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LICENSING (SCOTLAND) ACT 2005 – SECTION 142 – GUIDANCE FOR LICENSING BOARDS

Under the terms of the Licensing (Scotland) Act 2005 Ministers may issue guidance to Licensing Boards as to the exercise of their functions under the Act. The Act also requires that before the first guidance can be issued to Boards, it must firstly be approved by Parliament. The Parliament approved the first draft of guidance for Boards on 7 March 2007.

I am pleased now to be able to issue the first guidance for Licensing Boards, which will also be of use to local authorities and others affected by the Act.

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

We considered that it would be of assistance for guidance to be issued at this stage, in advance of some of the necessary subordinate legislation under the Act being made. As such, we have always been aware of the need to revise guidance later this year to, among other things, fully reflect the regulations that came behind it in the Parliamentary process. We will need to consider whether any further guidance should be developed in respect of the regulations that Parliament has recently approved, or in the longer term, regulations that are still to be put before Parliament.



Finally I would like to make it clear that we remain open to suggestions about how the guidance might be revised in future. With that in mind we will continue to engage with Boards and other stakeholders over the coming months to ensure that any issues can be addressed. This includes issues already raised where it was not possible in the time available to fully address them before the guidance had to be submitted to Parliament. I cannot promise that every issue will be accepted into revised guidance but where we are not able to accept a particular issue we will explain our reasoning for not including it in the guidance.

In addition, we expect that new issues may arise in light of experience gained whilst Boards develop their first Policy Statements throughout the remainder of 2007 and we will be happy to consider. Any revised or new guidance will, of course, have to be laid before the Parliament, as the 2005 Act requires.

Yours sincerely

GARY COX
Head of Licensing Team



**LICENSING (SCOTLAND) ACT
2005**

**GUIDANCE FOR LICENSING
BOARDS AND LOCAL
AUTHORITIES**

LICENSING (SCOTLAND) ACT 2005

GUIDANCE FOR LICENSING BOARDS AND LOCAL AUTHORITIES

CONTENTS LIST

Page number

1. Introduction

- the licensing objectives 9
- the guidance 9

2. Statements of Licensing Policy

- background 11
- licensing objectives 11
- overprovision of licensed premises 12
- licensed hours 12
- relationship with other strategies 13
- transport 13
- tourism, employment, planning and building control 13
- duplication 14
- mandatory and discretionary licence conditions 14
- content of policy statements 14

3. Overprovision

- the overprovision assessment 15
- arrangements for overprovision during transition 21

4. The Premises Licence

- background 24
- operating and layout plans 24
- internet and mail order sales 25
- relevant licensing board 25
- sports grounds 25
- applications for variations 26
- major variations 26
- minor variations 26
- objections and representations 27
- transfer of premises licences 27
- transfer on applications of person other than licence holder 28
- applications to change the named premises manager 28
- provisional premises licences 29
- review of premises licences 29
- powers of a licensing board on the determination of a review 29

- general extensions to licensing hours	29
- extended hours applications	29
- licence conditions	31
- irresponsible promotions	34
5. The Occasional Licence	
- procedure	37
- notification and objections	37
- police intervention	38
- occasional extensions	39
- extended hours application	39
- relaxation of opening hours for local, national and international events	39
6. The Personal Licence	
- background	41
- premises manager	41
- application/eligibility for personal licence	42
- renewal of personal licence	43
- licensing qualification	43
- relevant licensing board	43
- review of personal licence	44
- changes in name or address	45
- updating the personal licence	45
- relevant offences	45
7. Control of Order	
- general	46
- closure orders	46
- voluntary co-operation	48
- in the vicinity of licensed premises	48
- likely disorder	49
- length of police closure orders	49
- the manager of the premises	50
- enforcing a closure order	50
- Anti-Social Behaviour (Scotland) Act 2004	51
- exclusion orders	51
8. Excluded Premises	
- motorway service stations	52
- garage forecourt shops	52
- community resource	52

9.	Exempt Premises	
	- international airports and international ports	53
	- trains and aircraft	53
	- vessels	53
	- vessels on an international journey	54
	- vessels operating as ferries	54
	- power to ban the sale of alcohol on certain trains or ferries	54
10.	Sale and supply of alcohol to children	
	- background	55
	- defences	56
	- allowing sale of alcohol to children	56
	- sale of liqueur confectionery to children under 16	57
	- purchase of alcohol by or on behalf of children	57
	- consumption of alcohol by children	57
	- delivering alcohol to children	58
	- sending a child to obtain alcohol	58
	- prohibition of unsupervised sales by children	58
11.	Licensing Standards Officers	
	- background	60
	- mediation	61
	- training should provide LSOs etc.	61
	- compliance	61
	- training	62
	- smoking	62
	- gaming legislation	62
	- hours of work	62
12.	Other Offences	
	- general, bodies corporate	63
	- prohibition of unlicensed sale of alcohol	63
	- drunk person entering or in premises on which alcohol is sold	63
	- obtaining alcohol by or for a drunk person	63
	- sale of alcohol to a drunk person	63
	- premises manager, staff etc. not to be drunk	64
	- disorderly conduct	64
	- refusal to leave premises	64
	- offences relating to sale of alcohol to trade	65
	- prohibition of unauthorised sale of alcohol on moving vehicles	65
	- delivery of alcohol from vehicles	65
	- prohibition of late night deliveries of alcohol	65
	- keeping of smuggled goods	66

13. Transition	
- framework	67
- the transfer of existing premises licences	68
- grandfather rights	69
- garages/petrol stations and forecourt shops	69
- personal licence applications	69
- new licences	70
- submission of hybrid applications	71
- transfer of premises licences	71
- members' clubs	72
- seamen's canteens	72
14. Local Licensing Forums	73
Annex 1 – Job description for Licensing Standards Officers	79
Annex 2 – Personal Specification for Licensing Standards Officers	83
Annex 3 – List of appeals provisions	86
Annex 4 – Unique local authority identifiers	88
Annex 5 – Useful links and associated information	89
Annex 6 – Guidance on members' clubs	91

1. Introduction

The Licensing Objectives

1. The Act complements the wider policies of the Scottish Executive. This includes measures to tackle antisocial behaviour, and the programme of work set out in the Plan for Action on Alcohol Abuse, which seeks to tackle under age drinking, binge drinking, and the wider problems associated with alcohol misuse.

2. Act establishes a national policy framework to provide an appropriate level of consistency across Scotland on the implementation of licensing policy. Within that national framework, Licensing Boards will have flexibility to take local decisions in light of their own area's particular circumstances.

3. The Act sets out 5 high level "licensing objectives." These represent the principles on which the new licensing system is based, and provide Licensing Boards with a solid foundation on which to build their own local policies. These objectives are not ranked in order of importance. Each has equal weighting and all must be paramount considerations when Licensing Boards are carrying out their responsibilities. These 5 objectives are:

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

4. As well as complementing the wider policies of the Scottish Executive these objectives aim to improve the environment for social drinking to one which is safe and welcoming for all.

The Guidance

5. This guidance has been prepared in accordance with section 142 of the Licensing (Scotland) Act 2005. The main provisions of the Act are expected to come into force in September 2009. This guidance is provided mainly for Licensing Boards, but we hope other agencies such as local authorities, the Police, Local Licensing Forums, Licensing Standards Officers, and the licensed trade and their representatives may also find it useful. In some areas the guidance is necessarily detailed so as to provide as much assistance as possible to those implementing the Act and those who are subject to the provisions of it.

6. 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 or set of circumstances that may arise. Licensing Boards may therefore depart from the guidance if

they have reason to do so, provided that the Board has had regard to the guidance in reaching a particular decision or view. If Boards depart from the guidance, they must be able to provide full reasons for their actions. 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 and merits of any decision taken.

7. In accordance with section 142 of the Act this guidance cannot be issued by the Scottish Ministers unless a draft of the guidance has been laid before, and approved by resolution of the Scottish Parliament. This guidance was so approved on 7 March 2007.

The Licensing (Scotland) Act 2005

8. The Act, the associated explanatory notes and any statutory instruments made under its provisions may be viewed at **www.opsi.gov.uk**.

2. Statements of Licensing Policy

Background

9. Section 6 of the Act requires a Licensing Board to prepare and publish a statement of its licensing policy every three years. Licensing policies must be published before the Board carries out any function in respect of individual applications made under the terms of the Act. During each three year period, the policy must be kept under review and the Licensing Board may make to it such revisions as it considers appropriate. For example, such revisions may be made in response to feedback from the Local Licensing Forum.

10. Before determining its policy for any three year period, the Licensing Board must consult the persons listed in section 6(3) of the Act. These are:

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

11. Boards should have regard to the views of all those listed and the views should be given appropriate weight when the policy is determined. In some areas, it may be difficult to identify persons or bodies representative of all parts of the industry affected by the provisions of the Act. In such circumstances Licensing Boards must make reasonable efforts to identify and engage with the persons or bodies concerned. Licensing Boards should note that the terms of the Act do not prevent them consulting other bodies or persons before determining their policies. Indeed, it would be good practice to consult bodies with a particular role in licensing, for example, Building Standards Officers when considering overprovision of licensed premises. Boards should keep in mind Best Value when considering the resource implications of consulting large groups of people.

Licensing Objectives

12. All statements of licensing policy should seek to promote the 5 licensing objectives set out in the Act. In setting its policy, a Licensing Board must have regard to this Guidance and give appropriate weight to the views of those consulted.

13. Licensing Boards' statements of policy may set out a general approach to the making of licensing decisions, but must not ignore, or be inconsistent with, provisions in the Act.

14. Similarly, 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.

15. Statements of policies should make clear 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.

16. A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are no longer on the licensed premises and beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned.

Overprovision of licensed premises

17. Guidance for Boards on the issue of overprovision of licensed premises is provided at section 3 of this guidance.

18. Boards should note that the duty under section 7 to assess overprovision will not be brought into force until the main provisions of the Act are brought into force in 2009. This approach recognises that the task of assessing the capacity of licensed premises in Boards' areas, as required by section 7, is significant. The decision not to bring this section into force until 2009 is a pragmatic approach which gives Boards time to assess the number and capacity of licensed premises. Ultimately this will enable a more accurate assessment of overprovision to be made. By autumn 2009 the transition period will have been completed and all the new licence applications will have been processed. At that point Boards will have an accurate baseline of information, including capacity of premises, which can be used to inform their overprovision policy.

Licensing hours

19. Each application will be considered on its individual merits, but the statement of licensing policy should provide information on the Board's policy on licensing hours. Statements of policy should recognise that licensing hours are important not only to individual licensed premises but can have a wider impact for an area. For example, considerations 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 however unnecessarily inhibit the development of thriving and safe evening and night-time local economies which are important for investment, employment, and tourism.

20. Licensing Boards must observe the requirement set out in section 64 of the Act which provides an assumption against routine 24 hour opening of licensed premises. Any application received by a Licensing Board from a premises wishing to open for 24 hours must only be granted in limited exceptional circumstances.

21. Ministers are of the view that Licensing Boards should consider "exceptional circumstances" to cover special events such as one-off local or national festivals. It is unlikely that "exceptional circumstances" would be constituted in the case of premises where there were routine requests to sell alcohol for 24 hours. In considering applications for licensed hours Boards may wish to consider applications for up to 14 hours as being reasonable but local circumstances and views of Local Licensing Forums should always be

considered. Any application for licensed hours for more than 14 hours should require further consideration to the effect of granting extra operating hours.

22. Licensed hours will be those agreed following the Board's consideration of the, operating plan and any national and local licence conditions applied. Particular attention should be drawn to those premises wishing to open after 1.00am since mandatory licence conditions will apply. Boards should also be reminded that when considering licensed hours for premises, anyone can make representations to the Board. As such they may request a review of the licence. It is important that in developing its policy on licensed hours the Board must take account of the views of the Local Licensing Forum so that any policy published has the backing and confidence of the local community. Further to this, following a review, reducing licensed hours can be one of the sanctions applicable against a license holder.

Relationship with other strategies

23. Ministers recommend that statements of policy should provide clear indications of how the Licensing Boards will take into account other matters relating to alcohol, for example: local crime prevention; community safety strategies; health, particularly in relation to the Scottish Executive Action Plan on Alcohol Problems; planning; transport; tourism; race equality schemes; cultural strategies; and any other plans introduced for the management of town centres and the night-time economy when developing policy statements. Some of these issues may not directly relate to the promotion of the five licensing objectives, but may indirectly impact upon them.

Transport

24. A statement should 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). It is recognised that this may not be feature in the first policy statements prepared during transition, but Boards may wish to include such a statement in subsequent reviews of their policy statements. 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. Boards may wish to be aware that some trade associations (for example, the British Entertainment and Dance Association) have developed comprehensive dispersal policies which offer practical guidance and advice.

Tourism, planning and building control

25. Policy statements should also indicate:

- that arrangements have been made for Licensing Boards to receive, when appropriate, reports on the needs of the local tourist economy for the area to ensure that these are reflected in their considerations;
- that planning, building control and licensing regimes will be properly managed to avoid duplication and inefficiency. An application for a premises licence must be from a business with planning consent for the property concerned. 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 control⁴ where appropriate. Proper liaison and communications should be assured between Licensing Boards and the planning committee on the situation of licensed premises in the area. For example, in relation to new premises or a significant extension of existing premises. This might include the general impact of alcohol related crime and disorder.

Duplication

26. Statements of licensing policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation governing health and safety at work and fire safety will place a range of duties on the self-employed, employers and operators of venues. These may be in respect of employees and customers on the premises. Similarly, many aspects of fire safety will be covered by existing and future legislation and should not be duplicated through the licensing regime.

Discretionary conditions

27. Boards have the discretion to apply licence conditions, but must recognise how these relate to the mandatory licence conditions set out in regulations, orders, or any other instruments made under the Act.

Content of policy statements

28. Policy Statements should provide local communities with a clear indication of the Licensing Board's policy and must be consistent with the licensing objectives set out in the Act. In particular the policy statement should include: -

- A clear indication of the Board's policy on the granting of licensed hours generally and where different policies may apply in different localities according to local circumstances;
- A statement of their policy on overprovision of licensed premises or particular types of premises (as required by section 7 of the Act once that is brought into force) and which localities (if appropriate) have (1) been determined to be overprovided for by the Board, or (2) are approaching overprovision;
- A general statement on how many Licensing Standards Officers the authority intends to employ, their role and remit, and how they can be contacted; and
- A statement of the agreed procedures the Board has developed for handling applications, objections, representations, delegation of functions and review hearings etc. for premises and personal licences.

3. The Overprovision Assessment

Overprovision: the previous law

29. In terms of Section 17(1)(d) of the Licensing (Scotland) Act 1976, a Licensing Board must refuse an application for a new licence if, having regard to:

- "(i) the number of licensed premises in the locality at the time the application is considered; and
- (ii) the number of premises in respect of which the provisional grant of a new licence is in force,

the Board is satisfied that the grant of the application would result in the overprovision of licensed premises in the locality."

30. The Nicholson Committee's Report concluded that this approach to overprovision results in a "largely arithmetical exercise" which is "imprecise and unworkable in any meaningful sense". As interpreted by the Court, it requires Licensing Boards to examine the facilities which the holders of licences in the locality are authorised to provide in terms of Schedule 1 to the 1976 Act. That authorisation is expressed in general or economical terms, particularly in relation to public house, hotels and off-sales. For example, the holder of a public house licence is simply "authorised to sell by retail alcoholic liquor for consumption on or off the premises". Subject to the provision of a minimum number of letting bedrooms, a similar authority is conferred on the holder of a hotel licence. An off-sale licence authorises the holder "to sell by retail alcoholic liquor for consumption off the premises only".

31. The Court has also said that the Licensing Board is not entitled to take account of the particular way in which each licence holder is in fact operating the premises or the facilities which an applicant proposes to provide.

32. This approach has produced undesirable results:

- the Licensing Board is disabled from drawing distinctions between different proposals, for example:
 - premises operating in the style of a high quality restaurant with a limited bar facility and a so-called "vertical drinking establishment" would both require to be the subject of a public house licence, although the latter is exclusively or predominantly used for the consumption of alcohol;
 - a small delicatessen offering a limited range of wines and spirits complimentary to specialist groceries, or a florist's shop with a limited range of champagne, cannot be distinguished from a large off-sales warehouse.
 - No account may be taken of the capacity of licensed premises. A "superpub" capable of accommodating 500 customers cannot be distinguished from a small, traditional public house.

The new approach to licensing and overprovision

33. The Act sets out a new approach to licensing and overprovision. In particular it:
- ends the seven fixed categories of licences;
 - introduces a single premises licence, based on an operating plan which gives a clear outline of an applicant's intentions and which may be modified and/or subjected to conditions;
 - requires Licensing Boards to take a pro-active position on overprovision and identify those localities in which it would not propose to grant new licences or licences for premises of a particular description;
 - allows Licensing Boards to take account of the "particular description" of premises (that is to say, their styles of operation) when assessing overprovision; and;
 - directs Licensing Boards to have regard to the number *and* the capacity of licensed premises in localities.
34. This approach:
- allows Licensing Boards to take account of changing market trends, such as the development of so-called "hybrid" premises;
 - 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;
 - 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 growing outlet density.

A policy on overprovision

35. Section 7 of the Act requires each Licensing Board to include in its policy statement:
"a statement as to the extent to which the Board considers there to be an overprovision of -
- (a) licensed premises, or
 - (b) licensed premises of a particular description,
- in any locality within the Board's area."

36. The Licensing Board must have regard to (a) "the number and capacity of licensed premises in the locality"; and (b) consult the persons specified in Section 7(4) of the Act:

- "(a) the appropriate chief constable.
- (b) such persons as appear to the Board to be representative of the interests of -
 - (i) the holders of premises licences in respect of premises within the locality,
 - (ii) persons resident in the locality, and
- (c) such other persons as the Board thinks fit."

41. Section 6(3) of the Act requires the policy statement to seek to promote the licensing objectives:

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

37. The duty to consult is subject to the over-arching obligation set out in Section 6(3)(b) of the Act. This means that the Licensing Board is also required to consult the Local Licensing Forum established for the whole of the Board's area and, where not represented on the Forum, those who appear to be representative of the interests in that area of:

- the holders of personal licences;
- persons having functions relating to health, education, education or social work;
- young people;
- persons resident in the Forum's area.

38. Members' clubs may be discounted for the purposes of overprovision assessments carried out by Licensing Boards provided they meet the criteria in terms of regulations made under Section 125 of the new Act.

39. Section 7 provides that references to "licensed premises" do not include references to premises which are the subject of an occasional licence.

Determining localities

40. An assessment of overprovision for the purposes of the 1976 Act has normally resulted in Licensing Boards selecting localities by reference to the town or city centre in which the premises will be situated or by taking a radius from the application premises or site.

41. The Act inverts this approach. In formulating its overprovision assessments the Licensing Board should closely scrutinise the provision of licensed premises across the whole

of its area and then proceed to determine those localities which it proposes to examine. It is not necessary to divide the whole of the Board's area into separate localities.

42. The process by which the selection exercise is carried out is largely a matter for the Licensing Board and will no doubt involve the use of its own local knowledge. A locality could, for example, consist of a particular town, a city centre area, a street, a collection of streets or a council ward.

43. The identification of localities could be approached in a number of ways. The Licensing Board may consider that information which the chief constable is capable of providing is a reasonable starting point. The chief constable will be able to:

- identify "hotspot" areas within the Licensing Board's area where it can demonstrate that crime, disorder and nuisance are caused by customers of a concentrated number of licensed premises;
- suggest other areas in which the number of licensed premises or premises of a particular description is moving closely towards overprovision; and
- provide the Licensing Board with the geographical boundaries of those areas.

44. Once the Board has made this initial assessment and decided localities upon which to focus, it should identify the number of licensed premises, or premises of a particular description, in those localities; determine their capacities; and fulfil its consultation obligation.

A duty to consult and gather evidence

45. The Licensing Board's duty to carry out wide-ranging consultation prior to the formulation of overprovision assessments (see paragraph 37) illustrates the importance of partnership working in the achievement of the licensing objectives.

46. 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.

47. The results of all 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, *always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality*. Factors which the Licensing Board may take into account include:

- the information provided by the chief constable;
- subject to the constraints of data protection legislation, CCTV footage supplied by the chief constable or another source which illustrates disorder associated with the dispersal of customers in any locations;
- evidence from the licensed trade that the density of licensed premises in the locality has resulted in levels of competition which have applied downward pressure on the price of alcohol;

- 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 NHS Board or other health bodies, for example, local Accident and Emergency Departments or Alcohol Action Teams.

48. It will not normally be appropriate to arrive at a decision based on one particular factor alone; but rather consideration should be given as to whether aggregated information and evidence from a number of sources points compellingly towards a particular conclusion.

49. 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 separately be addressed through other statutory mechanisms;
- the need or demand for licensed premises in the locality. Commercial considerations are irrelevant to a policy which is designed to protect the wider public interest; or
- the hours during which licensed premises in the locality trade, since these will be controlled through operating plans.

50. The Licensing Board's policy should be expressed in such a way that interested parties are left in no doubt as to the reasons for its adoption, including the evidence upon which the Board relied and the material considerations which were taken into account.

Licensed premises or premises of a particular description

51. The consultation carried out by the Licensing Board may disclose that communities are placed under stress only by licensed premises sharing certain characteristics: for example, a concentration of off-sales in a residential area, or the density of "vertical drinking establishments" in a town centre. The Board should therefore consider carefully whether it wishes to state that overprovision exists in any locality simply having regard to the number of licensed premises and their capacities. Such an approach should only be adopted in exceptional circumstances. 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. A policy which discourages premises where the primary activity is the consumption of alcohol may leave room for the introduction of licensed premises which are likely to produce positive benefits for the locality or which will have a neutral impact on the those objectives.

52. The Board must decide how it wishes to categorise premises by description. While the single premises licence introduced by the Act removes the seven fixed categories available under the 1976 Act system, it is still possible to differentiate premises according to the facilities which they provide for the sale and/or consumption of alcohol. For example:

- "vertical drinking establishments" are distinguishable from those catering predominantly or exclusively for persons taking meals;
- nightclubs are likely to have a more significant impact on town centres, city centres and communities than concert halls and theatres, although all may have a large capacity and provide entertainment;
- the Licensing Board would be entitled to decide that premises specialising in adult entertainment such as lap-dancing and pole-dancing were entirely distinct from other entertainment venues;
- in recent years, "chameleon" premises have developed in which the facilities offered during the day are markedly different from those provided in the evening, with, for example, a switch from a food-led operation to a nightclub style of operation;
- a town or city centre hotel may have little or no impact on the licensing objectives and produce benefits for tourism and the local economy, while a hotel in a residential area with few letting bedrooms and extensive bar facilities may have a negative impact on the amenity of local residents;
- in rural areas a hotel whose trade is mainly derived from bar sales may provide a valuable local function;
- large supermarkets serving catchment areas larger than the localities in which they are situated and delicatessens selling speciality foods with a limited range of wines and spirits for consumption off the premises can be distinguished from shops devoted to off-sales and local convenience stores selling a general range of groceries. Convenience stores may provide an essential local service in some communities, particularly those with an elderly population where transport considerations make it difficult for residents to take advantage of more extensive shopping facilities available at large supermarkets in adjoining localities.

Summary

53. The formulation of the statement 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 and their capacities;
- 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; and
- 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, it is undesirable to grant further licences or further licences for premises of a particular description on the ground of overprovision;
- producing a statement in its published policy which meets the requirements set out in paragraph 35.

The effect of the overprovision assessment

54. Where a Licensing Board's policy statement has concluded that in a particular locality there is an overprovision of licensed premises, or licensed premises of a particular description, an application for a new premises licence or for the variation of an existing licence in that locality should normally be refused on the ground provided by Section 23(5)(e) of the Act, either:

- because it would simply add to the number of licensed premises; or
- because it would increase the number of premises of the relevant description,

depending on the approach which the Licensing Board has taken in the policy statement.

55. The application need not be the subject of an objection.

56. The effect of the policy is to create a rebuttable presumption against the grant of an application. Each application still requires to be determined on its own merits and there may be exceptional cases in which an applicant is able to demonstrate that grant of the application would not undermine the licensing objectives, or those objectives would not be undermined if the applicant's operating plan were to be modified or the grant of the licence made subject to appropriate conditions.

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

Arrangements for dealing with overprovision during transition

58. Ministers have decided that the duty under section 7 of the Act to carry out an assessment of licensed premises to determine whether or not there is overprovision of licensed premises in a locality should not be brought into force until completion of the transition period. During transition the guidance set out above will apply but Boards are not required to have regard to the number and capacity of all licensed premises within their area.

59. Set out below is how the Executive expects Boards to deal with overprovision during the transition period.

Arrangements for transition

Step 1 - Boards should determine localities or a locality in their area based on their local knowledge and understanding of their areas and in consultation with their Local Licensing Forum where they are aware of problems caused by the density of licensed premises;

Step 2 – Boards should use the services of local authority Building Standards Managers to determine capacity of licensed premises in those localities using the methodology for calculating capacity set out in the guidance on overprovision;

Step 3 - Boards should provide a statement in their Policy Statement (although Boards are not under a statutory duty to do so for the first Policy Statement) setting out a clear indication that a locality or localities have been deemed to be overprovided for. As such, it should be assumed that no more applications would be accepted in relation to that area or those areas. Boards will then be in a position to refuse licenses in a locality deemed to be overprovided for “having regard to the number and capacity of licensed premises”, as provided for in section 23, (the capacity of premises having been determined by the Building Standards Officers).

60. This is not a statutory duty for the first Policy Statement but it would be **good practice** for Licensing Boards to undertake this work so as to provide licensees and the local communities with a clear indication of how they will implement their statutory ability to refuse applications on the grounds of overprovision.

Capacity of licensed premises

61. The recommendation of the National Licensing Forum, agreed by Ministers, is that, for the purposes of the overprovision assessment, the operating capacity of licensed premises should be determined by local authority building standards officers. Any operating capacity figure that is determined should only be used for the purposes of overprovision under the Licensing (Scotland) Act 2005 and for no other purposes. The definition of operating capacity for on-sales and off-sales is set out in section 147 of the Act. Based on these definitions the proposed methodology for calculating capacity for on-sales and off-sales is set out below.

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.

On-sales

- The Buildings (Scotland) Regulations 2004 assessment methods set out in the Technical Handbooks issued in support of these regulations.

Existing premises

62. Existing premises applying through transition on a “like for like” basis will be exempt from the overprovision assessment. This policy will still apply. During transition, this category of premises will be exempt from the statutory grounds of refusal on overprovision grounds under section 23 of the Act

4. Premises Licence

Background

63. The premises licence is a single form of licence for premises which sells alcohol, each licence being tailored to the type of premises in question by reference to a compulsory “**operating plan**” and a “**layout plan**”. Drafts of these must be lodged by the applicant at the same time as their application for the premises licence. The operating plan should set out clearly the applicant’s proposals including the activities that would be undertaken on the premises, proposed opening hours and their policy in relation to access for children. 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. The form of the operating plan and layout plan are set out in regulations made under the Act.

64. When a licence is being granted, a Licensing Board should be able to determine with certainty the kind of operation which would be permitted in terms of the licence, and be assured that the premises will continue to operate on that basis once a licence is granted.

65. The premises licence does not require renewal every three years as is the case currently. It will remain in force for as long as the premises continues to operate in compliance with the licence and the operating plan, or until such time as it is suspended or revoked by the Licensing Board.

Operating plans and layout plans

66. Operating plans will encourage a flexible licensing regime. They will make clear to the Board how the premises are to be run, will set out what activities will be undertaken on the premises and at what times they will be undertaken, so long as the licence is in operation (unless a variation is sought).

67. In preparing an operating plan, applicants should be aware of the expectations of Licensing Boards and the police about the steps that are necessary for the promotion of the licensing objectives. This does not mean that applicants must check their operating plans with the police or others before submitting them, but when uncertain, Licensing Standards Officers and Licensing Boards could provide advice on matters relating to the licensing objectives.

68. The information provided in operating plans will enable Boards and Licensing Standards Officers to determine if a breach of the operating plan and/or the licence conditions has occurred. Where this is the case the Licensing Standards Officer or the Board will initiate a review of the licence. Boards should note that the Act allows anyone to apply to the Board for a review of the licence on any of the grounds set out in section 36 of the Act.

69. Boards must recognise that there may be circumstances which would reasonably cause a temporary deviation from the trading hours given in the operating plan, for example, a bereavement, illness, holidays, or where the weather makes a premises inaccessible. This is not an exhaustive list but one which simply illustrates certain difficulties which licence holders may encounter. Such circumstance should not ordinarily be considered a breach of the operating plan. Boards are expected to adopt a common sense approach with regard to such cases.

70. Ministers also expect a common sense approach by Licensing Boards where licensed premises, when faced with no demand for customers, wish to close early and therefore not trade for their full complement of licensed trading hours. In considering such issues Licensing Boards should give particular attention to whether these “un-used” hours are preventing new entrants into the market. If so, consideration should be given to changing the operating plan of the premises concerned.

Internet and mail order sales

71. 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.

Relevant Licensing Board

72. 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 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.

Sports grounds

73. 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. Designation of both the sporting ground and the event is made by Ministers.

74. Alcohol controls imposed under existing legislation do not apply to a non-designated event at a designated ground.

75. Licensing Boards have discretion to allow the sale of alcohol inside designated sports grounds for non-designated events having first taken into account a police assessment. Advice from the Police should be sought of the risk to public order and safety that may arise from a specific event or specific type of event.

Applications for variations to premises licences

76. Premises licence holders can apply to the Licensing Board which originally granted the licence for variations to the terms and conditions of the premises licence. All such applications must be accompanied by the original premises licence where possible. The Act allows for two procedures for Boards to follow: one to deal with applications for major variations, and a simpler one for applications for minor variations.

Major variations

77. The procedure Licensing Boards must adopt when they are considering an application for a major variation to a premises licence is set out in section 30 of the Act.

78. The Act defines a major variation as being any variation 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));
- 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

79. These include an addition, deletion or other modification.

80. Where a Board refuses an application for a variation, the Licensing Board's decision must be based on the statutory grounds for refusal. These are similar to the grounds for refusal of an application for a licence. Licensing Boards may make their own variations to the licence conditions where it grants the variation applied for, subject to the provisions of section 27(10) of the Act.

81. Licensing Boards should note that the statutory notification and objections procedures set out in sections 21 and 22 of the Act apply to applications under this section for major variations to premises licences. All those persons with a statutory right to be notified must be notified of the proposed major variation, and that any person can make representations and objections in respect of the proposed variation.

Minor variations

82. Section 29(6) of the Act defines a minor variation as being:

- Any variation of the layout plan if the variation does not result in any inconsistency with the operating plan;
- Where children are allowed entry any variation that restricts their terms of entry;
- Any variation in relation to the premises manager; and
- Any other variation that is prescribed.

83. Boards should note that any proposed variation in relation to access by children, which would reduce the amount of access allowed to children is classed as "a minor variation". Any proposal to increase access by children would still require a full determination procedure by the Board.

84. Ministers may prescribe further minor variations. These will be set out in regulations made under the Act.

85. The Act provides a simple procedure for licensees to make minor variations to their premises layout which could be approved in a simple and straightforward way. Such changes are those that do not have any impact on the licensing objectives. Therefore, where an application is made in respect of such a minor variation the notification procedures do not apply and Licensing Boards must grant the application.

Objections and representations

86. The new licensing system allows anyone to object to or make representations to a Licensing Board about any application for a premises licence. Whilst this is new to Licensing Boards with respect to liquor licensing the provisions in the Act relating to objections are similar to objections procedures set out in schedules 1 and 3 the Civic Government (Scotland) Act 1982 with which Boards will be familiar.

87. Under the Act anyone is entitled to make objections or representations in relation to:

- an application for a premises licence;
- an application for a major variation of a premises licence, i.e. a variation of a type which would have to come before the licensing board for a hearing, or one which had been referred to the licensing board for a hearing; and
- an application for an occasional licence

88. The main difference between an objection and a representation is that the representation is concerned with the conditions or suggestion of possible modifications that could be made to the operating plan and layout plan only of a possible licence and not its granting in principle. Representations can also be made in support of the application. Licensing Boards are required to have regard to any objections or representations made to it. Boards may only refuse a premises licence if one of the statutory grounds for refusal, has 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.

89. Whilst any person may object, frivolous and vexatious objections can be rejected by Licensing Boards. This concept is not new and 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. Expenses can be recovered from objectors who make vexatious or frivolous objections

Transfer of premises licences

90. The holder of a premises licence may apply for the transfer of the licence to another person. On receipt of such an application the Licensing Board must notify the application to the chief constable for their area and the chief constable must respond within 21 days.

91. Where the chief constable notifies the Licensing Board that the person(s) to whom it is proposed to transfer the licence (or connected persons) has been convicted of a relevant or foreign offence then the chief constable may also make a recommendation for refusal of the transfer application.

92. The Executive is currently developing regulations which will set out the range of offences that will be deemed to be relevant offences for the purposes of the Act. Discussions are currently on going with the Scottish Courts Service, the Crown Office and the District Courts Association. It is expected that the Executive will consult on a draft of the proposed regulations in the summer of 2007 with the draft regulations being laid before Parliament as soon as possible after the consultation period.

93. The procedure that Licensing Boards must adopt on receipt of the chief constable's notice are set out in sections 33 of the Act. Where the notice reports that no conviction is found the transfer must be granted. Where the notice reports a conviction the Board is under a duty to hold a hearing. The only ground on which the transfer application may be refused is that it is necessary to do so for the purposes of the crime prevention objective. Otherwise the application must be granted.

Transfer on application of person other than licence holder

94. An application can also be made for a transfer of a premises licence by the proposed transferee rather than the licence holder. All of the notification procedure set out in section 33 applies to applications for transfer of a premises licence under this section.

95. The transferee may make an application to the Licensing Board within 28 days where the licence holder has died, become insolvent or incapable, or the business is being sold or transferred to that person. A transferee can apply only if the transferee has a prescribed connection to the licence holder or the premises as set out in regulations made under the Act.

Applications to change the named premises manager

96. The Act allows for a change of premises manager in relation to any premises. Licensed premises cannot operate without a premises manager (being in post) as this would be a breach of one of the licence conditions.

97. Where there is a change of premises manager, before the new premises manager can act as such, his or her name needs to be added to the licence. The Act allows for the proposed new premises manager to take up post, pending the granting of an application to vary the premises licence so as to add the new premises manager's name to it.

98. This will help ensure that changes of premises managers can take effect quickly so as to enable businesses to continue to operate with the minimum disruption.

99. The Act provides that 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) is deemed to be a minor variation.

Provisional premises licences

100. A premises licence application is required to be made in relation to premises which are being constructed or converted for use as licensed premises. A premises licence granted for such premises is referred to as a “provisional premises licence”. A provisional premises licence has no effect until confirmed by the Licensing Board. The licence has to be confirmed within 2 years otherwise it will automatically be revoked. The 2 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

Reviews of premises licences

101. The procedures set out in the Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public health and safety, public nuisance or activities harmful to children are occurring.

102. At any stage following the grant of a premises licence, any person may ask the Licensing Board to review the licence in circumstances where 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.

Powers of a Licensing Board on the determination of a review

103. Licensing Boards have a new range of sanctions, should such action be deemed necessary following a review hearing, depending on the individual circumstances of each case. Those sanctions 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

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

105. It is hoped that, in the majority of cases, transgressions will be resolved before there is a need for Boards to apply sanctions, for example, through discussions between LSOs and the licence holder. This means any cases that reach the stage of a review, and the potential imposition of sanctions, will have a history of non-compliance, and for that reason will not be entirely trivial. Boards will be faced with a range of different scenarios and have a choice of action that they can take.

General extensions to licensing hours

106. Section 67 of the Act provides a new power for Licensing Boards to grant general extensions to licensed hours in connection with special events of local or national significance. This can apply to the whole of the Board’s area or only to specified parts;

licensed hours generally or only to specify descriptions of those hours; and all relevant premises in the Board's area or only to specified descriptions of such premises.

Occasional extensions to licensing hours

107. 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. However, Boards should recognise that events of local, national or international 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 conditions of large numbers of premises licences.

108. In such circumstances it will be for Licensing Boards under section 67 of the 2005 Act to make a determination for premises to be open for specified, generally extended hours on these special occasions. Examples might include a one-off local festival, a Royal Jubilee, or local festivals, weddings, funerals, parties, conferences, sponsored events, any other social function that may go on early or late.

109. Boards have a wide discretion about who should come under such a general extension ranging from the whole of a Licensing Board's area to a specified locality and from all premises to only those of a specified description. 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 extension hours specified.

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

Licence conditions

111. Flexibility to deal with local circumstances is a vital component of the new licensing regime. However, local discretion must be balanced with a clear and effective national framework within which Boards must operate. This is reflected in the requirement that all premises licences issued under the Act will be subject to a range of mandatory licence conditions set out in schedule 3 of the Act. This is further supplemented by a range of discretionary licence conditions that Boards can choose from that may be appropriate to apply to meet local circumstances.

112. A Board cannot impose any discretionary condition which: -

- Is inconsistent with any condition
 - to which the premises licence is subject by virtue of section 27(1) of the Act, or
 - prescribed in regulations
- 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.

Late Opening Conditions

113. Licensing Boards, under section 27(3) of the Act, must attach further conditions to any licence premises which operates after 1 am. These are set out in regulations made under the Act and are summarised below.

Late Opening Conditions which are applicable to all

114. There is one mandatory condition which must be attached to the licences for all premises that state in their operating plan that they intend to open after 1 am. This condition requires each premises to have present between the hours of 1 am to 5 am a person trained to the satisfaction of the Licensing Board in administering first aid.

115. 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 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

116. To support the objectives of the Act, Ministers intend that certain premises should have further mandatory conditions attached to their premises licence if they list in their operating plan that they wish to operate after 1 am. Such conditions are 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’.

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

(2) That description is premises-

(a) where live or recorded music with a decibel level exceeding 85 will regularly be provided;

(b) where there will be provision made for-

(i) dancing; or

(ii) entertainment in the form of a person performing an act of an erotic or explicit sexual nature;

(c) which, when fully occupied, are likely to have more customers standing than seated; and

(d) the capacity of which is at least 200 people.

118. The intention of this definition is to differentiate those premises which will attract large amounts of customers and where the consumption of alcohol is a major component of the premises operation. Such additional mandatory conditions are not necessarily appropriate for other late opening premises, e.g. hotels and restaurants and so they are excluded from the definition.

The additional conditions to be applied are

- The presence of a designated person who holds a personal licence to be present on the premises from 1 am until 5am or the time at which the premises next close. This need not be the designated 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 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. Advice on developing a drugs policy can be found in the guidance issued by the Home Office on ‘Safer Clubbing’.
- Each premises must install to the satisfaction of the appropriate Chief Constable a CCTV system. Any system installed would be required to meet with the requirements of the Data Protection Act 1998. The Information Commissioner has issued a code of practice and a small users’ checklist which contains useful information. 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 in good working order. Such premises would be open to having their licence reviewed by the Board for a breach in their conditions and behaviour which was against the licensing objectives with the ultimate sanction of revocation of the licence being available to Licensing Boards.

- Each premises would also be expected 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.
- Any person acting in the capacity of a door supervisor must be the holder of a licence granted under section 8 of the Private Security Act 2001.

Additional Discretionary Conditions for Late Opening

119. Licensing Boards when considering any premises licence whose operating plan states that they wish to operate after 1 am may find it appropriate to supplement the mandatory late opening conditions with other conditions. The addition of such conditions should be appropriate and proportionate and made on a case by case basis after consideration of antisocial behaviour reports submitted by the Police and the effective delivery of the licensing objectives of the 2005 Act.

120. A Licensing Board may attach a condition which is mandatory for certain premises to a premises licence which fell outwith the prescribed definition if they thought it necessary and proportionate.

121. A Licensing Board may also decide the time at which individual conditions should come into operation for each licence. For example in some circumstances it may be appropriate to have stewards on duty from 10 pm, rather than from 1 am.

122. Listed below are conditions that Boards may wish to consider. This is not an exhaustive list and does not restrict Licensing Boards in any way. 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 premises or type of 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.

123. Conditions that 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, the premises should be a member. 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.
- 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: 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.
- 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.

124. In applying other conditions Licensing Boards should do so in line with the its licensing policy and the licensing objectives of the Act. 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.

125. In producing a policy on hours, Boards should consider the effect on a premises' surrounding neighbours. This is a particular problem with late opening premises. 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 could 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.

Irresponsible promotions

126. The need to tackle irresponsible promotions and the associated problems that they can cause is central to the policy objectives of the new licensing system. Ministers recognise that not all alcohol promotions are irresponsible and that the majority of licensees act responsibly in running their businesses. However, the undesirable health and social consequences of

binge and underage drinking, which can be encouraged by irresponsible promotions, are widely recognised. Current trends suggest that this is a particular problem for young women. Ministers consider that “Irresponsible promotions” are those promotions which actively encourage people to consume a large quantity of alcohol in a short period of time. This may be done by cutting prices for a specified short period – e.g. happy hours – or offering unlimited quantities of alcohol for a set price. This may also include promoting competitions based on increased consumption of alcohol. Irresponsible promotions would also include “upselling”.

127. This type of activity not only runs counter to the overarching objectives and values of the new licensing system, it also increases the likelihood of antisocial and criminal behaviour, increases the burden on the NHS and the police and discredits responsible members of the licensed trade. It would also be unacceptable to leave unchallenged an area of activity which undermines the wider work the Executive is engaged in under the Plan for Action on Alcohol Problems, the overall purpose of which is to reduce alcohol related harm in Scotland. The Act sets out a new national policy designed to target irresponsible alcohol promotions by way of applying a standard national licence condition to all premises licences contained in schedule 3 to the Act. Ministers consider that there is a clear need for a national lead on this issue and for national consistency to set a framework for the future. Ministers believe that one of the most effective ways to tackle promotions is to tackle price. Such policies, based on non-differential pricing, have already been trialled successfully in Scotland. The Act sets out in the form of a national licence condition for all premises licences a ‘non-differential’ pricing policy which requires licence holders to maintain their price list for a minimum of 72 hours. Prices may only be decreased or increased on a 72 hour frequency.

128. Ministers felt, however that on its own this was not enough to prevent other generic types of promotion such as upselling, a fixed amount for all you can drink and free drinks linked to entry fees. Therefore, Schedules 3 and 4 to the Act also provides a series of mandatory national licence conditions applicable to irresponsible promotions would ban a defined list of generic promotions.

129. Ministers do not believe that this policy can presently be generally extended to off-sales promotions in the absence of any concrete evidence to suggest that purchasing a large quantity of alcohol in an off-licence is linked to immediate consumption and to binge drinking. However, the Act does extend some of the mandatory conditions to off-sales particularly those aimed at young persons. These are set out below.

130. Those are promotions which: -

- Relate specifically to an alcoholic drink likely to appeal largely to people under the age of 18;
 - 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.

131. The Executive is currently considering research into establishing whether or not there is a direct causal link between binge drinking and excessive drinking and promotions in off-sales. A power is provided for Ministers to update the list of mandatory licence conditions by

modifying the schedule should the research suggest this may be necessary, in light of further policy consideration, or in light of experience gained once the Act is implemented.

132. It should be emphasised that the proposals in the Act will restrict types of promotions, that encourage binge drinking and underage drinking, not products themselves. The proposals in the Act address the issue of binge and under age drinking and the length of time a product has been on the market is irrelevant.

133. It may be that in some cases the determination of what is and is not an irresponsible promotion will be left for the courts to determine. This may arise where a member of the public, the police or the Licensing Standards Officer has brought to the attention of the Board a case where they feel such a promotion is being offered. Ministers expect that this should be dealt with initially at a local level by the Licensing Standards Officer, who would mediate between the licensee and the Board to agree whether or not any promotion breached the mandatory licence conditions. In most cases it is hoped that these cases can be resolved in discussion between the LSO and the licensee without any sanctions being applied by the Board. However, where the Board feels that further action is appropriate, it would instigate a review hearing to determine what action, if any, needed to be taken against the licensee concerned.

134. The licensee would be able to appeal the decision of the Board in the courts.

135. It is expected that the mandatory conditions set out in the schedule 3 to the Act provide a clear statement of what would be considered an irresponsible promotion, and should not lead to ambiguity in many cases.

136. The provisions in schedules 3 and 4 concerning irresponsible drinks promotions are generally directed at promotional activity and not at pricing activity. The Parliament legislated to prevent the irresponsible promotions listed in Schedules 3 and 4 being carried out on licensed premises. Ministers do not intend to prescribe the prices at which any alcohol or measure of alcohol is to be sold.

5. Occasional licence

137. This chapter concerns the system for administering the arrangements in the 2005 Act for the temporary sale or supply of alcohol which is not authorised by a premises licence.

Occasional Licences

Procedure

138. The procedures for handling occasional licences are set out in sections 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.

139. Occasional licences are subject to mandatory national licensing conditions set out in schedule 4 to the 2005 Act. An example of where occasional licences might arise would be where a licensee wished to make provision for the sale of alcohol at a wedding reception or other social event held outwith their licensed premises. Voluntary organisations may also apply for an occasional licence authorising the sale of alcohol at an event connected with the organisation's activities. When an occasional licence is in force it will not negate the requirement for a public entertainment licence and late night catering licence issued under the Civic Government (Scotland) Act 1982 where appropriate.

140. Occasional licences may be given in respect of a premises licence covering a members' club. This means, for example that a members' club which under its 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. This is to enable such premises to be used for community events and if it was found to be a regular occurrence the licensing board should consider reviewing the licence to ensure it fulfilled the licensing principles.

141. The maximum duration of each occasional licence is 14 days.

142. Under the 2005 Act applications for occasional licences will, for the first time, be subject to a statutory procedure for notification and determination. This is intended to ensure there is appropriate notification of applications and the ability to object and make representations.

Notification & objections

143. The 1976 Act required all applications to be intimated by the applicant to the chief constable. Such applications will now be forwarded to the chief constable and the relevant Licensing Standards Officer by the Licensing Board. Both of whom within 21 days of receiving an application can submit their views to the Board. For the Licensing Standards Officer this is an opportunity to submit comments which may include recommendations for additional conditions to be attached by the Licensing Board.

144. Where no objections, representations or notices are received from the police and/or other statutory objectors there is no need for a hearing and applications can be delegated to the Clerk. However, where objections and/or representations have been received and a hearing is proposed, the Act provides that Boards must provide the applicant with any information relevant to their application raised in objections, representations or in a notice provided by the Police.

145. This new regime benefits voluntary organisations with an increase from the 1976 Act position of 4 occasional permissions per year. Under the 2005 Act a single voluntary organisation may now hold over a 12 month period:

- Not more than 4 occasional licences of 4 days or more in duration;
- Not more than 12 occasional licences of less than 4 days in duration

146. However the total number of days on which an occasional licence has effect must not exceed 56 during any 12 month period.

147. 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.

Police Intervention

148. The notification requirement provides the police with an opportunity to consider whether they should object to the event taking place for reasons of preventing crime and disorder. Such cases might arise because of concerns about the scale, location or timing of the event. The general run of cases where alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder (e.g. at weddings or small social, community, charitable or sporting events) should not give rise to the use of these police powers. The 2005 Act provides that the police may issue an objection notice because they believe the event would undermine the crime prevention objective set out in the Act. The police must issue any objection notice within 21 days of being notified, but they can subsequently withdraw their objection notice. If the police do not intervene, they will still be able to rely on their powers of closure under section 97 of the 2005 Act should disorder subsequently arise. The issuing of such an objection notice requires the consideration of the objection by the licensing Board at a hearing. Consideration by the Licensing Board of an objection made by the police to an occasional licence application is confined to the crime prevention objective. It may not, for example, uphold a police objection notice on grounds of public nuisance. At the hearing, the police and the premises user may be heard by the relevant licensing committee. A hearing would not be necessary if the objection notice is withdrawn by the police.

149. The possibility of police intervention is another reason why event organisers should be encouraged by local publicity 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.

150. The police may withdraw their objection notice at any stage if the proposed premises user agrees to modify his proposal to meet their concerns. The Licensing Board will then be sent or delivered a copy of the modified notice by the police as proof of their agreement.

Occasional Extensions

Extended hour applications

151. An occasional extension enables for ad hoc occasions the sale of alcohol for a period beyond the normal hours during which alcohol may be sold at a premises under its premises licence. It should normally be possible for applicants for premises licences to anticipate special occasions which occur regularly each year, such as bank holidays and incorporate appropriate opening hours for these occasions in their operating plans. Where it is not and specific premises are asked to handle or wish to provide for an event at short notice, Sections 68 to 70 enable Licensing Boards to process such extensions hours 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.

152. The relevant chief constable and Licensing Standards Officer must be notified by the Licensing Board of an application by the premises licence holder. Within 10 day of the receipt of the application, the Police may choose to object and the Licensing Standards Officer must submit a report to the Licensing Board. Since these applications are likely to arise at short notice a detailed determination procedure is impractical but the Board should be able to gather sufficient information from the LSO report and from the Police.

153. The Board will have complete discretion as to whether to grant the application taking into account any Police objections and LSO comments and having regard to the licensing objectives. The Board may hold a hearing for the purposes of determining any application, but this is not mandatory. Where the Board does not hold a Hearing, the Board must ensure that before determining the application, the applicant is given an opportunity to comment on any objections from the Police or adverse comments from the Licensing Standards Officer.

154. 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 a premises licence should look to vary its operating plan.

Relaxation of opening hours for local, national & international events

155. As stated above applicants for premises licences, in their operating plans, should include the hours needed for special occasions which occur regularly each year. While extended hour applications should be sufficient to cover one-off special events such as a family anniversary party. However, with the passage of time exceptional events of local, national or international significance may arise which could not have been anticipated.

156. Such events can give rise to the need to vary the conditions for a number of licensed premises. In such circumstances it will be open to local licensing boards under section 67 of the 2005 Act to grant a general extension of licensed hours to enable premises to open for specified extended hours on these special occasions. Examples might include a one-off local

festival, or events such as the Commonwealth Games. In the interest of public safety it would be good practice for the Boards to request the views of the police before granting such a general extension – although this is not a statutory obligation.

157. The grant of a general extension of hours can apply to the whole of the Licensing Board's area or only to specified parts. It can apply to all the relevant premises in the Board's area except to those premises solely concerned with off sales or only to specified premises or types of premises. The extra hours granted can be a general extension or particularly specified. However the granting of a general extension does not require a licenced premises to be open for the sale of alcohol during the extended period.

158. Where a Board decides to grant such a general extension it must give notice to the police and to relevant licences holders who are affected.

6. Personal Licence

Background

159. This Chapter provides advice about best practice in administering the process for issuing personal licences to sell or supply alcohol. It should be stressed that a personal licence is not a qualification that is associated with business competency.

160. The personal licence is intended to ensure that anyone managing premises is suitably capable to do so. In that respect the emphasis is on ensuring appropriate training, both in the applicable law and in how to deal with customers. For this reason, we expect the personal licence to become a recognised level of attainment held by those pursuing a career in the licensed trade.

161. The personal licence remains in force for a period of 10 years, with the possibility of renewal for further periods of 10 years thereafter. English and Welsh personal licences are not transferable to Scotland under the new licensing system due to differences in the recognised relevant convictions and training requirements.

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

Premises manager

163. Section 19 of the Act defines the term “premises manager”. Each premises must have one named premises manager, whose details will be given in the premises licence. The named premises manager must be a personal licence holder. This is a mandatory licence condition for premises licences. A named premises manager 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.

164. The named 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 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 designated premises manager will be held responsible by the Licensing Board.

165. 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 premises manager is not the appropriate licensing qualification in relation to the premises.

166. 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. 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.

167. 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 barperson making the sale may be considered responsible under the provisions of section 102 of the Act. However, section 103 may also make the premises manager or other personal licence holder responsible (whether or not present on the premises at the time). It will depend upon whether the sale has been "knowingly allowed", which will in turn depend on the facts and circumstances of the particular case.

168. Similarly, a sale of alcohol by a non-qualified person (contrary to paragraph 6(1) of schedule 3) may make a (non-present) licence holder responsible under section 1 of the Act if that holder has knowingly allowed the sale (section 1(3)(b)).

169. It must be stressed that these scenarios are provided as examples and each case would have to be considered in each individual set of circumstances.

Application/Eligibility for personal licences

170. In order to be issued with a personal licence an applicant must demonstrate to the relevant Licensing Board that:

- They are aged 18 or over;
- They possess a licensing qualification; and
- No personal licence previously held by applicant has been revoked within the period of 5 years ending with the day on which the application was received.

171. In determining applications for personal licences an important element is the notification process requiring Boards to notify the chief constable of all applications. This notification process allows the chief constable to confirm whether or not the applicant has been convicted of a relevant offence. If they have, the police can recommend refusal of the application.

172. If the applicant has no relevant convictions and meets all the conditions set out in section 74(3) of the Act, then the Board must grant the licence.

173. 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 Boards receive such notifications they must suspend consideration of the application

and notify the police 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 into consideration when determining the application.

Renewal of personal licence

174. Renewal of the personal licence every ten years provides an opportunity to check that any convictions for relevant and foreign offences have been properly notified to the relevant licensing authority, and that all such convictions have been properly endorsed upon the licence. It also provides an opportunity to ensure that the photograph of the holder on the personal licence is updated to aid identification.

175. The determination of an application for renewal of a personal licence will be the same as an application for a personal licence: the clerk may deal with it if the formalities are correct and there are no convictions. If there are convictions and/or a recommendation from the police, the Board must have a hearing to consider the application and may refuse to grant a further licence.

Licensing qualifications/training

176. Section 74(3) of the Act requires that to be eligible for a personal licence an applicant must hold a licensing qualification. Furthermore personal licence holders are required to undertake mandatory training every 5 years as set out in section 87 of the Act. Section 91 of the Act provides a power for Ministers to set out in regulations which qualifications are applicable.

Relevant Licensing Board

177. Personal licences are valid for ten years unless surrendered, suspended or revoked. Once granted, the Licensing Board which issued the licence remains the "relevant Licensing Board" for it and its holder, even though the individual may move out of the area or take employment elsewhere within the period for which the licence is valid. The personal licence will show details of the issuing Licensing Board.

Review of the personal licence

178. The new licensing system provides for a pro-active role for Boards and a range of sanctions that can be used against a personal licence holder where that action may be appropriate. The Act does, however, provide a mechanism whereby Licensing Boards should consider all the relevant facts before considering any action.

179. The Act, therefore, provides that Licensing Boards must hold a review hearing should they become aware of the following: -

- They receive notification from the court of a conviction for a relevant or foreign offence; or
- They receive notification from the licence holder of any conviction (they are required to notify the Board within one month of the date of the conviction), for a relevant or foreign offence.

180. These hearings are not courts of law. Anyone asked to provide the Boards with evidence does not do so under oath. They are an opportunity for 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, Boards will be acting in a quasi-judicial manner and an appropriate degree of formality will be necessary.

181. If following a hearing, a Licensing Board considers that a sanction is required against the personal licence holder then, depending on the circumstances, they can take one of the following actions: -

- Revoke the licence;
- Suspend the licence for such period, not exceeding 6 months, as the Board considers appropriate; or
- Endorse the personal licence

182. The introduction of endorsements is based on a similar approach taken with driving licences. Should a personal licence holder receive 3 endorsements from the Licensing Board, section 86 of the Act requires Boards to hold a hearing. Following a hearing, the 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

183. If this action is taken then the Board must give the licence holder notice of this and the reasons for the decision.

Changes in name or address

184. 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 of the Act.

Updating the personal licence

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

- A personal licence is reviewed, enter the renewal date;
- Where a licence is suspended, enter the date and period of any suspension;
- The 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 Board, the Board must enter details of the conviction or conduct giving rise to the endorsement;
- The Board receives notification of a change of name and/or address the new details must be entered; and
- Where a Board receives details of training undertaken those details must be entered

Relevant offences

186. The relevant offences will be set out in Regulations.

7. Control of Order

General

187. This guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. The guidance is provided to support and assist police officers and Licensing Boards in interpreting and implementing Part 7 of the Act in the interests of public safety, the prevention of disorder and the reduction of anti-social behaviour.

188. This guidance cannot cater for every circumstance and that circumstances may arise where officers will determine the need to operate in ways which will not wholly conform to it. However, at all times, senior police officers deploying the powers in question should seek to ensure that their actions are appropriate, proportionate and necessary in all the circumstances.

189. Licensing Boards and police officers reading this guidance may also find it beneficial to familiarise themselves with the terms of: -

- The explanatory notes accompanying the Act; and
- The policy memorandum accompanying the Act

190. Police powers contained in sections 94 to 99 of the Act should help ensure that premises licence holders, occasional licence holders, and premises managers, carry out their responsibilities in a way that helps maintain order and minimises anti-social behaviour on licensed premises.

191. The powers are intended to make these individuals more aware of their responsibilities to the wider community. As such, the potential as well as the actual use of these powers should help prevent disorder on the relevant premises. The powers therefore have a significant deterrent value. In addition, an effective police licensing policy, promoting good crime prevention strategies and professional practice among holders of premises licences and premises managers, should result in the extended powers being used minimally.

192. Good practice should involve an effective working liaison, and system of communication between the police, Licensing Standards Officers and managers of licensed premises. It is recognised that a great deal will depend on the willingness of licensees, premises managers and premises users to involve themselves in a partnership approach, but those licensees who fail to take a socially responsible attitude will place themselves at greater risk of police action under these powers than other licensees, managers, premises managers and premises users who actively co-operate.

Closure Orders and Emergency Closure Orders

193. Section 97 (2) of the Act provides for a senior police officer to apply to a Licensing Board to close licensed premises in the interests of public safety. Unlike the provisions in the 1976 Act, the power provides an additional mechanism for the police to authorise immediate closure in the interests of public safety.

194. This is set out in section 97 of the Act:

- A senior police officer may, if the officer reasonably believes that:
 - (i) there is, or is likely imminently to be, disorder—
 - (ii) on, or
 - (iii) in the vicinity of any licensed premises, and
 - closure of the premises is necessary in the interests of public safety, and
 - the risk to public safety is such that it is necessary to do so immediately and without making an application to the relevant Licensing Board
- make a closure order in relation to the premises.

195. The maximum duration for such orders are up to 24 hours. Such 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. Where a senior police officer proposes to issue an emergency closure order on a premises, they must notify the appropriate Licensing Board of this action. The format of these forms will be set out in regulations.

196. Emergency closure orders should only be used as last resort and police officers should bear in mind that decisions to close licensed premises will almost always have a seriously damaging commercial 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.

197. The Police should be aware that any decision to deploy the powers available to them 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.

198. 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.

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

Voluntary co-operation

200. The police should, whenever possible, 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.

201. 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, it is sensible to provide early warnings and reminders to premises license holders, and named premises managers of their responsibilities and duties under licensing law; and of the police powers of closure.

202. 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.

203. Where the police attend an incident, following complaints about disorder, or attend at the request of the licensee or Licensing Standards Officer, and a senior police officer of Superintendent rank or above reasonably believes that closure is necessary under the terms of the Act, police officers should advise the licence holder, and named premises manager, and premises user immediately. Wherever possible, police officers should then give the licence holder, manager, or premises user an opportunity to close the premises voluntarily, on police advice, until the following day. A closure order will normally only have to be made if police advice is disputed or rejected and it becomes necessary to take action to impose closure. When giving advice to close voluntarily, police officers should make clear that they are not engaging in a negotiation. The view of the senior police officer will be final.

204. However, even if the licensee, named premises manager is willing to close voluntarily, it will remain open to the senior police officer 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.

205. Against this background, police officers should also note 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. The police should 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

206. A closure order 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. The senior police officer cannot close the premises under this provision 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.

207. 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 elsewhere, closure orders are not designed as penalties but as a means of ensuring public safety.

Likely disorder

208. A further question arises when any future disorder is likely to take place and would justify a closure order being made. The Act requires that the disorder should be likely to be 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. 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 police closure order

209. The maximum permitted duration of an order under section 97 of the Act cannot exceed 24 hours. This does not mean that the length of the closure should automatically be set for 24 hours on every occasion. The criteria for making a closure order places an obligation on the senior police officer to close the premises for the period he/she estimates 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.

210. An extension to that emergency closure period can be made by the police only if the senior police officer reasonably believes that: -

- there continues to be, or is likely to continue to be, disorder on, or in the vicinity of the premises;
- 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 original closure period immediately and without making an application under section 97(1) of the Act.

211. Any extension may be for a further period of only up to 24 hours from the end of the original closure period.

212. If, for example, a closure is made at 9pm 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 senior police officer 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.

213. There is no appeal mechanism for licensees against the imposition of a closure order.

The manager of the premises

214. The Act refers to the “the premises manager” who is defined in section 19 as being the individual for the time being specified as such in the premises licence. Every licensed premises must have a named premises manager who will be responsible for the day to day management of the premises and the staff. This is particularly relevant to the arrangements for serving a closure order. It is not relevant whether or not the individual has the expression “manager” in his or her job title or description. If the holder of a premises licence or the named premises manager or premises user has left any member of staff in charge of the premises, with responsibility at that time for compliance with the licensing laws, that person will normally have been given the authority to close the premises in compliance with the law. Accordingly, the individual would have the delegated authority to close the premises and could therefore be served with notice of a closure order in respect of the premises.

Enforcing a closure order

215. 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 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 constable, a licence holder, premises user, or named premises manager and then refuses to leave, he or she does become liable to prosecution. Where a police officer is asked for assistance to remove such a customer, the officer is under a statutory duty to afford that assistance.

216. The lack of any duty on customers to leave the premises automatically following the service of a closure order should be noted. The police already have powers to clear an area if disorder is taking place, and need no additional powers in this respect under the Act. However, the police may propose a phased emptying of larger premises for the purpose of safe dispersal, for example, keeping disorderly gangs separately 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.

217. 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.

218. Police officers are also reminded that, particularly where large capacity venues are involved, they may need additional police assistance to clear the resulting crowd and the availability of that assistance should be considered before any decision is made to make a closure order.

Antisocial Behaviour etc. (Scotland) Act 2004

219. Licensing Boards may wish to be aware that under section 26 of that Act a senior police officer (officers of or above the rank of superintendent) can authorise service of a closure notice. 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.

220. A senior police officer may 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, which 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

221. The Licensed Premises (Exclusion of Certain Persons) Act 1980 provides for the courts to make an exclusion order against a person, if they are found guilty of a violent offence committed on licensed premises (other than an off-licence). In light of the concerns that were raised during the consultation on the Antisocial Behaviour (Scotland) Act about off-licences and how they can become focal points for antisocial behaviour, and in order to support responsible licensees, it is appropriate that under the new system, exclusion orders should be extended to include off-licences.

222. The Act, therefore repeals in its entirety the 1980 Act and 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,
- (c) except with the appropriate consent.

223. Further to this 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. The Act sets out those conditions that must be considered by the sheriff.

8. Excluded Premises

224. Section 123 of the 2005 Act provides that no authority (being a premises licence or occasional licence) under the Act will have effect to authorise the sale or supply of alcohol on or from certain premises. This section of the Act has the effect of restricting the ability to use certain premises for the sale or supply of alcohol. Those specified are set out below.

Motorway Service Stations

225. The 2005 Act prohibits alcohol licences being available for motorway service stations.

Garage Forecourt Shops

226. If a premises is used as a garage or form part of premises which are so used the 2005 Act prohibits the holding of an alcohol licence. Premises are used as a garage if they are used for one or more of the following:

- the retailing of petrol;
- the retailing of diesel;
- the sale of motor vehicles; and
- the maintenance of motor vehicles.

Community Resource

227. However, under the 2005 Act if a premises (or parts of premises) are used as a garage they will be able to apply for an alcohol licence if the local community is (or is likely to become) reliant on the premises as a principal source of **either** fuel **or** groceries. The effect of this exemption is not limited to rural areas, as there may be instances in urban or other areas where the community is reliant on the premises as their local shop.

228. This means that forecourt shops (including those forecourt shops who presently hold a licence under the 1976 Act to sell or supply alcohol) will only be eligible for consideration for a licence under the 2005 Act if they fall within a specified exemption for shops fulfilling a retailing need within the locality.

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

230. The 2005 Act changes the position which existed under the Licensing (Scotland) Act 1976 where it was a matter for the local Licensing Board to decide whether to grant a licence to a garage forecourt shop. A Licensing Board must now refuse such an application unless it believes the shop is fulfilling a retaining need within the locality. It is recognised that in rural areas the garage forecourt shop may be a local community's only retail facilities and that the shop may provide the economic support for maintaining a local fuel supplier especially in the more isolated communities. Licensing Boards should also recognise that in urban areas the garage forecourt shop may provide the only shop for its surrounding community, providing groceries for those who do not have access to transport to the larger, often out of town retailers.

9. Exempt Premises

International airports and International ports

231. Under the 2005 Act, Scottish Ministers may designate as exempt premises a port, hoverport or airport, if it appears to them that there is a substantial amount of international traffic, removing the need for premises to obtain a licence for the sale or supply of alcohol at such designated locations. Details of the ports, hoverports and airports so designated may be viewed on the Scottish Executive website. No ports or hoverports are presently so designated.

232. Regulations to be made under the Act will propose that the following airports should be designated exempt premises:

- Aberdeen Airport
- Edinburgh Airport
- Glasgow Airport
- Glasgow Prestwick Airport
- Inverness Airport
- Sumburgh Airport

233. Where an airport or port has been designated by Scottish Ministers, the areas at the airport or port which are “airside” or “wharfside” are included in the exemption in the 2005 Act from the licensing regime. These are areas to which the non-travelling public do not have access and are subject to stringent by-laws. The exemption is to enable the provision of refreshment of travellers at any time. Other parts of designated ports, hoverports and airports e.g. “landside” pubs which may be accessed by those not travelling are subject to the normal licensing controls.

Trains and aircraft

234. Under the 2005 Act, railway vehicles and aircraft engaged on journeys are exempted from the licensing regime. 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 2005 Act. It should also be noted that under the 2005 Act, the sale of alcohol to a child or young person anywhere in Scotland has been made a criminal offence. Until the 2005 Act came into force, such sales were only offences if they took place on licensed premises. This is no longer the case. The sale of alcohol aboard a train or aircraft to a child or young person is now a criminal offence.

Vessels

235. The 2005 Act applies in relation to a vessel (which includes a ship or a boat) which is not permanently moored or berthed as if it were premises situated in a place where it is usually moored or berthed. The relevant Licensing Board for considering an application for a premises licence in respect of a vessel is therefore the Licensing Board for the area in which it is usually moored or berthed. There are two exceptions, described below.

Vessels on an international journey

236. A vessel while engaged on an international journey does not require to obtain a premises licence to sell or supply alcohol aboard. An “international journey” means a journey from a place in the United Kingdom to an immediate destination outside the United Kingdom or a journey from outside the United Kingdom to an immediate destination in the United Kingdom. A vessel that is permanently moored or berthed is a premises situated at that place.

Vessels operating as ferries

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

Power to ban the sale of alcohol on certain trains or ferries

238. On the application of a police officer of the rank of superintendent or above the 2005 Act empowers a sheriff to make an order to prohibit the sale of alcohol on specified vessels which are part of a ferry service. This can be used to prevent the sale of alcohol on either a particular journey or a particular route.

239. A similar order may also be obtained by the Police from a Sheriff in respect of trains, prohibiting the sale of alcohol on any railway vehicle at such railway stations as may be specified or travelling between such stations as may be specified. Selling or attempting to sell alcohol in breach of such an order or allowing such sales to take place are offences under the Act.

10. Sale & supply of alcohol to children

Background

240. A key objective of the new system is the protection of children 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. Children need protection from environments which are wholly 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 Executive's extensive efforts to combat underage drinking.

241. The intention of the new legislation is to encourage licensed premises to become more child-friendly and to encourage an environment where families can socialise safely together. It replaces the old complicated system of children's certificates which allowed under-14s to enter a bar to eat a meal when accompanied by an adult between 11am and 8pm. Under the 2005 Act, the hours during which children will be permitted on a particular premises will be set out in the operating plan.

242. The Act sets out a range of provisions relating to the protection of children including the widening of existing offences.

243. The Act builds on the existing provisions in the 1976 Act by providing, in section 102, that a person commits an offence if he sells alcohol to an individual aged under 18 **anywhere**. However, Licensing Boards, when considering instituting proceedings for offences under the Act, are expected to be concerned primarily with offences involving the sale and consumption of alcohol licensed under a premises licence. It should be noted that a body corporate, partnership or unincorporated association (see section 141 of the Act) may be the subject of proceedings for an offence under section 102.

244. Licensing Boards are expected to maintain close contact with the police, young offenders' teams, Licensing Standards Officers and trading standards officers 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 retailers 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.

245. Ministers primarily see the development of these offences as having a deterrent effect on sales of alcohol to children by raising the risk of detection and by making the consequences of non-compliance significant.

Defences

246. The Act provides a defence to the offence of the sale of alcohol to children if the retailer of alcohol believed that the purchaser was 18 or over **and** either he took all reasonable steps to establish the purchaser's age or nobody could reasonably have suspected from a purchaser's appearance that he was under 18. The second limb of that defence would cover a case where the purchaser who was under 18 looked exceptionally old for his age. The accused will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age and that evidence would have convinced a reasonable person.

247. 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.

248. 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. 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 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. Ministers recommend that Licensing Boards should promote the PASS arrangements.

249. Boards should be aware that under the provisions of section 105 a Test Purchasing Pilot Scheme was launched in the Fife Constabulary area on 1 June 2006. This pilot will run for one year. It is designed to test the arrangements in place and develop a test Purchasing Protocol for alcohol related products before the main provisions of the Act come into force in 2009. Police should have regard to any protocol in place when carrying out test purchasing operations under the Act.

250. 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 and available resources, which will establish how far such operations are necessary in each Licensing Board area.

Allowing sale of alcohol to children

251. Under section 103 of the Act, it is an offence knowingly to allow the sale of alcohol to an individual aged under 18, on relevant premises, which are defined in section 122. The offence may be committed by those who work at the premises, whether paid or unpaid, in a capacity that gives them the authority to prevent the sale. It should be noted that a body corporate, partnership or unincorporated association (see section 141 of the Act) may be the subject of proceedings for an offence under section 103.

Sale of liqueur confectionery to children under 16

252. The definition of liqueur confectionery is given in section 147 of the Act. It is an offence to sell liqueur confectionery to a child under 16. A defence is provided if the seller believed that the purchaser was 16 or over and if either he took all reasonable steps to establish the purchaser's age or if nobody could reasonably have suspected from the purchaser's appearance that he was under 16. The accused will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age, and that evidence was such that it would have convinced a reasonable person.

253. Although children aged 16 and 17 can buy liqueur confectionery (as defined in the Act) they cannot buy or be sold any other foodstuffs which contain alcohol of a strength exceeding 0.5 per cent.

Purchase of alcohol by or on behalf of children or young persons

254. The Act also makes it an offence for a child to buy or attempt to buy alcohol whether or not on licensed premises. Section 105 provides that the offence will not be committed if the child was asked by a police constable, acting in the course of their duty, to buy or attempt to buy alcohol in order to conduct test purchasing operations, designed to establish whether licensees and staff working in licensed premises are complying with the prohibition on underage sales.

255. The Act also makes it an offence for a person to act as an agent for a child in purchasing or attempting to purchase alcohol, for example, if a child gives money to an adult to buy alcohol in an off-licence for consumption by the child. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so.

256. A further offence occurs if a person buys or attempts to buy alcohol for consumption by a child on licensed premises, for example, where a father buys a drink for his son under eighteen in a pub. The offence also applies where a member or officer of a club has alcohol supplied to a child (in circumstances where by act or default he caused the supply) or attempted to do so. There is an exemption provided in respect of these offences so that they would not be committed if a person other than a child or young persons buys beer, wine or cider for a person aged 16 or 17 to consume with a meal on relevant premises, in circumstances where the 16 or 17 year old is accompanied by a person other than a child or young person. Licensing Boards will want to note that the 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.

Consumption of alcohol by children or young persons

257. Under section 106 the Act it is also an offence for a child or young person knowingly to consume alcohol on relevant premises. Relevant premises are defined in section 122. The offence is not committed if the child inadvertently consumes the alcohol, for example, if his drink is spiked. It is also an offence knowingly to allow the consumption of alcohol by a child on relevant premises. Those who can commit this offence are any person who works whether paid or unpaid, at the premises in a capacity that gives him the authority to prevent

the consumption and, in the case of a supply by a club, any officer or member of a club who is present at the time of the consumption in a capacity which authorises him to prevent it.

Delivering alcohol to children or young persons

258. It is an offence for someone working, whether paid or unpaid, on relevant premises knowingly to deliver to an individual under 18 alcohol which is sold on the premises. The offence would cover, for example, circumstances where a child takes delivery of a consignment of alcohol ordered by an adult by telephone (in a case where the exceptions mentioned below do not apply). It is also an offence for a person working, whether paid or unpaid, on relevant premises, and in a position which gives him authority to prevent it, knowingly to allow another person to deliver alcohol supplied on relevant premises to individuals under 18.

259. This offence would cover, for example, a person who authorises a delivery of the sort mentioned above in the knowledge that the recipient will be a child. The offence also applies 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 allowed by a person working on the premises in a capacity which gives him authority to prevent it. The offences are not committed if the alcohol is delivered to the place of work of the purchaser or person who is to be supplied with the alcohol, for example, where the job, whether paid or unpaid, of the child who took delivery of the alcohol involves delivery of alcohol (for example, where a 16 year old office worker is sent to collect a delivery for his employer), nor where the alcohol is sold or supplied for consumption on the relevant premises.

Sending a child to obtain alcohol or young persons

260. Under the Act, it is an offence knowingly to send a child to obtain alcohol which is sold or to be sold for consumption off the premises. This offence would cover, for example, circumstances where a parent sends their child to an off-licence to collect some alcohol which had been bought over the telephone. The offence is committed regardless of whether the child is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent. The offence will not be committed where the child works, whether paid or unpaid, at the premises in question and his job involves taking deliveries of alcohol. The offence is also not committed if the child is sent by a police, in the course of their duty, to obtain alcohol as a test purchaser to test the compliance of the retailer or club with the prohibition on underage sales.

Prohibition of unsupervised sales by children

261. It is an offence under the Act for any responsible person to knowingly allow an individual under the age of 18 to sell, supply or serve alcohol on relevant premises. The offence may be committed by:

- a premises licence holder, named premises manager or someone aged 18 or over authorised by them; or

262. 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 sold or supplied for consumption with a meal in a part of the premises used only for this purpose. However,

the sale or supply must also be authorised by a responsible person or any other person 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 a restaurant.

11. Licensing Standards Officers

Background

263. It is imperative that Licensing Standards Officers have 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. LSOs will require to be able to work with persons from every background. They will require to have diversity training to ensure their ability to properly handle themselves in different and potentially sensitive or difficult situations.

264. LSOs will have three main roles - Guidance, Mediation and Compliance.

265. It is anticipated that LSOs 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 national and local policies. The public will require information to enable them to make representations, to object or complain within the terms of the legislation. Licensing Forums and other interested parties may also require information and advice from LSOs.

266. LSOs will not be expected to give legal advice or make applications or objections on behalf of any party. Care should be taken in training to ensure that is understood by the LSOs and their customers. It is not anticipated that LSOs will be legally qualified, although this would not be a barrier to application, however their role *must not be to give legal advice* as this could lead to conflict of interest in any subsequent action by the LSO or the Board.

267. LSOs will be expected to be approachable and should have a sufficient knowledge of the business of the licensed trade to properly enable the functioning of the licensing service to the benefit of the trade and their neighbours and customers.

268. LSOs should be able to advise licensees as to what actions required to be taken to prevent or resolve complaints.

269. LSOs require to attend Local Licensing Forums. They should also consider forming links with other groups such as Local Alcohol Action Teams and keep the Local Licensing Forums and Boards up to date, if appropriate, with any new initiatives such as health initiatives which may have an impact on licensing.

270. Training should ensure the following

- 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
- Proper concern for the rights of neighbours
- Proper knowledge of the rights and duties of the licensee
- A recognition of the extent of their role
- A recognition of when to advise customers that legal or other advice should be sought
- Confident people handling
- The proper application of discretion
- An understanding of licensing policy as it relates to health

Mediation

271. LSOs will require to have some mediation skills. It is considered that in most cases these skills would involve the application of common sense. Examples of this would be when complaints were received from neighbours about noise problems at premises caused by the late night deposit of bottles in bottle banks. An LSO may be able to persuade the licensee to carry out this task at a more reasonable hour to resolve the issue.

Training should provide LSOs with the following skills-

- Be confident working with a range of difficult people
- Understand the pitfalls of working in situations where alcohol is a significant feature
- Remain calm and professional during difficult encounters
- Communicate effectively and build rapport under pressure
- Have a range of ways of handling upset, aggressive and other difficult behaviour
- Understand the personal safety issues involved in carrying out their role
- Understand how to resolve disputes using a mediation-style dispute resolution
- Remain impartial
- Help people assess different ways of moving their situation forward
- Encourage parties to resolve disputes by dialogue where appropriate
- Be able to set up, structure and run a joint, face to face dispute resolution session
- Understand when mediation-style dispute resolution is appropriate and when it is not

Compliance –

272. LSOs will require to ensure that licensees carry out their business in a manner which complies with licensing legislation, regulations and national and local policies. The legislation proposes wide ranging powers to enable LSOs to ensure this compliance.

273. In any case where an LSO believes business is not being carried out in such a manner, the LSO should make an initial assessment of the situation and in most cases it is expected that the LSO will be able to persuade the licensee to make changes to his operation to ensure compliance.

274. LSOs will have the power to require sight of any documentation relating to the legislation, regulations and policies e.g. training registers, the operating plan etc. LSOs will not have powers to demand sight of non-licensing documentation such as the financial records of a business. LSOs will have the power of entry at all reasonable times and otherwise should require a warrant. LSOs will not have the power to force entry to premises. The LSO role will in no way impinge on the role of the police who will still be the responsible enforcing authority for criminal matters. LSOs will require to keep in touch with the police to ensure that any enforcement action contemplated by an LSO did not harm any ongoing police investigation of the premises or persons connected to the premises.

275. LSOs will be required to submit reports on their progress to Boards, licensing forums and their employing local authorities and on occasion to submit applications for review of premises licences to Boards. The latter will require to be served as appropriate on persons concerned.

276. LSOs will present the case for review to the Board and will need to ensure that their case was able to be corroborated, whether by documentary evidence or witnesses to the matter requiring enforcement action.

277. LSOs will be accountable for their actions to their employers, the public and trade that they serve and the bodies to which they report. It is also assumed that they will require to submit statistical evidence on enforcement matters to the Scottish Executive.

278. There may be occasions when it would be unwise for LSOs to enter premises alone and on those occasions assistance should be sought from the police.

Training

279. Training for LSOs should deliver:

- Knowledge of enforcement provisions of legislation
- Understanding of appropriateness of enforcement measures
- Understanding of consequences of enforcement actions
- The balance between the interests of the public and the licensee
- An understanding of Health and Licensing 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

Smoking

280. LSO should be able to enforce Smoking Health & Social Care (Scotland) Act 2005 providing appropriate training was to be given. However, this should be left to the discretion of local authorities.

Gaming Legislation

281. It would be appropriate for LSOs to monitor Gaming premises. However, this should be left to the discretion of local authorities.

Hours of work

282. LSOs would require to be flexible and be prepared to work evenings and weekends if required, although much of the role will be administrative and require dealing with licensees and others during the normal working day. It is not anticipated that an LSO would carry out enforcement matters otherwise than during the normal working day but would require to visit premises during unsocial hours only for information/evidence gathering purposes. The LSO should not go alone to premises at night.

283. Local Authorities may wish to establish a representative body of LSOs to provide a mechanism for sharing best practice.

12. Other offences

284. This Chapter provides guidance about a number of offences contained in the Act. It does not deal with those offences relating to children and defences against such offences which are contained in Chapter 10 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.

General – Bodies corporate

285. Section 141 of the Act provides for certain persons responsible for the management or control of these bodies to share criminal responsibility for offences committed under the Act with their consent or connivance or due to their neglect.

Prohibition of unlicensed sale of alcohol

286. 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 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. However, Boards should be aware that this does not apply in the case of alcohol sold on a premises designated as an “exempt premises” under section 124 of the Act, or where alcohol is sold to the trade.

287. Anyone who sells alcohol, or knowingly allows the sale of alcohol that does not fall into the category set out above commits an offence. 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.

Drunk person entering or in premises on which alcohol is sold

288. It is an offence for a drunk person to attempt to enter any relevant premises. It is also an offence 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 can be arrested without warrant by the police.

Obtaining alcohol by or for a drunk person

289. It is an offence under section 112 to obtain or attempt to obtain, on relevant premises, alcohol for consumption on those premises by a person who is drunk.

Sale of alcohol to a drunk person

290. It is an offence to sell or attempt to sell alcohol to a person who is drunk, or to allow alcohol to be sold to such a person, on relevant premises. The offence may be committed by any person who works at the premises, whether paid or unpaid, in a capacity that gives him the authority to sell the alcohol, a premises licence holder or named premises manager, who is present at the time of the sale and who has authority to prevent it.

Premises manager, staff etc. not to be drunk

291. It is an offence for any responsible person to be on any relevant premises whilst drunk.

Disorderly conduct

292. This offence is 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. It is an offence knowingly to allow disorderly conduct on relevant premises. The offence may be committed by any person who works at the premises, whether paid or unpaid, in a capacity that gives him the authority to prevent the conduct, a premises licence holder or named premises manager, who is present at the time of the disorder and who has authority to prevent it. 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 his duty in this respect. It is important to note the words "allow" disorderly conduct on relevant premises. 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.

293. Licensing Boards should be aware that there is a defence for the person charged with allowing disorderly conduct on the premises set out in section 115 of the Act. It will be a defence where; the accused can prove that they took all reasonable precautions and exercised due diligence not to commit the offence. And 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

294. It is an offence if a person who is drunk or disorderly refuses 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.

295. It is also an offence for a person to refuse 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.

296. 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 will sometimes be a result of sales made earlier on licensed premises when an individual was drunk. It is therefore important that such offences are prosecuted 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.

297. The 2005 Act does not change the ability of staff to refuse entry, nor does it require them to give a reason for refusal.

Offences relating to sale of alcohol to trade

298. The Act provides that any sale to another trader should be exempt from licence requirements, regardless of minimum quantities sold. This approach focuses on the nature of the activity (i.e. selling to trade) rather than on quantities sold. As long as the sale of alcohol is made to another trader, no premises licence will be required, regardless of whether it is a single bottle or a case of wine that is being sold.

299. However, it is an offence for a person to sell alcohol to trade otherwise than from premises not used exclusively for the purpose of selling to trade (whether such sale is solely of alcohol or not).

Prohibition of unauthorised sale of alcohol on moving vehicles

300. The Act provides that moving vehicles, on which alcohol is sold can now be adequately licensed under the new regime by either a premises or occasional licence. In particular, Licensing Boards will now be able to license “party vehicles” such as stretched limousines and decommissioned fire engines.

301. It is an offence for any person to knowingly sell alcohol on any such vehicle whilst it is moving unless authorised to do so by a premises licence or occasional licence.

Delivery of alcohol from vehicles

302. All deliveries and carrying of alcohol in vehicles must be properly and clearly recorded under the provisions 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 his person containing the same information. Not do so will be an offence.

303. It is also an offence for any person to deliver the alcohol to an address other than that listed in the day book. However, it should be stressed that 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).

Prohibition of late night deliveries of alcohol

304. It is an offence for anyone who works on a licensed premises which sells alcohol for consumption off the premises to deliver alcohol between midnight and 6 am. It is also an offence for any responsible person to allow such a delivery.

Keeping of smuggled goods

305. The sale of contraband cigarettes and alcohol is a matter of considerable concern to 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.

306. The Act provides that it is an offence knowingly 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.

307. The Act also provides that a court which convicts a person of this offence may order the confiscation of the goods in question and their containers, which may then be either destroyed or dealt with as the court orders. Licensing Boards should liaise closely with Customs and Excise in respect of the investigation and prosecution of such offences.

13. Transition

Framework

308. This chapter concerns the transfer from the present alcohol licensing regime governed by the Licensing (Scotland) Act 1976 to the new regime instituted by the Licensing (Scotland) Act 2005 under the powers granted in section 145 of the 2005 Act. Whilst the detail will be set out in regulations, what follows represents a framework of how transition will work.

309. Following the May 2007 Elections, local authorities will need to appoint new licensing boards. These are to be appointed in line with the provisions of the 2005 Act. This will entail having no fewer than 5 members but not more than 10 members per Board. Following appointment this Board will be empowered to undertake matters which may arise under the 1976 Act until the start of the transition period in February 2008. This will avoid the need to operate two boards or appoint a larger number of board members who would then become surplus to need during the final period of operation of the 1976 Act.

310. All the licences under the new system and the majority of the provisions of the 2005 Act will take effect on a single appointed day following a transition period.

311. The transition period will start on the **1 February 2008** and last for a period of nineteen months until the end of August 2009 with the single appointment date being **1 September 2009**.

312. Transition will take place at 0500 on Tuesday 01 September 2009. This avoids the change taking place on a weekend, usually a busy time for many premises and by tying the transition to a specific time when the majority of premises would be expected to be closed it should lessen the confusion of when a premises should be operating under one licence regime and not the other.

313. During Transition it will be necessary for 1976 Act licences to continue to run until 1 September 2009 when 1976 Act licences will terminate automatically. During this period licences will be deemed to automatically be extended. No new licences will be issued. To promote fairness for licensees and reduce administrative complications, the following will be implemented during transition:

- No 1976 Act renewals – existing licences due to expire during transition and which would require renewal under section 30 of the 1976 Act will be automatically extended to run until the end of the transition period. Any automatic extension should include extending the licensees' children's certificate (Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 section 49).
- 1976 Act regular extensions – such regular (annual) extensions as have been granted under section 64 of the 1976 Act when transition begins should be automatically extended to run until the end of the transition period.

- There will no longer be set Quarterly meetings. The last quarterly meetings will be held in January 2008.
- Boards will be required to use delegated powers/duty to delegate to clerks the remaining business of the 1976 Act, such as licence transfers. However Clerks are required to revert a case to a Board where they consider this to be ‘necessary or expedient’.

The transfer of Existing Premises licences

314. To ensure a controlled flow of applications all existing licensees are required to apply for their new licence during one of the following periods, according to the month of the quarterly Board meeting in which their existing licence is due to expire (the year of expiry being irrelevant):

- March expiries – must apply by the last lodging date of **7 March 2008**
- June expiries – must apply by the last lodging date of **6 June 2008**
- October expiries – must apply by the last lodging date of **3 October 2008**
- January expiries – must apply by the last lodging date of **9 January 2009**

315. However there is nothing stopping any applicant lodging their application early and applications can be lodged from 1 February 2008 regardless of the expiry date of their existing licence

316. Each Board should write to each licensee at the address of the licensed premises advising of the relevant deadline stated above. These 4 dates are the same for all Boards throughout Scotland.

317. The license fee as detailed in regulations enabled by section 136 of the 2005 Act would be due with the application when lodged.

318. Licensing Boards will have **6 months** to determine a premises licence application during transition. This period would run from each of the ‘last lodging dates’ as noted above, even if licensees choose to apply earlier than their designated period. A Licensing Board is not required to deal with an application before the appointed determination period, nor are they prevented from receiving or processing an early application.

319. Should a licence holder fail to apply by the set lodging date, the licence holder loses their ‘Grandfather Rights’ and the application will be treated as an entirely new application when received.

320. Any applicant who missed their lodging date would need a new application. The new application would need to include all the certificates required by an applicant for a new premises licence (building standards, planning and food hygiene certificates, section 50 of the 2005 Act) nor would the premises be exempt from the consequences of any overprovision

assessment in section 23(5)(e) of the 2005 Act. If no application is received the licence would run to the end of the transition period and then terminate automatically.

321. Where there are no objections to an application and the clerk does not foresee any problems with the draft operating plan and layout plan - a list of non-controversial applications should be allowed to be submitted to the Board and agreed. Some Boards though might choose not to operate in this way and decide to scrutinise every case individually at full Board meetings, however this flexibility is available. Determination itself must still be undertaken by the Board and not delegated.

Grandfather Rights

322. The following partial 'Grandfather Rights' are applicable to existing 1976 Act licensees as they transfer into the regime of the 2005 Act.

- Exemption from the consequences of the overprovision assessment and from the overprovision ground for refusal of a licence (section 23(5)(e) of the 2005 Act) where there is no change to the size, capacity or activities taking place on the premises.
- Exemption from the need to provide building standards, planning and food hygiene certificates where transfer is on a like for like basis. (section 50 of the 2005 Act)
- Where transfer is on a like for like basis but the licensing board considers that they would nevertheless be minded to refuse the licence on the grounds of the "location, character or condition of the premises" (section 23(5)(d) of the 2005 Act), but that suitable modifications can be made to address this, the licence must be granted and the licensee given a period of 12 months to make the necessary modifications. If the modifications are not made within this period the licence would be revoked.

323. No other Grandfather Rights are available and all other aspects of the new legislation would be applied.

Garage/Petrol Station Forecourt Shops

324. The 'Grandfather Rights' mentioned above do not apply to Garage/Petrol Station Forecourt Shops premises which presently hold a licence, unless the licensing board decides they fall under section 123(5) of the 2005 Act, which allows a premises which serves a wider local function or is a required community resource to continue to hold an alcohol licence. Garage/ Petrol Station Forecourt Shops which do not fall within this definition will no longer be able to sell alcohol from 0500 on 1 September 2009.

Personal Licence Applications

325. During transition Personal Licence applicants can apply by the following times:

- Those disassociated with a premises licence application – at any time during transition

- Those associated with a premises licence application i.e. as named premises managers (Schedule 3 paragraph 4 of the 2005 Act), to apply at same time as premises application.
- Where a premises has not identified a premises manager at time of application, it is acceptable to allow this name to be provided at any time prior to a determined date before the end of the transition period. If no name was provided by this date the premises licence will fall.

326. Unlike the transition of the Licensing Act 2003 there will be no grandfather rights for Personal Licence applicants and all applicants will be required to undertake the relevant training required by regulations under section 91 of the 2005 Act.

New Licences

327. There will continue to be a need to grant 1976 Act licences during the transition period if an applicant required a provisional licence or wished to operate during transition. It would not be commercially viable to prevent this.

328. This will be achieved through a ‘hybrid’ application process. The outcome of a successful “hybrid” application process would be that:-

(1) Either:

(a) a current licence is granted which comes into effect immediately to allow
the licensed premises to operate or,

(b) there is a provisional grant of licence in order to allow premises to be
completed

and

(2) a new premises licence or provisional premises licence is granted which will
not take effect until the appointed day.

329. The hybrid application process we have outlined sets out to deal with two main issues, firstly the *type* of licence (as set out in Schedule 1 of the 1976 Act) which is to operate during

the transitional period and, secondly, the *nature* of the premises to operate as from the appointed day.

Submission of “Hybrid” Application

330. In order to deal with operation before and after the appointed day, there will be one “hybrid” application form. This will require to set out the type of licence which is being applied for to operate during the transitional period, for example a public house or a restaurant. In addition to the paperwork required to fulfil the 1976 Act requirements the application should be accompanied by information in relation to the new premises licence to operate as from the appointed day, namely:-

- an operating plan,
- a layout plan and
- a section 48 certificate

331. In accordance with the new principle for transition that application must be determined within a period of six months. Applications for new businesses during the transitional period should be dealt with by the Board as and when they are received. The six months should run from the date the Board receives the application with appropriate reminder triggers being maintained for the expiry of the determination period.

332. The final date for a Hybrid application to be lodged will be 28 February 2009. Past this date applications for premises licence under the 2005 Act only will be accepted.

333. During transition the requirement to publish a list of applications in a newspaper would be suspended, but only where a Licensing Board is able instead to publish such a list on their website.

Transfer of Premises Licence

334. During the transition period the ability to transfer a premises licence would require that both the 1976 Act regime and the 2005 Act regime run in tandem until the Big Bang date.

335. The ability to permanently transfer a licence under the 1976 Act regime will be a delegated power for the clerks.

336. If a premises application had already been granted under the 2005 Act regime in transition and an application for transfer was received in transition this would then follow the 2005 Act regime process for transfer. However if a premises application under the 2005 Act regime was submitted and the premises then changed hands under the transfer provisions of the 1976 Act prior to determination of the 2005 Act application then the application will automatically fall for the premises licence, and be resubmitted by the next lodging date. Grandfather rights will continue as long as the application was lodged on time. This will not be a substitution but a new application requiring a new fee. Should an application fall in this way there is no requirement to reimburse the original premises licence fee paid.

Members' Clubs

337. Members' Clubs are authorised to supply alcohol to their members by a certificate of registration granted by a sheriff under Part VII of the 1976 Act. These clubs under the 2005 Act will be required to obtain a premises licence from the licensing board although section 125 of the 2005 Act ensures such clubs maintain their special character.

338. For transition Members' Club will not need to continue to register during the transition period. Their regular extensions granted by licensing boards under S64(5) of the 1976 Act will also be extended to run until the end of the transition period. The lodging dates by which a Members' Club must apply for a premises licence under the 2005 Act will be set by the local licensing board and that board is required to individually notify Members' Clubs of the lodging date. The determination period will be 6 months and existing Members' Clubs should also enjoy the same Grandfather Rights as other premises when applying for a premises licence.

339. A new Members' Club wishing to open during transition should be required to apply both to the sheriff and the Licensing Board (i.e. for a 76 Act licence to operate now and, at the same time apply for a premises licence).

Seamen's Canteens

340. Section 40 to 46 of the 1976 Act makes provisions for Seamen's Canteens. However the 2005 Act has removed the option of special arrangements for Seamen's canteens and in future they will be required to follow the same process in gaining a single premises certificate.

14. Local Licensing Forums

341. Section 10 of the Act requires every council to establish a Local Licensing Forum for their area. Section 11 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.

342. Schedule 2 to the Act sets out the mandatory requirements for membership of Local Licensing Forums. This guidance is intended to help councils establish Local Licensing Forums. It is not exhaustive and councils will wish to adopt their own individual working practices and explore innovative ways in which Forums can carry out their work, so long as they are consistent with the provisions of the Act.

Role of Local Licensing Forums

343. The role of the Forum is to keep under review the operation of the licensing system in their area and to give advice and recommendations to the Licensing Board. This does not include reviewing or offering advice or recommendations in relation to any particular application or case before the Board. To facilitate this, the Forum is to be provided with copies of any relevant statistics which have been requested from any relevant source by the Board.

344. The Board has a duty to “have regard” to the Forum’s views and must offer reasons where it takes decisions against the advice of the Forum.

345. The Act requires that a local Licensing Standards Officer must also be a member of the Forum, providing an important link to the operation of the system. Board members may also be invited to attend or to speak to the Forum. There is a mandatory requirement for a minimum of one formal meeting between the Board and Forum annually.

346. Links should also be established with the Local Alcohol Action Teams who are responsible for developing the local alcohol action plans to reduce alcohol related harm. A member of that team might be invited to sit on the Forum.

The effective Forum: independent, expert, trusted

347. 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.

348. To ensure independence, the Forum must develop an identity that is clearly separate from the Licensing Board or any other interest or group of interests. It must have the capacity to be impartial. However, councils may wish to consider whether one member of the Licensing Board should also sit on the Local Licensing Forum as a member so as to provide a direct link with the Board.

349. To gain expertise, Forums will comprise a balanced representation of relevant interests and collectively will have knowledge to demonstrate expertise in licensing matters. The forum will be able to identify key licensing issues affecting their area and will be able to develop constructive advice on how to address them.

350. The Local Licensing Forum must also strive to develop the trust of the licence holders and the licensing board by producing impartial and effective advice to the Board.

An inclusive approach to involvement

351. Schedule (2) of the Act specifies the composition of a Local Licensing Forum, but in broad terms the aim is a balanced representation of all ‘constituencies of interest’:

- Holders of premises licences and personal licences;
- The chief constable for the police area in which the Forum’s area is situated;
- Persons having functions relating to health, education or social work;
- Young people; and
- Persons resident within the Forum’s area.

352. These are the five main ‘target audiences’ which the Council must reach and engage in the process of setting up the Forum. A range of techniques will be needed to suit the different needs of these audiences:

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

- **In Public agencies** care should be taken to target the most appropriate officer, who might not necessarily be the chairperson or chief executive.

- **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 Forum may include:

- The local press and any associated public meetings.
- Leaflets to explain the role of the Forum and to give notice of public meetings.
- Leaflets and posters can be placed in shops, gyms, libraries and public buildings to reach the general public.
Leaflets can be included with letters sent to licence holders, the police and other organisations, individuals and community organisations.
- A dedicated page might be created on the Council’s web site, with a prominent link from the home page, to give details of how the Forum will be set up and, in time, to become the Forum’s own web page.

353. Having contacted everyone with an interest, the next step is to ensure that they all share the same core knowledge about licensing in general and the functions of a Local Licensing Forum in particular. The challenge is to convey complex information while still motivating people to want to be part of it. The information which needs to be covered includes:

- The Scottish Executive Guidance on the Act; and
- The functions laid down in the Act for Local Licensing Forums

354. The constitution and role of the Local Licensing Forum, including the fact that members are appointed to represent constituencies of interest. This is an unfamiliar role for many people. Making sure potential members and members understand their role is crucial to the effective operation of the Forum.

Key points in this respect include:

- Members are *not* on the Forum to express their own views, pursue their own enthusiasms or pet projects, or resolve personal issues
- Members who belong to a particular organisation are *not* on the Forum to express or promote the views of that organisation
- Members must take active steps to stay in touch with the constituency they represent so that they can convey *its* views to the Forum
- Being an enthusiast with a capacity to generate ideas, or being a committed member of an organisation and having experience gained from involvement in its activities, give members *the potential* to be key to the success of the Forum

355. Past experience is the base from which members start. The learning curve in the role and responsibilities of a representative on the forum can be ascended by:

- preparing a ‘person specification’ and/or ‘job specification’ for prospective Forum members
- preparing a Code of Practice for current Forum members
- ensuring consistency of representation by appointing ‘substitutes’ who can fill in for members who are temporarily unavailable
- insisting on regular attendance and taking appropriate steps when attendance falters
- 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

356. There are a number of ways in which representatives may be chosen:

- Seek nominations from the 5 interest groups during or following the formative stage discussions

- Invite all interested parties to a plenary meeting, split up into the 5 interest groups, and have facilitators lead discussion to agree the appropriate number of nominations from each group
- Invite written applications for the appropriate number of places, and assess candidates on the basis of the skills and experience they can offer, perhaps backing up the written submissions with interviews.

357. Each method has its merits, but none is a magic solution. If the time has not been taken to lay the groundwork thoroughly by explaining the functions of a Local Licensing Forum and the roles and responsibilities of Forum members, no selection process *in itself* can guarantee an effective Local Licensing Forum.

358. Whichever method is chosen, it helps to remind interested parties that there are many ways to contribute and their turn on the Forum may come in the future if not now. 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.

Achieving a culture of participation

359. Having created the pre-conditions for participation, the next step is 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 overloaded. 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. As already mentioned above, 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. This will mean taking active steps to restrain the confident, if there is a danger of them dominating proceedings, and to draw out the more reticent who might otherwise stay silent. There are some techniques that can be deployed including:

- **“Round Robins”**: The Convenor 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 Convenor 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. The Convenor needs to ensure that some members do not monopolise the purpose.

- ***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 Forum breaks up into smaller groups to discuss a particular topic and then report back later. This helps members who are happier speaking in small groups.

360. Whatever techniques are employed, the Convenor must pay close and constant attention to how well the group is working together. 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 and enjoyable.

Management of business

361. The Convenor must be mindful of time and regulate discussion so as to make sure that meetings get through their agendas. Repeated failure to finish the business will undermine belief in the value of what the Forum does. 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 to the Forum about steps taken as a result of previous discussions and what the outcome was. Pursuing the twin aims of achieving good leadership and developing a culture of participation is a challenging and complex task. Success will not be an overnight phenomenon, but rather the result of patiently negotiating a learning curve and applying consistent effort over an extended period of time. It is therefore important to guard against unrealistic expectations

Communication

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

- 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

363. Once again, it is important that the Forum members debate these matters and come to an agreement, especially as some aspects affect personal privacy.

JOB DESCRIPTION FOR LSOs

POST: **Licensing Standards Officer (LSO)**

OUTLINE OF THE JOB

Licensing Standards Officers are an integral part of the monitoring and enforcement regime of the new 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 enforce 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.

LSOs therefore have 3 clear roles:

- **Guidance** – acting as a source of information and guidance for licensees and for the community and any other interested persons.
- **Mediation** - mediating between local communities and the licensed trade or between any two parties where there is a need to resolve a local problem and develop a local solution and offer advice and guidance where appropriate.
- **Compliance** - supervising compliance by the holders of premises licences or occasional licences in respect of premises in the area with the conditions of their licence, with the requirements of the Licensing Act and with local Licensing Board policy.

Accountability: LSOs 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 Board. They will require to ensure they do not compromise their ability to seek review by being seen to be acting for the Boards as the prosecutor should not be involved with the judge and too close a working relationship could compromise Board decisions and lead to successful appeals against Board decisions.

It will be left to the discretion of local authorities as to which department within the local authorities that LSOs should sit.

KEY ELEMENTS OF THE POST

Raising awareness of the LSO 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
- Providing information and guidance to the general public with regard to the Licensing (Scotland) Act including:
 - National licensing policy and the licensing objectives set out in the Licensing Act
 - Board policies
 - Terms and licence conditions of individual premises licences
- Making representations to 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 including:
 - National licensing policy and the licensing objectives set out in the Licensing Act
 - Board policies
 - Complying with the terms and conditions of the licence
- Monitoring licensees' compliance with their licence conditions and 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 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 LSO has initiated a review
 - For reviews initiated by other persons
 - On general topics as requested by the Board
- Collating, preparing and maintaining records relating to caseload
- Attending meetings of the Licensing Board and the Local Licensing Forum **and ADATS or their equivalent**

SMOKING IN PUBLIC PLACES

Individual local authorities may decide to ask LSOs to undertake responsibility for enforcing the ban on smoking in public places on licensed premises under the Smoking, Health and Social Care (Scotland) Act 2005.

GAMBLING ACT 2005

Individual local authorities may decide to ask LSOs to undertake responsibility for enforcing the Gambling Act.

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 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 LSO hours will be set by the Local Authority for the area but must of necessity include some anti-social hours. As the LSO 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.

IDENTIFICATION

LSOs 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.

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>Ability to research and investigate issues on own initiative</p> <p>Ability to prepare reports and</p>

	(a) Record keeping (b) Analysis of issues (c) Report writing	statistics within a Windows based computer system Awareness of issues relating to Diversity. Training will be offered.
	An ability to understand their roles and duties in terms of legislation and policies	Training will be offered
	Ability to build good relationships with local licensees, local communities and others Ability to handle conflict	
Qualifications And Training.	Training will be provided to a national standard for successful applicants	
Other Competencies/ Personal Characteristics.	<i>Confidence</i> <i>Customer Focus.</i>	

	<p><i>Self motivated</i></p> <p><i>Work Effectively With Others.</i></p> <p><i>Deal positively with Change.</i></p> <p><i>Taking Personal Responsibility.</i></p> <p><i>Decision Making.</i></p> <p>Minimal Supervision</p> <p>Integrity</p>	
Other Skills	Clean driving licence	

APPEALS TO THE SHERIFF PRINCIPAL

<i>Decision</i>	<i>Persons who can appeal</i>
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) 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	Any person who has given a notice of objection

application	under section 58(1)
A decision to refuse a personal licence application	The applicant
A decision to make an order under section 83(9), 84(7), or 86(3) revoking, suspending or endorsing a personal licence>	The personal licence holder

**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 - Shetlands Islands
SA - South Ayrshire
SL - South Lanarkshire
SC - Stirling
WD - West Dunbartonshire
WL - West Lothian
WI - Western Isles

Useful Links & associated information

Partnership working

Licensing functions under the Act are only one means of promoting the delivery of the 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. Delivery should involve partnership work between Licensing 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

Pubwatch schemes range in size from over 200 premises in cities to small rural schemes with as few as 5 premises involved. 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.

The National Pubwatch Good Practice Guide provides advice on how such schemes can be established locally and includes Codes of Practice on sharing information, photographs and banning policies with regard to responsibilities under the Data Protection Act 1998. Licensing Boards should familiarise themselves with Pubwatch schemes operating in their areas and support their aims. Information about Pubwatch can be obtained through their website: www.uniquepubs.com/pubwatch.

Safer Clubbing

Drug use by young people in a club environment poses many challenges to all those responsible for the regulation of nightclubs and other dance venues. With that in mind Licensing Boards may wish to consider current guidance available in England & Wales that has been prepared by the Home Office in collaboration with the London Drugs Policy Forum in partnership with Release, "Safe Clubbing" which is available on their website. This guidance has been prepared for use by licensing authorities in England & Wales, club managers and promoters. This guidance may be viewed at the following website address.

<http://www.drugs.gov.uk/publication-search/young-people/safer-clubbing-guide.pdf?view=Binary>

Research

For information on potential alcohol-related harms generally, Licensing Boards may wish to be aware of information that is regularly updated on the Scottish Executive's "Alcohol Information Scotland" website.

http://www.alcoholinformation.isdscotland.org/alcohol_misuse/AI_MainPage.jsp?pContentID=1394&p_applic=CCC&p_service=Content.show&

This website also contains useful links to a range of key organisations in Scotland in the alcohol field including: -.

- Scottish Executive
- Scottish Ministerial Advisory Committee on Alcohol Problems
- National Alcohol Information Resource
- Scottish Association of Alcohol Action Teams
- Alcohol Action Teams
- Alcohol Focus Scotland

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 ("the 1990 Act"). 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

A range of qualifications, designed to support the licensing objectives, are currently being developed by the National Licensing Forum. In order to assist in this process, the Forum established an Expert Training Advisory Group consisting of representatives of training bodies, the licensed trade, representatives from the National Licensing Forum and others who are developing the detail relating to, the development of a training syllabus and qualifications, and delivery mechanisms.

Guidance on Clubs

Q How are clubs to be treated?

- Brought within licensing system but special requirements to be recognised through licence conditions which have been discussed with clubs
- Personal licence holder will be required but very small club will be exempted
- Licence conditions provided to subordinate legislation committee and include:
 - Non-profit making
 - Written constitution and rules
 - Management committee or governing body elected by members
 - No person under 18 to be admitted unless to sporting club or students union
 - No member to have personal interest in alcohol sales
 - No visitors except as recorded in guest book and in company of a member
 - Minimum of 25 members

Q Who will be licence holders?

- Premises – club itself or the committee
- Personal - premises manager or member of club committee or club – doesn't matter.

Q Children?

- As per normal arrangements under Act

Q Who has access to club?

- Similar rules as at present
- Events for public must be covered in operating plan

Q Clubs Included in overprovision assessment?

- No, all private members clubs that come under the provisions of the Act will be exempt

Q What about guests, will they be able to buy alcohol?

- Yes

