

THE LICENSING (SCOTLAND) ACT 2005

POLICY STATEMENT

BY THE EAST RENFREWSHIRE LICENSING BOARD

The East Renfrewshire Licensing Board (hereinafter referred to as “the Board”) is responsible for the administration of the Licensing (Scotland) Act 2005 (hereinafter referred to as “the 2005 Act”).

In terms of Section 5 of the 2005 Act, the East Renfrewshire Licensing Board is responsible for the local government area known as East Renfrewshire.

In terms of Section 6 of the 2005 Act each Board must before the beginning of each three year period publish a Statement of its Policy with respect to the exercise of its functions under the 2005 Act during that period. The Policy Statement is a live document and will be continuously amended as necessary to take account of changes in the law and representations from all consultees.

The first period commences on 1 December 2007 and the Board has agreed to adopt this Policy Statement.

1. FUNDAMENTAL PRINCIPLES

The Board will promote and have regard to the Licensing Objectives:-

1. Preventing crime and disorder.
2. Securing public safety.
3. Preventing public nuisance.
4. Protecting and improving public health, and
5. Protecting children from harm.

2. OVERALL OBJECTIVES

The 2005 Act is about regulating the sale of alcohol by persons and premises on which alcohol is sold.

Having regard to the terms of this Policy Statement, the Board will seek to achieve a consistent approach to liquor licensing within the East Renfrewshire area and to promote the wider principles of fairness, proportionality and equal treatment. Whilst every application will be considered on its own merits, this Policy Statement is designed to provide licence holders, prospective licence

holders, members of the public and responsible authorities such as the Police and the Fire Service, with information in advance on the Board's general approach to the making of licensing decisions. **The Board will expect compliance with the terms of the Policy Statement unless individual applications/licence holders can provide good reasons for their failure to do so.**

3. LICENCES

The Act provides for three types of licence:-

- (i) Premises licence
- (ii) Personal licence
- (iii) Occasional licence

The Board will be responsible for issuing all three types of licence.

4. BACKGROUND

A number of issues emerged from the pre-consultation exercise and they were subsequently addressed in developing this Policy Statement.

The Board is well aware of the important role licensed premises have in the positive contribution they make to local communities both in terms of their social and economic values. The Board wishes to continue where possible to foster and encourage this.

From 1 March 2008 the Board will be receiving applications for new licences and for licences passing under transition and has agreed that rather than attempt a radical change of policies from December 2007, any changes in the policy hours should be read in the context of licences granted under the Licensing (Scotland) Act 1976 Act. The Board acknowledges that licensing is not the primary mechanism for the control of public nuisance and antisocial behaviour once individuals have left licensed premises. Nevertheless the Board considers that licensing plays a key role in both preventing and controlling alcohol-related crime and disorder and antisocial behaviour through the promotion of the Licensing Objectives and the monitoring of licensed premises. The Board will look to the involvement in the liquor licensing process of the new Licensing Standards Officer to keep premises under review in order to maintain high standards of operation.

5. HOURS

In considering any application, the Board will determine the application on its own merits having regard to the Licensing Objectives and the terms of the 2005 Act.

Any applications received from premises wishing to open for twenty four hours will only be granted in exceptional circumstances.

As a general rule the Board endorses the guidance given by the Scottish Government that permitted hours for up to fourteen hours are reasonable.

(a) EARLY HOURS

The Board, for the purposes of this Policy Statement, will consider premises wishing to open before 11.00 am to be seeking early hours. In such cases the Board considers, in general, 9.00 am as an appropriate time.

(b) LATE HOURS

The Board is aware that there is yet to be enacted Regulations on late opening. For the purposes of this Policy Statement the Board regards late opening as after 11.00 pm. In such cases the Licensing Board considers, in general 1 am as an appropriate time. The Board will have regard to mandatory and discretionary conditions which might be attached.

The Board recognises that premises operating in residential areas can have a significant impact on the immediate community and this will be taken into account in considering all permitted hours. The underlying objective is to protect the wider public interest rather than commercial considerations. In general it is expected that no licence will be granted beyond 1.00 am.

The Board will continue to support local schemes such as PubWatch. The Board recognises that voluntary schemes amongst licensees can reduce public disorder and nuisance offences taking place within local communities. Where appropriate, the Board encourages membership of such schemes.

(c) OTHER HOURS

In terms of Section 64 of the 2005 Act, there is a presumption against the routine 24 hour opening of licensed premises. Any application received by the Board in respect of premises to be open for 24 hours will only be granted where it is demonstrated to the satisfaction of the Board that there are exceptional circumstances for doing so. The Board is of the view that such exceptional circumstances will only be capable of being demonstrated in a very limited number of cases.

The Guidance sets out that the Scottish Ministers are of the view that Boards should consider “exceptional circumstances” to cover special events such as one-off local or national festivals. The Guidance states that it is unlikely that “exceptional circumstances” would be constituted in the case of premises where there were routine requests to sell alcohol for 24 hours.

(d) OFF-SALES

In terms of the 2005 Act, the Board must refuse an application which proposes off sale hours before 10 am, after 10 pm or both. However, it is open to the Board to further restrict licensed hours for off-sales where it considers that the hours proposed would be inconsistent with the Licensing Objectives. In particular, where as a result of the hours operated (conversions) or proposed, premises are, or are likely to be, a source of, or focal point for, antisocial behaviour and thus compromise the Licensing Objectives of 'preventing crime and disorder' and 'preventing public nuisance', the Board may restrict the hours of operation. Unless so restricted the Board will generally permit off-sale hours from 10 am until 10 pm.

6. PERSONAL LICENCES

During the transitional period, applicants for a personal licence can apply at the following times:-

- Where the applicant is not to be a Premises Manager, at any time during the transition period
- Where the applicant is named as the Premises Manager on a Premises Licence Application, at the same time as the premises licence application

Where the premises licence application does not identify a premises manager at the time of the application, it will be acceptable to allow this information to be provided at any time prior to 1 December 2009, in terms of paragraph 17 of the Licensing (Transitional and Saving Provisions (Scotland) Order 2007. Licence holders should however note that, in the absence of that information between 1 September 2009 and 1 December 2009, the licence will not be operative having regard to the terms of paragraph 4 of Schedule 3 to the Act which states that "alcohol is not to be sold on the premises at any time when there is no premises manager in respect of the premises."

No grandfather rights have been made available for applicants for personal licences and accordingly, all applicants will be required to have obtained the appropriate licensing qualification required in terms of section 91 of the Act and in terms of the Licensing Qualification (Scotland) Regulations 2007 in order to be eligible for a personal licence.

7. OCCASIONAL EXTENSIONS

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

The Board may make a determination under Section 67 of the Act to extend licensed hours to enable premises to remain open longer for certain special occasions. In addition to consulting the East Renfrewshire Licensing Forum, the Board will request observations from the Chief Constable and from other relevant parties on the issues of crime prevention and public safety. It will notify its determination to the Chief Constable, to holders of licences and other relevant parties and will take appropriate steps to publicise the determination as widely as possible.

It is expected that no Occasional Extension will be granted beyond 2 am.

8. OFFENCES

In terms of Section 110 of the 2005 Act, as from 5 am on 1 September 2009 a notice in A4 size or larger must be displayed in all licensed premises containing the following statement:-

“This notice is displayed in accordance with the provisions of section 110 of the Licensing (Scotland) Act 2005.

It is an offence for a person under the age of 18 to buy or attempt to buy alcohol on these premises.

It is also an offence for any other person to buy or attempt to buy alcohol on these premises for a person under the age of 18.

Where there is doubt as to whether a person attempting to buy alcohol on these premises is aged 18 or over, alcohol will not be sold to the person except on production of evidence showing the person to be 18 or over.”

In addition notices will have to be displayed providing information on the units of alcohol contained within various drinks as from 1st September 2009.

Where there is doubt as to the age of a person attempting to buy alcohol, only the following forms of identification should be accepted:-

- A passport
- A European Union photocard driving licence, or
- An identity card of a type approved by the British Retail Consortium for the purposes of its Proof of Age Standards Scheme

9. GARAGES/PETROL STATIONS

Grandfather Rights will not apply to conversion applications in respect of garages and petrol station shops which hold a licence under the 1976 Act unless the Board considers that they fall under the exemption provided by section 123 (5) of the 2005 Act which allows premises used for the sale by

retail of petrol or derv, or which form part of premises so used, to apply for a premises licence 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 a principal source of petrol or derv, or groceries.

If existing garages or petrol station shops do not fall within this definition, the Board must refuse any application for conversion in terms of section 23(5)(a) of the Act and they will no longer be able to sell alcohol from 1 September 2009. The same approach will apply to any new applications for a premises licence in respect of a garage/petrol station. The exemption in the Act was provided principally in order to ensure that the vital existence of rural petrol stations is not compromised. However, it was also recognised that the exemption would be of benefit to garages in some urban areas where the community is reliant on the premises as the local shop.

In determining whether or not the ground for refusal in section 23(5)(a) as aforesaid should be invoked, the Board will, as a matter of general policy, take the view that there will be few communities in East Renfrewshire reliant on such premises as a principal source of petrol or derv or groceries, given the widespread provision of such facilities throughout the area. Whilst this will be the Board's general approach as a matter of policy, the individual circumstances of each application in respect of excluded premises will be considered carefully on its merits when the conversion application or a new premises licence application is being determined. Given this general approach the Board does not consider that it would be appropriate to fix any set criteria to be addressed in seeking to persuade the Board that the aforesaid ground for refusal should not be invoked. However the Board will expect applicants to be able to demonstrate that similar facilities could not be accessed elsewhere in the area without *significant* difficulty for those living in the locality of the premises which are the subject of the application.

10. NATIONAL AND LOCAL EVENTS CONFERENCES

The Board will, in exceptional circumstances, grant extensions beyond the Standard early and late hours referred to in paragraphs 5(a) and 5(b) above but the fact that an event is taking place is no reason on its own to extend permitted hours. Any extension will only be granted after careful consideration and having regard to the particular event and may require additional conditions to manage the event.

11. MAKING AN OBJECTION OR REPRESENTATION

Any person may object or make a representation regarding an application for a premises licence. An objection to an application must be made on one or more of the grounds for refusal referred to in section 23(5) of the Act which are noted below under the section "Determination of Applications". Representations may be made in support of the application, or proposing modification to the operating plan or proposing conditions which it is

considered should be attached to the licence. Objections and representations must be made within the time limit specified in the notice displayed at the premises by the applicant and in the Board's newspaper/web-site notice.

Whilst any person may object or make a representation, the Board may reject a notice of objection or representation if it is considered to be frivolous or vexatious and, in addition, may seek to recover from the objector any expenses incurred in considering the matter.

The Chief Constable may also object to an application if he has reason to believe that the applicant or any connected person is involved in serious organised crime and by reason of that involvement the application ought to be refused for the purposes of the crime prevention objective.

The Board will provide the applicant with a copy of all objections and representations received.

It is believed that the Scottish Executive intends to produce pro-forma notices of objections and representations which it will recommend are used in making an objection or representation. If and when these pro-forma notices are produced, copies will be available from the Clerk.

12. DETERMINATION OF APPLICATIONS

The Board must hold a hearing for the purpose of considering and determining an application for a premises licence and have regard to any competent objection or representation made in respect of the application. Where objections or representations have been received, the applicant will be cited to appear at a hearing of the application. Those who have made competent objections and representations will also be invited to attend the hearing to address the Board on the basis of their objection or representation. Meetings of the Board will be held as and when necessary given appropriate notice within the Council Chambers, Council Offices, Eastwood Park, Rouken Glen Road, Giffnock, East Renfrewshire, G46 6UG or within the Council Offices, Main Street, Barrhead, East Renfrewshire, G78 1SY.

A party to the hearing of an application may be represented by another person. The Board may decide not to hear representations from a person who claims to represent a party if he/she is unable to produce written authority to that effect from that party. Where a valid objection or representation has been made in respect of an application but that party is not represented at the hearing, the Board will still take the objection or representation into account and the applicant will be expected to address the objection or representation in their submissions to the Board.

The Board will also consider any comments received from the Council's Building Control, Planning and Environmental Services divisions regarding the application.

The Board is required to give consideration as to whether one of the grounds for refusal set out in section 23(5) of the Act applies. These are:-

- That the subject premises are excluded premises being those situated at motorway service stations and, subject to certain exceptions, premises used as a garage;
- That an application in respect of the same premises has been refused in the last year, unless the Board has directed otherwise at the time of refusal or there has been a material change in circumstances;
- That the application, if granted, would allow the sale of alcohol for a continuous period of 24 hours without there being exceptional circumstances;
- That the Board considers that the granting of the application would be inconsistent with one or more of the Licensing Objectives. In considering whether the grant of the licence would be inconsistent with the Licensing Objectives, the Board must take account of any conviction notice and any refusal recommendation made by the Chief Constable for the purpose of the crime prevention objective and, as regards any of the Licensing Objectives, the anti-social behaviour report provided by the Chief Constable of Strathclyde Police.
- That having regard to the nature of the activities proposed to be carried on in the premises, the location, character and condition of the premises and the persons likely to frequent the premises, the Board considers that the premises are unsuitable for use for the sale of alcohol.
- That having regard to the number and capacity of licensed premises, or licensed premises of the same or similar description as the subject premises, in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted there would be an over provision of licensed premises, or licensed premises of a particular description.

If none of the above grounds of refusal apply, then the application must be granted by the Board. If any of them are found to apply, the application must be refused. However, the Board may, with the applicant's consent, modify the operating plan in order to resolve any issue of concern and thus grant the application where it would otherwise have refused it. For example, this power may be used to control the access of children to the premises in pursuance of the "protecting children from harm" objective.

Following the determination of the application, the Board will give notice of the grant or refusal of the application to the applicant, the Chief Constable and any person who gave notice of an objection or representation in respect of the application. Such notice will be given within 7 days of the grant or refusal of the application in question.

Any person who is entitled to require a Statement of Reasons must make their request by sending a notice to the Clerk within 14 days of receiving the notice of the decision.

13. OVERPROVISION

The Board welcomes the requirement to state the extent to which the Board considers there to be overprovision of:-

- a. Licensed premises, or
- b. Licensed premises of a particular description, in any locality within the Board's area.

The Board recognises that at the time of making of this Policy Statement there is insufficient evidence before the Board to determine if there is overprovision in any locality. The Board recognises that it will not be able to reach such a decision until it has information on the number and capacity of licensed premises. This information will not be before the Board until the transitional period which commences 1 February 2008 is completed and therefore will not be able to carry out its duty until after 30 September 2009. As an interim position that each application will be considered on its own merits having regard to the information available at the time of the application.

14. POLICY RELATIVE TO THE MANAGEMENT OF OUTSIDE DRINKING AREAS

Where applicants for a premises licence propose within their operating plan to provide an outside drinking area or areas, the Board will expect the applicant to have regard to the need to ensure that the use of such areas will not cause disturbance or nuisance to the occupiers of other premises in the locality.

Where an applicant intends to apply for an outside drinking area to be included within the licensed area of the premises, that area must be included within the layout plan for the premises and clearly indicated as such. The applicant must also be able to advise as to how the proposed licensed outdoor area will be delineated on the ground by a removable barrier designed to allow access and egress for disabled persons. The requirement for physical delineation on the ground will then be made a condition of the premises licence in respect of outdoor drinking areas. It is expected that Licensing Standards Officers will monitor for compliance with this particular condition and report to the Board as appropriate.

It will also be a condition of the premises licence in respect of outdoor areas that sufficient ashtrays and other litter receptacles are to be provided in outdoor areas which are excluded from the definition of "*no smoking premises*" as prescribed in the Prohibition of Smoking in Certain Premises

(Scotland) Regulations 2006. In addition, all drinks taken to the outdoor area will be decanted into plastic or toughened glass containers.

The Board will also expect the applicant to be able to demonstrate their intention to put in place effective management controls, supervision and other measures to ensure that the use of such areas by patrons does not have an adverse impact on the locality, particularly to occupiers of premises in the vicinity of the application premises.

In relation to noise control, and in pursuance of the Licensing Objective of Preventing Public Nuisance, generally, the Board will not permit amplified sound or music to be played within, or relayed to, outdoor drinking areas.

Where the proposed outdoor area is situated on a public footway, the Board expects applicants applying for outdoor areas to have obtained consent from the Council's Roads Division under section 59 of the Roads (Scotland) Act 1984. The Board expects that premises licence holders will comply with all conditions which may be attached to that consent. Also such outdoor areas should only be used for the consumption of alcohol by those **seated** in the area – no external "vertical drinking" should take place on a public footway.

For the purposes of this Policy Statement, and for the avoidance of doubt, "beer gardens" are enclosed areas of private ground included within the licensed premises as per the approved operating plan and layout plan and which do not require consent in terms of section 59 of the Roads (Scotland) Act 1984. "Public footway" is the area for which consent is required in terms of that section.

15. LICENSING STANDARDS OFFICER

It is the understanding of the Board that the East Renfrewshire Council intend to employ one Licensing Standards Officer for the whole area of the East Renfrewshire Board. If there are insufficient Officers to carry out the duties outlined the Board will request the East Renfrewshire Council to increase that number.

The Licensing Standards Officer will have the following responsibilities:-

- Guidance
- Mediation
- Compliance

The Board recognises that the Licensing Standards Officer will have a key role in the new regime.

Whilst not being in a position to give legal advice or make applications or objections on behalf of any party, the Licensing Standard Officer will be expected to advise both the licensed trade and the public on their responsibilities and rights.

The Licensing Standards Officer will be expected to mediate between the public and the licensed trade in order to try and resolve problems without involving the Board.

The regulatory role of the Licensing Standards Officer will be to ensure that licensees comply with their Operational Plans and licensing legislation.

In addition it is understood that the Licensing Standard Officer will carry out East Renfrewshire Council's responsibilities for inspection under the Gambling Act 2005.

The Licensing Standards Officer will be contactable through the East Renfrewshire Council's switchboard or by enquiry through the Community Services Offices (Environmental Services) Capelrig House, Newton Mearns.

16. SCHEME OF DELEGATION

The Board will have a separate Scheme of Delegation contained in the Regulations to be made by the Board. The Regulations will be published on the Board's web pages and will also be available in hard copy.

17. OTHER POLICIES

This Policy Statement recognises the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 which places a legal obligation on Public Authorities to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups and it is understood the Board will have regard to this in their deliberations. This Policy Statement also recognises that the Licensing Authority is required to produce a Race Equality Scheme assessing the impact of proposed Policies on race equality and to monitor Policies for impact on the promotion of race equality. The Board, in determining applications, will have regard to this legislation so as to avoid any possible direct or indirect discriminatory impact on particular ethnic groups.

This Policy Statement recognises the Disability Discrimination Act 1995 and the Board's Policy made following on this along with the duties of the Board under the Sex Discrimination (Public Authorities) (Statutory Duty to Promote Equality, Scotland) (Appointed Day) Order 2007 which requires the Board when carrying out its function to eliminate unlawful discrimination and harassment and promote equality of opportunity between women and men.

18. OTHER AGENCIES

The Board recognises that Licensing law is not the primary mechanism for general control of nuisance and antisocial behaviour by individuals. The

Board recognise that in disposing of licensing applications, within the framework of this Policy Statement, the Board will take into account matters relating to local Crime Prevention, Community Safety Strategies, Health, Planning, Transport, Tourism, Race Equality Schemes and Disability Discrimination Schemes.

19. CLERK TO THE BOARD

The Clerk to the Board is Mrs J.A.C. Leonard. Enquiries should however be made to either Mr Alex Forsyth, Depute Clerk or Mrs Dorothy McLaren at the Council Headquarters, Eastwood Park, Rouken Glen Road, Giffnock, East Renfrewshire, G46 6UG.

Tel: 0141-577 3021

email: alex.forsyth@eastrenfrewshire.gov.uk or

dorothy.mclaren@eastrenfrewshire.gov.uk

20. LASTLY

No part of this Policy Statement will override the right of any person to make representations on an application or seek a review of a personal or premises licence where such provision has been made in the Act and all applications will be considered on their individual merits

APPENDIX A

List of Consultees

1. Chief Constable, Strathclyde Police, Licensing Division Aitkenhead Road, Glasgow
2. Chief Fire Officer, Strathclyde Fire and Rescue Service, Fire Safety Department, Barrhead Fire Station, Grahamston Road, Barrhead, G78 1TL.
3. British Beet and Pub Association
4. Scottish Licensed Trade
5. Bii
6. East Renfrewshire Council, Community Health and Care Partnership
7. East Renfrewshire Council, Licensing Forum
8. East Renfrewshire Council, Building Control
9. East Renfrewshire Council, Environmental Health
10. East Renfrewshire Council, Community Services
11. East Renfrewshire Council, Planning
12. Alcohol Focus Scotland
13. Licensed Grocers Federation
14. John Batters & Co, Solicitors
15. Boyle Shaughnessy, Solicitors
16. Brunton Miller, Solicitors
17. Harper McLeod, Solicitors
18. Hill Brown & Co, Solicitors
19. Lindsays WS, Solicitors
20. McClure Naismith, Solicitors
21. McGrigors, Solicitors

22.
 - (i) Ms Irene Murphy, Secretary, Neilston Community Council, 18 Madras Place, Neilston, G78 3PH
 - (ii) Mr Tom Taylor, Secretary, Stamperland and Netherlee Community Council, 98 Stamperland Hill, Stamperland, G76 8AH.
 - (iii) Mrs Roberta Mullen, Secretary, Thornliebank Community Council, 12 Summerlea Road, Thornliebank, G46 8AH.
 - (iv) Mrs Brenda Fletcher, Secretary, Giffnock Community Council, 45 Forres Avenue, Giffnock, G46 8LF
 - (v) Mr Colin Scott, Chair, Busby Community Council, 30 Newford Grove, Busby, G78 8QZ.
 - (vi) Mrs Anne Johnstone, Secretary, Clarkston Community Council, 74 Beechlands Drive, Clarkston, G76 7UX.
 - (vii) Mr John Simcox, Secretary, Eaglesham Community Council, 327 Glasgow Road, Waterfoot, G76 0ER.
 - (viii) Mrs Rita Connelly, Secretary and Planning Contact, Barrhead Community Council, 54 Fenwick Drive, Barrhead, G78 2LB.
 - (ix) Mr George Butler, Secretary and Planning Contact, Mearns Community Council, 40 Netherplace Road, Newton Mearns, G77 6DG.
 - (x) Mr Charles Brindley, Secretary and Planning Contact, Uplawmoor Community Council, 3 Libo Avenue, Uplawmoor, G78 4AL.
23. East Renfrewshire Faith Forum.
24. East Renfrewshire Council Child Protection Committee, East Renfrewshire Council Offices, Burnfield Road, Giffnock.