment

Introduction

5.1 This Chapter provides Guidance to assist Licensing Boards on the assessment of overprovision of licensed premises.

5.2 Section 7 of the Act requires Licensing Boards to include in their Licensing Policy Statement, a statement as to the extent to which the Licensing Board considers there to be an overprovision of:

- licensed premises, or
- licensed premises of a particular description,

in any locality within the Board's area.⁴

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

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

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

5.6 This approach:

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

⁴ As mentioned below at paragraphs 5.13 to 5.18, the Board 'locality' can include the whole of the Board's area as a single locality.

5.7 A statement regarding overprovision within a licensing policy statement has an important role. Overprovision is a ground for refusal of a premises licence application and for refusal of an application for a premises licence variation application.⁵ Where the licensing policy statement contains a statement that the Licensing Board considers that there is overprovision of licensed premises (or licensed premises of a particular description) in a locality then that creates a rebuttable presumption against the grant of an application.

5.8 A rebuttable presumption means that the applicant has to justify to the Licensing Board why their application should be granted despite the overprovision assessment in the licensing policy statement. As explained in more detail below in paragraph 5.37 of this Guidance, an overprovision assessment and the statement regarding overprovision in the licensing policy statement need to be based on evidence in order for that part of the policy to be valid and for the rebuttable presumption to be created.

Which licensed premises are to be included?

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

5.10 Furthermore, the Act applies differently, in some respects, to those members’ clubs which match the description set out in the Licensing (Clubs) (Scotland) Regulations 2007 (SSI 2007 No. 76). One of the ways the Act applies differently is that such members’ clubs are to be discounted by Licensing Boards when a Board is assessing overprovision. Annex 6 of this Guidance provides more detail on the way in which the Act applies to such members’ clubs.

5.11 All other licensed premises are to be included when considering whether there is overprovision of licensed premises generally, or licensed premises of a particular description.

5.12 Licensed premises of a particular description may be determined in terms of their styles of operation. Information may be gleaned from operating plans for this purpose. The Licensing Board should decide how it wishes to categorise premises by description. For example: they may consider utilising the definition of categories contained in the Town and Country Planning (Use Classes) (Scotland) Order 1997 (SI 1997 No. 3061) or other types of classification.

Determining localities

5.13 It is for the Licensing Board to determine the “localities” within the Licensing Board’s area for the purposes of the Act. Licensing Boards can determine that the whole of the Licensing Board’s area is a single locality. The choice of locality is

⁵ Sections 23(5)(e) and 30(5)(d) of the Act, respectively. See Chapter 8 of this Guidance for more on premises licence applications and for variations of premises licences.

flexible to reflect the different circumstances in different geographical areas throughout the country.

5.14 The choice of locality must, however it is done, be rational and capable of justification. Licensing Boards may wish to consider clarifying the reasons for their decision making in arriving at their locality choices.

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

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

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

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

Matters for the Licensing Board to have regard to when considering whether there is overprovision

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

- must have regard to the number and capacity of licensed premises in the locality/localities;
- may have regard to such other matters as the Licensing Board thinks fit including, in particular, the licensed hours of licensed premises in the locality/localities; and
- must consult the persons specified in section 7(4) of the Act (see paragraphs 5.25 to 5.29 of this Guidance for more on consultation requirements).

Capacity of licensed premises

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

5.21 Under section 147 of the Act, “Capacity”, in relation to licensed premises, means –

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

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

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

On-sales: Licensing Boards may wish to have regard to the parts of the Technical Handbook issued in support of the Buildings (Scotland) Regulations 2004 (SSI 2004 No. 406) which relate to occupancy capacity.

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

5.23 Licensing Boards should be consistent when using terminology for measurement.

Other matters as the Licensing Board thinks fit

5.24 Other considerations may include the relevant circumstances in the area or the proximity of specific types of premises, such as facilities for vulnerable adults with alcohol addiction issues.

Duty to consult and gather evidence

5.25 As mentioned above in paragraph 5.19 of this Guidance, Licensing Boards have a duty to consult when considering whether there is overprovision in any locality. For the purpose of the overprovision statement, the Licensing Board must consult –

- the chief constable,
- the relevant Health Board,

- such persons as appear to the Licensing Board to be representative of the interests of –
 - holders of premises licences in respect of premises within the locality,
 - persons resident in the locality, and
- such other persons as the Licensing Board thinks fit.

5.26 Licensing Boards should be aware that the consultees listed above differ slightly to those listed in their duty to consult on their licensing policy statement or supplementary licensing policy statement, outlined in paragraph 4.13 of this Guidance.

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

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

5.29 The consultation process may disclose that communities are affected only by licensed premises sharing certain characteristics: for example, a concentration of off-sales in a residential area. Therefore proper regard should be given to the contrasting styles of operation of different licensed operations and the differing impact they are likely to have on the promotion of the licensing objectives.

Assessing overprovision

5.30 Taking into account all the matters mentioned in paragraphs 5.19 to 5.29 of this Guidance, the results of all evidence gathering and the consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached.

5.31 Factors which the Licensing Board may take into account include:

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

- data supplied by the relevant health and/or social care body, for example, hospital admissions, alcohol related mortality or morbidity.

5.32 The overprovision assessment must be based on credible evidence of a causal link (see paragraph 5.37 of this Guidance for an explanation of this term) between the engagement of one or more of the licensing objectives and a concentration of licensed premises or of licensed premises of a particular description in a locality.

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

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

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

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

5.36 If a Licensing Board comes to a conclusion that there is a causal link between the alleged cause and the alleged alcohol related harm in a locality to such an extent that it would be clearly inconsistent with any of the licensing objectives, the Licensing Board should include details of this in their licensing policy statement, which incorporates the overprovision assessment. A Licensing Board may wish to express this in such a way that interested parties are left in no doubt as to the reasons for adoption of the policy, specifying the relevant locality, and including information on the evidence upon which the Licensing Board relied and the material considerations which were taken into account.

5.37 For a Licensing Board to make a finding that a harm will arise because of or in consequence of the sale of alcohol, there must exist a causal link between the alleged cause and the alleged harm. This is sometimes referred to as a 'dependable causal link'. The dependability of the 'causal link' is based on the quality and nature of the evidence used. In considering whether there is a 'causal link' the Licensing Board should assess whether, on a balance of probabilities, the harm identified is caused by the sale of alcohol in the locality. 'Balance of probabilities' is the standard of proof that courts apply in civil law matters (which includes licensing). It means that it is more likely than not that the sale of alcohol causes the harm.

5.38 The licensing policy statement or supplementary licensing policy statement (see section 6 of the Act and Chapter 4 of this Guidance) should identify the factors taken into account in the overprovision assessment and it should make it clear however that each application will be decided on its merits.

The effect of the overprovision assessment

Overprovision as a ground for refusal

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

5.40 As mentioned above at paragraph 5.7 of this Guidance, where the Licensing Board considers that there is overprovision of licensed premises (or licensed premises of a particular description) in a locality, that is a ground of refusal of a premises licence application and of a premises licence variation application. Where the licensing policy statement contains a statement that the Board considers there is overprovision then that creates a rebuttable presumption against the grant of an application. A rebuttable presumption means that the applicant has to justify to the Licensing Board why their application should be granted despite the overprovision assessment in the licensing policy statement.

5.41 Where the statement is that there is overprovision in respect of a particular locality, the rebuttable presumption exists in relation to that locality. For instance, if the Licensing Board considers that there is overprovision in locality A but not locality B, and an application is made for a new licensed premises in locality A the rebuttable presumption would apply. However, if the application was for a new licensed premises in locality B then there would be no presumption. Of course, one of the other grounds for refusal in section 23 of the Act may apply in respect of the application.

5.42 Similarly, if the statement was that there was overprovision of licensed premises of a particular description, the rebuttable presumption is in connection with applications for licensed premises of that description. For example, if the statement was that there is overprovision of off-licences in a locality, there is a rebuttable presumption against the grant of applications for new premises licences for off-licences. However, it would not be a presumption against an application for a different description of premises, such as a restaurant.

5.43 It is not necessary that the application has been objected to for the Licensing Board to refuse an application.

5.44 If a Licensing Board has determined that there is no overprovision in any locality, it is still entitled to refuse an application based on overprovision. This might be because the granting of applications subsequent to the making of the statement could result in the Board considering saturation point has been reached. If this is the

case, the Board may wish to consider whether they need to revise their overprovision statement.

Rebutting the presumption

5.45 The presumption is ‘rebuttable’, and is a ‘presumption’ meaning that there can be exceptions to the rule. However, it is for the applicant to justify a departure from the presumption and to satisfy the Licensing Board that the presumption should not be applied in the circumstances. There may be exceptional cases in which an applicant is able to demonstrate that the grant of the application would not undermine the licensing objectives, or the objectives would not be undermined if the applicant’s operating plan were to be modified or the grant of the licence was made subject to appropriate conditions.

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

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

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

The Licensing Board may not delegate certain functions

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

- determining for the purposes of any such statement, whether there is overprovision of licensed premises, or premises of any particular description, in any locality.

Summary

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

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

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

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

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

6. Local Licensing Forums

6.1 Local Licensing Forums have an important role to play. Section 10 of the Act requires every council to establish a Local Licensing Forum for their area (or, alternatively, a council may establish a Forum for each division if a council area is divided into licensing divisions). Section 11 of the Act sets out the general functions of such Forums and Section 12 of the Act sets out certain duties placed on Licensing Boards in respect of Forums.

6.2 Schedule 2 of the Act sets out the mandatory requirements for Local Licensing Forums in relation to matters such as the membership, convener, administrative support and meetings and proceedings of Local Licensing Forums.

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

Role of Local Licensing Forums

6.4 The role of the Local Licensing Forum is to keep under review the operation of the licensing system in their area along with the functions exercised by the Licensing Board and to give advice and recommendations to the relevant Licensing Board. This does not include reviewing or offering advice or recommendations in relation to any particular application or case before the Licensing Board. To facilitate this, the Local Licensing Forum is to be provided with copies of any relevant statistics, information and reports which they may request from the Licensing Board. Also, the chief constable must send a copy of a report annually to the Local Licensing Forum setting out their views on matters relating to policing in connection with the operation of the Act in the area, which should include any steps taken during the year, and the intentions for the following year, to prevent the sale and supply of alcohol to children and young people in the area. The Local Licensing Forum may also request a police officer to attend a meeting to discuss the report.

6.5 The Local Licensing Forum may participate as an independent body, for example, in the formulation of any licensing policy by providing its views to the Licensing Board as with any other stakeholder. Indeed, the Forum for a Licensing Board's area is a statutory consultee of the Licensing Board in respect of the formulation of the licensing policy statement and any supplementary licensing policy statement. The Local Licensing Forum may make suggestions as to the review of policy or procedural matters. The Local Licensing Forum may provide feedback on the various Licensing Board reporting functions.

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

of this should be agreed between and Licensing Board and the Local Licensing Forum at the earliest opportunity following the Licensing Board's appointment. These arrangements should be reviewed on a regular basis to ensure that they are meeting the needs of both the Licensing Board and the Local Licensing Forum. There is a mandatory requirement for a minimum of one formal meeting between the Licensing Board and the Local Licensing Forum annually.

6.7 The Act requires that a local Licensing Standards Officer (See Chapter 7 of this Guidance for more information on this role) must also be a member of the Local Licensing Forum, providing an important link to the operation of the system. The Act also requires that at least one of the members must be a member nominated by the relevant health board⁶ for the Local Licensing Board's area. Licensing Board members may also be invited to attend or to speak to the Local Licensing Forum. Further detail on the composition and membership of Local Licensing Forums is set out below.

6.8 Local Licensing Forums may wish to establish links with relevant bodies responsible for developing the local alcohol action plans and strategies to reduce alcohol related harm as well as organisations representing and supporting the responsible retail of alcohol (For example - Alcohol & Drug Partnerships, Community Planning Partnerships, Health & Social Care Partnerships, Pubwatch/Shopwatch). The organisations mentioned are illustrative as others may be relevant from time to time. Members of relevant bodies might be invited to sit on the Forum.

6.9 Licensing Boards may find it helpful to be aware that councils must provide support to Local Licensing Forums, as required for the Forum's purposes, to allow them to be effective in their role. Councils and Local Licensing Forums may find the following information to be useful:

The effective Forum: independent, expert, trusted

6.10 An effective Local Licensing Forum should be widely recognised as being both independent and expert. As such it will enjoy the trust of all those whose interests are affected by licensing.

6.11 To ensure independence, the Local Licensing Forum must develop an identity that is clearly separate from the Licensing Board or any other interest or group of interests. It must have the capacity to be impartial.

6.12 Local Licensing Forums will comprise a balanced representation of relevant interests and collectively will have knowledge of licensing matters. The Local Licensing Forum should be able to identify key licensing issues affecting their area and be able to develop constructive advice on how to address them. Forums may wish to consider gaining expertise, opportunities for learning and development in licensing for their members. Such opportunities may include training in licensing law (For example: Personal Licence Holder training, Licensing Board Member training), attendance at Licensing Board meetings, presentations from licensing stakeholders

⁶ If there is more than one Health Board in the area, the one whose area contains the larger, or largest part of the Local Licensing Forum's area will nominate the Health Board representative.

(Such as: Police Scotland, Licensing Standards Officers, the Health Board), and relevant reading materials.

6.13 The Local Licensing Forum must also strive to develop the trust of the Licensing Board and other 'constituencies of interest', such as licence holders, relevant agencies and bodies, young people and local residents by producing impartial and effective advice to the Licensing Board.

An inclusive approach to involvement

6.14 In terms of membership of Local Licensing Forums a broad aim is for there to be, so far as possible, a balanced representation of all 'constituencies of interest'. Paragraph 2 of schedule 2 of the Act sets out requirements as to membership of Local Licensing Forums. Forums are to consist of between 5 and 21 members, as may be determined by the relevant council.⁷ As already mentioned above, at least one of those members must be a Licensing Standards Officer for the council's area and at least one of the members must be a person nominated by the relevant Health Board. The other members are to be appointed by the relevant council. As mentioned, an aim of the legislation is for there to be a balanced representation of members, and paragraph 2(5) of schedule 2 of the Act places a duty on the relevant council to seek to ensure that the membership of the Forum is representative of the interests of persons or descriptions of persons who have an interest which is relevant to the Forum's general functions. In particular the Act provides that those persons include -

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

The above is not an exhaustive list. Membership can be drawn from other groups who have an interest.

6.15 Although membership can be drawn from elsewhere, those listed above are the five main suitable categories of appointees which the council must reach and engage in the process of setting up and maintaining the Local Licensing Forum. The council should strive to keep membership of the Local Licensing Forum under regular review to ensure balance and to optimise engagement. A range of methods to encourage/enhance membership will be needed to suit the different needs of participants:

- many licence holders and representatives of youth organisations and persons having functions relating to health, education or social work can be reached through representative organisations;

⁷ The relevant council here is the council for whose area the Forum is established, or if the Forum is established for a licensing division, for the area of which the division forms part

- in public agencies care should be taken to target the most appropriate officer, who might not necessarily be the chairperson or chief executive; and
- an innovative approach should be taken to engaging local communities, in addition to engagement through publicity, community councils, housing associations, and other local organisations. Publicity tools councils may wish to consider in establishing a Local Licensing Forum may include:
 - the local press and any associated public meetings.
 - leaflets to explain the role of the Local Licensing Forum and to give notice of public meetings.
 - leaflets and posters can be placed in shops, gyms, libraries and public buildings to reach the general public.
 - leaflets can be included with letters sent to licence holders, the police and other organisations, individuals and community organisations.
 - a dedicated page on the council's web site, with a prominent link from the home page, and/or the Local Licensing Forum's own web page to give details of the Local Licensing Forum.

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

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

6.17 Making sure potential members and members understand their role is crucial to the effective operation of the Local Licensing Forum. Schedule 2 of the Act provides the legislative requirements in terms of Membership, Convener, Administrative support and Meetings and proceedings. Preparing a document may assist in this regard, to collate relevant information in one place, which may include the above categories covered in schedule 2 of the Act and other matters not specified in the legislation, under headings, such as –

- name
- membership eligibility
- quorum
- membership; tenure
- office bearers
- convener's duties

- vice convener
- administrative support
- meetings
- conduct of meetings/business
- motions and amendments
- voting; committees/sub-committees
- agendas; minutes
- rescission of previous resolutions
- adjournment of meetings
- Annual General Meeting
- special meetings
- appointment and removal of office bearers
- resignation and dismissal
- non-attendance at meetings
- alterations to the constitution and powers to make or amend rules
- geographical boundary
- contact details

as deemed appropriate to the circumstances by the members of the Local Licensing Forum. A separate code of conduct for meetings may also be considered to be appropriate.

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

6.18 Establishing, supporting and maintaining an effective Local Licensing Forum is the responsibility of the council. Some actions which may assist in this activity include:

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

Choosing representatives

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

Achieving a culture of participation

6.20 Having created the pre-conditions for participation, it is thereafter important to manage meetings in an effective way. The key factors are:

- ***Preparation***

Opportunities should be offered for all the members to help compile agendas or raise items for discussion. If suggestions cannot find space on formal agendas, some other way may be found to deal with them. This will foster a sense of ownership of the business to be handled. Agendas should not be over-loaded. Tackling a realistic and achievable volume of business will help build a satisfying sense of accomplishment. Careful attention should be paid to the order of business, to ensure that the most important items can definitely be concluded. Agendas and papers should be circulated well in advance of meetings.

- ***Convening techniques***

The convener has the responsibility for making sure that all members are involved in discussions. There are some techniques that can be deployed including:

- ***"Round Robins"***: The convener asks members to spend a few minutes thinking about an issue and jotting down notes and ideas. Putting simple questions can help to focus thoughts. The convener then asks each member in turn for one idea, avoiding repetition, and recording the ideas on a flip chart. The process continues until everyone's ideas are recorded.
- ***"Brainstorming"***: This is particularly useful in generating 'new angles' on a topic. Unlike 'round robins', one person's idea may spark off new thinking as another person picks up and develops the first idea. The technique relies on people's ability not to judge ideas until a later stage in the process.
- ***Planning for Real***: This is the same technique as that used at public consultation meetings. Members use maps and voting cards to contribute ideas without the need to explain and justify them verbally and while preserving their anonymity. It is only applicable to situations where physical proposals are being discussed.
- ***Small Group Activities***: The Local Licensing Forum breaks up into smaller groups to discuss a particular topic and then report back later.

6.21 From time to time, it will be advisable to instigate a discussion which lets members air their views about how well things are progressing and whether they feel their involvement is worthwhile.

Management of business

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

Communication

6.23 Good communications are essential for the successful operation of the Local Licensing Forum, both in relation to its own internal business and its place in the opinions of the public. There is a need to systematically identify what communication needs exist, and then draw up an action plan which may include:

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

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

Summary

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

7. Licensing Standards Officers

7.1 Licensing Boards should be aware that the Act requires local authorities to appoint at least one Licensing Standards Officer in their area. The Act sets out that a person can be a Licensing Standards Officer for more than one council area.

7.2 Licensing Boards can rely on Licensing Standards Officers having a good understanding of the needs and aspirations of the licensed trade and work to build respect for the role by the judicious application of their powers. Licensing Standards Officers will require to be able to work with persons from every background.

7.3 The general functions of Licensing Standards Officers for a council area are -

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

Information and guidance

7.4 It is anticipated that Licensing Standards Officers will be the first port of call for most matters pertaining to licensing. Licensees will make requests about applications and the general working of the legislation and local policies. The public will require information to enable them to make representations, to object or complain within the terms of the legislation. Local Licensing Forums and other interested parties may also require information and guidance from Licensing Standards Officers.

7.5 Licensing Standards Officers do not give legal advice or make applications, objections or representations on behalf of any party. It is not anticipated that Licensing Standards Officers will be legally qualified, although this would not be a barrier to application.

7.6 Each Local Licensing Forum must contain at least one Licensing Standards Officer who will attend meetings as a member of the Forum. Licensing Boards

should be aware that Licensing Standards Officers may consider forming links with other groups such as substance misuse partnerships and trade/regulatory partnerships. A Licensing Standards Officer should keep the Local Licensing Forum and Licensing Board up to date with any new initiatives which may have an impact on the licensing objectives or licensing policy.

Compliance

7.7 Licensing Standards Officers will require to ensure that licensees carry out their business in a manner which complies with licensing legislation, regulations and local policies. The legislation contains wide ranging powers to enable Licensing Standards Officers to monitor compliance.

7.8 Where a Licensing Standards Officer believes a premises licence is not being operated in an appropriate manner, the Licensing Standards Officer should make an initial assessment of the situation with a view to making necessary changes to ensure compliance.

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

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

7.10 The Licensing Standards Officer's role in no way impinges on the role of the police who will still be the responsible enforcing authority for criminal matters. Licensing Boards may wish to know that it may be considered as good practice for Licensing Standards Officers to keep in touch with the police to ensure that any enforcement action contemplated by a Licensing Standards Officer did not harm any ongoing police investigation of the premises or persons connected to the premises.

Information to Licensing Boards

7.11 In determining applications for personal licences, an important element is the notification process requiring Licensing Boards to notify the chief constable and appropriate Licensing Standards Officer of all applications. The notification process allows the Licensing Standards Officer to give the Licensing Board any information in relation to the applicant that they consider relevant for the Licensing Board to consider. Licensing Standards Officers can also provide such information in relation to existing personal licence holders.

Mediation

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

Reporting to Licensing Boards

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

7.14 Where a Licensing Standards Officer believes that one or more of the conditions relating to a premises licence or occasional licence has been breached, they have the power to issue a notice to the licence holder requiring them to take action to remedy the breach, as may be specified in the notice. If, in the case of a premises licence, the notice is not complied with to the satisfaction of the Officer, they can submit a premises licence review application to the relevant Licensing Board in respect of the licence. Licensing Standards Officers also have the power to make an application for review of a premises licence on any other competent ground for review.

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

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

Training

7.17 Licensing Boards may wish to be aware that each Licensing Standards Officer must undertake a course of training accredited by the Scottish Ministers within 18 months of being appointed to their role. It is essential that Licensing Standards Officers also receive ongoing training and are permitted to take part in relevant Continuous Personal Development opportunities.

Training for Licensing Standards Officers should deliver:

- an understanding of licensing issues
- knowledge of provisions of legislation
- understanding of appropriateness of enforcement measures
- understanding of consequences of enforcement actions
- understanding of the principals of better regulation
- the balance between the interests of the public and the licensee
- an understanding of health issues
- ability to understand and interpret documentation
- negotiation skills
- ability to deal confidently with enforcement issues
- record keeping and writing skills
- presentation skills
- communications skills

It should ensure that Licensing Standards Officers shall have:

- a sound understanding of licensing and other related legislation and regulations including interpretation of policies.
- a sound understanding of the business of the licensed trade.
- genuine awareness and understanding of the rights of neighbours
- knowledge of the rights and duties of the licensee.
- an understanding of the extent and limits of their role.
- an appreciation of when to advise parties that professional legal or other advice should be sought.
- an ability to manage conflict
- an understanding of the application of discretion
- an understanding of the Licensing Board's Statement of licensing policy as it relates to the 5 Licensing Objectives

and should provide Licensing Standards Officers with skills to:

- be confident working with a range of people
- understand the risks of working in situations where alcohol is a significant feature
- remain calm and professional during difficult encounters
- communicate effectively and build rapport under pressure
- use a range of options for managing conflict, when dealing with others who may be upset, aggressive or showing signs of difficult behaviours
- understand the personal safety issues involved in carrying out their role
- understand how to resolve disputes using dispute resolution
- remain impartial
- mediate
- problem solve

National Licensing Standards Officers Group

7.18 Licensing Boards may wish to be aware of the existence of the National Licensing Standards Officers Group which engages with Licensing Standards Officers across the country to share issues and best practice, and liaise with other agencies to encourage partnership working.

8. Premises Licence

Background

8.1 The premises licence is a specific licence for premises which sell alcohol, either on-sales or off-sales (or both). This Chapter concerns premises licences and includes Guidance on the provisional premises licence and temporary premises licence. However, the occasional licence and the personal licence are considered in Chapters 9 and 10 of this Guidance respectively.

Each licence is tailored to specific premises by the applicant's completion of additional documents, namely, the "**operating plan**" and the "**layout plan**".

Licensing Boards would expect that when an applicant applies for a new premises licence their application must include a description of the subject premises, be accompanied by the operating plan for the premises along with the specific layout plan for the premises and the relevant certificates in relation to planning, building standards and food hygiene. Applicants must also include their Disabled Access and Facilities Statement with their application for a premises licence. Failure to submit it will render the application invalid.

The operating plan should set out clearly the applicant's proposals, including among other things, the activities that would be undertaken on the premises, proposed opening hours including licensed hours and, for on-sales premises, their policy in relation to access for children and young persons.

The layout plan of the premises should show, among other things, the area where alcohol will be sold, seating arrangements and areas suitable for children and young persons. The form of the operating plan and layout plan are set out in the Premises Licence (Scotland) Regulations 2007 (SSI 2007 No 452)⁸ made under the Act.

There are statutory forms covering premises licence applications, operating plans and Disabled Access and Facilities Statements. The appropriate application form and fee should be available on the relevant local authority and/or Licensing Board's website(s).

Once granted, the premises licence will be subject to various licence conditions. There are national mandatory licence conditions, which have been set by the Scottish Ministers, and there are local conditions that could be added by the local Licensing Board. Conditions are extra rules that the licence holder must abide by and trade in accordance with.

Failure to abide by conditions may result in a review of the licence by any person, a Licensing Standards Officer or Licensing Board.

Licensing Boards should note that the Act allows anyone to apply to the Licensing Board for a review of the licence on any of the grounds set out in section 36 of the Act.

⁸ As amended by the Premises Licence (Scotland) Amendment Regulations 2018 (SSI 2018 No. 49).

A review may result in a written warning being issued to the licence holder, a variation of the licence, the licence being suspended for a period determined by the Licensing Board or the licence being revoked. A Licensing Board can also resolve to take no action on consideration of a review.

Licensing Boards should be aware of the above and other requirements in relation to premises licences, which are set out in more detail throughout the remainder of this Chapter of this Guidance.

Operating plans and layout plans - (Accompany the premises licence application)

8.2 Applications must include an operating plan and a layout plan. Section 21(4) of the Act sets out what should be contained in an operating plan, and the prescribed form of operating plans is set out in schedule 5 of the Premises Licence (Scotland) Regulations 2007 (SSI 2007 No. 452).

Operating plans should make clear to the Licensing Board how the premises are to be run, will set out what activities may be undertaken on the premises and at what times they may be undertaken, and who is to be the premises manager so long as the licence is in operation.

8.3 In preparing an operating plan, Licensing Boards will expect that applicants should be aware of the terms of the licensing policy statement of the relevant Licensing Board and should have particular regard to the Licensing Objectives. This does not mean however that applicants should check their operating plans with others, such as the police or the Licensing Board, before submitting the application. When uncertain, Licensing Standards Officers may provide guidance but they cannot assist with completion of the application form. Licensing Boards may wish to be aware that applicants may well seek independent legal advice on completion of a new premises licence application, and this may be beneficial.

8.4 Licensing Boards should be aware that a licence holder is under a duty to comply with the terms of the operating plan, layout plan and conditions attached to a premises licence. Failure to do so may result in a review of the premises licence.

Opening hours (including licensed hours)

8.5 What hours should applicants apply for?

In applying for licensed trading hours the onus is on the applicant to apply for those hours which will regularly be the best fit for the business and the Operating Plan. Where it is envisaged that there will be times of the year when a different set of Licensing Hours are required due to such matters as seasonal fluctuations of business then this should be incorporated under a seasonal variation in the operating plan.

Do Licence holders need to trade for all the hours that they applied for ?

Following any grant of a licence the licence holder should endeavour to trade according to what they have applied for. However no sanction ought to be taken against Licence Holders for temporary departures from the licensed hours caused by

unforeseen circumstances such as illness, bereavement, inclement weather conditions. Licensing Boards and Licensing Standards Officers should be pragmatic in such circumstances.

8.6 It should be understood by Licensing Boards that running a business in many cases is not an exact science and there may be reasons for deviation from licensed hours from time to time, but in circumstances that are not so predictable as to be able to be captured within a seasonal variation; for example a Highland Hotel near a ski resort experiencing an unusually mild winter causing a severe shortfall in their expected trade. However where it becomes the case that deviation from licensed hours that lessen the hours traded becomes the established and regular pattern of trade then it is incumbent upon the Premises Licence Holder to apply to the relevant Licensing Board for a variation of their licensed hours. A lessening of licensed hours is now sympathetically enabled in terms of costs by way of minor variation⁹, however extending hours would not be considered a minor variation.

Disabled Access and Facilities Statements

8.7 Applications for a premises licence or provisional premises licence will also require to be accompanied by a Disabled Access and Facilities Statement.

A Disabled Access and Facilities Statement should contain information regarding provision made for access to the premises by disabled persons, the facilities provided on the premises for use by disabled persons and any other provision made in relation to the premises for disabled persons.

8.8 Disabled Access and Facilities Statements should follow the style set out in the Premises Licences (Scotland) Regulations 2007 (SSI 2007 No. 452)¹⁰. Non statutory Guidance for applicants has also been issued by Scottish Government to assist with the preparation of Statements and is available at <https://www.gov.scot/publications/licensing-scotland-act-2005-guidance-completing-disabled-access-facilities-statement/>

Provisional premises licences

8.9 A premises licence application may be made in relation to premises which are being constructed or converted for use as licensed premises. A premise licence granted for such premises is referred to as a "provisional premises licence". A provisional premises licence has no effect until confirmed by the Licensing Board. The licence has to be confirmed within 4 years otherwise it will automatically be revoked. The 4 year period can be extended if the construction or conversion work of a premises is delayed for reasons outwith the licence holder's control. The procedure for handling these and confirming provisional premises licences are set out in sections 45 and 46 of the Act.

⁹ Regulation 2(b) of the Licensing (Minor Variations) (Scotland) Regulations 2011 (SSI 2011 No. 151) provides that a reduction of hours is a minor variation – provided that it does not result in the premises opening any earlier or closing any later than stated in the premises licence and operating plan.

¹⁰ The form is set out in schedule 6 of the Premises Licences (Scotland) Regulations 2007 (SSI 2007 No. 452), which was inserted by the Premises Licence (Scotland) Amendment Regulations 2018 (SSI 2018 No. 49).

Temporary premises licences

8.10 A premises licence application may be made in relation to any licensed premises (other than premises in respect of which a provisional premises licence or occasional licence has effect) which are undergoing, or are to undergo, reconstruction or conversion (known as the “principal premises”). The appropriate Licensing Board may issue a premises licence in respect of such other premises within its licensing area, if satisfied that the temporary premises are suitable for use for the sale of alcohol and it is necessary to grant the application to enable the applicant to carry on business pending reconstruction or conversion of the principle premises.

A premises licence granted for such premises is referred to as a "temporary premises licence". It has effect for such a period of not more than 2 years but can be extended by the Licensing Board for a further period of not more than 12 months on the application of the holder of a temporary premises licence. The procedure for handling these and confirming temporary premises licences are set out in section 47 of the Act.

Appropriate Licensing Board

8.11 Premises licences are issued by the Licensing Board for the area in which the premises are situated. In the case of any premises that straddle an area boundary, a licence will be issued by the Licensing Board for the area in which the greater part of the premises is situated. Where the premises is located equally in two or more areas, the applicant may choose to which Licensing Board an application should be made. In the rare cases where such premises exist, it will be important that the Licensing Boards concerned maintain close contact about the grant of the premises licence, inspection, enforcement and other licensing functions in respect of these premises.

Notification of application

8.12 Upon receipt of an application for a premises licence, the Licensing Board must give notice of the application to:-

- each person having a notifiable interest in neighbouring land¹¹;
- any community council within whose area the premises are situated;
- the council within whose area the premises are situated (except where the council is the applicant);
- the relevant Health Board;
- the chief constable; and
- the enforcing authority within the meaning of section 61 of the Fire (Scotland) Act 2005 (asp 5) in respect of the premises.

The Licensing Board must give the chief constable a copy of the application and may provide any other person who is given notice with a copy of the application. The chief

¹¹ The meanings of ‘notifiable interest’ and ‘neighbouring land’ are set out in regulations 3 and 4 (respectively) of the Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007 No. 453).

constable must advise the Licensing Board if the applicant or any connected person¹² has been convicted of a relevant or foreign offence or not.

8.13 The list of relevant offences is contained within the Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513). The meaning of ‘foreign’ offence’ for these purposes is set out in section 129 of the Act.

Period of effect of a premises licence

8.14 A premises licence takes effect on such date as the Licensing Board may determine and ceases to have effect if one of the events set out in section 28(5) of the Act occurs. These include that the licence is revoked under any provision of the Act, the premises ceases to be used for the sale of alcohol or the licence is surrendered by the licence holder. Unless there is a successful application to transfer a premises licence, the licence also ceases to have effect if the licence holder dies¹³ or becomes incapable¹⁴ or becomes insolvent.

Objections and representations

8.15 Under the Act anyone is entitled to make objections or representations in relation to an application for:

- a premises licence;
- a provisional premises licence;
- a temporary premises licence;
- a variation of a premises licence, other than a minor variation (known as a major variation)¹⁵; and
- an occasional licence (see Chapter 9 of this Guidance).

For ease, this Guidance will follow common usage and use the term major variation to describe variations other than minor variations.

8.16 Objections or representations concerning an application may be notified to the Licensing Board:

Objections to a premises licence application (or a provisional premises licence application) can be on any ground relevant to one of the grounds of refusal under section 23(5) of the Act. (See paragraph 8.22).

Representations can be, or may include in particular, representations –

- in support of the application;

¹² The meaning of ‘connected person’ is set out in section 147(3) of the Act.

¹³ Or the dissolution of the licence holder where the licence holder is a company or partnership.

¹⁴ This means incapable within the meaning of section 1(6) of the Adults with Incapacity Act 2000,

¹⁵ See paragraph 8.40 and 8.41 of this Guidance for more information on minor and major variations.

- as to modifications which the person considers should be made to the operating plan accompanying the application; or
- as to conditions which the person considers should be imposed.

8.17 Where a Licensing Board receives a notice of objection or representation, the Licensing Board must –

- give a copy of the notice to the applicant in such a manner and by such time as may be prescribed, and
- have regard to the objection or representation, including any information included under section 22(1A) of the Act¹⁶, in determining the application,

unless the Licensing Board rejects the notice if it considers the objection or representation to be frivolous or vexatious.

8.18 Licensing Boards should address each case on its own merits, based on its local knowledge of the area and those that will be directly affected by the granting of a licence.

Whilst any person may make a notice of objection or representation, Licensing Boards can reject the notices if they consider them to be frivolous or vexatious. Expenses can be recovered from objectors who make vexatious or frivolous objections.

Licensing Boards may wish to be aware that in practice many people who wish to object may find it difficult to present material that fits in with these requirements, and therefore may find it useful to speak to their local Licensing Standards Officer beforehand in order to discuss the material that they can present to their Licensing Board.

Licensing Board's power to request an antisocial behaviour report

8.19 Prior to determining any application for a premises licence, Licensing Boards may make a request to the chief constable for a report detailing all cases of antisocial behaviour which can be identified by the police as having taken place on, or in the vicinity of, the premises and all complaints or other representations made to constables concerning antisocial behaviour on, or in the vicinity of, the premises within the previous year to the date of the application.

¹⁶ Section 22(1A) of the Act provides for the person giving the notice to the Licensing Board to include information in the notice that they consider may be relevant to consideration by the Licensing Board of any ground for refusal including, in particular, information in relation to the applicant, a connected person in relation to the applicant (where the applicant is neither an individual nor a council), or any person who would be an interested party.

8.20 If the Licensing Board requests such a report, they must suspend consideration of the application until it receives the report. The chief constable has 21 days in which to provide the report once requested.

8.21 Once the Licensing Board receives the report from the chief constable, they must give a copy of the report to the applicant and resume consideration of the application.

Determination of Premises Licence application

8.22 In determining applications for a premises licence a Licensing Board may only refuse the application if one or more of the relevant statutory grounds for refusal, under section 23(5) of the Act have been met. Even if there are no objections or representations, the Licensing Board must consider the application and refuse it if the application fails on a statutory ground.

The grounds for refusal are -

Section 23(5) of the Act

- that the subject premises are excluded premises (see Chapter 14 of this Guidance),
- that the application must be refused under section 25(2), 64(2) or 65(3) of the Act, *(These respectively relate to applications which have been refused within the previous year; if granted would allow the sale of alcohol during a continuous period of 24 hours or more; or the off-sales hours proposed would mean that alcohol would be sold before 10 am, after 10 pm, or both, on any day)*
- that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence,
- that the Licensing Board considers that the granting of the application would otherwise be inconsistent with one or more of the licensing objectives,
- that, having regard to—
 - (i) the nature of the activities proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,the Licensing Board considers that the premises are unsuitable for use for the sale of alcohol,

- that the Licensing Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises, in the locality.

8.23 When any application for a premises licence is made, the Licensing Board must hold a hearing in order to consider and determine the application. Licensing Boards must consider whether any grounds for refusal apply to the application. In doing so consideration must be given to any convictions for a relevant or foreign offence in relation to the applicant or any connected person¹⁷ along with any report from the chief constable regarding any anti-social behaviour. The list of relevant offences is contained within the Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513). The meaning of 'foreign' offence' for these purposes is set out in section 129 of the Act.

8.24 If the Licensing Board considers that they would refuse an application for a premises licence but would grant the application if it included a modification to the operating or layout plan (or both) which was proposed by the Licensing Board, then they must grant the application (as modified) if the applicant accepts the proposed modification.

8.25 If a Licensing Board refuses an application for a premises licence, having been satisfied of any grounds for refusal, they must specify which ground of refusal they are relying on. If the ground or grounds of refusal relate to any of the licensing objectives, then the licensing objective or objectives relied upon must also be specified.

Licence conditions

8.26 All premises licences issued under the Act are subject to a range of national mandatory licence conditions set out in schedule 3 of the Act, with equivalent conditions for occasional licences provided for in schedule 4 of the Act. Some of these conditions apply to all premises, and some to only certain premises (for instance, the mandatory condition set out in paragraph 7 of schedule 3 of the Act only applies in respect of on-sales and the mandatory condition set out in paragraph 7A of schedule 3 of the Act only applies in respect of off-sales).

These conditions cannot be amended or varied by a Licensing Board. Additional national mandatory conditions may be added to schedule 3 of the Act, for example Minimum Unit Pricing was introduced as a new mandatory condition via the Alcohol (Minimum Pricing) (Scotland) Act 2012. The Scottish Ministers also have the power to modify schedule 3 of the Act via secondary legislation. An example of this is the mandatory condition set out in paragraph 12 of schedule 3 of the Act, which relates to baby changing facilities.¹⁸

¹⁷ The meaning of 'connected person' is set out in section 147(3) of the Act.

¹⁸ Which was added by the Licensing (Mandatory Conditions) (Scotland) Regulations 2007 (SSI 2007 No. 457).

Certain premises are subject to additional mandatory conditions if they fall within the classification of 'late opening premises'. This is discussed further below.

In addition to the mandatory conditions, Licensing Boards have the discretion to impose further conditions on premises licences under section 27(6) of the Act. A Licensing Board can impose such a condition if it considers it necessary or expedient for the purposes of any of the licensing objectives. Licensing Boards must give careful consideration when deciding on what conditions are appropriate and ensure that the conditions are set out clearly to the licence holder so they are aware of what is expected from them. Failure to adhere to licence conditions can have serious consequences on their licence status. It is important that the Licensing Boards have consistency when imposing additional conditions for similar types of premises. Equally, it is important for Licensing Boards to have flexibility to each particular set of circumstances as additional or more tailored conditions reflecting local circumstances may be more appropriate.

All conditions imposed on a premises licence (whether mandatory or discretionary) are equally binding and failure to adhere to any of them can result in a review of the premises licence. Depending on the outcome of the review, the licence holder may receive a written warning, the licence may be varied, or suspended for a period determined by the Licensing Board or the licence may be revoked

Local licence conditions

8.27 Flexibility to deal with local circumstances is a vital component of the licensing regime. As such, Licensing Boards are authorised under section 27(6) of the Act to attach local conditions. For example, where the facts and circumstances of a particular case require this or on a general basis to reflect Licensing Board Policy on a certain matter.

A Licensing Board cannot impose any condition which: -

- is inconsistent with any condition
 - to which the premises licence is subject by virtue of section 27(1) of the Act (mandatory conditions), or
 - which is prescribed in regulations made under section 27(5) of the Act,
- would have the effect of making any such condition more onerous or more restrictive, or
- relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment

8.28 This paragraph includes potential conditions that Licensing Boards may wish to consider. This is not an exhaustive list and does not restrict Licensing Boards in any way. Licensing Boards may wish to consider applying such conditions to a premises licence if circumstances and the licensing objectives warrant such application. For example, in a particular on-sales premises, or type of on-sales premises, it may be reasonable to ban the use of glass to ensure that glasses and bottles are not used as weapons, or to prevent accidents on a dance floor when such

receptacles are dropped. However it may be disproportionate to apply such a condition to the premises licence for a restaurant.

- In particular, Licensing Boards may wish to consider conditions of the kind described in section 27(9) of the Act, which are conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with: the sale of alcohol on the premises in respect of which a premises licence has effect, or
- any other activity carried on in such premises.

Conditions that Licensing Boards may wish to consider include:

- Active membership of any Radiolink or Pubwatch-type scheme: where a local scheme based on radio link to the police or Pubwatch or a scheme with similar principles exist. In considering this option Licensing Boards should consider whether any scheme has the resources to support an influx of members.
- Participation in the "Best-Bar None" schemes which aim to promote safer premises.
- Conditions relating to an external area e.g. a 10 pm terminal hour, no standing, no live or recorded music.
- Conditions relating to children and young persons access to a premises.
- Closure Policy, e.g. the last 30 minutes of music must be slow and considerably quieter.
- Last entry policy/curfew on entrance
- Staff present who have undertaken Advanced First Aid training: Licensing Boards should take into consideration local arrangements on busy nights and link to the city centre triage may be a more appropriate option.
- Premises to have a glass collection policy.
- The use of plastic or toughened glass where non-glass or toughened glass receptacles are required to be used throughout the premises, for example after a set hour .
- Agreed times for the disposal of glassware: disposal of glassware should be made at a reasonable time as agreed by the Licensing Board.
- Noise control: steps should be in place to minimise noise leakage from the premises.
- Staffing policy: a personal licence holder must be nominated as being in charge at all times and to be on the premises, each bar must be supervised by a personal licence holder.

- Register of staff: a register must be maintained by the nominated person in charge each day and or at shift handover times.
- Door control policy: consideration should be given to best practice used throughout the industry and again to which premises such measures are applied. Options could include:
 - Door supervisors wearing yellow reflective tabards
 - How door stewards are able to communicate with each other
 - Door steward minimum numbers or ratio to clientele
 - Ensuring no bottles or glasses are removed by customers leaving the venue.
 - Search policy: rather than having a blanket search policy, to use a search policy which is appropriate to trading conditions perhaps in conjunction to discussions with the police.
 - Policies to ensure patrons are not put in vulnerable situations after leaving e.g. allowing the phoning of a taxi and waiting in a specific area.

Late opening conditions

8.29 Licensing Boards, under section 27(3) of the Act, must attach further conditions to any premises licence if the operating plan for the premises specifies that the premises will, on any occasion, be open for a continuous period beginning on one day and ending after 1 am on the following day. For instance, a premises which opens at 7 pm on Friday and closes at 2 am Saturday. These further mandatory conditions are prescribed by regulations made by the Scottish Ministers (the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 (SSI 2007 No. 336).

As off sales are restricted to operating between 10.00 and 22.00, these late opening conditions are not relevant to off sales.

Late opening conditions which are applicable to all on sales premises

8.30 There is one mandatory condition which must be imposed on all premises licences that state in their operating plan that they intend to open after 1 am. This condition requires each premises to have present (during certain hours) a person trained to the satisfaction of the Licensing Board in administering first aid. The time at which such a person must be present is from 1 am until the premises closes (or until 5 am, if that is earlier).

8.31 Licensing Boards may wish to note that employers are already required by law to make an assessment of significant risks concerning injury and ill health and that the Health & Safety Executive (HSE) approve courses and training organisations to

train first aiders in the workplace. Lists of first-aid training organisations in the relevant local area are available from the HSE.

Late opening conditions applied to certain premises

8.32 To support the objectives of the Act, the Scottish Ministers intend that certain premises should have further mandatory conditions attached to their premises licence if they list in their operating plan that they will operate after 1 am and they fall within the description set out in paragraph 8.33 below.

Even if they do not state their intention to do so in their operating plan, if it appears to the Licensing Board, from the operating plan, that they fall within the description of premises as outlined in paragraph 8.33 below, the Licensing Board must impose the further additional conditions.

These additional conditions are listed in paragraph 8.34 below. Such conditions are designed to be appropriate and proportionate in meeting the needs of public safety and tackling crime. For example a small restaurant has a very different effect on the night-time economy when compared to a large nightclub or 'super pub'.

8.33 A definition of those premises for which Licensing Boards will be required to impose these additional conditions is set out in the regulations and is reproduced below.

That description is, premises

(other than premises where the primary function is the service of food; which include, or are part of a larger premises which include, at least 6 letting bedrooms; which have a licence in force under section 12 of the Theatres Act 1968 or section 1 of the Cinemas Act 1985; or which are, or are part of, an art gallery)

the capacity of which is at least 250 people and which—

- 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 85dB;
 - (ii) facilities for dancing; or
 - (iii) adult entertainment¹⁹; or
- when fully occupied, are likely to have more customers standing than seated.

In addition to the already mentioned mandatory condition referred to in paragraph 8.30, regarding the requirement to have the presence of a person trained in first aid, further additional conditions to be applied are:

- The presence of a designated person who holds a personal licence to be present on the premises when trading from 1 am until the premises next close

¹⁹ Adult entertainment for these purposes is defined by regulation 1(2) of the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 (SSI 2007 No. 336).

or 5 am (whichever is the earlier). Boards have discretion to specify a time other than 5 am. This need not be the named premises manager required by section 19 of the 2005 Act. If it is not, the designated person has responsibility for the premises during the premises manager's absence.

- Each premises must have written policies concerning evacuation of the premises and the prevention of the misuse of drugs on the premises. Licensing Standards Officers may ask to see such policies. As part of the staff training it would be expected that staff would be aware of these policies and how to implement them.
- Each premises must install to the satisfaction of the chief constable a CCTV system. The operation of any system installed would be required to meet with the requirements of the Data Protection Act 2018 and the EU General Data Protection Regulation. The Information Commissioner has issued a code of practice²⁰ designed to help those who use surveillance cameras to collect personal data to stay within the law. A premises required to have CCTV as a condition of its premises licence would be in breach of that licence if they were to operate without the CCTV system being in good working order.
- Each premises is required to check their toilets on a regular basis to ensure the safety and wellbeing of people using these facilities. This must be the responsibility of at least one member of staff however the condition does not require that this must be their only duty.
- A person who holds a licence granted under Section 8 of the Private Security Act 2001, must be positioned at every entrance of the premises, from 1 am until whichever is the earlier of the time at which the premises next close, and 5 am or such other time as the Licensing Board may specify.

Additional conditions for late opening

8.34 Licensing Boards when considering any premises licence whose operating plan states that they will operate after 1 am may find it appropriate to supplement the mandatory late opening conditions with other conditions. Such conditions would be imposed under the Licensing Board's power conferred by section 27(6) of the Act. The use and limits of that power are described above. The addition of such conditions should be appropriate and proportionate and made on a case by case basis. An example would be, a restriction on entry to the premises after a certain time late at night.

8.35 A Licensing Board may also decide the time at which individual conditions should come into operation for each licence.

8.36 In applying other conditions Licensing Boards should do so in line with its licensing policy and the licensing objectives. It must also apply conditions fairly across the sector so as not to disadvantage one premises against another. This however would not be relevant if a Licensing Board was seeking to tackle a problem particular to a certain premises.

²⁰ <https://ico.org.uk/media/for-organisations/documents/1542/cctv-code-of-practice.pdf>

8.37 When considering conditions, Licensing Boards should consider the effect on a premises' neighbours which may be a particular issue with late opening premises. Licensing Boards should be aware that complaints arise not only from the general noise of activities on the premises but from people leaving and the closing and opening routines. For example, the disposal of glassware, restocking deliveries, closing shutters and activating alarms all of which can lengthen the hours of disturbance. Such disturbance may not only continue for a period after closing but could also begin early in the morning as the premises prepares for the next day's trade. It is hoped that many such problems can be solved through mediation.

Issue of licence and summary

8.38 Where a Licensing Board grants a premises licence, the Licensing Board must issue, in the prescribed form,²¹ a premises licence and a summary of the licence to the applicant. These will contain, amongst other things, information such as the date on which the licence takes effect and conditions to which the licence is subject. The operating plan and layout plan in respect of the premises will also be included.

Applications for variations to premises licences

8.39 Under section 29(1) of the Act, premises licence holders can apply to the appropriate Licensing Board for variations of the premises licence.

Section 29(5) of the Act provides that, in relation to a premises licence, 'variation' means any variation (including an addition, deletion, or other modification) of:

- any of the conditions to which the licence is subject (other than those to which the licence is subject by virtue of section 27(1) of the Act, i.e. mandatory conditions),
- any of the information contained in the operating plan contained in the licence,
- the layout plan contained in the licence, or
- any other information contained or referred to in the licence.

All such applications must be accompanied by the original premises licence where possible.

Fees are payable in respect of applications to vary premises licences. Some fees are set at a specific cost, for example, for an application which seeks only a minor variation.²² Whereas the legislation does not set fees in respect of major variations. Fees payable in respect of major variations are to be determined by the relevant

²¹ The prescribed forms of the premises licence and the summary of the premises licence are set out, respectively, in schedules 1 and 2 of the Premises Licence (Scotland) Regulations 2007 (SSI 2007 No. 452).

²² Regulation 12(1)(b) of the Licensing (Fees) (Scotland) Regulations 2007 (SSI 2007 No. 553).

Licensing Board, and Boards are entitled to determine different fees in respect of different types of applications.²³

The Act allows for two procedures for Licensing Boards to follow: a simpler process to deal with *minor variations*, and a more onerous process for *major variations*.

Minor variations

8.40 As mentioned above, the processing by Licensing Boards of applications for minor variations of premises licences is more streamlined than the processing and consideration of major variations (i.e. non-minor variations).

A minor variation is one described by section 29(6) of the Act. These are:

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

For the purposes of section 29(6) of the Act, the following are prescribed as minor variations²⁴—

- where the name of the premises is disclosed in the premises licence, any change in that name;
- a temporary or permanent reduction in the licensed hours which does not result in the premises opening any earlier or closing any later than stated in the premises licence and operating plan;
- in relation to the access of children or young persons onto the premises any variation to the operating plan so as to—
 - increase the minimum age at which children or young persons may be allowed onto the premises;
 - reduce the times at which children or young persons are allowed onto the premises;

²³ Regulation 12(2) of the Licensing (Fees) (Scotland) Regulations 2007 (SSI 2007 No. 553).

²⁴ See the Licensing (Minor Variations) (Scotland) Regulations 2011 (SSI 2011 No. 151).

- restrict the access of children or young persons to certain parts of the premises;
- any reduction in the capacity of the premises whether resulting from a variation to the layout plan or otherwise;
- any variation resulting in the cessation of the provision of live or recorded music at a decibel level exceeding 85 decibels;
- any variation to provide that, when the premises are fully occupied, more customers are likely to be seated than standing.

As noted above, where a variation is not a minor variation, then it will be a major variation.

In accordance with section 30 of the Act, when a Licensing Board receives a premises licence variation application, the Licensing Board must grant the application.

Variations other than Minor Variations – Major variations

8.41 The procedure Licensing Boards must adopt when they are considering an application for a variation to a premises licence is set out in sections 29 and 30 of the Act. Licensing Boards should note that the following does not apply in respect of minor variations, and references to premises licence variation applications here refer only to such applications which concern major variations.

8.42 Licensing Boards should note that the statutory ‘notification of application’, and ‘objections and representations’ procedures set out in sections 21(1) and (2), 22 and 24A of the Act in respect of premises licence applications also apply to premises licence variation applications. Licensing Boards are required to notify the persons listed in section 21(1) of the Act that a premises licence variation application has been made and provide a copy of the application to the chief constable. Licensing Boards also have the option of providing a copy to other persons notified of the application. Any person can make objections and representations to the Licensing Board in respect of the proposed variation. If any objections or representations are received by the Licensing Board, the requirements of section 22(3) to (6) of the Act apply. As section 24A of the Act applies to premises licence variation applications, Licensing Boards may request from the chief constable antisocial behaviour reports in connection with the premises.

Determination of application for variation

8.43 Under section 30 of the Act, a Licensing Board must hold a hearing to consider and determine a premises licence variation application. Where a Licensing Board refuses an application for a major variation, the Licensing Board's decision must be based on the statutory grounds for refusal set out in section 30(5) of the Act. These are similar to the grounds for refusal of an application for a premises licence.

The grounds for refusal are-

- that the application must be refused under section 32(2), 64(2) or 65(3) of the Act,
(Section 32(2) of the Act – in respect of the same premises licence and seeking the same variation having been subject of an earlier refusal for a variation within the previous year; Section 64(2) of the Act - if granted for particular types of applications would allow the sale of alcohol during a continuous period of 24 hours or more; or Section 65(3) of the Act - the off-sales hours proposed would mean that alcohol would be sold before 10 am, after 10 pm, or both, on any day),
- that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
- that, having regard to—
 - (i) the nature of the activities carried on or proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,the Licensing Board considers that the premises are unsuitable for use for the sale of alcohol, in accordance with the proposed variation,
- that the Licensing Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises (taking account of the variation), in the locality.

8.44 Licensing Boards may also make their own variations to the licence conditions where they grant the variation applied for. In these circumstances, the Licensing Boards must not use their power to impose a condition which they could not have imposed in the initial granting of the premises licence, for example the restrictions applied at section 27 of the Act.

Applications to change the named premises manager

8.45 Licensed premises cannot operate without a premises manager (being in post) as this would be a breach of one of the mandatory licence conditions. Section 31 of the Act allows for the premises to continue operating while any application for a variation to substitute another individual as premises manager is being processed and determined, so long as the applicant requests that the variation should have immediate effect. This would be considered as a minor variation.

Transfer of premises licences by Licence Holder

8.46 The holder of a premises licence may apply for the transfer of the premises licence to another person (transferee). On receipt of such an application the Licensing Board must notify the application to the chief constable and the chief constable must respond within 21 days of receipt of the notice.

8.47 The chief constable will notify the Licensing Board whether or not the transferee (or any connected person of the transferee) has been convicted of a relevant or foreign offence. In making such notification the chief constable may also make a recommendation for refusal of the transfer application or provide any information that the chief constable considers may be relevant in relation to the transferee (or connected persons) or any person who would be an interested party in relation to the licensed premises if the application for the transfer were to be granted.

8.48 The procedure that Licensing Boards must adopt on receipt of the chief constable's notice are set out in section 33 of the Act. Where the notice reports that no conviction is found and there is no recommendation or there is no relevant information provided from the chief constable the transfer must be granted. Where the notice reports a conviction or there is a recommendation from the chief constable to refuse the application or relevant information is provided, the Board is under a duty to hold a hearing to determine the application.

8.49 Following the hearing, the Licensing Board can either grant or refuse the application. The Licensing Board can only refuse the application if satisfied that having regard to the licensing objectives, the transferee is not a fit and proper person to be the licence holder or it is otherwise necessary to refuse the application for the purpose of any of the licensing objectives.

Transfer on application of person other than licence holder

8.50 Under section 34 of the Act, an application can also be made for a transfer of a premises licence by a person other than the licence holder, for instance applications can be made by an executor, a person with power of attorney or an insolvency practitioner. The proposed transferee requires to be over 18 years of age and be a person of a prescribed description as set out in the Licence Transfer (Prescribed Persons) (Scotland) Regulations 2007 (SSI 2007 No. 34). Those Regulations set out the circumstances in which a person of a prescribed description can make an application in respect of a premises licence of which they are not the licence holder..

The procedure set out in section 33(4) to (10) of the Act applies to applications for transfer of a premises licence under section 34 of the Act.

Reviews of premises licences

8.51 The procedures set out in the Act for reviewing premises licences represent a key protection for the community. At any stage following the grant of a premises licence, any person may ask the Licensing Board to review the licence in circumstances where -

- having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,
- one or more of the conditions to which the premises licence is subject has been breached, or
- on any other ground relevant to one or more of the licensing objectives.

Licensing Boards may initiate their own reviews of premises licences on any of the grounds for review.

Powers of a Licensing Board on the determination of a review

8.52 A Licensing Board can reject premises licence review applications under section 36(6) of the Act, if it considers the application is frivolous or vexatious, or does not disclose any matter relevant to any ground for review.

8.53 Where a Licensing Board makes a premises licence review proposal, or receives a premises licence review application, it must hold a review hearing unless, in the case of a premises licence review application it has rejected the application under section 36(6) of the Act.

8.54 A Licensing Board can resolve to take no action on consideration of a review. However, Licensing Boards have a range of steps available to them if satisfied that a ground for review is established, should such action be deemed necessary following a review hearing, depending on the individual circumstances of each case. Those steps are -

- To issue a written warning to the licence holder;
- To make a variation of the licence;
- To suspend the licence for such a period as the Board may determine; and
- To revoke the licence. This is mandatory if the fit and proper person ground of review is established.

8.55 Where a variation is proposed, Boards may provide for the variation to apply only for such a period that they may determine.

8.56 It is hoped that, in the majority of cases, matters will be resolved before there is a need for Licensing Boards to take any of the above steps, for example, through discussions between Licensing Standards Officers and the licence holder.

Extensions of licensed hours

Seasonal variation in opening hours

8.57 Some dates of holidays etc. will change annually, but it should normally be possible for applicants for premises licences to anticipate special occasions which occur regularly each year, such as bank holidays and major local events. As such, appropriate opening hours for these occasions should be included in their operating plan.

8.58 Licensing Boards should recognise that events of local or national significance will arise from time to time which could not have been anticipated when the operating plan was prepared. Such events can give rise to the need to vary the licensed hours of large numbers of premises licences. In these circumstances, there are two ways in which hours may be extended, either on application by individual licence holders or a general extension across the licensing area.

Extended hours applications

8.59 Where a licensed premises wishes to provide for an event, section 68 to 70 of the Act enable Licensing Boards to process an extended hours application from the licence holder where there is no provision for the extended hours in the operating plan. The application must relate to a special event or occasion to be catered for on the premises, for example a wedding. An extended hours application can also be made in connection with a special event of local or national significance.

8.60 The chief constable and Licensing Standards Officer must be notified by the Licensing Board when the Board receives an extended hours application. Within 10 days of the receipt of that notice the Licensing Standards Officer must prepare and submit a report setting out the officer's comments on the application to the Licensing Board

The chief constable may, within 10 days of receipt of the notice, object to the application if the chief constable considers it necessary to do so for the purposes of any of the licensing objectives.

8.61 There is provision in the legislation to deal with an application in a shorter period. If the Board is satisfied that the application requires to be dealt with quickly they can require that the deadline for the submission of any report from the Licensing Standards Officer and any notice of objection from the chief constable, must be submitted to the Board earlier than the usual 10 days from notification of the application. For instance, they could require any report or objection to be submitted within 5 days of the notification of the application. However, the Board cannot require these to be sent less than 24 hours from notification of the application. When the response period is reduced, the Licensing Standard Officer's duty to submit a report on the application becomes optional. This expedited process can accommodate applications where it is not possible to make the application within the usual statutory timescales.

8.62 The Licensing Board will have complete discretion as to whether to grant the application taking into account any police objections and Licensing Standards Officer's comments and having regard to the licensing objectives. The Licensing Board may hold a hearing for the purposes of determining any application, but this is not mandatory. Where the Licensing Board does not hold a hearing, the Licensing Board must ensure that before determining the application, the applicant is given an opportunity to comment on any objections from the police or comments from the Licensing Standards Officer. The Licensing Board may extend the licensed hours in respect of the premises by such period as is specified in the application or such other period as the Licensing Board consider appropriate.

8.63 No extension can be granted to operate for a period of more than one month and such an extension cannot be further extended. If a Licensing Board receives continual requests for applications consideration should be given to whether the holder of the premises licence should look to vary its operating plan by way of an application for a major variation.

24 hour licences to be granted only in exceptional circumstances

8.64 Licensing Boards must refuse certain applications in the circumstances that, if the application were to be granted, the licensed hours would allow alcohol to be sold on the premises during a continuous period of 24 hours or more. However, if the Licensing Board is satisfied that there are exceptional circumstances which justify the sale of alcohol on the premises during such a period, they may grant the application. This applies to the following applications:

- a premises licence application,
- a premises licence variation application,
- an occasional licence application, or
- an extended hours application.

Licensing Board's power to grant general extensions of licensed hours

8.65 Section 67 of the Act provides a power for Licensing Boards to grant general extensions to licensed hours in connection with special events of local or national significance if they consider it appropriate to do so. The Act refers to a Licensing Board making a 'determination' to that effect. A determination can apply to –

- the whole of the Licensing Board's area or only to specified parts,
- licensed hours generally or only to specified descriptions of those hours, and
- all licensed premises in the Licensing Board's area or only to specified descriptions of such premises.

Even if granted, such a determination does not require any licensed premises to be open for the sale of alcohol during any or all of the period of extended hours specified. The determination will have effect for such a period as the Licensing Board specifies.

8.66 It is a matter for Licensing Boards to decide on how they further publicise the granting of a general extension of hours. At a minimum the Licensing Board may wish to post details on its website. However the Licensing Board is under a statutory duty to notify the chief constable and the appropriate licence holders to whom the determination applies.

Licensing Board's power to vary the conditions on an extended hours application

8.67 Section 70A of the Act provides that when granting an extended hours application, the Licensing Board can make such variation of the conditions to which the licence is subject as they consider necessary or expedient for the purposes of any of the licensing objectives, for example, requiring door supervision or plastic

cups be used in the premises. Any variation may take the form of the addition, deletion or modification of a condition. Section 27(10) of the Act limits a Licensing Board's ability to vary a condition to the effect that it would impose a condition that the Licensing Board cannot impose under section 27 of the Act on the initial grant of the licence. Variations of conditions may have effect only until the end of the extension period e.g. if the period specified under section 68(2) of the Act is two weeks then the varied conditions can only apply during that two week period and will not be a permanent variation of conditions. Licensing boards can require that the variation applies to the whole of the premises' licences hours (as extended) and not just the 'extra hours'. For instance, if a premises is ordinarily open from 11 am until midnight and the Board grants an extension of hours to 2 am, the Board can require the varied conditions to apply to:

- the whole period the premises is open (i.e. 11 am until 2 am),
- just the 'extra hours' (i.e. midnight until 2 am), or
- any part of the period the premises is open (e.g. 10 pm until 2 am).

Irresponsible Promotions

8.68 The need to tackle irresponsible promotions and the associated problems that they can cause is central to the policy objectives of the licensing system. Irresponsible promotions apply to both sales on premises and off sales.

8.69 Schedule 3 (paragraph 8) (which relates to premises licences) and schedule 4 (paragraph 7) (which relates to occasional licences) of the Act, respectively set out a mandatory licence condition which provides that an irresponsible drinks promotion must not be carried out on or in or in connection with the premises. This condition applies to all premises licences and occasional licences granted under the Act. In these paragraphs, "drinks promotion" means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.

These schedules list generic promotions which would be considered irresponsible, namely –

If a drinks promotion is carried on in relation to alcohol sold for consumption on or off the premises it is irresponsible if it –

- relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18;
- involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks);
- is based on the strength of any alcohol;
- rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly; or
- offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.

Additionally, if a drinks promotion is carried out in relation to a sale of alcohol for consumption on the premises, it is also irresponsible if it –

- involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink;
- involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises); or
- encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume.

8.70 The above descriptions of what amounts to an irresponsible promotion could include those types of promotions which actively encourage people to consume a large quantity of alcohol in a short period of time and may include examples in the off-sales trade, such as buy one, get one free; three for the price of two; three bottles of wine for £10; buy six, get 20% off and in the on-sales trade examples such as, all you can drink for a certain price or period of time; or upselling. The Scottish Ministers note that not all alcohol promotions are irresponsible and that the majority of licensees act responsibly in running their businesses.

8.71 It may be that in some cases the determination of what is and is not an irresponsible promotion will require some consideration. This may arise where a member of the public, the police or the Licensing Standards Officer has brought to the attention of the Licensing Board a case where they feel such a promotion is being offered. The Scottish Ministers expect that such instances should be dealt with initially by the Licensing Standards Officer. In most cases it is hoped that these cases can be resolved in discussion between the Licensing Standards Officer and the licensee without any sanctions being applied by the Licensing Board.

However, where the Licensing Board feels that further action is appropriate, it may instigate a review hearing to determine what action, if any, needs to be taken against the licensee concerned. The licence holder would be able to appeal the decision of the Licensing Board in the courts. Ultimately, it may be left for the courts to determine whether the promotion is irresponsible or not.

Display, or promotion of the sale, of alcohol for consumption off the premises

8.72 Furthermore, with regards to alcohol which is for sale only for consumption off the premises, paragraph 13 of schedule 3 of the Act requires that alcohol may be displayed only in either or both of –

- a single area of the premises agreed between the Licensing board and the holder of the licence; or
- a single area of the premises which is inaccessible to the public.

These areas are known as “alcohol display areas”.

8.73 There are restrictions on the type of drinks promotions that can be offered on a premises where, in so far as that premises is used for the sale of alcohol, the premises is used only or primarily for the sale of alcohol for consumption off the premises. Here “drinks promotion” means any activity which promotes, or seeks to promote, the buying of any alcohol sold on the premises for consumption off the premises **but does not include** the display of any product which is:

- a branded non-alcoholic product²⁵ for sale on the premises, or
- a newspaper, magazine or other publication for sale on the premises (or, if not for sale on the premises, which does not relate only or primarily to alcohol).

Boards should note that the meaning of “drinks promotion” as regards irresponsible drinks promotions under paragraph 8 of schedule 3 of the Act is different to the definition of “drinks promotion” for the purposes of display of alcohol under paragraph 13 of schedule 3 of the Act.

Any drinks promotion undertaken in connection with alcohol sold on the premises for consumption off the premises may take place in the either or both of the alcohol display areas and/or in a room on the premises for offering the tasting of any alcohol sold on the premises (for consumption off the premises) which is separate from the above areas (sometimes known as a “tasting room”).

8.74 Additionally, under paragraph 13(1C) of schedule 3 of the Act, a drinks promotion in connection with the premises may not take place in the vicinity of the premises, which is an area extending 200 metres of the boundary of the premises as shown on the layout plan. This condition concerns a promotion **in connection** with the premises. Accordingly, a promotion unrelated to the premises – such as an advert on a bus shelter – within 200 metres of the premises would not be caught by this restriction.

8.75 Paragraph 13(2) of schedule 3 of the Act places restrictions on the display of products other than alcohol in an alcohol display area. Only the following can be displayed:

- a non-alcoholic drink,
- a product which is packaged with, and which may be purchased only along with, alcohol,
- a branded non-alcoholic product (see paragraph 13(4) of schedule 3 of the Act, or
- a newspaper, magazine or other publication.

Examples include –

- branded non-alcohol products (such as football tops, which are not for sale) may constitute a drinks promotion,
- newspapers, magazines or other publications which are not for sale may only constitute a drinks promotion if they relate only to or primarily to alcohol.

²⁵ For the meaning of ‘a branded non-alcoholic product’ see paragraph 13(4) of schedule 3 of the Act.

If any of these examples, or if other such circumstances, do constitute a drinks promotion the products may only be displayed in alcohol display areas or a tasting room.

Where newspapers, magazines and other publications are for sale then they will not be drinks promotions and so may be displayed anywhere on the premises

8.76 Exemptions from these restrictions are provided in paragraph 13(3) of schedule 3 of the Act for visitor attractions forming part of a larger site which is used principally for the production of alcoholic drinks and for visitor attractions that principally provide information about and promote the history and attributes of a particular alcoholic drink or a particular category of alcoholic drink.

8.77 Retailers use a variety of promotional activities, so it would be impossible to account for all of these within this Guidance. It is ultimately the retailer's responsibility to be able to demonstrate that they have complied with the legislation in relation to irresponsible promotions.

Pricing of alcohol

Minimum pricing of alcohol

8.78 Paragraph 6A of schedule 3 of the Act sets out a mandatory licence condition which provides that alcohol must not be sold on the premises at a price below its minimum price. Where alcohol is supplied together with other products or services for a single price, that condition applies as if the alcohol were supplied on its own for that price.

This condition applies to all premises licences granted under the Act. This includes both licensed premises that sell alcohol for consumption off the premises and consumption on the premises. A similar condition applies in respect of occasional licences (under paragraph 5A of schedule 4 of the Act). The minimum price is to be calculated according to the formula set out in paragraph 6A(3) of schedule 3 of the Act (and paragraph 5A(3) of schedule 4 of the Act in respect of occasional licences).

8.79 Guidance on the Alcohol (Minimum Pricing) (Scotland) Act 2012 is separately available, which provides a reference for sellers of alcohol, Licensing Boards and Licensing Standards Officers (LSOs) in Scotland for the calculation, implementation, and enforcement of minimum pricing. Please go to <http://www.minimumunitpricing.scot/> for this Guidance.

Guides specifically for convenience store retailers from the Scottish Grocers Federation and for wholesalers from the Scottish Wholesale Association are also available.

Minimum price of packages containing more than one alcoholic product

8.80 Paragraph 6B of schedule 3 of the Act (and paragraph 5B of schedule 4 of the Act in respect of occasional licences) respectively set out a mandatory licence condition which applies to all premises licences (and occasional licences) granted under the Act, which prevent licence holders from selling alcoholic products

packaged together at a lower price than the customer could buy the same products individually. This applies in respect of both on and off sales. The condition only applies where each alcoholic product in the package is available for sale on the premises separately. So, if the retailer does not sell single cans of beer, then the price of an 8-pack of beer does not have to be double the price of the 4-pack of beer (with the cans being the same size).

8.81 The provision also only applies to a package containing more than one alcoholic product. So, if an alcoholic drink is packaged with a non-alcoholic product, cheese for instance, then the provision does not apply. For example, the provision does not apply to a bottle of wine packaged with cheese.

Variation of pricing of alcoholic drinks

8.82 Paragraph 7 of schedule 3 of the Act (and in relation to occasional licences, paragraph 6 of schedule 4 of the Act) set out a mandatory licence condition which provides that in relation to sales of alcohol for consumption on the premises, retailers are prohibited from varying the price of any alcohol until after 72 hours have passed since any alcohol product was last varied. The price variation must take effect at the beginning of a period of licensed hours.

8.83 Paragraph 7A of schedule 3 of the Act (and, in relation to occasional licences, under paragraph 6A of schedule 4 of the Act) sets out a similar mandatory licence condition in respect of sales of alcohol for consumption off the premises. A variation in the price at which any alcohol sold on the premises may only be brought into effect at the beginning of a period of licensed hours. No further variation in the price of that alcohol may be brought into effect for a period of 72 hours.

8.84 In **Mitchells & Butlers Retail Ltd v Dundee City Licensing Board** [2011] S.L.T. (Sh Ct) 53, the Court was asked to consider whether the use of a discount card by a certain class of customers entitling them to purchase alcohol at a separate reduced price amounted to a price variation. The Sheriff Principal held that it did not and that it was not unlawful for a business to maintain separate pricing structures provided the differential pricing was in place at the start of a period of licensed hours and was not varied for 72 hours. This same reasoning can be applied to the use of vouchers or customer specific discounts in both on and off sales.

Sports grounds

8.85 To protect public order and safety, controls at certain sporting events are in place to prevent alcohol being consumed on designated sporting grounds for designated events. Powers under section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995 enable the Scottish Ministers to designate sports grounds and sporting events taking place on those grounds. The effect of designation is that the controls in section 20 of that Act apply.

The controls apply to the 'relevant area' of a 'designated sports ground' at any time during the 'period of a designated sporting event'.

The 'period of a designated sporting event' means the period commencing two hours before the start and ending one hour after the end of the event.²⁶ The 'relevant area' means any part of a sports ground to which spectators attending a designated sporting event are granted access for payment or from which a designated sporting event may be viewed directly.²⁷ This means that the controls do not apply in other areas of a sporting ground. However a licence would still be required for alcohol to be sold (see paragraph 8.87 of this Guidance).

Under the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2014 (SSI 2014 No. 5) the Scottish Ministers have designated FIFA, UEFA, and Scottish association football matches played at the grounds of clubs in the Scottish Premier Football League, Lowland League, Highland League and at Murrayfield.

8.86 The controls in place include it being an offence to be in, or attempt to enter, a designated sports ground during a designated event while drunk or in possession of alcohol. Such controls do not apply to a non-designated event at a designated ground, therefore, alcohol is permitted at events such as concerts, American football or rugby matches.

For further information on alcohol controls, including drink in hospitality areas, see <https://www.gov.scot/policies/physical-activity-sport/football/> .

8.87 Licensing Boards have discretion to issue a licence which would enable the sale of alcohol inside designated sports grounds at non-designated events having first taken into account a police assessment. Advice from Police Scotland should be sought of the risk to public order and safety that may arise from a specific event or specific type of event.

Internet and mail order sales

8.88 A premises licence will not be required for a location, e.g. a call centre at which an order is taken or placed. A premises licence would however be required for the premises from which alcohol is specifically selected for and despatched to the purchaser, e.g. a warehouse. In terms of the Act, the place from which alcohol is dispatched is the place which must be licensed. However, where alcohol is despatched from a location outwith Scotland and delivered to a location within Scotland, the sale is outwith the scope of the Act.

²⁶ See section 23 of the Criminal Law (Consolidation) (Scotland) Act 1995. Section 23 sets out provision as to what is meant by 'period' when the timing of an event changes from the advertised times.

²⁷ See section 23 of the Criminal Law (Consolidation) (Scotland) Act 1995.

9. Occasional Licence

9.1 This Chapter concerns ‘occasional licences’. Part 4 of the Act allows Licensing Boards to issue ‘occasional licences’, which are licences which authorise the sale of alcohol on a premises for a temporary period. Occasional licences are distinct from premises licences, and where an occasional licence has effect in relation to a premises, a premises licence is not necessary.

Procedure

9.2 The procedures for handling occasional licences are set out in section 56 to 61 of the Act. Those persons eligible to apply for an occasional licence are: -

- the holder of a premises licence;
- the holder of a personal licence; and
- a representative of any voluntary organisation.

9.3 Occasional licences are subject to mandatory licensing conditions set out in schedule 4 of the Act.

Occasional Licences are typically used when licensees wish to licence a premises for a one off event for the sale of alcohol, such as at a wedding reception or party; for longer term events such as a festival or concert; or other social event held outwith their licensed premises.

Licensing Boards may wish to be aware that a public entertainment licence (‘PEL’) is required for the use of premises as a place of public entertainment, subject to the terms of any public entertainment licensing resolution.²⁸ It used to be the case that a PEL was not required in respect of a premises where an occasional licence was in effect in respect of that premises. However, following amendments made by section 75 of the Air Weapons and Licensing (Scotland) Act 2015, that exemption is no longer in force.²⁹

9.4 The usual position is that an occasional licence may not be issued in respect of a premises which is already licensed.³⁰ However, there is an exception to this in respect of a club falling within the description of regulation 2 of the Licensing (Clubs) (Scotland) Regulations 2007 (SSI 2007 No. 76).³¹ The fact that a premises licence is in effect in respect of such a club does not prevent an occasional licence being issued in respect of the club. This means, for example, that a members' club which under its premises licence is normally only permitted to supply alcohol to its members and their guests, may during the period covered by an occasional licence admit members of the public and sell alcohol to them. When an occasional licence

²⁸ See section 41 of the Civic Government (Scotland) Act 1982, specifically section 41(2) as to the definition of ‘public entertainment’.

²⁹ The exemption remains in force in respect of premises licences (see section 41(2)(f) of the Civic Government (Scotland) Act 1982).

³⁰ See section 56(1) of the Act.

³¹ See Annex 6 for more on the licensing of members clubs.

has effect in respect of the premises, the conditions of the premises licence temporarily do not apply (see regulation 3(3) of the Licensing (Clubs) (Scotland) Regulations 2007) and the conditions of the occasional licence apply instead. When the occasional licence ceases to have effect the conditions of the premises licence are resumed and begin to apply again. Where an occasional licence is in effect in respect of the premises it means that sales of alcohol are permitted on the club premises to persons who are not members or accompanied by a member. Such occasional licences could be used for community events or when an event was taking place on the premises which was attended by persons who were not members of the club.

9.5 An application for an occasional licence can also be made by a representative of a voluntary organisation. One of the mandatory conditions in respect of an occasional licence issued to a representative of a voluntary organisation is that alcohol may only be sold on the premises at an event taking place on the premises in connection with the voluntary organisation's activities.³² In these circumstances the applicant does not need to be a personal licence holder to authorise the sale of alcohol at the premises.

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

Limitations to number and duration of occasional licences

9.6 Licensing Boards are restricted in the number of occasional licences which the Board can issue in respect of a members' club³³ or a voluntary organisation (where the applicant does not hold a premises or personal licence). The limits are,³⁴ in any period of 12 months:

- no more than 4 occasional licences, each having effect for a period of 4 days or more, and
- no more than 12 occasional licences each having effect for a period of less than 4 days duration.

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

³² See paragraph 5 of schedule 4 of the Act.

³³ I.e. a club described in regulation 2 of the Licensing (Clubs) (Scotland) Regulations 2007 (SSI 2007 No. 76).

³⁴ The limits in respect of voluntary organisations are set out in section 56(6) of the Act and in respect of clubs in regulation 3 of the Licensing (Clubs) (Scotland) Regulations 2007 (SSI 2007 No. 76).

Where the occasional licence is issued in respect of a club this limit applies to the premises. Where the occasional licence is issued in respect of a representative of a voluntary organisation the limit applies to the organisation.

9.7 An occasional licence has effect for as long as the Licensing Board determines, but the maximum period for an occasional licence is 14 days.

Repeated Occasional Licences

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

Notification of application & objections and representations

9.9 Applications for occasional licences are subject to a statutory procedure which allows for objections and representations prior to the determination as to whether or not an occasional licence should be granted.

9.10 When an occasional licence application is received, the Licensing Board must, within 7 days,³⁵ give notice of it, together with a copy of the application, to -

- the chief constable, and
- the Licensing Standards Officer

and, on the same day as the Licensing Board gives notice to the police and the Licensing Standards Officer, or as soon as reasonably practicable after that, publish details of the application on its website for a continuous period of 7 days.³⁶

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

9.12 To accommodate situations where applications require to be dealt with quickly, the Licensing Board may reduce the time within which a Licensing Standards Officer may submit their report on the application – e.g. for applications pertaining to a funeral. However, it is for the applicant to request that the application is dealt with in a shorter period and for the Licensing Board to determine if it will do so. The shorter period should not be less than 24 hours.

A Licensing Board can delegate the function of granting an occasional licence to any member of the Board, any committee established by the Board, the clerk of the Board or any member of staff. However, there are some restrictions on the ability of

³⁵ See regulation 8(2)(c) of the Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007 No. 453).

³⁶ See regulation 18 of the Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007 No. 453).

the Board to delegate. The Board may not delegate where a hearing is to be held to determine an application for an occasional licence. The Board may not delegate to the clerk or a member of staff where a notice of objection or representation in relation to the application has been made.

9.13 Any person may by way of notice to the Licensing Board -

- object to the application on any ground relevant to one of the grounds for refusal specified in section 59(6) of the Act, or
- make representations to the Licensing Board concerning the application, including, in particular, representations—
 - in support of the application, or
 - as to conditions which the person considers should be imposed.

Where a Licensing Board receives such a notice in relation to an occasional licence application, they must give a copy of the notice to the applicant and have regard to the objection or representation when determining the application. The Licensing Board may reject any notice of objection or representation if it is frivolous or vexatious and recover any expenses they have incurred in relation to such a frivolous or vexatious notice from the person who gave the notice. Any notice of objection or representation must be made to the Licensing Board within the 7 days that it is published on their website, otherwise the Licensing Board may deem it as having not been made.

Police intervention

9.14 Police Scotland may make representations concerning any application for an occasional licence under section 58(1) of the Act. They may wish to make such objections or representations due to concerns about the scale, location or timing of the event.

9.15 Due to the possibility of police intervention and/or public objection, Licensing Boards may wish to encourage, by means of publicity, event organisers not to rely on giving the minimum amount of notice and to contact local police licensing officers at the earliest possible opportunity about their proposals.

Determination of occasional licence

9.16 If the Licensing Board has not received any:

- report from a Licensing Standards Officer under section 57(3) of the Act, or
- notice of objection or representation under section 58(1) of the Act,

relating to the application, the Licensing Board must grant the application unless the application must be refused under section 56(6A),³⁷ 64(2)³⁸ or 65(3) of the Act.³⁹

³⁷ Relating to the maximum number of occasional licences that maybe issued in a 12 month period.

9.17 Section 59(3) of the Act provides that, in any other case, for example - where a representation has been received – the Licensing Board must consider whether any of the grounds for refusal applies and:

- if none of them applies, the Licensing Board must grant the application, or
- if any of them applies, the Licensing Board must refuse the application.

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

The grounds for refusal are:

- that the premises to which the application relates are excluded premises (see Chapter 14 of this Guidance),
- that the application must be refused under section 56(6A), 64(2) or 65(3) of the Act,
- that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,
- that, having regard to—
 - the nature of the activities proposed to be carried on in the premises to which the application relates,
 - the location, character and condition of the premises, and
 - the persons likely to frequent the premises,

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

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

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

³⁸ Where, if the application were to be granted, a licence would be such as to allow alcohol to be sold for consumption on the premises during a continuous period of 24 hours or more, in the absence of exceptional circumstances to justify that ability.

³⁹ Where the off-sales hours proposed in the application are such that alcohol would be sold for consumption outside before 10 am, after 10 pm, or both.

Conditions of occasional licence

9.20 Every occasional licence is granted subject to the mandatory conditions set out in schedule 4 of the Act. Licensing Boards may also impose such other conditions, in addition to those to which the licence is subject by virtue of schedule 4 of the Act, as they consider necessary or expedient for the purposes of any of the licensing objectives.

In particular, those are conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with either:

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

9.21 A Licensing Board may not impose a condition which:

- is inconsistent with any mandatory or prescribed condition⁴⁰,
- would have the effect of making any such condition more onerous or more restrictive, or
- relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.

Extension of licensed hours

9.22 Section 67 of the Act applies to occasional licences as well as premises licences. This means that the Licensing Boards have the power to grant general extensions to licensed hours in connection with special events of local or national significance if they consider it appropriate to do so. However licensed premises are not obliged to remain open for the period of such an extension.

Please see Chapter 8 of this Guidance – (Premises Licences – Paragraphs 8.65 – 8.66) for fuller information in relation to this.

Please note that section 68 of the Act (Extended hours applications) do not apply to occasional licences.

⁴⁰ A 'prescribed condition' is a condition prescribed by regulations made by the Scottish Ministers under section 60 of the Act, which Licensing Boards have discretion to impose on the grant of an occasional licence. Licensing Boards still retain the discretion to impose conditions other than any prescribed conditions, but these cannot be inconsistent with any prescribed condition. At the time of publication of this Guidance no conditions have been prescribed by the Scottish Ministers.

10. Personal Licence

Background

10.1 This Chapter provides Guidance on personal licences to sell or supply alcohol under the Act and on best practice in administering the process for issuing and renewing personal licences to sell or supply alcohol. A personal licence allows the holder to supervise or authorise the sale and supply of alcohol from licensed premises; it allows the person to be named as the premises manager of a particular premises if they choose; it allows the holder to deliver the mandatory two hour training course for licensed premises staff⁴¹; and it also allows the holder to apply for occasional licences.

10.2 The personal licence will remain in force for a period of 10 years⁴², with the possibility of renewal for further periods of 10 years thereafter. English and Welsh personal licences are not transferable to Scotland, and vice versa, as the licensing and legal systems operate separately. For example, the holder of an English personal licence who takes up employment in a Scottish premises and wishes to be a premises manager, will need to obtain a separate Scottish personal licence. Within Scotland, personal licences are portable. A personal licence issued by one Licensing Board may be used within another Licensing Board's jurisdiction. For example,

- a personal licence issued by the Aberdeen Licensing Board can be used by the holder who wants to be a premises manager in the Scottish Borders Licensing Board area, or
- a personal licence issued by one Licensing Board can be used to conduct training or to apply for occasional licences in another Licensing Board area.

10.3 When issuing personal licences, Licensing Boards may use the unique local authority identifiers as a prefix to the Licence numbers they issue for each personal licence. The list of identifiers which Licensing Boards may use is set out at **Annex 4** to this Guidance. In cases where local authorities have split their areas into separate Licensing Board areas, it would be good practice to adopt unique reference numbering for each of their respective areas to identify the Licensing Board area for which licences are issued.

10.4 Whilst there is no formal or statutory national database of personal licence holders in Scotland, Police Scotland retain a management software system known as "Innkeeper" which contains details of existing personal licence holders in Scotland. Licensing Boards do, however, have an obligation to maintain a public register of licensing information, in accordance with section 9 of the Act and with the Licensing Register (Scotland) Regulations 2007 (SSI 2007 No. 33). A Licensing Board's register includes information on the holders of personal licences. An individual can only hold one personal licence at a time. Licensing Boards may not

⁴¹ As mentioned above, one of the mandatory conditions of a premises licence relates to staff training requirements. Regulation 2 of the Licensing (Training of Staff) (Scotland) Regulations 2007 (SSI 2007 No. 397) provides that the prescribed training can be delivered by a person who holds a personal licence.

⁴² Unless revoked or surrendered.

issue a personal licence to any person who already holds a personal licence,⁴³ and any subsequent personal licence issued to such a person would be void. The Act does however allow for an existing personal licence holder to apply for the renewal of their licence.⁴⁴

10.5 The personal licence itself is a paper document issued by the Licensing Board. The form of a personal licence is prescribed and set out in schedule 1 of the Personal Licence (Scotland) Regulations 2007 (SSI 2007 No. 77). If Licensing Boards also issue an "ID badge" to supplement the paper licence, it should be borne in mind that the ID badge is not the licence and any requirements in relation to the licence relate to the paper licence and not the ID badge, such as the requirement to produce the licence when requested by the police or Licensing Standards Officers, or to return it to the Licensing Board to have details updated.

Premises manager

10.6 Section 19 of the Act defines the term "premises manager". Each premises must have one named premises manager, whose details will be specified in the premises licence. The named premises manager must be a personal licence holder in order to allow the sale of alcohol. This is a mandatory licence condition for premises licences.⁴⁵ In accordance with section 19(2) of the Act, an individual cannot be the premises manager for more than one premises at a time. Each premises can have more than one personal licence holder should they wish, but only one can be designated as the premises manager. Holding a personal licence authorises that person to supervise or authorise the sale of alcohol as well as train staff.

10.7 The personal licence is intended to ensure that anyone holding the position of a premises manager, which will include authorising or supervising the sale or supply of alcohol, is suitably trained to do so. In that respect the emphasis is on ensuring appropriate training of all personal licence holders, both in the applicable law and in how to deal with customers. For this reason, it may be that some people other than existing or proposed premises managers may wish to obtain a personal licence as it is seen as a recognised level of attainment and as a positive attribute when held by those pursuing a career in the licensed trade. Licensing Boards may wish to be aware that a personal licence is not a qualification that signifies business competence – it instead is a recognition that the individual has been trained in the responsible sale and supply of alcohol.

10.8 The premises manager will be responsible for the day to day running of the premises, responsible for the training and supervising of the staff, and ensuring the premises is run in accordance with the requirements of the licence. The Act requires a named premises manager for each premises since this carries a greater responsibility, as the sale and supply of alcohol can have a wide impact on the wider community and on crime and anti-social behaviour. It is therefore important to have

⁴³ See section 74(3)(ba) of the Act.

⁴⁴ Section 78 of the Act concerns renewal of a personal licence, noting section 73, 73A and 74 of the Act apply to a personal licence renewal application as they do to an initial application for a personal licence – with the exception of section 74(3)(ba) of the Act. That provision is the condition that an applicant must not already hold a personal licence. This has the effect of disapplying that condition in the context of a renewal of a personal licence.

⁴⁵ See paragraph 4 of schedule 3 of the Act.

one responsible person who will require to be knowledgeable of the law and experienced in the supervision and training of staff and suitably qualified. Ultimately the premises manager will be held responsible by the Licensing Board.

10.9 Paragraph 4 of schedule 3 of the Act states that alcohol must not be sold on the premises (other than where section 54 of the Act applies) at any time when: -

- there is no named premises manager in respect of the premises (i.e. one has not been designated);
- the named premises manager does not hold a personal licence;
- the personal licence held by the named premises manager is suspended; or
- the licensing qualification held by the named premises manager is not the appropriate licensing qualification in relation to the premises.

Where any events include the premises manager ceasing to work at the premises, the premises manager becoming incapable for any reason of acting as premises manager, the death of the premises manager or the personal licence held by the premises manager being revoked or suspended, the premises licence holder has a duty under section 54(3) of the Act to advise the appropriate Licensing Board⁴⁶ within 7 days of the date the manager ceased to be so. This notification triggers a six week window within which the premises may continue to sell alcohol and during which time an application naming a new premises manager may be lodged. If the 7 day notice is not given, then the premises should cease selling alcohol until such times as a new manager is named. Separately, if no new manager is named by the end of the six week window, the premises should cease selling alcohol until such times as a new manager is named. Any application naming a new manager can be given immediate effect so a premises can recommence alcohol sales just as soon as a valid application naming the new manager has been lodged. The new manager must be the holder of a valid personal licence and cannot be named on another premises licence.

10.10 Licensing Boards may wish to be aware that the Act does not require a holder of a personal licence to be on the premises at all times when alcohol is being sold on the premises (unless the premises is open after 1 am and meets certain criteria under late night condition regulations – see Chapter 8 of this Guidance - Paragraph 8.62, in which case a personal licence holder may require to be on the premises from 1 am to 5 am or such earlier time as the premises closes).

Whilst the Act requires every sale to be "authorised" by a personal licence holder, such authorisation can be a general one. This does not mean general authorisations being necessarily given by a person who is present on the premises when the relevant sale is made. It may be that many Licensing Boards as well as Licensing Standards Officers and Police Scotland consider it a matter of "best practice" to have more than one personal licence holder working at a premises for reasons of sound management, however this is not a legal requirement.

⁴⁶ See section 18 of the Act for the identification of the appropriate Licensing Board and paragraph 8.11 of this Guidance

10.11 This does not, however, mean that where a personal licence holder is not present they are removed from all responsibility. For example, where a sale of alcohol to a child is made, then the person making the sale may be considered responsible under the provisions of section 102 of the Act. However, section 103 of the Act may also make the premises manager or responsible person (see section 122 (3) of the Act) responsible (whether or not present on the premises at the time). It will depend on the facts and circumstances of the particular case.

10.12 Similarly, a sale of alcohol by a non-qualified person (contrary to paragraph 6(1) of schedule 3 of the Act) may make a (non-present) licence holder responsible under section 1(3)(b) of the Act for allowing alcohol to be sold.

10.13 It must be stressed that the scenarios referred to above in paragraphs 10.11 and 10.12 of this Guidance are provided as examples and each case would have to be considered in each individual set of circumstances.

Application/Eligibility for personal licences

10.14 A person may apply to a Licensing Board for a personal licence. Licensing Boards determine personal licence applications subject to certain circumstances, such as the examples shown in paragraph 10.16 of this Guidance. Applicants must meet all of the following conditions⁴⁷:

- they are aged 18 or over;
- they possess a licensing qualification;
- they do not already hold a personal licence; and
- no personal licence previously held by them has been revoked within the period of 5 years ending with the day on which the application was received (unless the revocation was due to failure to comply with "refresher" training requirements, in which case the 5 year prohibition on reapplication does not apply).

Individuals should apply to the Licensing Board of the area in which the person is ordinarily resident. If the person is not ordinarily resident in the area of any Licensing Board they may apply to any Licensing Board.

Notification of application

10.15 An important element of the personal licence application process is the requirement for Licensing Boards to notify the chief constable and appropriate Licensing Standards Officer of all applications, and to send each of them a copy of the application. This notification process allows the chief constable to confirm whether or not the applicant has been convicted of a relevant offence or foreign offence. It also allows the chief constable to consider whether to make a recommendation that the application be refused (if necessary in the chief constable's view for the purpose of any of the licensing objectives) and/or to give the Licensing Board any information in relation to the applicant that the chief constable considers relevant for the Licensing Board to consider. The notification process also allows the

⁴⁷ See section 74(3) of the Act.

Licensing Standards Officer to give the Licensing Board any information in relation to the applicant that the Officer considers relevant for the Licensing Board to consider, including conduct inconsistent with the licensing objectives.

Determination of personal licence application

10.16 Personal licence applications received by a Licensing Board are determined by the Licensing Board in accordance with section 74 of the Act. There are a number of scenarios which may impact upon how an application will be determined. For example:

- the Licensing Board **must grant** the application if: all of the conditions referred to in paragraph 10.14 of this Guidance are met in relation to the applicant; the Licensing Board has received a notice from the chief constable⁴⁸ (stating that, as far as the chief constable is aware, the applicant has not been convicted of any relevant offence or foreign offence); the notice does not include a recommendation⁴⁹ that for the purposes of any of the licensing objectives the personal licence be refused; no information has been provided⁵⁰ (by the chief constable or a Licensing Standards Officer in relation to the applicant that may be relevant to consideration by the Licensing Board of the application); the applicant has signed the application; and section 74(8)⁵¹ of the Act does not apply.
(section 74(2) of the Act)
- the Licensing Board **must refuse** the application if: any of those conditions referred to in paragraph 10.14 of this Guidance are not met in relation to the applicant.
(section 74(4) of the Act)
- the Licensing Board **must hold a hearing** for the purposes of considering and determining the application if: all of the conditions referred to in paragraph 10.14 of this Guidance are met in relation to the applicant; and a notice received from the chief constable⁵² (stating that, as far as the chief constable is aware, the applicant has not been convicted of any relevant offence or foreign offence, or a notice specifying any convictions of the applicant for any such offence) includes a recommendation⁵³ that for the purposes of any of the licensing objectives that the personal licence application be refused.
(section 74(5) of the Act)

⁴⁸ Under section 73(3)(a) of the Act.

⁴⁹ Under section 73(4) of the Act.

⁵⁰ Under section 73(5) or 73A(2) of the Act.

⁵¹ Section 74(8) of the Act applies if – (a) all of the conditions specified in section 74(3) of the Act (and outlined in paragraph 10.14 of this Guidance) are met in relation to the applicant, (b) the Licensing Board has received from the chief constable a notice under section 73(3)(a) of the Act, and (c) of the Act, the applicant has held a personal licence which– (i) expired within the period of 3 years ending on the day on which the application was received, or (ii) was surrendered by the applicant by notice under section 77(6) of the Act received within that period.

⁵² Under section 73(3)(a) or (b) of the Act.

⁵³ Under section 73(4) of the Act.

- the Licensing Board **may hold a hearing** for the purposes of considering and determining the application if: all of the conditions referred to in paragraph 10.14 of this Guidance are met in relation to the applicant; the notice received from the chief constable⁵⁴ specifies any convictions of the applicant of any relevant or foreign offence; and that notice does not include a recommendation for the purposes of any of the licensing objectives that the personal licence be refused.
(section 74(5A) of the Act).

In such circumstances, if the Licensing Board **decides not to hold a hearing**, the Licensing Board **must grant** the application.
(section 74(5B) of the Act)

- the Licensing Board **may hold a hearing** for the purpose of considering and determining the application if: all of the conditions referred to in paragraph 10.14 of this Guidance are met in relation to the applicant; a notice received from the chief constable (stating that, as far as the chief constable is aware, the applicant has not been convicted of any relevant offence or foreign offence, or a notice specifying any convictions of the applicant for any such offence) does not include a recommendation that for the purposes of any of the licensing objectives that the personal licence application be refused; and information has been provided (by the chief constable or a Licensing Standards Officer in relation to the applicant that may be relevant to consideration by the Licensing Board of the application).
(section 74(5AA) of the Act)

In such circumstances, if the Licensing Board **decides not to hold a hearing**, the Licensing Board **must grant** the application.
(section 74(5B) of the Act)

- the Licensing Board **may hold a hearing** for the purpose of considering and determining the application if: all of the conditions referred to in paragraph 10.14 of this Guidance are met in relation to the applicant; a notice received from the chief constable states that, as far as the chief constable is aware, the applicant has not been convicted of any relevant offence or foreign offence; and the applicant has held a personal licence which expired within a period of 3 years⁵⁵, or was surrendered by the applicant⁵⁶, and after having regard to the circumstances relating to the expiry or surrender of the previously held licence, the Licensing Board **may refuse or grant** the application.
(section 74(7) and (8) of the Act)

10.17 At a hearing under section 74(5), (5A) or (5AA) of the Act, the Licensing Board **must**, after having regard to the chief constable's notice and any information provided by the chief constable or a Licensing Standards Officer (in relation to the applicant that may be considered relevant to consideration by the Licensing Board of the application)–

⁵⁴ Under section 73(3)(b) of the Act.

⁵⁵ Ending on the day on which the application was received.

⁵⁶ By notice under section 77(6) of the Act received within that period.

- if satisfied that a ground for refusal applies, **refuse** the application, or
- if not so satisfied, **grant** the application.
(section 74(6) of the Act)

The grounds for refusal are-

- that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence,
- that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.
(section 74(6A) of the Act)

10.18 Licensing Boards may delegate the function of determining a personal licence application, unless:⁵⁷

- the applicant has been convicted of a relevant offence or a foreign offence, or
- a hearing is to take place to consider the application.

10.19 Under section 75 of the Act applicants are under a duty to notify the Licensing Board should they be convicted of a relevant or foreign offence during the application period. Should Licensing Boards receive such notifications they must suspend consideration of the application and notify the chief constable of the conviction seeking either confirmation of the relevant or foreign offence or that no relevant or foreign offence has been committed. At this time should a relevant or foreign offence have been committed the chief constable may recommend refusal of the application. Licensing Boards must resume consideration of the application process and, in these circumstances, take the chief constable's recommendations (if any) into consideration when determining the application.

Renewal of personal licence

10.20 In order to remain valid, personal licences must be renewed every ten years. The determination of an application for renewal of a personal licence will be similar as an application for a personal licence. An application for renewal must be made under section 78 of the Act which applies essentially the same process and considerations (including notification by the Licensing Board to the chief constable and the Licensing Standards Officer) to personal licence renewal applications as those applying to personal licence applications (i.e. sections 73, 73A and 74 of the Act apply to personal licence renewal applications). A key difference, however, is that section 74(3)(ba) of the Act does not apply here, meaning a personal licence renewal application is not automatically rejected because the applicant already holds a personal licence. Licensing Boards can delegate the function of determining a personal licence renewal application to clerks subject to the same restriction as described in paragraph 10.18 of this Guidance. Personal licence holders must apply to the Licensing Board for renewal of the licence within the specified period. The specified period is the period of 9 months beginning 12 months before the expiry date of the licence (see section 78 of the Act). The effect of section 78 of the Act is that personal licence holders must apply for renewal of their licence no later than

⁵⁷ See paragraph 10 of schedule 1 of the Act.

three months prior to the expiry of the licence. For instance, if a licence was issued on 1 September 2020, the licence holder would be able to apply for renewal of the licence during the period beginning on 31 August 2029 and ending on 31 May 2030.

The Licensing Board which issued the personal licence must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed. This notification must be not later than 9 months before the expiry date of the personal licence.

10.21 The purpose of renewal is not to update the licence holder's knowledge of the licensing regime, (see paragraph 10.24 of this Guidance on refresher training). Instead it provides an opportunity (despite the obligations on the licensee to update the Board) for the Board to check at least once every 10 years, that the details they hold with regard to the licence holder still remain correct and that the licensee has been updating them as required. This includes ensuring that the photograph of the holder on the personal licence is updated to aid identification and being able to check that the person applying for renewal is still the same person who is recorded as holding the licence. Further, while a personal licence holder also has a duty to notify the Licensing Board of any convictions for relevant and foreign offences,⁵⁸ the renewal process also provides an opportunity to check that any convictions for such offences have been properly notified to the relevant licensing authority.⁵⁹

Licensing qualifications/training

10.22 Section 74(3) of the Act requires that in order to be granted a personal licence an applicant must possess a licensing qualification. The only acceptable licensing qualification is such qualification, or a qualification of such description, as may be prescribed in regulations made by the Scottish Ministers under section 91 of the Act. The Licensing Qualification (Scotland) Regulations 2007 (SSI 2007 No. 98) provide that in terms of section 91 of the Act, a licensing qualification means a qualification which has been accredited for the purpose of section 91 of the Act by the Scottish Ministers.

10.23 The Scottish Ministers accredit licensing qualifications from time to time for the purpose of an application for a licence under section 74 of the Act, and for the purpose of a renewal of a licence under section 78 of the Act. The current accredited licensing qualifications for these respective applications can be found here:

<https://www2.gov.scot/Publications/2018/11/3180>

10.24 Licensing Boards will be aware that Personal Licence holders have two important obligations:-

- they must undertake a course of training during the first 5 years from the date of their personal licence being issued and again during each subsequent 5 year period during which the licence has effect. The purpose of this training is to refresh their knowledge of the licensing regime. Once completed the

⁵⁸ See section 82 of the Act.

⁵⁹ See section 83 of the Act, which sets out what action the Board must take on being notified (or otherwise becoming aware) of a personal licence holders relevant or foreign offences, and the possible consequences for the licence holder.

licensee must send the training certificate (which was awarded as a result of successfully completing the course of training) to the Licensing Board which issued the licence; and

- they must apply to renew their personal licence every ten years, and lodge the renewal application no later than 3 months before the expiry date of the licence (see paragraph 10.20 of this Guidance).

The mandatory training which personal licence holders are required to undertake, is commonly referred to as "refresher" training. The training requirements are prescribed in regulations made by the Scottish Ministers under section 87(1) of the Act. regulation 2 of the Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013 No 261), made under section 87(1) of the Act, provides that the prescribed course of training is a course accredited for the purpose of that regulation by the Scottish Ministers.

The Scottish Ministers therefore accredit the required course of training from time to time using that power. The current accredited course of training can be found here:

<https://www2.gov.scot/Publications/2018/11/3180>.

The refresher training requirements are that the holder of the licence must undertake and pass an accredited refresher training course within the period of five years from the date of the issue of their licence and within each subsequent five year period during which the licence has effect⁶⁰. The Board must then receive evidence from the licensee that this training requirement has been completed by them within 3 months of the expiry of the five year period to which the course of training relates. The only evidence which is acceptable by the Board for this purpose is the original or copy of the Scottish Certificate for Personal Licence Holders (Refresher) at Scottish Credit and Qualifications Framework (SCQF) Level 6. In addition this must be accompanied by the licensees full name, address, date of birth and licence number).

If a personal licence holder fails to submit the required evidence to the Licensing Board/either of these deadlines is missed, the Licensing Board must revoke the licence (although the holder may surrender the licence prior to the formal revocation). A licence holder who has missed either of these deadlines will therefore require to obtain a fresh personal licence by submitting a new personal licence application.

Surrender and re-application - training obligations

10.25 Personal licence holders are able to surrender their personal licence at any time by giving notice to the Board (section 77(6) of the Act). It is possible that a licence holder could surrender their licence within any 5 year period during which they were obliged to undertake training, without completing that refresher training. Once a personal licence holder has surrendered their personal licence they are no longer able to supervise or authorise the sale of alcohol (section 71 of the Act). A person who has surrendered their personal licence may apply for another personal

⁶⁰ See regulation 2 of the Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013 No. 261).

licence at any time (section 72 of the Act). There is no obligation on such an applicant to obtain another “licensing qualification” in addition to the one they obtained in support of their application for their previously held personal licence (section 74(3)(b) of the Act), provided that qualification is one which is still accredited for the purposes of an application under section 72 of the Act.

If an applicant applies for a personal licence within 3 years of the receipt by the Board of the applicant’s notice surrendering their previous personal licence, then the Board may hold a hearing for the purposes of considering and determining the application (section 74(7) and (8) of the Act). If a hearing is held the Board must have regard to the circumstances in which the previously held personal licence was surrendered (section 74(8) of the Act). Such circumstances will include circumstances which suggest the applicant’s surrender of their previous personal licence was a means of avoiding undertaking the training which they would have otherwise have been required to undertake had they not surrendered their previous licence. After such a hearing the Board may either refuse or grant the application (section 74(8) of the Act).

Renewal and Refresher combined - Combining the personal licence renewal process and the requirement to exhibit evidence of training

10.26 There is no legal connection between the process undertaken by the Board to renew a personal licence and the obligation on the personal licence holder to undertake and evidence training to the Board. However the end of the second 5 year period during which training must be undertaken will always coincide with the expiry date of a personal licence (sections 87(1) and 77(1) of the Act). A personal licence holder may then choose to apply to renew their personal licence and at the same time submit evidence of their compliance with their obligations to undertake training even though a separate deadline applies to the requirement to submit evidence of completion of refresher training. If an applicant chooses to combine their submission of evidence of refresher training and their application to renew their personal licence then a Board may choose to administratively combine their consideration of each matter, provided that the Board treats each issue separately as matter of law and statutory function.

The Scottish Ministers have also accredited the qualifications required to be taken in compliance with the refresher training requirement, as a “licensing qualification” (regulation 2 of SSI 2007/98) for the purpose of renewing a personal licence. This is in addition to the continued accreditation of the “licensing qualifications” which were used by applicants in their initial application for a personal licence. At renewal it is therefore open to applicants to submit evidence of any of the accredited “licensing qualifications” which now includes evidence of the qualifications obtained by them in their most recent fulfilment of their refresher training requirement.

Review of the personal licence

10.27 The Act allows the Licensing Board to apply a range of sanctions against a personal licence holder where such action is considered appropriate.

Notice of convictions

10.28 Section 81 of the Act requires the clerk of a court before which a personal licence holder is convicted of a relevant offence to notify the Licensing Board of the conviction. The clerk is to notify the Licensing Board which issued the personal licence held by the licence holder. Where a Licensing Board receives such a notice and has reason to believe that the personal licence holder in respect of whom the notice is given is working in licensed premises situated in the area of another Licensing Board, the receiving Board must give notice of the conviction to the other Board.

Section 82 of the Act requires a licence holder who is convicted of a relevant or foreign offence to give notice of the conviction to the Licensing Board which issued the personal licence held by that person. If the licence holder works in any licensed premises situated in the area of a different Licensing Board, the licence holder must also notify that other Board.

The relevant Licensing Board must give notice of the licence holders convictions to the chief constable if the Licensing Board receives a notice of conviction relating to a personal licence holder or becomes aware that a personal licence holder was, during the application period, convicted of a relevant or a foreign offence. If the personal licence holder in question is working as a premises manager at any licensed premises, the 'relevant Licensing Board' is the Licensing Board for the area in which those premises are situated. In any other case, the 'relevant Licensing Board' means the Licensing Board which issued the personal licence.

Within 21 days of receiving that notice, the chief constable must give notice to the Licensing Board either:

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

If the Licensing Board receives the former notice, they can take no further action in relation to the conviction.

If the Licensing Board receives the latter notice they must hold a hearing or decide to take no further action in relation to the conviction. That is subject to the following.

If the chief constable gives notice confirming the existence of the conviction, the chief constable may include a recommendation that the licence holder's personal licence should be revoked, suspended or endorsed. The chief constable can only make such a recommendation if they consider it necessary for the purposes of any of the licensing objectives, having regard to the conviction specified in the notice. If the Licensing Board receives such a recommendation they must hold a hearing.

At a hearing the Licensing Board can make certain orders. However, they must have regard to the conviction and any recommendation from the chief constable and provide the licence holder and the chief constable an opportunity to be heard. The

Licensing Board can only make an order if satisfied that it is necessary to do so for the purposes of any of the licensing objectives. The orders that the Licensing Board can make are orders revoking, suspending or endorsing⁶¹ the personal licence. Suspension is for such period not exceeding 6 months as the Licensing Board considers appropriate. If, at the hearing, the Licensing Board is satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.

When making an order the Licensing Board must give notice of the order, and the reasons for making it, to the persons listed in section 83(10) of the Act.

Conduct inconsistent with licensing objectives

10.29 In certain circumstances Licensing Boards are required to consider whether to make an order in light of information that a personal licence holder has displayed conduct inconsistent with the licensing objectives.

10.30 In the course of a review hearing in respect of a premises licence, a Licensing Board may make a finding that a personal licence holder acted in a manner which was inconsistent with any of the licensing objectives while working in the premises concerned (section 84 of the Act).

If, at the time of the finding, the personal licence holder concerned is working in any licensed premises in that Licensing Board's area, the Board must hold a hearing. Otherwise, the Licensing Board is to give notice to the relevant Licensing Board of their finding and also recommend to the relevant Licensing Board whether the personal licence held by the licence holder should be revoked, suspended or endorsed. The 'relevant Licensing Board' means the same as that in paragraph 10.28 of this Guidance. Where a Licensing Board receives such a notice and recommendation, the Board must hold a hearing.

At a hearing the Licensing Board must give the licence holder concerned, and such other persons as the Board considers appropriate an opportunity to be heard. If satisfied that it is necessary to do so for the purposes of any of the licensing objectives, the Licensing Board may make an order revoking, suspending or endorsing⁶² the personal licence. Suspension is for such period not exceeding 6 months as the Licensing Board considers appropriate. If, at the hearing, the Licensing Board is satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.

When making an order the Licensing Board must give notice of the order, and the reasons for making it, to the persons listed in section 84(7) of the Act.

10.31 Under section 84A of the Act, if the chief constable considers that any personal licence holder has acted in a manner inconsistent with any of the licensing

⁶¹ See paragraph 10.34 of this Guidance for more on endorsement.

⁶² See paragraph 10.34 of this Guidance for more on endorsement.

objectives, they may report the matter to the relevant Licensing Board. Here 'relevant Licensing Board' has the meaning given in section 83(11) of the Act, and described in paragraph 10.28 of this Guidance. Upon receipt of such a report, the Licensing Board must hold a hearing. The process and potential consequences of such a hearing are the same as that described in paragraph 10.30 of this Guidance.

10.32 Under section 84B of the Act, if a Licensing Standards Officer considers that any personal licence holder who is, or was, working in licensed premises in the Officer's areas has acted in a manner inconsistent with any of the licensing objectives, the Officer may report the matter to the relevant Licensing Board. Here 'relevant Licensing Board' has the meaning given in section 83(11) of the Act, and described in paragraph 10.28 of this Guidance. Upon receipt of such a report, the Licensing Board may hold a hearing. The process and potential consequences of such a hearing are the same as that described in paragraph 10.30 of this Guidance.

General comment on hearings

10.33 These hearings are not courts of law. They are an opportunity for Licensing Boards to hear all the circumstances relating to a particular case to aid them in making a judgement, and also an opportunity for a licence holder's case to be heard. Any hearing should not be intimidating for the licence holder, and hearings should be conducted in an open and fair manner. However, Licensing Boards will be acting in a quasi-judicial manner and an appropriate degree of formality will be necessary.

Endorsements

10.34 The introduction of endorsements is based on a similar approach taken with driving licences. An endorsement remains on an individual's personal licence for five years at which point the licence holder can apply to have the endorsement removed. Where a Licensing Board receives an application for the removal of an expired endorsement, the Licensing Board must amend the licence so as to remove the endorsement. Should a personal licence holder receive 3 endorsements⁶³ from the Licensing Board, section 86 of the Act requires Licensing Boards to hold a hearing. Following this hearing, the Licensing Board can decide to take no further action, or if further action is warranted may: -

- suspend the personal licence for such period, not exceeding 6 months, as the Board considers appropriate; or
- revoke the licence

Changes in name or address

10.35 The holder of the licence is required by section 88 of the Act to notify the Licensing Board of any changes of name or address. These changes should be recorded by the Licensing Board and the procedure for this is set out in section 89(6) of the Act. Licensing Board members should be aware that no fee may be charged

⁶³ Where an endorsement has expired, but the Licensing Board has not yet amended the personal licence, that endorsement is still to be disregarded and will not count toward the total number of endorsements (see section 85(6) of the Act).

for updating a licence but that licence holders have a duty to inform the Licensing Board of any change in personal details within one month of the change; and failure to do so is a criminal offence.

Updating the personal licence

10.36 It is essential that the details contained on the personal licence are accurate and kept up to date. In order to achieve this, section 89 of the Act places a duty on Licensing Boards to update and amend the personal licence should any of the following occur: -

- a personal licence is renewed, enter the new expiry date;
- where a licence is suspended, enter the date and period of any suspension;
- the Licensing Board receives notification of a conviction, enter the date of the conviction and the nature of the offence;
- a personal licence is endorsed by the Licensing Board, the Licensing Board amend the licence so as to include in it a statement that it is endorsed together with the details of the conviction or conduct giving rise to the endorsement;
- the Licensing Board receives notification of a change of name and/or address the new details must be entered; and
- where a Licensing Board receives details of training undertaken those details must be entered.

11. Control of Order

General

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

Closure Orders and Emergency Closure Orders

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

Closure Orders

Licensing Boards may make a closure order under section 97(1) of the Act. Licensing Boards can only do so on the application of a senior police officer.⁶⁴ The form of such an application is set out in Parts A and B of schedule 1 of the Licensing (Closure Orders) (Scotland) Regulations 2007 (SSI 2007 No. 35) (the ‘Closure Order Regulations’).

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

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

- in the case of a premises in respect of which a premises licence has effect:
 - the premises licence holder, or
 - the premises manager,
- in the case of premises in respect of which an occasional licence has effect, the person who holds the occasional licence, and
- in either case, any person working at the premises in a capacity (whether paid or unpaid) which authorises the person to close the premises.

⁶⁴ A senior police officer for these purposes means a constable of, or above, the rank of superintendent (section 147(1) of the Act).

11.3 Licensing Boards can receive applications from premises licence holders (or occasional licence holders) for the termination of the closure order (section 98(3) of the Act). If the Licensing Board may terminate the closure order if it is satisfied that it is no longer necessary in the interests of public safety for the premises to be closed. Such applications should be in the form set out in Parts A and B of schedule 3 of the Closure Order Regulations. Licensing Boards should give notice to the applicant of the Board's decision in the form set out in Part C of schedule 3 of the Closure Order Regulations.

Additionally, a constable of, or above, the rank of inspector must terminate a closure order if the constable is satisfied that it is no longer necessary in the interests of public safety for the premises to be closed (section 98(1) of the Act). The constable, must ensure that notice of the termination is given to the Board which made the closure order (section 98(2)(b) of the Act)⁶⁵.

Emergency closure orders

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

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

11.4 Under regulation 5 of the Closure Order Regulations, when an emergency closure order is made under section 97(2) of the Act, the officer who has made the order must give notice of the order to the Licensing Board in the area of which the premises in question are situated. This notice must be given as soon as practicable after the order has been made.

An emergency closure order is to be in the form set out in Part 1 of schedule 2 of the Closure Order Regulations.

The period of closure specified in an emergency closure order cannot exceed 24 hours, however that period can be extended under section 99 of the Act.

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

⁶⁵ Notice must also be given to a responsible person (section 98(2)(a) of the Act).

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

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

Regulation 5 of the Closure Order Regulations requires that the Licensing Board in the area of which the premises in question is located must be notified when the period of an emergency closure order is extended under section 99(1) of the Act.

A constable of, or above, the rank of inspector must terminate an emergency closure order if the constable is satisfied that it is no longer necessary in the interests of public safety for the premises to be closed (section 98(1) of the Act). The constable must give notice to a responsible person (section 98(2)(a) of the Act) and the Licensing Board in the area of which the premises is situated (regulation 5 of the Closure Order Regulations).

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

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

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

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

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

Voluntary co-operation

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

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

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

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

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

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

In the vicinity of licensed premises

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

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

Likely disorder

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

Length of emergency closure order

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

11.20 If, for example, a closure is made at 9 pm on a Monday evening because of disorder caused by gangs fighting in a public house, closure might only be appropriate for up to the time when the premises licence requires the premises to close, perhaps midnight. This could be because the constable of or above the rank of inspector reasonably believes that there is a threat of gang members (those not

arrested) returning to the premises before closing time but after the police have left. However, if the threat is not expected to have subsided by closing time, it may be appropriate to impose a closure for a period extending into the following day.

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

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

Enforcing a closure order

11.23 The Act does not require the licence holder or the police to clear the premises of customers following the service of a closure order, however, it is assumed that normally premises would empty, as it would be an offence under section 97(7) of the Act for a responsible person to allow any licensed premises to be open in breach of a closure order. The closure relates to the premises. If an individual who is drunk or disorderly is asked to leave by a responsible person⁶⁶ or a constable and then refuses to leave, they commit an offence (section 116 of the Act). Where a constable is asked for assistance to remove such a customer, the officer is under a statutory duty to provide that assistance (section 116(4) of the Act).

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

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

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

⁶⁶ Note that here that 'responsible person' has a slightly different meaning (set out in section 122(3) of the Act) than the meaning of 'responsible person' for the purposes of closure orders (see section 101 of the Act).

Antisocial Behaviour etc. (Scotland) Act 2004

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

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

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

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

Exclusion Orders

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

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

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

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

12. Sale and supply of alcohol to children and young persons

Background

12.1 One of the licensing objectives in section 4 of the Act is “protecting children and young persons from harm”. The system itself must be tested against that licensing objective including whether or not it can, as proposed, adequately deliver that protection for children and young persons. Licensing Boards may find it useful for an overview of the ways in which the Act seeks to ensure that the licensing system protects children and young persons from harm. This Chapter of the Guidance provides that overview.

For the purposes of the Act, a ‘child’ means a person under the age of 16 and a ‘young person’ means a person aged 16 or 17 (section 147(1) of the Act). Some provisions of the Act apply differently to children and to young persons.

12.2 Children and young persons may need protection from environments which are unsuitable and they need to be prevented from being placed in a position where it is easy for them to circumvent the law and obtain alcohol. The interests of communities would not be served by allowing any relaxation of controls which would undermine the Scottish Government's extensive efforts to combat underage drinking.

12.3 The intention of the legislation is to ensure that licensed premises where children and young persons are to have access are safe and sensible environments where families can socialise safely together.

Notwithstanding the general requirement to observe the licensing objective of “protecting children and young persons from harm”, the Act sets out a range of provisions relating to the protection of children and young persons.

Under section 20(4)(e) of the Act, any premises where alcohol is to be sold for consumption on the premises must include:

- a statement as to whether children or young persons are to be allowed entry to the premises, and
- if children and young persons are to be allowed entry to the premises, a statement of the terms on which they are allowed entry.

In particular, that statement of terms should include details on:

- the ages of children and young persons to be allowed entry,
- the times at which they are to be allowed entry, and
- the parts of the premises to which they are to be allowed entry.

A licence which authorises off sale only is not required to state the rules for access by children and young persons in the operating plan so the default position is that there is no restriction of access in off sale premises.

In addition to this requirement as to operating plans, the Act also creates a series of offences to discourage underage persons obtaining or consuming alcohol.

Overview of offences

Section 102 to 110 of the Act create a number of offences concerning underage drinking. There are some common elements applying across these offences.

Under section 122 of the Act, references to 'relevant premises' in section 102 to 110 of the Act means:

- any licensed premises,
- any exempt premises on which alcohol is sold (see Chapter 14 of this Guidance), and
- any premises used for the selling of alcohol to trade.

Under section 122 of the Act, references to 'responsible person' in section 102 to 110 means of the Act, in relation to relevant premises:

- in the case of licensed premises in respect of which a **premises licence** has effect, **the premises manager**,
- in the case of licensed premises in respect of which an **occasional licence** has effect, the **holder of the licence**,
- in the case of **other relevant premises**, the **person having management and control of the premises**, and
- in any of those cases, any person aged 18 or over who works on the premises in a capacity (whether paid or unpaid) which:
 - authorises the person to sell alcohol, or
 - in relation to any offence, under section 102 to 110 of the Act, of allowing something to be done, authorises the person to prevent the doing of the thing.

12.4 Section 141 of the Act provides for corporate liability where an offence under the Act has been committed by a body corporate, a Scottish partnership or an unincorporated association other than a Scottish partnership. Vicarious liability (see paragraph 13.2 of this Guidance) of premises licence holders and interested parties applies to certain offences under the terms of section 141B of the Act. These offences are specified in section 141B(5) of the Act, and include offences related to underage drinking under sections 102, 103, 106, 107 and 108 of the Act.

In relation to certain offences under the Act, it is a general defence for a person charged with a relevant offence to prove that the person did not know the offence was being committed and exercised all due diligence to prevent the offence being committed (section 141A(1) of the Act). The relevant offences here are those listed in section 141A(2) of the Act, and include offences related to underage drinking under sections 103, 106 and 107 of the Act.

Sale of alcohol to a child or young person

12.5 Under section 102 of the Act, a person commits an offence if they sell alcohol to an individual aged under 18. Licensing Boards, when considering applications, or instituting review proceedings as a result of offences under the Act, are expected to

be concerned primarily with offences involving the sale and consumption of alcohol on licensed premises.

12.6 Licensing Boards are expected to maintain close contact with other relevant bodies, such as the police, Licensing Standards Officers and local authority social work departments (youth justice/children and families teams) about the extent of unlawful sales and consumption of alcohol by children and young persons and to be involved in the development of any strategies to control or prevent these unlawful activities and to pursue prosecutions. For example, where as a matter of policy, warnings are given to licence holders or other responsible persons prior to any decision to prosecute in respect of an offence, it is important that each of the enforcement arms should be aware of the warnings each of them has given.

12.7 The presence of these offences act as a deterrent to the sale of alcohol to children and young persons by making the consequences of non-compliance significant.

Defences

12.8 The Act provides a defence under section 102(2) of the Act to the offence of the sale of alcohol to children and young persons if the seller of alcohol believed that the purchaser was aged 18 or over and either they took all reasonable steps to establish the purchaser's age or no reasonable person could have suspected from the purchaser's appearance that they were aged under 18. The second limb of that defence would cover a case where the purchaser who was under 18 looked exceptionally old for their age. For the purposes of this defence, the accused is to be treated as having taken 'all reasonable steps' to establish the age of the purchaser if the accused was shown evidence of the age of the person and that evidence would have convinced a reasonable person. Evidence here means:

- a passport,
- an EU photocard driving licence, or
- a document of the type described in regulation 2(2) of the Sale of Alcohol to Children and Young Persons (Scotland) Regulations 2007 (SSI 2007 No. 93), being:
 - a Ministry of Defence Form 90 (Defence Identity Card)
 - a photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram (See paragraph 12.10 of this Guidance),
 - a national identity card issued by a European Union member state (other than the United Kingdom), Norway, Iceland, Liechtenstein or Switzerland, or
 - a Biometric Immigration Document.

12.9 If it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it (for example if the proof of age was either an obvious forgery or clearly belonged to another person), the defence will fail (section 102(3)(b) of the Act).

Licensing boards should note that, whilst the above forms of ID are acceptable, it remains a matter for the individual licensee to decide at their discretion whether any

of these forms are acceptable to them. A customer cannot insist on being served alcohol having presented one of these forms of ID.

12.10 The Scottish Ministers strongly support the PASS accreditation system which aims to approve and accredit various proof of age schemes that are in existence and this is reflected in the prescribing of PASS approved cards as acceptable proof of age under sections 102 and 108 of the Act (see paragraphs 12.27 to 12.29 of this Guidance for more on section 108 of the Act). PASS is the Proof of Age Standards Scheme launched in January 2003 by the British Retail Consortium and is supported by major retail associations, including those representing the licensed trade. It is an umbrella system, audited by the Trading Standards Institute, under which reliable proof of age card schemes, such as the Young Scot card, will carry the same hologram logo in order that retailers can readily distinguish such cards from forgeries or cards issued under unreliable schemes. This ensures that such schemes maintain high standards, particularly in the areas of integrity and security. The Scottish Ministers recommend that Licensing Boards should promote the PASS arrangements.

It is also important to recognise that the Act also creates a statutory requirement for all licensed premises to have an Age Verification policy – commonly referred to as a "Challenge 25" policy. This policy is a mandatory condition of every premises licence and requires licence holders and their staff to take positive steps to identify a customer's if that person appears to the person selling the alcohol to be under the age of 25 (paragraph 9A of schedule 3 of the Act). Retailers are left with a degree of flexibility in order to adopt the most appropriate procedures for them.

Test Purchasing

12.11 Licensing Boards should be aware that Police Scotland have an additional tool with respect to age related licensing offences which is commonly referred to as "test purchasing". This is where the police, under section 105(2) of the Act, authorise a child or young person to buy or attempt to buy alcohol, for the purpose of determining whether an offence is being committed under section 102 of the Act (the offence of selling alcohol to a child or young person). This means that the authorised child or young person can enter a licensed premises and attempt to obtain alcohol in order to check that the licence holder or their staff are carrying out the proper checks. This power is only given to the police. The police have their own internal guidance on how to conduct test purchasing which includes, for example, requirements that the young persons who are involved look their age as well as procedures so as not to have the young person put at risk. Section 105(3) of the Act requires that a child or young person can only be authorised for this purpose if the chief constable is satisfied that all reasonable steps have been or will be taken to avoid any risks to the welfare of the child or young person. Test purchasing is one tool which the police use amongst others in order to identify if there is a problem at particular premises, and whilst it is generally used on an intelligence-led basis, it can also be used for a particular premises or a number of premises in a particular locality as part of a wider operation or scheme. A failed test purchase, where the young person is sold alcohol, would typically result in a charge against the staff member or licence holder and may also result in the police seeking a personal or premises licence review, depending on the wider context and circumstances.

12.12 The need for and extent of test purchasing operations in any area is a matter for the police, in consultation with Licensing Standards Officers, to judge on the basis of their local knowledge, available resources and intelligence/information being received that indicates offences may be occurring within a particular premises or local area. This will establish how far such operations are necessary in each Licensing Board area.

Allowing sale of alcohol to a child or young person

12.13 Under section 103 of the Act, it is an offence for a responsible person to allow the sale of alcohol to an individual aged under 18, on relevant premises. The meanings of relevant premises and responsible person are set out above in paragraph 12.3 of this Guidance.

Sale of liqueur confectionery to children under 16

12.14 It is an offence under section 104(1) of the Act to sell liqueur confectionery to a child (i.e. a person aged under 16). The definition of liqueur confectionery is given in section 147(1) of the Act. It is a defence if the seller believed that the purchaser was aged 16 or over and the seller either took all reasonable steps to establish the purchaser's age or no reasonable person could have suspected from the purchaser's appearance that they were under 16. For the purposes of this defence, the accused is to be treated as having taken 'all reasonable steps' to establish the purchaser's age if the accused was shown evidence of the child's age and that evidence would have convinced a reasonable person.

12.15 Although young persons aged 16 and 17 can buy liqueur confectionery (as defined under section 147(1) of the Act) they cannot buy or be sold any other foodstuffs which contain alcohol of a strength exceeding 0.5 per cent (the meaning of alcohol is set out in section 2 of the Act).

Supplying alcohol to a child or young person

12.16 A person over the age of 18 who buys, or attempts to buy, alcohol on behalf of, or for, a child (or who gives or makes alcohol available to a child) in a public place commits an offence under section 104A of the Act.

12.17 A person over the age of 18 who knowingly buys, or attempts to buy, alcohol on behalf of, or for a young person (or who gives or makes alcohol available to a young person) in a public place commits an offence under section 104B of the Act.

12.18 Public place includes any relevant premises, any place where the public have access for the time being (whether on payment of a fee or otherwise), and any place to which the public do not have access but the child or young person unlawfully gains access (sections 104A(3) and 104B(3) of the Act). The definition of public place in this context would not include a private domestic dwelling.

12.19 These offences would include, for example:

- a person acting as an agent for a child or young person in purchasing or attempting to purchase alcohol, such as when a child or young person gives

money to an adult to buy alcohol in an off-licence for consumption by the child or young person. This is also known as proxy purchasing.

- a person buying or attempting to buy alcohol for consumption by a child or young person on licensed premises, such as when an adult buys a drink for an under-age family member in a pub.
- a member or officer of a club has alcohol supplied to a child or young person (in circumstances where by act or default they caused the supply) or attempted to do so.

12.20 It should be noted:

- It is not an offence under either section 104A or section 104B of the Act however, to buy or give alcohol to a child or young person for consumption for the purposes of religious worship.
- It is not an offence to buy, give or make available beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises (section 104B(2)(b) of the Act). Licensing Boards should note that this exemption only applies while a meal is being consumed. It would not be sufficient for a person to claim that bar snacks amounted to a meal. Whilst the Act allows consumption with a meal as described, it is still a matter for the individual licence holder to decide whether or not this will be allowed. The sale remains at the discretion of the licence holder and the adult cannot insist on purchase for the young person simply because the law allows it.
- The above exceptions do not apply to the offences of buying alcohol “on behalf of” a child or young person (sections 104A and 104B of the Act).
- The offence under section 104B of the Act (which relates to young persons) requires the person who bought or gave the alcohol to know the young person was under 18 years old.

Purchase of alcohol by a child or young person

12.21 It is an offence under section 105 of the Act for a child or young person to buy or attempt to buy alcohol, whether for themselves or another person. The offence will not be committed if the child or young person buys or attempts to buy alcohol when authorised by the chief constable as part of a ‘test purchase’ (section 105(2) of the Act). Test purchases are discussed in paragraph 12.11 of this Guidance.

Consumption of alcohol by a child or young person

12.22 It is an offence under section 106(1) of the Act for a child or young person to knowingly consume alcohol on relevant premises. The meaning of relevant premises is described above. The offence is not committed if the child or young person inadvertently consumes the alcohol, for example, if their drink is spiked. It is also an offence for a responsible person to allow a child or young person to consume alcohol on any relevant premises. The meaning of responsible person is described above.

It is not an offence for the young person to consume, or for a responsible person to allow a young person to consume, beer, wine, cider or perry along with a meal which is supplied on the relevant premises.

Unsupervised sale of alcohol by a child or young person

12.23 It is an offence under section 107 of the Act for any responsible person to allow an individual under the age of 18 to sell, supply or serve alcohol on relevant premises. The meaning of responsible person is described above .

12.24 The Act provides that the offence is not committed where any sale by a child or young person of alcohol is made for consumption off the premises or the alcohol is supplied or served for consumption on the premises along with a meal supplied on relevant premises. However, the sale, supply or service must also be authorised by a responsible person or any other person of or over the age of 18 who is authorised by a responsible person for the purposes of section 107 of the Act. The effect of this exception is that, for example, a child or young person working as a waiter or waitress in a restaurant is able to serve alcohol lawfully in the restaurant.

Delivery of alcohol by or to a child or young person

12.25 The Scottish Ministers are aware that the growth on online sales and home deliveries of alcohol is a continuously evolving area of retail and that there can be some concerns about how such sales are monitored in comparison with "face to face" sales. The position relating to online sales and home deliveries is that a premises (in Scotland) from which alcohol is despatched requires to hold a licence which necessarily must authorise off sales. Alcohol sales being despatched from premises outside of Scotland are not covered by the Act (section 139 of the Act).

12.26 The mandatory licence condition to have an age verification policy in relation to the sale of alcohol for premises and occasional licences does not apply to remote sales of alcohol (paragraph 9A(3) of schedule 3 of the Act). However, Licensing Boards may wish to satisfy themselves as to how a business seeking a licence where home deliveries will occur will ensure that offences related to the underage sale, consumption and delivery of alcohol will not occur. Licensing Boards may wish to consider whether any local conditions should be attached in respect of such concerns.

12.27 Where alcohol is sold on relevant premises for consumption off the premises, it is an offence under section 108(2) of the Act for any responsible person to allow alcohol to be delivered by an individual under 18. It is also an offence under section 108(3) of the Act for a responsible person to deliver or allow the delivery of alcohol to an individual under 18. This particular offence would cover, for example, circumstances where a child or young person takes delivery of a consignment of alcohol ordered by an adult by telephone (in a case where the exceptions mentioned below do not apply).

12.28 Offences under section 108 of the Act would cover, for example, a person who authorises a delivery of the sort mentioned above where the recipient is a child or young person. Also, in the case of a delivery by or on behalf of a club or to the order of a member or officer of the club, where the delivery is by a person working on

the premises in a capacity which gives them the authority to prevent it. The offences are not committed where the delivery of alcohol by or to a person aged under 18 who works on the relevant premises or the place where the delivery is made in a capacity (whether paid or unpaid) which involves the delivery of alcohol.

Defences

12.29 Section 108(5) of the Act provides a defence to the offences of the delivery of alcohol by or to a child or young person if the person charged with the offence believed that the child or young person was aged 18 or over and either they took all reasonable steps to establish the child or young person's age or no reasonable person could have suspected from the child or young person's appearance that they were aged under 18. The second limb of that defence would cover a case where the child or young person looked exceptionally old for their age. For the purposes of this defence, the accused is to be treated as having taken 'all reasonable steps' to establish the purchaser's age if the accused was shown evidence of the person's age and that evidence would have convinced a reasonable person. Evidence here means the same documentation described above in relation to section 102 of the Act.

Sending a child or young person to obtain alcohol

12.30 It is an offence under section 109 of the Act to knowingly send a child or young person to obtain alcohol which is sold or to be sold on any relevant premises for consumption off the premises. This offence would cover, for example, circumstances where a parent sends their child who is under 18 to an off-licence to collect some alcohol which had been bought over the telephone. The offence is committed regardless of whether the individual is sent to the actual premises from where the alcohol is sold or to be sold-, or whether they are sent to other premises to which the alcohol is to be delivered. The offence will not be committed where the child or young person works, whether paid or unpaid, at the premises in question and their job involves taking deliveries of alcohol.

13. Other Offences

13.1 This Chapter provides Guidance about a number of offences contained in the Act of which Licensing Boards may wish to be aware. It does not deal with those offences relating to children and defences against such offences which are contained in Chapter 12 of the Guidance, or with offences relating to rights of entry and inspection or non-compliance with administrative requirements with which Licensing Boards will be more familiar.

Most offences are provided within Part 8 of the Act and refer to **relevant premises** and **responsible persons**, which are defined in section 122 of the Act and described in paragraph 12.3 of Chapter 12 of this Guidance. However, there are exceptions to offences being contained in Part 8, most notably the offence provided for at section 1 of the Act.

General - Bodies corporate and vicarious liability

13.2 Section 141 of the Act provides for certain persons responsible for the management or control of bodies corporate to share criminal responsibility for offences committed under the Act. More broadly, the licensing regime is underpinned by a doctrine of vicarious liability in relation to a variety of licensing offences, as set out in section 141B of the Act. Vicarious liability means that someone other than the individual who commits an offence could be liable for that offence. This liability can extend to the premises licence holder and interested parties⁶⁷. For example, if an under-age sale occurs, the persons who can be found guilty of that offence include the individual who made the sale, the licence holder and any interested party. It is a defence for a holder of a premises licence or an interested party charged with an offence by virtue of section 141B of the Act to prove that they did not know that the offence was being committed by the employee or agent of the person, and that they exercised all due diligence to prevent the offence being committed. A person may be vicariously liable in relation to the offences set out in section 141B(5) of the Act.

Prohibition of unlicensed sale of alcohol

13.3 The Act makes provision for the regulation of the sale of alcohol, and for regulating licensed premises and other premises where alcohol is sold and for connected purposes. As such, section 1 of the Act states that alcohol must only be sold on any premises under and in accordance with the premises licence, or an occasional licence applied for and granted under the Act. This does not apply to the selling of alcohol on exempt premises or to trade.

13.4 Anyone who sells alcohol, or allows the sale of alcohol that does not fall into a category set out above commits an offence under section 1 of the Act. The selling of unauthorised alcohol is a serious offence and as such the level of fine for someone convicted of such an offence is set at a maximum of £20,000. Imprisonment for a term not exceeding 6 months is also an option for the court on summary conviction, as is both a fine and imprisonment.

⁶⁷ Who is an interested party is set out in section 147(5) of the Act, and is a person who has an interest in the premises as an owner or tenant or who has management and control over the premises or the business carried out on the premises.

Drunk person entering or in premises on which alcohol is sold

13.5 The Act does not create a single definition of what constitutes "drunk", however the law does recognise that there is a difference between being drunk, and drunk and incapable. So, it is an offence under section 111(1) of the Act for a drunk person to attempt to enter any relevant premises (unless they reside in the premises), and it is also an offence under section 111(2) of the Act for a person, whilst on relevant premises, to be drunk and incapable of taking care of himself or herself. A person committing an offence under this section of the Act can be arrested without warrant by the police.

Obtaining alcohol by or for a drunk person

13.6 It is an offence under section 112 of the Act to obtain or attempt to obtain, on relevant premises, alcohol for consumption on those premises by a person who is drunk, or to help a drunk person to obtain or consume alcohol on relevant premises.

Sale of alcohol to a drunk person

13.7 It is an offence under section 113 of the Act for a responsible person, on any relevant premises, to sell alcohol to a person who is drunk.

Premises manager, staff etc. not to be drunk

13.8 It is an offence under section 114 of the Act for any responsible person in relation to a relevant premises to be drunk while on the relevant premises whilst drunk.

Disorderly conduct

13.9 It is an offence under section 115(1) of the Act to, while on relevant premises, behave in a disorderly manner while drunk or to use obscene or indecent language to the annoyance of any person.

It is also an offence under section 115(2) for a responsible person in relation to any relevant premises to allow a breach of the peace, drunkenness or other disorderly conduct to take place on the premises. The Licensing Board should draw the attention of any person, or business granted a premises licence, or occasional licence to this offence and of the Licensing Board's readiness to take any action permitted by the Act against any person who fails in their duty in this respect. The outbreak of disorder may not of itself give rise to this offence. It is the failure to address the problem either through direct action or calling the police that is likely to give rise to an offence.

These offences are central to the management of premises where alcohol is sold for consumption on those premises whether exempt premises or not. Its existence is central to the safety of law-abiding customers on the premises.

13.10 There is a defence for any person charged with allowing such conduct on the premises set out in section 115(3) of the Act. It will be a defence where; the accused,

or an employee or agent of the accused, can prove that they took all reasonable precautions and exercised due diligence not to commit the offence, or that there were no lawful and reasonably practical means by which the accused could prevent the conduct giving rise to the offence.

Refusal to leave premises

13.11 It is an offence under section 116(1) of the Act if a person behaves in a disorderly manner, and refuses or fails to leave a relevant premises at the request of a responsible person or a constable. Responsible person is defined in section 122 of the Act.

13.12 It is also an offence under section 116(2) of the Act for a person to refuse or fail to leave a relevant premises, when asked by a responsible person or constable, after the end of any period of licensed hours. Where such a person does refuse to leave a relevant premises, the Act allows any "authorised person to remove the person from the premises, and if necessary for that purpose to use reasonable force. The Act requires that should the authorised person seek the assistance of the constable, then the constable must give the necessary assistance asked for. 'Authorised persons' are defined in section 116(6) of the Act.

13.13 Licensing Boards, Licensing Standards Officers, and the police should note that anti-social behaviour once customers are beyond the direct control of licensees and managers of licensed premises may sometimes be as a result of sales made earlier on licensed premises. The requirement to observe licensing objectives such as preventing crime and disorder and preventing public nuisance do not necessarily stop at the front door of a premises. It is therefore important that such offences are dealt with effectively to ensure that there is a strong deterrent in respect of such sales. The control of excessive consumption and drunkenness on relevant premises should reduce the risk of anti-social behaviour occurring elsewhere after customers have left the premises.

It is also important to consider that not all incidents in the vicinity of a licensed premises will be connected to that premises. The Licensing Board, Licensing Standards Officers and the police should ensure that all facts and circumstances are carefully considered before taking any action.

13.14 Licensed premises management and staff have a general right to refuse entry or service, so long as the refusal has not been made on a ground which would be deemed to be discriminatory under the Equalities Act 2010 such as a refusal based on race or sexual orientation. However, a reason does not have to be provided for refusal.

Offences relating to sale of alcohol to trade

13.15 The Act provides that the sale of alcohol to trade, does not require to be carried out under and in accordance with a licence. This is the position regardless of the quantities of alcohol sold. Wholesalers who sell alcohol to non-trade as well as to trade will require a premises or occasional licence, and sales made will be bound by the terms of that licence.

Prohibition of unauthorised sale of alcohol on moving vehicles

13.16 It is an offence under section 118 of the Act for any person to sell alcohol on any vehicle whilst it is moving, unless expressly authorised to do so by a premises licence or occasional licence in respect of the vehicle.

13.17 Section 3 of the Act deems certain supplies of alcohol to be a sale, which includes alcohol sold or supplied on moving vehicles pursuant to a contract. In particular, Licensing Boards are able to license "party vehicles", such as stretched limousines and decommissioned fire engines.

Delivery of alcohol from vehicles

13.18 All deliveries and carrying of alcohol in vehicles must be properly and clearly recorded under the provisions of section 119 of the Act. Before a delivery of alcohol is dispatched the delivery driver must ensure that the quantity, a description and price of the alcohol, and the name and address of the person to whom the alcohol is being delivered, is recorded in a day book kept on the premises from where the alcohol, is being dispatched. The driver must also carry an invoice or delivery book on their person containing the same information. It is an offence under section 119(1) of the Act not to do so.

13.19 It is also an offence under section 119(4) of the Act for any person, pursuant to a sale of alcohol, to deliver the alcohol to an address other than that listed in the day and delivery books or invoice. However, it should be stressed that under section 119(7) of the Act, these requirements do not apply to deliveries of alcohol to a trader for the purposes of that person's trade (e.g. retailers' distribution networks delivering to stores) or to orders dispatched from outwith Scotland but delivered within Scotland as they fall outwith the scope of the Act.

13.20 Licensing boards should note that the general rules and conditions relating to the supply of alcohol still apply where the supply is a delivery to a domestic dwelling. It is also common for Licensing Boards to attach local conditions to premises licences which specify that home deliveries will be provided e.g. the requirement to keep a refusal book or a condition requiring that delivery drivers receive training.

Prohibition of late night deliveries of alcohol

13.21 If alcohol has been sold on relevant premises for the consumption off the premises, it is an offence under section 120(2) of the Act for a responsible person to deliver the alcohol to any premises (other than licensed premises) between midnight and 6 am. It is also an offence under section 120(3) of the Act for a responsible person to allow such a delivery.

Keeping of smuggled goods

13.22 The sale of contraband cigarettes and alcohol is a matter of considerable concern to the Scottish Ministers. In addition, some of the goods sold are fake products smuggled from other countries on behalf of organised criminal gangs. Such products could contain dangerous ingredients.

13.23 It is an offence under section 121 of the Act to keep or allow to be kept, on relevant premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported.

13.24 Section 121 of the Act also provides that a court which convicts a person of this offence may order the confiscation of the goods in question, which may then be either destroyed or dealt with as the court orders. Licensing Boards should liaise closely with HM Revenue and Customs in respect of such offences.

14. Excluded and Exempt premises

14.1 Licensing Boards should be aware that premises licences cannot be granted in relation to excluded premises, and are not necessary in relation to exempt premises (i.e. alcohol can be sold on exempt premises without the need for a licence).

Excluded and exempt premises, which are quite different from one another, are defined in sections 123 and 124 of the Act respectively.

Excluded premises – where licences cannot be granted

14.2 As explained above in Chapter 8 of this Guidance, it is a ground of refusal of a premises licence application that the premises in question are excluded premises meaning that a premises licence cannot be granted in respect of excluded premises (section 23(4) and (5) of the Act). Likewise as regards occasional licences (section 59(3) and (6) of the Act). Further to this, section 123(1) of the Act provides that no premises licence or occasional licence has effect to authorise the sale of alcohol on or from excluded premises. This section of the Act has the effect of preventing the ability to use certain premises for the sale or supply of alcohol. Excluded premises are defined in section 123(2) of the Act and fall into two categories.

Motorway service stations

14.3 The first category of excluded premises is set out in section 123(2)(a) of the Act. These are premises on land which has been acquired or appropriated by a special roads authority and for the time being used for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class 1. The terms 'special road' and 'special roads authority' have the same meaning as in the Roads (Scotland) Act 1984. 'Class 1' traffic is defined by section 123(3) of the Act by reference to the Roads (Scotland) Act 1984.

This is intended to cover motorway service areas.

Garages (Forecourt shops)

14.4 The second category of excluded premises is set out in section 123(2)(b). The definition in that section is intended to cover petrol stations and garages. If a premises is used as a garage, or forms part of premises which are so used, the Act prohibits the holding of an alcohol licence. Section 123(4) defines premises being used as a garage if they are used for one or more of the following:

- the retailing of petrol;
- the retailing of derv (diesel);
- the sale of motor vehicles; or
- the maintenance of motor vehicles.

Resource for persons resident in the locality

14.5 The exclusion of garage (forecourt shop) premises is subject to an exception which is contained in section 123(5) of the Act. If the Licensing Board is satisfied that this exception is met, it may grant a licence.

Section 123(5) provides that “...premises used for the sale by retail of petrol or derv or which form part of premises so used are not excluded premises if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of—

(a) petrol or derv, or

(b) groceries (where the premises are, or are to be, used also for the sale by retail of groceries).

14.6 This means that garage (forecourt shop) premises will only be eligible for consideration for a licence under the Act if they fall within a specified exemption for shops fulfilling a retailing need within the locality. The decision as to whether this exemption applies is one which has to be made by a Licensing Board at the point of dealing with an application for a new premises licence or conversion of a pre-existing licence.

14.7 In discharging functions, Licensing Boards should be cognisant of jurisprudence in which the courts have interpreted the provisions of the Act. In the case of *BP Oil (UK) Ltd. v. the City of Glasgow Licensing Board and the City of Edinburgh Licensing Board*⁶⁸, the Inner House of the Court of Session has set out how section 123(5) of the Act should be interpreted. In that case after initial refusal by the Licensing Boards on the ground that the premises in question were regarded as excluded premises in terms of the Act, the Court of Session found that three out of the four applications for premises licences should be granted, and that the fourth application should be reconsidered by the Licensing Board. The reasoning for the Court of Session’s decision is summarised below.

The phrase ‘persons resident in the locality’ does not mean there must be a specific group of persons. It is enough that there are a number of persons resident in the locality, going beyond what might be termed a “handful”, who are reliant to the appropriate and necessary extent⁶⁹.

The phrase ‘reliant to a significant extent’ does not mean that just because there will often be an alternative source of supply of food or motor fuel, albeit at some additional inconvenience or possible travelling cost, that the exemption might not apply. Absolute dependency is not the test.⁷⁰

⁶⁸ [2011] CSIH 29

⁶⁹ See paragraph 48 of the judgment.

⁷⁰ See paragraphs 49 and 50 of the judgment.

Simple preference for a retailer, as the principal source of supply of a person, because, for example of the quality of goods or services offered, also does not mean that the exemption is capable of being met.⁷¹

The persons resident in the locality do not necessarily have to be shown as wishing to buy alcohol from the premises. Petrol, derv and groceries are the commodities in question.

The Court concludes that:

‘...we have come to the view that what the language of subsection (5) envisages is that there be a recognisable number of persons in the locality, not necessarily constituted as a group, who as a matter of their purchasing habits see and treat the shop premises in question as the principal source from which they may in ordinary course obtain either groceries or fuel and who would properly consider themselves materially disadvantaged or inconvenienced were that shop not to provide those retail facilities. In judging that matter, evidence of alternative retail outlets for groceries or motor fuel (or the local knowledge of the Licensing Board to that effect) is plainly not excluded; but the existence of some alternative facilities within the locality will not in itself prevent the giving of a positive answer to the question.’⁷²

In applying this judgment, factors that a Licensing Board might want to take cognisance include any relevant characteristics of the persons in question. For example persons who are elderly or disabled may find that it is materially more convenient for them to shop in a local garage shop (which often have a wide range of commodities on offer) than to travel further afield. Equally it is not necessary that the persons share a characteristic for the test to apply. Persons resident in the locality could cover a range of profiles.

Equally the use of other shops does not prevent reliance being placed on the exemption if there is sufficient evidence to show that those who shop elsewhere treat the shop in question as their principal source of groceries or fuel.

Even if it has been shown that the premises might be such a principal source, the Licensing Board will still need to go on to address whether, if the premises were not licenced, there was a proper basis for the view that the persons who use it will be materially disadvantaged or inconvenienced if they could not obtain groceries or fuel from the premises. There must be sufficient evidence to show that such an adverse outcome is likely.

Ultimately the application of the section 123(5) of the Act exception is a matter for the judgment of the Licensing Board.

In judging that matter, evidence of alternative retail outlets for groceries or motor fuel (or the local knowledge of the Licensing Board to that effect) is plainly not excluded; but the existence of some alternative facilities within the locality will not in itself prevent the exemption from applying. The Licensing Board must however be

⁷¹ See paragraphs 49 and 50 of the judgment.

⁷² Paragraph 51 of the judgment.

satisfied that the use of the premises can be seen as being used on a sufficiently regular basis by the relevant persons to allow it to form the view that the use can be regarded as habitual.

In addressing the issue Licensing Boards are entitled to consider any material which has a relevant bearing on it. This may include evidence of shopping habits and as to the location and type of possible alternative provision.

In summary when considering such applications Licensing Boards should consider -

- what locality has been chosen by the applicant and why;
- whether or not a recognisable number of persons in the locality have been identified and why they have been so identified;
- whether or not these persons can be seen to use the premises as a principal source of either groceries or motor fuel; and
- whether or not, there is a proper basis for the view that the persons who use it will be materially disadvantaged or inconvenienced if they could not obtain groceries or fuel from the premises.

Another case which may be of value to Licensing Boards when considering how the exception may apply is: *Co-operative Group Ltd v Aberdeen City Licensing Board*.⁷³

14.8 The effect of this exemption is not limited to rural areas, as there may be instances in urban or other areas where the exemption might apply.

14.9 If a garage (forecourt shop) premises is not eligible for the above exemption it will not be eligible for a premises licence or occasional licence.

Exempt premises - where alcohol can be sold without the need for a licence

14.10 The prohibition on the unlicensed sale of alcohol under section 1 of the Act does not apply to the selling of alcohol on exempt premises. That means a premises or occasional licence is not necessary in respect of such premises.

Section 124 of the Act lists each of the following as exempt premises for the purposes of the Act –

- An examination station at an airport designated (for the purposes of section 124 of the Act) in an order made by the Scottish Ministers (see below)⁷⁴;
- An approved wharf at a port or hoverport so designated⁷⁵;

⁷³ [2009] L.L.R 647; 2009 G.W.D. 4-67

⁷⁴ See sections 22 and 22A of the Customs and Excise Management Act 1979 for more on what is meant by an examination station.

⁷⁵ See sections 20 and 20A of the Customs and Excise Management Act 1979 for more on what is meant by an approved wharves.

- An aircraft, a hovercraft or a railway vehicle while engaged on a journey;
- A vessel while engaged on an international journey or a journey (other than an international journey) forming part of a ferry service; and
- Premises occupied for the purposes of the armed forces of the Crown (except while being used for another purpose)

14.11 The Scottish Ministers may designate an airport, port or hoverport as exempt premises, if it appears to them that there is a substantial amount of international passenger traffic, removing the need for premises to obtain a licence for the sale or supply of alcohol at such designated locations.⁷⁶

International airports

14.12 Airports that are currently exempted in terms of section 124(1)(a) of the Act, due to their handling of substantial international traffic, are listed in the Licensing (Designated Airports) (Scotland) Order 2007 (SSI 2007 No. 97):

- Aberdeen airport
- Edinburgh airport
- Glasgow airport
- Glasgow Prestwick airport
- Inverness airport
- Sumburgh airport

The exemption applied to airports means that premises in the "airside" areas (those past the security controls/checks) do not need to hold premises licences for the sale and supply of alcohol.

It should be noted that licensing offences under Part 8 of the Act may be committed in such premises.

"Land side" premises, on the other side of the security barriers and which may be accessed by those not travelling are subject to licensing controls under the Act and premises selling alcohol will require to have a premises licence.

International ports

14.13 No ports or hoverports are currently designated in terms of section 124(1)(b) of the Act.

⁷⁶ See section 124(1) and (2) of the Act.

Trains, hovercrafts and aircraft

14.14 Under section 124(1)(c) of the Act, railway vehicles (defined in section 147 of the Act), hovercrafts and aircraft engaged on journeys are exempt premises for the purposes of the Act. 'Journey' is described at section 124(3) of the Act. However, Licensing Boards should note that some decommissioned aircraft and railway carriages are used as restaurants and bars, remaining in a fixed position. Licensing Boards may consider applications made in respect of such premises and they are subject to the provisions of the Act.

14.15 It should also be noted that the offences at Part 8 of the Act apply even to exempt premises, for example under section 102 of the Act, the sale of alcohol to a child or young person anywhere in Scotland is a criminal offence, which will include the sale of alcohol to a child or young person aboard a train, hovercraft or aircraft.

Power to ban the sale of alcohol on trains/routes

14.16 Under section 127 of the Act, a sheriff can make an order (on the application of a senior police officer)⁷⁷ prohibiting the sale of alcohol on a railway vehicle (train), if satisfied that it is necessary to prevent disorder. The order can prohibit the sale of alcohol on any railway vehicle, during a period as may be specified in the order, at a station, or on a journey between stations (at least one of which, is within the sheriffdom of the sheriff making the order). Offences can be committed by a person who, in breach of the order, sells or attempts to sell alcohol or allows the sale of alcohol.

Vessels

14.17 The Act permits the licensing of "premises" and this includes a "vessel", which in turn includes "a ship, boat, raft or other apparatus constructed or adapted for floating on water" (section 147(1) of the Act). The relevant Licensing Board for considering an application for a premises licence in respect of a vessel is the Licensing Board for the area in which it is usually moored or berthed (see section 126 of the Act).

There are two exemptions under section 124(1)(d) of the Act relating to the requirement to licence vessels, as described below:

- vessels engaged on an international journey; or
- vessels engaged on a journey forming part of a ferry service.

An "international journey" means a journey with:

- a point of departure,
- a destination, or
- at least one port of call,

outside the United Kingdom.

⁷⁷ Meaning an officer of a rank of or above superintendent (section 147(1) of the Act).

The vessel while engaged in a journey forming part of a ferry service does not require to obtain a premises licence to sell or supply alcohol. A ferry service does not include vessels which provide purely a social service, such as a pleasure cruise, those vessels must be licensed.

Power to ban the sale of alcohol on ferries

14.18 Under section 128 of the Act, a sheriff can make an order prohibiting the sale of alcohol on a vessel engaged on a journey forming part of a ferry service, if satisfied that it is necessary to prevent disorder. In this case, an application is made by a senior police officer (a constable of or above the rank of superintendent). The order prohibits the sale of alcohol on such a vessel, during a period as may be specified in the order, while engaged on any journey to or from a specified place within the sheriff's sheriffdom, or a specified journey to or from such a place. Offences can be committed by a person who, in breach of the order, sells or attempts to sell alcohol or allows the sale of alcohol.

Annex 1 - Job Description for Licensing Standards Officers

Licensing Boards may wish to be aware of this job description for the post of a Licensing Standards Officer (LSO). Local authorities are required to appoint at least one Licensing Standards Officer in their area. (See Chapter 7 of this Guidance).

POST: Licensing Standards Officer

OUTLINE OF THE JOB

Licensing Standards Officers are an integral part of the monitoring and enforcement regime of the alcohol licensing system established by the Licensing (Scotland) Act 2005.

The role includes a wide range of activities backed up by statutory powers. The statutory role and powers are set out in sections 13-15 and section 137 of the Act. This includes power to ensure compliance with the system by licensees. However, the emphasis of the LSO role is on establishing good relationships with licensees and local communities and acting as a source of support by offering information and guidance, mediating to resolve local problems and explaining and promoting National and local Licensing Board policies. Establishing those good relationships should reduce the amount of compliance activity that has to be undertaken.

The general functions of Licensing Standards Officers are -

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

Accountability: Licensing Standards Officers are employed directly by local authorities but will require to report to the Licensing Board on a regular basis and to present reviews to the Licensing Board.

It will be left to the discretion of local authorities as to which department within the local authorities that Licensing Standards Officers should sit.

KEY ELEMENTS OF THE POST

Raising awareness of the Licensing Standards Officer role and service provided -

- liaising with and developing an effective working relationship with licensees, the local community and local police
- visiting licensed premises
- inspecting licensed premises for the purposes set out in section 15 of the Act
- seizure and removal of substances, articles and documents for the purposes set out in section 15 of the Act
- providing information and guidance to the general public with regard to the Licensing (Scotland) Act 2005 including:
 - the licensing objectives set out in the Licensing Act
 - Licensing Board policies
 - terms and licence conditions of individual premises licences
- making representations to Licensing Boards about licences & seeking reviews of licences where appropriate
- providing general information and guidance to members of the licensed trade with regard to the Licensing (Scotland) Act 2005 including:
 - the licensing objectives set out in the Licensing (Scotland) Act
 - Licensing Board policies
 - complying with the terms and conditions of the licence
- monitoring licensees' compliance with their licence conditions and Licensing Board policies, the licensing objectives and other provisions of the Licensing (Scotland) Act
- investigating complaints against individual premises
- carrying out a mediation role in respect of disputes between licensees and members of the public or any other person
- gathering evidence against a licensee who may be in breach of licence conditions, the licensing objectives or any other provision of the Licensing (Scotland) Act
- where a licence condition is believed to be being breached, to issue a notice to the holder of the licence outlining action to be taken to remedy the breach and, where this is not complied with, to initiate a review of that premises licence before the Licensing Board
- preparing written reports for the Licensing Board:
 - Where the Licensing Standards Officer has initiated a review
 - for reviews initiated by other persons
 - on general topics as requested by the Licensing Board

- with information about the conduct of holders of, or persons applying for, personal licence in the area, which is inconsistent with the licensing objectives
- collating, preparing and maintaining records relating to caseload
- attending meetings of the Licensing Board and the Local Licensing Forum

STATUTORY POWERS

- power to enter licensed premises at any time
- power to enter premises where a premises, occasional or temporary licence has been applied for
- power to carry out inspections of licensed premises and any substances, articles or documents found there
- power to seize and remove substances, articles and documents
- power to require assistance from licence holders, premises managers and persons working on licensed premises
- power to issue compliance notices and initiate a licence review

HOURS OF WORK

The Licensing Standards Officer's hours will be set by the local authority for the area but must of necessity include some anti-social hours. As the Licensing Standards Officer's role will include visits to licensed premises it will be necessary in many cases to visit during trading hours which may extend into the late evening or early morning and weekends.

GRADE/SALARY

Grade and Salary will be set by the local authority.

TRAINING

Suitable national training will be offered to successful applicants. Training is compulsory and must be completed within 18 months of appointment to the role.

IDENTIFICATION

Licensing Standards Officers must carry a form of photo identification card approved by the Council such as carried by Environmental Health Officers and/or trading standards officers detailing the empowering legislation, (i.e. the Licensing (Scotland) Act 2005) and the powers conferred on them by the Act.

Annex 2 - Personal Specification for Licensing Standards Officers

Licensing Boards may wish to be aware of this personal specification for the post of Licensing Standards Officers. Local authorities are required to appoint at least one Licensing Standards Officer in their area. (See Chapter 7).

Licensing Standards Officer - Personal Specification

	Essential	Desirable
Experience	<p>Experience of dealing with a wide cross section of people, particularly experience in dealing with members of the public.</p> <p>Experience of handling complaints</p>	<p>Experience of working within a large organisation in the public or private sector</p> <p>Awareness of the hospitality industry</p> <p>Experience of conducting negotiations and influencing skills</p>
Knowledge, Skills and Understanding	<p>Excellent Oral and Written Communication Skills</p> <p>Administrative Skills</p> <p>(a) Record keeping</p> <p>(b) Analysis of issues</p> <p>(c) Report writing</p>	<p>Ability to research and investigate issues on own initiative</p> <p>Ability to prepare reports and statistics within a Windows based computer system</p> <p>Awareness of issues relating to Diversity. Training will be offered.</p>
	An ability to understand their roles and duties in terms of legislation and policies	Training will be offered
	<p>Ability to build good relationships with local licensees, local communities and others</p> <p>Ability to handle conflict</p>	
Qualifications and Training	Training will be provided to a national standard for successful applicants	
Other Competencies/ Personal Characteristics.	<p>Confidence</p> <p>Customer Focus.</p>	

	<p>Self-motivated</p> <p>Work Effectively With Others.</p> <p>Deal positively with Change.</p> <p>Taking Personal Responsibility.</p> <p>Decision Making.</p> <p>Minimal Supervision</p> <p>Integrity</p>	
Other Skills	Clean driving licence	

Annex 3 - List of appeals provisions

This Annex draws on schedule 5 of the Act. Section 131(1) of the Act provides that a decision of the Licensing Board specified in the left hand column of schedule 5 may be appealed by the person in the right hand column. Sections 131 and 132 set out further provision, including as to the grounds on which a Licensing Board's decision may be appealed.

Appeals to the Sheriff Principal

Decision	Persons who can appeal
A decision to refuse a premises licence application	The applicant
A decision to refuse a premises licence variation application	The applicant
A decision to refuse an application under section 33(1) or 34(1) for transfer of a premises licence	The applicant
A decision to refuse an application under section 35(1) for a variation of a premises licence	The applicant
A decision under section 39(1) or (2A) to issue a written warning to a premises licence holder, to make a variation of a premises licence, or to suspend or revoke such a licence	The premises licence holder or, where the decision is taken in connection with a premises licence review application, the applicant
A decision to refuse an application under section 40 to revoke a variation or suspension of a premises licence	The applicant
A decision to refuse an application under section 45(7) to extend the provisional period in relation to a provisional premises licence	The applicant
A decision to refuse an application under section 46(4) to confirm a provisional premises licence	The applicant
A decision to refuse an application under section 47(2) to issue a premises licence for temporary premises	The applicant
A decision to refuse an application under section 47(6) to extend the period for which a temporary premises licence has effect	The applicant
A decision to refuse an occasional licence application	The applicant
A decision to grant an occasional licence application	Any person who has given a notice of objection under section 58(1)
A decision to refuse an extended hours application	The applicant

Appeals to the Sheriff

Decision	Persons who can appeal
A decision to refuse a personal licence application	The applicant
A decision to make an order under section 83(9) or (9A), 84(7) or (7A), or 86(3) revoking, suspending or endorsing a personal licence	The personal licence holder

Annex 4 – Unique local authority identifiers

List of unique local authority identifiers to be used when numbering personal licences issued by Licensing Boards

AC - Aberdeen City
AB - Aberdeenshire
AN - Angus Council
AR - Argyll & Bute
CC - Clackmannanshire
DG - Dumfries & Galloway
DC - Dundee City
EA - East Ayrshire
ED - East Dunbartonshire
EL - East Lothian
ER - East Renfrewshire
EC - Edinburgh City
FC - Falkirk
FI - Fife
GC - Glasgow City
HC - Highland
IC - Inverclyde
MC - Midlothian
MO - Moray
NA - North Ayrshire
NL - North Lanarkshire
OI - Orkney Islands
PK - Perth & Kinross
RC – Renfrewshire
SB – Scottish Borders
SI – Shetland Islands
SA – South Ayrshire
SL – South Lanarkshire
SC – Stirling
WD – West Dunbartonshire
WL – West Lothian
WI – Western Isles

Annex 5 – Useful links and associated information

Partnership working

Licensing functions under the Act are only one means of promoting the delivery of the licensing objectives. They can make a substantial contribution in respect of the premises affected but cannot be regarded as the only way to tackle challenges in our communities. Successful promotion of the licensing objectives should involve partnership work between Boards, Licensing Standards Officers, planning authorities, environmental health and safety authorities, the police, the fire and rescue authorities/joint fire and rescue boards, local people, other representative bodies and organisations working towards the promotion of the common objectives described. The establishment of Local Licensing Forums should help to facilitate this process.

National Pubwatch and local Pubwatch schemes

Whilst Pubwatch schemes may range in size in cities and in rural areas, the basic working principle underpinning a Pubwatch scheme is that the licensees of the premises involved agree on a number of policies to counter individuals who threaten damage, disorder, and violence or use or deal in drugs in their premises. Normally, action consists of agreeing to refuse to serve individuals that cause, or are known to have caused, these sorts of problems. Refusal of admission and service to those that cause trouble has proved to be effective in reducing anti-social behaviour. To be effective any Pubwatch scheme must work closely with the police, and Licensing Boards.

National Pubwatch is a voluntary organisation set up to support existing pubwatches. It encourages the creation of new pubwatch schemes with the key aim of achieving a safe, secure social drinking environment in all licensed premises throughout the UK.

Licensing Boards should familiarise themselves with Pubwatch schemes operating in their areas and support their aims. Information about Pubwatch can be obtained through the National Pubwatch website: <http://www.nationalpubwatch.org.uk/>

Safer nightlife

Drug use in any licensed environment poses many challenges. With that in mind, Licensing Boards may wish to consider Guidance which has been prepared for use by licensing authorities in England & Wales, which may be viewed at the following website address:

http://newip.safernightlife.org/pdfs/digital_library/uk_safer_nightlife_guideline.pdf

This best practice Guidance builds on the important achievements of *Safer Clubbing* (2002) which itself built on the 1996 *Dance Till Dawn Safely* document. These two publications proved popular with licensing officers, club managers, promoters, police officers, Drug Action Teams, drug outreach workers and others.

Health and alcohol

For general information on potential alcohol-related harms, Licensing Boards may wish to be aware of information that is regularly updated on the “Scottish Public Health Observatory” website.

<http://www.scotpho.org.uk/behaviour/alcohol/introduction>

This website also contains useful links to a range of key organisations in Scotland in the alcohol field.

Anti-social behaviour (Scotland) Act 2004

Licensing Boards should be aware of powers available to local authorities under the above Act with regard to the closure of premises and noise nuisance.

Part 4 of that Act makes provision for the closure of premises associated with significant and persistent disorder or significant, persistent and serious nuisance to members of the public. A closure notice will only be served on a premises once authorised by a senior police officer. That senior officer will then apply to the sheriff for a closure order, which will prohibit all access to the premises for a specified period (up to a maximum of 6 months, including extension). Failure to comply with a closure order will be a criminal offence.

Part 5 of that Act contains noise control provisions which are additional and complementary to the existing statutory nuisance regime under Part III of the Environmental Protection Act 1990. Local authorities are given the power to implement a noise nuisance service in their area up to 24 hours a day and 7 days a week. In addition, provision is made for fixed penalty notices for noise nuisance and additional powers are introduced for local authority officers to seize noise making equipment.

That Act can be viewed on the HMSO website: -

(<http://www.opsi.gov.uk/legislation/scotland/acts2004/20040008.htm>)

Qualifications supporting the licensing objectives

Under the Licensing (Scotland) Act 2005, the following require to undertake mandatory training leading to a qualification accredited by the Scottish Qualifications Authority (SQA): -

- Licensing Board members;
- Licensing Standards Officers; and
- Personal licence holders

Information on those qualifications currently available and that have been accredited can be found by contacting the SQA.

<https://accreditation.sqa.org.uk/accreditation/home>

Tel: 0845 279 1000

Fax: 0845 213 5000

E-mail: customer@sqa.org.uk

Annex 6 – Guidance on members’ clubs

Members’ clubs exist principally for the benefit of their members and are not commercial enterprises that are open to members of the public. They play a valuable part in community life in providing a range of sports and social activities. They will have a written constitution which contains a set of rules and they have special provisions under the Licensing (Scotland) Act 2005.

Such clubs operate under a premises licence with special provisions for certain clubs. For the purposes of this Annex such a licence is referred to as a “members’ club licence”.

How are Clubs affected by the Act ?

Q - What kind of licence should a club apply for?

- If a club is considering making an application for a licence, then they should consider the most appropriate option, whether to apply for a full premises licence, or whether to apply for a members’ club licence under section 125 of the Act. The members’ club licence provides certain exemptions from the requirements of the Act, but also imposes certain restrictions on the operation of the club. There may also be differences in the fee levels. Licensing Boards may wish to be aware that applicants may be advised to seek appropriate independent legal advice when considering their options before completing a new premises licence application.

Q - How are clubs to be treated?

Those clubs which meet the criteria set out in the Licensing (Clubs) (Scotland) Regulations 2007 (SSI/2007/76) will be exempt from a number of the requirements of the Act.

This Annex refers specifically to clubs meeting those criteria and seeking to operate under the exemptions provided at section 125. If premises do not hold a licence under section 125, then the advice in this annex does not apply.

- The following link is to the regulations - http://www.opsi.gov.uk/legislation/scotland/ssi2007/pdf/ssi_20070076_en.pdf
- Apart from the specific exemptions below, clubs will be subject to the other statutory requirements of the Act. Further advice on the operation of the Act can be found in this Guidance, and the local Licensing Standards Officer will also be able to provide advice.

Licensing Standards Officers should be encouraged to make checks from time to time that such clubs are genuinely operating in terms of the Licensing (Clubs) (Scotland) Regulations 2007, and to take action in the event of non-compliance.

Q - What are the provisions of the Act that those clubs would be exempt from?

- These are set out in section 125 of the Act. They are: -
 - (a) section 7 (assessments of overprovision – Licensing Boards should not factor in clubs when undertaking their assessment of overprovision),
 - (b) section 20(4)(g) (requirement for operating plan to contain information as to the premises manager),
 - (c) section 23(5)(e) (ground of refusal of premises licence application relating to overprovision),
 - (d) section 26(2)(a)(ii) (requirement for name and address of premises manager to be specified in premises licence),
 - (e) section 30(5)(d) (ground of refusal of premises licence variation application relating to overprovision),
 - (f) in schedule 3-
 - (i) paragraph 4 (requirement for there to be a premises manager for licensed premises), and
 - (ii) paragraph 5 (requirement for sales of alcohol under premises licence to be authorised by a personal licence holder), and
 - (g) in schedule 4, paragraph 4 (requirement for sales of alcohol under certain occasional licences to be authorised by a personal licence holder).

Q - Who will be licence holders?

- Premises licence – club itself or the committee
- Personal licence - premises manager or member of club committee or club – either is acceptable.

Q - What about guests, will they be able to buy alcohol?

- Yes, subject to limitations.
- Other than when an occasional licence has effect, non-members cannot be supplied with alcohol on the club premises unless that person is:
 - a person who is on the premises at the invitation of a member of the club and is accompanied by that member, or
 - a member of another club falling within the definition of club in the Licensing (Clubs) (Scotland) Regulations 2007 (SSI 2007 No. 76).
- Furthermore, the name and address of the guest, the name of the member signing them in and the date in question must be recorded in a book kept on the premises.

Q - Are clubs required to have a personal licence holder on site?

- No
- Section 125 of the Act allows clubs which are designated under the Licensing (Clubs) (Scotland) Regulations 2007 to be exempt from the mandatory

condition set out in paragraph (5) of schedule 3 to the Act which require alcohol sales to be authorised by a personal licence holder.

- The same exemption applies when an occasional licence is in force.

Q – Are clubs subject to the mandatory training requirements set by the Act

- Yes, clubs are subject to the mandatory conditions set out in schedule 3 (and 4 if applicable) of the Act relating to training of staff in licensed premises

Q - Who can train staff?

- a Personal Licence Holder.
- While clubs do not require a personal licence holder they may wish to consider a member of the club gaining a personal licence to train those who will be serving alcohol.

Q - What are the arrangements for children?

- Clubs will be subject to all the statutory requirements of the Act with regard to children, except the provision of Baby changing facilities.
- The Act requires licensees to apply for child access as part of the operating plan on application (or revision of the operating plan on a variation application). If there is a wish to allow children into the premises and bar area, this would have to be stated on the operating plan when applying for the premises licence.

Q - Are clubs able to apply for occasional licences?

- Yes. The regulations specifically allow this, subject to the statutory restriction on the maximum number of such licences in any one year. This can either be, no more than 4 (of 4 or more days duration) or no more than 12 (of less than 4 days duration), provided that the total number of days in which an occasional licence has effect must not exceed 56 in any period of 12 months.
- During the period the occasional licence has effect, the licence conditions may differ from the usual premises licence conditions. It is important to check what conditions apply, depending on which licence is in place at the relevant time.

Q - Who has access to club?

- Generally, access arrangements would be in accordance with the operating plan.
- Events for the public must be covered in the operating plan.

Q - Do guests need to be signed in at clubs?

- Generally guests should be signed in by a bona-fide member of the club, who is responsible for the person he or she has signed in.
- When the club is being used under an occasional licence, there is no requirement for guests to be signed in.

Q - What happens if a club is hosting a wedding reception, do all guests still need to be signed in one by one or can arrangements be made in advance to allow quick entry to the club?

- Licensing Boards may wish to be aware that clubs can consider whether they wish to apply for an occasional licence, which would avoid the requirement for guests to be signed in.

If clubs were reluctant to apply for an occasional licence for this purpose, the club would need to ensure that all guests are signed into the club. A Licensing Standards Officer can visit at any time and can ask to see the visitors book.

Q - If a club wishes to host an event that involves tickets being sold to non-members, how do signing arrangements work under these circumstances?.

- Licensing Boards may wish to be aware that clubs may wish to consider whether to apply for an occasional licence.

Unless an occasional licence has been granted, the legislation requires all non-members are signed into the club.



Annex B - Consultation on: Licensing (Scotland) Act 2005 – Section 142 Draft Revised Guidance for Licensing Boards

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- ☐ Individual
☐ Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- ☐ Publish response with name
☐ Publish response only (without name)
☐ Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☐ Yes
- ☐ No

Consultation on: Licensing (Scotland) Act 2005 – Section 142
Draft Revised Guidance for Licensing Boards

Comments

We would welcome comments on:

1. any areas within the draft revised guidance which you found were unclear.
(Please specify the paragraph number. We would also welcome suggestions of alternative wording, for our consideration.)

2. other issues which you believe should be taken into account within the draft revised guidance



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