



Clackmannanshire Council

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# **CLACKMANNANSHIRE LICENSING BOARD**

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

### **STATEMENT OF LICENSING POLICY**

**Consultative Draft  
August 2013**

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## **Foreword**

This Statement of Licensing Policy is being prepared in accordance with the Licensing (Scotland) Act 2005 as amended, all regulations issued there under and the Guidance for Licensing Boards and Local Authorities issued by the Scottish Government.

Consultation on the draft Statement of Licensing Policy will take place between 19 August 2013 and 29 September 2013. The Board is required to have its Policy in place by 30 November 2013. The Policy will be applied during the three year period to 30 November 2016. 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.

## **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 and has been subsequently amended in terms of the Criminal Justice and Licensing (Scotland) Act 2010 and the Alcohol etc. (Scotland) Act 2010 .

- 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 is Scotland in miniature – magnificent scenery, a turbulent history and welcoming people. The County is a mix of both urban and rural communities, covers some 159 square kilometres and has an increasing population of 50,630



The County is bounded to the north by the Ochil Hills and to the south by the River Forth. Clackmannan has geographical boundaries with Fife, and Perth & Kinross Councils to the north and east and Stirling Council to the west.

- 2.2 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 A map of the Council and Board area is provided at Appendix 1 to the Statement of Licensing Policy.

- 2.3 The current breakdown of licensed premises in Clackmannanshire is as follows :

Off Sales Licensed Premises	52
On Sales Licensed Premises	46
Members Clubs Licensed Premises	27

**2.4** In addition, the Board deals with applications for occasional licences and extended licensed hours. The number of these applications received in the period 1 July 2012 to 30 June 2013 is as follows:

Occasional Licence Applications	280
Extended Hours Applications	58

### **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 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 on their premises and the condition in which they leave them. 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.

The Board expects off sales licence holders to be aware of their wider social responsibilities and to engage positively with the mandatory conditions regarding minimum pricing of packages containing more than one alcoholic product, pricing of alcohol and irresponsible drinks promotions.

#### **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 Forum:

- holders of premises licences and personal licences;
- the Chief Constable of Scotland, Police Scotland;
- persons having functions relating to health, education or social work;
- young people;
- persons resident within the Forum's area; and
- the Health Board for the Licensing Board'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 will take place between 19 August 2013 and 29 September 2013. The draft Statement has been sent to all members of the Clackmannanshire Licensing Board and the Clackmannanshire Local Licensing Forum for comment. In addition, the policy statement has been sent to those listed in Appendix II of the document.

It has been 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 is available to members of the public at Council Offices and Community Access Points.

4.4 This Statement of Policy will be presented for approval at a meeting of the Clackmannanshire Licensing Board on 14 November 2013 and will thereafter be published on our website [www.clacksweb.gov.uk](http://www.clacksweb.gov.uk). Copies will also be available at the principal office of Clackmannanshire Council at Kilncraigs, 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 - 727450

in writing to:           The Team Leader Building Standards and Licensing  
Community and Regulatory Services  
Clackmannanshire Council  
Kilncraigs  
Alloa  
FK10 1EB

Informal queries regarding the statement of policy may be made by contacting Licensing Services 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 - applications for a premises licence review are normally made either on behalf of the Chief Constable or by the Licensing Standards Officer. However anyone may make a premises licence review application. The Board can on its own initiative make a premises licence review proposal. The grounds for review are (a) that



- hearings involving personal licence holders where notification of conviction for a relevant offence is received or a finding of conduct inconsistent with the licensing objectives is made.

## **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.

An objection must be on a ground relevant to one of the statutory grounds of refusal. The Board is required to consider whether any ground of refusal applies. If none apply, the Board must grant the application. If it finds that a ground of objection applies, it must refuse the application.

The main grounds of refusal relate to whether grant of the application would be inconsistent with any of the licensing objectives; the suitability of the premises taking account of the nature of the proposed activities, the location, character and condition of the premises and persons likely to frequent them; and overprovision.

Representations may be made in support of the application; proposing modifications to the operating plan; and suggesting conditions which should be imposed.

The Board would strongly encourage the public and particularly those who consider they may be affected by the grant of a licence or variation of a licence to engage with the licensing process and where appropriate to lodge an objection or make a representation as these can be very helpful to the Board in determining applications.

There is more information about making objections and representations in the licensing section on clackswab. Further general assistance on procedural matters can be obtained by emailing the licensing service at the email address given in paragraph 4.5 above. As there is a time limit within which an objection or representation must be made, it is in the interests of anyone intending to object or make a representation to do so in good time.

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

7.3 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.

7.4 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 - premises licence applications must be accompanied by planning, building standards and if food is to be supplied on the premises a food hygiene certificates).

## **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 to comply with the Public Sector Equality Duty under section 149 of the Equality Act 2010 and will take such steps as are required to ensure its compliance. As part of Clackmannanshire Council's publication of equality outcomes, the Board has been identified as a separate public authority and has published its equality outcomes relating to making letters available if required in other languages and the provision of an interpreter at Board hearings if required to enable it better to perform the equality duty. The Board is aware of and will comply with the requirement to publish progress reports regarding the integration of the equality duty into the performance of its functions and towards achievement of its equality outcomes.... A copy of the published Equalities Outcomes are available to view online at [www.clacksweb.gov.uk](http://www.clacksweb.gov.uk) .
- 9.4 The Board will continue to work with the co-ordinator of the Clackmannanshire Alcohol and Drugs Partnership. The co-ordinator maintains a delivery plan detailing the key milestones and local outcomes in regard to tackling misuse..
- 9.5 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.
- 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.

\* Section 50 certificates are so called as they are provided for by section 50 of the 2005 Act. There are 3 types of section 50 certificates relating respectively to planning, building standards and food hygiene (only relevant if food is to be supplied on the premises).

The purpose of section 50 certificates is to provide assurances to the Board as part of their consideration of a premises licence application regarding the planning status and construction of the premises and that the premises are suitable for the supply of food. These certificates must be lodged with a premises licence application.

In the case of a provisional premises licence application (which is appropriate where premises are yet to be or are in the course of being constructed or converted for use as licensed premises) only a provisional planning certificate need be lodged with the application.

A planning certificate signed on behalf of the Council as Planning Authority sets out the planning status of the premises by confirming either that planning permission for any development of the premises required for their proposed use as licensed premises has been granted or no such planning permission is required.

A provisional planning certificate states that either planning permission or planning permission in principle has been obtained for the proposed construction or conversion or no such planning permission is required.

A building standards certificate signed by the Council is concerned with compliance with the Building (Scotland) Regulations and states either that a completion certificate has been accepted in respect of any construction or conversion of the premises in connection with their proposed use as licensed premises; that permission for temporary occupation or use of the premises has been granted; or that no such completion certificate or permission is required.

A food hygiene certificate signed on behalf of the food authority for the area relates to food safety matters and states that the premises comply with the requirements of the relevant regulations relating to construction, layout, drainage, ventilation, lighting and water supply or concerned with the provision of sanitary and washing facilities.

An application for confirmation of a provisional premises licence (required before the premises can be used as licensed premises following construction or conversion) must be accompanied by a planning certificate (where the provisional planning certificate relates to planning permission in principle only); a building standards certificate and (where appropriate) a food hygiene certificate.

- 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 Scottish Fire and Rescue Service 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 Board's general approach as to how we will seek to promote each of the Licensing Objectives. The Board will continue to exercise its power where required to impose conditions it considers necessary or expedient with a view to ensuring the licensing objectives are met. The Board may do this when granting a premises licence or occasional licence application.

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

1.1 The Board is required when considering and determining applications for a premises licence, variation of a premises licence and an occasional licence 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 and ensure that in so far as these matters are regulated by the Act that they pay proper regard to them and comply with the statutory provisions :

- 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 and the adoption of age challenge schemes such as Challenge 25 ;
- provision of effective CCTV equipment acceptable to Police Scotland;
- 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.
- put in place an age verification policy and ensure that it is understood and enforced on the premises

#### 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 will 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 of Scotland 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 late entry to late night entertainment premises, which prohibits entry to premises after a certain time. Evidence from the Chief Constable of Scotland and the Licensing Standards Officer (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 generally used to refer to premises where the primary purpose is the sale and consumption of alcohol and a high percentage of customers will be standing.

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 by the use of the premises for the sale of alcohol and the carrying on of other activities on the premises. The Board will where it considers it necessary or expedient for the purposes of securing public safety impose conditions requiring anything to be done or prohibiting or restricting anything from being done in connection with the sale of alcohol on the premises or in connection with any of the other activities carried on in the premises. To this end, applicants will, where appropriate, be expected to demonstrate in their operating plan in respect of activities listed in section 5(f) 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 specified activities.

In cases where the Board is minded to refuse an application for a premises licence on the basis that granting it would be inconsistent with the licensing objective of securing public safety it may propose modifications to the operating plan which, if accepted by the applicant, will enable the Board to grant the application. The Board will also exercise its power to make a



variation of the conditions attached to a premises licence if it considers it necessary for the purposes of the securing public safety licensing objective.

2.2 Applicants should have regard to securing public safety in preparing the operating plan and layout plan which will accompany a premises licence application. Securing public safety will be a relevant consideration in connection with the following matters:

- 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 which applicants should consider in connection with securing public safety may include:

- carrying out risk assessments;
- installation of CCTV equipment acceptable to Police Scotland;
- 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;
- ensuring compliance with the provisions of The Smoking, Health and Social Care (Scotland) Act 2005 and The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 and taking all reasonable steps to ensure that customers and staff within the premises are not put at any risk by the presence of second hand smoke
- if appropriate, SIA trained door security staff. The security industry is regulated in terms of the Private Security Industry Act 2001 which established the Security Industry Authority (SIA).The SIA is responsible for the licensing regime whereby security operatives are vetted and trained and are registered.

Sometimes applicants indicate that they propose to provide their own stewarding - for example in the case of a club or voluntary organisation stewarding will be provided by committee members or, in one case, stewarding for an 18th birthday party was to be provided by some of the parents attending the function. The Board is generally not in favour of such an approach to stewarding as such volunteers are not trained to supervise and control access to the premises and to deal with any violent conduct or anti-social behaviour. Employment of SIA stewards provides a premises licence holder with the assurance that they are fit and proper persons to operate as door stewards and are trained to carry out the role of door stewards in a proper and professional manner.

The 2001 Act creates a number of offences designed to ensure that a party requiring to employ stewards can be assured that they are SIA licensed.

The 2001 Act creates an offence of engaging in any licensable conduct without having a valid SIA licence. The following are some of the main actions which are made unlawful :

- a contractor carrying out door stewarding in terms of a contract without holding a SIA licence;
- carrying out door stewarding without holding a licence in the course of employment by an employer who is contracted to provide the service ;
- providing door stewarding services for another party by using security operatives who are not SIA licensed.

The SIA maintains public registers of SIA licence holders and contractors approved as providers of security industry services.

In most cases, the Board will not normally impose a condition regarding SIA stewards for private functions. This condition will, however, normally be imposed for certain public events such as live music events and other similar events where the Board considers it necessary or expedient to impose this condition for the purposes of any or all of the preventing crime and disorder, securing public safety and preventing public nuisance licensing objectives.

The Board has already successfully employed and will continue to impose in appropriate cases conditions regarding the installation of CCTV equipment and the employment of SIA trained door security staff having had regard to the location of the premises, nature of the activities to be carried on in the premises and persons likely to frequent them.

### **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 Board will have particular regard to these issues in the case of proposed pavement cafes and other outdoor drinking areas and, if minded to grant such applications, will attach appropriate conditions;
  - 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 and meets with the approval of Police Scotland;
  - 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 Applicants and licensees should consider the following matters :

- 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 and is approved by Police Scotland;
- 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 and will have regard to the views of the Health Board which, in

recognition of the significant concerns about this issue, is now a statutory consultee.

4.2 Premises licence holders are reminded of their responsibilities having regard to the licensing objectives (see **PART A - INTRODUCTION** paragraph 3.1) to their customers and wider society in connection with the sale of alcohol. The Board looks to the licensed trade to promote a culture of moderate and responsible consumption of alcohol. It is their responsibility to ensure that such a culture is promoted and embedded by their managers and staff. Applicants for premises licences and premises licence holders should ensure that due prominence is given to the following matters which must be covered in staff training :

- best practice as regards standards of service and refusing service;
- units of alcohol and the relationship between units and the strength of alcoholic drinks;
- the sensible drinking limits for males and females recommended by the British Medical Association.

Applicants and licensees are requested to have regard to and in the case of statutory provisions are required to comply with the following:

- 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;
- ensuring compliance with the provisions of The Smoking, Health and Social Care (Scotland) Act 2005 and The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 and taking all reasonable steps to ensure that customers and staff within the premises are not put at any risk by the presence of second hand smoke;
- having a robust age verification policy in place and ensuring that managers and staff are aware of it and are enforcing it;
- being thoroughly conversant with and ensuring managers and staff are complying with the law regarding pricing of alcohol and irresponsible drinks promotions.

A breach of the matters specified in either or both of the last two bullet points above are very likely to result in a review of the premises licence.

4.3 Licence holders are reminded of the following offences relating to the sale of alcohol:

- sale of alcohol to a child or young person
- allowing sale of alcohol to a child or young person
- sale of alcohol to a drunk person on licensed premises
- allowing breach of the peace, drunkenness or other disorderly conduct to take place on licensed premises.

Conviction of any of the foregoing offences is likely to result in a review of the premises licence. However, in the absence of a conviction, if there is a sufficiency of information, it remains likely that there will be a review of the premises licence in question.

## **5.0 Protecting Children from Harm**

5.1 The Board will seek advice from and have particular regard to the views of the Stirling and Clackmannanshire Child Protection Committees.

5.2 The Board's general policy stance is to welcome and encourage well thought out applications for premises licences and occasional licences 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 and put in place where legally required if they are to allow children and young persons within their premises :

- appropriate measures (eg good quality staff training, age verification policy) 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 - a person may purchase beer, wine, cider or perry for consumption by a young person with a meal supplied on the premises);
- instructions to managers and staff regarding taking reasonable steps to establish the age of a child or young person and acceptable documents for that purpose - a passport, an EU photocard driving licence, a Ministry of Defence Form 90 (Defence Identity Card), a photographic identity card bearing the national Proof of Age Standards Scheme hologram, a national identity card issued by an EU member State (other than the UK), Norway, Iceland, Liechtenstein or Switzerland and a Biometric Immigration Document;

- effective and responsible premises management;
- ensuring compliance with the provisions of The Smoking, Health and Social Care (Scotland) Act 2005 and The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 and taking all reasonable steps to ensure that children and young persons within the premises are not put at any risk by the presence of second hand smoke;
- 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;
- provision of unbreakable drinks containers for the use of children; and
- measures to ensure children or young people 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 of Scotland and the LSO.

It is in the interests of the applicant that as full information as possible be provided in the application form in response to the questions. Not only will this assist the Board but may avoid the attraction of adverse comment as mentioned above, and the potential for the application to be refused.

If application forms are not fully completed or sufficient information provided, the application form may be returned for proper completion.

The guidance contained in the following paragraphs is not intended to be prescriptive in any way. It is intended to set out the Board's approach to these matters and indicate to applicants and licensees matters which in the view of the Board they ought to have regard to. Each application will be determined

on its own merits taking account of the facts and circumstances relevant to the application and any submissions which may be made about it.

Applicants must consider whether it is appropriate given the nature of the event, the activities proposed and the hours sought that children be present either at all or for the duration of the event.

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 children's 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 participating in 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. The Board will regulate this issue by the imposition of appropriate conditions.

Where an 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 other than members of bands or participants in sporting events 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. Applicants and licensees should be mindful of the views of the Board on this issue when framing their operating plans or applying for occasional licences or extensions of licensed hours.

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;
- (ii) knowingly allow alcohol to be sold to a child or young person;
- (iii) knowingly allow a child or young person to consume alcohol on relevant premises; and
- (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 or in the case of other events or occasions where the Board determines it to be appropriate, the Board if minded to grant the application will 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 will generally be recommended that the Board impose a condition requiring the employment of SI A licensed stewards for these types of events. Applicants should have regard to these considerations when applying for occasional licences for such events and should ensure that the organisers are aware of the Board's likely requirements.

This policy objective aids the promotion of public health, the prevention of crime and disorder and the protection of children from harm licensing objectives.

- 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 offences of purchase of alcohol by or for persons under the age of 18 and stating whether persons under the age of 18 years are permitted entry and if so to which parts of the premises.

It is frequently brought to the Board's attention that such notices are not being displayed properly in accordance with the legal requirements.

Such failings on the part of licensees are unacceptable. It is the duty of licensees to ensure that they are familiar with the legal requirements and to comply with them. Licensees are reminded that these notices are there to inform customers and persons who wish to enter the premises of any age related restrictions.

Persistent failure to display these notices or to display them properly is likely to lead to a premises licence review.

## **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 or 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 at any time. In addition, along with the Police, they have powers under Section 137 to enter premises at any reasonable time 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.

It is an offence for any person to obstruct intentionally a Licensing Standards Officer in the exercise of his/her powers of entry or inspection or to refuse or fail without reasonable excuse to give the Licensing Standards Officer such assistance, provide him/her with such information or produce such documents as he/she may reasonably require.

Depending on the circumstances, the Board is also likely to review a premises licence either on a premises licence review application being made or on the Board making a premises licence review proposal irrespective of whether there has been a conviction for such an offence. In the case of an occasional licence application, the Board will have regard to any such previous instance

of obstruction or refusal or failure whether or not resulting in conviction of such an offence should any representation or objection be made in respect of same.

A Constable or a Licensing Standards Officer may require a person having custody or control of a premises licence (or certified copy of it) to produce it or the certified copy for inspection. Failure to do so without reasonable excuse is an offence.

A Constable or Licensing Standards Officer may when a personal licence holder is working at a licensed premises and is on the premises require the personal licence holder to produce the licence for examination. Failure to do so without reasonable excuse is an offence.

Premises licence holders are advised to ensure that the premises licence is available for inspection. It will greatly assist the Licensing Standards Officer if premises licence holders ensure that personal licence holders working in their premises are aware of and are in a position to comply with the requirement to produce their personal licences.

Persistent disregard of the requirement to produce the premises licence is likely to result in a review of the licence.

- 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 Scotland 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

2.8 Applicants for premises licences and premises licence holders should bear in mind that proper training is an essential part of the reforms introduced by the Act. Training is required to be undertaken by premises managers and all those who hold a personal licence and all staff who make sales of alcohol or who serve alcohol to any person.

Staff training in this latter category may be carried out by either a personal licence holder or a person holding an appropriate training qualification.

The Board requires premises licence holders to accord a high degree of importance to ensuring that their staff are trained to the statutorily required standard as provided for in the Licensing (Training of Staff)(Scotland) Regulations 2007. It is the responsibility of premises licence holders to satisfy themselves that this training has been carried out to a satisfactory standard and that the training is not only understood by staff but that they observe it and act in accordance with it in the course of carrying out their duties.

The Licensing Standards Officer has on a number of occasions been required to report to the Board failure to comply with the record maintenance requirements in mandatory condition 6(2A) and (2B).

These provide that at any time when a member of staff other than a personal licence holder is working on the premises for the purposes of selling or serving alcohol, there must be kept **on the premises** the training record of that person in the prescribed form provided in the Licensing (Mandatory Conditions No.2) (Scotland) Regulations 2007.

These provide for signed declarations by members of staff that they have received the training required in terms of the above training of staff regulations and by the person providing the training confirming that he/she has provided the required training and the date it was provided on.

These training records require to be produced to the Licensing Standards Officer on request.

The Board has been disappointed and concerned to note that in a significant number of cases these training records have not been available when requested. In some cases it has taken a number of visits and a considerable amount of effort on the Licensing Standards Officer's part to have this breach of the regulations satisfactorily remedied. In at least one case, the Licensing Standards Officer has required to make a premises licence review application.

The Board wishes it to be known that it takes compliance with the above regulatory requirements with the utmost seriousness. The Board is

determined to drive up standards of record keeping with a view to ensuring that premises licence holders are aware of and comply with their legal obligations in respect of these matters.

Its policy stance in the case of flagrant or persistent failure to comply or in cases of falsification of training records is that the premises licence in question should be the subject of review either at the instigation of the Licensing Standards Officer by making a premises licence review application or the Board on its own initiative making a premises licence review proposal.

### **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 i) 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 ii) 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 protecting and improving 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 national significance. Such an extension may 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. The Board's policy stance will be that it will normally be prepared to allow an extension of up to 1 hour on existing licensed hours (subject to this resulting in a terminal hour of no later than 3am) in connection with festive related special events. However, as the Board's policy is not to make a determination providing for 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 Act and this paragraph of the Policy Statement.

For the above purpose, the festive season will be deemed to be the period commencing on the first Friday in the month of December in each year and terminating on the second Saturday in January in each year.

#### 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 to provide a pavement cafe facility.

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 or applicants for premises licences who indicate in their proposed operating plan that they wish to operate outdoor drinking facilities.

(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 :

(i) 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).

(ii) 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 Scottish Fire and Rescue Service 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 Scottish Fire and Rescue Service.

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

(c) Matters Board will have regard to

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

- (i) 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;
- (ii) the condition of the proposed outdoor drinking area;
- (iii) the nature and extent of the proposed use of the outdoor drinking area;
- (iv) the persons likely to frequent the outdoor drinking area; and

- (v) 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 must seek the consent of the Roads Authority prior to submitting any application where the proposed area forms part of the public footpath or road.

(d) Information to be provided within the application

- (i) 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 pm
- (ii) 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 chairs are provided.
- (iii) 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.
- (iv) Whether any adjoining properties are overlooked by or overlook the proposed facility.
- (v) 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.
- (vi) 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.
- (vii) Provision of ashtrays & location of litter bins for areas excluded from definition of "no smoking premises" as prescribed in The Prohibition Of Smoking In Certain Premises (Scotland) Regulations 2006

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

#### (e) 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, some or all of the following conditions shall apply to the licence taking account of the circumstances of the individual application :

- 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 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.

The Board would encourage that a written statement be lodged with the application for premises licence or variation explaining how the applicant proposes to achieve the following:

- (i) enforce the above management requirements and conditions; and
- (ii) have arrangements in place to eliminate noise, nuisance and anti-social behaviour

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.

## 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.

Application requires to be made on the form which is available from the licensing administrator or on clacksweb.

Applicants should ensure that application forms are fully and properly completed. If a particular part of the form is not relevant, this should be indicated by stating "not applicable or N/A" in the relevant box rather than being left blank.

Particular attention should be paid to providing a full and accurate description of the activities to be carried on during the event or occasion for which an occasional licence is sought (Section 3) and Section 6 (Children). It is not the job of the licensing administrator to seek information in the case of badly completed application forms. Such forms may be returned to the applicant for proper completion which will cause delay and may cause difficulties for the applicant if as a result they are not able to lodge the application timeously.

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 of Scotland and the LSO have a 21 day period to make representations or objections to an application. The Board must advertise occasional licence applications on clacksweb 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.

Despite the above guidance being well known throughout the licensed trade, the Board is concerned and very dissatisfied at the number of occasional licence applications which continue to be lodged within the above 21 day period.

Whilst the Board has power to relieve an applicant of failure to comply with this requirement where the failure to lodge timeously arises due to mistake, oversight or other excusable cause, this is subject to the Board considering it appropriate to relieve the failure taking account of all the circumstances.

In cases where the Board has previously granted relief to a licence holder under the above provision, and in circumstances where the failure has arisen due to mistake or oversight on the part of the same applicant or organiser, the Board wishes to emphasise that it will consider very carefully whether it will be appropriate to relieve a further failure.

There is a clear onus on the part of licence holders, other applicants and organisers of events taking place on non-licensed premises to make inquiry of the licensing administrator and to ensure that applications are lodged in good time.

There is an exception in the case of occasional licence applications which the Board is satisfied must be dealt with quickly. In these cases, the Board can reduce the 21 day period allowed to the Chief Constable and the LSO as explained above to a shorter period subject to a minimum of 24 hours.

This commonly arises in the case of funeral purveys where the Board is clearly amenable to exercising this power. However, applicants should clearly understand that this power is only exercisable where there is some reason intrinsic to the nature and circumstances of the occasion which have precluded an application being lodged in accordance with the normal statutory requirements. It is not exercisable in cases of mistake and oversight which will require to be considered initially under the Board's general dispensing power explained above to relieve an applicant of the consequences of failure to lodge an application timeously.

- 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 of Scotland 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 notice recommending refusal or a report having been received from the Chief Constable and the Licensing Standards Officer respectively, and no objections being received, the Board must 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, notice recommending refusal has been made by the Chief Constable of Scotland, a report has been lodged by the LSO or an objection has been received, 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 6 elected members of the Board. The Committee will determine the application 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.
- 4.10 An occasional licence is subject to the mandatory conditions contained in Schedule 4 of the Act.

The Board has power to impose additional conditions which it considers necessary or expedient for the purposes of any of the licensing objectives. Depending on the nature and circumstances of the occasion or event, the Board will consider imposing conditions regulating:-

- children's access,
- provision of SIA trained stewards,
- provision of food,
- use of trained staff
- having a personal licence holder (or a greater number sufficient for the occasion or event) in attendance throughout the occasion or event.

Applicants and organisers of events or special occasions should have particular regard as to the suitability of the event for children to be present at or, taking account of the hours sought, whether it is appropriate that children should be allowed entry for the full duration of the event. Particular regard should be had to the protecting children from harm licensing objective in this context.

In the case of occasional licences granted to premises licence and personal licence holders every sale of alcohol on the premises must be authorised either generally or specifically. The Board considers that this will require the presence of a personal licence holder throughout the event and will normally impose a condition to this effect. The Board also will normally require the employment at the event of staff trained to the statutorily prescribed standard.

Employment of a personal licence holder is highly recommended in the case of occasional licences granted to voluntary organisations.

Such conditions are considered necessary to ensure that the sale of alcohol is properly supervised and conducted in accordance with the requirements of the Act and regulations made thereunder.

## **5.0 Board Hearings**

- 5.1 The Board has delegated authority to the Clerk to grant straightforward applications for minor variations and transfers of premises licences; personal licences and certain refusals of personal licences; occasional licences and extended hours; confirmation of provisional premises licences.

Details can be provided on application to the licensing administrator.

This does not apply to determination of applications for premises licences; non-minor variations; transfers where applicant has been convicted of certain offences; personal licences and renewals where applicant has been convicted of certain offences; hearings including premises licence reviews; and orders to revoke, suspend or endorse a personal licence. All of these matters must come before the full Board for determination..

- 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 otherwise 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 of Scotland, 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 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 strongly advises that all applicants and licensees familiarise themselves with the mandatory conditions applicable to all premises licences and occasional licences contained in Schedules 3 and 4 of the Act.. Alcohol may not be sold except under and in accordance with a premises licence or an occasional licence. Anyone who sells alcohol or who knowingly allows alcohol to be sold in breach of the above provision commits an offence. Failure to comply with a condition of the licence will constitute an offence.

Whether or not a licensee is convicted of such an offence, it is the Board's policy to regard any substantive or repeated breach of any condition of the licence as a serious matter which is likely to result in a review in the case of a premises licence and may lead to an objection or representation in the case of future applications for an occasional licence by the same applicant.

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.

The above comments regarding compliance with mandatory conditions are equally applicable to additional conditions imposed by the Board.

- 6.2 "Irresponsible drinks promotions" are prohibited in terms of the mandatory conditions contained in Schedules 3 and 4 of the Act. The Board considers that the following are examples of promotions which are considered 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 in the case of a premises licence and Schedule 4 paragraph 7(2)(b) in the case of an occasional licence.

**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)(premises licence) and Schedule 4 paragraph 7(2)(e) (occasional licence) apply.

**3. Double up.** For example,, customers are offered the chance to double up by offering a double measure for an extra nominal sum of money (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) (premises licence) and Schedule 4 paragraph 7(2)(c) (occasional licence) 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 in respect of 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.

6.3 Similarly, paragraphs 7A and 7 of Schedule 3 (premises licences) and paragraphs 6A and 6 of Schedule 4 (occasional licences) prohibit the variation of the price of alcohol for a period of 72 hours where the price Variations can only take effect at the beginning of a period of licensed hours. 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

6.4 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.

6.5 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. These require that a designated person who is the holder of a personal licence must be present on the premises from 1am when the premises are open until the earlier of next closing time of the premises and 5am or such other time as the Board may specify.

## **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 will seek information from consultees 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 consultees the number of licensed premises or those of a particular kind are close to over provision.

The Board will also consider any information provided to it of alcohol related health and other problems above the national norm shown to exist either in Clackmannanshire as a whole or particular identified localities within Clackmannanshire and which can be demonstrated to be caused by an overprovision of licensed premises or licensed premises of a particular description or to be indicative of the number of licensed premises or those of a particular description being close to overprovision.

7.6 Having taken into account the views of the consultees, the Chief Constable of Scotland 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. The Board having received no information or representations indicating that the position within Clackmannanshire has changed since the publication of its previous Statement of Licensing Policy and, subject to any responses received during the period of consultation on the draft Statement of Licensing Policy remains of the view that there are no localities within Clackmannanshire where overprovision exists or is close to existing.

- 7.7 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 the responsibility of applicants and licence holders to comply with this legislation.

## **9.0 Members' Clubs**

- 9.1 Members' clubs are 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. The body requires to be constituted with lawful objects which it regularly and actively furthers in accordance with its constitution. If information comes to the attention of the Board that a body is not being conducted actively in accordance with its stated objects, this may result in an investigation as to whether the body is a genuine members' club entitled to hold a premises licence.

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.

## **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. The Board's approach to this matter will be to examine and determine the locality for this purpose and whether in fact a number of persons in that locality are or are likely to become reliant to a significant extent on the premises as a principal source of petrol or derv or groceries (should groceries be available on the premises).

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;
- 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 (if available on the premises) with supporting evidence in respect of who in general constitute the relevant body of residents and details of their reliance on the premises and its extent.

The Board will carefully consider any application on its merits and in reaching a decision will take account of all relevant information and considerations made known to it.

## **11.0 Personal Licence Holders**

A personal licence is required to authorise a person to supervise or authorise the sale of alcohol. Designated premises managers must hold personal licences. A personal licence holder must have a licensing qualification which has been accredited by the Scottish Ministers. A licensing qualification is obtained by successfully completing an accredited training course.

Personal Licence Holders are required to undertake training every 5 years in order to keep their licences current. The Board will issue each personal licence holder with notice of this requirement no later than 3 months prior to the expiry of each 5 year period.

Each personal licence holder must produce, to the Board which issued the personal licence, no later than 3 months after the expiry of the period of 5 years (beginning with the date of issue of the holder's personal licence) and each subsequent period of 5 years (while the personal licence has effect) evidence in prescribed form that the personal licence holder has complied with the prescribed training requirements for personal licence holders.

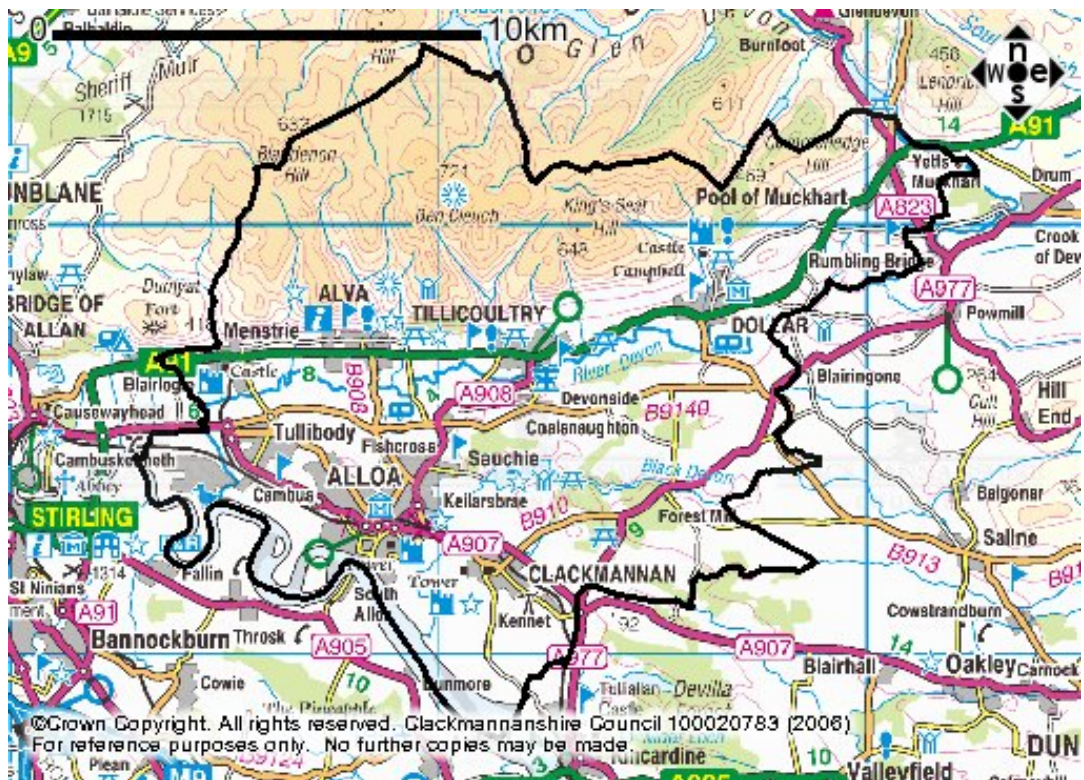
Personal licence holders working in Clackmannanshire should only send evidence of completion of training to Clackmannanshire Licensing Board if this Board issued their personal licence. Personal licence holders should receive notice from whichever Board issued their licences and they should send evidence of completion of training to that Board.

It is the Board's interpretation of this requirement that although a personal licence holder has 3 months from the expiry of each 5 year period within which to produce evidence of completion of training, the training must have been undertaken and completed before the expiry of each 5 year period.

If evidence of completion of training is not produced as required, personal licence holders are advised that the Board is required in terms of the Act to revoke the personal licence in question. The Board is bound by this requirement and has no discretion to grant an extension of time.

Due to the serious consequences of non-compliance, personal licence holders are advised to ensure that they understand the requirements of the Act in this regard. If in any doubt, they should seek further guidance from the licensing administrator if their personal licence was issued by Clackmannanshire Licensing Board and otherwise from the Board of issue.

## Appendix 1



## Appendix II - List of Consultees

- 1 All elected members of Clackmannanshire Council
- 2 The Chief Constable of Scotland, Police Headquarters, PO Box 21184, Alloa FK10 9DE
- 3 The Chief Fire Officer, Scottish Fire and Rescue Service Headquarters, 5 Whitefriars Crescent, Perth PH2 0PA
- 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 acting Chair Chief Inspector Sneddon Police Scotland, Clackmannanshire Council, Lime Tree House, Alloa, FK10 1EX
- 33 Clackmannanshire Womens Aid
- 34 Clackmannanshire Library Services