

# **EAST AYRSHIRE LICENSING BOARD**

## **STATEMENT OF LICENSING POLICY UNDER THE LICENSING (SCOTLAND) ACT 2005**

**November 2018 – November 2022**



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## **1. PREAMBLE**

Section 6 of the Licensing (Scotland) Act 2005 (the Act) requires all Licensing Boards to publish a Statement of Licensing Policy. This statement fulfils that statutory requirement for East Ayrshire Licensing Board.

This Statement will remain in effect from 1 November 2018, subject to review, until 18 months after the next ordinary local government elections. It will be subject to regular review and monitoring and further consultation during this period. If necessary, the Board will prepare and publish supplementary Statements of Licensing Policy. If you wish to make comment on the statement or wish the contents to be reviewed, please contact the Licensing Section at the contact point stated on the front page.

In carrying out its statutory role and fulfilling its responsibilities under the Act the East Ayrshire Licensing Board is required to have regard to its Licensing Policy Statement, and any supplementary licensing policy statement published by the Board.

The Licensing Board will consider all applications on their merits within the context of the Licensing Policy Statement. In particular the Board will give due consideration to an application whether or not it conforms to any requirements set out in the Licensing Policy Statement.

In exercising their functions under the Licensing (Scotland) Act 2005, the Licensing Board will have regard to the statutory licensing objectives, which are set out at section 4 of the Act:

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

The Board has consulted widely on this statement and has taken account of the views submitted in its adoption.

## **2 INTRODUCTION**

East Ayrshire covers a land area of 490 square miles in west central Scotland, 30 miles southwest of Glasgow. The population of East Ayrshire in 2015 was estimated to be 122,060, of which there were 59,186 males and 62,874 females.

There are 23 main communities and settlements in a diverse geographical area, embracing both rural and urban areas. Established as a result of local government reorganisation in 1996, the area does not reflect any natural or traditional community, stretching as it does down the eastern length of the County of Ayrshire.

As at 1 April 2018, there were in force within East Ayrshire the following:-

320 Premises Licences  
1257 Personal Licences

### **3 BYELAWS**

East Ayrshire Council has introduced bye-laws prohibiting the consumption of alcohol in designated places. These bye-laws, in terms of the Local Government (Scotland) Act 1973, currently apply to the East Ayrshire area.

The effect of the bye-laws is that any person who consumes alcoholic liquor in a designated place or is found to be in possession of an open container containing alcoholic liquor in a designated place shall be guilty of an offence. Licensed premises are exempt from the bye-laws. The bye-laws also state that they shall not have effect on 31 December from 6.00pm until the end of that day and on 1 January until 6.00am.

### **4 LINKS TO OTHER POLICIES, STRATEGIES & LEGISLATION**

East Ayrshire Licensing Board consulted widely before finalising and publishing this Statement of Policy and has given due consideration to the views of all those who responded to that consultation process.

In administering its responsibilities, the Board believes that it is important that it does not operate in isolation. Due regard will be given to the policies and decisions of East Ayrshire Council.

#### **4.1 [The Human Rights Act 1998](#) - The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a Convention Right. The Board will have particular regard to the following relevant provisions of the European Convention on Human Rights in respect of its licensing responsibilities:**

- Article 1 of the First Protocol: that every person is entitled to the peaceful enjoyment of their possessions, including for example the possession of a licence
- Article 6: that in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law and
- Article 8: that everyone has the right to respect for their home and private life.

The Board will take advice on ECHR issues generally as and when required, as is currently the case with all other legal matters.

- 4.2 **Equality Act 2010** – The Licensing Board is committed to promoting equality, which means recognising that everyone has different needs and taking positive action to ensure that we are all able to participate in society. The Licensing Board has a legal requirement to produce and publish a set of equality outcomes, the results of which aim to achieve the promotion of equality, tackling discrimination and fostering good relations.
- 4.3 **Immigration Act 2016** - The Immigration (Alcohol Licensing and Late Hours Catering) (Scotland) Regulations 2018 are made under the Immigration Act 2016. These regulations place restrictions on the holding of alcohol licences by people who are not entitled to work in the United Kingdom, or people who have been convicted of immigration offences or required to pay immigration penalties. (Note that these Regulations have been laid before Parliament for approval but are still in draft form).
- 4.4 **Gambling Act 2005** - In carrying out its statutory role and fulfilling its responsibilities under the Gambling Act 2005, the Board will at all times act in an open and transparent manner and in accordance with the public interest and will have regard to the statutory licensing objectives, which are
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
  - Ensuring that gambling is conducted in a fair and open way
  - Protecting children and other vulnerable persons from being harmed or exploited by gambling
- 4.5 General Data Protection Regulation (GDPR) and the **Data Protection Act 2018** – Personal information submitted to the Licensing Board will be treated in accordance with the Data Protection Act 2018. Any information provided will not be used in any way other than for its original purpose. However, the Licensing Board may be legally obliged to share it with other public authorities if that information could be used to prevent or detect a crime.
- 4.6 **The Freedom of Information (Scotland) Act 2002** – The Freedom of Information (Scotland) Act 2002 gives a general right of access to information held by public authorities in Scotland. East Ayrshire’s Licensing Board’s Publication Scheme, which can be found on <https://www.east-ayrshire.gov.uk/Resources/PDF/L/LicensingBoardPublicationScheme.pdf> sets out the classes of information that is generally available with the links and/or contacts to access the information. Specific information requests can be made in writing or any recordable form.
- 4.7 The Board will liaise closely with the Local Alcohol and Drugs Partnership, the importance of such co-operation being recognised as part of the wider alcohol agenda, especially in relation to public health and child protection Licensing Objectives.
- 4.8 The Board will have regard to any strategy of the Scottish Government designed to address the social, health and crime and disorder issues raised by the misuse of alcohol.

- 4.9** The Board will avoid duplication with other regulatory regimes and will not use its powers under the Licensing (Scotland) Act 2005 to arrive at outcomes that can be achieved under other legislation or by other enforcement agencies. In particular, the Board's licensing functions will be discharged separately from the functions of East Ayrshire Council as the local planning authority. The Board recognises that planning and licensing regimes are separate and that the processing of licensing applications is a distinct exercise from the processing of planning applications.

Applicants for licences are reminded that, notwithstanding the grant of any form of premises licence, planning permission may be required for certain uses and that planning consent may carry additional conditions not directly attributable to licensing matters.

For all applications, other than grant applications, it is preferred by the Licensing Board that planning permission is obtained first, or alternatively that a certificate of lawful use or development has been obtained in terms of the proposed activities and trading hours.

In general, planning permissions authorise a broad type of use of premises, whereas licences are granted for a particular type of activity. A planning permission may cover a number of activities that can have a wide range of different impacts in the locality.

It should however be recognised that there may be a common approach in the reasoning behind planning and licensing decisions and conditions attached to planning permissions may relate to one or more of the five licensing objectives.

The Council's planning policies are set out in its Development Plan and associated supplementary guidance as appropriate. Government guidance for the Planning system in the form of Scottish Planning Policy and Planning Advice notes are also relevant.

- 4.10** The formulation of this policy involved consultation with the Local Licensing Forum, which will keep under review the operation of the Act in this Board's area and will advise and make recommendations to the Board as appropriate. The Board will have regard to any advice given or recommendation made to it. If the Board does not follow the advice or guidance this will be for good and substantial reasons, which reasons will be given in writing within 14 days of the decision.

To ensure proper communication with the Local Licensing Forum, the Board may provide reports particular to it from time to time to enable it to have regard to the detail of such matters when deliberating.

- 4.11** All premises for which a licence is being sought will be expected to comply with the building standards requirements in force at the time of their construction, or at the time of any alteration. This is particularly relevant in respect of the licensing objectives relating to public health and public safety.

Where construction work is proposed or completed, the applicant should be able to produce appropriate building warrant and completion certificates issued by the local authority.

- 4.12** Other statutory requirements may apply both to the use of and the provision of any activities at premises and the responsibility for compliance lies with the licence holder. For example, if the activity involves the preparation and/or sale of food then it is the responsibility of the applicant to ensure that all appropriate food safety legal requirements are met. It is not a requirement of any licence decision to address these matters but a responsible licence holder will be expected to conform to all relevant legislation. There is considerable overlap between the licensing regime and wider health and safety regulatory regimes. Many specific licensing requirements relate to matters potentially affecting public health and public safety, two of the licensing objectives.

## **5 LOCAL LICENSING FORUM**

Under the Licensing (Scotland) Act 2005 every local authority must establish a Local Licensing Forum for their area.

The forum's role is to keep under review the operation of the new Licensing Act and to give advice and make recommendations to the Licensing Board in relation to any matters that the forum considers appropriate. Although the forum is independent from the Licensing Board they will share the common goal of having the local community's best interest at the heart of the decision making.

A Forum is to consist of between 5 and 21 members as the Council may determine. At least one of the members must be a Licensing Standards Officer for the council's area and one must be a representative of the Health Board for the area.

In appointing members of a Forum, the council must seek to ensure so far as possible that the membership of the Forum is representative of the interests of persons or descriptions of persons who have an interest which is relevant to the Forum's general functions. Those persons include:-

- holders of premises and personal licences
- The Chief Constable
- persons having functions relating to health, education or social work
- young people
- persons living within the forum's area

## **6. BOARD BUSINESS**

The Board will deal with all of its business in an open and transparent way.

When assessing applications submitted for premises licences, the Board will require to be satisfied that the applicant will be able to fulfil the five licensing objectives.

Application forms (including online applications) and details of appropriate fees are available on East Ayrshire Council's website: <https://www.east-ayrshire.gov.uk/LawAndLicensing/ApplyForALicence/AlcoholLicences/AlcoholLicensing.aspx> or by contacting the Licensing Section at Council Headquarters, London Road, Kilmarnock.

Information will be made available to those persons who wish to apply for a licence, to make representations to the Board or to lodge objections. The Board will remain at all times mindful of the need to be accessible to all and assistance will be available on request to those who require any special arrangements made.

The Board will operate in the East Ayrshire Council Headquarters. The Board will meet on a regular basis and the date of meetings will be advertised on the Council's website: <https://www.east-ayrshire.gov.uk/LawAndLicensing/LicensingInformationAndMeetings/LicensingBoard/LicensingBoardMeetings.aspx>

## **7 DELEGATION OF LICENSING FUNCTIONS**

The Licensing Board, for the purposes of the Licensing (Scotland) Act, 2005 is responsible for the consideration of:

- Premises licences
- Occasional licences
- Temporary licences
- Provisional licences
- Personal licences
- Variations of licences
- Review of licences
- Transfer of licences
- Extensions of licensed hours
- The sale of alcohol by retail
- The supply of alcohol in members' clubs

As it is the Board's policy to provide a speedy, efficient and cost effective service to all parties involved in the licensing process, East Ayrshire Licensing Board has delegated to the Clerk (which includes such Depute or Assistants as may be appointed by the Clerk for the purpose) authority to grant the following descriptions of applications:

- Minor variation of premises licence (section 29);

- Variation to substitute new premises manager – where the applicant has not been convicted of any relevant or foreign offence (section 31 and with reference to section 54);
- Transfer of premises licence – where transferee has not been convicted of any relevant or foreign offence (reference to sections 33 to 35);
- Confirmation of a provisional premises licence – where no objections or representations have been received (section 46);
- Occasional licence – where no objections or representations have been received and Police Scotland have not lodged a notice recommending refusal of the application (section 56);
- Extension of licensed hours – within the Board’s normal licensing hours policy – where no objections or representations have been received, Police Scotland have not lodged a notice recommending refusal of the application and the report by the Licensing Standards Officer does not recommend refusal (section 68);
- Personal licence or renewal of a personal licence where the applicant has not been convicted of a relevant or foreign offence (section 129).

In order to maintain an overview the Board will receive regular reports regarding licences determined by the Clerk.

Unless provided for in regulations made, or to be made, under the Act, the Board will meet in public, although Members may retire into private session to conduct their deliberations.

## **8 NOTIFICATION OF APPLICATIONS, OBJECTIONS AND REPRESENTATIONS**

The Board will give notice of each premises licence application it receives to those persons referred to in Section 21 of the Act, namely:

- a) each person having a notifiable interest in neighbouring land;
- b) any community council within whose area the premises are situated;
- c) East Ayrshire Council;
- d) Police Scotland;
- e) Scottish Fire and Rescue Service;
- f) NHS; and
- g) The Secretary of State

Additionally, the Board will advertise all applications to be considered on:-  
<https://www.east-ayrshire.gov.uk/Resources/PDF/L/Licensing-applications/Licensing-Advert-LicensingBoardMeetings.pdf>

Applications will remain on this site for a period of 21 days.

Within 21 days of the date of receipt of the notice, the Board expects Police Scotland to consider all applications and respond by giving the Board one of the statutory notices, as appropriate, referred to in section 21(4) of the Act.

The Board will consider all relevant representations or objections received from any person, including the Chief Constable of Police Scotland, as defined in section 22 of the Act. Any objection must relate to one of the licensing objectives.

Any person may submit an objection or representation to the Board in relation to a premises licence. The objection must relate to one or more of the licensing objectives. Although anyone is entitled to object to an application for a premises licence the Board may reject an objection where it is considered to be “frivolous” or “vexatious”. In determining this, the Board is entitled to recover any expenses incurred by them in considering the objection or application for review.

## **9 CONSIDERATION OF APPLICATIONS**

When considering whether any licence should be granted, the Board will take into account relevant matters, including:

- the nature of the premises, the style and type of use, and occupant capacity.
- the proposed hours of operation.
- the means of access and egress (including emergency provision) to the premises including the location of customer entrances and exits.
- the provision of toilet facilities and ventilation of the premises.
- Disabled Access and Facilities Statement.

Where it is possible to take steps to mitigate or prevent any potential impact the Board may still be able to grant a licence subject to conditions; each case will be considered on its merits and appropriate advice will be sought by the Board.

When an application for a major variation is lodged with the Board and the works requested are such that Certificates are required from Planning and Building Standards, copies of the Certificates and the Completion Certificate must be submitted to the Board prior to the area covered by the variation being utilised.

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

The grounds for refusal of licence are:-

- (a) The premises are excluded premises;
- (b) The application is made within one year of a previous refusal;

- (c) The Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence;
- (d) The granting of the application would otherwise be inconsistent with one or more of the licensing objectives;
- (e) That having regard to the nature of the activities proposed, the location, character and condition of the premises and the persons likely to frequent the premises, the premises are unsuitable for the sale of alcohol; and
- (f) The grant would result in overprovision, having regard to the number and capacity of licensed premises and licenced premises of a similar description as the application premises.

## **10 CONDITIONS ATTACHED TO LICENCES**

Schedule 3 of the Act provides mandatory conditions for premises licences. The Board also has power to impose further discretionary conditions which would be attached to licences on an individual basis. These conditions will not be inconsistent with or seek to strengthen or restrict mandatory conditions and will only be imposed when considered necessary for the promotion of the licensing objectives. A list of mandatory conditions are attached at Appendices I and II. However, it is understood that the Scottish Government may produce Regulations relating to further mandatory and discretionary conditions which may necessitate a variation to the terms of the Appendices.

The decision whether to impose a condition will be made on an objective basis having regard to the operating plan and layout plan and any representation made and any other relevant information available to the Board when considering the application.

## **11 OVERPROVISION**

In terms of Section 7 of the Act, the Board are required to produce a statement as to the extent that the Board considers there to be over provision of licensed premises or licensed premises of a particular description in any locality within the Board's area.

It is for the Licensing Board to determine the 'localities' within the Licensing Board's area. Licensing Board can determine that the whole of the Licensing Board's area is a single locality.

In determining locality, the statutory Guidance for Licensing Boards indicates that the process by which the selection exercise is carried out is largely a matter for the Board and will no doubt involve the use of its local knowledge.

On the basis of the information provided following an extensive consultation process, and having regard to the Board's own knowledge, the Board determined that the locality for the purposes of over provision is East Ayrshire as a whole and that there is an overprovision of off-sales premises only within the locality.

The effect of the policy is to create a rebuttable presumption against the grant of an application within this locality for off-sales premise. Each application still requires to be determined on its merits and there may be exceptional cases in which an applicant is able to demonstrate that the grant of the application would not undermine the licensing objectives, or the objectives would not be undermined if the applicants operating plan were to be modified. The Board will expect applicants who are seeking the grant of a new off-sales premises licence or to increase the capacity of an existing off-sales premises license to provide robust and reliable evidence to the Board why the benefit to the licensing objectives through the grant of their application outweighs the detriment to the licensing objectives and the Overprovision Policy.

The Board recognises the positive health benefits associated with increased employment opportunities as a factor that applicants may use in support of their application and a factor that may in appropriate circumstances rebut such a presumption. In particular the Board will expect to be addressed on the benefits of granting the application in terms of each licensing objective.

If an existing licence ceases to be in effect this does not necessarily mean that there is capacity for a new licence of a similar capacity. The data and consultation responses considered by the Board provide evidence that there is presently an overprovision of off-sales licensed premises in East Ayrshire but does not quantify the extent of that overprovision. In these circumstances any application seeking to replace capacity relinquished by other premises will be subject to an individual overprovision assessment.

The data and consultation responses considered by the Board in adopting this statement are published at:-

<https://www.east-ayrshire.gov.uk/LawAndLicensing/ApplyForALicence/AlcoholLicences/AlcoholLicensing.aspx>

## **12 OCCUPANCY CAPACITY**

The occupancy capacity for premises and events is an important factor in the achievement of the five licensing objectives, except in respect of premises licensed only for the consumption of alcohol off the premises. The Board may consider setting maximum occupancy limits in circumstances where this is deemed appropriate to ensure the safety of persons in the premises and safe escape in the case of an emergency.

The Board has an expectation that applicants will consider various factors when assessing the appropriate capacity for premises or events prior to including any

such capacity figures in operating plans. Although not exhaustive, such factors could include:-

- The design and layout of the premises
- The location, availability and size of exits including emergency exits
- The nature of the premises or event
- The nature of the activities being provided
- The provision or removal of temporary structures such as stage or furniture
- The number of staff available to supervise customers both ordinarily and in the event of an emergency
- The attendance by customers with disabilities
- The availability of suitable and sufficient sanitary accommodation
- The nature and provision of facilities for ventilation

Licence holders will be expected to have monitoring arrangements in place to verify the number of persons present at any point to ensure that the approved occupancy capacity is not exceeded. For the avoidance of doubt, the total occupant capacity should include all staff members on duty within the premises.

Particular attention will be paid to any applications for a premises licence which demonstrates that large numbers of patrons will be provided only with standing accommodation. It is considered that likely levels of disturbance and public nuisance caused by the number of licensed premises in a locality would be exacerbated where such premises had very high capacity levels.

Although each application for a premises licence will be considered on its own merits the Board will consider very carefully the type, size and capacity of licensed premises in a particular locality in respect of which the application is made. The Board recognises its responsibility to assess overprovision, not only on the number of licensed premises but on the number of premises of a particular description in any locality.

### **13 REVIEW OF PREMISES LICENCES**

Any person may apply to the Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review. These are:-

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

At a review hearing the Board may, if satisfied that a ground for review is established, make a variation of the licence, suspend or revoke the licence, issue a written warning or take no action at all.

The Board may reject a premises licence review application if it is considered to be vexatious or frivolous or if it does not disclose any relevant matter. In determining this, the Board is entitled to recover any expenses incurred by them in considering the application for review.

Further information on how to request a premises licence review can be found on East Ayrshire Council's website at :-

<https://www.east-ayrshire.gov.uk/LawAndLicensing/ApplyForALicence/AlcoholLicences/AlcoholLicensing.aspx>

## **14 OCCASIONAL LICENCES**

An occasional licence authorises the temporary sale or supply of alcohol which is not authorised by a premises licence.

To allow time to consult the Police and for objections to be made, applications should be submitted as far in advance of the event as possible but certainly by no later than 28 days before the event is due to take place. Any application lodged outwith this timescale should be accompanied by a letter detailing the reason for the application being lodged late. Due to the strict deadlines in terms of the Act failure to submit the application on time may result in the application not being considered. There is provision to deal with applications lodged outwith this timescale where the Licensing Board is satisfied that an application requires to be dealt with quickly, for example to cater for a funeral.

An Occasional Licence may be applied for by:-

- The holder of a premises licence
- The holder of a personal licence
- A representative of any voluntary organisation (subject to Condition 5 of the mandatory conditions attached to an Occasional Licence whereby alcohol may be sold on the premises only at an event taking place on the premises in connection with the voluntary organisation's activities.

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

The holders of a premises licence or a personal licence may make unlimited applications. There are restrictions on the number of applications a voluntary organisation and a Member's Club can make in any period of 12 months:

- 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

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

In relation to Member's Clubs, for any period during which an occasional licence has effect in respect of those premises, the conditions of any premises licence issues in respect of the premises are not to have effect.

The Board recognises the right of any person to object to an application for an occasional licence.

The Board is aware of the mandatory conditions laid out in Schedule 4 of the Act. The Board will consider on an individual basis whether it is necessary or expedient to impose additional conditions to promote one or more of the licensing objectives. The decision whether to impose a condition will be made on an objective basis, any representations made and any other relevant information available to the Board when considering the application. A copy of the mandatory conditions is attached at Appendix III.

Where occasional licence applications include a request to have children and young persons present, full details of the terms of access, the times of access and the areas children and young persons are to be permitted must be provided. While all applications will be considered on their own merits, particular consideration will be given to the suitability of children and/or young persons being present at the requested event.

## **15 EXTENDED HOURS**

Extended hours applications allow for the occasional extension of licensed hours and operate only for a period of up to one month. If the Board receives a number of applications to extend licensed hours it will expect the applicant to consider whether an application should be made to vary the premises licence, by adjustment of the operating plan.

Notwithstanding the Board's general position in relation to the hours of trading as set out in Section 22 of this Statement, a general extension of licensing hours under Section 67 of the Act may be granted to enable premises to remain open longer in connection with a special event of local or national significance. The Board will request observations from the Police on the issues of crime prevention and public safety. The Board believes that in many cases, such events can be appropriately accommodated within the Board's normal licensing hours policy and should not be regarded as routinely in need of extended licensing hours.

Where extended hours are sought, the applicant will require to provide information that the hours requested are appropriate in the circumstances. The applicant should provide the Board with sufficient information to enable a decision to be made. This will include:-

- The hours sought;

- A full description of the special event or occasion;
- What activities are proposed to take place during those hours;
- When each activity will take place;
- Why the event or occasion is considered to be special, and
- Why the event or occasion cannot take place within the Policy hours.

Any extension beyond normal licensing hours policy will only be granted after careful consideration of the particular event and will require increased control measures in place aimed at preventing or limiting problems with their potential impact on the five licensing objectives.

## **16 ENFORCEMENT AND LICENSING STANDARDS OFFICER**

East Ayrshire Council employ two Licensing Standards Officers (LSOs) to investigate allegations of unlicensed activities, ensure that licence conditions are complied with and to provide information and guidance and a mediation service.

Whilst the LSOs are not in a position to give legal advice or make applications or objections on behalf of any party, they will be expected to provide guidance both to Licence Holders and the public on their rights and responsibilities.

It is a mandatory condition of the Act that the LSOs are fully trained thus enabling them to carry out their functions efficiently. The LSOs are members of the Local Licensing Forum.

Resources will be targeted towards high-risk premises and activities that require greater attention whilst a lighter touch will be provided in respect of low-risk premises which are well operated.

The LSO's will also ensure compliance with the Alcohol (Minimum Pricing) (Scotland) Act 2012 whereby retailers cannot legally sell alcohol below 50 pence per unit.

Minimum Unit Pricing (MUP) a Mandatory Condition of the Premises Licence and it is the responsibility of the Licence Holder and the Designated Premises Manager to ensure that all alcohol sold on the premises complies with MUP.

A 'sunset clause' within the 2012 Act however means that MUP will expire after 6 years unless the Scottish Parliament passes an order to extend it. To inform this decision there is a review clause which requires Ministers to present a review report to Parliament on the impact of MUP after 5 years of operation.

The Board will liaise closely with its partners to assist licence holders to comply with the law and the five licensing objectives it seeks to promote. Proportionate but firm action will be taken against those who commit offences. In particular the Board anticipates co-operation with the police and to share information where appropriate in order to enhance the promotion of the five licensing objectives.

In addition, the LSOs will carry out the Council's responsibilities for monitoring and enforcement of legislation under the Gambling Act 2005, The Civic Government Act 1982 and the Smoking Health and Social Care (Scotland) Act 2005.

East Ayrshire Licensing Standards Officers can be contacted by telephone on 01563 576174 / 554624, by e-mail at [LicensingStandardsOfficers@east-ayrshire.gov.uk](mailto:LicensingStandardsOfficers@east-ayrshire.gov.uk) or by letter addressed to Council Headquarters, London Road, Kilmarnock KA3 7BU.

## 17 MANAGEMENT OF LICENSED PREMISES

Within the operating plan for the premises on which alcohol will be sold, with the exception of club premises, a premises manager must be specified. The Board will expect the premises manager to have the day to day responsibility for the management of the premises and to be present at the premises on a regular basis when alcohol is being sold. The premises manager must hold a personal licence and possess a licensing qualification

The premises licence holder is expected to ensure that the premises manager has experience commensurate with the size, capacity, nature and style of the premises.

Within all licensed premises, the Board will expect there to be proper management arrangements in place which will ensure that there is an appropriate number of responsible, trained persons on the premises and will also ensure compliance with all statutory responsibilities and the terms and conditions of the premises licence.

There are various aspects of managing licensed premises which are of particular concern to the Board. The Board has therefore determined to implement policies in these areas, as follows:-

- 17.1 **Incident Book** – The Board expects Licensees and their staff to operate an incident book on the premises, which should be used to record instances of refusals to sell alcohol on account of age or drunkenness, refusal to allow or permit entry to the premises, requests to leave the premises, violent or anti-social incidents and other matters as deemed appropriate.
- 17.2 **Misuse of Drugs** – Licence holders for premises with the facility for on consumption are expected to have policies and procedures in place to prevent the misuse of drugs on and in the immediate vicinity of the premises. Whilst the Licensing Board accepts that in society in general there is a problem with the use of drugs, including psychoactive substances and other illegal substances, licence holders and premises managers should ensure that all reasonable steps are taken to prevent such items being brought into licensed premises.

17.3 **Police** – Licence Holders and their staff are expected to contact and co-operate with the Police when appropriate, including when incidents of a violent or anti-social nature occur and when there is a breach of the Licensing (Scotland) Act 2005.

17.4 **Dispersal of Patrons** – On approach to the terminal hour for the supply of alcohol, Licence Holders should ensure that they and their staff have sufficient measures in place to ensure patrons exit the premises as quickly as possible, in good order and as quietly as possible. Measures may include limiting the amount of alcohol sold just before the terminal hour, making sure all patrons know well in advance the last time for purchasing alcohol is approaching, raising lighting level and inspecting all parts of the premises for patrons.

17.5 **Children and Young Persons on Licensed Premises** – The Board aims to ensure that premises which seek to accommodate children and young persons are managed in such a way that they are suitable for children. In determining any application where the Operating Plan indicates that children and young persons are to be allowed on the premises the Board will consider the need to protect children from harm as its principal concern.

Children and young persons under the age of 18 will only be permitted into licensed premises which are considered to be restaurants or into other licensed premises where:-

1. The primary purpose of allowing them access is to consume a meal (it is the expectation of the Licensing Board that children and young persons leave the premises within a reasonable time after the consumption of a meal in compliance with the protecting children and young persons from harm licensing objective) ; or
2. To attend a pre-booked private function (a private function will be a function to which the general public are not permitted entry);
3. The Board accept that children and young persons under the age of 18, who are resident in the premises, are allowed free access throughout the premises with the exception of the bar area. No children or young person will be permitted in the bar area except where the primary purpose of allowing them access is to consume a meal or to attend a pre-booked private function.
4. In relation to Clubs whose primary object is sport, children and young persons under the age of 18, who are junior members of such Club, plus junior guests, are permitted access to participate in the sport.
5. Children and young persons may be permitted entry to premises for the duration of one hour prior to the commencement of certain sports events or the departure of any supporters bus from the premises.

When addressing the issue of protecting children and young persons from harm, applicants must demonstrate that those factors, which may particularly impact on harm to children or young persons, have been considered.

Applicants are reminded that they and their staff must comply with all other legislation in relation to children and young persons, including not selling or allowing the sale of alcohol to children and young persons, whilst being mindful that Section 106(3) of the Act provides that it is lawful for an adult to buy alcohol for a young person in certain circumstances; not delivering alcohol to a child or young person, the employment of children and young persons and preventing or stopping a child from being breast fed in terms of the Breast Feeding etc. (Scotland) Act 2005.

Applicants are also reminded of the requirement in terms of Section 110 of the Act to display a prominent notice in respect of the prohibition of the sale of alcohol to persons under the age of 18.

- 17.6 **Smoking / Noise Nuisance** – Licensees will have regard to good practice ensuring patrons do not smoke within their premises. Other issues can arise in the area around the premises such as noise nuisance, litter, disorder and smoke drift into neighbouring residences or back into the licensed premises. Licensees and their staff are expected to have sufficient measures in place to prevent such problems arising. The Board require that licensees should operate on a good neighbour basis and ensure that all measures are taken to prevent noise escape. No noise from amplified and non amplified music, singing and speech sourced from licensed premises shall be audible in any adjoining property. Operating/layout plans should indicate any outside areas set aside for smoking.

Noise complaints can be made to Environmental Health Services during normal office hours on 01563 553520 or on the 24 hour noise helpline on 01563 503018, or alternatively to Police Scotland on 101.

- 17.7 **Door Supervision** - All door stewards require to be registered with the Security Industry Authority under the Private Security Act 2001. To employ a door supervisor who is not registered is a criminal offence. The Board, taking into account the licensing objectives of preventing crime and disorder, securing public safety and preventing public nuisance may consider door supervision conditions appropriate in relation to some premises. Particular attention will be paid to premises within town centres.

- 17.8 **Outside Seating Areas** - Where applicants propose to provide outside seating, tables or other facilities in any outdoor area (whether covered or not), the area should be included in the plan of the premises to be licensed. The applicant should ensure that any such areas do not encroach on or impede the public footway, without first having obtained consent in terms of Section 59 of the Roads (Scotland) Act 1984. Further, the operating plan should indicate that due consideration has been given to the need to ensure that the use of such areas will not cause disturbance or nuisance to the occupiers of other premises in the vicinity and effective management controls, supervision and other

measures will be put in place to ensure that the use of such areas by patrons or by any other persons does not have a negative impact in the vicinity.

For the purpose of this policy, beer gardens are clearly identified external areas of private ground included in the Operating Plan and Layout Plan and do not require consent in terms of Section 59 of the Roads (Scotland) Act 1984. Beer gardens will be subject to the undernoted Conditions:-

- (a) The permitted use of the area is restricted to 9pm each evening for the consumption of alcohol.
- (b) That any noise generated by patrons in this area should be inaudible within the nearest noise sensitive dwelling.
- (c) The area should be suitably monitored at all times.

Tables and chairs sited on a public footway will require consent in terms of Section 59 of the Roads (Scotland) Act 1984 and if granted, the Consent will be subject to the undernoted Conditions:-

1. The outside seating area shall be clearly defined and shall not cause an obstruction, the existing footway to be kept clear at all times.
2. The tables and chairs should be light in colour, of a firm construction with rounded edges and shall be located clear of all pedestrian entrance and exit routes.
3. The area should be suitably monitored and kept free from litter.
4. The area shall be swept thoroughly following removal of tables.
5. The permitted use of the area is restricted to 9pm each evening.
6. Consent to operate only between the months of May and September each year, and not at any other time.
7. Should the tables and chairs be sited outside for more than 28 days in any one calendar year, planning permission should be obtained.

The Board's policy is to restrict of the use of outdoor drinking areas to 9pm each evening, however the Board accepts that there will be certain exceptional circumstances where a later terminal hour will be required. Such later hours will however not be granted where the outdoor area is in close proximity to residential properties or other noise sensitive dwellings, or where there has been a history of noise complaints associated with the premises. It is expected that such applications only be made where it can be demonstrated to the satisfaction of the Board that there are exceptional circumstances

The Board would encourage licence holders to participate in any scheme aimed at raising standards within licensed premises. Pubwatch and Best Bar None are schemes currently operating within East Ayrshire and further information can be obtained by contacting [Licensing.StandardsOfficers@east-ayrshire.gov.uk](mailto:Licensing.StandardsOfficers@east-ayrshire.gov.uk)

## **18 GAMBLING**

No race night, betting or gambling shall be provided within the premises for the commercial gain of any Premises Licence Holder, Premises Manager or any holder of a Personal Licence who is employed on the premises.

The Board will expect that any gambling taking place within licensed premises will conform with the terms and conditions set out in The Gambling Act 2005.

## **19 FIRST AID**

The Late Opening Premises Mandatory Conditions attached to all premises state that a person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of

- (a) The time at which the premises next close; and
- (b) 5.00am

East Ayrshire Licensing Board will expect the appointed First Aider to be in possession of a First Aid Certificate and this Certificate must be produced when requested by the Board.

## **20 PERSONAL LICENCES**

The Board will consider applications for personal licences from individuals living in the area of East Ayrshire.

Any individual may seek a personal licence. The Board will grant a personal licence if it is satisfied that the applicant:-

- Is over 18 years of age
- Possesses a relevant licensing qualification
- Has not had revoked in the previous five years, ending with the day on which the application was received, a personal licence (with the exception of a Personal Licence revoked for non-compliance with of the requirement in terms of Section 87 of the Licensing (Scotland) Act 2005 to undertake refresher training.
- Has not been convicted of any relevant or foreign offence

Where the police have advised that the applicant has an unspent conviction for a relevant offence, the Board will consider whether the application should be

refused under the Act. In making a decision the Board will have regard to the seriousness and age of the conviction along with any other circumstances it considers to be relevant.

## **21 ADULT ENTERTAINMENT**

Although each application received, specifying the different forms of entertainment, including adult entertainment, will be determined on its own merits, the policy of the Board in East Ayrshire is not to permit adult entertainment involving male strippers, female strippers and/or erotic dancers within any licensed premises.

For the purpose of this Policy Statement adult entertainment means any live performance or any live display of nudity, for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). The definition of nudity for the purpose of this Policy Statement is (a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; (b) in the case of a man, exposure of his pubic area, genitals or anus.

## **22 OFF-SALES**

Applications for licences for premises which are to be used for the sale of alcohol for consumption off the premises will be expected to demonstrate consistency with the five licensing objectives within their operating plan.

The Board is concerned to ensure that all possible steps are taken in this area to promote the licensing objectives.

East Ayrshire Licensing Board welcomes the ability of Police Scotland to initiate a test purchase scheme within the Board's area and will support Police Scotland in any test purchase initiative embarked upon.

In the event that a licence in respect of an off-sales premises is suspended by the Board for any reason, or when the sale of alcohol requires to cease, the Board would expect that all alcohol is removed from the alcohol display area during the period of suspension.

**Alcohol Deliveries** – Section 108 of the Act contains a number of offence provisions relating to the delivery of alcohol by or to a child or young person. Section 119 details the requirement for certain information to be recorded in respect of the delivery of alcohol from a vehicle, etc.

In order to ensure the effective regulation of alcohol deliveries, licence holders should ensure:-

- The Challenge 25 policy for the premises is implemented at the point of delivery;

- Customers are advised at the point of order that alcohol will only be delivered to a person over the age of 18 years;
- All reasonable steps are taken to ensure that the person delivering alcohol has received appropriate training on Challenge 25 and acceptable forms of age verification:
- Alcohol should not be left in nominated safe places.

## 23 HOURS OF TRADING

While each application will be assessed on its own merits, the following section sets out the Licensing Board's guidelines on licensing hours. For applications for licensed premises at times outwith the Board's guidelines, applicants will require to demonstrate to the board that the additional requested hours are appropriate in the circumstances. The Board's guidelines are reflected in the undernoted table.

### Off-Sales

For applications relating to premises licences and to occasional licences, the licensed hours for the sale of alcohol for consumption off the premises (off-sales hours) are 1000hrs (10am) until 2200hrs (10pm) every day of the week. The Licensing Board has no discretion to permit licensed hours outwith these times. In determining applications and licensed hours within these times, the Board will, in considering the merits, have particular regard to the effect (if any) which the proposed off-sales hours would have on the occurrence of anti-social behaviour.

### On-Sales

For applications relating to premises licences including extensions to hours, the licensed hours for the sale of alcohol for consumption on the premises (on-sales hours), the Licensing Board considers the commencement of alcohol sales shall be no earlier than 1100hrs (11am). The undernoted table reflects the Board's guidelines.

Night clubs and discotheques, in addition, currently impose a 0115hrs (1.15am) curfew whereupon no persons will be allowed entry to the premises after this time. The Board supports this measure and would encourage it to remain in place.

During the festive period the Board will consider further extending the terminal hour for on-sales premises until 2.00am with night clubs/discotheques being allowed to remain open until 3.00am on a maximum of four occasions. This will not be an automatic right and an application to the Board will require to be made by each premises wishing to take advantage of this extension, if permission has not already been granted in terms of the Premises Licence. Where an extended hours application has been granted over the festive period, or where the operating plan permits the premises to open until 3 am on four occasions over the festive period, the curfew will be extended to 2.15am, on these occasions.

The festive period, for the purpose of this aspect of the policy, will be two weeks prior to Christmas Day and until the 6 January.

### **Trading Hours Guidelines**

Off-sales Premises	Monday – Sunday	10am – 10pm
On-sales Premises	Sunday – Wednesday	11am – 12 Midnight
	Thursday – Saturday	11am – 1am
On-sales Premises Providing Late Night Entertainment	Sunday – Wednesday	6.30pm – 2am
	Thursday – Saturday	6.30pm – 2.30am

Premises wishing to cater for early morning funerals prior to 11.00am may request in their Operating Plan to sell alcohol from 10.00am. However, it will be a condition of the Premises Licence that prior notification must be given to the Board, in writing.

## **24 MEMBERS CLUBS**

Members Clubs are regulated under the Licensing (Scotland) Act 2005, and a Premises Licence will be required to authorise the sale of alcohol.

The Scottish Government acknowledges that it would be reasonable to reflect their special characteristics. In order to benefit from the exemptions available Members Clubs will require to meet the criteria prescribed in the Licensing (Clubs) (Scotland) Regulations 2007.

When Clubs apply to the Licensing Board they will be asked to certify whether or not they comply with the criteria referred to above in order to benefit from the exemptions.

Members Clubs will be subject to the same provisions regarding access by children as any other licensed premises, with the exception of the requirement to have available on the premises facilities for baby changing for children under the age of 5 years. They will require to specify in their operating plans whether or not it is proposed that children and young persons are to be allowed entry to the premises and, if so, to specify the terms, the times, the ages of such children and the parts of the premises to which they would be permitted access.

Members Clubs are requested to enclose a copy of their Constitution and Rules together with any application for Premises Licence. Following on from the Annual General Meeting each year, Clubs are also required to provide the

Clerk with an updated list of Office Bearers, their date of birth, address and contact telephone number.

Clubs must keep their constitutions updated and, when revised, submit a copy of the revised constitution to the Clerk to the Licensing Board. Clubs must also ensure that their constitution, accounts and register book are available for inspection by a Licensing Standards Officer and Officers of Police Scotland, at all reasonable times.

## **25 EXCLUDED PREMISES – GARAGES**

Under Section 123 of the Act some categories of premises are excluded from authorising the sale of alcohol. This includes premises or parts of premises used as a garage. For the purpose of the Act a garage is a premises where there is (a) the sale by retail of petrol or derv; (b) the sale of motor vehicles or (c) the maintenance of motor vehicles.

The Act permits the Board to make exceptions to this rule if they determine that in relation to such premises, persons resident in the locality are, or are likely to become, reliant to a significant extent on the premises as the principal source of (a) petrol or derv, or (b) groceries.

When considering an application for a premises licence the Board would have to be satisfied that the premises will provide a service to local residents, which would not be reasonably met otherwise. When considering an application for a premises licence for a garage the Board would remind applicants that they would expect the premises to satisfy this test.

## **26 PROMOTION OF THE LICENSING OBJECTIVES**

The Board will continually promote the licensing objectives, each of which are of equal importance, and calls on licence holders and other stakeholders to be mindful of them when providing their services.

The Board considers that applicants should consider, when formulating operating plans, details of the proposed arrangements for effective and responsible management of the premises and for instruction, training and supervision of staff. This is considered to be an essential control measure for the achievement of all the licensing objectives.

From time to time the Board may seek the co-operation of premises licence holders in relation to the distribution and use of advertising materials which would purport to promote the licensing objectives.

## 27 LICENSING OBJECTIVE – PREVENTING CRIME AND DISORDER

East Ayrshire Council together with other partner agencies, support a strategy aimed at making East Ayrshire a safe place to live in and visit. The Board is committed to further improving the quality of life for people within East Ayrshire by continuing to adopt policies and to introduce measures designed to increase community safety and to reduce crime, the fear of crime and disorder and anti social behaviour.

Applicants should consider, in the formulation of their operating plans, how they intend to promote the prevention of crime and disorder, for example:-

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Dealing, possession and/or use of illegal drugs
- Violent behaviour
- Anti-social behaviour
- Selling of counterfeit or stolen goods
- Unauthorised advertising
- Litter

The following examples of control measures are given to assist applicants who may need to take account of them in formulating their operating plan, having regard to their particular type of premises and/or licensable activities :-

- Effective and responsible management of premises
- Training and supervision of staff
- Acceptance of accredited proof of age cards, photographic driving licences or passports
- Adoption of best practice guidance where available including those relating to drinks promotions
- Provision of effective CCTV in and around the premises which complies with all the current legislative provisions
- Provision of external lighting and other security measures
- Employment of Security Industry Authority licensed door stewards
- Active membership of Pubwatch, Best Bar None (a scheme which is currently operating within East Ayrshire) or a similar scheme which aims to raise standards within licensed premises.
- Provision of plastic or reinforced drinking vessels during certain events (eg. football matches )
- Provision of litterbins and/or waste receptacles for smokers' debris outside premises

Licence holders are called upon to actively discourage drink driving which is a serious offence and can have catastrophic effects on families of both victims and offenders. Licence holders are therefore encouraged to play an active part in preventing drink driving by:-

- Displaying anti drink drive materials
- Supplying reasonably priced soft and non alcoholic drinks
- Promoting awareness of campaigns such as the designated drivers scheme
- Offering free or reduced priced soft drinks to designated drivers

## **28 LICENSING OBJECTIVE – SECURING PUBLIC SAFETY**

The Board is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. In view of this, applicants should consider, when formulating their operating plan, that suitable and sufficient measures have been identified and will be implemented and maintained to ensure public safety relevant to the individual style and characteristics of their premises and the licensable activities for which the licence is being sought.

When addressing the issue of public safety, applicants should consider those factors which impact on standards of public safety, including

- The occupancy capacity of the premises
- The age, design and layout of the premises including means of escape in the event of a fire or similar emergency
- The nature of activities such as music and dancing
- The hours of operation
- The customer profile (e.g. Age, disability )
- Use of special effects such as lasers, strobe lighting, pyrotechnics, smoke machines and foam machines

The following examples of control measures are given to assist applicants who may need to take account of them in formulating their operating plan having regard to their particular type of premises and/or activities :-

- Suitable and sufficient risk assessments
- Effective and responsible management of premises
- Provision of a sufficient number of staff employed or engaged to secure the safety of the premises and patrons
- Appropriate instruction, training and supervision of staff employed or engaged to secure the safety of the premises and patrons
- Provision of an effective CCTV system which complies with current legislative requirements in and around premises
- Provision of toughened or plastic drinking vessels during certain events (e.g. Football matches )
- Implementation of crowd management measures
- Adoption of best practice guidance
- Proof of regular testing and certification where appropriate of procedures, appliances and safety systems

The Board could consider requesting sight of Electrical Safety Certificates, Ceiling or Structural Certificates, Fire Safety Certification, Risk Assessments

and a Health & Safety Policy. However, as other agencies and services have enforcement powers in connection with these forms of documentation, it is anticipated that such a request by the Board will be exceptional and only taken in consultation with those other agencies and services.

## **29 LICENSING OBJECTIVE – PREVENTING PUBLIC NUISANCE**

The Board believes that licensed premises may have a significant potential to impact adversely on communities through public nuisance that may arise from their operation. The Board wishes to maintain and protect the amenity of residents and local businesses from the potential consequences of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

‘Anti Social Behaviour’ is defined in the Antisocial Behaviour etc (Scotland) Act 2004 as where a person acts in a manner that causes alarm, fear or distress or pursues a course of conduct that causes or is likely to cause alarm, fear or distress to at least one person who is not from the same household as the person engaging in the behaviour. Conduct includes speech.

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

The Board expects that licence holders will have regard to good practice. It is their responsibility to ensure that patrons do not create a nuisance or disturbance for residents living nearby. This includes noise arising as a result of patrons smoking outside the premises and any other associated littering of the area. In appropriate circumstances the Board may impose conditions requiring licence holders to provide litter bins or other appropriate receptacles outside their premises.

Every business has a duty to ensure that waste is disposed of securely and showing due consideration to noise when doing so in order to keep their premises clear of all litter generated by staff and customers.

In addition when applicants propose to provide outside seating, tables or other facilities in any outdoor area, whether covered or not, regard should be had to the need to ensure that the use of such areas will not cause disturbance or nuisance to the occupiers of other premises in the vicinity, and that they do not encroach on or impede the public footway.

Applicants should consider, when formulating their operating plans, that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.

When addressing the issue of preventing public nuisance, the following facts are relevant and could be considered :-

- The location of premises and proximity to residential and other noise sensitive premises such as hospitals, hospices, care homes and places of worship
- The hours of opening, particularly after 2300hrs (11pm)
- The nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside the premises
- The design and layout of premises and in particular the presence of noise limiting features and a CCTV system, which complies with current legislative requirements
- The occupancy capacity of the premises
- The availability of public transport and taxis
- The wind down time between the end of the licensable activities and the closure of the premises
- The last admission time

The following examples of control measures are given to assist applicants who may need to take account of them in formulating their operating plan, having regard to their particular type of premises and/or activities :-

- Effective and responsible management of premises
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance
- Control of operating hours for all or parts of the premises – for instance, garden areas, bottle disposal and deliveries
- Adoption of best practice guidance
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- Management of people, including staff and vehicular traffic and resulting queues, arriving and leaving the premises
- Liaison with public transport providers
- Siting of external lighting, including security lighting and installation of an effective CCTV system which complies with current legislative requirements
- Effective ventilation systems to prevent nuisance from odour

### **30 LICENSING OBJECTIVE – PROTECTING AND IMPROVING PUBLIC HEALTH**

The Board wishes to see premises thriving within East Ayrshire but not to the detriment of patrons' health and wellbeing. The Board will take advice from the relevant bodies responsible for and interested in the protection and improvement of public health in the East Ayrshire area.

Applicants should consider when formulating their operating plan that suitable and sufficient measures have been identified and will be implemented and maintained to protect patron's health. Communications are an essential part of a wider programme of action to change Scotland's harmful drinking cultures.

Accordingly applicants will be expected to support the Scottish Government's new, integrated and long-term alcohol communications campaigns. This could include displaying and using materials such as posters and beer mats which promote moderate consumption of alcohol along with awareness of units of alcohol and the recommended guidelines for consumption.

Licence applicants, door stewards where employed and premises managers as well as other staff employed in the premises must remain vigilant at all times to the risks of excessive consumption. There should be an established practice within the premises to ensure that a standard approach is taken where patron's demeanour demonstrates an excessive consumption of alcohol. There should also be a clear understanding of the offences committed in connection with the service of alcohol to children or persons who appear drunk and allowing drunkenness on the premises.

Businesses can have in place a workplace alcohol policy in order to raise awareness, minimise harm and ensure that staff are able to access help (without fear of job loss) when a problem arises.

### **31 LICENSING OBJECTIVE – PROTECTING CHILDREN AND YOUNG PERSONS FROM HARM**

The wide range of premises licensed under the Act means that children and young persons will visit many of these premises.

The Board wishes to see family friendly licensed premises thriving within East Ayrshire and therefore encourages applications that will make venues family friendly and safe for children and young persons.

Children and young persons may be adequately protected from harm by the available actions to protect adults. When addressing the issue of protecting children and young persons from harm, applicants should consider that, when formulating their operating plan, the factors that may impact on harm to children and young persons have been considered.

These can include where:-

- Members of staff at the premises have been convicted of serving alcohol to under age persons
- Licence holders or staff have convictions for offences against children and/or young persons or have otherwise been found unsuitable to work with children
- The premises have a reputation for under age drinking
- There has been a known association with drug taking or dealing
- Entertainment of an adult nature is commonly or regularly provided
- There is a serious element of gambling within the premises
- The supply of alcohol for consumption on the premises is the exclusive or primary purpose of the service provided.

The following are examples of control measures that applicants may wish to adopt. They are considered to be amongst the most essential that applicants should take account of in formulating their operating plan.

- Effective and responsible management of the premises
- Extra measures to secure the safety of children and young persons such as Disclosure Certificates for staff working within the premises or employed as stewards
- Appropriate instruction, training and supervision of those employed to secure the protection of children and young persons from harm
- Adoption of best practice guidance
- Limitations or exclusions by age when certain activities are taking place
- Acceptance of accredited proof of age cards with photographs or photographic driving licences or passports
- Measures to ensure children do not purchase, acquire or consume alcohol
- Measures to ensure children and young persons are not exposed to incidences of strong and offensive language, violence or disorder

When preparing the operating plan, applicants must set out the terms on which children and young persons are to be allowed entry including the ages of children and young persons to be allowed entry, times and parts of the premises to which children and young persons will have access.

The Board will consult with the East Ayrshire Child Protection Committee on any application where concerns are raised regarding access for children and young persons and will have particular regard for their views.

*Sections 26-30 should not be regarded as any intention by the Board to create or enforce any conditions in respect of premises licenses which are outwith its powers. The items specified therein are provided as examples of issues which applicants may wish to consider when submitting their applications to the Board.*

*The Board would reiterate that every application will be considered on its own merits.*

**Mandatory Conditions – Premises Licence**

- 1 In this schedule, “the premises” means, in relation to any premises licence, the premises specified in the licence.

**Compliance with the operating plan**

- 2 (1) Alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence.  
  
(2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63(2).
- 3 Any other activity to be carried on in the premises is to be carried on only in accordance with the operating plan contained in the licence.

**The premises manager**

- 4 (1) Alcohol is not to be sold on the premises at any time when—
  - (a) there is no premises manager in respect of the premises,
  - (b) the premises manager does not hold a personal licence,
  - (c) the personal licence held by the premises manager is suspended, or
  - (d) the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises.
- (2) In sub-paragraph (1), “appropriate licensing qualification” in relation to any licensed premises means any licensing qualification prescribed as such in relation to licensed premises of that description in regulations under section 91(2)(d).
- (3) Nothing in sub-paragraph (1) or paragraph 5 is to be read as requiring the premises manager to be present on the premises at the time any sale of alcohol is made.

**Authorisation of sales of alcohol**

- 5 Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by—
  - (a) the premises manager, or
  - (b) another person who holds a personal licence.

## **Training of staff**

- 6 (1) No person (other than a person who holds a personal licence) is to work in the premises in the capacity mentioned in sub-paragraph (2) unless that person has complied with such requirements as to the training of staff as may be prescribed for the purposes of this paragraph.
- (2) That is a capacity (whether paid or unpaid) which involves the person—
- (a) making sales of alcohol, or
  - (b) where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person.
- (2A) At any time when a person (other than a person who holds a personal licence) is working in the premises in a capacity mentioned in sub-paragraph (2), there must be kept on the premises a training record which relates to that person and is in the form set out in the Schedule to the Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007.
- (2B) A record kept on the premises under sub-paragraph (2A) must be produced to a Licensing Standards Officer on request.
- (3) Regulations under sub-paragraph (1) prescribing training requirements may, in particular—
- (a) provide for the accreditation by the Scottish Ministers of—
    - (i) courses of training, and
    - (ii) persons providing such courses,for the purposes of the regulations,
  - (b) prescribe different training requirements in relation to different descriptions of persons,
  - (c) require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualification as may be prescribed in the regulations, and
  - (d) require training to be undergone again at such intervals as may be prescribed in the regulations.

## **Pricing of alcohol**

- 6A (1) Alcohol must not be sold on the premises at a price below its minimum price.
- (2) Where alcohol is supplied together with other products or services for a single price, sub-paragraph (1) applies as if the alcohol were supplied on its own for that price.

- (3) The minimum price of alcohol is to be calculated according to the following formula—

$$\text{MPU} \times \text{S} \times \text{V} \times 100$$

where— MPU is the minimum price per unit,  
S is the strength of the alcohol, and  
V is the volume of the alcohol in litres.

- (4) The Scottish Ministers are to specify by order the minimum price per unit for the purposes of sub-paragraph (3).

- (5) For the purposes of sub-paragraph (3), where—

(a) the alcohol is contained in a bottle or other container: and

(b) the bottle or other container is marked or labelled in accordance with relevant labelling provisions:

the strength is taken to be the alcoholic strength by volume as indicated by the mark or label.

- (6) The Scottish Ministers are to specify by order the enactments which are relevant labelling provisions for the purposes of sub-paragraph (5).”.

- 6B (1) A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale on the premises.

- (2) Sub-paragraph (1) applies:-

(a) Only where each of the alcoholic products is for sale on the premises separately, and

(b) Regardless of whether or not the package also contains any item which is not an alcoholic product.

- (3) In this paragraph, “alcoholic product” means a product containing alcohol and includes the container in which alcohol is for sale.

- 7 Where the price at which any alcohol sold on the premises for consumption on the premises is varied—

(a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and

(b) no further variation of the price at which that or any other alcohol is sold on the premises for consumption on the premises may be brought into effect

before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.

- 7A Where the price at which any alcohol sold on the premises for consumption off the premises is varied-
- (a) The variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and
  - (b) No further variation in the price at which that alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.

### **Irresponsible drinks promotions**

- 8 (1) An irresponsible drinks promotion must not be carried on in or in connection with the premises.
- (2) Subject to sub-paragraph (3), a drinks promotion is irresponsible if it—
- (a) relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18,
  - (b) involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks),
  - (c) involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink,
  - (d) involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),
  - (e) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,
  - (f) is based on the strength of any alcohol,
  - (g) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or
  - (h) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.
- (3) Paragraphs (c) to (e) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.
- (4) The Scottish Ministers may by regulations modify sub-paragraph (2) or (3) so as to—
- (a) add further descriptions of drinks promotions,
  - (b) modify any of the descriptions of drinks promotions for the time being listed in it, or
  - (c) extend or restrict the application of any of those descriptions of drinks promotions.

- (5) In this paragraph, “drinks promotion” means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.

### **Provision of non-alcoholic drinks**

- 9 (1) The conditions specified in this paragraph apply only to the extent that the premises licence authorises the sale of alcohol for consumption on the premises.
- (2) Tap water fit for drinking must be provided free of charge on request.
- (3) Other non-alcoholic drinks must be available for purchase at a reasonable price.

### **Age Verification Policy**

- 9A (1) There must be an age verification policy in relation to the sale of alcohol on the premises.
- (2) An “age verification policy” is a policy that steps are to be taken to establish the age of a person attempting to buy alcohol on the premises (“the customer”) if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy).
- (3) The condition specified in this paragraph does not apply in relation to any sale of alcohol which takes place on the premises merely by virtue of being treated, by Section 139, as taking place on the premises.

### **Payment of annual or recurring fees**

- 10 (1) The condition specified in sub-paragraph (2) applies only in relation to a premises licence in respect of which an annual or other recurring fee is to be paid by virtue of regulations under section 136(1).
- (2) The fee must be paid as required by the regulations.

### **Notices – admission of persons under 18**

- 11 (1) The condition specified in this paragraph applies only in the case of premises on which alcohol is sold for consumption on the premises.
- (2) There is to be displayed so that it is reasonably visible to customers entering the premises a sign of at least A4 size which–
  - (a) states that persons under the age of 18 are not permitted on the premises; or

- (b) states that such persons are permitted on the premises or on such parts of the premises as are specified on the sign.

### **Baby changing facilities**

- 12 (1) The condition specified in this paragraph applies only in the case of premises–
  - (a) which are not–
    - (i) a vehicle;
    - (ii) a vessel;
    - (iii) a moveable structure; or
    - (iv) used wholly or mainly for the purposes referred to in section 125(1);
  - (b) on which alcohol is sold for consumption on the premises; and
  - (c) to which children under the age of 5 are to be admitted.
- (2) There are to be on the premises facilities for baby changing which are to be accessible to persons of either gender.

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

- 13 (1) Alcohol which is for sale only for consumption off the premises may be displayed only in one or both of the following–
  - (a) a single area of the premises agreed between the Licensing Board and the holder of the licence; or
  - (b) a single area of the premises which is inaccessible to the public.
- (1A) Sub-paragraphs (1B) to (1D) apply where the premises, in so far as they are used for the sale of alcohol, are so used only or primarily for the sale of alcohol for consumption off the premises.
- (1B) Any drinks promotion on the premises may take place only in any one or more of the following–
  - (a) An area referred to in sub-paragraph (1)(a) and (b),
  - (b) A room on the premises which is used for offering the tasting of any alcohol sold on the premises (for consumption off the premises) and the resulting tasting and is separate from those areas.
- (1C) A drinks promotion in connection with the premises may not take place in the vicinity of the premises.
- (1D) For the purposes of sub-paragraph (1C), the “vicinity” means the area extending 200 metres from the boundary of the premises (as shown on the layout plan).

- (2) In an area agreed in terms of sub-paragraph (1)(a), a product other than alcohol may be displayed only if it is-
- (a) A non-alcoholic drink;
  - (b) Packaged with, and may be purchased only along with, alcohol.
  - (c) A branded non-alcoholic product, or
  - (d) A newspaper, magazine or other publication.
- (2A) Sub-paragraph (2) is without prejudice to sub-paragraph (1B).
- (3) This paragraph does not apply in respect of premises-
- (a) Whose main function is to provide a visitor attraction, and
  - (b) Where-
    - (i) The premises form part of a larger site which is used principally for the production of alcoholic drinks, or
    - (ii) The visitor attraction is used principally to provide information about and promote the history and attributes of a particular alcoholic drink or a particular category of alcoholic drink.
- (4) In this paragraph-
- “branded non-alcoholic product” means a product which does not consist of or contain alcohol and which-
    - (a) Bears a name or image of, or
    - (b) Is an image of,

an alcoholic product (namely, a product consisting of or containing alcohol).
  - “drinks promotion” means any activity which promotes, or seeks to promote, the buying of any alcohol sold on the premises for consumption off the premises but does not include the display of any product which is-
    - (a) A branded non-alcoholic product for sale on the premises, or
    - (b) A newspaper, magazine or other publication-
      - (i) For sale on the premises, or
      - (ii) If not for sale on the premises, which does not relate only or primarily to alcohol.

**Mandatory Conditions – Late Opening Premises**

**1. All Premises**

- (1) A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 1:00 am (on any day when the premises are open at that time) until whichever is the earlier of-
- (a) the time at which the premises next close; and
  - (b) 5:00 am.

**2. Certain Premises**

- (2) The Conditions specified in paragraphs (2) to (3) below must be imposed by a Licensing Board if it appears to the Board from the operating plan for the premises that they fall within the description in paragraph (2).
- (3) That description is premises (other than premises to which paragraph (3) applies, the capacity of which is at least 250 people and which:-
- (a) Will regularly provide at any time in the period between 1.00am and 5.00am
    - (i) Live or recorded music with a decibel level exceeding 85dB;
    - (ii) Facilities for dancing; or
    - (iii) Adult entertainment; or
  - (b) When fully occupied, are likely to have more customers standing than seated.
- (4) This paragraph applies to premises
- (a) The primary function of which is the service of food;
  - (b) Which include, or are part of larger premises which include, at least 6 letting bedrooms;
  - (c) In respect of which a Licence under Section 12 of the Theatres Act 1968(a) or Section 1 of the Cinemas Act 1985(b) is in force; or
  - (d) Which are, or are part of, an art gallery.

**Conditions**

- (2) A designated person who is the holder of a personal licence must be present on the premises from 1:00 am (on any day when the premises are open at that time) until whichever is the earlier of-
- (a) the time at which the premises next close; and
  - (b) 5:00 am or such other time as the Licensing Board may specify.
- (3) There must be written policies in existence concerning-
- (a) the evacuation of the premises; and
  - (b) the prevention of the misuse of drugs on the premises.

- (4) A CCTV system must be installed on the premises to the satisfaction of the appropriate chief constable and must be kept in good working order.
- (5) There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.
- (6) A person who holds a licence granted under section 8 of the Private Security Industry Act 2001 must be positioned at every entrance to the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of –
  - a. the time at which the premises next close; and
  - b. 5.00am or such other time as the Licensing Board may specify.

**Mandatory Conditions – Occasional Licences**

1. In terms of Schedule 4, "the premises" means, in relation to any occasional licence, the premises specified in the licence.
2. (1) Alcohol may be sold on the premises only in accordance with the terms of the licence.  
 (2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63(2) which states:-  
 It is not an offence for a person to-
  - (a) allow alcohol to be consumed on licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol was sold during that period;
  - (b) allow alcohol to be taken from licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol-
    - (i) was sold during that period, and
    - (ii) is not taken from the premises in an open container.
3. Any activity to be carried on in the premises is to be carried on only in accordance with the description of the activity contained in the licence.
4. (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to the holder of a premises licence or personal licence.  
 (2) Every sale of alcohol made on the premises to which the licence relates must be authorised (whether generally or specifically), by the holder of a personal licence.
5. (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to a representative of a voluntary organisation.  
 (2) Alcohol may be sold on the premises only at an event taking place on the premises in connection with the voluntary organisation's activities.
- 5A (1) Alcohol must not be sold on the premises at a price below its minimum price.  
 (5) Where alcohol is supplied together with other products or services for a single price, sub-paragraph (1) applies as if the alcohol were supplied on its own for that price.  
 (6) The minimum price of alcohol is to be calculated according to the following formula—

$$\text{MPU} \times \text{S} \times \text{V} \times 100$$

where— MPU is the minimum price per unit,  
 S is the strength of the alcohol, and  
 V is the volume of the alcohol in litres.

- (4) The Scottish Ministers are to specify by order the minimum price per unit for the purposes of sub-paragraph (3).
  - (5) For the purposes of sub-paragraph (3), where—
    - (a) the alcohol is contained in a bottle or other container: and
    - (b) the bottle or other container is marked or labelled in accordance with relevant labelling provisions:
 

the strength is taken to be the alcoholic strength by volume as indicated by the mark or label.
  - (6) The Scottish Ministers are to specify by order the enactments which are relevant labelling provisions for the purposes of sub-paragraph (5).”.
- 5B
- (1) A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale.
  - (2) Sub-paragraph (1) applies—
    - (a) only where each of the alcoholic products is for sale on the premises separately, and
    - (b) regardless of whether or not the package also contains any item which is not an alcoholic product.
  - (3) In this paragraph, “alcoholic product” means a product containing alcohol and includes the container in which alcohol is for sale.
6. Where the price at which any alcohol sold on the premises is varied:-
- (a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and
  - (b) no further variation of the price at which that or any other alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.
- 7.
- (1) An irresponsible drinks promotion must not be carried on in or in connection with the premises.
  - (2) Subject to sub-paragraph (3), a drinks promotion is irresponsible if it -
    - (a) relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18,
    - (b) involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks),
    - (c) involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink,
    - (d) involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),
    - (e) encourages, or seeks to encourage, a person to buy or consume a

- larger measure of alcohol than the person had otherwise intended to buy or consume,
- (f) is based on the strength of any alcohol,
  - (g) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or
  - (h) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.
- (3) Paragraphs (b) to (d) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.
  - (4) The Scottish Ministers may by regulations modify sub-paragraph (2) or (3) so as to:
    - (a) add further descriptions of drinks promotions,
    - (b) modify any of the descriptions of drinks promotions for the time being listed in it, or
    - (c) extend or restrict the application of any of those descriptions of drinks promotions.
  - (5) In this paragraph, "drinks promotion" means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.
8. (1) The conditions specified in this paragraph apply only to the extent that the occasional licence authorises the sale of alcohol for consumption on the premises.
- (2) Tap water fit for drinking must be provided free of charge on request.
  - (3) Other non-alcoholic drinks must be available for purchase at a reasonable price.
9. (1) There must be an age verification policy in relation to the sale of alcohol on the premises.
- (2) An "age verification policy" is a policy that steps are to be taken to establish the age of a person attempting to buy alcohol on the premises ("the customer") if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy).
  - (3) The condition specified in this paragraph does not apply in relation to any sale of alcohol which takes place on the premises merely by virtue of being treated, by section 139, as taking place on the premises.

**Additional licence conditions imposed by the Licensing Board:**

- 1. Where a licence is granted to a Personal Licence Holder, the Personal Licence Holder must be present at the event.
- 2. In terms of Section 110 of the Act a notice must be displayed at all times at each place on the premises where sales of alcohol are made, and in a position where it is readily visible to any person seeking to buy alcohol. A Notice is enclosed herewith and you should arrange to display it at relevant locations within the premises.