



**Clackmannanshire Council**

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# **CLACKMANNANSHIRE LICENSING BOARD**

**LICENSING (SCOTLAND) ACT 2005**

**STATEMENT OF LICENSING POLICY**

**November 2010 – November 2013**

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## **Foreword**

This statement of licensing policy has been prepared in accordance with the Licensing(Scotland) Act 2005, all regulations issued thereunder and the Guidance for Licensing Boards and Local Authorities issued by the Scottish Government.

Consultation on the draft Statement of Licensing Policy took place between 1 July 2010 and 24 September 2010. The Board is required to have its Policy in place by 30 November 2010. The Policy will be applied during the three year period to 30 November 2013. It will be kept under review and revised, if appropriate, by the issue of supplementary statements during the three year period.

The Board may review the operation of its policy statement in consultation with both Clackmannanshire Council's Community & Regulatory Services, who are responsible for the administration of the system and the Local Licensing Forum. The policy will be reviewed if required by virtue of any legislative changes as a result of either (i) the Criminal Justice & Licensing (Scotland) Act 2010; or (ii) the Alcohol (Scotland) Bill 2010.

## **PART A - INTRODUCTION**

### **1.0 Legal Background**

The Licensing (Scotland) Act 2005 (“the Act”) makes provision for the sale of alcohol and for regulating licensed premises and other premises on which alcohol is sold. The Act came into full force on 1 September 2009 .

- 1.1 Section 6 of the Act requires every Licensing Board to publish a Statement of their Policy in respect of the discharge of their functions under the Act. A Licensing Policy Statement must be published every three years. This Statement fulfils the statutory requirement for Clackmannanshire Licensing Board.

### **2.0 Clackmannanshire Licensing Board**

- 2.1 Clackmannanshire Licensing Board (“the Board”) is the Licensing Authority for the Clackmannanshire Council area for the purposes of the Act and any subsequent regulations and guidance. Clackmannanshire is Scotland’s smallest mainland county The county accommodates a wide variety of licensed premises which contribute to the tourist, leisure and employment opportunities in the area. The total estimated population of Clackmannanshire as at 30 June 2009 was 50,540. A map of the Council and Board area is provided at Appendix 1 to the Statement of Licensing Policy.
- 2.2 Under the Licensing (Scotland) Act 1976, licensed premises were split into different categories. Under the 2005 Act, this system has been replaced with a single licence known as a Premises Licence. As provided in the Operating Plan of each licensed premises, alcohol may be sold either on or off the premises or both. Members Clubs which wish to supply alcohol also require to obtain a premises licence. The current breakdown of licensed premises in Clackmannanshire is as follows :

Off Sales Licensed Premises	46
On Sales Licensed Premises	58
Members Clubs Licensed Premises	28

- 2.3 In addition, the Board deals with applications for occasional licences and extended licensed hours. The number of these applications received in the period 1 September 2009 to 31 August 2010 is as follows:

Occasional Licence Applications	292
Extended Hours Applications	66

### **3.0 The Licensing Objectives**

- 3.1 In exercising their functions under the Act and in preparing the Licensing Policy Statement Licensing Authorities must have regard to the Licensing Objectives set out in Section 4 of the Act.

These Licensing Objectives are:

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

Further details of how the Board will seek to promote these objectives are set out in Part B.

- 3.2 The Board recognises that the 2005 Act cannot be used as the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are no longer on the licensed premises.

Other mechanisms provided through, for example, planning and environmental legislation, police and community wardens operations in relation to anti-social behaviour and the provision of CCTV surveillance can be utilised to reduce nuisance and anti-social behaviour once an individual has left licensed premises.

However, Licence Holders are reminded of their role in respect of the behaviour of customers on their premises. Licensees also have a responsibility towards their customers and need to be mindful that it is they and their staff who determine how much alcohol customers are allowed to consume and the condition in which they leave their premises. Licensees should be mindful of the health of their customers. They also have a wider social responsibility towards their neighbours and the surrounding communities. This does not end when those customers leave the premises.

#### **4.0 Consultation on the Statement of Licensing Policy**

- 4.1 When preparing the Licensing Policy Statement the Act requires that the following parties are consulted by the Board:

- a) the Local Licensing Forum for the Board's area;
- b) the following categories insofar as they are not already represented in the membership of the Local Licensing Form:
  - holders of premises licences and personal licences;
  - the Chief Constable for the Police Area in which the Forum's area is situated;
  - persons having functions relating to health, education or social work;
  - young people; and
  - persons resident within the Forum's area; and
- c) such other persons as the Board thinks appropriate.

- 4.2 In developing the Statement the Board has consulted widely and given due consideration to the views of all those who responded to the consultation process.
- 4.3 Consultation took place between 1 July 2010 and 24 September 2010. The draft Statement was sent to all members of the Clackmannanshire Licensing Board and the Clackmannanshire Local Licensing Forum for comment. In addition, the policy statement was sent to those listed in Appendix I of the document.

It was also published on the Clackmannanshire Council website to allow for comment from any person or organisation with an interest in licensing or who may be affected by licensing policy and licensing board decision making. It was made available to members of the public at Council Offices and Community Access Points.

- 4.4 This Statement of Principles was approved at a meeting of the Clackmannanshire Licensing Board on [ ] and is published on our website [www.clacksweb.gov.uk](http://www.clacksweb.gov.uk). Copies are available at the principal office of Clackmannanshire Council at Greenfield, Alloa.
- 4.5 Should you have any comments as regards this Policy Statement please submit these as follows:

by email to: [licensing@clacks.gov.uk](mailto:licensing@clacks.gov.uk)

by fax to: 01259 - 452021

in writing to: Clerk of the Licensing Board  
Legal Services  
Clackmannanshire Council  
Greenfield  
Alloa  
FK10 2AD

Informal queries regarding the statement of policy may be made by contacting the Board by telephone on 01259 450000.

- 4.6 During the three year period following this Statement having been published, it will be kept under review. The Board will make such revision as it considers appropriate, taking account of any representations made by any stakeholders, legislative amendments and any feedback received from Clackmannanshire Licensing Forum.

## **5.0 Declaration**

- 5.1 In producing this Statement the Board declares that it has had regard to the Licensing Objectives set out in the Act, the Guidance for Licensing Boards and Local Authorities issued by the Scottish Government and any responses from those consulted on the Statement.

5.2 This Statement covers a wide variety of issues including procedural matters, licensing hours and the protection of children. It cannot provide for every eventuality but the intention is to outline the general policy which the Board proposes to follow. The Board emphasises that every application will be considered on its merits and there will be no rigid adherence to policy. The purpose of the statement of policy is to provide a framework for consideration of applications and to provide guidance and information to applicants, licensees, those wishing to make objections or representations and generally all stakeholders in the alcohol licensing system.

## **6.0 Licensing Board Functions**

6.1 The Board is responsible for various functions under the Act including dealing with :

- premises licences including variations and transfers;
- personal licences;
- occasional licences;
- provisional licences;
- temporary licences;
- extension of licensing hours;
- transfers of licences;
- review of premises licences.

## **7.0 Objections and Representations**

7.1 The Act allows anyone to object or make representations to the Board in relation to applications for:

- a premises licence;
- a major variation of a premises licence which seeks to change the licence conditions, the information in the Operating Plan or the layout plan and which would have to come before the Board for a Hearing or which has been referred to the Board for a Hearing;
- an occasional licence.

Only the Chief Constable may object to the grant of a personal licence.

7.2 The Board will have regard to any representations or objections made to it. However, the Board does have a right to reject frivolous or vexatious objections or representations.

7.3 The procedure for Board Hearings is detailed at paragraph 5 of Part C of the policy statement

## **8.0 Duplication**

8.1 Insofar as possible, the Board shall avoid duplication with other regulatory regimes. Where other legislation exists and other enforcement agencies have

sufficient powers the Board will not use the powers under the Act to achieve that same outcome.

- 8.2 It is recognised that Planning and Building Standards matters require to be kept separate from the alcohol licensing regime . The Board must deal with matters in accordance with the provisions of the Act relevant to the matter under consideration. The grant or refusal of a Planning or Building Standards consent or application will not affect decisions taken by the Board (save insofar as permitted by the Act).

## **9.0 Links to Other Policies, Strategies and Legislation**

- 9.1 In fulfilling its responsibilities in respect of alcohol licensing 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 Clackmannanshire Council in so far as they may be relevant to those matters to which the Board is required to have regard .

- 9.2 The Human Rights Act 1998 incorporates the European Convention on Human Rights into Scots Law and makes it unlawful for public authorities including Licensing Boards 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 holding 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 his private and family life, his home and his correspondence.

The Board is aware of the need to have due regard to different interests which may require to be balanced. The Board will always endeavour to act in a proportionate and reasonable manner.

- 9.3 The Board recognises its responsibilities under various equalities legislation and has accordingly adopted an Equalities Scheme to ensure and monitor compliance with these responsibilities. A copy of the Equalities Scheme is available to view online at [www.clacksweb.gov.uk](http://www.clacksweb.gov.uk) or at the Council's offices at Greenfield, Alloa.

- 9.4 The Board will continue to work with the co-ordinator of the Clackmannanshire Alcohol and Drugs Partnership. The co-ordinator maintains the annual work plan. The main priorities in relation to alcohol are:

- reduce binge drinking;
- reduce drug and alcohol related crime and reassure communities that effective action is being taken; and

- reduce hazardous or at risk drinking by children and young people because of the particular health or social risks;
  - reduce harm to children affected by substance misusing parents/carers through improved multi agency support to children and parents.
- 9.5 The Board will have regard to any strategy of the Scottish Executive designed to address the social, health and crime and disorder issues raised by the misuse of alcohol.
- 9.6 The Board's licensing functions will be discharged separately from the functions of Clackmannanshire Council as the local planning authority. The Board recognises that the planning and licensing regimes are separate and that the processing of licensing applications should be an exercise distinct from the processing of planning applications. The Board will not be bound by decisions made by Clackmannanshire Council or the local planning authority. Applicants for licences are reminded that planning consents may be subject to conditions which require to be complied with irrespective of the grant of a premises licence.
- 9.7 It is appropriate that planning permission is obtained first, if required, or alternatively that a certificate of lawful use or development has been obtained in terms of proposed activities and trading hours. This will be confirmed in terms of a Section 50 Certificate which an applicant is required to lodge together with a premises licence application.
- 9.8 An applicant must ensure that the premises for which a licence is being sought will comply with the Building Standards requirements in force at the time of their construction, or at the time of any alterations. This is particularly relevant in respect of the licensing objectives relating to public health and public safety. A section 50 certificate must accompany an application for a premises licence.
- 9.9 Other statutory requirements may apply to the provision of any activities on licensed premises (eg provision of gambling facilities and gaming machines) and responsibility for compliance lies with the licence holder. If the proposed activities included in an Operating Plan involve the preparation and/or sale of food then it is the responsibility of the applicant to ensure that all appropriate food safety and other legal requirements are met (including the requirement to obtain a section 50 certificate where a new premises licence is being sought).
- It is not a requirement of any licence decision to address these matters but a responsible licence holder will be familiar with and observe all relevant legislation. Licence holders are reminded that they are only authorised to carry on the activities specified in their Operating Plans. If they wish to change the activities in their Operating Plans they require to apply for a variation of their licence.
- 9.10 Applicants should note that the Clackmannanshire Local Plan includes policies that direct licensed premises to existing commercial centres, thereby helping to ensure a compatibility of land use and minimising the prospect of nuisance. Policy tests therefore include impact on residential amenity, levels of environmental pollution and public safety hazards. This conjoined approach

to the assessment of proposals ensures that wider community interests are properly served in a balanced and proportionate manner, and thereby avoiding the potential need for enforcement or other appropriate action. This overall package of measures and joint working contribute to the Council's strategy of Sustainable Development.

Whilst these are matters of planning policy and fall to be considered in the context of a planning application, they are included here for the guidance of applicants for premises licences as they are matters which applicants for licences will require to consider.

- 9.11 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. In particular, the Board will have regard to the Fire Authority and Building Standards comments in relation to the safe occupancy capacity of all licensed premises.
- 9.12 The drafting of this Policy involved consultation with Clackmannanshire Local Licensing Forum, which will keep under review the operation of the Act in the 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 and provide reasons when it decides not to follow any advice or recommendations of the Forum. To ensure proper communication with the Forum and to facilitate the work of the Forum, the Board will provide statistical information and reports, as requested.

## **PART B - LICENSING OBJECTIVES**

### **The Licensing Objectives**

The following subsection sets out the Boards general approach as to how we will seek to promote each of the Licensing Objectives.

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

1.1 The Board is required when considering and determining a premises licence application to consider whether any of the grounds of refusal apply. It will accordingly have regard to any impact the granting of premises licences may have on crime and disorder in the area. Particularly, the Board has, as one of its objectives, making the Board's area a safe environment for residents and visitors.

1.2.1 Certain matters arising from information contained in the Operating Plan may raise issues upon which the Board may require to be addressed at the Hearing to consider the application. These include:

- underage drinking;
- drunkenness on premises;
- public drunkenness;
- illegal possession and/or use of drugs;
- violent behaviour;
- anti-social behaviour; and
- drink driving.

1.3 Applicants and licensees are requested to consider the following as matters relevant to the prevention of crime and disorder:

- effective and responsible management of premises including outdoor drinking areas;
- training and supervision of staff;
- requiring production of accredited proof of age cards and photographic driving licences or passports;
- provision of effective CCTV equipment;
- provision of external lighting and security measures;
- employment of security industry authorised licensed door supervisors;
- responsible advertising and promotions;
- responsible management and accountability for persons within premises and also upon persons vacating the premises; and
- use of plastic or toughened glasses and bottles at relevant events, particularly those events where children and young persons are present.

1.4 Personal Licence and Premises Licence Applications

It has become increasingly apparent to the Board that some applicants are failing to disclose relevant convictions (particularly in relation to the personal licence application form). The information provided by applicants is checked by the police against national records and they will bring any non-disclosure or discrepancy to the attention of the Board. The relevant offences which

require to be disclosed are set out in the Licensing (Relevant Offences)(Scotland) Regulations 2007.

Applicants are reminded that Spent Convictions in terms of the Rehabilitation of Offenders Act 1974 do not require to be disclosed. The Board does not expect applicants to have a detailed knowledge of these provisions and in the event that an applicant is unsure whether a previous conviction is relevant, they should contact the Licensing Administrator or the Clerk for guidance.

In the event that an applicant fails to declare a relevant conviction and the Board is subsequently notified of such, the Board will request that the applicant provides a satisfactory explanation as to why the conviction was not declared. The Board does not consider lack of knowledge or awareness to be a satisfactory reason. Applicants are strongly recommended to check this part of their applications with the licensing administrator or clerk before lodging.

Where an applicant fails to provide a sufficient justification, the Board may report this matter to the Chief Constable for investigation. Applicants are reminded that under section 44(2) of the Criminal Law Consolidation (Scotland) Act 1995 it is an offence to knowingly make a false declaration or a declaration that they believe not to be true. The punishment for this offence is an unlimited fine and up to two years imprisonment.

Applicants are also reminded that on conviction, the 2005 Act provides for a review procedure in respect of both personal and premises licences which may ultimately result in the suspension or revocation of the licence applied for.

## 1.5 Curfew Conditions

The Board is aware that other areas operate a curfew policy in respect of last entry to late night entertainment premises, which prohibits entry to premises after a certain time. Evidence from the Chief Constable and the LSO suggest that the application of this type of condition is successful in reducing the prevalence of anti social behaviour associated with the migration of drinkers.

It is also likely to deter patrons moving from a vertical drinking or other establishment where entertainment is not provided to an entertainment premises solely or principally to enjoy an extra period of drinking time. What amounts to a vertical drinking establishment is a question of fact and degree. However, it is unlikely to apply to licensed premises providing a significant food offering and adequate seating throughout the majority of its licensed hours.

It is the Boards view that permitting this type of migration contravenes the protection and improvement of public health, the crime prevention and the prevention of public nuisance objectives of the Act.

The Board is minded, subject to consideration of the merits of individual applications and representations by applicants to impose a condition restricting entry after 12.30 am (or such other time as the Board considers appropriate having regard to the nature of the premises in question and the

activities taking place or proposed to take place therein) where it decides to grant or vary the terminal hour to a time outwith the indicative times stated in paragraph 3.2.2 Part C of this statement in the following cases :

where there are a number of licensed premises in close proximity to the premises in respect of which the grant or variation of terminal hour is sought and the migration of drinkers to those premises may increase the risk of crime and disorder, public nuisance or have a detrimental impact on public health.

## **2.0 Securing Public Safety**

2.1 The Board is committed to ensuring that the safety of any person visiting or working on licensed premises is not compromised. To this end, applicants will, where appropriate, be expected to demonstrate in 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 activities specified in operating plans.

2.2 Applicants are advised to address the issue of public safety in their Operating Plan and indicate what measures they intend to put in place to ensure public safety on the premises. Such measures should take account of the following:

- the occupancy capacity of the premises;
- the design and layout of the premises, including the means of escape in the event of fire;
- the hours of operation – differentiating the core licensed hours from times when activities specified in operating plans are to be provided outwith core licensed hours ; and
- the nature of activities to be provided at the premises;

2.3 Suggested measures may include:

- carrying out risk assessments;
- installation of CCTV equipment;
- employment of adequate numbers of suitably trained staff ,;
- proof of regular testing and certification where appropriate of procedures, appliances and safety systems;
- implementation of customer management measures; and
- if appropriate, SIA trained door security staff

## **3.0 Prevention of Public Nuisance**

3.1 The Board wishes to protect and maintain the amenity of residents and occupiers of commercial premises from any adverse consequences due to the operation of licensed premises, whilst at the same time recognising the valuable cultural, social and business importance of such premises.

3.2 The Board will interpret public nuisance in its widest sense and will have regard to such issues as noise, light, odour, litter and anti-social behaviour,

where these matters impact on those living, working or otherwise engaged in normal activity in Clackmannanshire.

- 3.3 Licensees are expected to be aware of the impact on neighbours of noise from their premises and are expected to take reasonable steps to prevent public nuisance.
- 3.4 The Board acknowledges the provisions of Section 65 of the Act in relation to off-sales by shops, supermarkets and other premises selling alcohol for consumption off the premises. Subject to the provisions of section 65(3) restricting off sale hours to a maximum 10am to 10pm, the Board will usually permit off sales of alcohol during the trading hours of premises. The Board will, however, in considering whether granting an application would be inconsistent with any of the licensing objectives, consider whether the proposed off sales hours will have any effect on the occurrence of antisocial behaviour.
- 3.5 Applicants should be aware that the Board may apply local conditions or may grant licensed hours of less than 10 a.m. and 10 p.m. where it considers that the grant of the hours proposed will have an adverse effect on the occurrence of antisocial behaviour. Such considerations will be particularly important where premises are situated in residential areas and there is evidence of strong likelihood of public nuisance in the absence of restrictions in the operation of licensed premises. The Board may vary existing licences to apply such local conditions or restrict licensed hours where there is evidence that existing hours are having an adverse impact on the occurrence of anti social behaviour. Similar considerations may apply in the case of commercial premises which have been affected by public nuisance due to the operation of licensed premises.
- 3.6 The Board believes that the impact licensed premises can have on a neighbourhood is significantly influenced by behaviour of customers and the nature of the activities within and in the vicinity of licensed premises. The Board will look to licensees to manage their premises effectively and responsibly to minimise the potential for public nuisance. The Board may vary licensed hours at a review hearing, if it considers this to be appropriate for instance, where the premises are a source of anti-social behaviour (particularly in relation to outdoor smoking areas and dispersal of patrons).
- 3.7 Depending on the activities specified in an operating plan the Board may require to be addressed at the Hearing to consider the application on the following non-exhaustive list of points:
  - the possibility of public nuisance arising due to the proximity of the premises to residential and other noise-sensitive premises, such as hospitals, hospices, care homes and places of worship and any mitigating measures proposed by the applicant;
  - the possibility of public nuisance arising due to 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 and any mitigating measures proposed by the applicant;

- the design and layout of the premises and any proposals by the applicant regarding noise-limiting features and installation of a CCTV system which complies with current legislative requirements;
- the applicant's proposals, in so far as a matter within his power, regarding dispersal of customers;
- the institution of a wind down period between the end of the activities specified in an operating plan and closure of the premises; and
- the proposed last admission time.

The Board may impose local conditions regarding any of the above matters or in respect of any other matter where the Board considers conditions are necessary or expedient for the purposes of any of the licensing objectives during consideration of individual applications.

3.8 Suggested measures for the consideration of applicants and licensees are as follows:

- effective and responsible management of premises;
- appropriate instruction, training and supervision of those employed or engaged to prevent instances of public nuisance, for example, to ensure that customers leave quietly;
- control of operating hours for all or parts of the premises, for example in Outdoor Drinking Areas;
- installation of a sealed sound limiter, sound proofing, air conditioning, keeping doors and windows closed;
- siting of external lighting, including security lighting and installation of an effective CCTV system which complies with current legislative requirements;
- management arrangements for collection and disposal of waste and empty bottles, including reference to the management's duty of care in terms of the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991;
- effective use and maintenance of plant, including air extraction and ventilation systems to prevent nuisance from odours; and
- Dispersal Policy - plenty of notice to patrons about last orders; winding down activities or entertainment; and planning how patrons will leave the premises quickly and quietly;

It should be noted that the list of items to a certain extent are mandatory requirements under the Act, However licence holders and applicants have a degree of discretion as to how they implement such measures.

3.9 Having received various complaints from residents whose properties adjoin or are in proximity to licensed premises, the Board will impose a condition at the time of grant or by variation if established as a ground of review at a review hearing on all such licences prohibiting the disposal of glass and other receptacles between the hours of 9pm and 9am inclusive. Applicant's and Licence Holders attention is specifically drawn to paragraph 3.2.6 of Part C of the Policy Statement

#### 4.0 Protecting Public Health

- 4.1 The Board is concerned about the link between the consumption of alcohol and public health which has been widely documented. The Board is keen for licensed premises to thrive in Clackmannanshire but this cannot be at the expense of the health and well being of customers' and staff on licensed premises. The Board will have particular regard to the views of the relevant bodies responsible for, and interested in, the protection and improvement of public health in Clackmannanshire. It will take advice from those relevant bodies. Protection and improvement of public health is one of the licensing objectives to which the Board must have regard.
- 4.2 Certain matters arising from information contained in the Operating Plan may raise issues upon which the Board may require to be addressed at the hearing to consider the application. The Board must consider whether granting the application would be inconsistent with any of the licensing objectives.
- 4.3 Suggested measures that applicants and licensees are requested to consider include:
- making available information which promotes moderate drinking along with awareness of units of alcohol in alcoholic drinks and recommended guidelines for consumption;
  - providing information and contact details for obtaining assistance with alcohol related problems;
  - displaying anti-drink driving materials and promoting awareness of campaigns such as designated driver schemes;
  - participation in national campaigns, for example Alcohol Awareness Week; and
  - having in place a policy to deal with patrons who have consumed excessive alcohol;
- 4.4 Licence holders are reminded of the offences relating to the sale of alcohol especially the offences of the sale of alcohol to a drunk person and allowing breach of the peace or other disorderly conduct to take place on the premises.

## **5.0 Protecting Children from Harm**

- 5.1 The Board will seek advice from and have particular regard to the views of the Clackmannanshire Child Protection Committee.
- 5.2 The Board accepts applications from licensed premises which will accommodate children. In determining any such application the risk of harm will be a paramount consideration for the Board. For applicants who wish to operate such premises, the Board expects them to appreciate this places additional responsibilities upon them in terms of the safety of children and ensuring a suitable environment for children, at the same time recognising that parents and other adults accompanying children have primary responsibility for controlling and keeping safe children in their company.
- 5.3 Applicants and Licensees are reminded that it is their responsibility as to what measures will be implemented to protect children from harm.

5.4 The following matters are indicated as measures which applicants and licensees are strongly advised to consider if they are to allow children within their premises :

- appropriate measures to ensure children do not purchase or consume alcohol on the premises (unless such consumption is permitted by a young person in terms of the restricted provisions of Section 105(5) of the Act);
- appropriate disclosure checks for staff who will be working in the premises where children are present;
- acceptance of accredited proof of age card, photographic driving licences or passports;
- effective and responsible premises management; and
- limitations on the hours when children may be present throughout or in parts of the premises;

5.5 Suggested measures the applicants and licensees may wish to consider include the following:

- the part or parts of a licensed premises where children or young people are permitted should be free of gaming and/or amusements with prize machines;
- gaming and/or amusements with prize machines should not be located in walkway areas or parts of the premises where children or young people will have access to;
- all heating appliances including open fires, calor gas fires and electric bar fires shall be adequately guarded;
- all electrical sockets in public areas shall be adequately protected;
- provision of a safe highchair facility where children of a very young age are to be permitted on the premises;
- facilities for heating children's food at no cost;
- the removal of glass tables from areas where children are permitted;
- drinks served for consumption by children should be in unbreakable containers; and
- measures to ensure children are not exposed to incidences of strong and offensive language, violence or disorder

Applicants and Licence Holders are reminded that where children under the age of 5 are permitted entry, baby changing facilities accessible to persons of either gender are a mandatory requirement.

5.6 Since the full commencement of the Act on 1 September 2009, the Board has received a number of applications where children and young persons access has not been sufficiently dealt with in the application form, leading to adverse comments from both the Chief Constable and the LSO.

The Board is of the view that children and young persons should be allowed to attend family events, such as weddings, anniversary celebrations and birthday parties. Where the sale of alcohol is permitted by means of an occasional licence, applicants should set out any requirements for childrens access and the hours during which it is proposed they be allowed on the premises.

The Board also considers that it is appropriate to allow young persons access to Licensed Premises for the purposes of attending organised pool, darts or other competitions providing that they do not remain on the premises beyond the completion of the tournament and that suitable arrangements are in place to prevent such young persons from purchasing or consuming alcohol on the premises.

However, where the event relates to the provision of advertised entertainment (whether provided for profit or on a not for profit basis) such as a live band or a sporting event, the Board are of the view that it is inappropriate to allow children and young persons access to such an event. The Board operates a policy of presumption against grant in these circumstances, although each application will be considered on its merits

Furthermore, applicants are reminded that (subject to the provisions of section 106 of the Act) it is a criminal offence to:

- (i) sell alcohol to a child or young person; or
- (ii) knowingly allow alcohol to be sold to a child or young person; or
- (iii) knowingly allow a child or young person to consume alcohol on relevant premises; or
- (iv) knowingly buy or attempt to buy alcohol on behalf of a child or young person or for consumption on relevant premises by a child or young person.

The penalties for these offences range from a fine up to £5,000 and a custodial sentence of up to 3 months, or both.

In the event that an applicant seeks a licence for an eighteenth birthday party, the Board may impose additional conditions regulating entry and the sale of alcohol to reduce the risk of harm caused to young persons in attendance through consumption of excess alcohol. It is recommended by Central Scotland Police that SIA licensed stewards are used for these types of events. Applicants may wish to consider this factor when organising this type of event.

This policy objective meets the promotion of public health and the prevention of crime and disorder licensing objectives. Furthermore, attention is drawn to the provisions contained in section 102(4) of the 2005 Act in relation to proof of age.

- 5.7 Applicants are reminded of the requirement under both Section 110 and Schedule 3 of the Act to display prominent notices in respect of the prohibition of the sale of alcohol to persons under the age of 18.

## **PART C**

### **1.0 General**

- 1.1 The Board will carry out all its business in an open and transparent manner. The Board may conduct their deliberations in private in cases of contested hearings or in matters of controversy before the Board decides. Voting on all decisions will be taken in public. The Board will ensure that an appropriate level of information and assistance is made available to applicants, those wishing to make representations or objections and to all those who may have occasion to make an enquiry regarding alcohol licensing matters. Information sheets will be made available and will be posted on the Council's website [www.clacksweb.gov.uk](http://www.clacksweb.gov.uk).
- 1.2 The Board will endeavour to do whatever it reasonably can to provide an efficient customer friendly and cost effective service to all stakeholders in the alcohol licensing process.

The Board has posted a lot of useful information on the licensing pages of [www.clacksweb.org.uk](http://www.clacksweb.org.uk). It is now possible for applicants to make and pay for applications online and the Board encourages applicants to make use of this facility. Should any applicant have any query or experience any difficulty in using this facility, they should contact the Licensing Administrator who will be pleased to assist. The Licensing Administrator can be contacted by telephoning 01259 452093, emailing [licensing@clacks.gov.uk](mailto:licensing@clacks.gov.uk) or calling at the Council's Office at Kilncraigs, Greenside Street, Alloa.

- 1.3 The Board has adopted a Scheme of Delegation to ensure that decisions are taken at a level consistent with efficiency and cost effectiveness.
- 1.4 Applicants and Licensees should note that the Board do not produce a surplus (or break even) from running the alcohol licensing system. In particular, the cost of administering both extended hours and occasional licence applications is disproportionate to the fees which can be charged for the application. Fees charged by the Board cover the costs of the licensing administrator, licensing standards officer, the administration of the application process, board hearings and review applications for both personal and premises licences

Accordingly, the Board meets its statutory duty of levying charges broadly equivalent to the costs of delivering the licensing function under the Act and the Board keeps fees under review.

### **2.0 Licensing Standards Officers and Enforcement**

- 2.1 Under the Act, Clackmannanshire Council is required to appoint an officer known as the Licensing Standards Officer ("LSO"). The contact details for the LSO are below:

Contact: 01259 452091  
Email: [licensing@clacks.gov.uk](mailto:licensing@clacks.gov.uk)

Address: Community & Regulatory Services, Kilncraigs, Greenside Street,  
Alloa, FK10 1EB

- 2.2 The LSO is a member of the Local Licensing Forum. The Board recognises that the LSO has a key role in the alcohol licensing regime .

Whilst they may provide general information and guidance on such matters as completion of application forms, and Board practice and procedure, the LSO may not give legal advice nor make any applications or objections on behalf of any party. Should any applicants require legal advice, they are advised to contact a solicitor.

- 2.3 The LSO will carry out the roles and responsibilities set out under the Act, including:

- providing guidance and information on the operation of the Act in Clackmannanshire;
- checking that licence holders are complying with the terms of the legislation and their licence conditions; and
- providing a mediation service in order to resolve disagreements and disputes between licence holders and other persons.

- 2.4 Section 15 of the Act gives Licensing Standards Officers power to enter and inspect licensed premises to establish compliance with premises or occasional licences or any other requirements of the Act. In addition, along with the Police, they have powers under Section 137 to enter premises for the purposes of assessing the likely effect on the promotion of the Licensing Objectives of the grant of certain applications or the effect of the sale of alcohol under the licence in relation to the licensing objectives. The Act also provides that any one preventing those persons from undertaking this task will be guilty of an offence.

- 2.5 Licence holders and those managing and working on the premises are under a duty to co-operate with and assist the Licensing Standards Officer in the performance of his/her functions and to provide any information or documents requested.

- 2.6 In addition to the powers set out above, the LSO has the power under section 14 of the Act to serve notice on the holder of a licence where they believe that any condition of the licence is being breached. Where a licence holder fails to comply with the notice to the LSO's satisfaction, the LSO may make a premises licence review application. In exercising any powers to serve notices or to review licences, the LSO will act lawfully and proportionately in accordance with the Enforcement Concordat agreed among Scottish Local Authorities.

Without prejudice to the above paragraph, the LSO has the power to seek review of a premises licence where a competent ground for review exists.

- 2.7 Test Purchasing

Under the 2005 Act, the Chief Constable of Central Scotland Police may authorise a child or young person to purchase alcohol for the purposes of

determining whether a person is committing an offence under the Act. This is more commonly referred to as "Test Purchasing".

The Board recognise the importance of Test Purchasing in ensuring that all licensed premises comply with their legal responsibilities under the Act and ensure that the licensing objectives are being met. Whilst each matter must be determined on its own merits, it is likely that the Board will find that a ground for review of a licence exists on the failure of a test purchase.

On notification of conviction of a licence holder, the Board must hold a hearing. If satisfied that a ground for review exists, the Board may:

- (i) issue a warning;
- (ii) make a variation of the licence
- (iii) suspend the licence for a period that the Board may determine; or
- (iv) revoke the licence

### **3.0 Licensed Hours and Extended Hours**

3.1 Each application to the Board shall be considered on its individual merits. The Board will at all times give consideration to the Licensing Objectives and the other provisions of the Act.

3.2 The Board's general policy is as follows:

#### **3.2.1 Off Sales**

The maximum licensed hours for the sale of alcohol for consumption off the premises are laid down as between 10 a.m. and 10 p.m. each day. These hours are applicable to premises licences and occasional licences. The Board will have no discretion to permit licensed hours outwith these times. In dealing with off-sales applications the Board will determine such applications having regard to :

- (i) the documents accompanying the application,
- (ii) any objections or representations received;
- (iii) this Licensing Policy Statement or any Supplementary Licensing Policy Statement;
- (iv) guidance issued by Scottish Ministers and;
- (iv) after considering whether any of the grounds of refusal apply.

#### **3.2.2 On Sales**

##### **(a) General**

There are many factors that may be relevant to the Board's consideration of licensed hours in relation to each individual application, however each application must be consistent with the licensing objectives and the Board will have regard to the licensing objectives in determining licensed hours in respect of each application.. The following factors are a non-exclusive list of matters which the Board considers may be relevant:

- the premises being situated in a town centre location;
- proximity to residential premises;
- history of anti-social behaviour in the vicinity;
- provision of public transport;
- proximity of taxi ranks and likely availability of taxis at the terminal hour;
- provision of toilet facilities in the vicinity;
- provision of catering establishments;
- proximity of noise sensitive establishments such as Hospitals, Churches or Care Homes;
- any noise limiting measures present on the premises;
- existence of public space CCTV cameras; and
- the occupancy capacity of the premises.

(b) Commencement Hour

In applications for premises licences, variations and extensions of hours for the sale of alcohol for consumption on the premises (on sale hours) the Board considers that the commencement of licensed hours should generally be no earlier than 11 a.m. However, the Board also recognises that earlier opening may be appropriate for certain types of premises :

- to meet the requirements of certain customer groups such as shift workers and
- to recognise the importance of tourism in certain locations within Clackmannanshire and the need to meet the reasonable demands of tourists.

The Board has reached the view that there should be a presumption against granting a commencement hour of earlier than 11am having regard to the protection and improvement of public health objective, subject to the considerations set out above.

(c) Terminal Hours

The Board recognises that different terminal hours may be appropriate having regard to the nature of the premises and the activities taking place or proposed to take place thereon. Subject to the Licensing Objectives and consideration of the merits and circumstances of each individual application, the Board regards the following indicative terminal hours as reasonable :

i) licensed premises other than off-sales and premises specified at ii) below

Sunday – Thursday – 12 midnight  
Friday and Saturday – 1 a.m.

These premises will in the main be vertical drinking establishments (premises where the only or main activity is consumption of alcohol and other activities taking place on the premises are secondary to the consumption of alcohol), hotels, restaurants and members' clubs.

ii) Premises offering entertainment or other facilities or activities of a similar nature specified in the operating plan (where the provision of alcohol is ancillary to the entertainment or other activities provided and is not the only activity offered on the premises)

Sunday – Thursday – 1 a.m  
Fridays and Saturdays – 2a.m.

Subject to the individual merits of the application, the Board may consider applications for a terminal hour out with these times, however the Board does not consider a terminal hour of later than 3a.m on Fridays and Saturdays to be appropriate to ensure that the public health objective is met.

The main purpose of premises in this category will be to provide music and dance facilities in the form of night club style premises which have specified a later commencement of licensed hours in their operating plans than premises falling with category a) above.

In considering an application for a premises licence or for a variation (or otherwise) seeking a later terminal hour, the Board considers that the following non exhaustive list amounts to the provision of entertainment:

- Live Band;
- Disc Jockey;
- Karaoke;
- Dance facilities;

The Board is of the view that the following do not amount to entertainment:

- Music provided through PA system, jukebox or equivalent;

Regardless of the above, what the Board considers to amount to provision of entertainment or other facilities or activities bringing a premises into category b) above will be determined on the facts and circumstances of each application. It is up to the applicant to satisfy the Board that genuine entertainment or other activities or facilities will be provided.

The Board has a presumption against granting an application based on the above where that application purely seeks an additional period for drinking where no entertainment or other activities or facilities are provided on the grounds that this contravenes the promotion of public health under the Act.

### 3.2.3 Special Events - Extended Hours

The Board may on application extend the licensed hours in respect of licensed premises by such period as the Board considers appropriate. This can only be in respect of (a) a special event or occasion to be catered for on the premises, or (b) a special event of local or significance importance. Such an extension will only last a maximum period of one month.

The applicant will be required to satisfy the Board that the hours sought are appropriate in the circumstances of the application. It will be the responsibility of the applicant to provide the Board with sufficient information to enable it to reach a decision. The information which will assist the Board in making a decision will include:

- the hours sought;
- the description of the special event or occasion;
- what activities are proposed;
- if more than one activity, the duration of each activity; and
- the reason for the event or occasion being regarded as special and requiring extended hours.

The Board will not grant an extended hours application where the applicant fails to satisfy the Board that a genuine special event is taking place and the application merely relates to an extra hours drinking time. Where the applicant is seeking extended hours then they must clearly demonstrate to the Board on their application the nature of the special event taking place.

The Board will not grant applications where it is apparent to the Board that the applicant is seeking an additional hours drinking time only where there is no genuine event taking place on the Premises. The Board considers that this approach is consistent with the protection of public health objective under the Act.

In addition, the Board may allow longer licensed hours over the festive period, however as the Board does not operate a general extension for the festive period, applicants will be required to submit an extended hours application that will be considered by the Board in accordance with the 2005 Act and this paragraph of the Policy Statement.

#### 3.2.4 Late Opening

Premises which propose to open after 1 a.m. are subject to the mandatory late opening conditions and the Board may decide it is appropriate to attach additional local conditions. The applicant will be required to justify the request for late opening hours bearing in mind the Licensing Objectives.

#### 3.2.5 Outside Drinking Areas

##### (a) General

An increasing number of licensees wish to provide for their customers an outdoor drinking area attached to the existing licensed premises.

The provision of an outdoor drinking area can give rise to particular concerns due to the increased potential for noise and disturbance due to the presence of a number of persons outside consuming alcohol. Nuisance can arise, for example from talking, shouting and laughter, the playing of music and boisterous or anti-social behaviour. The Board also requires to consider a range of amenity, safety and management issues before coming to a decision on an application for an outdoor drinking area.

It is of particular concern where a proposed outdoor drinking area is situated within close proximity to residential properties whose occupants may be subject to an unacceptable level of noise and disturbance or where the proposed facility will be located adjacent to or near to a public footpath or other public area.

The Licensing Board wishes to encourage tourism in Clackmannanshire. One of the ways in which this may be done is by there being a range of attractive licensed premises offering a pleasant ambience, good food and other facilities such as an outside drinking area. Given the potential for noise, nuisance and disturbance, however, the Board considers it necessary to lay down guidelines and conditions to assist licence holders who may be considering varying their existing operating plan to include an outdoor drinking area.

**(b) Application Process : Information to be provided : Layout**

The Board will consider the matter in terms of relevant provisions of the Act, depending on the type of application.

An applicant will require to lodge an application in accordance with the Licensing (Procedure)(Scotland) Regulations 2007. The application will be determined in accordance with the Act. In the event that the Board grants the application, it does not authorise the proposed facility in terms of other legislation. Separate advice on obtaining planning permission/building warrant should be sought from :

(a) Planning – Principal Planner, Community & Regulatory Services, Clackmannanshire Council, Kilncraigs, Greenside Street, Alloa. FK10 1EB.

Tel: 01259 450000;

Fax: 01259 727450;

email: [development\\_services@clacks.gov.uk](mailto:development_services@clacks.gov.uk).

(b) Building Warrants – Building Standards Team Leader, Community & Regulatory Services, Clackmannanshire Council, Kilncraigs, Greenside Street, Alloa. FK10 1EB.

Tel: 01259 450000;

Fax 01259 452547;

email: [buildingstandards@clacks.gov.uk](mailto:buildingstandards@clacks.gov.uk).

Applicants requiring further advice and assistance regarding applications should contact either the LSO or the Licensing Administrator on 01259 450000.

Whilst any person may make a representation or objection to an application, the Board will make enquiry of the Council's Regulatory & Community Services to obtain their views on individual applications. Applicants will be given a copy of any information supplied by these Services prior to the consideration of their applications.

The Board will also consult with the Central Scotland Fire and Rescue Authority and will have regard to any advice or information supplied by them. The Board will be particularly concerned to be satisfied that there will be a safe, unobstructed and clearly indicated means of escape from outdoor drinking areas in the event of fire or other emergency. It will also require to be satisfied that the layout and location of a proposed outdoor drinking area would not, whilst in use, impede exit from other parts of the premises. It is recognised by the Board that the enforcement of these provisions is the primary responsibility of the Fire Authority.

Notwithstanding the general policy guidelines below, the Board may impose additional conditions on the grant of the application based on representations made by the Fire Authority, Central Scotland Police and the Council's Community and Regulatory Services Department.

The matters which the Board is required to consider in dealing with the application are:

(1) whether the proposals will adversely affect the suitability of the premises for the sale of alcohol having regard to:

(a) the location of the outdoor drinking area and, in particular, its relationship and proximity to adjoining property and whether any adjoining property is overlooked by or overlooks the proposed facility;

(b) the condition of the proposed outdoor drinking area;

(c) the nature and extent of the proposed use of the outdoor drinking area;

(d) the persons likely to resort to the outdoor drinking area; and

(2) whether the use of the outdoor drinking part of the premises is likely to cause undue public nuisance or constitute a threat to public order and safety.

The Board operates a general presumption against the grant of applications where the proposed facility will be situated wholly or partially on any part of a public footpath or any other public area or in a car park. Applicants are advised to seek the consent of the Roads Authority prior to submitting any application where the proposed area forms part of the public footpath or road.

The following information shall be provided within the application:

The proposed hours during which the outdoor drinking area will be operational. Applicants are reminded that the Board operate a presumption against grant where proposals to operate the outdoor drinking facility result in its use late into the evening. Depending on the proximity of residential property and the nature of the licensed premises, the Board will not normally expect applicants to seek to operate the outdoor drinking facility after 10 p.m.

The Board require the following further information:

(a) The number of tables and chairs to be provided. Applicants should note that the number of customers using the outdoor drinking facility at any one

time should be restricted to the number for which tables and chairs are provided.

- (b) The relationship and proximity of the proposed facility to adjoining property (in so far as this cannot be shown on the plan). Details should be provided of the addresses and types of adjoining property, for example, whether there are flatted dwelling houses overlooking the proposed facility.
- (c) Whether any adjoining properties are overlooked by or overlook the proposed facility.
- (d) The location and number of toilets for males and females. The Board will wish to be satisfied that these are adequate to cope with any increased number of persons which may be attracted to licensed premises due to the outdoor facility.
- (e) The nature of any enclosures/structures associated with the proposed facility, for example, walls, fencing, decking. Applicants should note that the Board will require the outdoor drinking area to be clearly delineated. A structural barrier will require to be provided where the facility is adjacent to a public footpath or any other area outwith the premises to which the public have access. The Board will have regard to any information supplied or views expressed by Community & Regulatory Services regarding the above matters.

The applicant is required to satisfy the Board that the above information is provided and that the principles will be adhered to.

### **(c) Management of Premises and Conditions**

The Board will require that in order to meet the licensing objectives under the Act that the applicant manages the outdoor drinking area in a responsible manner. Where the Board is minded to grant the application, the following conditions shall apply to the licence:

- The licence holder shall ensure that no music at all, live or otherwise, is permitted to be played in the outdoor drinking area either by themselves, their staff or their customers
- The licence holder shall ensure that no entertainment is provided within the outdoor drinking area either by themselves, their staff or their customers.
- No speakers or tannoy systems shall be used in connection with an outdoor drinking facility.
- The licence holder shall ensure that where musical entertainment of any sort is provided within the licensed premises, no disturbance from that entertainment is caused to neighbouring residents when customers enter or leave the outdoor drinking area.
- The licence holder shall ensure that the behaviour of customers is not likely to cause nuisance or annoyance to neighbouring residents and in

particular must take all reasonable steps to prevent shouting, singing or loud talking.

- The licence holder and their staff shall ensure that customers do not encroach on to the footpath or any adjoining public area outwith the boundaries of the proposed outdoor drinking area.
- Where the outdoor drinking facility is to be used during the hours of darkness, the licence holder shall ensure that suitable lighting is provided for the convenience and safety of all persons on the premises but shall not cause annoyance to neighbouring residents through brightness or glare.
- The licence holder shall ensure that the outdoor drinking facility is not used either by themselves, their staff or their customers for any purpose which is likely to cause annoyance to neighbours through smell, for example, the use of barbecues.
- The licence holder shall ensure that any facility provided for the comfort of patrons such as outdoor heaters are used and maintained in a safe manner and in accordance with manufacturers' instructions and any statutory requirements.
- The licence holder shall ensure that the outdoor drinking area is kept clean and free from litter at all times. The licence holder shall provide suitable receptacles for litter having regard to the nature of any litter likely to be produced and shall ensure that staff and customers use these receptacles. The licence holder shall ensure that such receptacles are emptied on a regular basis, however this must be done in accordance with paragraph 3.9 of Part B of the Licensing Policy.
- Licence holders should insofar as practical provide plastic or other suitable non-glass drinking containers for use in the outdoor drinking area(s). The licence holder should seek to take all necessary steps to prevent customers taking glasses and in particular glass bottles into the outdoor drinking area(s).

Where smoking is permitted in the outdoor drinking area, the licence holder shall ensure that ashtrays or other suitable receptacles are provided on the tables and that precautionary measures are in place to prevent the outbreak of a fire in the outdoor drinking area caused by discarded cigarettes. Applicants are reminded that any structure provided for the use of those wishing to smoke must comply with the provisions of The Smoking, Health and Social Care (Scotland) Act 2005 and the prohibition of Smoking in Certain Premises (Scotland) Regulations 2006. Applicants and licence holders are reminded that it is a criminal offence to breach these provisions.

The licence holder shall take all reasonable steps to ensure that customers within the premises and occupants of adjacent or neighbouring properties are not caused nuisance or annoyance or put at risk by the presence of second hand smoke caused by those smoking within outdoor drinking areas. To comply with this requirement, the licence holder should permit smoking only within certain designated parts of outdoor drinking areas (insofar that this is reasonably possible).

The Board would encourage that a written statement explaining how the applicant proposes to complete the following:

- (i) enforce the above management requirements and conditions; and
- (ii) the arrangements in place to eliminate noise, nuisance and anti-social behaviour be lodged with the application for premises licence or variation.

The Board will expect the licence holder, after issuing an appropriate warning, to remove from the premises any customers who breach any of the above requirements regarding customer conduct and behaviour.

The licence holder will be required to display notices setting out the rules which apply to the use of the outdoor drinking area and conduct therein. Such notices should be placed at the entrance to the outdoor drinking area and within the outdoor drinking area, where they can be conveniently read by customers.

The licence holder shall ensure that their staff are familiar with the above requirements and that they take all necessary steps to ensure that they are complied with.

#### **4.0 Occasional Licences**

4.1 Occasional licence applications may be made by :

- a premises licence holder;
- a personal licence holder;
- a voluntary organisation representative.

4.2 Such an application is appropriate where authority is being sought for the sale of alcohol on premises which are not licensed premises.

4.3 An occasional licence can last for a maximum of 14 days.

4.4 Whilst premises licence and personal licence holders may make unlimited application for occasional licences, the following restrictions apply to applications on behalf of voluntary organisations. A voluntary organisation can apply for in any period of 12 months:

- (a) no more than 4 occasional licences lasting for up to 4 days;
- (b) no more than 12 occasional licences for periods of less than 4 days.

This is subject to a maximum of 56 days on which occasional licences can have effect in respect of any one voluntary organisation in any 12 month period.

4.5 Applicants are strongly recommended to make applications no later than 42 days prior to the event for which application is made.

4.6 The time limit is required to allow the Board to carry out all necessary administration and fulfil its statutory duties in respect of consultation. The Chief Constable and the LSO have a 21 day period to make representations

or objections to an application. The Board must advertise occasional licence applications on clackswab for 7 days and anyone can lodge an objection. In the event that this occurs, a committee of the Board will meet to make a decision in accordance with paragraph 4.12. The Board is required to determine the application within 42 days of receipt. Whilst it will be possible to deal with straightforward applications which do not attract objections or adverse comment from the police or the LSO in a much shorter period of time, applicants are recommended to apply 42 days ahead of the date for which the occasional licence is required to allow for the possibility of their application requiring to be determined by a Board committee.

- 4.7 The applicant must state the hours required for the duration of the licence. It is not appropriate for the Board to set down hours that it deems as reasonable for the hours sought, however from previous experience it is likely that objections will be received from either the LSO or the Chief Constable where the hours sought extend beyond:

Sunday to Thursdays - 12 midnight  
Fridays and Saturdays - 1am

or seek the commencement of the sale of alcohol earlier than 10am.

Each application will be considered on its merits and in the event of no objections being received, the Board will grant the application.

- 4.8 The Board currently operates a scheme of delegation whereby straightforward licensing applications are dealt with by Council staff on behalf of the Clerk of the Board. However in the event that an occasional licence or extended hours application falls out with Board policy or adverse representations have been made by the Chief Constable, the LSO or any other party, the matter will be referred to a committee of the Board for determination.

- 4.9 The Committee of the Board consists of 3 members drawn from the 9 elected members of the Board. The Committee will determine the above applications in accordance with the Policy and the Act, although all applications are considered on their own merits. Applicants will have an opportunity to comment on any notice or report. The Clerk will notify the applicant of the decision of the Committee as soon as possible after the decision has been made by telephone. This will be followed up in writing within a period of 5 working days.

## **5.0 Board Hearings**

- 5.1 The Act requires that in the event of no objections or representations that applications must be granted. Where this occurs, the Board has delegated authority to the Clerk to grant the applications sought. This does not apply to the grant of a new Premises Licence, where the grant of the Licence must be made by the Board.

- 5.2 In the event that an objection or representation is received or in certain other circumstances prescribed by the Act, the Board is required to hold a hearing. Applicants will be provided with advance notification of the Board Meeting. Whilst the Board cannot compel applicants to attend hearings, it is advisable

to do so as you will not be able to answer questions raised by any other party or the Board.

- 5.3 The Board will conduct its business in accordance with the published agenda. Applications will normally be taken in the order that they appear on the agenda.
- 5.4 The Board will invite the Chief Constable, LSO and any party who has submitted a representation or objection to speak to their report or statement. Applicants will then be provided with the opportunity to put forward their own submissions. The Board may then ask questions regarding the content of the evidence that has been presented to them prior to making their decision
- 5.5 In certain circumstances, the Board may then adjourn to consider the matters presented to them in private, although the formal decision will be made and reasons given in the public meeting.

## **6.0 Mandatory Conditions**

- 6.1 The Board is aware of the mandatory conditions which are set out in the Act and in regulations and strongly advises that all applicants and licensees familiarise themselves with them. Additionally, the Board in considering individual applications will decide whether it is necessary or appropriate to impose additional conditions for the purposes of one or more of the licensing objectives. The Board will only impose additional conditions which it considers proportionate and appropriate to the circumstances of the application. Further, the Board acknowledges that Scottish Ministers may by regulations prescribe further conditions which the Board may, at its discretion impose.
- 6.2 Since the coming into force of the Act, it has come to the attention of the Board through the LSO that the quality of staff training and records do not meet the requirements of the Act. Applicants and Licence Holders are reminded that the staff training requirements are a mandatory condition of the Premises Licence. The training requirements are set out in the Licensing (Training)(Scotland) Regulations 2007.
- 6.3 Licensed premises are prohibited from carrying out "irresponsible drinks promotions". Whilst what amounts to an irresponsible drinks promotion is set out in paragraph 8, Schedule 3 of the Act, there are degrees of interpretation that can be applied to this definition. In order to remove a degree of uncertainty, the Board considers that the following promotions are irresponsible:
  - 1. All inclusive offers.** For example, a party night promotion, where the purchase of a ticket or payment of an admission charge entitles the purchaser to access to a free bar. This promotion involves the supply of unlimited alcohol for a fixed charge and therefore Schedule 3 paragraph 8 (2) (d) applies.
  - 2. Watch the match and if your team wins get a free pint of beer.** For example, a promotion that requires a customer to be in the premises at the beginning of a televised sports event and at the end of the contest dependent

on the result the person may be given a free pint of beer. This promotion is offering alcohol to be consumed on the premises as a reward for being in the premises and therefore Schedule 3 paragraph 8(2) (e) applies.

**3. Double up.** For example, a premises offers customers the chance to double up by offering a double measure for an extra 50p( in addition to the price for a single measure).This promotion offers an extra measure of alcohol at a reduced price on the purchase of a measure of alcohol and therefore Schedule 3, paragraph 8(2) (c) applies. Licensees are reminded that it is the promotion and not the pricing that contravenes this paragraph of the Act

**4. Student nights.** For example, a night club advertises/distributes flyers giving details of the venue, entry fee and stating that the first drink is free. The free drink is offered as a reward for entering the premises therefore Schedule 3 paragraph 8(2) (c) applies.

**5. Drinks vouchers.** For example, a night club advertises/distributes flyers giving details of the venue, entry fee and stating that five £1 drink vouchers will be given to the customer on entry. The vouchers can be handed over the bar in exchange for a drink .This constitute giving alcohol as a reward for entering the premises therefore Schedule 3 paragraph 8(2) (b) applies.

**6. Reward card.** For example, on application by a customer a points card is issued by a premises. Every time a purchase is made by the card holder in the premises the card is credited with points. The points are given a cash value and can be claimed against the price of alcoholic drinks. This constitutes giving alcohol as a reward for frequenting the premises therefore Schedule 3 paragraph 8(2) (h) applies.

It should be stressed to all applicants and licensees that these conditions do not regulate any pricing strategy put in place, only the promotion of that pricing strategy and only insofar as it is does not comply with the Act.

6.4 Similarly, paragraph 7 of Schedule 3 prohibits the variation of the price of alcohol for a period of 72 hours where the price of alcohol has already been subject to an earlier price variation. The Board considers the following to amount to a price variation:

**1. Offering the same drinks at different prices in the same premises.** For example, prices in the lounge bar of a pub being different than the prices in the public bar. This would constitute a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.

**2. Out of code discount .** For example, offering cans of beer with a best before date that has expired while selling cans of the same brand that are within date code at a different price. This would constitute a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.

**3. Discount vouchers .** For example, a promotion where vouchers or tokens which are sold or given to potential customers where by they are entitled to a reduction in the price of certain drinks while other customers still require to pay the full price. This constitutes a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.

**4. Discount to certain customers.** For example, a promotion that offers a discount to students or OAPs while other customers pay the full price for the same drinks. This constitutes a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.

**5. Student nights.** For example, a night club advertises/distributes flyers giving details of the venue & entry fee and stating that on a Friday or Saturday night, drinks are £1 all night\*. The asterisk gives the qualification for the promotion which is \* *with student card*. The price of drinks is varied for students but not other customers therefore this constitutes a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.

**6. Drinks vouchers.** For example, a night club advertises/distributes flyers giving details of the venue, entry fee and stating that five £1 drink vouchers will be giving to the customer on entry. If the voucher merely entitles the customer to a discounted drink i.e. the customer uses a voucher and is only charged a £1 then unless that drink is that price for all customers then this constitutes a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.

**7. Cheaper drinks throughout the week.** For example, a pub has a drinks promotion where the cost of all drinks is reduced from 12.30pm on a Sunday until Friday at 8pm.

Drinks are increased to "full" price from 8pm on a Friday until closing time on Saturday night. This constitutes a further variation in drinks pricing. A variation in pricing cannot occur except at the beginning of a licensing period so drinks cannot change price at 8pm if the pub is open prior to this time selling alcohol and the variation must last a minimum of 72 hours so the variation whereby the prices increase on the Friday and Saturday does not provide the minimum 72 hours time period. This variation in pricing would not comply with the requirements of Schedule 3 paragraph 7

6.5 Views have been sought from the consultees on this matter, however it should be noted that there is no definitive case law on this subject and licensees should take their own advice if embarking on promotional activity or pricing structures that amount to variations which in the view of the Board breach the Act.

6.6 Schedule 3 of the Act does not require that a premises manager (or other personal licence holder) be present at any time any sale of alcohol is made. Whilst the Board recognises this provision, it is recommended that either the premises manager or other personal licence holder is on the premises for a sufficient period of time to ensure personal supervision of the premises, as a matter of good practice. Whilst this is within the licence holders discretion, the Board view that a sufficient period of time would amount to not less than 50% of the trading hours of the premises.

This does not apply where the premises are subject to mandatory late night conditions.

## **7.0 Overprovision**

- 7.1 Section 7 of the Act requires each Licensing Board to include in its Policy Statement a statement as to the extent to which the Board considers there to be an overprovision of licensed premises or licensed premises of a particular description in any locality within the Boards area..
- 7.2 Section 23(5)(e) of the Act makes overprovision, having regard to the number and capacity of licensed premises or licensed premises of the same or similar description to premises for which application is made in the locality a ground for refusal of a premises licence.
- 7.3 In considering whether there is overprovision for the purposes of the Board's Licensing Policy Statement or considering the overprovision ground of refusal, the Board must have regard to the capacity of the premises.
- 7.4 The Board has taken the advice and assistance of Clackmannanshire Council's Building Standards Service regarding determining the capacity of individual premises.
- 7.5 In formulating its statement of overprovision, the Board has closely scrutinised the provision of licensed premises across the whole of Clackmannanshire to determine any localities to be examined further. To assist it in determining localities which the Board wishes to examine, it has sought information from the Chief Constable in order to identify whether there are any particular areas indicating crime, disorder and nuisance being caused by customers of a concentrated number of licensed premises or areas where in the opinion of the Chief Constable the number of licensed premises or those of a particular kind are close to over provision.
- 7.6 In preparation of this Policy Statement, the Board sought views from the consultees as to whether there were any areas of overprovision of licensed premises within any locality in the Board's area. No responses were received highlighting any localities, however one consultee advised that there had been an approximately 15% reduction in licensed premises within the Boards area since the introduction of the 2005 Act, which corresponds with the Boards own figures. This figure is slightly higher than the Scottish average of a 14% reduction in licensed premises.
- 7.7 Having taken into account the views of the consultees, the Chief Constable of Central Scotland Police and Board Members own knowledge of the Board's area, the Board have determined that there are no localities where overprovision exists or is close to existing.
- 7.8 It will be the responsibility of licensees to ensure that the occupancy capacity of premises is not exceeded.

## **8.0 Occupancy Capacity**

- 8.1 Occupancy capacity is one factor which the Board will take into account when addressing overprovision. The licensee may have to set limits in order to secure public safety.

- 8.2 The recommendation of the National Licensing Forum agreed by the Scottish Ministers, is that for the purposes of the overprovision assessment the operating capacity of licensed premises should be determined by Local Authority Building Standards Officers. Accordingly, the Board will seek the advice and assistance of Clackmannanshire Councils Building Service regarding the determining of individual premises.
- 8.3 Applicants will be expected to have sufficient measures in place to monitor the number of persons on the premises at any point to ensure the occupancy capacity is not exceeded.
- 8.4 Notwithstanding the provisions of the Act, other legislation, in particular the Fire (Scotland) Act 2005 and Building (Scotland) Act 2003 govern the occupancy capacity and safety of premises. It is up to the applicants and licence holders to comply with this legislation.

## **9.0 Members' Clubs**

- 9.1 Members' clubs are now fully regulated by the Act in respect of the sale of Alcohol. Accordingly, members clubs are holders of a premises licence, although they are excepted from the application of certain provisions of the Act.
- 9.2 In considering an application for a premises licence on behalf of a club, the Board will wish to make enquiry into the nature and activities of the club. Clubs will be required to submit a copy of their current Constitution along with the application for a premises licence so that the Board may check compliance with Paragraph 2(2) of the Licensing (Club)(Scotland) Regulations 2007.
- 9.3 If clubs revise or update their Constitutions, it is a condition of the licence that a copy of the revised Constitution is submitted to the Clerk of the Licensing Board. Clubs should make their Constitution accounts and visitors book available for inspection by the LSO and the police at all reasonable times.
- 9.4 The fact that a premises licence is in effect in respect of premises used wholly or mainly as a Club does not prevent an occasional licence being issued in respect of those premises. The Board may issue in respect of those premises in any period of 12 months :
- (a) not more than 4 occasional licences each having effect for a period of 4 days or more, and
  - (b) not more than 12 occasional licences each having effect for a period of less than 4 days,

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

The Board expects members clubs to adhere strictly to their constitutions and, in particular to note that, except when an occasional licence has effect, no person can be supplied with alcohol on the club premises unless he/she is :

- (i) a club member;
- (ii) a guest of a member and accompanied by a member; or
- (iii) a member of another club conducted on a non-profit making basis and having a constitution meeting the requirements of the Act.

In addition, details of supplies of alcohol to guests except when an occasional licence has effect must be entered in a visitors' book. For the avoidance of doubt, the guest must only be entered once into the visitors book and not each time that they purchase an alcoholic drink. The details of the purchase are not required to be entered.

Breaches of these provisions may result in a review of a club's premises licence.

- 9.5 The Board recognises that members clubs may still be familiarising themselves with the new arrangements and that every effort will be made by the Board to assist clubs where necessary to ensure that their alcohol sales activity is in compliance with the Act. Any members club who is having difficulty with the provisions of the new Act should contact either the Licensing Administrator or the LSO in the first instance.

## **10.0 Excluded Premises - Garages**

- 10.1 Garages are excluded premises in terms of the Act. Garages have been defined as premises used for one or more of the following purposes:

- sale by retail of petrol or derv;
- sale of motor vehicles;
- maintenance of motor vehicles.

- 10.2 There is an exception for premises or parts of premises used for sale by retail of petrol or derv if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of (a) petrol or derv; or (b) groceries.

The Board will be required to determine this issue.

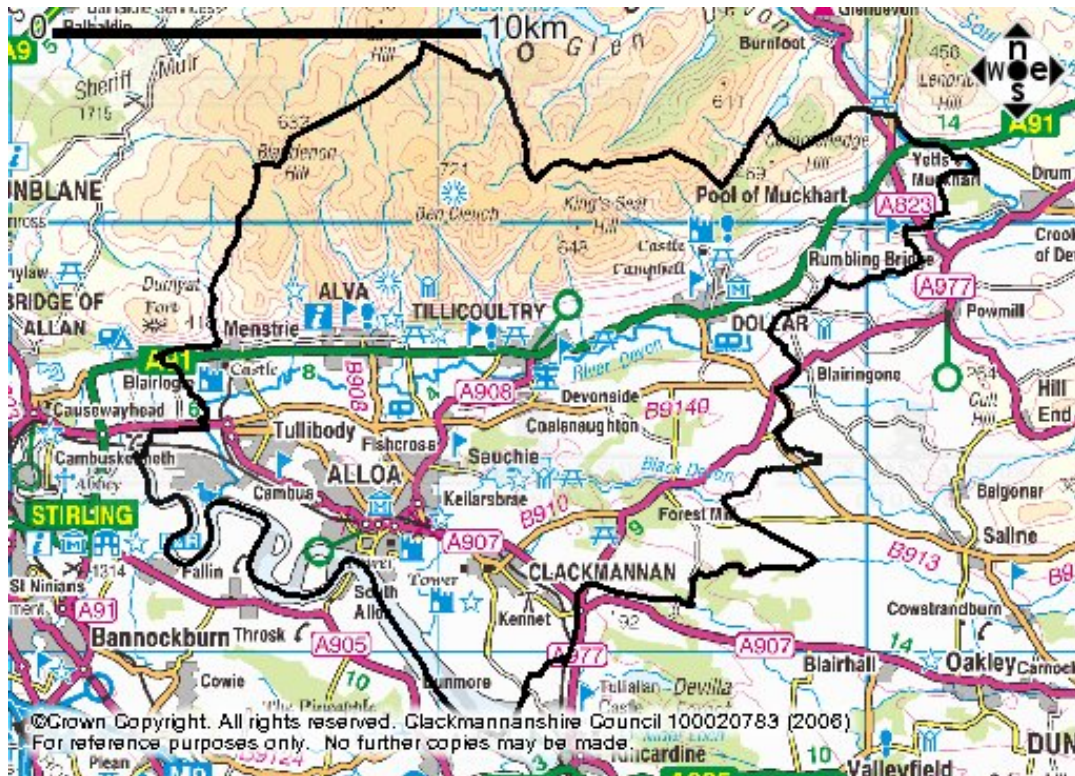
An applicant will be required to provide information on the following matters for the consideration of the Board:

- the extent of the locality in which premises are situated;
- identify other sources of (a) petrol or derv and/or (b) groceries in that locality;
- the extent to which persons resident in that locality are or are likely to become reliant on the premises as the principal source of petrol or derv or groceries.

- 10.3 The Board will carefully consider any application on its merits and in reaching a decision will take account of all relevant information and considerations known to or made known to it. Relevant factors may include:

- number of premises selling petrol or derv or groceries in the locality;
- distance to nearest other premises selling petrol or derv or groceries;
- opening hours of other premises selling petrol or derv or groceries in the locality;
- the number and/or percentage of persons resident in the locality who are, or are likely to become, reliant on the premises as the principal source of (a) petrol or derv or (b) groceries and the extent of any such reliance.

## Appendix 1



## Appendix II - List of Consultees

- 1 All elected members of Clackmannanshire Council
- 2 The Chief Constable, Central Scotland Police, Police Headquarters, Randolphfield, Stirling
- 3 The Chief Fire Officer, Central Scotland Fire & Rescue Board, Maddiston, Falkirk
- 4 All Premises Licence Holders within Clackmannanshire
- 5 The Licensing Standards Officer, Clackmannanshire Council
- 6 Clackmannanshire Council, Community & Regulatory Services, Development Control and Development Policy
- 7 Clackmannanshire Council, Community & Regulatory Services, Environmental Health Department
- 8 Clackmannanshire Council, Community & Regulatory Services, Building Control Department
- 9 The Clackmannanshire Council Child Protection Committee, Lime Tree House, Castle Street, Alloa
- 10 Church of Scotland, 121 George Street, Edinburgh, EH2 4YN
- 11 Roman Catholic Church, General Secretary, Bishop's Conference of Scotland, 64 Aitken Street, Airdrie
- 12 Baptist Union of Scotland, 14 Aytoun Road, Glasgow, G41 5RT
- 13 The Church of Jesus Christ of Latterday Saints, Grange Road, Alloa
- 14 Congregation at Scottish Episcopal Church, General Synod Office, 21 Grosvenor Crescent, Edinburgh, EH12 3EE
- 15 Sauchie and Fishcross United Free Church, Church Grove, Sauchie, FK10 3BU
- 16 Congregational Church, 151 High Street, Tillicoultry
- 17 Elim Pentecostal Church, Greenside Street, Alloa, FK10 1BT
- 18 Hillfoots Evangelical Church, Bank Street, Tillicoultry
- 19 Alloa Congregation of Jehovah's Witnesses, Kingdom Hall, Cowden Park, Alloa, FK10 2BS
- 20 All Community Councils within the Clackmannanshire Council area
- 21 Citizens Advice Bureau, 47 Drysdale Street, Alloa
- 22 NHS Forth Valley Public Health Directorate, Carseview House, Castle Business Park, Stirling, FK9 4SW
- 23 Clackmannanshire Community Health Partnership – Clackmannanshire Community Health Care Centre, Hallpark Road, Sauchie, FK10 3JQ

- 24 The Community Safety Partnership, Area Commander, Central Scotland Police, Mar Place, Alloa
- 25 All Residents' Associations within the area of Clackmannanshire
- 26 Scottish Licensed Trade Association, Craiglea, Back Road, Alva, FK12 5LH
- 27 All School Boards in Clackmannanshire
- 28 Clackmannanshire Youth Forum
- 29 Head Teachers of all primary/secondary schools in Clackmannanshire
- 30 Business Liaison Initiative
- 31 Scottish Beer and Pub Association
- 32 Clackmannanshire Alcohol and Drugs Partnership, c/o Deirdre Cilliers, Clackmannanshire Council, Lime Tree House, Alloa, FK10 1EX
- 33 Clackmannanshire Womens Aid