

# North Ayrshire Licensing Board Licensing Policy Statement 2023 to 2027

Under the Licensing (Scotland) Act 2005

Adopted at a special meeting of the Board on 23 October 2023

## 1. Introduction

1.1. This Licensing Policy Statement (LPS) is made under Section 6(1) of the Licensing (Scotland) Act 2005 and applies for the Licensing Policy Period of four years starting on Sunday 5 November 2023. It was adopted at a Special Meeting of the Board on 23 October 2023 and applies to Board decisions during that Licensing Policy Period.

1.2. Section 7 of the 2005 Act obliges the Board to include in the LPS a statement as to the extent to which the Board considers there to be Overprovision of Licensed Premises, or Licensed Premises of a particular description, in any locality within the Board's area. This is contained in Appendix E.

1.3. The Board is required to ensure that its policies promote the Licensing Objectives set out in Section 4 of the 2005 Act (see Part 2 of this LPS).

1.4. This LPS sets out the Board's Policy with respect to the exercise of its functions under the Act. It aims to promote transparency and certainty and to indicate to both the Licensed trade and the public the issues that the Board consider important in carrying out its functions. This LPS is partly based on previous Licensing Policy Statements but takes account of the Board's decisions and further information obtained since they were adopted, including:

- Annual MESAS report and report on Minimum Pricing - see "Annex H - Board report on 5 September 2022"
- Representations made during the 2023 LPS Review – see "Annex I - Report to Board 18 September 2023"

1.5. In exercising its functions under the Act, the Board is required to have regard to its LPS. This means that the LPS will be considered in many different situations, for example, in Applications for the Grant, Variation, Transfer, or Review of a Premises Licence, or the Grant, Renewal or Review of a Personal Licence. Subject to the promotion of the Licensing Objectives, the Board recognises and supports the contribution which Licensed Premises make to the economy, employment, tourism and vitality of North Ayrshire. If the Board considers that an Application is consistent with the Licensing Objectives and this LPS, there is a likelihood that the Application will be granted.

1.6. The Licensing Board will consider any Application on its merits and will give due consideration to an Application whether or not it conforms to any requirements set out in the LPS. Applicants are entitled to submit Applications which deviate from the LPS, but if they do, they will be expected to address the deviations, both in the Application and at any Board Meeting to determine the Application. Where the LPS states that Applications are 'likely to be refused' in certain circumstances (or uses similar phrases), this means that the Board will consider the Application on the basis that there is a presumption of refusal. The Board does not automatically refuse such Applications, and it will be open to the Applicant to seek to persuade the Board that either the presumption does not apply or that, in the particular circumstances of the Premises, an exception to the LPS should be made. The Board approaches phrases such as 'likely to be granted' in the same way.

1.7. Any Premises Licence or Occasional Licence is granted is subject to the Board's Standard Conditions ([see Annex A](#)). These reflect the Board's general expectations of the Licensed trade in North Ayrshire, but the Board may vary, amend or extend these if the circumstances of particular Premises require this (some of the Conditions are automatically applied by the legislation, and the Board cannot alter these). There is a presumption that Standard Conditions will be applied but it is always open to an Applicant or Licence-Holder to seek to persuade the Board not to apply Standard Conditions or to impose different Conditions.

1.10. In addition to applying Conditions when a Premises Licence is Granted, the Board may also reconsider the Conditions appropriate to particular Premises as part of the Variation and Review processes (Sections 30(6) and 39(2)(b) respectively).

1.11. In preparing this LPS, the Board has consulted widely and in addition, a notice has been placed on the Board's public website, inviting the public at large to make comments.

1.12. This LPS reflects the Board's views of the legislation. The Board does not warrant that those views will be shared by the Courts and accepts no liability for any action taken on the basis of those views. Licensees and the public should take independent legal advice on the effect of the legislation.

1.13. This LPS considers:

- a) the legislation (primarily the Licensing (Scotland) Act 2005 and related subordinate legislation),
- b) decisions of Courts
- c) Guidance issued by Scottish Ministers under Section 142. This Guidance was originally published in 2007 but was revised in January 2023. When this LPS refers to 'Guidance', it means the 2023 document unless otherwise stated.

1.14. The Board has also had regard to:

- a) the North Ayrshire Council Plan 2023 to 2028:
- b) North Ayrshire Council Plan ([north-ayrshire.gov.uk](http://north-ayrshire.gov.uk))
- c) The North Ayrshire Partnership Plan 2022 to 2030 (the "Local Outcomes Improvement Plan" made under the Community Empowerment (Scotland) Act 2015) at Local Outcomes Improvement Plan – North Ayrshire Community Planning Partnership

The LOIP has three priorities:

- Wellbeing: "Health and Wellbeing - We will reduce inequalities by targeted support to improve individual, family and community wellbeing."
- Work: "Economy and Skills - We will address the causes and effects of poverty through a strong local economy and skills base."
- World: "Climate Change - We will work more closely and effectively together to reduce carbon emissions and mitigate the impacts of climate change."

## 2. The Licensing Objectives

2.1. The Board is required to ensure that its policies promote the Licensing Objectives. They are set out in Section 4 and are:

- a) Preventing crime and disorder
- b) Securing public safety
- c) Preventing public nuisance
- d) Protecting and improving public health
- e) Protecting Children and Young Persons from harm.

2.2. If the Board considers that an Application for Grant or Variation of a Premises Licence is inconsistent with any of the Licensing Objectives or if any of the other statutory Grounds for Refusal apply, it must refuse the Application (Section 23(4) for Grant applications; Section 30(4) for Major Variation Applications).

2.3. If a Premises Licence has already been granted, the Board may Review it if it considers that any aspect of the operation is inconsistent with any of the Licensing Objectives, or that any of the Licence Conditions have been breached. A Review may lead to any of the following:

- a) Revocation the permanent termination of the Premises Licence
- b) Suspension - the Premises Licence becomes ineffective for a period of time
- c) Variation - examples: restricting Licensed Hours; removing the Premises Manager; restricting the extent of the Premises (for example prohibiting the use of an 'Outdoor Drinking Area' / 'Beer Garden'); alterations to the arrangements for access to all or part of the Premises by under 18s.
- d) Written Warning - where the Board does not consider that any of the other options are appropriate, it may issue a Written Warning; if the Board later considers another Review, then it may take the Written Warning into account

None of these actions is the automatic result of a Review: the Board may also decide that the Review is established but that no action is appropriate.

2.4. Although the Licensing Objectives are important, these are not the only things the Board can look at. The Board may also consider the likelihood that an Application for a new Premises Licence (or the Major Variation of an existing Premises Licence) will:

- promote economic growth
- promote tourism
- create accommodation
- bring a prominent derelict building back into use

The Board encourages inclusive growth, as long as this promotes the Licensing Objectives. For example, while new premises may bring immediate jobs, in the longer term increased availability of alcohol is likely to have a detrimental impact on alcohol-related harms, and impact on the objective of 'Protecting and Improving Public Health.' The Board is unlikely to accept the suggestion that it is necessary to include an off-sales alcohol sale facility within a convenience store selling general groceries.

### The Licensing Objectives

#### a) Preventing Crime and Disorder

2.5. The Board supports a strategy aimed at making North Ayrshire a safe place to live in and visit. The Board is committed to improving the quality of life for the people in the area by ensuring so far as possible that Licensed Premises are run in such a way as not to contribute to crime and disorder. Applicants should be able to demonstrate that they will address the following issues related to the sale of alcohol of:

- a) Underage drinking
- b) Agency sales
- c) Drunkenness on Licensed Premises
- d) Drunkenness in public places
- e) Illegal possession and use of drugs
- f) Violent behaviour
- g) Illegal possession and use of weapons
- h) Anti-social behaviour

2.6. The Board regards underage drinking as a problem which the whole licensed trade (both on-sale and off-sale) should address. All Premises, whether on-sale or off-sale, are legally required to adopt a "Challenge 25" Policy (This condition does not apply in the special case of Remote Selling). Under the Alcohol etc. (Scotland) Act 2010 it is a Mandatory Condition of both a Premises Licence and an Occasional Licence that the Premises have an "Age Verification Policy" requiring that steps are to be taken to establish the age of a person attempting to buy alcohol if it appears to the seller that the customer may be less than 25 years of age (not just 18).

The Premises' Policy may specify an older age, but the Policy must be at least 25.

2.7. The Board expects Premises (both on-sales and off-sales) to be vigilant to the widespread problem of 'agency' sales, where an adult buys alcohol on behalf of under 18s and therefore commits a criminal offence himself. If staff suspect that a customer has made or is attempting an illegal 'agency' purchase, they should refuse to make the sale, and inform the Police.

2.8. The age restriction is modified in restaurants and other eating establishments. An adult can buy beer, wine, cider or perry for consumption by a 'Young Person' (aged 16 or 17) along with a meal supplied on Licensed Premises.

2.9. If Premises wish to have Children (aged 0 to 15 years) and/or Young People (16 to 17), then this must be clearly shown in the Operating Plan, Part 6. If the applicant wants any Children or Young People to be on the Premises (even the children of staff or residents) the Operating Plan must say so. An Applicant is required to state:

- a) the terms of access (for example, does access depend on both the under 18 being accompanied and supervised, and eating a meal?). The Board is likely to expect that any under 18 on on-sales Premises should be accompanied by and under the supervision of a person of or over 18 (it is unlikely to be acceptable that the only adult supervision is by a member of staff)
- b) the parts of the premises which under 18s can access, for example the Board might refuse to permit access to a part of the premises if it is not satisfied that that part provides a suitable environment.

If the Applicant intends different arrangements for Children as opposed to Young People (or if the proposed different arrangements depend on an age other than 16) this can be specified, but the Applicant should be sure that the answers to (a) and (b) are consistent with each other.

## b) Securing Public Safety

2.10. The Board wishes to ensure that so far as possible the safety of customers, staff and anyone working in the vicinity of Licensed Premises is not compromised. If the Board considers that alterations to the physical layout, the operating hours, or the management of Premises are necessary, it may refuse an Application for a Premises Licence unless these alterations are done. Similarly, it may decline to grant a Variation Application or uphold a Review.

## c) Preventing Public Nuisance

The Board wishes to protect and maintain the amenity of residents and occupiers of other businesses from any adverse consequences arising from the operation of Licensed Premises. It has adopted Standard Conditions relating to the use of Outdoor Drinking Areas and the use of amplified sound (see Standard Conditions C.4, C.5, C.7 and C.19).

2.12. There are extra requirements when live music, recorded music, or other sound is broadcast after 10pm (see Condition C.4.4).

## d) Protecting and Improving Public Health

2.13. It is widely accepted that there is a clear link between the availability of alcohol and alcohol-related health harms. North Ayrshire figures also demonstrate a clear link between alcohol related harm and deprivation. The greater the availability of alcohol, the greater the expected harm, particularly in more deprived communities. The Board wishes to see Licensed Premises thriving in the area, but this cannot be at the expense of the health and wellbeing of patrons or the wider community. The Board will have regard to the views of public bodies concerned with the protection and improvement of public health in the area, and has had regard to those views in the preparation of the Overprovision Policy set out in Annex D. The Health Board is always consulted in relation to Applications for the Grant or Major Variation of a Premises Licence, and if the Applicant proposes:

- a) new or increased capacity (in on-sales - number of customers; in off-sales - the display area)
- b) an increase in licensed hours

the Board is likely to question whether or not the proposal is consistent with this Licensing Objective. The Board is unlikely to agree that any Premises regularly exceed Policy hours.



2.14. The Board is conscious of the obligations which may fall on the occupier of Premises under the Equality Act 2010 and applies Standard Condition C.11 regarding Disabled Facilities.

In terms of Section 179 of the Criminal Justice and Licensing (Scotland) Act 2010, applicants for the Grant of a Premises Licence must give the Board a 'Disabled Access and Facilities Statement' (DAFS) when they apply. A form for this is on the Board's website. Existing Premises do not have to produce a DAFS, although they have legal obligations to disabled people under the Equality Act 2010.

2.15. The Board is subject to the "Public Sector Equality Duty" under Equality Act 2010, Section 149(1). This provides:

149(1) A public authority must, in the exercise of its functions, have due regard to the need to

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
- b) advance equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it.
- c) foster good relations between persons who share a Relevant Protected Characteristic and persons who do not share it."

The Relevant Protected Characteristics are defined by Section 149(7):

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

When the Clerk prepares a Report for the Board on an Application, any specific equalities impacts will be detailed, particularly where these impact on the Licensing Objectives.

2.16. Where existing facilities are to be altered or upgraded it is recommended that Building Standards are consulted.

e) Protecting children and young people from harm

2.17. In the 2005 Act, “children” means people aged 0 to 15 years. People of 16 or 17 are “young people” and are not “children” for the purpose of the legislation.

When the 2005 Act was enacted, this Licensing Objective (L.O.) related only to "children", not "young people". It was extended to "young people" by an Act in 2015.

2.18. The Board wishes to see family-friendly Premises thriving in the area. The Board expects Applicants to appreciate that this places additional responsibilities upon them, while recognising that parents and other adults accompanying under 18s also have responsibilities. The Board also takes very seriously the issue of underage drinking and expects Licensees and their staff to comply with the legislation relating to the sale to under 18s.

2.19. In order to protect children and young persons from harm, the Board is unlikely to permit off-sales associated with prepared food sales where 'home delivery' is proposed.

### Home Delivery

2.20. Where alcohol (whether with or without food or any other goods or services) is supplied by delivery away from Licensed Premises (for example if a customer orders it by telephone) then:

- a) alcohol can only be sold within Licensed Hours, which cannot be outside the period 10am to 10pm (Section 65) and might be shorter if the Board specifically directs this in relation to the particular Premises.
- b) alcohol can be delivered outside those hours but cannot be delivered between 12 midnight and 6am (Section 120).
- c) the Board is likely to regard a delivery operation as being inconsistent with both the 'crime and disorder' and 'protecting children and young people from harm' Licensing Objectives if alcohol is supplied unless:
  - the supplier on arrival at the delivery address first carries out the same checks about the recipient's age as would be appropriate to a sale (see Section 102).
  - the supplier refuses delivery unless and until such evidence of age is produced.
- d) under Section 119, two records must be made before the Alcohol leaves the Premises:
  - in a Day Book kept on the Premises; and
  - in a Delivery Book or Invoice carried by the person delivering the Alcohol.
- e) The information to be recorded in both cases is:
  - the quantity, description and price of the Alcohol, and
  - the name and address of the person to whom it is to be delivered.
- f) It is illegal to deliver Alcohol to an address which is not recorded in both records. The records must be shown to a Police Constable or Licensing Standards Officer on request.

## Special Event Vehicles

2.21. This applies where Alcohol is to be sold on or from a moving vehicle (whether motorised or not), for example limousines for 'hen nights' and other 'special event vehicles':

- a) the vehicle needs a Premises Licence or Occasional Licence: Section 118.
- b) any person dispensing Alcohol must either hold a Personal Licence or have the same level of training as would be expected of staff working in ordinary Licensed Premises.
- c) Alcohol can only be sold during the Licensed Hours permitted by the Board. The Board is legally obliged to refuse an Application for a 24-hour Licence in the absence of exceptional circumstances: Section 64. The Board is unlikely to regard the fact that a vehicle is to be operated outside the Policy hours appropriate to on-sales premises (such as Public Houses) as being 'exceptional.'
- d) The Board is likely to regard a vehicle operation as being inconsistent with both the 'crime and disorder' and 'protecting children and young people from harm' Licensing Objectives if alcohol is supplied without the supplier first carrying out the same checks about the recipient's age as would be appropriate to a sale, and refusing supply if the recipient is not at least 18 (see Section 102);
- e) the Board expects that:
  - the person booking the vehicle or in charge of the party, should be 18 or more, and no Alcohol will be supplied where any person in the party is under 18 (whether or not the person receiving or consuming is 18 or older).

### 3. Premises Licences

3.1. Premises that wish to sell alcohol regularly require to have a Premises Licence. This applies whether the alcohol is for consumption on or off the Premises (or both).

If the sale of alcohol is not regular, an 'Occasional Licence' may be appropriate - see Part 8.

A Premises Licence will state what Parts of the Board's Standard Conditions apply ([see Annex A](#)). The Licence will also state if the Board has made any direction for the individual Licence, for example that the wording of one of the conditions has been varied.

3.2. The Premises Licence includes:

- a) the hours of operation.
- b) the activities that may be carried out (for example playing of music).
- c) the arrangements for access by under 18s.

Each Licence is tailored to the type of Premises in question. There must be a description of the Premises, an Operating Plan (O.P.) and a Layout Plan of the Premises.

It is recommended that the Premises Licence Holder ('P.L.H.') should review the Operating Plan at least once a year to ensure that it covers everything the Premises want to do, and if necessary, the P.L.H. should ask the Board to authorise a Variation.

3.3. It is important for Licensees to note that activities (such as the playing of music, dancing and the playing of games such as darts or pool) are only permitted if the Board has agreed to an O.P. describing them. If a particular activity is not mentioned in the O.P., that activity cannot take place on those Premises until the O.P. is varied and in the areas shown in the Layout Plan.

If a Licensee wants to have an activity which is not on the Plans (even if the activity will happen rarely, like a Christmas event) the Board should be asked to permit a Variation, and only if and when the Variation is granted can the new activity happen.

Regarding darts or pool: see also paragraphs 3.17 to 3.18.

3.4. It is important that a buyer checks both the O.P. and the Layout Plan to satisfy himself/herself that whatever is planned is already covered by the Licence. If not, he/she should seek a Variation as well as a Transfer (he/she will usually be seeking at least one Variation anyway, to substitute a new Premises Manager).

## Variation

3.5. The legislation distinguishes between Variations which are 'Minor Variations' and those which are not. The list of 'Minor Variations' is set by the legislation (Section 29(6) and "The Licensing (Minor Variations) (Scotland) Regulations 2011", S.S.I. 2011-151), and the Board cannot change that list. Some changes which might be called 'minor' in ordinary language might not be 'minor' for the purpose of the legislation. The legislation does not give a title to the other variations, but for convenience the Board calls them 'Major Variations'.

For the avoidance of doubt, the Board considers that any change in Entertainment or activities provided is a Major Variation.

3.6. Minor Variations are:

a) any Variation of the Layout Plan, if the Variation does not result in any inconsistency with the O.P. (a reduction of hours or capacity is a Minor Variation, but an increase is a Major Variation); An Applicant seeking a Minor Variation of the Layout Plan should give the Board four copies of the proposed new Layout Plan:

- entry to the Premises, (for example, increasing the minimum age, or excluding them from certain areas)
- any Variation of the information contained in the Licence relating to the Premises Manager (including a Variation so as to substitute a new Premises Manager)
- any change in the Premises' name
- any variation resulting in the cessation of the provision of live or recorded music at a decibel level exceeding 85 decibels
- any variation to provide that, when the premises are fully occupied, more customers are likely to be seated than standing
- any Variation reflecting any restriction of the terms on which under 18s are allowed

b) Any other change is a Major Variation.

3.7. With the exception of Premises Manager ('P.M.') variations, variations only take effect if and when the Board agrees to the request - it is not enough for the Licensee to lodge an application.

- a) 'Minor Variations' can be granted quickly, and the fee is currently either £20 or £31
- b) 'Major Variations' require a procedure which is similar to the application procedure for the original Premises Licence. The Fee is the same as the Annual Fee (£180 - £900, depending on the particular Premises); there is the same need for neighbour notification and display of a Site Notice; there is the same possibility of objections; and the Board itself decides the Application at a Meeting (after hearing from the P.L.H. and any objectors): the decision cannot be delegated to Board officers. This means that the decision is likely to be a number of weeks after the Licensee has requested the variation.

3.8. A licensee proposing to make a change to the Licence should take independent legal advice or speak to the L.S.O. or Board staff first. It is in the Licensee's interests to make sure

that the Variation application contains all the variations he/she wants - this means that he/she will only have to pay a single fee (the highest of the Major Variation or Minor Variation fees).

The Licensee should not start construction work or assume that a Major Variation will be granted (even if the proposals have Planning Permission, a Building Warrant or some other statutory permission). The Licensee cannot make this assumption. The proposals can only proceed if and when the Board approve them.

This is particularly the case with proposals relating to:

- an Outdoor Drinking Area ('beer garden')
- noisy activities such as live music

Where the premises already have a history of neighbour complaints, licensees should not regard the Board's decision as a foregone conclusion.

The Board does not want to be presented with a *fait accompli* and may regard a Licensee who has done work requiring a Major Variation without first getting Board approval as not a fit and proper person to hold the Licence.

## Premises Manager

3.9. An important Variation is to change a Premises Manager ('P.M.'). All Premises (with one exception) must have a Premises Manager. If they do not, the Premises can be closed down by the Police and anyone selling alcohol faces prosecution.

3.10. The exception is a Members Club which is entitled to Special Treatment under Section 125 (some Clubs have chosen to give up the Special Treatment, which means that they need Premises Managers - see Part 9).

3.11. There are special rules to deal with the situation where there needs to be a change of Premises Manager (for example, if the existing Premises Manager leaves the job, or his/her own Personal Licence is revoked or suspended, or he/she dies): Section 54.

In that situation, the Licensee should do two things:

- a) not later than seven days after the occurrence of the event (for example the existing Premises Manager leaving), he/she must inform the Board, and
- b) within the period of six weeks beginning with the day on which the event occurs, the licensee should apply for a Variation to substitute another individual as the Premises Manager (the six weeks is counted from the event, and not from the date of the notification in (a)).

It is not enough to do only one of these: if the P.L.H. does only one of these, he/she could be charged by the Police if the Premises operate without a Premises Manager, and the Police might close the Premises.

3.12. During this six week period, while the P.L.H. is looking for a permanent replacement P.M., he/she might engage another P.M. who works elsewhere and himself has a Personal Licence. This might be acceptable to the Police in the short-term, but it would be important that the new person actually managed the Premises. He/she does not have to be present every minute of the day, but he/she must be exercising effective supervision. If not, the Police might have a complaint.

3.13. That arrangement cannot be long-term. When the P.L.H. applies for a Minor Variation, the proposed new P.M. cannot already be the P.M. of other Premises (Section 19(2)).

## Death or insolvency of Licence Holder

3.14. If the Premises Licence Holder dies, or becomes insolvent, or if a Company which holds the Premises Licence goes into Administration or Liquidation, then the Licence automatically expires 28 days later: Section 28.

There is a strict time limit: unless an Application for Transfer is made within that 28-day period by the Executor, Administrator or other representative, the Licence expires, and the Police are likely to close the Premises and prosecute the operator.

This refers to the procedure for transfer of a Licence under Section 34 of the 2005 Act as it was originally enacted in 2005. The Air Weapons and Licensing (Scotland) Act 2015 amended

the 2005 Act to replace the transfer provisions. If the 2015 provisions are commenced in the duration of this LPS they will supersede this part of the LPS.

## Layout Plan

3.15. In the same way, the Layout Plan must match the physical layout of the Premises.

There are Regulations specifying what a Layout Plan needs to contain (The Premises Licence (Scotland) Regulations 2007 No. 452, Reg. 5). See the Regulations, but the Layout Plan requires a lot of detail and should be drawn at a scale of 1:100. In practice Layout Plans are often drawn by architects, surveyors or similar professionals. It is not enough to provide a sketch plan.

3.16. As well as the Layout Plan, if the Application is for:

- a) the grant of a new Licence,
- b) a physical extension of the Premises, or
- c) a change of use (for example the use of an outside area for drinking)

the Board asks to see a Location Plan at scale of 1:1. This is so that the Board can see where the Premises are in relation to surrounding streets and other premises such as houses, schools and hospitals - the Board needs to be able to assess whether or not the proposal is consistent with the Licensing Objectives and whether or not the Premises will be suitable for the sale of alcohol if the Application is granted. For example, if the proposal is for an Outdoor Drinking Area ('beer garden'), the Board might consider that it was not consistent with the 'preventing public nuisance' Licensing Objective if the proposed area was near dwelling-houses.



Darts, Pool, Snooker and other games

3.17. One of the Licensing Objectives is “protecting children and young people from harm.”

The Board's Standard Conditions include:

“C.10.3 In the area(s) of the Premises to which children are admitted:

- d) The playing of darts, pool, snooker or any other game is prohibited.
- e) There shall be no dartboard, pool table or other facilities for such activities in those area(s)

In the Conditions, "Children" means people under 16, not people of 16 or 17.

The reasoning behind these conditions is the concern that children might be at risk of injury if they are in a place where darts, pool and similar games are being played. Those requirements are not Mandatory Conditions which the Board is obliged to apply, so it is always possible for applicants to seek to persuade the Board to make an exception or vary them on a case-by-case basis.

3.18. Instead of expecting businesses to incur the cost in time and money involved in seeking an exception, the Board has amended C.10.3 by adding:

“Where the Board is satisfied that requirements of Condition C.10.3 (d) and (e) (darts, pool and similar games) are not necessary in the particular circumstances of the Premises, the Board may, on the written Application of the Licence-Holder or Premises Manager, issue a written Notice dispensing with those requirements. From time to time, on one or more occasions, the Board may reconsider the question of dispensation and may withdraw or vary it.”

Related to this, the Board has amended its Scheme of Delegations so that the Clerk and the Solicitor (Licensing) are authorised to exercise that discretion and make a dispensation, and to review from time to time a dispensation previously allowed so as to vary it.

## Notification of Applications, Objections and Representations

3.19. The Licensing Board must give notice of a Premises Licence Application (and an Application for a Major Variation) to:

- a) each person living or owning property within four metres
- b) the local Community Council
- c) North Ayrshire Council
- d) the Police
- e) the Fire Authority
- f) the Health Board

3.20. As well as intimation, the following public notifications procedures are required:

- a) the Licence Applicant is responsible for displaying a Site Notice on or near the Premises for at least 21 days, and
- b) during that time, the Board places a Notice describing the Application on its public website.

Applicants should note the Board cannot decide on the Application unless the Applicant provides a Certificate confirming that proper notice has been given. Without evidence that the Site Notice has been displayed for the full 21 days, the Board will continue the case to a future meeting.

3.21. Any person may submit an objection or representation to the Board. Objections should be relevant to the application, to the sale of alcohol (including connected purposes) and the Licensing Objectives.

Any objection:

- a) on the general basis of opposing alcohol consumption,
- b) not related to the particular Premises, or
- c) to the principle of Sunday trading,

is likely to be rejected as frivolous by the Licensing Board and if so, will not be considered.

3.22. The Licensing Board will assess each Premises Licence Application on its own merits. The Board is likely to consider:

- a) the nature of the Premises, its capacity, the style and type of use, the potential number and profile of the customers likely to attend the Premises.
- b) the proposed hours of operation.
- c) the means of access and exit from the Premises including the location of customer entrances and emergency exits.
- d) food safety and cleanliness issues
- e) the provision of toilet facilities.
- f) whether 'Children' (aged 0 to 15 years) and/or 'Young Persons' (aged 16 to 17) are to have access to the Premises or parts of Premises and on what terms and times.



For example, the Board is likely to:

- expect there to be supervision by an adult (18 or over), or
- limit access to the consumption of meals or the attendance at a function such as a wedding.

Different arrangements may be appropriate for 'Children' and 'Young Persons'

- g) the need for door supervisors
- h) areas or activities which may have potential for Crime and Disorder, or Public Nuisance, including noise and any measures to mitigate those issues.

The Board will take account of any information supplied by the Police or Departments of the Council like Building Control, Environmental Health or Planning. The Board or its L.S.O. may wish to inspect the Premises before deciding on the Application (see Section 137).

3.23. Applicants cannot assume that the absence of objections will automatically lead to a decision to grant:

- a) In Grant Applications, the Board can ask the Police to supply a Report detailing Anti-Social Behaviour incidents in the vicinity in the past year.
- b) In both Grant and Major Variation Applications increasing capacity, the Board is obliged to consider the question of Overprovision (see Annex D).
- c) in all cases, the Board must consider the Licensing Objectives.
- d) the legislation itself states some automatic grounds for refusal, and the Board must decide whether or not any of these apply.

It is therefore possible that the Board might refuse an Application even if there are no third party objections.

## 4. Management of Premises

4.1. The Board expects Licensees and their staff to act consistently with the five Licensing Objectives. There are various aspects of running Licensed Premises which are of particular concern to the Board. The Board has therefore determined to implement policies in these areas including noise.

4.2. Licensees are expected to be aware of the impact on neighbours of noise from their Premises and are expected to apply best practicable means to prevent noise nuisance. There are several Licence conditions about this.

Steps to be taken may include:

- a) sound tests
- b) installation and use of a sound limiter; the position of any control equipment, or on/off switch should be available only to staff
- c) soundproofing
- d) keeping doors and windows closed (there is an extra condition after 22.00 - see below).
- e) door staff to ensure patrons leave quickly and quietly
- f) notices at exits asking patrons to leave quietly.

4.3. If the Premises have after 22.00 any of these:

- Live performances
- Dancing
- Theatre
- Films
- Radio, Television or Jukebox.

then all windows and doors (both external and internal) must be kept closed, except that doors may be opened from time to time to permit the immediate passage of people provided that they are then again closed (Condition C.4.4(a)).

4.4. After 22.00 it is a Licence Condition that where equipment is used for the amplification, relaying or making of sound, the Premises shall, at the request of an Officer authorised by the Council, use sound limiter equipment set so that the equipment does not operate beyond sound levels agreed (Condition C.4.4(b)). If such equipment is to be used after 22.00, Licensees should discuss their proposals in advance with the Council's Environmental Health Department.

4.5. If the Board considers that a nuisance exists, it is entitled, following a review to do some or all of these:

- a) restrict the times when noisy entertainment is provided
- b) restrict the parts of the Premises where such entertainment happens
- c) restrict the times when such entertainment happens
- d) prohibit such entertainment altogether
- e) restrict the opening hours of the whole Premises

### Vertical Drinking

4.6. The Licensing Board is concerned about so-called 'vertical drinking' establishments. Particular attention will be paid to any Applications for a Premises Licence where large numbers of patrons will have only standing accommodation. The Licensing Board is likely to expect on-sales Premises to accommodate patrons with a minimum of 25% of occupant capacity provided as seating space.

The Board may lower this percentage in the case of Premises where both:

- a) the sale of alcohol is ancillary to a primary purpose of entertainment, and
- b) where that entertainment reasonably requires greater than 75% of non-seated space in the Premises.

### Children and Young Persons on Licensed Premises

4.7. The legislation distinguishes between 'Children' (aged 0 to 15 years) and 'Young People' (aged 16 or 17 years). The Layout Plan must identify areas:

- a) set aside specifically for the use of Children and Young Persons; and
- b) to which Children and Young Persons will have access.

4.8. The Board has a long-standing interest in encouraging family-friendly Premises within North Ayrshire and wishes to continue to ensure that Premises which seek to accommodate under 18s are run in such a way that they are suitable. Premises which:

- a) are small and enclosed
- b) which have few facilities
- c) are unlikely to be accepted as able to provide the appropriate environment.

4.9. Standard Condition C.10 is applied to all on-sales. Parts of this condition apply to darts, pool: paragraphs C.10.3(d) and (e). See paragraphs 3.17 to 3.18 of the LPS.

1. The Licensee shall apply best practicable means to ensure that adults accompanying Children or Young Persons take reasonable steps to protect them from harm at all times.
2. No Child shall be permitted to operate any amusement-with-prizes machine or video/DVD/electronic machine which is in the Premises, except mobile telephones or other hand-held electronic devices owned by the Child.
3. In the area(s) of the Premises to which Children are admitted:
  - All heating appliances must be adequately guarded.
  - All electrical sockets must be fitted with a safety cover when not in use.
  - Where meals are provided a Children's, menu must be available at all times, or alternatively the main menu must show that half portions are available for Children.
  - The playing of darts, pool, snooker or any other game is prohibited.
  - There shall be no dartboard, pool table or other facilities for such activities in those area(s).
  - There must be available (for sale or supply) for consumption by Children meals and beverages other than alcohol.
  - Drinks supplied to Children under 12 must be served in non-glass containers
  - Straws must also be available to Children free of cost
4. Where the Operating Plan permits a person aged under 16 to be admitted to any part of the Premises, that person shall only be allowed to enter or remain on the parts of the Premises which are described by the Operating Plan or Layout Plan as permitting such persons, and then only if all the following conditions are fulfilled:
  - the person shall only be on the Premises (or part) if accompanied by a person of or over 18.
  - all other conditions as to entry stated in the Licence must be fulfilled.
5. If Children under the age of five are admitted to the Premises:
  - not less than two safe high chairs shall be available to customers with Children.
  - provision must be made for heating Children's food at no extra cost.
  - a separate container for the disposal of soiled nappies must be provided."

4.10. The Licensing Board may refuse a Premises Licence or Occasional Licence where Children would have access to a place containing pool tables, dart boards, gaming machines or glass doors, unless appropriate changes are made to the Application, and will only consider Varying the relevant Conditions on a case-by-case basis after being satisfied that the Variation would not be inconsistent with the Licensing Objective.

## CCTV

4.11. The use of CCTV on Licensed Premises can be an important measure in complying with the Licensing Objectives, particularly (a) preventing crime and disorder and (c) preventing public nuisance.

4.12. In the case of Premises licensed for Off-sale but not On-sale (for example 'off-Licences') the Board has a Condition requiring the use of internal CCTV.

4.13. Although the Board does not automatically require other Premises to have CCTV, the Board supports the use of such systems and would encourage Licensees to make use of these.

4.14. In the case of all Premises, if the Board considers that:

- a) there is a risk of disorder, crime or nuisance arising in or outside particular Premises, or that the use of CCTV would otherwise promote the Licensing Objectives.
- b) there is a possibility of Licensed Premises or the area immediately outside the Premises becoming a gathering point for people to congregate, with potential for issues of crime, disorder or nuisance to arise,

the Board may require the installation of an effective CCTV system covering the interior, exterior or both

Where used, such systems must be kept in proper working order at all times, staff on the Premises must be able to operate the system, and images should be kept for at least one month and made available to the Police on request.



## Prevention of discriminatory conduct

4.15. The Licensing Board is aware of wide public concern within its area and elsewhere in Scotland surrounding sectarian conduct which focuses on the religious divide between Christian denominations, racial prejudice or other discriminatory conduct.

4.16. If a Licensee behaves in such a fashion, or condones such behaviour by others, he/she may cause offence. Members of the public may consider themselves excluded from the Premises by reason of their religious beliefs or affiliations or racial identity or possession of Protected Characteristics under the Equality Act 2010. Such conduct can also intimidate, incite religious or sectarian hatred, and constitute a threat to public order or safety. Several Licensing Objectives are engaged:

- 'Preventing Crime and Disorder'
- Securing Public Safety
- 'Preventing Public Nuisance'.

4.17. See Standard Condition A.15:

- 1) The Licensee shall not engage in, or permit, conduct or activities on the Premises:
  - a) which cause offence, or
  - b) which are likely to cause offence to a reasonable person, or
  - c) which constitute a threat to public order or safety, or
  - d) which are likely to discourage a particular part of the community from using the Premises
- 2) on racial, religious, sectarian or other discriminatory grounds.
- 3) The Licensee shall take reasonable steps to prevent any other person from engaging in such conduct or activities.
- 4) The association of any Licensed Premises with a particular football club or the display of football programmes or football memorabilia within the Licensed Premises shall not of itself breach this condition: provided that any such material displayed does not contain any design, insignia, word or groups of words which discriminate on the basis of race, religion or are sectarian or which could reasonably be construed as being discriminatory or inciting racial, religious or sectarian hatred or violence."

## Protection of staff and the community

4.18. The Board recommends that all licensees:

- consider the policies below to protect their staff and the community, and
- speak to the Police and L.S.O. for advice.

The Board can only recommend that Licence-Holders should implement such policies. These are not Licence Conditions, and the Board cannot revoke or suspend Licences if Licence-Holders do not implement these recommendations.

## On-Sales

The Board recommends that On-Sales licence-holders (including On-Sales with an ancillary Off-Sales facility, such as a public house which sells take-away alcohol) should consider policies such as:

- "Get Me Home Safely"
- "Ask for Angela"
- "PubWatch"
- "RadioLink"

### "Get Me Home Safely"

This is the name of the campaign to require businesses operating late at night to provide free transport for their staff after the Premises close. At the time of publishing this LPS there has been no legislation requiring employers to do this. Before adopting such a policy business should check with the Tax authorities for advice on whether such payments would be 'benefits in kind' so as to make the employees pay tax:

Employer expenses and benefits:

The Board cannot advise on this or on whether payments would affect the employees' contracts of employment.

## Off-sales

The Board recommends that Off-sales should participate in any bottle-marking scheme.

## Dispersal of Patrons

4.19. Many occurrences of crime, disorder and public nuisance occur at or immediately after the terminal hour for the supply of alcohol. Licensees should ensure that they and their staff have sufficient measures in place to ensure patrons exit the Premises in good order and as quietly as possible. Measures may include:

- a) limiting the amount of alcohol sold just before the terminal hour, for example only permitting a group to purchase one round, not two
- b) making sure all patrons know well in advance the last time for purchasing alcohol is approaching
- c) raising the lighting level and inspecting all parts of the Premises for patrons.

## Door Supervision

4.20. Licensees in on-sales should review the need for door supervision, having regard to the Licensing Objectives of 'preventing crime and disorder', 'securing public safety', and 'preventing public nuisance'. Door supervisors must be registered with the Security Industry Authority under the Private Security Act 2001. To employ a door supervisor who is not registered is a criminal offence and may itself lead to a Review by the Board of the Premises Licence. Licensees involved in what is termed 'Manned Guarding', whether or not door supervisors are used, may themselves have to be registered. Applicants should contact the Police and Security Industry Authority for more information.

## Participation in Games and Entertainment

4.21. Where entertainment involves the participation of patrons in games, physical activities, or their exposure to substances (for example hypnosis and foam parties), the Applicant may be asked for a Risk Assessment showing adequate controls to avoid the risk of injury to participants. Licensees should be aware that an authorisation from the Council for any exhibition, demonstration or performance of hypnotism may be required under the Hypnotism Act 1952, and that it is illegal to hypnotise anyone under 18.

## Gambling

4.22. Certain types of gambling in Licensed Premises may not require a Gambling Act Licence (for example cards or dominoes played by patrons).

Considering the 'Public Health' Licensing Objective, the Board would be concerned if games were played, with or without a Gambling Act Licence, for such high stakes that they constituted an inducement to persons to resort to Licensed Premises primarily for the purpose of taking part in such games.

The limits on stakes per game, total stakes that may be staked in any one period of 24 hours, prizes, and roll-over, are set by Regulations. The limits depend on the type of game and the type of Premises, for example the rules for pubs are different from the rules for clubs, and the rules for poker are different from the rules for other games. Licensees should contact the Gambling Commission or consult its website and should observe the Codes of Practice produced by the Commission.

The Commission's website has many advice documents on Gambling Law:

[Gambling Commission](https://www.gamblingcommission.gov.uk/)

## Race Nights

4.23. The Board also has concerns that the provision of 'Race Nights' or similar entertainment for the commercial gain of the Licence Holder or staff may have a major impact on the character of the Premises. Indeed, this is likely to be a criminal offence, unless the Premises are separately Licensed under the Gambling Act 2005. Accordingly, the Board has imposed a condition to the effect that no Race Night or similar entertainment shall be provided for the commercial gain of the Licence Holder or staff.

4.24. However, this does not prevent a Race Night where the whole proceeds of the event are paid (without deduction for any costs, such as organising the event or accommodating it) to a charity or good cause. The whole proceeds must be paid within 14 days of the event, and the receipt must be displayed to the Board or the L.S.O. on request. "Proceeds" does not include the cost of alcohol sold.

4.25. Licensees who propose any form of gaming or Race Nights are advised to contact the Board in advance to discuss what additional Licences may be needed.

## Management of Outside Drinking Areas

4.26. Since the operation of areas outside buildings (for example 'Beer Gardens') may be a particular source of noise nuisance, the Board expects that such areas will not be used for the consumption of drink, alcoholic or not, before 11am or after 10pm. They can still be used for other purposes, for example as smoking areas, although in particular cases the Board may consider that a complete prohibition is necessary.

4.27. Where a Layout Plan shows such an area:

- a) that area can be used by customers only.
- b) if the area is not enclosed by a wall, fence or other permanent structure, the Board expects that the area should be delineated by a removable barrier, in which case the barrier must be designed to allow access and exit for disabled persons
- c) Licensees should have 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 Premises
- d) all bottles and glasses must be cleared from the tables when the area closes for drinking (which can be no later than 10pm.).

4.28. Where the proposed outdoor area is situated on a public footway:

- a) the Licensing Board expects Applicants applying for outdoor areas to have obtained consent from the Council's Roads Service under Section 59 of the Roads (Scotland) Act 1984, and to comply with any conditions attached to that consent
- b) 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.

## 5. Adult and Sexual Entertainment

5.1. There are two types of Licence or authority required here, one administered by the Licensing Board and the other administered by the Licensing Committee. Premises need both.

### a) Licensing Board

This LPS describes the Licence which can be granted by the Licensing Board, which in the "Adult Entertainment" situation means that the Operating Plan attached to the Premises Licence must have a suitable description in Question Five(f), such as Adult Entertainment to consist of comedians, exotic dancers, adult entertainers and stag and hen nights.

### b) Licensing Committee

As well as the permission of the Licensing Board, the licensee will only be able to conduct a "Sexual Entertainment Venue" where permitted under the Civic Government (Scotland) Act 1982, Part Three, because either:

- the Licensing Committee has granted a "Sexual Entertainment Venue Licence"
- the Licensing Committee has granted a 12 month SEV Waiver, or
- occasional use is permitted by the Act ("the four-in-a-year exemption")

The Licensing Committee has made a Resolution requiring the licensing of "Sexual Entertainment Venues", so that since 21 August 2020 a further licensing system has applied. An alcohol Premises Licence is unlikely to be enough to permit these activities.

5.2. It should be clearly understood that both the Board and the Committee are strongly opposed to any form of Adult or Sexual Entertainment and are likely to regard any activity involving nudity or sexually suggestive behaviour as inappropriate.

### a) Licensing Board – "Adult Entertainment"

5.3. Adult Entertainment' is defined as:

any form of entertainment which–

- a) involves a person performing an act of an erotic or sexually explicit nature; and
- b) is provided wholly or mainly for the sexual gratification or titillation of the audience.

(See: 'Licensing Conditions (Late Opening Premises) (Scotland) Regulations, 2007-336').

5.4. The Board considers that there are other activities which, although not necessarily falling within the formal definition of 'Adult Entertainment', are nonetheless undesirable. Examples are strippers and 'Anne Summers parties'.

5.3. The Board is aware of the limits on the powers of a Licensing Board implied by the decision of the Court of Session in *Brightcrew Ltd. v City of Glasgow Licensing Board*, [2011] CSIH 46, but regards such activities as inconsistent with the Licensing Objectives of

- a) preventing crime and disorder,
- b) preventing public nuisance,
- c) protecting and improving public health, and
- d) protecting children and young people from harm.

5.5. The Holder of an Occasional or Premises Licence is expected to prohibit any such activity, whether it is arranged by the Holder, the Premises Manager, staff or by a customer. However, if a customer arranges an event without the prior knowledge of the Premises Licence Holder, Premises Manager or staff, staff are expected to prevent entry to the Premises, or part of the Premises where the event is taking place, by persons under 18 until the event ends.

5.6. If such activity is permitted then, unless expressly licensed by the Board, it is likely to be regarded by the Board as inconsistent with the Licensing Objectives, and the Board is likely to consider Revoking or Suspending the Premises Licence and, where a Personal Licence Holder is involved (for example the Premises Manager and/or a staff member), Revoking, Suspending or Endorsing that.

5.7. As with any other activity, it is important that the Operating Plan describes all the activities which the Licence-Holder proposes are to be carried out on the Premises, and that it specifically describes the nature, location, times and frequency of any such activities (whether or not within the statutory definition of “Adult Entertainment”). The Operating Plan should also detail the arrangements for excluding persons under the age of 18 from any part of the Premises where such activities are to occur.

5.8. When Premises propose Adult Entertainment, the Operating Plan should:

- a) state expressly at Question 5(e) ('Adult Entertainment') that this activity will be carried out
- b) state the arrangements for excluding under 18s at Questions 6(b) and 6(d).

5.9. Whether or not the proposed activity:

- is within the statutory definition of “Adult Entertainment,” or
- needs a Sexual Entertainments Venue Licence under the Civic Government (Scotland) Act 1982,

the Operating Plan should:

- a) state a full description of the activity, the parts of the Premises proposed, and the frequency and timing of the activity at Question 5(f) ('Other Activities')
- b) state the arrangements for excluding under 18s at Questions 6(b) and 6(d)
- c) the conditions of the Premises Licence will include those in Paragraph 5.10.

5.10. The conditions are:

- a) The Licensed Premises must be appropriately stewarded by personnel who are Licensed by the Security Industry Authority in terms of the Private Security Industry Act 2001
- b) Licensed stewards must be provided in all public areas in addition to the entrances to the Premises
- c) All performance areas, and all public areas (including entrances) must be monitored constantly whilst the Premises are open to the public via the use of CCTV (Standard Condition X.1 shall be observed).
- d) Licensing Committee - "Sexual Entertainment"

5.11. The Committee will consider each Application for a SEV Licence or SEV Waiver on its merits but is of the opinion that Licences and Waivers will only be granted in exceptional circumstances. It will approach Applications with the presumption that they should be refused.

5.12. If "Sexual Entertainment" happens on Premises without a SEV Licence or a Waiver:

- a) both the Premises Manager and the Premises Licence Holder can be prosecuted for not having a SEV Licence
- b) the Licensing Board can review the Premises Licence, and revoke or suspend it, on the basis that the Premises Licence Holder is not a fit and proper person having regard to the Licensing Objectives of "preventing crime and disorder" and "protecting and improving public health"; and
- c) the Licensing Board can review the Premises Manager's Personal Licence and revoke, suspend or endorse it, on a similar basis.

They can only avoid the possibility of these sanctions if they actively try to stop the Customers or if the "Occasional Use" exemption applies.

5.13. Premises can be used for Sexual Entertainment for a proposed event (not exceeding 24 hours) if the Premises have not been used for Sexual Entertainment on not more than three previous occasions in the past 12 months (1982 Act, Section 45A (9)). Each occasion can last no more than 24 hours. If the Premises operate as a Sexual Entertainment Venue for more than a 24 hour period, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion (Section 45A (10)).

5.14. The rule applies to a rolling year, not the calendar year running from 1 January to 31 December. To know whether a particular date can be used, count back 12 months from that date, and ask:

"Have the Premises been used for "Sexual Entertainment" on three or fewer occasions in this period?"

If the answer is "no", the exemption applies, and the Premises do not need a Licence. The Premises Operators are advised to write to the Council and the Police in advance when they propose to use the exemption, so that the operators can show that later uses of the Premises fell within the exemption.

## 6. Plastic Glasses in Late Opening Premises

### 6.1. The Board is aware:

- a) that it is widely acknowledged that violent crime, particular that involving glasses and bottles in Licensed Premises, tends to be spontaneous and to involve a link with the consumption of alcohol
- b) that individuals using glasses and bottles as weapons have caused a significant number of serious injuries sustained in or around Licensed Premises
- c) that the incidence of 'glassing attacks' is considerably greater in 'Late Opening Premises,' such as nightclubs, as opposed to other Licensed Premises which do not operate into the early hours of the morning.

6.2. Against this background, the Licensing Board considers it desirable to have in place a Policy in order to reduce, as far as possible, bottles and other receptacles being used as weapons during any incidents of disorder. The Board therefore adopts the following Policy having regard to the Licensing Objectives:

- a) preventing crime and disorder,
- b) securing public safety,
- c) protecting and improving public health.

### Policy

6.3 The following applies to Premises Licence (for Occasional Licences, see Part 8, especially Paragraph 8.25).

Unless an exemption in Paragraph 6.4 applies:

a) After 1am on any night (except where the Premises are only open after 1am due to a grant of Extended Hours):

- 1. all drinks (alcoholic or not) should be served in drinks containers made of plastic or toughened glass should be used, and
- 2. no conventional glass bottles, whether open or sealed, and whether they contain alcohol or not, should be given to patrons, whether at the bar or by staff service to any area away from the bar.



- c) Where the Licensee of Late Opening Premises is unable to source and use non-conventional glass bottles, such as plastic Ready-to-Drink containers (RTDs), all drinks (alcoholic or not) should be decanted into containers made of plastic or toughened glass before supply to consumers.
- d) all receptacles must still be in proper form to ensure accurate measurement of drink (for example, draught beer and cider glasses must bear either a Crown stamp or CE mark).

## Exemptions

### 6.4. The Policy does not always apply:

#### a) Premises which:

1. operate principally as hotels and which include at least four apartments set apart exclusively for the sleeping accommodation of travellers (in the Premises or in an associated building), in which the sale or supply of alcoholic liquor is solely to persons resident that accommodation; or
2. operate exclusively as a restaurant, or in which the sale or supply of alcoholic liquor is solely to persons taking table meals there, or as an ancillary to the table meals are exempt from the Policy. Exemption (ii) also applies to any part of Premises which is set aside permanently and exclusively for use as a hotel or restaurant, subject to the same conditions

#### b) On a case-by-case basis the Board may agree to a written exemption from the Policy requirements:

1. in relation to any Premises or part thereof
2. for certain types of receptacles or bottle.

Where an exemption applies to part only of the Premises, the P.L.H. shall ensure that no drink (alcoholic or not) is taken from the exempt area to any other part of the Premises, unless that drink is contained in plastic receptacles.

6.5. The Board may withdraw or vary any exemption and might do so if it considers that this would promote the Licensing Objectives, for example having regard to incidents involving injury to patrons or crime or disorder occurring in or near the Premises (for example this Policy might be applied to different hours).

6.6. Where the Policy does not apply (either while the Premises operate before the times, or where the Premises or part are within the exemption), it is for the individual P.L.H. to determine what practices should be put in place with regard to the safe operation of the Premises.

6.7. The Policy does not apply to Premises which have the usual Policy hours (such as is common with public houses).

6.8. The Policy does apply to "Late Opening Premises" (meaning Premises where the Operating Plan specifies that the Premises will, on any occasion, be open for a continuous period beginning on one day and ending after 1am on the following day, unless an Exemption applies (see above).

## 7. Licensed Hours and Extended Hours

7.1. While each Application is assessed on its own merits, the following sets out the Licensing Board's Policy on Licensing Hours. While there is a presumption that these hours will be allowed the Board reserves the right to reduce these depending on the circumstances of individual premises. Equally, applicants may seek to persuade the Board that additional requested hours are appropriate in the circumstances.

7.2. The Board's Policy on Licensed Hours is based on placing individual Premises (there are about 400 in North Ayrshire of all types) in one of six 'Function Types'. The allocation is based on the function of the Premises and is roughly based on the types of Licence under the 1976 Act:

1. Off-sales Premises: the Board usually allows the maximum permitted on each day (10am to 10pm, seven days a week). This applies both to Premises where Off-sales are a substantial part of the business (for example, shops) and where Off-sales are only ancillary to On-sales (for example, where a public house sells from its gantry). The Board has no discretion to permit Licensed Hours out with these times (1976 Act: 'Off-sales Licence')

2. On-sales Premises whose principal function is the provision of entertainment ('Entertainment Licence'); This category typically includes nightclubs. Such Premises are usually subject to a curfew condition, preventing any customers from entering after 00.30am.

3. On-sales Premises (other than (2)) (this includes Public Houses and Hotels).

4. On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose; 'meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table and is always available until 45 minutes before the terminal licensed hour. Snacks and crisps are not considered to constitute 'meals' ('Restricted Hotel Licence', 'Restaurant Licence' or 'Refreshment Licence')

5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125

6. Members' Clubs which have chosen to give up their entitlement to the Special Treatment allowed by Section 125 (and are subject to Part K of the Board's Standard Conditions). The same division is used for the purpose of the Overprovision Assessment (see Annex D). (by statute, Premises in Function Type 5 are not included in the Overprovision Assessment).



### 7.3. Considering:

- a) the five Licensing Objectives
- b) the presumption against 24-hour drinking
- c) the Guidance for Licensing Boards and Local Authorities issued by the Scottish Government

the Licensing Board has adopted a Policy for the terminal hour beyond which alcohol must not be sold on the Premises or parts of Premises.

### 7.4. The Policy for each Function Type 1 to 6 is:

| Type | Mon   | Tue   | Wed   | Thu   | Fri   | Sat   | Sun   |
|------|-------|-------|-------|-------|-------|-------|-------|
| 1    | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 |
| 2    | 1.00  | 1.00  | 1.00  | 2.30  | 2.30  | 2.30  | 1.00  |
| 3    | 24.00 | 24.00 | 24.00 | 1.00  | 1.00  | 1.00  | 24.00 |
| 4    | 24.00 | 24.00 | 24.00 | 1.00  | 1.00  | 1.00  | 24.00 |
| 5    | 1.00  | 1.00  | 1.00  | 1.00  | 1.00  | 1.00  | 1.00  |
| 6    | 1.00  | 1.00  | 1.00  | 1.00  | 1.00  | 1.00  | 1.00  |

The "Function Type" of Premises is the same as in the Overprovision Policy (see Annex D).

The Policy on Licensed Hours is different for Occasional Extensions (Extended Hours): see the following paragraphs.

#### On-sales- Early-opening

7.5. The Board considers that the commencement of On-sales of alcohol before 11am is likely to be inconsistent with the Licensing Objective "protecting and improving public health," regardless of whether a meal is provided.

On a case-by-case basis the Board may agree to the hours starting at or after 10am if the Licence Holder satisfies the Board that there is a need for this, arising from the particular circumstances of the Premises. The Board would expect evidence, and not simply anecdotal evidence, that there is an actual need for the hours already licensed.

7.6. Where Applicants seek the grant or variation of Premises Licence to permit On-sales before 11am:

- a) The Operating Plan will have to indicate an intention to provide certain facilities, for example the provision of cooked meals throughout the early opening period (snacks and crisps are not considered to constitute 'meals').
- b) The Applicant will require to satisfy the Board that there is a demonstrable demand from patrons to provide those facilities. It is not sufficient to refer generally to 'customer demand'. What is required is evidence that there is a quantifiable demand.

7.7. If the Board is later satisfied that early-opening is not appropriate in particular Premises, it may seek to Review the Premises Licence on the basis that early-opening is not consistent with that Licensing Objective.

7.8. Although the normal earliest opening time permitted is 11am, the Board might permit a temporary Occasional Extension ("Extended Hours") to allow early opening if the request relates to:

- a) the activities of customers of the Premises associated with a sporting event, for example the participation of customers in a sports tournament,
- b) the meeting of customers prior to travelling to a sporting event such as an 'away' football match.
- c) the live TV broadcast of a major sporting event in a different time zone where the broadcast is outside hours already licensed.

7.9. Regardless of any decision about early hours, any Outside Drinking Areas associated with the Licensed Premises cannot operate before 11am or after 10pm.

#### On-Sales- Closing Hours conditions

7.10. The Board operates a 00.30am curfew: no member of the public shall be admitted to On-sales Premises after 00.30am (whether on payment or not). On a case-by-case basis the Board may allow particular Premises to permit customers who have already entered the Premises to leave temporarily and re-enter after smoking, but the numbers of such customers must be limited, and the Premises must take all reasonable steps to ensure that the only customers who enter after 00.30am are those who have previously been on the Premises.

7.11. Premises open after 1am are subject to additional Mandatory conditions. As these are imposed under the 2005 Act, the Board cannot vary or disapply them.

#### Extended Hours' Applications

7.12. The Licensing Board may extend the Licensed Hours in respect of particular Premises by such period as the Board considers appropriate. The Board can only do so in connection with:

- a) a special event or occasion to be catered for on the Premises, or
- b) a special event of local or national significance.

7.13. If Premises intend 'seasonal opening' (for example opening during the Festive Period), Premises must indicate this intention in the Operating Plan Question Four. Even if the

Operating Plan states this intention, the Premises cannot open outside the usual trading hours stated in the Operating Plan unless they apply for and are granted Extended Hours. The Board does not grant general extensions over part or all of its area under the Section 67 Determination procedure.

7.14. Premises can only apply for the addition of 'Extended Hours' to the beginning of or the end of a period of Licensed Hours - if the Operating Plan does not already have Licensed Hours for the day in question, the Board must be asked for a Variation, rather than a grant of 'Extended Hours'.

Events which are appropriate for Extended Hours

7.15. The Board has approved a list of events which are likely to be accepted as appropriate for a grant of Extended Hours. An event which is not on the list may still be allowed Extended Hours if the Board is satisfied that it falls within the legislation. The list is:

- a) 'special event or occasion'

This includes a birthday, christening or funeral, or the opening night of Licensed Premises which are opening after being closed during construction or renovation (no more than seven consecutive days may be included as 'opening nights').

- b) 'special event of local or national significance'

This includes:

- a) Festive Period: each year the Board determines a Policy for Extended Hours for the next Christmas/New Year Period, and may decide to impose a 00.30am curfew, and may make special provision for certain days falling on weekends; the exact Policy is agreed in October or November
- b) Marymass (see Paragraph 7.21)
- c) Public Holidays widely observed in North Ayrshire (for example, the May Day Holidays and the September Weekend); holidays observed mainly outside Scotland and observed in only a few Licensed Premises in North Ayrshire are not included
- d) Arran Folk Festival, Largs Viking Festival, Largs Regatta Week and Millport Country & Western Festival
- e) major sporting events such as the Olympic Games, Commonwealth Games or football World Cup Finals
- f) Hallowe'en.

Events which are not appropriate for Extended Hours

7.16. The Board does not consider that the following are appropriate for Extended Hours:

- a) the Easter weekends
- b) Local Holidays other than Marymass
- c) Guy Fawkes Night.

Applicants seeking Extended Hours on those days should expect that their Applications will be referred to a Board Meeting.

## How to apply

7.17. For the convenience of Licensees, the Board accepts a single Application Form covering several different days, although these are individual Applications. The current prescribed fee per Application is £10, so an Application covering four days would cost £40.

7.18. An Applications should be made at least 28 days before the proposed event if it is within Board Policy ([see the Board's "Statement of Practice" at Annex C](#), and ["Occasional Licences for Junior Football" at Annex F](#)).

If the Application is outside Policy, then the Applicant is recommended to apply at least 56 days in advance.

This is because:

- a) if the Application is within Policy and there are no adverse comments from either the Police or L.S.O., the Application is likely to be granted under 'delegated powers' (it can be granted quickly by the Clerk or another Board officer, without having to wait until the next Board Meeting, perhaps weeks away), but
- b) if the Application is outside Policy it may have to be decided by a Board Meeting. These meetings are held at intervals of at least six weeks, so an Applicant who does not apply early may find that either there is not enough time to put the case on the meeting Agenda or that any Board decision comes only days before the date requested.

7.19. Where the hours sought are outside the Board's Policy, the Applicant will have to demonstrate that the hours requested are appropriate in the circumstances. The Applicant should provide the Board with sufficient information to enable a decision to be made. This will include:

- a) the hours sought
- b) the description of the special event or occasion
- c) what activities are proposed to take place during those hours
- d) when each activity will take place
- e) why the event or occasion is considered to be special, and
- f) why the event or occasion cannot take place within the Policy Hours.



## Policy on Extended Hours

7.20. The Board has a special Policy for Extended Hours for Premises in Irvine on Marymass Saturday (see Paragraph 7.21 below). Otherwise, the Policy on Extended Hours is: one hour at the end of 'normal' hours, except that Function Type 2 (nightclubs) only have 30" extra on Thursday - Saturday. The Policy for each Function Type 1 to 6 is:

| <b>Type</b> | <b>Mon</b> | <b>Tue</b> | <b>Wed</b> | <b>Thu</b> | <b>Fri</b> | <b>Sat</b> | <b>Sun</b> |
|-------------|------------|------------|------------|------------|------------|------------|------------|
| <b>1</b>    | None       | None       | None       | None       | None       | None       | None       |
| <b>2</b>    | 2.00       | 2.00       | 2.00       | 3.00       | 3.00       | 3.00       | 2.00       |
| <b>3</b>    | 1.00       | 1.00       | 1.00       | 2.00       | 2.00       | 2.00       | 1.00       |
| <b>4</b>    | 1.00       | 1.00       | 1.00       | 2.00       | 2.00       | 2.00       | 1.00       |
| <b>5</b>    | 2.00       | 2.00       | 2.00       | 2.00       | 2.00       | 2.00       | 2.00       |
| <b>6</b>    | 2.00       | 2.00       | 2.00       | 2.00       | 2.00       | 2.00       | 2.00       |

## Marymass Saturday in Irvine

7.21. In general, the Board will agree to Licensed Hours for on-sales for Premises in Irvine any period

- starting on or after 8am on Marymass Saturday and
- ending on or before 2am on the following Sunday.

This applies to Premises in the Irvine Locality only

- a) This is not a Determination under Section 67 ("Power for Licensing Board to grant general extensions of Licensed Hours"). It will still be for individual Licensed Premises to apply for Extended Hours (under Section 68) and the Application will be determined on a case-by-case basis according to the particular circumstances. For example, a Public House might apply for an extension to 2am, but the Board might refuse the application if the Police said that the application was inconsistent with any of the Licensing Objectives (such as "preventing crime and disorder", "securing public safety" or "preventing public nuisance").
- b) It is not legally possible to license off-sales before 10am or after 10pm and the Board would have to refuse an Occasional Licence Application or an Extended Hours Application asking for off-sales outside these hours: Section 65(2).

## 8. Occasional Licences

8.1. It is possible to make an Application for an Occasional Licence (O.L.) authorising the sale of alcohol on Premises which are not otherwise Licensed Premises (such as church halls or community centres). The Application may be made by:

- a) the holder of a Premises Licence,
- b) the holder of a Personal Licence, or
- c) a representative of any Voluntary Organisation, or
- d) a 'Section 125' Club.

8.2. The 'occasion' must be identified, for example a birthday, christening or funeral. For the convenience of Licensees, the Board accepts a single Application Form covering several different days, although these are individual Applications. The prescribed fee per Application is £10, so an Application covering four days would cost £40. An O.L. can only last up to a maximum of 14 days.

Although the Board is entitled to grant O.L.s for over one day, if the Applicant seeks a single O.L. to cover more than one day then there should be a common event connecting each of the days. For example, if Premises hold birthday parties for four different people on four successive nights, these will be regarded as four distinct 'occasions', so four separate O.L.s will be needed, costing £40 in total. This would not be treated as a single occasion lasting days, with a single O.L. costing £10.

Which events are suitable for Occasional Licences?

8.3. The Board has Policy guidelines as to events which are, and are not, considered suitable for granting an O.L. If there is a request for an event which is outside the Policy, it may be necessary for the Applicant to attend and seek to persuade a Hearing of the Board as to why the Policy guidelines should not be followed in the particular circumstances of their event.

Suitable for Occasional Licence

8.4. These include dances, discos, dinner-dances, wedding receptions, and parties where a disco or band is provided.

Not Suitable for Occasional Licence

8.5. Private parties where there is no significant entertainment are not regarded as suitable for the grant of an O.L.

No O.L.s for commercial use

8.6. The Board considers that O.L.s should be used only for genuine 'occasions' and should not be used for the operation of commercial Premises.

There is one exception: where Premises which were licensed have within the past 12 months ceased to be so and have not been used for any other purpose since, the Board will consider granting one or more O.L.s, totalling not more than three months, provided:

- a) the operator of the Premises has applied, or confirmed that he/she will be applying, for a full Premises Licence (not a Provisional Premises Licence) and the Application has not been determined, and
- b) the Board is satisfied that that new Application is likely to call at a scheduled meeting of the Board within that period.

Any exception allowed on one occasion is without prejudice to any future decision.

O.L.s – Limits on numbers of Licences

8.7. At the time of adopting this LPS, the legislation permits holders of a Premises Licence or Personal Licence to make an unlimited number of Applications. However, the Scottish Government may change this, under the Alcohol (Scotland) Act 2010.

In any case, if there are regular Applications from the same person (or persons representing the same organisation) for the same Premises, then the Board may expect the Applicant to seek a Premises Licence instead and refuse the O.L. Application).

8.8. There are restrictions on the number of Applications a Voluntary Organisation or Section 125 Club can make.

The limitations are in any period of 12 months, there can be no more than four O.L.s (where each has a duration of four days or more), and 12 O.L.s (where each has a duration of one to three days), provided that, in any period of 12 months, the total number of days does not exceed 56.

## O.L. for Contact Sports

8.9. Events involving contact sports, such as boxing, karate or other martial arts tournaments, might be granted O.L.s, but, since all five of the Licensing Objectives are relevant here, the Board will only permit O.L.s for contact sports where:

- a) the organiser is part of a recognised sporting association, and
- b) the event is conducted according to the rules of the association.

Accordingly, the Board will not just be seeking information about who is to run the bar, but about who is running the event itself. The Board may require the Applicant for the O.L. to give information and documents about the event, the association, and insurance. The Board may attach special Licence conditions requiring proper medical attention on-site (not simply First Aid), insurance and parental consent for participants under 16.

Any Application for an O.L. where there are to be contact sports will be referred to the Convenor or another Member of the Board, who may direct that any O.L. should be subject to additional conditions. It may be decided that the Board's general practice on plastic or toughened glass should not apply (see Para. 8.25), and accordingly the Board may impose requirements that:

- a) for all drinks (alcoholic or not) containers made of plastic or toughened glass should be used,
- b) all drinks (alcoholic or not) should be decanted into containers made of these materials before supply to consumers,
- c) all receptacles must still be in proper form to ensure accurate measurement of drink (for example draught beer and cider glasses must bear either a Crown stamp or CE mark).
- d) no conventional glass bottles, whether open or sealed, and whether they contain alcohol or not, should be given to patrons, whether at the bar or by staff service to any area away from the bar,

8.10. Apart from Licensing issues, there may be a need for other consents or permissions, for example some staging or boxing rings may be regarded as "raised structures" requiring prior consent from the Council's Building Standards office. Some use of Premises may require Planning Permission.

## O.L. for Voluntary Organisation

8.11. There is no statutory definition of what a 'Voluntary Organisation' is, but the Board will expect to be satisfied of two matters about the Applicant:

- it has objects which are social, cultural, educational, charitable (for example fund-raising for a good cause)
- it operates on a not-for-profit basis: all proceeds from the sale of alcohol, beyond necessary costs, will be applied to the objects, and no office-bearer or anyone else will receive any benefit from the proceeds

8.12. A 'Voluntary Organisation' might have some or all of these features:

- a continuing purpose (it is not simply formed for the event for which it seeks the O.L.)
- a written Constitution
- office-bearers, such as Convenor and Secretary
- its own Premises
- it has an OSCR number (registered on the Scottish Charity Register)
- it is a Company Limited by Guarantee
- it is treated as a Charity by the Inland Revenue
- it receives relief from Council Rates

8.13. It is recommended that, at the same time as a Voluntary Organisation lodges an Application for an O.L., it also lodges with the Board written evidence of these matters. If the Board staff doubt whether or not 'Voluntary Organisation' status applies, the Application may be referred to a Board Meeting for a decision. Since it is possible that the next scheduled Board Meeting would fall after the date of the proposed event, so that the event would remain unlicensed, it is important that Applicants provide all evidence at the earliest opportunity.

#### O.L. application process

8.14. Applicants are recommended to apply for O.L.s at least 56 days before the date of the function or event. This is not a requirement of either the Law or Board Policy, but it would help the Applicant because it is always possible that an O.L. Application will have to be considered by the full Board at a scheduled meeting. Since there are only about five scheduled meetings in the year, it is possible that there might not be enough time to arrange a meeting before the function or event, which means that there would be no Licence in place.

8.15. As a minimum, the Board expects to receive O.L. Applications at least 28 days before the date of the function or event ([see the Board's "Statement of Practice" in Annex C](#), and [the Board's Policy on "Occasional Licences for Junior Football" in Annex F](#)).

8.16. The period of 28 days was chosen to allow all the steps of the statutory procedure to be followed. When an O.L. Application is made, the Board must:

- tell the Police
- tell the Board's L.S.O.
- put an advertisement on its website so that members of the public know of the Application and can object.

The details are in Section 59 – up to 28 days can pass between the date the Application is lodged and the report from the Police and L.S.O. In many cases the reports are provided much quicker, but no Applicant can assume that this will happen in any particular case.

8.17. The vast majority of O.L. Applications are granted by the Clerk or other officers of the Board under what are called 'delegated powers', without a Hearing before the Licensing Board. An important factor in this system working is that Applicants follow the Board's advice about early Application. The Application can be granted under delegated powers only if all of these apply:

- where there are responses from both Police and L.S.O.
- both are 'clear.'
- there are no objections; and
- the Application is within Board Policy (for example as to hours).

8.18. If there are any unfavourable circumstances, the Application cannot be determined under delegated powers, but must instead be referred to a Meeting of the full Licensing Board (the particular case may be able to use the special procedure, but Applicants cannot assume that this will be available).

If the Application is lodged at least 28 days in advance, it may be possible to put it before the Board, so that the Board can hear both Applicant and any Objector, and decide, all before the date of the event. If the Application is made later, there is a chance that the Hearing would not be until after the date of the proposed event, meaning that the event would be unlicensed.

#### O.L.s – need for other Licence

8.19. Applicants should also be aware that, as well as an Occasional Licence granted by the Board, they may also require a Public Entertainment Licence and/or a Late Night Catering Licence issued by North Ayrshire Council under the Civic Government (Scotland) Act 1982.

8.20. If the Licences relate to a large event, such as a rock concert where 500 or more people are expected, then six months is the practical minimum notice, since the management of large numbers of people may involve co-ordination with the Police and other Emergency Services, other agencies outside the Council, as well as several Council Departments. An Applicant proposing such an event should:

- a) supply details, including a risk assessment, to the Council's Chief Executive's Department; and
- b) ensure that all interested parties are fully informed about the proposals,
- c) at least six months in advance.

8.21. If Premises already have an Occasional Licence, they cannot ask for Extended Hours: Section 68(6). A person who wants an O.L. must state the whole Licensed Hours at the outset.

## O.L.s- Policy on Hours

8.22. Although the normal earliest opening time permitted is 11am:

- a) the Board may permit hours before 11am if the request relates to the activities of customers of the Premises associated with a sporting event, in the same circumstances where early Extended Hours would be allowed (see above), and
- b) the Board will permit on-sales in Irvine on Marymass Saturday starting at 8am.
- c) there are special rules for Junior Football (see Annex F - "Occasional Licences for Junior Football").

8.23. The maximum terminal hour (after which alcohol must not be sold on the Premises):

- On-Sales

In the following Table:

Row one is the Policy for the period outside the 'festive period' for Extended Hours Applications (such as Christmas, New Year, certain public holidays - see Paragraph 7.15 ("special event of local or national significance")).

Row 2 is the Policy for the 'festive period'.

| <b>Period</b> | <b>Mon</b> | <b>Tue</b> | <b>Wed</b> | <b>Thu</b> | <b>Fri</b> | <b>Sat</b> | <b>Sun</b> |
|---------------|------------|------------|------------|------------|------------|------------|------------|
| 1             | 24.00      | 24.00      | 24.00      | 1.00       | 1.00       | 1.00       | 24.00      |
| 2             | 1.00       | 1.00       | 1.00       | 2.00       | 2.00       | 2.00       | 1.00       |

- Off-sales

10am to 10pm, seven days a week (by Law the Board cannot grant off-sales outside these times).

## O.L.s- Conditions

8.24. Part H of the Board's Standard Conditions applies to all Occasional Licences. If these Conditions are not observed, then:

- a) future Applications for Occasional Licences may be refused, and
- b) the Police may act on the basis that the current event is unlicensed.

Part H includes:

#### H.7. Temporary Structures

H.7.1. In this condition “temporary structure” includes marquee or tent.

H.7.2. Where a temporary structure is used:

- Alcohol must only be consumed within the temporary structure or a roped area beside it reserved exclusively for this purpose (these areas are together the licensed area).
- The roped area shall not exceed in size the equivalent of one-half the floor area of the temporary structure itself.
- The Licence Holder shall follow the instructions of any officer of North Ayrshire Council prior to and throughout the duration of the Occasional Licence.

#### H.9. Supervision

The Licence Holder:

- a) shall provide adequate stewarding to enforce all conditions.
- b) shall ensure that all staff who sell or serve alcohol on the Premises to which the Occasional Licence relates either hold a Personal Licence or have received the same training as is required of staff in Licensed Premises by 2005 Act, Schedule 3, Paragraph 6, and the Personal Licence or training record must be produced to a L.S.O. on request;
- c) shall ensure that either he/she or that trained member of staff is present at the Premises throughout the duration of the Licence.”

O.L.s- Plastic 'glasses'

8.25. The Board Policy depends on what the function or event is:

- for contact sports such as boxing, karate or other martial arts tournaments - see Para. 8.6
- for Junior Football - one of the conditions of the O.L. is Condition M.2(c):

"No glasses shall be used. All drinks (alcoholic or not) shall be decanted into paper or plastic containers."

(see Annex F of this LPS).

- Otherwise, there is no need to use drinks containers made of plastic or toughened glass, or to decant alcohol into containers made of these materials, at events which are covered by an O.L.



## 9. Members Clubs

9.1. Members Clubs require a Premises Licence granted by the Board.

9.2. Members Clubs are of two types. The majority are entitled to the 'special status' given by Section 125 of the 2005 Act, which means:

- a) they have lower Licence fees than commercial premises,
- b) they do not require to have baby-changing facilities, and
- c) they do not require to have a Premises Manager.

9.3. To qualify for the 'special status', Members Clubs must

- a) be non-profit making; and
- b) have a constitution and rules as detailed in the Licensing (Clubs) (Scotland) Regulations 2007, Number 76.

The Club must produce its constitution and rules to the Board, which advises Clubs if these qualify.

9.4. However, this special status has a potential disadvantage - a limitation on the number of Occasional Licences - and a few Clubs have chosen to ask the Board to give up the 'special status'. The Board has introduced a procedure under which the organisation will become 'ordinary' Licensed Premises but continue to operate as a 'Club', in the sense that it will normally restrict the use of its facilities to its members, as opposed to the public at large, except where the Premises are used for a bona fide pre-booked function such as a wedding reception or birthday party, when persons other than Members can use the facilities of the part of the Premises where the function is taking place, and buy or consume alcohol there.

9.5. A Club which opts to surrender the special status becomes subject to Part K of the Board's Standard Conditions, so is referred to as a 'Part K Club,' and like other 'ordinary' Licensed Premises must:

- 1. have a Premises Manager
- 2. pay the higher Annual Fee based on Rateable Value (rather than the reduced fee paid by 'special status clubs')
- 3. comply with the condition requiring baby-changing facilities.

9.6. To make the change the Organisation:

- a) signs a document (prepared by the Board) acknowledging the consequences of the change - this document is part of the Variation Application.
- b) nominates a Premises Manager.

When the Variation is granted, it becomes subject to a different part of the Standard Conditions from that appropriate to 'ordinary' Clubs.

9.7. Whether they have the 'special status' or not, Clubs must keep their constitutions updated and, when revised, submit a copy of the revised constitution to the Board. Clubs must also ensure their constitution, accounts and entry book are available for inspection by the L.S.O. and the Police at all reasonable times.

9.8. The Overprovision rules apply differently, depending on whether or not the Club has the 'special status':

- a) a Club which has 'special status' is not counted for Overprovision purposes (in the Board's Function Type scheme, the Premises are "FT5")
- b) a "Part K" Club does not have 'special status', so is counted for Overprovision purposes (the Premises are Function Type "FT6").

## 10. Personal Licences

10.1. It is important that at least one member of staff should have a Personal Licence. This is because one of the mandatory Licence conditions is:

“Every sale of Alcohol made on the Premises must be authorised (whether generally or specifically) by—

- a) the Premises Manager, or
- b) another person who holds a Personal Licence.”

(2005 Act, Schedule 3, Paragraph 5)

This is so important that the Board recommends that Premises have at least two Personal Licence Holders, to allow for lengthy absences due to holidays or illness.

There is a lot of advice about how to get and renew a Personal Licence on the Board's website:

[Personal licence \(north-ayrshire.gov.uk\)](http://north-ayrshire.gov.uk)

This includes an Advice Note for renewal "Answers to Frequently Asked Questions".

Training- initial

10.2. Before a person can apply for a Personal Licence, he/she needs to obtain a training qualification. This is called “Scottish Certificate for Personal Licence Holders” (SCPLH).

10.3. That is the only qualification that can be used. These qualifications cannot be used:

- Scottish Certificate for Personal Licence Holders (On-Sales)
- Scottish Certificate for Personal Licence Holders (Off-Sales)
- The Scottish Certificate for Personal Licence Holders (Refresher)"

10.4. The Board does not itself provide training and the person would have to get it himself: some colleges offer suitable courses, as do:

BII (Scotland) (formerly the “British Institute of Innkeeping”), and AFS/Servewise (“Alcohol Focus Scotland”).

When choosing a training provider, make sure that they offer a Scottish qualification. The Licensing legislation in England and Wales (Licensing Act 2003) also has Personal Licences, but the system there is quite different from Scotland, so a qualification or Licence from south of the Border would be no use here.

## Training- Refresher

10.5. Once a Personal Licence is granted, the Holder must do two things:

- a) the Holder must be retrained every five years (not ten years), and
- b) the Holder must give the Board evidence within three months of the retraining qualification. The retraining can be provided by the same organisations that give Personal Licence training.

Requirement (b) is important. Even if you get the refresher training, you must show the Board the Refresher Training certificate within three months of the end of the five year period. If you do not show the Board at all, or if you show it to the Board after the three month period, the Board is legally required to revoke your Licence - even if you in fact have a Refresher Certificate. There is no Board Hearing, and you have no right of Appeal.

10.6. Anyone holding a Personal Licence should book the retraining well in advance of the five year limit. If the booking is made but the retraining does not in fact happen on schedule (for example because the Holder misses the course due to illness or emergency, or the course is cancelled), then the Licence is still Revoked.

10.7. The certificate you need at this point is:

- Scottish Certificate for Personal Licence Holders (Refresher)

This is not the same certificate used to get the Personal Licence in the first place. When booking a training place, the holder should make sure that it leads to the right qualification. Although the former Licence Holder could still work on Licensed Premises (since the qualification he/she had already obtained would be sufficient to meet the staff training obligation) he/she would cease to be qualified to act as a Premises Manager.

## Review

10.8. Where a Personal Licence has already been granted, the Board can review it in three situations:

- a) where the Holder is convicted of any 'relevant or foreign offence' (Section 83(7).
- b) where the Board is dealing with a Premises Licence Review, and in the course of that the Board considers that a Personal Licence Holder acted against the Licensing Objectives (Section 84).
- c) following a report from the Chief Constable stating that the Personal Licence Holder has acted in a manner which is inconsistent with any of the Licensing Objectives (Section 84A).

10.9. In any of these cases, the Board can decide to Revoke, Suspend or Endorse the Personal Licence. If the Personal Licence was granted by a Board elsewhere in Scotland, NALB will report to that other Board.

Example: Police make a complaint about Licensed Premises in North Ayrshire. In the course of the Review into the Premises Licence, NALB decides that a member of staff (for example the Premises Manager) acted against the Licensing Objectives. NALB can act against that person's Personal Licence. If it was granted by another Board, NALB informs that other Board afterwards.

10.10. Endorsement means that the outcome of the Review is noted on the Personal Licence. An Endorsement lasts five years. If, in that time, the Licence Holder gets a total of three Endorsements, the Board must consider whether or not to Revoke or Suspend the Licence (Section 86).

### Updating

10.11. A person who holds a Personal Licence must tell the Board within one month of any change of circumstances:

- a) if he/she is convicted by a Court of a Relevant or Foreign Offence (Section 82)
- b) any change in the Licence Holder's name or address (Section 88)

At the same time as giving the information, he/she must give the Board the original Licence. This is so that the Board can update it and re-issue it.

Failure to supply the information or to provide the Licence for updating is a criminal offence and can lead to prosecution.

### Training for Other Staff

10.10. All staff on Licensed Premises require a minimum of two hours training, if they do not themselves hold a Personal Licence

The training records must be shown to the L.S.O.

The training can be given by a Personal Licence Holder (for example, the P.M.), and can be provided by the same organisations that give Personal Licence training.

10.11. Whether staff hold Personal Licences themselves or have only the basic statutory training, the Board may regard misconduct by them as reflecting on the Premises Manager and on the Premises Licence Holder. For example, where a staff member sells alcohol to a person under 18 then the Board may consider that, as well as the personal fault of the individual concerned, inadequate training or supervision was an issue.

### Training: Occasional Licences

10.12. In the case of Occasional Licences, Standard Condition H.9 requires the Licence Holder to ensure that:

- a) all staff who sell or serve alcohol either hold a Personal Licence or have received the same training as is required of staff in Licensed Premises
- b) the Personal Licence or training record is produced to a L.S.O. on request
- c) either he/she or that trained member of staff is present at the Premises throughout the duration of the Licence.

## Annex A- Standard Conditions for Premises and Occasional Licences

The Board's Standard Conditions consist of:

1. The Statutory Conditions which are applied by Statute (and which the Board cannot vary or dis-apply) and
2. The Conditions applied by the Board under Sections 27(6) and 60(4) (except where the Board decides to exclude or modify a Condition in any case).

The Statutory Conditions are the Mandatory Conditions:

- a) which apply to all Premises Licences (see Schedule 3, 2005 Act),
- b) which apply to all Occasional Licences (see Schedule 4, 2005 Act), and
- c) which apply to Late Opening Premises (see The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007, No. 336).

Where the Mandatory Conditions are amended, the Standard Conditions are held to be amended accordingly.

The Standard Conditions are issued in several Editions. This is because they have been reviewed and amended from time to time since they were first adopted in 2008. On each occasion, a new Edition has been prepared. The Standard Conditions were adopted by the Board on 20 May 2008, before the Board started to grant Premises Licences under the 2005 Act.

The five Editions are:

1. the original
2. after amendment on 2 December 2008
3. after amendment on 10 February 2009
4. after amendment on 23 June 2009
5. after amendment on 1 September 2009.

All five Editions are on the Board's website:

Only one Edition ever applies to particular Premises. If a Premises Licence was granted with one Edition, it is not affected if the Board later approves a new Edition. This means that the Board's website requires to maintain several copies of the Standard Conditions, because the earlier Editions continue to be relevant to Premises which had Licences granted earlier.

When the Board informs an Applicant that the Premises Licence Application will be considered at a Meeting on a particular date, the Board also informs the Applicant that any Premises Licence to be granted will be subject to specified Parts of the Standard Conditions. The Applicant should read this as a reference to the most recent Edition.

Where the Board later wishes to apply the newest Edition to older Licences, this is done during the statutory Variation procedure. The individual Licence Holder has the right to make representations to the Board as to whether or not the Variation should be applied.

It is possible that the Board may apply additional Conditions, in addition to the Standard Conditions, to deal with the circumstances of particular Premises, and that further Editions will be adopted.



## Annex B- Local Licensing Forum

The Forum is a consultative and advisory body separate from the Board. It should aim to include representatives of:

- a) holders of Premises Licences and Personal Licences
- b) the Police
- c) persons having functions relating to health, education or social work
- d) young people
- e) residents

In North Ayrshire, the Forum also includes a L.S.O.

The Forum meets at least four times a year and has an annual joint meeting with the Board itself.

It is important to note that the Forum is separate from the Board and does not decide on individual cases. Decisions are made by the Board. The Forum is supposed to monitor the operation of the legislation and to give the Board advice and recommendations. The Board must have regard to any advice or recommendation from the Forum but is not obliged to follow either.

The Forum is not entitled to comment on a particular case: the Forum would be entitled to comment generally on the application of Board Policy or the use of a Licence Condition throughout North Ayrshire, but it would not be entitled to advise the Board what action it should take during a Premises Licence Review relating to particular Premises.

## Annex C- Statement of Practice for Occasional Licences and Extended Hours

If you are applying for an Occasional Licence for Junior Football, see also Annex F.

The Statement of Practice is:

"North Ayrshire Licensing Board is concerned that Applications are sometimes lodged without leaving enough time for the legal procedure to be followed, and on 25 May 2010 approved the following Statement of Practice. It applies to all Applications made on or after Tuesday 29 June 2010.

1. This Statement of Practice does not apply where the only reason for the Application is to cater for a funeral
2. the Board's advice to Applicants remains that an Application should be made at least 28 days before the date, or the earliest date, requested.
3. An Application will not be accepted if it is not made at least 14 days before the date, or the earliest date, requested.
4. Where an Application is lodged giving over 14 days, but less than 28 days, notice (a 'Late Application'):
  - a) 'three strikes' rule: If an Applicant makes a Late Application and within the period of two years immediately preceding the date requested has had two or more events where Occasional Licences or Extended Hours (or any combination of them) were granted following Late Applications, the Application is to be rejected.
  - b) in any other case, the Late Application will be accepted and will be granted (assuming that there is no adverse comment from Police, L.S.O., or (in an Occasional Licence) an objector). However, the '28 day' advice is to be repeated in a covering letter when the Licence is issued, and a record of the lateness is to be kept.
5. The Clerk should decline to grant an Application where Board staff have contacted the Applicant to clarify some issue and the Applicant has failed, within seven days of that contact, to supply clarification to the reasonable satisfaction of the Clerk.
6. The Convenor (who failing the Vice-Convenor, and who failing any Member of the Board) may authorise departure on a case-by-case basis from the Board's Policy on hours or any other matter.
7. The Clerk is entitled to disregard the fact that the Applicant has failed to do anything required of him by this Statement of Practice, where in the opinion of the Clerk the failure is justified by exceptional circumstances.
8. When an Application is rejected for any of these reasons, the Applicant will be informed of the reason. The Police will be told of the Application anyway.
9. In this Statement of Practice, 'Clerk' includes any officer of the Board authorised by the Clerk."

## Annex D- Overprovision

### Summary of the Policy

The Policy in 2023 to 2027 is consistent with that of the 2013 to 2018 and 2018 to 2023 LPS. During the intervals between LPS reviews the Board received regular updating information to ensure that the Policies remained a reliable guideline and to enable it to consider whether or not it was necessary to consider proposing a Supplementary Licensing Policy Statement.

For example, at its Meeting on 5 September 2022 the Board had a report (see Annex H):

"Update on:

- a) Alcohol consumption in Scotland (MESAS Monitoring Report 2022) and
- b) Review of Minimum Pricing legislation."

The Board receives a summary of the annual MESAS report.

The Board has never proposed making a Supplementary Licensing Policy Statement.

In assessing Overprovision and considering the related grounds of refusal the Board disregards the off-sales capacity of on-sales premises (some, but not all public houses and restaurants have a small off-sale facility, to allow customers to takeaway unopened bottle or other containers).

The Board's 2023 to 2027 Overprovision Policy is as follows:

1. Everywhere in North Ayrshire is overprovided, so if there is an Application for a new Licence, or for an increase in capacity, there is always a presumption of refusal, no matter which 'Function Type' is involved.
2. Effect of 'Locality': The presumption of refusal is stronger if the Premises are in a 'Locality' where Applications are especially unlikely to be granted (all of North Ayrshire, apart from "North Coast" and "Isle of Arran").
3. Effect of 'Function Type': The presumption of refusal is stronger if the Premises have any 'Function Type' except for 4 (Hotels and restaurants), but even if the Premises are in hotels or restaurants the Board can still refuse due to its Overprovision Policy)

If both (2) and (3) apply, the presumption of refusal is especially strong. For example, it is unlikely that the Board would allow a new Off-sales in the Garnock Valley Locality.

These are all presumptions, not rigid rules, so refusal is not automatic. While the LPS creates a rebuttable presumption that a case should be determined in a certain way, it will always be open to applicants or objectors to persuade the Board that the Policy should not be followed in the individual circumstances of a particular case.

The application of the Board's Policy in a particular case is affected by two issues:

- a) the 'Locality' of the Premises (there are six):
- b) the 'Function Type' of the Premises (there are six).

#### a) Locality

The Board has determined that there are six 'Localities' in their area, coinciding with the six 'Locality Areas' used by the North Ayrshire Community Planning Partnership). These are:

1. "North Coast" (Skelmorlie, Largs, Isles of Cumbrae, Fairlie, Seamill & West Kilbride)
2. Three Towns" (Ardrossan, Saltcoats & Stevenston)
3. Kilwinning" (including Pennyburn, Blacklands, Whitehurst Park, Woodside)
4. Irvine and Area" (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranyard)
5. Garnock Valley" (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie)
6. Isle of Arran"

#### b) Function Type

1. Off-sales Premises
2. Nightclubs (or parts of Premises which operate as nightclubs)
3. Other On-sales Premises (for example, Public Houses)
4. Hotels, Restaurants and other On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose- 'meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table and is always available until 45 minutes before the terminal licensed hour.
5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125
6. Members' Clubs which have chosen to give up their entitlement to that Special Treatment (these are sometimes called "Part K Clubs")

By statute, Premises in Function Type 5 are not included in the Overprovision Assessment.

## Details of the Policy

### 1. Introduction

1.1. Section 7 obliges the Board to include in the LPS a statement as to the extent to which the Board considers there to be Overprovision of Licensed Premises, or Licensed Premises of a particular description, in any Locality within the Board's area.

1.2. The issue of Overprovision arises when the Board is considering whether or not to grant applications for either a new Premises Licence or a Major Variation of an existing Licence, including an application for increased capacity. It is not relevant when dealing with Occasional Licences (Sections 7(5), 23(9) and 30(8)).

1.3. In applications for a new Premises Licence, Section 23(5)(e) provides for the following ground of refusal:

- "that the Board considers that, if the Application were to be granted, there would, as a result, be Overprovision of Licensed Premises, or Licensed Premises of the same or similar description as the subject premises, in the Locality."

1.4. In applications for a Major Variation, Section 30(5)(d) is similar.

### 2. The Board's approach

2.1. Previous Licensing Policy Statements were based on Guidance that was published in 2007. This was updated on 13 January 2023 and now includes:

- Assessing overprovision

5.31. There are a number of underlying principles that the Licensing Board should consider as they approach the development of their statement of overprovision:

- Licensing Boards should use alcohol-harm information (or potential alcohol-harm information) to identify localities and then proceed to consider the number, type and capacity of premises in those areas.
- It is the potential for undesirable consequences which is intended to be addressed through overprovision assessments as a requirement within the 2005 Act. This can be thought of as the cumulative effect of increased licences being granted in a locality and what this means in respect of the effect on life in that area. It is the cumulative effect rather than the actions of any single operator that is key.
- If a Licensing Board considers there is at least potential for, or a reasonable basis for, concluding that there will be a risk of adverse impact on the objectives (should more premises licences be granted), it is entitled to come to the view that there is a state of overprovision.
- Consideration should be given as to whether aggregate information and evidence from a number of sources demonstrates a link between the availability of alcohol in an area and alcohol-related harm.

- To demonstrate a "dependable causal link", the proof of the link must be on a balance of probabilities. What this means in practice is that based on the evidence of harm in a locality, it is more likely than not that alcohol availability is a cause, or that increasing the availability of alcohol in that area will increase that harm.
- There is no simple numerical formula for pinpointing the threshold between provision and overprovision. Determining overprovision involves the application of reason and judgement in the interests of the community."
 

The problem Boards face is that while there is abundant evidence that social harms exist in some areas more than in others, there are many types of social harm, and one cannot conclude that one thing causes another: the two things might be symptoms of an underlying problem.

Government agencies collect a vast amount of data on health and social 'Indicators', to give a 'profile' of an area.

The Board has used several 'Indicators' in the past, because:

- they were thought to give good evidence of a relationship between poor health and alcohol, and
- the Board has used them before in previous Licensing Policy Statements to assist comparison (there has been a slight improvement in health figures over the years, and while nobody could say that previous Overprovision Policies have been the only cause of that improvement, the Board might think "we're doing something right")

but there are many other Indicators available. They will paint much the same picture - often an area which:

- scores poorly on the overall "Scottish Index of Multiple Deprivation" (SIMD) also
- has many individual poor scores on measurements such as the amount of alcohol consumed, hospital attendances, crime and accidental fires.

but recognising that one negative factor tends to coincide with another negative factor does not prove that one thing causes another (this is the "correlation v causation" issue).

Localities

2.2. Section 7(2) of the 2005 Act states:

"It is for the Licensing Board to determine the "localities" within the Board's area for the purposes of this Act and in doing so the Board may determine that the whole of the Board's area is a Locality."

The Board's Overprovision Policy covers its whole area, although the Board has determined that there are six 'Localities' in its area (coinciding with the six 'Localities' used by the North Ayrshire Community Planning Partnership (CPP)):

1. North Coast (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride)
2. Three Towns (Ardrossan, Saltcoats & Stevenston)
3. Kilwinning (including Pennyburn, Blackland, Whitehurst Park, Woodside)
4. Irvine and Area (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranyard)
5. Garnock Valley (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton)
6. Arran

These Areas contain a total of 38 Intermediate Zones ('IZs'). IZs are the areas commonly used to gather a wide range of government statistics.

## Function Types

2.3. The Assessment recognises that there are six Premises 'Function Types':

1. Off-sales
2. Entertainment venues (for example nightclubs)
3. Other On-sales (for example public houses)
4. Accommodation, meals, or refreshment
5. Clubs with "Special Treatment" under Section 125
6. Clubs without "Special Treatment" (what the Board calls 'Part K' Clubs)

Overprovision applies to all Function Types except FT5 (since Clubs which are eligible for "Special Treatment" under Section 125 are exempt from Overprovision: Section 125(2)(c).)

2.4. The 2005 Act introduced a single 'Premises Licence' in place of:

- a) the seven separate types of Licence under the 1976 Act (for example 'Public House'), and
- b) the separate status of Registered Clubs (under the 1976 Act, Clubs were registered at the Sheriff Court instead of being Licensed by the Board).

For the purpose of determining the type of premises to which an Overprovision policy should apply, it is the Board's view that the 1976 Act types are still relevant, as: -

- a) the six Function Types reflect the different functions of Licensed Premises; (the statute allows such a distinction for Overprovision purposes: "... Licensed Premises of the same or similar description as the subject premises").
- b) the vast majority of Premises which presently hold Licences under the 2005 Act already had Licences under the 1976 Act (and so would already have been in a particular Function Type) and when these Premises applied for a 2005 Act Licence they did so (without exception) on a 'like for like' basis - the Board was satisfied that in each case the Operating Plans and Layout Plans reflected substantially the existing Licensed activity;

2.4. The Board considers that its approach to the categorisation of different Premises is consistent with Paragraph 5.5 of the 2023 Guidance, for example a feature of the previous system was that the 'Public House Licence' covered both:

- a) Premises that concentrated on vertical drinking, and
- b) Premises where a substantial part of the business was the supply of food.

The Board will be open to the suggestion that particular Premises may not fit easily into a single Function Type.

This approach was also consistent with Paragraph 52 of the 2007 Guidance.

### 3. Application of the Overprovision Assessment

#### 3.1. The Board's approach to Overprovision

This is consistent with both the 2007 and 2023 Guidance documents:

- The 2007 Guidance

This includes:

- “54. Where a Licensing Board's Policy statement has concluded that in a particular locality there is an overprovision of licensed premises, or licensed premises of a particular description, an application for a new premises Licence or for the variation of an existing Licence in that locality should normally be refused on the ground provided by Section 23(5)(e) of the Act, either:
  - because it would simply add to the number of licensed premises; or
  - because it would increase the number of premises of the relevant description, depending on the approach which the Licensing Board has taken in the Policy statement.
- 55. The application need not be the subject of an objection.
- 56. The effect of the Policy is to create a rebuttable presumption against the grant of an application. Each application still requires to be determined on its own merits and there may be exceptional cases in which an applicant is able to demonstrate that grant of the application would not undermine the Licensing objectives, or those objectives would not be undermined if the applicant's operating plan were to be modified or the grant of the Licence made subject to appropriate conditions.
- 57. Because the application of the Policy must leave room for exceptions, the Policy statement should not set a numerical quota of licensed premises or premises of a particular description for any locality.” (emphasis added thus)



## The 2023 Guidance

This includes:

"3.9 ... Where it is assessed that there is overprovision a rebuttable presumption is created against granting new licences although each case is judged on its own merits and there is always the possibility of exceptions." (emphasis added thus)

### 3.2. Policy on Overprovision

The Board has considered the information contained in the documents and resources described in Annex J ("The statistics used in this LPS").

The Board considers that there is Overprovision in all Localities of its area, and not only in the Localities which are predominantly 'orange' in the 'traffic light' scheme ("significantly 'worse' than the Scottish average"). The present number of Licences reflects the Board's historical willingness to permit the number of Licensed Premises in the tourist areas of Arran, and to a lesser extent, the North Coast, to exceed the average for the rest of the Board's area. The Board takes the view that such an excess is not consistent with the Licensing Objective "protecting and improving public health."

The Overprovision Policy covers the whole of the Board's area, as the Board considers that the whole area is already overprovided. The Policy already makes a rational distinction, based on the evidence, between areas suffer substantial health and social problems as a result of the consumption of alcohol (four Neighbourhood Areas) and areas which are not as bad (two Neighbourhood Areas)

The Policy adopted in 2023 is similar to those adopted in 2013 and 2018, which were developments of the Policy adopted in 2010. The data that the Board has collected indicates that there have been improvements in health and other indicators over that time, but the Board is concerned that in many cases data for North Ayrshire is below the national average for the whole of Scotland, which itself is a low benchmark. The Board considers that the general trend of the earlier Policies should be continued.

The Board considers that it is reasonable to apply the Overprovision Policy even to Localities which are, relatively, not as bad as others, given that it is likely that customers from one Locality will travel to another. The Board is unlikely to permit an increase in capacity in one Locality where there might be a draw of customers from any of those four Localities.

### 3.3. Procedure

When the Board requires to consider an Application for:

- a) a new Premises Licence (including a Provisional Premises Licence) or
- b) a Major Variation which would lead to an increase in capacity in an existing Premises Licence

the Board will proceed as follows:

- a) The Board will start by identifying the Locality containing the Premises and the Function Type.
- b) it will then consider whether or not any of the 'Additional Factors' (listed in Paragraph 3.4 below) apply.
- c) It will have a report stating which Locality and Function Type apply to the Premises, and (where relevant) stating which of the 'Additional Factors' may apply.
- d) It will consider any submissions made by the Applicant and any interested party and consider those submissions and the presumptions listed in Paragraph 3.5 below.

### 3.4. 'Additional Factors'

The likelihood that the Application will be granted or refused will be influenced by the Locality and the Function Type:

- a) Locality: Given the level of alcohol-related health and crime impacts in four of the six Localities ("Three Towns"; "Kilwinning"; "Irvine and Area"; or "Garnock Valley"), an Application in these four Localities is especially unlikely to be granted (regardless of the Function Type
- b) Function Type 1

The Board is aware:

- that a substantial proportion of alcohol is bought from off-sales shops and consumed in an unregulated environment (unlike a public house, there are no checks on the rate consumed, volume consumed, the consumer's state of intoxication, or the age of the consumer)
- that disorder in or near on-sales is often contributed to by customers 'front-loading' by drinking at home or in public places

Accordingly, any Application for Premises in Function Type 1 is especially unlikely to be granted (regardless of the Locality)

- c) Function Types 2, 3, 6:

The Board is concerned with what may be characterised as the 'night-time economy', with members of the public visiting Premises, and travelling between Premises, where the consumption of alcohol is a substantial element of the night's events. Thus, the presumption of refusal would apply to pubs, nightclubs, and 'Part K' Clubs (Function Types 2, 3 and 6)

- d) Function Type 4:

Where the Premises are in Function Type 4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), the Board may regard the grant of a new Licence (or Variation of an existing one) as not calling for refusal, on the view that such Premises may not be a significant contributor to overall disorder.

However, since the Board:

- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and
- endorses the view that “alcohol is not an ordinary commodity,”

it may refuse the Application here also. 'Meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table and is available at all times until 45 minutes before the terminal licensed hour.

### 3.5. Presumptions

- a) the existing number and capacities of Premises in that Locality and in that Function, Type is already sufficient,
- b) Overprovision would result if the Application were to be granted, and
- c) the Application should be refused.
- d) It would not be necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted. The Assessment does not set rigid quotas.

The Board will expect Applicants who are seeking the grant of a new Premises Licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application.

### 3.6. Subsequent Events

It does not follow that, where one Licence ceases to be in force or there is a reduction in capacity, the Board will proceed on the basis that there is now 'surplus' capacity which can be filled without doing harm to the Licensing Objectives or the Overprovision Policy.

The Assessment should be regarded as varied as a result of subsequent events:

If the Board sees fit to depart from the Policy in an individual case, then the Assessment should be regarded as varied, and the Board will consider the fact that it has already been departed from

For example:

- Suppose that the original Assessment notes that there are 1,000 customers in a particular Locality; if the Board later grants an Application which increases the capacity to 1,100, a second Application for Premises in the same Locality will be approached by the Board on the view:
- that the Board has already changed its position

- that the maximum appropriate level is 1,100, that the second Application is even more likely to lead to Overprovision.
- If capacity is reduced, as by the closure of Licensed Premises or the variation of an existing Licence, then the Assessment should be regarded as automatically varied:
- In the same example, if the Capacity in the Locality fell from 1,000 customers to 900, the Board would approach a new Application on the basis that that the maximum appropriate level was 900 and that the Locality was already at its Overprovision limit.

## Annex E – Gambling in Clubs and Pubs

The legislation about Gaming and the use of Gambling Machines is separate from the Licensing (Scotland) Act 2005. It is dealt with by the Licensing Board.

The Gambling Act 2005 also has "Premises Licences", but these are different from the "Premises Licences" granted by the Board to sell alcohol.

There are rules about stakes and prizes, but generally small-scale gaming and machines are allowed on on-sales Premises.

There are special rules for Clubs.

For more information see the Gambling Commission website and the document "Guidance to licensing authorities" (published 1 April 2021, last updated 19 April 2023), including:

Premises licensed to sell alcohol at:

[Guidance to licensing authorities - Part 26: Premises licensed to sell alcohol \(gamblingcommission.gov.uk\)](#)

Summary of gaming machine categories and entitlements at:

[Guidance to licensing authorities - Appendix B: Summary of gaming machine categories and entitlements \(gamblingcommission.gov.uk\)](#)

Summary of gaming entitlements for clubs and alcohol-licensed premises at:

[Guidance to licensing authorities - Appendix C: Summary of gaming entitlements for clubs and alcohol-licensed premises \(gamblingcommission.gov.uk\)](#)

Poker games and prizes at:

[Guidance to licensing authorities - Appendix H: Poker games and prizes \(gamblingcommission.gov.uk\)](#)

If Premises want more machines than the "Automatic Entitlement" allows, then they can apply to the Board for separate Permits. These have fees and have to be renewed periodically.

### a) Gaming

Poker and other card games, bingo, cribbage, backgammon and dominoes ("Equal Chance Gaming") is allowed in on-sales Licensed Premises without a Licence or Permit under the Gambling Act, so long as the rules about stakes and prizes are observed.

## b) Gaming Machines

The Regulations place machines in "Categories", with different rules as to stakes and prizes. The Categories are A to D. Category B is divided into five sub-categories, B1, B2, B3, B3A and B4. Generally, Category D machines are aimed at children, and have low stakes and prizes. Other categories have progressively higher stakes and prizes. For example, the "Fixed-Odds Betting Terminals" are in Betting Shops are B2 machines. The Category rules are linked to the numerous different types of Premises, which have Licences or Permits.

On-Sales Premises with alcohol licences (not off-sales) have an "Automatic Entitlement". This means that they can have up to two machines, each of Category C or D. The "Automatic Entitlement" only applies if the Premises Licence Holder gives the Board written notice of his/her intention to make gaming machines available under it and pays £50. The P.L.H. must comply with the Gambling Commission Code of Practice about the location and operation of Gaming Machines. The notification lasts indefinitely and does not need to be renewed.

## Annex F- Occasional Licences for Junior Football

There are special arrangements for Junior Football:

- a) Policy
- b) Replays and rearranged matches
- c) Licence Conditions

### Policy

Following representations from the Scottish Junior Football Association (West Region) and Police Scotland and having regard to the fact that the sale or consumption of alcohol at Junior Football fixtures has the potential for crime, disorder, nuisance and anti-social behaviour, the Board on 5 September 2016 adopted a Policy.

This Policy applies to any Occasional Licence granted for Premises linked to the playing of Junior Football. The Policy was reviewed, amended and confirmed by the Board on 12 December 2016.

Occasional Licences are automatically granted subject to Mandatory Conditions set out in Schedule 4 to the Act. In addition, the Policy also includes conditions made under Section 60(4), which are set out below ("Conditions for Junior Football - Board's Standard Conditions, Part M").

1. The Notice Period between
  - other date the Application is made and
  - the requested date
2. must be at least fourteen (14) days.
3. if it is late, the Applicant will have to state why.
4. The Applicant must
  - give the Board a plan showing the Designated Area (the only place where alcohol may be sold or consumed). If the Licence is issued, the plan approved by the Board will be an essential part of the Licence.
  - state the times of the scheduled start and finish of the fixture, and the names of the competing teams. The Board specifically rejected the proposal that a Club might say "over the remainder of the season, we will play Clubs X, Y and Z. We can't yet say which Club will be played on which date." If a late Application is lodged, it will be referred to the Convenor for a preliminary decision on whether or not to accept it for processing.
5. if the Notice Period is seven days or less, the Convenor will be "satisfied that the application requires to be dealt with quickly" and so the usual statutory timescale of 21 days is reduced to 72 hours under (Licensing (Scotland) Act 2005, Section 57(4,5), added by Criminal Justice and Licensing (Scotland) Act 2010, Section 189(2).)
6. If it is not accepted, it will be treated as refused on the basis that the Convenor considers that it is not possible for
  - the Police
  - Licensing Standards Officer, or
  - anyone entitled to make objections or representations

to give adequate consideration to the Application, and that it should be refused as inconsistent with the Licensing Objectives:

- a) preventing crime and disorder,
  - b) securing public safety,
  - c) preventing public nuisance,
  - d) protecting and improving public health, and
  - e) protecting Children and Young People from harm.
7. if it is accepted, it will be processed as normal (with intimation and advertisement). The Response Period will be the period available for Notices, Reports, Objections or Representations (subject to any reduction authorised by the Convenor under the 'quick' procedure.)
  8. When the Response Period has expired, the Application will be referred to the Convenor for a decision on whether or not to grant the Licence. If there are adverse Notices or Reports, Objections or adverse Representations:
    - the Applicant should be sent copies or advised orally or by email of their contents.
    - the Applicant will be told the date and time when the Convenor is likely to consider the case and will be invited to lodge written or email comments
  9. If the Licence is granted, it will be subject to the conditions of Part M of the Board's Standard Conditions. Part M is stated below
  10. Anything which may be done by the Convenor may, who failing, be done by the Vice-Convenor, and who failing, by any Member of the Licensing Board.
  11. The Licence will permit the sale of alcohol for no more than:
    - one hour before the kick-off.
    - 15 minutes during half-time.
    - one hour after the end of the match.

## Replays and rearranged matches

This applies to

- a) cup replay matches
- b) matches which are being re-arranged at short notice having been recently postponed,
- c) matches replacing fixtures cancelled due to inclement weather and subsequently re-arranged for another date in the near future

The second fixture would need a separate Licence Application - the original Licence would only have covered a particular date and time. The Board has no power to amend these details after issue.

If a second Application for an Occasional Licence is made to cover such a fixture the Board will look favourably on second applications lodged with less than 14 days' notice, provided that the original fixture:

- a) met all of the Occasional Licence requirements (at least 14 days' notice),
- b) was granted a Licence, and



- c) involved the same teams and venue.
- d) Licence Conditions

As well as the Licence Conditions that would apply to any O.L., there are extra Conditions applying to Junior Football. These are in Part M of the Board's Standard Conditions:

- Conditions for Junior Football (Board's Standard Conditions, Part M)

All Occasional Licences in Scotland are automatically subject to Mandatory Conditions set out in Schedule 4 to the Act. In addition, in North Ayrshire the Conditions in Part M are local conditions made by the Board under Section 60(4).

### M.1. Times

Alcohol may only be sold or consumed in the periods:

- a) one hour immediately before the scheduled start time of the fixture (if the start is delayed, the period for sale or consumption is not extended),
- b) 15 minutes during half-time.
- c) one hour immediately after the end of the match.

There is to be no sale or consumption at any other time.

### M.2. Places

- a) Alcohol may only be sold or consumed in the Designated Area shown on the plan included with the Application.
- b) No alcohol is to leave the Designated Area.
- c) No glasses shall be used. All drinks (alcoholic or not) shall be decanted into paper or plastic containers.

### M.3. Under 18s

No person under 18 years of age may enter or remain in any place where alcohol is being sold or consumed, except that the sale or supply of non-alcoholic drinks is permitted to a person under 18, but the person must immediately leave the Designated Area after the drink is supplied.

### M.4. Temporary Structures

Where a marquee, tent or other temporary structure is used:

- a) Alcohol must only be consumed within
  - 1. the temporary structure or
  - 2. a roped area beside it reserved exclusively for this purpose. The roped area shall not exceed in size the equivalent of one-half the floor area of the temporary structure itself.
- b) The Licence Holder shall follow the instructions of any officer of North Ayrshire Council prior to and throughout the duration of the Occasional Licence.

## M.5. Supervision

The Licence Holder:

- a) shall provide adequate stewarding to enforce all conditions.
- b) shall ensure that all staff who sell or serve alcohol on the Premises to which the Occasional Licence relates either hold a Personal Licence or have received the same training as is required of staff in Licensed Premises by 2005 Act, Schedule 3, Paragraph 6, and the Personal Licence or training record must be produced to a Licensing Standards Officer on request;
- c) shall ensure that either he/she or that trained member of staff is present at the Premises throughout the duration of the Licence.

## M.6. Policing

The club should agree with Police Scotland the policing resources required at the fixture prior to the grant of a Licence."

## Annex G- Display and consumption of free samples in Off-Sales

1.1 PLHs sometimes ask the Board to permit this, for example an off-sales shop selling locally produced alcohol might offer small samples for customers to taste.

1.2. The Board does not regard the display and consumption of alcohol as a normal incident of the Licensed activity under an off-sales Licence, so these PLHs should apply to the Board for a Major Variation. The Major Variation proposal will ask the Board to agree to include the display and consumption of free samples in Part 5(f) of the Operating Plan ("Other activities"). It is not enough to request a Minor Variation to amend the Layout Plan.

1.3. The PLH should tell the Board:

- a) what volumes will be available for consumption (for example, samples for spirits or other alcohol with an ABV of 20% or more should be no more than 12.5ml, and samples for wine/beers should be no more than 25ml).
- b) where the display will be within the shop.
- c) how the display is to be supervised.
- d) supervisors must be told that no-one under 18 may consume alcohol, even in small volumes.

1.4. The Board will treat each Application on its merits but may regard the proposal as inconsistent with the Licensing Objective "protecting and improving public health" since it encourages drinking.

1.5. If a display is permitted, the following requirements must be kept in mind:

- a) the display will only be permitted in the area which is either:
  - already marked on the Layout Plan as licensed for the display of alcohol for sale
  - between shelves which are so licensed, or
  - between a shelf which is so licensed and the point of sale.

The definition of "capacity" in 2005 Act, Section 147 is:

"... (b) in relation to Licensed Premises (or any part of such Premises) on which Alcohol is sold for consumption off the Premises (or, as the case may be, that part), the amount of space in the Premises (or, as the case may be, that part) given over to the display of Alcohol for sale"

The object of the free samples is to encourage potential buyers to buy a full bottle or can of the sample, so although the alcohol in the sample is not itself "for sale", it is part of "the display of Alcohol for sale". Therefore, the Board is entitled to expect that the display will be within the designated Layout Plan area, although the Board may accept that the area between the designated display area and the point of sale can also be used for the display and consumption of free samples

- b) consumption can only take place within "Licensed Hours" shown in part three of the Operating Plan. Licensing (Scotland) Act 2005, Section 63(1) provides:
  - "Subject to subsection (2), a person commits an offence if, out with Licensed Hours, the person— ... (b) allows Alcohol to be consumed on Licensed Premises ..."
  - The word is 'consumed', not 'sold'. Subsection (2) contains various exceptions (for example the 15 minutes drinking-up time in on-sales) but none of these are likely to apply to an off-sales shop.
- c) Off-sales cannot operate before 10am or after 10pm, so the free samples cannot be consumed outside that period, even if the shop opens before the Licensed Hours start or remains open after they end. This is because the Board cannot vary the Licence so as to extend the off-sales before 10am or after 10pm (Section 30(5)(a), referring to various mandatory grounds for refusal including the 'no off-sales outside 10am to 10pm' rule).
- d) Alcohol should not be consumed by anyone under 18 (in the Act, "Child" means a person aged under 16, and a "Young Person" is 16 to 17). Section 106 is:
  1. A Child or Young Person who knowingly consumes Alcohol on any Relevant Premises commits an offence.
  2. Any Responsible Person who allows a Child or Young Person to consume Alcohol on any Relevant Premises commits an offence. Examples of "Responsible Person" would be the Premises Manager and any member of staff.

## Annex H – Board report on annual MESAS report and Minimum Pricing (5 September 2022)

Report to North Ayrshire Licensing Board

Meeting: 5 September 2022

Title: Update on:

- a) Alcohol consumption in Scotland (MESAS Monitoring Report 2022) and
- b) Review of Minimum Pricing legislation.

Purpose: To inform the Board of the current position.

Recommendation: That the Board note this report.

### 1. Executive Summary

1.1. This Report to the Board deals with two matters:

- a) The annual report published by Public Health Scotland ("PHS") as part of the "Monitoring and Evaluating Scotland's Alcohol Strategy" ("MESAS").
- b) The current review of the Minimum Pricing legislation.

Both matters are relevant to the Board's approach to the Licensing Objective of 'protecting and improving public health' and the question of Overprovision. The Board will consider these when reviewing the Licensing Policy Statement (the deadline for this review is 5 November 2023).

1.2. The Licensing Board's Licensing Policy Statement for the period 2018 to 2023 is published on this webpage:

[Licensing Board](#)

under the heading "Licensing Policy Statement". That webpage contains links to the many documents concerning the relationship between alcohol consumption and health, crime and fires in North Ayrshire which the Board considered before adopting the Licensing Policy Statement.

### 2. Background

MESAS

2.1. As part of the "Monitoring and Evaluating Scotland's Alcohol Strategy" ("MESAS"), each year Public Health Scotland ("PHS") publish a report. This report presents all the latest available data on key alcohol indicators in Scotland, for example the link between alcohol consumption and health. The report includes many data sets and charts.

The most [recent report was published](#) on 21 June 2022. It is [published on the PHS website](#).

## 2.2. In summary:

In 2021, population-level alcohol consumption – estimated from alcohol retail sales – was maintained at a similar level to 2020, the lowest level seen in Scotland in the available time series (1994 onwards). 9.4 litres of pure alcohol were sold per adult, equivalent to an average consumption of 18.1 units per adult per week and substantially exceeding the low risk weekly drinking guideline of 14 units.

Throughout 2021, COVID-19 restrictions continued to affect alcohol sales through on-trade premises such as pubs, clubs and restaurants. As a result, 85% of all pure alcohol sold in Scotland was through supermarkets and other off-licences; while this was lower than in 2020 (90%) it remains higher than prior to the pandemic (72% in 2019). The volume of pure alcohol sold per adult in Scotland was 4% higher than in England and Wales, the smallest difference seen between the two areas and a reduction from last year.

The average price of alcohol sold in Scottish supermarkets and off-licences rose to 64 pence per unit in 2021, up from 63 pence in 2020. In England and Wales, the average price rose from 59 pence to 60 pence per unit over the same timeframe. In 2021, the majority (62%) of pure alcohol sold in Scotland was recorded as being sold at between 50 pence and 64.9 pence per unit, compared to 32% before Minimum Unit Pricing (MUP) was implemented.

Alcohol continues to be a leading cause of illness and early death. In 2020, 1,190 people in Scotland died due to a cause wholly attributable to alcohol, an average of nearly 23 people per week. Alcohol-specific death rates increased between 2019 and 2020, an increase that was largely driven by deaths amongst men aged 45 years and over. Both rates of alcohol-specific death and alcohol-related hospital stays continue to be at least twice as high for men as women and were highest in the 55 to 64 year age group.

2.3. Vicki Ponce Hardy, Public Health Intelligence Adviser at Public Health Scotland, said:

“Today’s MESAS report shows that population-level alcohol consumption in Scotland has been maintained at a similar level to that seen in 2020, the lowest level observed in the available data. However, it also clearly highlights that significant inequalities persist in both alcohol consumption and the harm it causes.

"The most recent survey data show that almost a quarter (24%) of adults in Scotland still drink more than the recommended low risk weekly drinking guideline. Among those exceeding the guideline, it is those in the lowest income group who are likely to consume the most. In the 10% most deprived areas of Scotland, rates of alcohol-specific death were nearly five times higher, and alcohol-related hospital stays were nearly eight times higher, than in the 10% least deprived areas.

"Like all harm caused by alcohol, this is preventable. Public Health Scotland will continue to monitor and evaluate Scotland’s alcohol strategy, to gauge progress and understand what works to reduce the harm alcohol causes.”

## Minimum Pricing

Minimum Pricing is applied by the Alcohol (Minimum Pricing) (Scotland) Act 2012.

On 1 May 2018, the Scottish Ministers set the "Minimum Price per Unit" ("MPU") at 50 pence. The legislation provides that the Minimum Pricing Provisions expire at the end of a period of six years, counted from that date, unless the Scottish Ministers order that the Minimum Pricing Provisions are to continue in effect (this is sometimes referred to as a "sunset clause"). The legislation requires that the Scottish Ministers must, as soon as practicable after the end of the period of five years counted from that date, lay before the Scottish Parliament a report on the operation and effect of the Minimum Pricing Provisions during that period. Accordingly, the Scottish Government are currently reviewing what the future arrangements should be, for example, should the MPU remain at 50 pence, rise to 60 pence, 70 pence, 80 pence or more?

The Minimum Pricing legislation affects Licensing Boards in that one of the Mandatory Conditions which apply to all Premises Licences requires sale prices to be no lower than the Minimum Price. As with any other Licence Condition, a Premises Licence Holder who breaches this legislation faces a Review at the Licensing Board, although in North Ayrshire there have been no Reviews, because breaches are resolved by the Licensing Standards Officer giving advice to the Licence-Holder.

### 3. Proposals

The Board should note this Report. No action is called for at present.

### 4. Implications/Socio-economic Duty

#### 4.1. Financial

There are no financial implication arising from this Report, which has only been prepared for the Board's information.

#### 4.2. Human Resources – None.

#### 4.3. Legal – None.

4.4. Equality/Socio-economic – None. The Board are not being asked to take any action themselves and are only noting the position. An "Equality Impact Assessment" is not considered necessary. There are no socio-economic implications of the proposals.

#### 4.5. Climate Change and Carbon – None.

4.6. Key Priorities – North Ayrshire Council has priorities for Aspiring Communities in the Council Plan 2019 to 2024. An effective licensing system, for example monitoring the Licensing Objectives and the Licensing Board's Licence Conditions, helps achieve Priority Outcome: "North Ayrshire's residents and communities are safe".

#### 4.7. Community Wealth Building – There are no Community Wealth Building issues.



## 5. Consultation

No consultations are necessary or appropriate.

Aileen Craig

Head of Democratic Services

For further information please contact the Licensing team on [licensing@north-ayrshire.gov.uk](mailto:licensing@north-ayrshire.gov.uk).

## Annex I- Report to Board 18 September 2023

Report (to Board on 18 September 2023)

To North Ayrshire Licensing Board by Solicitor (Licensing)

Subject: Licensing (Scotland) Act 2005 – Review of existing Licensing Policy Statement and consideration of consultation responses for the Licensing Policy Statement 2023 to 2027

Purpose, To continue the review process

Recommendation:

That the Board:

- a) consider the consultation responses,
- b) give directions to the Clerk as to the content of a draft Licensing Policy Statement 2023 to 2027, and
- c) continue consideration to a Special Meeting to consider the draft and to adopt it, with or without amendment.

### A. Health Board presentation to the Board on 18 September 2023

The Health Board have been asked to give a presentation to the North Ayrshire Licensing Board at the next meeting on Monday 18 September 2023. They will send an electronic version of their presentation so that Council officers can set it up on the big screens in the Chambers.

### B. Background

B.1. All Boards must have a "Licensing Policy Statement" ("LPS") setting out the Board's approach to a wide range of licensing matters (such as the Core Hours allowed to on-sales and off-sales, and overprovision).

B.2. Under Section 6 the Board must revise its LPS every four years. The current calculation of the four year period sets the revision date as 18 months after the last Council election. The last Council election was on 5 May 2022, so the period ends on Sunday 5 November 2023.

B.3. NALB adopted its first LPS in 2007 and it had been revised every three to five years ever since (the interval has varied as the legislation has changed, although it is now four yearly).

B.4. The policy only sets out guidelines, and not rigid rules – for example, at present NALB has an 'overprovision' policy that says that in most of North Ayrshire there is a presumption against either:

- new premises, whether on-sales or off-sales, or
- an increase in capacity.

But that is only a presumption. It just means that the Applicant is told in advance "The Board is likely to refuse". The Board cannot say "refuse" before hearing the Applicant. The Applicant might persuade the Board that the particular proposal is not destructive of the aims of the policy, so that the Board might agree to treat the particular case as an exception to Policy.

For example:

- the Board might well say "no" to a proposal for a new off-sales shop,
- the Board might be more sympathetic to a proposal for a new restaurant.

And even with the off-sales proposal no-one can say, in advance, "this is certain to be refused".

### C. Revision Procedure

C.1. The procedure for revision involves public consultation. The procedure approved by the Board at its meeting on 26 June 2023 was that there should be a public notice placed on the website of either:

- NALB itself or
- the North Ayrshire Community Planning Partnership (NACPP),

in either case coupled with posts put on NAC's Facebook and Twitter accounts.

C.2. The social media posts were to the following effect:

"Do you have an opinion about the sale of alcohol in pubs, shops and other licensed premises? If you do, read this [link to website] "

C.3. The website notice published is Appendix A below ("Consultation document published on Website"). It:

- explained the purpose of a LPS,
- said where the current NALB one is (it is on the NALB website, along with the many supporting documents from the Health Board, Police and Fire),
- gave the NALB email address so that the public can send comments.

C.4. The website notice asked the public to give opinions, for example:

- "Do you think that the policy on any matter should be different?
- Do you think the LPS should cover any matter it does not yet cover?
- Why do you think that?"

C.5. Copies of the consultation document were sent to:

- a) NHS Ayrshire & Arran,
- b) Police Scotland,
- c) Scottish Fire and Rescue,
- d) all active Community Councils in North Ayrshire
- e) North Ayrshire Drug and Alcohol Partnership
- f) North Ayrshire Council's Protective Services Department.
- g) Unite Scotland (scotland@unitetheunion.org)
- h) Scottish Beer & Pub Association (contact@beerandpub.com)
- i) Scottish Grocers' Federation Healthy Living Programme [Healthy living](#)

C.6. The Consultation document included "Examples of matters for discussion" (Part 6):

- a) Overprovision
- b) Occasional Licences
- c) Trade Union "Safely Home" campaign

and stated:

"These are only examples and the Board welcomes comments on any aspect of Licensing policy."

C.7. The consultation period closed on Friday 25 August 2023. There were two responses, one from the Health Board and one from a member of the public. These are summarised in Appendix B below ("Summary of consultation responses").

## D. Procedure

D.1. On Monday 18 September 2023 the Board can consider:

- the current LPS
- the responses to the consultation
- a presentation from the NHS

and give directions to the Clerk as to the preparation of a revised draft LPS. Appendix C contains "Suggested matters for consideration" which the Board might give directions on.

D.2. The Board will convene later, at a Special Meeting prior to the revision deadline on 5 November 2023, and adopt the draft, with or without changes.

## Appendix A: Consultation document published on Website

North Ayrshire Licensing Board

Licensing (Scotland) Act 2005, Section 6

Licensing Policy Statement 2023 to 2027

Members of the public and consultees are invited to make written comments (by letter or email) on the proposed Licensing Policy Statement 2023 to 2027, to arrive no later than Friday 25 August 2023.

### 1. How to give us your comments

If you believe any of the existing Policies should be changed, added to or deleted, please say why and how. If you have any statistics to support your opinion, please send them.

Please send any comments by letter or email to:

Raymond Lynch  
Clerk to the Licensing Board:  
North Ayrshire Council  
Democratic Services  
Cunninghame House  
Irvine  
KA12 8EE

[licensing@north-ayrshire.gov.uk](mailto:licensing@north-ayrshire.gov.uk)

The Board will be told of all responses. Please note that all responses may be made public.

### 2. The present position

The Licensing (Scotland) Act 2005 regulates the sale of alcohol in Scotland. It is administered by Licensing Boards. Every Licensing Board must publish a Licensing Policy Statement ("LPS") setting out its policy for the exercise of its functions under the Act. This must be reviewed and adopted every four years. The next LPS must be adopted before Sunday 5 November 2023. Boards must have regard to the LPS when exercising their functions, although the LPS is only a set of guidelines, and each individual case is dealt with on its merits.

### 3. The content of the LPS

This is left up to individual Boards, but the Policies must seek to promote the Licensing Objectives (LOs). These are stated in Section 4:

- a) preventing crime and disorder,
- b) securing public safety,
- c) preventing public nuisance,
- d) protecting and improving public health, and

- e) protecting children and young people from harm.

The current North Ayrshire Licensing Board LPS is on the North Ayrshire Council website:

[Licensing Board](#)

This page has several links to the documents from the Health Board, Police Scotland and the Scottish Fire and Rescue Service which were used in the preparation of the LPS.

The webpage also has the Board's Standard Conditions for Premises Licences (the current version of the Conditions is Edition 5).

To see these documents, right-click the mouse, and select 'Save Target As ....' This will save the chosen document onto your own computer, so that you can then read it as a WORD or EXCEL document.

#### 4. Consultation

The Board must consult before it decides on an LPS. As well as inviting members of the public to comment, the Board is inviting the following to make representations as to what the next LPS should contain:

- a) NHS Ayrshire & Arran,
- b) Police Scotland,
- c) Scottish Fire and Rescue,
- d) all active Community Councils in North Ayrshire
- e) North Ayrshire Drug and Alcohol Partnership,
- f) North Ayrshire Council's Protective Services Department.
- g) Unite Scotland (scotland@unitetheunion.org)
- h) Scottish Beer & Pub Association (contact@beerandpub.com)
- i) Scottish Grocers' Federation Healthy Living Programme [Healthy Living](#)

When the Board considers what the next LPS should contain, the Board will be told of any responses received.

#### 5. Summary of the Alcohol Licensing System

Unlike the previous system (based on the Licensing (Scotland) Act 1976), where the only Licences related to individual Premises, the 2005 Act system has both 'Premises Licences' and 'Personal Licences'

Premises Licences:

- a) These are roughly equivalent to the 1976 Act Licences. The Board now regulates Members Clubs in addition to the Public Houses, Restaurants, Hotels, Off-sales and other Premises that had Licences under the 1976 Act system. The 2005 Act replaced the 1976 Act system where Members Clubs were registered at the Sheriff Court rather than licensed by the Board.
- b) There are over 300 Premises Licences in North Ayrshire.

- c) The legislation applies some 'mandatory' conditions - these conditions apply across Scotland, and local Boards cannot change them. In addition, local Boards are entitled to apply their own conditions to reflect the LPS and Licensing Objectives, and in North Ayrshire this is done by 'Standard Conditions.'

A Premises Licence lasts indefinitely, although with an Annual Fee (unlike the 1976 Act system, where Licences had to be renewed every three years).

Personal Licences:

- a) These Licences were introduced by the 2005 Act. Many people working in Licensed Premises have Personal Licences, and those who do not must have statutory training. Most Licensed Premises have at least one Personal Licence holder - many have two or more.
- b) There are about 1,600 Personal Licences in North Ayrshire.
- c) Unlike Premises Licences, there are no conditions (mandatory or local) for Personal Licences.
- d) A Personal Licence lasts ten years but can be renewed indefinitely.
- e) Holders must do 'refresher training' every five years to make sure that their knowledge of Licensing Law is up to date. If they do not do so then the Licence is automatically revoked.

Occasional Licences:

Premises which are not otherwise licensed (such as Community Halls) may apply for temporary "Occasional Licences". These last for the duration of a function (such as a wedding reception or party). Each year about 900 Occasional Licences are granted in North Ayrshire.

The Licensing Board cannot refuse an Occasional Licence or Personal Licence due to "Overprovision".

## 6. Examples of matters for discussion

These are only examples and the Board welcomes comments on any aspect of Licensing policy.

### a) Overprovision

The Board has an "Overprovision" Policy for "Premises Licences" which reflects a recognition that in some parts of North Ayrshire the link between drinking and crime and social problems make it inappropriate to grant new Premises Licences (or to allow an increase in size for existing Premises). This policy operates as a "presumption against", which means that when the Board look at a proposal for a new licence (or a request for an increase in size) the Board starts from the assumption of 'this proposal should be refused', and it is then for the Applicant to try to persuade the Board that the particular case can be treated as an exception to the policy.

Currently:

The policy operates a 'presumption against' all Premises Licences, but the 'presumption against' is stronger for some types of Premises, such as off-sales and public houses, and not as strong against Premises where the main activity is food or accommodation (restaurants and hotels).

The policy is 'strongly against' in four of the six Localities in North Ayrshire:

- "Three Towns" Locality (Ardrossan, Saltcoats & Stevenston)
- "Kilwinning" Locality (including Pennyburn, Blacklands, Whitehurst Park, Woodside)
- "Irvine and Area" Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torran yard)
- "Garnock Valley" Locality (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton)

but not so 'strongly against' in two Localities:

- "North Coast" Locality (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride)
- "Isle of Arran" Locality

Questions:

- Do you think there should be any "Overprovision" Policy at all?
- Do you think there should be an "Overprovision" Policy in some parts of North Ayrshire, but not in others?
- Do you think there should be an "Overprovision" Policy for some types of Premises, but not for others?

b) Occasional Licences

- What sort of activities should Occasional Licences be used for?

c) Trade Union "Safely Home" campaign

Should the Board recommend that On-Sales licence-holders should provide free transport for their staff after hours? (On-Sales like public houses and restaurants might stay open till midnight or later, but by Law all Off-sales must be shut by 10pm).

The Board can only recommend that Licence-Holders should implement policies like "Safely Home" or "Ask for Angela". The Board cannot threaten to revoke or suspend Licences if Licence-Holders do not implement these recommendations.



## Appendix B: Summary of consultation responses

Two responses:

1. Ayrshire and Arran Health Board
2. Resident in Irvine

### 1. Ayrshire and Arran Health Board (25 August 2023)

#### Background

The Licensing (Scotland) Act 2005 places a duty on Licensing Boards to publish a statement of their licensing policy outlining how they will protect the public's interests with regards to the supply of alcohol by promoting the five licensing objectives of:

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

The Public Health Department in NHS Ayrshire & Arran has considered the proposed Statement of Licensing Policy 2023 to 2027 and provides the following comments relating to the promotion of the licensing objectives. We have given particular consideration to the objectives of preventing crime and disorder; protecting and improving public health; and protecting children and young people from harm. We appreciate that the licensing objectives are a consideration throughout the Policy Statement not least in Section 4: Management of Premises, however, have elected to make comment on each of the above separately.

We have also included comment on specific issues such as: overprovision; alcohol home deliveries; outside drinking areas; and occasional licenses which, we feel, require further consideration due to their potential contribution to alcohol-related risks and harms.

We submit these comments along with a data report illustrating alcohol deaths and alcohol-related hospital admissions in North Ayrshire and across its six localities. Data on alcohol-related hospital admissions is also available at the level of smaller communities or intermediate zones. This illustrates which communities are experiencing the greatest risks and harms to health and also how this is changing over time.

## Comments

### The Licensing Objectives: Preventing Crime and Disorder

There is evidence of the impact that alcohol has on crime and anti-social behaviour. 44% of violent crime in Scotland is alcohol-related; and 41% of prisoners report being under the influence of alcohol at the time of their arrest.

It is welcomed that the Board supports a strategy aimed at making the area a safe place to live and visit and that it is committed to 'ensuring so far as possible that Licensed Premises are run in such a way as not to contribute to crime and disorder.' It may also be helpful for the Board to consider how it might use its knowledge and influence to work with partnerships such as the Safer North Ayrshire Partnership and the Alcohol and Drug Partnership to maximise their collective impact given the effect that alcohol can have on crime and disorder and the role of licensing within this.

It is helpful to see set out clearly the issues the Board expects applicants to address in license applications. It is noted that examples are given in Section 4 of the existing Policy Statement of control measures expected by the Board such as dispersal policies and use of CCTV. It may be helpful to extend these examples further where possible in the revised Policy to include staff training on policies and procedures for managing incidents; and installing lighting and safety infrastructure measures as a minimum.

It is welcome that examples of good practice are also provided in the existing Policy Statement under Section 4 such as Radiolink, Pubwatch and bottle marking. However, there may also be an opportunity to promote further examples in the revised Policy Statement such as: facilitating safe journeys home; conflict management training for staff; and participating in initiatives and campaigns such as 'Ask for Angela' aimed at keeping patrons safe.

### The Licensing Objectives: Protecting and Improving Public Health

The harmful impacts alcohol can have on health are well known and we have provided data to the Licensing Board on alcohol-specific deaths in North Ayrshire and more detail on alcohol-related hospital admissions across each locality and intermediate data zone.

At the most extreme end, alcohol specific deaths have increased in North Ayrshire over the last decade at a steeper rate than in East and South Ayrshire. From 2011 to 2015 to the current period for which data are available (2017 to 2021), the increase in North was 51% compared to 22% for Ayrshire and Arran as a whole. The current rate is significantly higher than Scotland as a whole at 27 per 100,000 compared to 21 per 100,000 population. These deaths are essentially preventable, and the impacts are felt more acutely in the most deprived areas in North Ayrshire which are experiencing a 4.5 times higher alcohol specific death rate than the least deprived communities.

We are seeing an increase in more severe alcohol-related harms. In 2021 to 2022 North Ayrshire had the sixth highest recorded figure (of 32 council areas) in Scotland that year for general hospital rates of alcoholic liver disease at 94 patients per 100,000 population compared to 71 per 100,000 in Scotland. This has more than doubled since 1997 to 1998

from 39 patients per 100,000 population to 94 per 100,000 in 2021 to 2022 – a 140% increase. Hospital admissions for alcohol dependence have also gradually risen over the last two decades in North Ayrshire from 54 patients per 100,000 population in 1997 to 1998 compared to 95 per 100,000 in 2021 to 2022, constituting a substantial increase of 76% over that period. This was the fourth highest recorded of the 32 Scottish council areas in 2021 to 2022.

Evidence indicates that drinking habits polarised as a result of the pandemic, with an overall decrease in consumption for lighter drinkers and an increase for heavier drinkers. Combined with reduced access to services during this period, these changing drinking patterns may translate into increased harm.

As illustrated in the health data report accompanying this submission; there are number of specific communities in North Ayrshire who are experiencing alcohol related hospitalisations which are significantly higher than the Scottish average and it is likely that the pandemic and economic crisis are also being experienced differently by different parts of the population, widening existing inequalities and creating new ones. It can also take 20 years to see the full effects of changes in alcohol consumption on other health-related conditions, such as cancers. More detail on these communities is summarised under the section on overprovision below.

We welcome the fact that the Board is concerned about the link between the consumption of alcohol and public health and appreciates the statement that ‘whilst the Board wishes to see premises thriving in the area, this cannot be at the expense of the health and wellbeing of patrons or the wider community.’

We also appreciate the opportunity we have to engage in dialogue and present data and information to the Board in order to help inform its Statement of Licensing Policy and it is helpful to see intentions set out in the Policy Statement for working in partnership with and consulting the NHS on relevant licensing applications. It would also be useful to set out what other bodies and partnerships the Board might engage with in North Ayrshire moving forward to continue to inform this dialogue as well as formulate further suggestions of how the licensing objectives (including Protecting and Improving Public Health) might be promoted. This might include the NHS, Police Scotland, North Ayrshire Alcohol and Drug Partnership and local communities including those with lived or living experience of problematic alcohol use as well as licensees.

We also welcome the measures that the Board would expect to see when an applicant or license holder is formulating and implementing their operating plan in order that public health may be protected and can see these measures woven though Section 4 of the existing policy including its position on adult entertainment and the use of plastic glasses in late opening premises. We also welcome the reference in the current Policy Statement to gambling as we recognise the risks of co-locating gambling facilities and alcohol at the same premises given the relationship between and impact of both on health.

We would, however, like to see the revised Policy Statement go further with more detail against this objective of additional measures that the Board would like to see licensees

consider and for this to be promoted to licensees in their everyday practice as well as when they are preparing operating plans.

Alcohol Focus Scotland (AFS) has produced a helpful resource which sets out suggested measures to promote all of the licensing objectives for both Licensing Boards and licensees. This refers to some of the measures the Licensing Board may wish to also reference against other licensing objectives. For example: measures to prevent crime and disorder can also be utilised to protect and improve public health, such as promoting designated driver campaigns and incentivising this with reduced cost or free soft/alcohol-free drinks. Other, more innovative measures to promote to applicants and licensees aimed at protecting and improving public health, which go beyond information provision and campaigns, include the following (more examples can be found in the AFS resource):

- Making available low/non-alcoholic products and providing a greater range, for example alcohol-free beer on tap
- Ensuring adequate staff training regarding the refusals policy and the effects of alcohol on the body (beyond the statutory minimum requirements for bar staff)
- Supporting customers to be aware of the number of units they are consuming through information provision and staff being aware, and being able to advise, on the strength of products they are dispensing
- Training and supporting staff to be vigilant and introducing standard approaches to responding to patrons who have consumed too much alcohol or are at risk.
- Development and promotion of workplace alcohol policies.
- Providing food on the premises, so that patrons may eat at the same time as consuming alcoholic beverages if they wish.
- It would also be beneficial for the Board to be mindful of those individuals who are experiencing or in recovery from problematic alcohol use and propose measures in the Policy Statement which may be supportive to their health and wellbeing. For example, we know from engagement with individuals with lived experience that locating alcohol displays at the entrance/exit/ centre of general retail premises create unnecessary pressure for individuals as they are forced to enter the alcohol display area to carry out their shopping.

The Licensing Objectives: Protecting Children and Young People From Harm

The clear expectations and measures set out under Section 4 in particular of the current Policy that licensees require to consider in relation to protecting children and young people are particularly positive and welcome.

It may be helpful if the Board sets out how it might engage with other bodies and partnerships on any application where concerns are raised regarding access for children and young persons. This might include the North Ayrshire Child Protection Committee or the Alcohol and Drug Partnership. Future engagement may also include dialogue with organisations, public stakeholders and licensees who may be able to suggest other measures which could be put forward to keep children and young people safe.

Home drinking also poses potential risks for children and young people, such as neglect or modelling of parental drinking. It would, therefore, be favourable if the Statement of

Licensing Policy also takes account of alcohol-related risks to children occurring in private spaces as well as public. The risks to children resulting from parental alcohol consumption also include Foetal Alcohol Spectrum Disorder (FASD). This is an umbrella term that is used to describe a range of lifelong disabilities caused by prenatal alcohol exposure. It may, therefore, be pertinent for the Board to consider how best to support licensees to increase staff awareness of the impact of parental alcohol consumption on children; how to recognise risk; and when and how to alert a relevant professional if they have concerns about the wellbeing of a child.

## 2. Resident in Irvine

He/she wants the Board to alter policy for Outdoor Drinking Areas ('beer gardens') to reduce opening to 5pm or 6pm (from the current 10pm). He/she refers specifically to a public house in Irvine. This comment concerns a Board decision in 2021, when the Board granted a variation for a public house to allow an ODA. There was one objection, from neighbours (not the present LPS respondent). The Board's decision to grant was unanimous.

It is open to the Board to change the policy, but this would only immediately affect future decisions. Existing licences would continue to have 10pm. On a case-by-case basis the Board could, after Review procedure, vary the Licence, but this change would only affect the particular premises.

Board-wide retroactive variations are not allowed. In 2010 the Scottish Parliament allowed Boards to propose changes to conditions, but this power cannot be used because the Scottish Government has never made Regulations prescribing the variations which Boards may impose (Licensing (Scotland) Act 2005, Section 27A, inserted by a provision of the Alcohol (Scotland) Act 2010 commenced in 2011).

There would have to be a Board Hearing if anyone objected (which presumably Premises Licence Holders would do if the Board proposed to restrict their Licences).

## Annex D: Overprovision

Although it is appreciated that the Board will be considering the impact of the COVID-19 Pandemic and other pressures particularly impacting on the hospitality sector in North Ayrshire we feel the evidence of alcohol risks and harms being experienced in North Ayrshire warrants the need to consider how controlling availability using an overprovision policy may help impact positively on this.

Evidence suggests that neighbourhood areas with a higher number of alcohol outlets have higher rates of alcohol-related deaths, alcohol-related hospitalisations and crime rates than those neighbourhoods with the least number of alcohol outlets. NHS Ayrshire & Arran is generally supportive of the Licensing Board's existing policy position of a 'presumption against' the granting of all new Premises Licences or a request for an increase in size to existing premises- placing the emphasis on the Applicant to make the case to the Board that a particular request should be treated as an exception to the policy.

Prior to the COVID-19 pandemic, the majority of alcohol (73%) was sold in off-sales premises. The pandemic further shifted alcohol sales and drinking from the on-trade to the off-trade with this proportion increasing to 90% in 2020 before decreasing slightly to 85% in 2021. We are therefore supportive of the position that 'presumption against' granting a license is stronger for off-sales in particular. In addition, as individuals are likely to travel to purchase alcohol it seems sensible that any action to limit the availability of alcohol should be taken across the Licensing Board area. This also requires to be considered in the context of alcohol deliveries which is explored further below.

As indicated in the information NHS Ayrshire & Arran has provided to the Licensing Board along with this response, alcohol related hospital admissions are higher in the communities also experiencing higher income deprivation. The most recent hospital data (2017 to 2021) highlights that four of the six areas in North Ayrshire where alcohol related hospitalisations are significantly higher than the Scottish average are in the Three Towns locality (Saltcoats Central; Ardrossan Central; Stevenston Hayocks and Stevenston Ardeer). The other two areas are Kilwinning West and Blacklands (Kilwinning locality) and Largs Central and Cumbrae (North Coast and Cumbraes locality). All are areas which also experience significantly higher levels of income deprivation than the Scottish average. It is therefore worth considering whether Largs Central and Cumbrae may require some specific consideration when identifying additional areas to be included in the list where the presumption against granting an alcohol license is stronger.

### Paragraph 2.20. Home Delivery

Alcohol deliveries are a growing area of retail associated with an increase in online shopping which has further developed in the context of COVID-19 restrictions. The types of businesses that sell alcohol online and deliver alcohol now is diverse and it is appreciated that many will operate out with the local authority area of the Licensing Board. There is also a dearth of data relating to the distribution areas of these retailers or the volumes and types of alcohol they sell. Given the lack of information about alcohol deliveries and online sales would it be possible for the Board to request that relevant licensees in their area provide data on the

volume of alcohol being ordered for delivery, what type and where alcohol is being delivered to, as a minimum to support collective understanding of this area?

Given the recognition that the home is an unregulated environment, and that the continued shift to home drinking may result in negative impacts; it is positive that the Board has described measures in their Policy Statement, which retailers must adhere to. For example, steps taken to ensure age verification; and adequate record keeping. It would be helpful to retain this in the revised Policy Statement and consider strengthening these to include other measures which are consistent with promoting the licensing objectives such as: ensuring that alcohol deliveries are not left in nominated spaces; and protecting the safety of those delivering alcohol.

In addition, it is somewhat unclear why orders for delivery of alcohol can only be taken during licensed hours however, deliveries may take place out with these times, albeit not between the hours of midnight and 6am. It would perhaps be clearer and more consistent to stipulate that alcohol deliveries are also only permitted in line with licensed hours (for example between 10am and 10pm) providing the same 12 hour window.

#### Section 4: Management of Premises- Outside Drinking Areas

The guidance contained in the existing Policy Statement around the management of outdoor drinking areas remains positive. It may be worth considering in the revised policy if there are now more permanent outside drinking areas in place in North Ayrshire than before, perhaps as a result of COVID, and whether this has had a significant increase in the overall capacity of venues. It may be helpful to consider if a separate occupancy capacity may be required for external drinking areas. This would seem important in the interest of public safety and in preventing crime and disorder as well as protecting public health and ensuring access to adequate facilities. This requirement would also help with monitoring overall provision. In addition, it is worth acknowledging that outdoor drinking areas have the potential to increase the visibility of alcohol to those not necessarily accessing the premises including children and people in recovery which may have a detrimental effect.

#### Section 8: Occasional Licences

Whilst we recognise the complexity of regulating the temporary sale or supply of alcohol it may be worth noting that the granting of occasional licences can have an impact on the general availability of alcohol and the cultural norm that alcohol is available in the majority of social situations. It would be useful for the Board to keep the number of occasional licenses granted under review with this in mind.

In the interests of protecting children and young people from harm, it may be helpful to consider if the revised Policy Statement could set out a presumption that an occasional licences will not be granted for events that are aimed primarily at children or young people or events where children and young people will be present where there are no other activities other than the sale of alcohol. It would be of interest for applicants to clearly set out how children and young people will be protected from harm and that they consider the reason for an occasional licence for an event to which children and young persons will have access.

It may also be helpful to give applicants examples of suitable measures that might be helpful in protecting children and young people from harm such as being vigilant about underage sales and proxy purchasing; giving consideration to the impact of adult alcohol consumption on children and young people who are present; and ensuring there are sufficient staff or responsible adults on hand to offer support where required. These measures would be equally appropriate for events granted occasional licenses as licensed premises. It is welcome that a number of positive measures are set out in Section 4 of the current Policy Statement specifically around children and young people on licensed premises. Many of these would be equally applicable in the context of occasional licenses.

## Notes

1. Scottish Crime and Justice Survey 2019 to 2020
2. NHS Ayrshire & Arran Public Health Research Team (2023) Alcohol Trends 2023 North Ayrshire
3. Fraser C, Giles L. The impact of the COVID-19 pandemic on alcohol consumption and harm in Scotland and England: an evidence summary. Public Health Scotland; 2023 the-impact-of-the-covid-19-pandemic-on-alcohol-consumption-and-harm-in-scotland-and-england/
4. Holmes, J. et al. (2012). The temporal relationship between per capita alcohol consumption and harm: a systematic review of time lag specifications in aggregate time series analyses. Drug and Alcohol Dependence, 123(1-3), 7-14.
5. Do 'environmental bads' such as alcohol, fast food, tobacco, and gambling outlets cluster and co-locate in more deprived areas in Glasgow City, Scotland? - ScienceDirect
6. measures to promote the licensing objectives (alcohol-focus-scotland.org.uk)
7. Alcohol Focus Scotland (2019) -parental-drinking-in-Scotland discussion paper
8. Cresh (2018) Alcohol Outlet availability and harm in East Ayrshire. alcohol-outlet-availability-and-harm-in-east-ayrshire.pdf [alcohol-outlet-availability-and-harm-in-east-ayrshire.pdf \(alcohol-focus-scotland.org.uk\)](#)
9. Ponce Hardy, V. & Giles, L. Public Health Scotland 2002. MESAS Monitoring Report 2002
10. Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS), 2022 ([Public Health Scotland](#))



## Appendix C: Suggested matters for consideration

### Overprovision Policy

The Board could review its policy on Overprovision, for example

- abandoning it altogether
- limiting its application to Premises which sell off-sales only
- limiting its application to areas where health and other statistics are substantially worse than the Scottish average
- setting out in the LPS factors which might lead it to allow an exception

### Overprovision: Factors

It is for the Board to decide whether or not what the Applicant says justifies an exception from the Board's Policy. For example, Applicants have said:

- "If my shop is granted a licence or expands its display:
  - I will be able to employ X new staff,
  - if I can stock a wider range of goods then it will benefit the public, because if they have more choice, they can get all their shopping locally
  - my business will be more profitable so it is more likely that the public will retain access to a local grocery's outlet, and
  - I myself will benefit because the business will be more profitable."

The Board could take the view that the Licensing Objective refers specifically to 'Public Health' so:

- any supposed benefits to staff and/or Applicant are irrelevant, and
- since 'Public Health' is unlikely to be improved by adding a new alcohol outlet or increasing an existing one,

the Application should be refused. But it can be suggested that that would be too strict a reading of the legislation. The whole of the Licensing (Scotland) Act 2005 is about regulating drinking, not stopping it: just looking at 'Public Health' is not enough.

### Overprovision: Considerations

1. Basing a Policy on capacity (and optionally on hours) fails to take account of a trend that existed before COVID and has accelerated during the pandemic - COVID led to an increase in the amount of alcohol being supplied by off-sales, as opposed to being drunk on-sales.
2. It might be suggested that the on-sales trade has not recovered fully from COVID (whereas some off-sales might have benefited from an increase in home delivery) and that the Board is more likely to see on-sales premises closing, rather than opening (and the new premises which open are invariably food-led). My impression is that nowadays the Board would positively welcome a proposal to open a restaurant and create jobs in the current economic climate.

3. It might be said that any policy based on physical capacity (numbers of customers or square metres of display space) is at best unreliable (and at worst legally 'irrational') given that a lot of alcohol is supplied by online sales, so the 'capacity' of the seller's premises is zero; by coincidence, the Board's agenda on 18 September 2023 also contains an application for an off-sales Licence for a traditional 'shop' in the same building where in 2021 the previous Board granted two off-sales licences for online businesses: the question of Overprovision must be considered;
4. If the alcohol is being supplied from a depot outside the Board area, why should Premises inside the area bear the Overprovision policy?

Overprovision: "correlation v causation"

The Overprovision Policy is the practical application of the Board's Policy on the Licensing Objective "Protecting and Improving Public Health" (the "PHLO").

The Board must have regard to the Five Licensing Objectives in all its functions. These are stated in the Licensing (Scotland) Act 2005, Section 4, and are:

- a) preventing crime and disorder,
- b) securing public safety,
- c) preventing public nuisance,
- d) protecting and improving public health, and
- e) protecting Children and Young Persons from harm.

Of the Five Licensing Objectives, with four of them there is no problem with linking the two concepts because the Board will have information which is specific to particular Premises:

For example, if the Board had detailed Police complaints about particular Premises, the Board might well conclude: "The operation of those Premises is inconsistent with the Licensing Objective 'Preventing Crime and Disorder.'"

Similarly:

- a report from Building Standards about particular Premises being overcrowded might lead the Board to say, "The operation of those Premises is inconsistent with the Licensing Objective 'Securing Public Safety' ".
- a report from Environmental Health about the history of noise nuisance at particular Premises might lead the Board to say, "The operation of those Premises is inconsistent with the Licensing Objective 'Preventing Public Nuisance;' and
- a report from the Police about underage sales at particular Premises might lead the Board to say, "The operation of those Premises is inconsistent with the Licensing Objective 'Protecting Children and Young Persons from harm' ".

The exception is the 'Protecting and Improving Public Health' Licensing Objective. Because of the Overprovision Policy when a Board has to decide on:

- an Application for a new Licence, or
- an Application to increase the Capacity (display space in a shop, or the number of customers on on-sales premises),

it is reasonable for a Board to ask the Applicant:

"Your premises are in an area with a 'presumption of refusal' due to poor health figures, so we start from a presumption of refusal. Why should the Board grant your proposal – how will it help the Board meet the 'Protecting and Improving Public Health' Licensing Objective?"

The Health Board can produce a lot of statistics on a 'whole area' basis (see their submission to the LPS consultation) but it's unlikely that anyone can produce specific evidence enabling

the Board to point to particular Premises and say, "The operation of those Premises is inconsistent with the Licensing Objective 'Protecting and Improving Public Health' ".

This is why the legislation has an alternative approach. Instead of requiring Boards to have specific evidence for the particular Premises, the Board can have an Overprovision Policy covering all or part(s) of its area, creating a presumption of refusal.

This Policy applies even when the Premises are only seeking a grant of a Licence so, as they are not open, there is no basis to draw a conclusion one way or the other about the PHLO.

Sometimes speculation about the effect of a proposal on other Licensing Objectives might be justifiable even if the development has not yet happened: for example, a proposal to open a 'beer garden' in a residential area certainly engages the 'Preventing Public Nuisance' Licensing Objective, so the Board has to consider it, but:

- saying that the Board has to consider something
- is different from saying the Board has to refuse

The Board may be satisfied that the existing licence conditions (for example, the 10pm policy) already strike a fair balance between the interests of the Licence Holder and the interests of neighbours.

## Overprovision: Scottish Government Guidance

Previous LPSs were based on Guidance that was published in 2007. This was updated on 13 January 2023 and now includes:

### "Assessing overprovision

5.31. There are a number of underlying principles that the Licensing Board should consider as they approach the development of their statement of overprovision:

- Licensing Boards should use alcohol-harm information (or potential alcohol-harm information) to identify localities and then proceed to consider the number, type and capacity of premises in those areas.
- It is the potential for undesirable consequences which is intended to be addressed through overprovision assessments as a requirement within the 2005 Act. This can be thought of as the cumulative effect of increased licences being granted in a locality and what this means in respect of the effect on life in that area. It is the cumulative effect rather than the actions of any single operator that is key.
- If a Licensing Board considers there is at least potential for, or a reasonable basis for, concluding that there will be a risk of adverse impact on the objectives (should more premises licences be granted), it is entitled to come to the view that there is a state of overprovision.
- Consideration should be given as to whether aggregate information and evidence from a number of sources demonstrates a link between the availability of alcohol in an area and alcohol-related harm.

- To demonstrate a "dependable causal link", the proof of the link must be on a balance of probabilities. What this means in practice is that based on the evidence of harm in a locality, it is more likely than not that alcohol availability is a cause, or that increasing the availability of alcohol in that area will increase that harm.
- There is no simple numerical formula for pinpointing the threshold between provision and overprovision. Determining overprovision involves the application of reason and judgement in the interests of the community."

The problem Boards face is that while there is abundant evidence that social harms exist in some areas more than in others, there are many types of social harm, and one cannot conclude that one thing causes another: the two things might be symptoms of an underlying problem.

The Board has used three indicators in the past, because:

- they might be thought to give good evidence of a relationship between poor health and alcohol, and
- the Board has used them before in previous Licensing Policy Statements to assist comparison (there has been a slight improvement in health figures over the years, and while nobody could say that previous Overprovision Policies have been the only cause of that improvement, the Board might think "we're doing something right")

but there are many other indicators available. They will paint much the same picture - you will often find that an area which:

- scores poorly on the overall "Scottish Index of Multiple Deprivation" (SIMD)
- has many individual poor scores on measurements such as the amount of alcohol consumed, hospital attendances, crime and accidental fires.

but recognising that one negative factor tends to coincide with another negative factor does not prove that one thing causes another (this is the "correlation v causation" issue).

## Overprovision: Basis of assessment – Six Localities or 38 Intermediate Zones?

An issue with the data supplied in Board reports was raised by a Board Member who questioned why data was based on the Six Localities in North Ayrshire. This was the instruction of the last Board and is used in the current LPS. The previous Board determined that the Overprovision Policy should be based on Six 'Localities', coinciding with the six 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership (the Licensing (Scotland) Act 2005 leaves it to individual Boards to determine 'localities', which may include the whole Board area).

The Localities are:

1. "North Coast" Locality (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride)
2. "Three Towns" Locality (Ardrossan, Saltcoats & Stevenston)
3. "Kilwinning" Locality (including Pennyburn, Blacklands, Whitehurst Park, Woodside)
4. "Irvine and Area" Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torran yard)
5. "Garnock Valley" Locality (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton)
6. "Isle of Arran" Locality

as opposed to the 38 Intermediate Zones in North Ayrshire.

An earlier LPS did present data based on the 38 Intermediate Zones, but the Board considered that that was an unnecessary complication and encouraged an approach that might be mathematically accurate but was unrealistic, given that people might well travel to buy alcohol.

For example, the "Three Towns" is a single locality but covers Nine Intermediate Zones:

1. Ardrossan North West
2. Ardrossan Central
3. Ardrossan North East
4. Saltcoats Central
5. Saltcoats North East
6. Saltcoats North West
7. Stevenston Ardeer
8. Stevenston Hayocks
9. Stevenston North West

There is a vast amount of data available but to assist comparison the Solicitor (Licensing) asked the NHS this time (2023) to use only the same three 'health indicators' which we used in the two previous Licensing Policy Statements:

- Life expectancy: males
- Life expectancy: females
- Alcohol-related hospital stays

So, the data is three times 38 equalling 108 items, provided as a colour-coded "Traffic Light" spreadsheet:

- Red: Statistically significantly 'worse' than Scottish average
- Amber: Statistically not significantly different from Scottish average
- Green: Statistically significantly 'better' than Scottish average

Looking just at the 'Three Towns' Locality, the 'reds' predominate, but if the examination goes down to Intermediate Zone level one sees that in 'Ardrossan North West' all the indicators are 'green' whereas in the neighbouring 'Ardrossan Central' all the indicators are 'red'. So, if there were effectively 38 different Overprovision Policies:

- an applicant in 'Ardrossan North West' might say "the Overprovision Policy doesn't need to apply to me" whereas
- the Board would say to an Applicant in 'Ardrossan Central' – perhaps only 100 metres from the boundary – “We're starting from the presumption of refusal. You persuade us why we shouldn't refuse."

When the Board did have an Overprovision Policy based on Intermediate Zones, we could get round the 'near the boundary' issue by also giving the Board data for the surrounding Intermediate Zones, but Members may have felt that they were being swamped with detail.

There is an even smaller statistical unit called the "Data Zone" (which can cover areas of only a few streets). NAC consists of 138 Data Zones: a lot of official data is supplied at the "Data Zone" level, for example in the "Scottish Index of Multiple Deprivation" (SIMD). The Board has never used "Data Zones" before, and the advice offered by officers is that it should not do so now, as this would lead to more "It's largely a mathematic exercise and it's unrealistic" comments.

The website includes a summary of the report:

"Small increase in alcohol-specific death statistics.

Tuesday, 29 August 2023.

The number of deaths from alcohol-specific causes rose in Scotland in 2022 by 2%, according to figures published today by National Records of Scotland.

In total 1,276 deaths were attributed to alcohol-specific causes last year, 31 more than in 2021: the highest number since 2008.

Male deaths continue to account for around two thirds of alcohol-specific deaths. Female deaths increased by 31 to 440, with the number of alcohol-specific male deaths unchanged at 836.

Considering the changing size and age-structure of the population, the rate of death had changed from 22.3 per 100,000 to 22.9 per 100,000 over the last year. This is not considered statistically significant.

Daniel Burns, Head of Vital Events Statistics, said:

- “Looking at the long term trend the number of deaths from alcohol-specific causes fell between 2006 and 2012 but has risen since and is now about the same as 2010 levels.
- “In 2022, the average age at death for females from an alcohol-specific cause was 58.7 years and for males it was 60.0 years.”

There are 4.3 times as many deaths from these causes in the most deprived communities as in the least deprived communities, but this equality gap has been narrowing. This compares to a ratio of 1.8 times for all causes of death."

B. "Safely Home", "Ask for Angela" and other initiatives

As the Law stands the Board cannot do anything more than recommend to Licence Holders that they adopt the various initiatives.

The "Safely Home" initiative was at a meeting of North Ayrshire Licensing Board on 22 November 2021. While the Board were sympathetic to the aims, they considered that the matters raised were beyond the legal competence of Licensing Boards and would require legislation, so instead of adopting a requirement on Premises to provide travel for their staff the Board instructed the Convenor to write to the Scottish Government, and this was done.

Apart from making these suggestions, the Board were concerned that Licence Conditions might be vulnerable to challenge as being ultra vires (outside the Board's legal powers, and so illegal).



Annex J- The statistics used in this LPS.

(a) Supporting documents

Documents considered in preparing the LPS 2023 to 27:

1. Alcohol trends 2023 North Ayrshire (14 March 2023)
2. Health indicators by Localities over time – Licensing Policy Statement 2023 to 2027
3. Explanation of statistics used in profiles (ScotPHO version 2)
4. Licensing Policy Statement NHS presentation to North Ayrshire Licensing Board (18 September 2023)
5. Alcohol-specific Deaths Report (2022) (National Records of Scotland) (29 August 2023)

Other resources considered: “Scottish Index of Multiple Deprivation 2020”.

The documents listed above can be requested by contacting [North Ayrshire Licensing Department](#).

(b) Colour-coding

The statistics are colour-coded using a 'Traffic Light' scheme:

- Orange - Statistically significantly 'worse' than national average
- Grey - Statistically not significantly different from national average
- Blue - Statistically significantly 'better' than national average

(c) The 'Indicators'

The information is based on six Indicators:

1. Alcohol-related hospital admissions
2. Alcohol-specific deaths
3. Male life expectancy
4. Male life expectancy
5. Deaths - all ages
6. Population income deprived

The use of the Indicators is explained:

- on Tab 0 ("Notes") of the NHS Excel spreadsheet, and
- in detail in the PowerPoint presentation.

All the Indicators, and particularly Indicator six ("Population income deprived") are relevant. The 2023 Guidance includes:

"5.29 In particular, inequalities are an important consideration for Licensing Boards in relation to overprovision. There is a stark inequalities gradient to alcohol harm and a growing awareness that the impact of harmful drinking and alcohol dependence is much

greater for those experiencing high levels of deprivation. For example, people living in our most deprived communities are over seven times more likely to die or are more than eight times more likely to be admitted to hospital due to alcohol use than those in our least deprived communities (Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2019: NHS Health Scotland; 2019). Similarly, areas of high deprivation can have extremely high rates of alcohol-related fires and crime rates, and it can often be individuals other than the drinker who feel the effects of alcohol use, including children, family, friends, colleagues and those working in frontline services such as the Police and Health Service.

5.30 Research examining the association between the density of alcohol outlets and neighbourhood-level income deprivation in Scotland has also found that there are 40% more licensed premises in the most deprived areas of Scotland than in the least deprived (BMC Public Health 2015 Research article "A cross-sectional analysis of the relationship between tobacco and alcohol outlet density and neighbourhood deprivation" N.K. Shortt et al). By taking account of evidence on inequalities, Licensing Boards can meaningfully consider how different communities are impacted differently by alcohol and use this to formulate their policy."

(d) Abbreviations:

"EASR" = "European age-sex standardised rates"

"IZ" = "Intermediate Zone" - an area used for measurement. Large amounts of official information are recorded by IZ. There are 38 IZs in North Ayrshire. The areas have approximately the same populations.

"DZ"= "Data Zone" - another area used for measurement. The areas have approximately the same populations, but they are smaller than IZs. There are 138 DZs in North Ayrshire.

The ScotPHO presentation explains statistical concepts such as "Confidence Intervals" and "Significance" which are used in interpreting data.

(e) The 'Intermediate Zones' in North Ayrshire

There are six Localities (Community Planning Partnership Localities) covering 38 Intermediate Zones:

- Locality One - North Coast & Cumbraes (six IZs)
  - Skelmorlie & Rural
  - Largs North
  - Largs Central & Cumbrae
  - Largs South
  - Fairlie & Rural
  - West Kilbride & Seamill
- Locality Two - Three Towns (nine IZs)
  - Ardrossan North West
  - Ardrossan Central
  - Ardrossan North East

- Saltcoats Central
- Saltcoats North East
- Saltcoats North West
- Stevenston Ardeer
- Stevenston Hayocks
- Stevenston North West
- Locality Three - Kilwinning (four IZs)
  - Kilwinning Central & North
  - Kilwinning Pennyburn
  - Kilwinning West & Blacklands
  - Kilwinning Whitehirst Park & Woodside
- Locality Four - Irvine (12 IZs)
  - Dreghorn
  - Irvine Bourtreehill
  - Irvine Broomlands
  - Irvine Castlepark North
  - Irvine Castlepark South
  - Irvine Central
  - Irvine East
  - Irvine Fullarton
  - Irvine Girdle Toll & Stanecastle
  - Springside & Rural
  - Irvine Tarryholme
  - Irvine Perceton & Lawthorn
- Locality Five - Garnock Valley (six IZs)
  - Dalry West
  - Dalry East & Rural
  - Beith West
  - Beith East & Rural
  - Kilbirnie North
  - Kilbirnie South & Longbar
- Locality Six - Arran (one IZ)
  - Arran

(f) Comparison with earlier periods

The NHS EXCEL spreadsheet was prepared by NHS Ayrshire and Arran for the purpose of this LPS. It uses information from the "Scottish Public Health Observatory" ("ScotPHO").

The information is based on six Indicators:

1. Alcohol-related hospital admissions
2. Alcohol-specific deaths
3. Male life expectancy
4. Male life expectancy
5. Deaths - all ages
6. Population income deprived

The Six Indicators were used in the two previous Licensing Policy Statements, so it is possible to track if and how they have changed.

This comparison is shown in the second EXCEL spreadsheet (prepared by the Solicitor (Licensing)).

While it is not possible to say that the only explanation for the general improvement in the figures has been the Overprovision policy, it is fair to say that the Policy will have been a contributing factor, along with other Council and Community Planning Partnership actions.

For example: Tab 1 in the NHS EXCEL spreadsheet ("Alc hosp trends") compares North Ayrshire with the Scottish average for one Indicator - "Alcohol-related hospital admissions" per 100,000 population for the 11 years from 2011 to 2012 to 2021 to 2022:

- At the start of the period the North Ayrshire figure was substantially worse than the Scottish average, but
- by the end of the period the North Ayrshire figure was much better than before and the difference from the Scottish average was much smaller:

Alcohol-related hospital admissions per 100,000 population

| <b>Year</b>  | <b>Scotland</b> | <b>North Ayrshire</b> | <b>Difference</b> |
|--------------|-----------------|-----------------------|-------------------|
| 2011 to 2012 | 749.8           | 1093.8                | 344.0             |
| 2012 to 2013 | 699.1           | 926.2                 | 227.1             |
| 2013 to 2014 | 706.5           | 922.6                 | 216.1             |
| 2014 to 2015 | 676.6           | 868.3                 | 191.7             |
| 2015 to 2016 | 674.1           | 766.6                 | 92.5              |
| 2016 to 2017 | 685.4           | 895.5                 | 210.1             |
| 2017 to 2018 | 669.2           | 879.8                 | 210.6             |
| 2018 to 2019 | 669.5           | 835.2                 | 165.7             |
| 2019 to 2020 | 680.9           | 753.9                 | 73                |
| 2020 to 2021 | 613.8           | 619.4                 | 5.6               |
| 2021 to 2022 | 610.9           | 646.3                 | 35.4              |

The NHS spreadsheet has several tabs:

0. Notes
1. Indicators 2023
2. Alcohol hospital trends

3. Bar Chart 20227
4. NA map 2022
5. IZ trends 2012 to 2022
6. Top six (worst)

Each shows the data in various ways, often comparing local figures with averages across Scotland. There are 38 IZs in North Ayrshire, and there are Six Indicators for each, a total of 228 data-items, each colour-coded using the Orange-Grey-Blue scheme.