

LICENSING (SCOTLAND) ACT 2005

MIDLOTHIAN LICENSING BOARD

POLICY STATEMENT

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1. INTRODUCTION

This is the Statement of Licensing Policy of the Midlothian Licensing Board (“the Board”) issued under the Licensing (Scotland) Act 2005 (“the Act”). It sets out the Board’s general approach to the making of licensing decisions under the Act.

1.1 Duty to Publish a Statement

In terms of section 6 of the Act every Licensing Board must prepare and publish a statement of its licensing policy every three years. The first period commences on 1 December 2007.

The policy will be subject to ongoing consultation with stake holders and will be kept under review and revised as necessary during the three year period.

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

- the Local Licensing Forum for the Board’s area
- such other persons as the Board thinks appropriate (Appendix 1)

The Board will have regard to all the views expressed and give them appropriate weight in determining the policy.

2. FUNDAMENTAL PRINCIPLES

In setting its policy the Board will have regard to the Guidance issued by the Scottish Executive as well as the views of those consulted. The overriding principle will be that each matter will be judged on its own merits and each person will have the right to make representations on an application or to seek a review of a licence where such provision has been made in the Act.

The Board encourages the responsible promotion of licensing activities but, in the interests of the public in general, will not tolerate irresponsible activity. It should be made clear however, that licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are no longer on licensed premises and outwith the direct control of the individual, club or business holding the licence, certificate or authorisation concerned.

The Board recognises that it does not work in isolation but achieves the licensing objectives in partnership with a range of other public bodies including The Midlothian Council, NHS Scotland, the police and fire services and the licensing trade.

3. LICENSING OBJECTIVES

The Board will seek to promote and have regard to the five licensing objectives set out in the Act:-

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

4. BOARD BUSINESS

The Board will deal with all its business in an open and transparent way. Information and assistance will be made available to those who wish to apply for a licence, make representations or object to an application.

It is the Board's aim to provide an efficient and cost effective service to all those involved in the licensing process. Therefore the Board will adopt a scheme of delegation to set out the decisions that may be made by the Clerk to the Board or his staff.

5. RISK ASSESSMENT

The Board would remind all applicants that they require to carry out a risk assessment in terms of the Fire Precautions (Workplace) (Amended) Regulations 1997.

Further information regarding fire safety risk assessment can be obtained from the Fire and Rescue Service or at www.infoscotland.com/firelaw

6. OVERPROVISION

The Board is required 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 Board's area.

Members clubs are discounted for the purposes of assessing overprovision.

The Board recognises that at the time of making this Statement there is insufficient information to allow it to determine if there is overprovision in any locality. This information will not be available until after full implementation of the Act in September 2009 and therefore the duty to assess overprovision has been deferred until after that date.

It should be noted that in terms of the Act, overprovision of licensed premises, or licensed premises of a particular description, in a locality is a ground for refusal of

a premises licence application. The Board is not entitled to refuse a premises licence application on this ground where the application relates to premises in respect of which a licence or certificate of registration is in force under the Licensing (Scotland) Act 1976 and the premises licence application is substantially the same regarding size, capacity and general nature of the premises, any entertainment on the premises and licensed hours. In all other cases the Board can consider overprovision as a ground of refusal.

7. LICENSING STANDARDS OFFICERS

Licensing Standards Officers will be employed by The Midlothian Council and will have the functions set out in the Act. Their role will be to inform, ensure compliance by licence holders with the conditions of their licence and the Act and to provide mediation services to avoid or resolve disputes and/or disagreements.

The Licensing Standards Officer will be a member of the Local Licensing Forum for the Midlothian area.

8. LICENCES

8.1 Premises Licence

Premises licences are issued by the Board for the area in which the premises are situated. It is a single form of licence for premises which sell alcohol, each licence being tailored to the type of premises by reference to an operating plan and a layout plan. Drafts of these must be lodged by the applicant with the application for a premises licence.

Each premises licence will be considered on its own merits.

The application must enable the Board to determine with certainty the kind of operation that would be permitted in terms of the licence.

The operating plan must set out clearly the applicant's proposals for the sale of alcohol, including the activities that would be undertaken on the premises, proposed opening hours and their policy in relation to children.

When considering an application for premises that have been previously licensed, or a review of an existing licence, the Board will take into account any relevant evidence on the impact of the operation of the premises on local residents. Such evidence will be made available to the applicant in order that s/he may advise of any measures proposed to mitigate any such adverse impact.

Mandatory conditions are set out in the Act and in Regulations. The Board will consider on an individual basis if it is necessary or expedient to impose additional conditions to promote one or more of the licensing objectives or give effect to the provisions in this policy statement or to the provisions of the Act. The decision to impose additional conditions will be made on an objective basis, having regard to

the operating plan, any representations made and all relevant information before the Board when considering the application.

The premises licence will remain in force for as long as the premises continue to operate in compliance with the licence and the operating plan, or until such time as it is suspended or revoked by the Board.

8.2 Personal Licence

Every premises will require one or more personal licence holders.

The personal licence is intended to ensure that anyone managing premises is capable of doing so. The Board will expect any applicant to have undertaken an appropriate training qualification and to produce evidence of this with the application.

The Act requires all sales of alcohol to be authorised (whether generally or specifically) by a personal licence holder. While the Board considers that this does not require the personal licence holder to be present on the premises when the sale is made, it is considered that it would normally be appropriate for a personal licence holder to be present during peak hours.

8.3 Occasional Licence

An occasional licence allows alcohol to be sold on unlicensed premises on a specific occasion.

An application for an occasional licence may be made by a holder of a premises or personal licence or a representative of a voluntary organisation.

To allow time to consult the police and for objections to be made, applications should be submitted as far in advance of the event as possible but in any event no later than 28 days before the event is due to take place. Applicants should be aware they may also require a public entertainment and/or late night catering licence issued under the Civic Government (Scotland) Act 1982

The Board considers that activities such as dances, wedding receptions and parties where a disco or band is provided are generally acceptable for the grant of an occasional licence.

Temporary Premises Licence

Where a licence holder wishes to carry out alterations to the principal licensed premises the Board can issue a temporary licence for other premises to enable the licence holder to continue to trade pending completion of the works.

Prior to issuing such a licence the Board will require to be satisfied that the alternative premises are suitable for use for the sale of alcohol and it is necessary to grant the application to enable the applicant to carry on business pending the reconstruction or conversion of the principal premises.

8.4 Provisional Premises Licence

An application may be made in relation to any premises still to be, or in the course of being, constructed or converted for use as licensed premises. The licence must be confirmed within 2 years, although this period may be extended by the Board if the works being carried out are delayed for reasons outwith the licence holder's control.

The application for confirmation must be accompanied by

- The provisional premises licence
- The operating plan for the premises to which the licence relates including a statement as to the identity of the premises manager
- The layout plan for the premises, and
- The certificates required under section 50(3) of the Act.

When considering an application for confirmation the Board must confirm the licence if satisfied that since the provisional premises licence was granted there has been no variation made to the operating plan or layout plan other than by formal application for variation in terms of the Act.

8.5 Premises Manager

The premises manager is the person specified as such in the premises licence. Every premises must have one named premises manager, who must be a personal licence holder.

A premises manager cannot be the premises manager for more than one premises at a time. Each premises may have more than one personal licence holder but only one can be designated as the premises manager.

The named premises manager will be responsible for the day to day running of the premises, the training and supervising of staff and ensuring that the premises are run in accordance with the requirements of the licence.

There are mandatory conditions relating to premises managers that are automatically applicable to all licences. It is clear that alcohol must not be sold on the premises (other than where an application has been made for a change of manager) at any time when:-

- There is no premises manager in respect of the premises
- The premises manager does not hold a personal licence
- The personal licence held by the premises manager has been suspended
- The licensing qualification held by the premises manager is not the appropriate qualification in relation to the premises.

9. LICENSING HOURS

While licensing hours are important to individual licensed premises, they do have a wider impact for an area. For example, the simultaneous closure of a number of premises in a town centre means large numbers of customers spill out onto the

pavements at the same time, often creating disorder and disturbance. By removing permitted hours the Scottish Executive has sought to alleviate such disorder.

The Board has no wish to inhibit the development of a thriving and safe evening and night-time local economy, which is important for employment and tourism in Midlothian, but believes that this is a problem that should be addressed.

As there are no longer set permitted hours, other than for off-sales, applicants may suggest their own opening hours. These will need to be detailed in the operating plan for each premises.

Section 64 of the Act makes it clear that routine 24 hour opening will not be permitted.

Licensed hours will be made up of core hours, i.e. regular hours when the premises will be open, as well as regular seasonal variations to those hours. It should be possible for applicants to anticipate all regular variations to core hours.

The overriding principle is that each application will be considered on its individual merits. Licence holders may apply for operating hours outside these guidelines but will be required to provide clear reasons to support their application.

The Board will always seek to promote the prevention of crime and disorder, the prevention of nuisance and the protection of the public. Accordingly the Board, in considering applications, will take into account the effect of trading hours on the surrounding neighbours. Complaints arise not only from the general noise of activities on the premises but also from people leaving and the opening and closing routines, for example the disposal of glass bottles and brewery deliveries.

The Board will normally expect licensing hours to be between 11.00am and 1.00am. If applicants seek to open outwith these hours they will be expected to justify the additional hours.

All premises will be subject to the mandatory licensing conditions under the Act and the Board may apply additional conditions.

The Act makes it clear that a Board must refuse an application to allow alcohol to be sold during a continuous period of 24 hours unless the Board is satisfied there are exceptional circumstances. Exceptional circumstances will only be justified by a specific event of very high local, national or international importance. As such events are rare, the Board considers that it would not be possible to allow for the same in the operating plan. It is stressed that regular seasonal events, for example Christmas, should be accounted for in the operating plan.

The licensed hours in respect of off-sales premises are between 10am and 10pm.

However applicants should be clear that even where requested off-sales hours are between the times given, the application will not automatically be granted.

An occasional extension allows for ad hoc occasions for specific premises where a licence holder wishes to provide for the sale of alcohol for a period beyond the normal hours during which alcohol may be sold under the premises licence. It should normally be possible to anticipate special occasions that occur regularly every year. Applicants should incorporate appropriate opening hours for these occasions in the operating plan.

It is understood that there will be occasions which cannot be anticipated, e.g. a wedding, and the Act allows the Board to process such extensions where there is no provision for the extended hours in the operating plan. In considering such an application, the Board will have regard to the comments of the Chief Constable and the Licensing Standards Officer. The Board may hold a hearing for the purposes of determining any such application. If a hearing is not held, the applicant will be given an opportunity to comment on any objections from the Chief Constable or adverse comments from the Licensing Standards Officer.

The Board accepts that there may be events of local or national importance which could not have been anticipated in the preparation of the operating plan. Such events could give rise to a large number of applications. In these circumstances the Board will consider making a determination for premises to be open for specified general extended hours on these special occasions.

10. APPLICATION PROCESS

10.1 General

For a properly constituted application, applicants will have to submit

- The correct application form (see 10.2)
- An operating plan (see 10.3)
- A layout plan (see 10.4)
- The correct fee (see 10.5)
- The planning, building standards and food hygiene certificates required by Section 50(1) of the Act

10.2 Forms

Forms are available on the Midlothian Council website by following this link:

10.3 Operating Plan

The operating plan is a document in the prescribed form containing

- (a) a statement as to whether alcohol is to be sold for consumption on or off the premises or both
- (b) a statement of the core times during which it is proposed to sell alcohol for consumption on the premises
- (c) a statement of the core times during which it is proposed to sell alcohol for consumption off the premises
- (d) seasonal variations

- (e) other activities or services that will be provided on the premises in addition to the supply of alcohol
- (f) a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises
- (g) where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and if they are, a statement as to the terms on which they will be allowed entry including, in particular-
 - (i) the ages of children or young persons to be allowed entry
 - (ii) the times at which they are to be allowed entry, and
 - (iii) the parts of the premises to which they are to be allowed entry
- (h) information as to the proposed capacity of the premises, and
- (i) information about the individual who is to be the premises manager

Where alcohol is to be sold for consumption both on and off the premises, the operating plan may state different times for such consumption. As already noted, off sales may only take place between 10.00am and 10.00pm.

The operating plan is the document to which each licensed premises will be tied for trading purposes. Licence holders will not be able to trade outwith the terms of the operating plan. The information contained within it will enable Boards and Licensing Standards Officers to determine if a breach of the operating plan and/or licence conditions has occurred.

Operating plans should make it clear to the Board how the premises are to be run and set out what activities will be undertaken on the premises and at what times, for as long as the premises are in operation. The Board should be able to determine with certainty from the operating plan the kind of operation that would be permitted in terms of the licence.

The Board expects the operating plan to be specific to the application being made and not completed in general terms. Applicants must therefore detail each and every activity likely to take place on the premises. The Board recognises that it is not always possible to predict customer demand. Matters that cannot be predicted when formulating the operating plan can be the subject of an occasional licence, an occasional extension or, for regular activities, a variation to the operating plan.

In terms of the Act, alcohol cannot be sold on any premises except in accordance with the operating plan. Applicants should take care as to the hours they detail in the operating plan as the public may reasonably expect the premises to be open for the sale of alcohol during those hours. Applicants are encouraged to be realistic in the hours stated in the operating plan. If there are regular deviations from the trading hours as stated in the operating plan, the Board will take into account whether “unused” hours are preventing new entrants into the market. If so, consideration will be given to changing the operating plan to reflect the true trading hours position.

Where a material breach of the operating plan has occurred, the Licensing Standards Officer or the Board will initiate a review of the licence.

The Board recognises that there may be circumstances that would reasonably cause a deviation from the trading hours in the operating plan, for example, a bereavement or illness. Such circumstances would not ordinarily constitute a breach of the operating plan.

10.4 Layout plan

The layout plan is a document in prescribed form and must show

- (a) the extent and dimensions of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter and dimensions of the premises to be licensed, including outside drinking areas
- (b) the location and names of any streets surrounding the premises from which members of the public have access to the premises
- (c) the location and width of each point of access to and egress from the premises
- (d) the location and width of any other escape routes from the premises
- (e) the location of any equipment used for the detection or warning of fire or smoke or for fighting fires
- (f) the location of any steps, stairs, elevators or lifts on the premises
- (g) the location of any toilets on the premises (identified as male, female or disabled as appropriate)
- (h) any area on the premises set aside specifically for the use of children and young persons, and
- (i) any area on the premises to which children and young persons will have access

The layout plan for premises to be licensed for the sale of alcohol for consumption on the premises must also specify the uses or uses to which each part of the premises will be put (under reference to the activities identified in the operating plan).

The layout plan for premises to be licensed for the sale of alcohol for consumption off the premises must also specify

- (a) the location of the area or areas to be used for the display of alcohol
- (b) the maximum width and height (in metres) of the frontage to be used for the display of alcohol within that area or those areas, and
- (c) the maximum linear measurement (in metres) of any displays of alcohol outside the frontage referred to head (b).

The Board expects the plan to be to scale and of architect's quality.

10.5 Fees

Details of the fees are available on the Midlothian Council website by following this link:

11. MANAGEMENT OF PREMISES

All premises should be operated in a manner consistent with the five licensing objectives. There are certain aspects of running licensed premises that are of particular concern to the Board and it has therefore determined to provide guidance in these areas

11.1 Children and young persons

The Board wishes to encourage family friendly premises within Midlothian and to ensure that such premises are run in such a way that they are suitable for children. In determining any application where the operating plan indicates that children are to be allowed on the premises, the Board will consider the need to protect children from harm as its paramount concern.

The Board has serious concerns about the prevalence of under-age drinking in Midlothian and the links between excess consumption of alcohol and the commission of crimes, in particular crimes of public disorder and violence. Licence holders are reminded that they and their staff must comply with all legislation in relation to children and young persons and failure to do so will be treated extremely seriously by the Board.

The Board would recommend that all licence holders for off sales premises to ask for accredited photographic identification (e.g. passport, driving licence) from any person believed to be under the age of 21 years.

11.2 Noise

Licence holders are expected to be aware of the impact on neighbours of noise from the premises and are expected to take reasonable steps to prevent noise nuisance. This may include installation of a sound limiter, sound proofing, keeping doors and windows closed and asking patrons to leave quickly and quietly at the end of the evening. If required, advice is available from Midlothian Council's Environmental Health Section.

11.3 CCTV

It is recognised that the use of CCTV can be an important tool in the prevention of crime and disorder and preventing public nuisance. The Board supports the use of such systems and would encourage licence holders to make use of them. Where used, the system must be kept in good working order, all staff must be able to operate the system, and if the system allows, images must be kept for a minimum of one month and must be made available to the police or Licensing Standards Officer on request.

The Board expects all off sales premises to install a CCTV system within 12 months of the application for the premises licence being granted.

11.5 Pub Watch

The Board supports the use of pub watch and similar schemes and would encourage licence holders to join these in areas where they are available.

12. CONDITIONS

All licences issued under the Act will be subject to mandatory conditions

The Act recognises that flexibility to deal with local circumstances is essential and it allows the Board to impose additional conditions to meet these circumstances.

It should be noted that a Board cannot impose a condition that

- would be inconsistent with any mandatory condition or a condition prescribed by Scottish Ministers,
- would have the effect of making any such condition more onerous or restrictive, or
- relates to a matter that is regulated under another enactment.

13. OBJECTIONS

The Board must give notice of a premises licence application to

- each person having a notifiable interest in neighbouring land*
- any community council within whose area the premises are situated
- Midlothian Council
- the Chief Constable of Lothian and Borders Police
- Lothian and Borders Fire and Rescue Service

In addition the applications will be published on the Midlothian Council website.

*Regulations define a person with a “notifiable interest” as the occupier of neighbouring land and “neighbouring land” is defined as land within 4 metres in any direction of any boundary of the premises to which the application relates and is not part of a road, land covered by water or a railway line.

Any person may submit an objection or representation to the Board. This is not restricted to those to whom notice of the application has been intimated. An objection or representation must relate to one of the licensing principles and to specific premises.

An objection or representation may be made in relation to

- an application for a premises licence
- an application for a major variation of a premises licence
- application for an occasional licence

It should be noted there is a difference between an objection and a representation: an objection goes to the very essence of the application as an objector opposes the grant of any licence at all. A representation is not concerned with the issue of a licence in principle, but is a comment on the way in which the premises are to be operated. It may suggest possible modifications to the operating and layout plans.

Representations may also be made in support of an application.

Each case will be considered on its own merits and objections considered to be vexatious or frivolous will be rejected by the Board. Expenses can be recovered from anyone who makes vexatious or frivolous objections.

14. MEMBERS CLUBS

With some exceptions, members clubs will be regulated under the Act and will require to apply for a premises licence. Regulations specifying what clubs are to be exempt, or partly exempt, have not yet been issued. The Board may amend its policy in respect of members clubs in the future.

Each club in submitting an application for a premises licence should also submit a copy of its most recent constitution.

15. OTHER ISSUES

15.1 Excluded Premises

Some premises are excluded from authorising the sale of alcohol. This includes premises, or a part of premises, used as a garage. Premises are used as a garage if there is retail sale of petrol or derv (diesel), the sale of motor vehicles or the maintenance of motor vehicles.

However, the sale of alcohol at such premises may be authorised if the Board is satisfied that the 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.

In determining such an application the Board will expect the applicant to provide sufficient information to enable it to consider the locality in which the premises are situated, the other sources of petrol or derv and/or groceries in the locality and the extent to which the persons resident in the 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.

15.2 Internet and Mail Order Sales

A premises licence will not be required for the premises at which an order is taken or placed. It will be required for the premises from which alcohol is selected for and despatched to the purchaser e.g. a warehouse.

Operators of such sales should take care to exclude the possibility of the sale of alcohol to under 18s and breaching the rules on trading hours.

15.3 Occupancy Capacity

The Board may consider setting maximum occupancy limits to ensure the safety of persons in the premises and safe escape in the event of an emergency. It will be advised by the Fire and Rescue Service and the Council's Building Standards Manager in this regard

15.4 Door supervision

Applicants are reminded that all door supervisors must be registered with the Security Industry Authority. To employ a door supervisor who is not registered is a criminal offence. In addition, licence holders employed in manned guarding activities, whether or not door supervisors, may require to be registered. Applicants should contact the Security Industry Authority for more information.

APPENDIX 1 – List of Consultees

Midlothian Council

Local Licensing Forum

Chief Constable, Lothian & Borders Police, Newbattle Road, Dalkeith EH22 3AX

Lothian & Borders Fire & Rescue Service, Dalkeith Fire Station, 36 Abbey Road,
Dalkeith EH22 3AD

Midlothian Child Protection Committee, Midlothian Council, Fairfield House, Dalkeith
EH22 3ZP

Community Councils within the Midlothian area

MDAAT, Midlothian Council, Fairfield House, Dalkeith EH22 3ZP

The above Statement of Policy was approved by the Midlothian Licensing Board on
30 November 2007

Chairman
Midlothian Licensing Board