

MEETING OF RENFREWSHIRE LICENSING BOARD

MONDAY 5 MARCH 2018

**HELD IN THE COUNCIL CHAMBERS, 2ND FLOOR, RENFREWSHIRE HOUSE, COTTON
STREET, PAISLEY
AT 10.00AM**

AGENDA

Councillors Andy Steel, Bill Brown, Jane Strang, Jennifer Adam-McGregor, John Hood, Kevin Montgomery , Marie McGurk, Michelle Campbell, Natalie Don and Scott Kerr

Convener – Cllr Andy Steel

- 1. APOLOGIES**
- 2. DECLARATIONS OF INTEREST**
- 3. LICENSING (SCOTLAND) ACT 2005**

Page 1	Applications for Major Variation of Premises Licences to be considered
Page 2	Application for Provisional Grant of a Premises Licence to be considered
Page 3	Applications for Occasional Licences to be considered
Page 4	Applications for Personal Licence to be considered
Pages 5-9	Applications for Minor Variation – DPM – delegated for noting
Pages 10-11	Applications for Minor Variation – delegated for noting
Pages 12-14	Applications for Transfer of Premises Licence – delegated for noting
Page 15	Applications for Confirmation of Premises Licence – delegated for noting
Pages 16-18	Applications for Personal Licences – delegated for noting

4. ADMINISTRATIVE ITEMS

- a) Proposed Hearing – Possible Cancellation of Club Machine Permit – Blacklandmill Bowling Club (Withdrawn for noting)**
- b) Report by Clerk to the Licensing Board - Delegated list of Revocation of Personal Licences (For members information)**
- c) Report by Clerk to the Licensing Board – Request for Extension to Licensing Hours due to the Royal Wedding of Prince Harry to Meghan Markle on 19 May 2018**
- d) Report by Clerk of the Licensing Board – Review of Statutory Guidance for Licensing Boards under the Licensing (Scotland) Act 2005**
- e) Minute of Previous meeting on 15 January 2018 to be agreed**

RENFREWSHIRE LICENSING BOARD**Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT****Licensing (Scotland) Act 2005****Variation (Major)(s) - Cited**

Premises	Applicant	Date Received	Comments
1 LICENSED GROCER & NEWSAGENT 3 CLARENCE STREET PAISLEY PA1 1PR	PAVNEETSINGH ANTAL C/O HUNTER & ROBERTSON SOLICITORS DX PA16 PAISLEY	1 February 2018	

RENFREWSHIRE LICENSING BOARD**Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT****Licensing (Scotland) Act 2005****Provisional(s) - Cited**

Premises	Applicant	Date Received	Comments
1 LIDL STORE 1 WALLNEUK ROAD PAISLEY PA3 4BT	LIDL UK GMBH C/O HARPER MACLEOD DX GW86	9 January 2018	
2 FOOD & WINE CELLARS 301 GALLOWHILL ROAD PAISLEY PA3 4UG	JARMAN UPPAL C/O TLT LLP DX GW138 GLASGOW	19 January 2018	
3 MINI MART 79 CAUSEYSIDE STREET PAISLEY PA1 1YU	JARMAN UPPAL C/O TLT LLP DX GW138 GLASGOW	19 January 2018	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley , PA1 1TT

Licensing (Scotland) Act 2005

Occasional(s) - Cited

Premises	Applicant	Date Received	Comments
1 FOOD AND WINE CELLARS 301 GALLOWHILL ROAD PAISLEY PA3 4UG	PARMINDER SINGH C/O TLT LLP DX GW138 GLASGOW	15 February 2018	Start date of event: 02/04/2018 End Date of Event: 15/04/2018 General Retail Of Groceries Children and young persons will not be permitted entry to the function.
2 FOOD AND WINE CELLARS 301 GALLOWHILL ROAD PAISLEY PA3 4UG	PARMINDER SINGH C/O TLT LLP DX GW138 GLASGOW	15 February 2018	Start date of event: 16/04/2018 End Date of Event: 29/04/2018 General Retail Of Groceries Children and young persons will not be permitted entry to the function.

RENFREWSHIRE LICENSING BOARD**Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT****Licensing (Scotland) Act 2005****Personal Licence(s) - Cited**

Applicant	Date Received	Comments
1 ANDREW ADRIAN OSBORNE	29 November 2017	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street , Paisley , PA1 1TT

Licensing (Scotland) Act 2005

Variation (Minor)(s) - DPM delegated - For Noting

Premises	Applicant	Date Received	Comments
1 ALDI 1A BRIDGEWATER SHOPPING CENTRE BRIDGEWATER PLACE ERSKINE PA8 7AA	ALDI STORES LIMITED C/O TLT LLP DX GW138 GLASGOW	5 December 2017	
2 ALDI 4 FULBAR ROAD PAISLEY PA2 9AP	ALDI STORES LIMITED C/O TLT LLP 140 WEST GEORGE STREET GLASGOW G2 2HG	13 December 2017	
3 BEST ONE T/A KWIKIE MART/MAMEE'S CAFE 35 GREENHILL ROAD PAISLEY PA3 1RN	IFTIKHAR AHMED	24 November 2017	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street , Paisley , PA1 1TT

Licensing (Scotland) Act 2005

Variation (Minor)(s) - DPM delegated - For Noting

	Premises	Applicant	Date Received	Comments
4	CHIQUITOS UNIT 13, LEVEL 1 INTU BRAEHEAD RENFREW PA4 8XQ	THE RESTAURANT GROUP (UK) LIMITED C/O HARRISON CLARK RICKERBYS SOLICITORS 5 DEANSWAY WORCESTER	27 November 2017	
5	COSMOPOLITAN 7 NEW STREET PAISLEY PA1 1XU	HAWTHORN LEISURE SCOTCO LIMITED C/O TLT LLP DX GW138 GLASGOW	18 December 2017	
6	COURTYARD BY MARRIOTT GLASGOW AIRPORT MARCHBURN DRIVE (SANDERLING ROAD) GLASGOW AIRPORT BUSINESS PARK ABBOTSINCH	MINHOCO 27 LIMITED	6 December 2017	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street , Paisley , PA1 1TT

Licensing (Scotland) Act 2005

Variation (Minor)(s) - DPM delegated - For Noting

	Premises	Applicant	Date Received	Comments
7	GRYFFE INN 1/3 MAIN STREET BRIDGE OF WEIR RENFREWSHIRE PA11 3NR	GREENE KING RETAILING LTD C/O TLT LLP DX GW138	18 December 2017	
8	INN OFF SNOOKER CLUB 1 LONDON STREET RENFREW PA4 8SB	PURE KINDA LIMITED C/O TLT LLP LP 10 GLASGOW 6	1 December 2017	
9	LICENSED GROCER & NEWSAGENT 3 CLARENCE STREET PAISLEY PA1 1PR	OM PARKASH C/O HUNTER & ROBERTSON SOLICITORS 35 HIGH STREET PAISLEY PA1 2AG	14 December 2017	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT

Licensing (Scotland) Act 2005

Variation (Minor)(s) - DPM delegated - For Noting

Premises	Applicant	Date Received	Comments
1 CHARLESTON ARMS 108 NEILSTON ROAD PAISLEY PA2 6EW	THE FIRM OF GIBSON PROPERTY GROUP C/O TLT LLP DX GW138 GLASGOW	4 January 2018	
2 CO-OP 60/62 NEILSTON ROAD PAISLEY PA2 6NE	CO-OPERATIVE GROUP FOOD LIMITED C/O HILL BROWN LICENSING RWF HOUSE 5 RENFIELD STREET GLASGOW	18 January 2018	
3 COAST 30 MAIN ROAD LANGBANK PA14 6XR	CAWLEY HOTELS & LEISURE LTD	8 January 2018	
4 JAM JAR 16 SHUTTLE STREET PAISLEY PA1 1YD	SKINNYMALINKYLONGLEGS LIMITED	22 January 2018	

RENFREWSHIRE LICENSING BOARD**Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT****Licensing (Scotland) Act 2005****Variation (Minor)(s) - DPM delegated - For Noting**

Premises	Applicant	Date Received	Comments
5 THE PHOENIX PARK PEGASUS AVENUE PHOENIX PARK RETAIL ESTATE LINWOOD PAISLEY PA1 2BH	WHITBREAD GROUP PLC C/O JOHN GAUNT & PARTNERS OMEGA COURT 372-374 CEMETERY ROAD SHEFFIELD S11 8FT	23 January 2018	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT

Licensing (Scotland) Act 2005

Variation (Minor)(s) - Minor Variation delegated - For Noting

Premises	Applicant	Date Received	Comments
1 TESCO STORE NEWMAINS ROAD RENFREW PA4 0NQ	TESCO STORES LIMITED	24 November 2017	
2 TESCO EAST LANE PAISLEY PA1 1QA	TESCO STORES LIMITED C/O TESCO STORES LTD LICENSING TEAM 2ND FLOOR 5 FALCON WAY SHIRE PARK	14 December 2017	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT

Licensing (Scotland) Act 2005

Variation (Minor)(s) - Minor variation delegated - For Noting

Premises	Applicant	Date Received	Comments
1 MORRISONS ANCHOR MILL PAISLEY PA1 1GZ	WM MORRISON SUPERMARKETS PLC C/O GOSSCHALKS SOLICITORS QUEENS GARDENS DX 11902 HULL	21 December 2017	
2 THE ABBEY INN 70 BARRHEAD ROAD PAISLEY PA2 7JF	STONEGATE PUB COMPANY LIMITED C/O HILL BROWN LICENSING RWF HOUSE 5 RENFIELD STREET GLASGOW G2 5EZ	13 December 2017	
3 THE LANE 7 SHUTTLE STREET PAISLEY PA1 1YD	JOHN CODONA C/O HILL BROWN LICENSING RWF HOUSE 5 RENFIELD STREET GLASGOW G2 5EZ	11 January 2018	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT

Licensing (Scotland) Act 2005

Transfer(s) - delegated - For Noting

Premises	Applicant	Date Received	Comments
1 INDIAN SCENE CUISINE 82 GLASGOW ROAD PAISLEY PA1 3PN	RISPAL SANGHERA C/O BRUNTON MILLER SOLICITORS HERBERT HOUSE 22 HERBERT STREET GLASGOW G20 6NB	20 November 2017	
2 LICENSED GROCER & NEWSAGENT 3 CLARENCE STREET PAISLEY PA1 1PR	PAVNEETSINGH ANTTAL C/O HUNTER & ROBERTSON SOLICITORS 35 HIGH STREET PAISLEY PA1 2AG	14 December 2017	
3 MOORPARK POST OFFICE 1 PORTERFIELD ROAD RENFREW PA4 8JB	COMPARE (UK) LTD C/O HARPER MACLEOD THE CA'D'ORO 45 GORDON STREET GLASGOW G1 3PE	17 November 2017	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT

Licensing (Scotland) Act 2005

Variation (Minor) on Transfer(s) - delegated - For Noting

Premises	Applicant	Date Received	Comments
4 INDIAN SCENE CUISINE 82 GLASGOW ROAD PAISLEY PA1 3PN	RISPAL SANGHERA C/O BRUNTON MILLER SOLICITORS HERBERT HOUSE 22 HERBERT STREET GLASGOW G20 6NB	20 November 2017	
5 MOORPARK POST OFFICE 1 PORTERFIELD ROAD RENFREW PA4 8JB	HARBINDER SINGH MALHI C/O HARPER MACLEOD THE CA'D'ORO 45 GORDON STREET GLASGOW G1 3PE	17 November 2017	

RENFREWSHIRE LICENSING BOARD**Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT****Licensing (Scotland) Act 2005****Transfer(s) delegated - For Noting**

Premises	Applicant	Date Received	Comments
1 THE PATER BAR 68 - 70 OLD SNEDDON STREET PAISLEY PA3 2AP	WILLOWPAT LIMITED C/O HUNTER & ROBERTSON SOLICITORS DX PA16 PAISLEY	14 November 2017	

RENFREWSHIRE LICENSING BOARD**Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT****Licensing (Scotland) Act 2005****Confirmation(s) - delegated - For Noting**

Premises	Applicant	Date Received	Comments
1 THE LANE 7 SHUTTLE STREET PAISLEY PA1 1YD	JOHN CODONA C/O HILL BROWN LICENSING RWF HOUSE 5 RENFIELD STREET GLASGOW G2 5EZ	11 January 2018	

RENFREWSHIRE LICENSING BOARD**Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT****Licensing (Scotland) Act 2005****Personal Licence(s) - delegated - For Noting**

Applicant	Date Received	Comments
1 PAUL SAUNDERS	29 September 2017	
2 JAMIE CAMPBELL BLAIR	2 October 2017	
3 MUHAMMAD SARWAR	2 October 2017	
4 ANDREA RONALDSON	2 October 2017	
5 STEPHEN WILLIAM WILSON	4 October 2017	
6 ELITA PAIGE NANSON	4 October 2017	
7 DALJINDER SINGH KOONER	19 October 2017	
8 MACIEJ ZAMIARA	23 October 2017	

RENFREWSHIRE LICENSING BOARD

Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT

Licensing (Scotland) Act 2005

Personal Licence(s) - delegated - For Noting

	Applicant	Applicant	Date Received	Comments
9	ROBERT SAMUEL MAGOWAN		23 October 2017	
10	NEIL THOMAS MCINALLY		30 October 2017	
11	SARAH COOPER		27 October 2017	
12	BESNIK NDOJ		1 November 2017	
13	ROSS MITCHELL C/O HILL BROWN LICENSING RWF HOUSE 5 RENFIELD STREET GLASGOW G2 5EZ		6 November 2017	
14	ADAM JAMES SPENCE		8 November 2017	
15	ROSS ANDREW JORDAN		7 November 2017	

RENFREWSHIRE LICENSING BOARD**Meeting 5 March 2018 at 10:00am in Council Chambers, Renfrewshire House, Cotton Street, Paisley, PA1 1TT****Licensing (Scotland) Act 2005****Personal Licence(s) - delegated - For Noting**

Applicant	Date Received	Comments
1 GORDON LINDSAY	17 November 2017	
2 ANDREW O'DONNELL	27 November 2017	
3 JOHN THOMAS YOUNG	30 November 2017	
4 SAMMIR MOHAMMED	29 November 2017	
5 SIMRA MOHAMMED	29 November 2017	

RENFREWSHIRE LICENSING BOARD

LICENSING BOARD MEETING

MONDAY 5 MARCH 2018

- 1. Proposed Hearing - Possible Cancellation of Club Machine Permit – Blacklandmill Bowling Club (Withdrawn for noting)**
- 2. Report by Clerk to the Licensing Board - Delegated list of Revocation of Personal Licences (For members information)**
- 3. Report by Clerk to the Licensing Board - Request for Extension to Licensing Hours due to the Royal Wedding of Prince Harry to Meghan Markle on 19 May 2018**
- 4. Report by Clerk to the Licensing Board - Review of Statutory Guidance for Licensing Boards under the Licensing (Scotland) Act 2005**

To: RENFREWSHIRE LICENSING BOARD

By: CLERK TO THE LICENSING BOARD

Date: 5 MARCH 2018

Subject: DELEGATED REVOCATION OF PERSONAL LICENCES

1. SUMMARY

1.1 Attached as Appendix I is a list of Personal Licences that were revoked under delegated powers on 5 February 2018 where the Personal Licenceholder failed to comply with the requirement to produce evidence of refresher training in terms of Section 87(3) of the Licensing (Scotland) Act 2005.

2. RECOMMENDATION

For Members Information

Contact Officer: - Douglas Campbell (Ext 7172)

Personal Licence

No:	PersonalLicence Holder	Status	Date Revoked
RC/1300	Raman Kumar	Revoked	05/02/2018
RC/1302	Gemma Leigh Porter	Revoked	05/02/2018
RC/1303	Christopher Paul Trager	Revoked	05/02/2018
RC/1304	Scott Douglas Fleming	Revoked	05/02/2018
RC/1305	Pauline Rachel Mullen	Revoked	05/02/2018
RC/1309	Stephen George McNish	Revoked	05/02/2018

To: Renfrewshire Licensing Board

On: 5 March 2018

Report by Clerk to the Licensing Board

Request for Extension to Licensing Hours due to the Royal Wedding of Prince Harry to Meghan Markle on 19th May 2018.

1. Summary

1.1 Renfrewshire Licensing Board has received a communication from a representative of the licensed trade regarding the possibility of additional hours for licensed premises to mark the occasion of the Royal Wedding of Prince Harry to Meghan Markle on 19th May 2018. A copy of this communication, from Belhaven Pubs, is attached to this report at Appendix 1. It is understood that this communication has been circulated to all Licensing Boards in Scotland.

1.2 The correspondence asks Licensing Boards in Scotland to consider the use of the provisions of Section 67 of the Licensing (Scotland) Act 2005 ("the Act") to extend licensing hours in Scotland. Section 67 of the Act allows the Board to make a determination to extend licensed hours on a general basis to enable premises to open longer for special events of local or national significance.

1.3 The Board make reference to the use of extended hours in Section 12.2 of their Statement of Licensing Policy which is in the following terms:-

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

1.4 The views of Police Scotland, the Local Licensing Forum and Renfrewshire Health & Social Care Partnership have been sought in relation to this request. A response has been received from Police Scotland who have indicated that the Home Secretary, Amber Rudd, suggested an extension to 1am would be sufficient and that, given this terminal hour at weekends is within the hours set out in the Board's current Statement of Licensing Policy, no general extension should be agreed. Police Scotland have also observed that the Scottish Cup Final is scheduled to take place on the same date as the Royal Wedding.

2. Recommendations

2.1 The Board is asked to consider the request received and the response from Police Scotland and consider whether any general extension of hours under Section 67 of the Licensing (Scotland) Act 2005 may be appropriate for premises in Renfrewshire.

A handwritten signature in black ink, appearing to read 'K. Graham', is written over a horizontal dotted line.

Kenneth Graham
Clerk to the Licensing Board

From: Linda Robinson [mailto:linda.robinson@belhaven.co.uk]
Sent: 09 January 2018 10:27
To: licensing@aberdeencity.gov.uk; licensing@aberdeenshire.gov.uk; lawadmin@angus.gov.uk;
licensing@argyll-bute.gov.uk; licensing@east-ayrshire.gov.uk; licensing@north-ayrshire.gov.uk;
licensing@south-ayrshire.gov.uk; licensing@clacks.gov.uk; licensing@dumgal.gov.uk;
licensing.board@dundeecity.gov.uk; liquor.licensing@eastdunbarton.gov.uk;
licensing@eastlothian.gov.uk; licensing@edinburgh.gov.uk; licensing@falkirk.gov.uk;
liquor.admin@fife.gov.uk; LicensingBoard@glasgow.gov.uk; licensing@highland.gov.uk;
fiona.denver@inverclyde.gov.uk; licensing@midlothian.gov.uk; licensing@moray.gov.uk;
legalservices@northlan.gov.uk; liquorlicensing@pkc.gov.uk; licensing.cs (CSAlias10)
licensing.cs@renfrewshire.gov.uk; liquorandlicensing@scotborders.gov.uk;
licensing@southlanarkshire.gov.uk; licensing@stirling.gov.uk; licensing@west-dunbarton.gov.uk;
licensingboard@westlothian.gov.uk
Cc: BH Licensing Act <BHLicensingAct@greeneking.co.uk>; Kenny MacKenzie
<kenny.mackenzie@belhaven.co.uk>
Subject: Royal Wedding Extensions - Licensing

To the Clerk to the Licensing Board

With regards to the upcoming nuptials of Prince Harry to Meghan Markle on 19th May 2018 and following on from the Home Secretary, Amber Rudd's statement 2 days ago "The royal wedding will be a time of national celebration, and we want everyone to be able to make the most of such an historic occasion. I hope that this relaxation of the licensing hours will allow people to extend their festivities and come together to mark what will be a very special moment for the country.", the government is looking to allow bars and other licensed premises to delay closing time on 18 and 19 May to allow the nation to better celebrate the Royal Wedding.

So that we may plan ahead to join in said celebrations, can you advise what your extension policy will be for this event of national significance?

Thanks for your help and look forward to hearing from you in due course.

Kind regards

Linda Robinson
 PA/Secretary
 Greene King plc | Belhaven Pubs | Atrium House| 6 Back Walk| Stirling | FK8 2QA
 Desk: 01786 476201



At Greene King, we're proud to have raised **£2.5 MILLION** for Macmillan Cancer Support - making a difference to the lives of people affected by cancer and helping Macmillan to ensure no one has to face cancer alone.



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Greene King Brewing and Retailing Limited (registered number 3298903) and Greene King Retailing Limited (registered number 5265451) (both trading as Belhaven). Registered offices: Westgate Brewery, Bury St Edmunds, Suffolk IP33 1QT. -

To: Renfrewshire Licensing Board

On: 5 March 2018

Report by Clerk to the Licensing Board

Review of Statutory Guidance for Licensing Boards under the Licensing (Scotland) Act 2005

1. Summary

- 1.1 The purpose of this report is to inform the Board of progress to date in relation to the review of the current statutory guidance to Licensing Boards under the terms of Section 142 of the Licensing (Scotland) Act 2005 ("the Act").

2 Background

- 2.1 Section 142 of the Act provides that the Scottish Ministers may issue guidance to Licensing Boards as to the exercise of their functions. The Scottish Ministers originally issued statutory guidance under the Act in April 2007, prior to the Act coming fully into force on 1st September 2009. Since then, there have been significant developments in the liquor licensing regime, including further legislation and case law under the Act.
- 2.2 The Scottish Government have been working on a review of the statutory guidance along with other stakeholders, including officers from a number of Licensing Boards. While most of the Chapters of the statutory guidance are currently under review by a number of working groups, two Chapters, relating to review of licensing policy statements and assessment of overprovision, have been prioritised in light of the requirement for Boards to publish a revised Statement of Licensing Policy by early November 2018. As a result, the Scottish Government have issued these Chapters of the Guidance on a non statutory basis as a temporary measure.
- 2.3 Once the review of the Guidance is complete and new statutory guidance is issued, Licensing Boards must have regard to its terms. A further report will therefore be brought to the Board in due course advising of the introduction of the new statutory Guidance, once available. In the meantime, for the information of the Board, a copy of correspondence from the Scottish Government, Justice Directorate, is attached at Appendix 1. Copies of the revised Chapters of the Guidance which have recently been issued, as detailed at Paragraph 2.2 above, are attached at Appendix 2.
- 2.4 The Board will note from the terms of the correspondence at Appendix 1 that the Scottish Government does not seek in the Guidance to instruct Boards exactly how to make the Act work, but state that the Guidance is intended to assist Boards as they carry out their responsibilities under the Act.

3. Recommendations

3.1 The Board is asked to note the contents of the report and the correspondence and Guidance issued, attached as Appendices to the report.



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Kenneth Graham
Clerk to the Licensing Board

Justice Directorate
Criminal Justice Division



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0131-244 2358
E: Alex.kelly@gov.scot

Our ref:
22nd February 2018

Dear Licensing Board,

Under the terms of the Licensing (Scotland) Act 2005 Ministers may issue guidance to Licensing Boards as to the exercise of their functions under the Act. I am issuing two updated chapters for the guidance. As a temporary measure these are being issued on a non-statutory basis.

You may be aware that Scottish Government officials have been working on updating the current liquor licensing guidance, assisted by stakeholders. As Boards will already be working on updating licensing policy statements, work on the parts of the guidance relating to licensing policy statements, and overprovision assessments has been prioritised.

We considered that it would be of assistance to issue drafts of the chapters that we have updated so far, as emerging guidance at this stage. i.e. the original chapters 2 and 3, which relate to licensing policy statements and overprovision assessments respectively. These have been amended to take into consideration the further Acts that have impacted upon the licensing regime since the original guidance was issued. The intention has been to work with the grain of the existing guidance, so that updated guidance does not undermine work that is already in progress.

I would like to stress that a non-prescriptive approach has been taken to drafting the revised guidance, which affords Boards the flexibility to operate and take decisions in light of their particular circumstances. The guidance does not seek to instruct boards exactly how to make the Act work. It is simply intended to assist boards as they carry out their responsibilities under the Act. Ministers wish boards and their clerks to be creative and innovative and to implement the Act in a way that best meets local needs and circumstances.

Ongoing work will continue on the remainder of the guidance, so over the next few months, we would hope to complete an update of the overall guidance, and then move to issue it on a statutory basis.

Yours sincerely

Alex Kelly, Alcohol Licensing Policy Project Manager

Licensing (Scotland) Act 2005 – Section 142
Draft Revised Guidance for Licensing Boards

**Statements of Licensing Policy
Background**

6.1 This chapter provides guidance on the development and preparation of statements of licensing policy (referred to as a 'licensing policy statement'), which Section 6 of this Act requires every Licensing Board to publish, before the beginning of each 'licensing policy period'.

6.2 A licensing policy statement should provide the policy on which Licensing Boards would base their decisions in implementing their functions under this Act. It may set out a general approach to the making of licensing decisions, but must not ignore, or be inconsistent with, provisions in the Act.

6.3 The 'licensing policy period' is the period between each relevant date.

6.4 The 'relevant date' means the date occurring 18 months after an ordinary election of councillors for local government areas takes place under Section 5 of the Local Government etc. (Scotland) Act 1994.

6.5 A licensing policy statement will generally have effect from 18 months after a local government election until 18 months after the next local government election. For example, in the case of a local government election in May 2017, followed by the next election scheduled for May 2022, the licensing policy statement would, in the usual case, last from November 2018 until November 2023.

Licensing Boards may decide that the licensing policy period to which the statement relates is to begin on an earlier date than it normally would. If they do so, they must publicise the date on which they have decided the licensing policy period is to begin.

6.6 Newly appointed Licensing Boards can use the policy inherited from their previous Licensing Board during the interim period. The alignment of licensing policy statements to local elections allows the Licensing Board to take stock, take the views of others into consideration, gather evidence and set policy statements that reflect their views and aspirations.

6.7 In exercising their functions under this Act a Licensing Board must have regard to the current licensing policy statement and any relevant supplementary licensing policy statement, published by the Licensing Board. Licensing Boards may wish to consider keeping the effectiveness and rationale of the licensing policy statement under review and to make revisions as and when appropriate.

6.8 A Licensing Board may also issue supplementary licensing policy statements. This may be due to unanticipated or emerging issues. If it decides to do so, it must publish the statement (referred to under this Act as a 'supplementary licensing policy statement').

6.9 The supplementary licensing policy statement will be with respect to the exercise of their functions during the remainder of that licensing policy period or until it is superseded by another supplementary licensing policy statement or licensing policy statement i.e. until 18 months after the next local government election.

6.10 There is no limit to the number of supplementary licensing statements which can be published during the licensing policy period.

6.11 Licensing Boards cannot delegate responsibility for determining their licensing policy statement or supplementary licensing policy statements.

Licensing Objectives

6.12 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must ensure that the policy stated seeks to promote the 5 licensing objectives set out in this Act, which for the purposes of this Act are:

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

Licensing Boards must also have regard to these 5 objectives when carrying out their functions under this Act. The 5 objectives carry equal weight and importance.

Inconsistency with one or more of the objectives could provide a basis for refusal of an application.

A policy must also be consistent with the principles of what constitutes a lawful policy in general administrative law terms. In particular –

“...such a declared policy may be objectionable if certain conditions are not fulfilled. A policy must be based on grounds which relate to and are not inconsistent with or destructive of the purposes of the statutory provisions under which the discretion is operated. Moreover, the policy must not be so rigidly formulated so that, if applied, the statutory body is thereby disabled from exercising the discretion entrusted to it. Finally, the individual circumstances of each application must be considered in each case whatever the policy may be. It is not permissible for a body exercising a statutory discretion to refuse to apply its mind to that application on account of an apparent conflict with policy.”

See **Calderwood v Renfrewshire Council**, 2004 SC 691

To have a licensing policy statement is a statutory requirement. It is bolstered by statutory consultation procedure. It has weight in 2 ways when a Licensing Board carries out its functions under the Act. First, a Licensing Board must ensure that it seeks to promote the licensing objectives in making policy. Second, the Licensing Board must have regard to the Policy in the exercise of their functions.

As the licensing policy must seek to promote the licensing objectives, it must not be inconsistent with the licensing objectives. If the licensing objectives pull in one direction and policy in the opposite, then the objectives rule. If both tend to the same view then policy simply reflects the licensing objectives.

Where an application comes before a Licensing Board which is contrary to the licensing policy, this does not necessarily mean that the application should be refused. It would only be to refuse the application if it was inconsistent with the licensing objectives. Policy is an expression of how those objectives can be met. Inconsistency with policy can therefore be an important factor in deciding whether there is an inconsistency with the licensing objectives.

Licensing policy is an important part of an assessment of the wider considerations at play within the Licensing Board area. **As licensing policy has a substantial role to play in promoting how the licensing objectives might be met, inconsistency with policy may be an indicator that the refusal of the application should follow. Equally, consistency with policy maybe an indicator that an application is consistent with objectives.** The licensing policy is entitled to be given considerable weight. It is not merely a guideline. The Licensing Board is entitled to expect conformity unless there is a positive or specific reason to justify departure from it. It is for the Licensing Board to determine whether what is proposed is inconsistent with the policy and whether the grant of the application would impact upon the rationale for the policy.

Preparation of policy statements

6.13 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must consult on the proposed policy statement(s) with:-

- the Local Licensing Forum for the Licensing Board's area;
- if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2 of this Act. (i.e. holders of premises licences and personal licences, the Chief Constable, persons having functions relating to health, education or social work, young people, person's resident within the Forum's area); then the Licensing Board must consult such person or persons as appear to it to be representative of those interests of which the membership is not representative;
- the relevant health board; and
- such other persons as the Licensing Board thinks appropriate.

6.14 Licensing Boards must make reasonable efforts to identify and engage with the persons or bodies concerned and have regard to their views. The terms of the Act do not prevent them from consulting other bodies or persons before determining their policies. The Licensing Board may wish to consider consulting widely on their proposed policies. There are a variety of methods of seeking views and gathering evidence to enable Licensing Boards to develop a formal consultation document, such as pre-consultation exercises, evidence sessions and making use of the existing policy as a basis for review. It is important that Licensing Boards consider

and evaluate any evidence gathered to ensure there is a reliable and credible basis on which to develop their policies. Licensing Boards should give appropriate weight to the views and responses obtained.

6.15 After the initial evidence gathering process Licensing Boards may wish to consider publishing their draft policy for comment and take cognisance of responses.

6.16 Licensing Boards may wish to consider clarifying the reasons for their decision making in arriving at their licensing policy statement.

6.17 The licensing policy statement must be published before the beginning of the licensing policy period. Once published the Licensing Boards must make copies of a licensing policy statement or a supplementary licensing policy statement available for public inspection free of charge. Licensing Boards must also publish the fact that the statement has been published and publicise details of the arrangements for making copies available for public inspection.

What the Licensing Board may require:

6.18 For the purpose of preparing a licensing policy statement or supplementary licensing policy statement, the Licensing Board may require statistical or other information from:-

- the chief constable;
- the relevant health board, or
- the relevant council

This must be provided to the Licensing Board on request, provided it is a reasonable request for the purposes of preparing such a statement.

What must be included:

6.19 Having carried out their duty to assess overprovision under Section 7 of this Act, Licensing Boards must, in particular, include a statement in their licensing policy 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 Licensing Board's area. If a Licensing Board decides that there is no overprovision, they must include a statement to this effect. (see Chapter 7 for further information).

Contents which Licensing Boards may consider:

6.20 Considerations may include:-

- providing a clear indication of the Licensing Board's policy and may set out a general approach to the licensing process and the making of licensing decisions.
- stating clearly that licensing is about regulating the sale of alcohol and premises on which alcohol is sold, and for connected purposes within the terms of the Act.
- bearing in mind that no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence where such provision has been made in the Act.
- including a general statement on the role and remit of Licensing Standards Officers.
- Including, in accordance with section 46(6) and (7) of the Act, a note which states that where an application is made for the confirmation of a provisional premises licence, that the Licensing Board may make a variation to the conditions for the purposes of "ensuring consistency with any licensing policy statement since the licence was issued". This may be relevant if a supplementary licensing policy statement is subsequently issued after a provisional licence was issued.

Licensed Hours

- state that Licensed hours will be those agreed following the Licensing Board's consideration of the operating plan and any mandatory and local licence conditions applied. Particular attention should be drawn to those premises wishing to open after 0100 hours since mandatory licence conditions will apply. (The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007). In developing its policy on licensed hours the Licensing Board may wish to take account of the views of those represented by the Local Licensing Forum.
- provide a clear indication of the Board's policy in relation to licensed hours in general and outline any specific areas of the policy which may differ from that general policy e.g. where different policies may apply in different localities according to local circumstances, if appropriate. Evidence for the policy approach should be included.
- state that each application will be considered on its individual merits, but the licensing policy statement should provide information on the Licensing Board's policy on licensed hours. Licensing policy statements should recognise that licensed hours are important not only to individual licensed premises but can have a wider impact for an area. For example, consideration should be given as to ways in which large numbers of customers leaving premises simultaneously can be appropriately managed. This might be necessary to reduce friction outside establishments, at taxi ranks and other transport sources, which can lead to disorder and

disturbance. Licensing hours should not unnecessarily inhibit the development of local licensing economies.

- observe the requirement set out in section 64 of the Act which provides a presumption against routine 24 hour opening of licensed premises. In terms of Section 64 (2) of the Act, the Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.
- Licensing Boards should be willing to consider “exceptional circumstances” for a special event or occasion to be catered for on the premises or a special event of local or national significance.

In such circumstances, the Licensing Board may extend the licensed hours in respect of the premises by such period as is specified in the extended hours application or such other period as the Licensing Board consider appropriate. Such an extension of licensed hours has effect for such period as is specified in the application or such other period as the Licensing Board consider appropriate; but in either case the period must not exceed one month.

It is unlikely that “exceptional circumstances” would be justified in the case of premises where there were routine requests to sell alcohol for 24 hour periods. In considering applications for licensed hours Licensing Boards may wish to consider applications for up to 14 hours as being reasonable but local circumstances and views of those represented by Local Licensing Forums should always be considered. Any application for licensed hours for more than 14 hours should require further consideration of the effect of granting extra operating hours.

Relationship with other strategies

- Provide clear indications of how the Licensing Boards will take into account other matters or strategies relating to alcohol when developing policy statements.

Transport

- describe any arrangements agreed between the police and Licensing Standards Officers for reporting views or concerns to the local authority transport committee (or other bodies with responsibility for transport in their area).
- The police are best placed to advise on the need to disperse people from town and city centres quickly and safely to avoid high concentrations of people in particular vicinities which may lead to disorder, disturbance and pressures on public transport facilities.

Tourism, planning and building control

- indicate that arrangements have been made for Licensing Boards to receive, when appropriate, reports on the local tourist economy for the area to ensure that these are reflected in their considerations.
- indicate that planning, building control and licensing regimes have separate processes and applications which have to be considered on their merits under the relevant regime. Licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee, nor should they seek to challenge decisions taken by that committee. Similarly, the granting by the Licensing Board of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building warrants /completion certificates where appropriate. Licensing Boards may wish to give consideration to relevant processes and communication arrangements between the regimes to avoid duplication and inefficiency'

Duplication

- include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation covering health and safety at work and fire safety will place a range of duties on the self-employed, employers and operators of venues. Such obligations should not be repeated in the licensing regime.

What should not be included:

6.21 Licensing Boards may not, in their licensing policy statement, or supplementary policy statement, indicate an intention to introduce a restriction on the sale of alcohol for consumption off the premises to those over 18 but under 21, whether in relation to some or all premises in its area. However, this does not prevent them from imposing licence conditions restricting off-sales of alcohol to people under 21 on a case by case basis.

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The Overprovision Assessment

Approach to licensing and overprovision

7.1 This chapter provides guidance to assist Licensing Boards to discharge their duty to assess overprovision of licensed premises in their area, which Section 7 of this Act requires every Licensing Board to include in their Licensing Policy Statement, a statement as to the extent to which the Licensing Board considers there to be an overprovision of:

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

Licensing Boards may reach the conclusion that there is no overprovision. If so, they must include a statement to this effect in their Licensing Policy Statement.

A statement regarding overprovision within a licensing policy statement has an important role. Inconsistency with policy is a powerful indicator that the refusal of the application should follow.

7.2 In Section 7 of this Act, references to "licensed premises" do not include references to any premises in respect of which an occasional licence has effect, therefore these should be left out of the assessment of overprovision.

7.3 Members' clubs should also be discounted for the purposes of overprovision assessments carried out by Licensing Boards provided they meet the criteria in terms of regulations made under Section 125 of this Act.

7.4 Consultation is required to be carried out by the Licensing Board. This may disclose that communities are placed under stress only by licensed premises sharing certain characteristics: for example, a concentration of off-sales in a residential area. Therefore proper regard should be given to the contrasting styles of operation of different licensed operations and the differing impact they are likely to have on the promotion of the licensing objectives.

7.5 Licensed premises of a particular description may be determined in terms of their styles of operation. Information may be gleaned from operating plans for this purpose. The Licensing Board should decide how it wishes to categorise premises by description. For example: they may consider utilising the definition of categories contained in the Town and Country Planning (Use Classes) (Scotland) Order 1997 or other types of classification.

7.6 The overprovision assessment should be evidence based, with the Licensing Boards having the flexibility to decide whether there was overprovision generally in relation to licensed premises, only overprovision in relation to a particular identifiable sector or that there was no overprovision, in any locality.

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7.7 It is for the Licensing Board to determine what the overprovision policy will be and how the evidence will be interpreted and weighted. When doing so, they must seek to promote the licensing objectives.

7.8 This approach:

- allows Licensing Boards to take account of changes since the last licensing policy statement;
- improves public and licensed trade confidence in a system by setting out clearly the grounds on which overprovision should be determined;
- recognises that halting the growth of licensed premises in localities is not intended to restrict trade but may be required to preserve public order, protect the amenity of local communities, and mitigate the adverse health effects of increased alcohol consumption resulting from growing outlet density.
- provides potential entrants to the market with a clear signal that they may incur abortive costs if they intend to apply for a licence in a locality which the Licensing Board has declared to have reached overprovision.

Determining Localities

7.9 It is for the Licensing Board to determine the “localities” within the Licensing Board’s area for the purposes of this Act. Licensing Boards can determine that the whole of the Licensing Board’s area is a single locality. The choice of locality is flexible to reflect the different circumstances in different geographical areas throughout the country.

The choice of locality must, however it is done, be rational and capable of justification in the event of a legal challenge.

7.10 The process by which the selection exercise to determine the “localities” is carried out is largely a matter for the Licensing Board. The selection of appropriate localities is based on having a broad understanding of provision across the Board’s area. Licensing Boards may wish to make use of their own local knowledge/understanding of areas. They may wish to carry out informal consultation with interested parties and/or make use of their existing licensing policy statement in order to assist them to come to a view as to which localities may be appropriate to include in their licensing policy statement.

Information may be obtained from a number of stakeholders, such as the relevant health and/or social care body who may be able to provide, amongst other things, data on alcohol related mortality and hospital admissions. The chief constable may be able to identify problematic areas where it can be demonstrated that crime, disorder and nuisance are caused by customers of a particular concentration of licensed premises and/or suggest areas in which the number of licensed premises or premises of a particular description are potentially approaching overprovision.

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7.11 It is not necessary to divide the whole of the Licensing Board's area into separate localities. A locality could, for example, consist of a particular town, a city centre, a street, a collection of streets, a council ward, datazone(s) – (Scottish Index of Multiple Deprivation) or the whole of the Licensing Board's area.

The Licensing Board may wish to consider making an initial assessment by closely scrutinising the premises across the whole of their area, then proceed to determine those localities it proposes to examine. After carrying out the initial assessment, the number of premises, or premises of a particular description in those localities should be identified, then the Licensing Board should determine the capacities and have regard to other matters it thinks fit and fulfil its duty to consult.

Matters for the Licensing Board to have regard to

7.12 In considering their policy on overprovision and whether there is overprovision in any locality, the Licensing Board –

- must have regard to the number and capacity of licensed premises in the locality/localities;
- may have regard to such other matters as the Licensing Board thinks fit including, in particular, the licensed hours of licensed premises in the locality/localities; and
- must consult the persons specified in Section 7(4) of this Act. Those persons are: the chief constable, the relevant health board, such persons as appear to the Licensing Board to be representative of the interests of – (i) holders of premises licences in respect of premises within the locality, (ii) persons resident in the locality, and such other persons as the Board thinks fit.

Capacity of licensed premises

For the purposes of the overprovision assessment, the operating capacity of premises licensed to sell for on-sale consumption should be taken from the operating plan. The definition of capacity for on-sales and off - sales is set out in section 147 of the Act.

"Capacity", in relation to licensed premises, means –

(a) in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption on the premises (or, as the case may be, that part), the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time, and

(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.

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Based on these definitions the proposed methodology for calculating capacity for on-sales and off-sales is set out below:

On-sales

The Buildings (Scotland) Regulations 2004 assessment methods set out in the Technical Handbooks issued in support of these regulations.

Off-sales

The maximum linear measurement, in metres, of the frontage used to display alcohol, including the areas utilised for off-shelf seasonal or any other promotional displays.

Licensing Boards should be consistent when using terminology for measurement.

Other matters as the Licensing Board thinks fit

- Licensing Boards may have regard to such matters as they think fit including, in particular, the licensed hours of licensed premises in a locality. Other considerations may include the relevant circumstances in the area or the proximity of specific types of premises, such as facilities for vulnerable adults with alcohol addiction issues.

The Licensing Board may not delegate certain functions

7.13 Although Licensing Boards may authorise certain others to exercise some of their functions on their behalf. In accordance with Schedule 1 paragraph 10(2), they may not delegate, amongst other things, the following functions:

- determining the Board's policy for the purposes of a licensing policy statement or supplementary licensing policy statement.
- determining for the purposes of any such statement, whether there is overprovision of licensed premises, or premises of any particular description, in any locality.

Duty to consult and gather evidence

Licensing Policy Statement

7.14 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must consult -

- the Local Licensing Forum for the Licensing Board's area;
- if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2 of this Act. (i.e. holders of premises licences and personal licences, the chief constable, persons having functions relating to health, education or social work, young people, person's resident within the Forum's area); then the Licensing Board must

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- consult such person or persons as appear to it to be representative of those interests of which the membership is not representative;
- the relevant health board; and
- such other persons as the Licensing Board thinks appropriate.

Overprovision Assessment

In considering whether there is overprovision in any locality, for the purpose of the statement, the Licensing Board must consult -

- the chief constable,
- the relevant health board,
- such persons as appear to the Licensing Board to be representative of the interests of –
 - holders of premises licenses in respect of premises within the locality,
 - persons resident in the locality, and
- such other persons as the Licensing Board thinks fit.

7.15 The duty of the Licensing Board to consult prior to the formulation of overprovision assessments illustrates the importance of partnership working in the achievement of the licensing objectives.

7.16 As well as consultation with representative bodies and organisations, Boards may wish to hold well-publicised 'open meetings' in particular localities, at which members of the community can be afforded an opportunity to express their views on the formulation of policy.

7.17 The results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality.

Factors which the Licensing Board may take into account include:

- the information provided by the chief constable;
- subject to the constraints of data protection legislation, CCTV footage supplied by the chief constable or another source which illustrates disorder associated with the dispersal of customers in any locations;
- evidence gathered from local residents of anti-social behaviour associated with licensed premises;
- information from the local authority's Environmental Health Department about noise complaints which can be attributed to the operation of licensed premises in a locality;
- data supplied by the relevant health and/or social care body, for example, alcohol related mortality or morbidity.

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It has long been Scots licensing law that for a Licensing Board to make a finding that a harm will arise because of or in consequence of the sale of alcohol, there must exist a causal link between the alleged cause and the alleged harm.

The dependability of the 'causal link' is based on the quality and nature of the evidence used.

Causation must be per caselaw on a more than "but for" basis as licensing is a civil law matter, the proof of the link must be on a balance of probabilities, that is "more likely than not". Once you show that link and develop the licensing policy statement (and overprovision assessment) based on it, these documents will inform the future consideration of licence applications, and will carry considerable weight.

The onus then falls on the applicant to show that their application should still be an exception.

7.18 The overprovision assessment must be based on credible evidence of a causal link between the engagement of one or more of the licensing objectives and a concentration of licensed premises or of licensed premises of a particular description in a locality.

7.19 Licensing Boards, on gathering information and evidence, must consider the fine detail and the local issues, applying appropriate weight to their findings during their decision-making process.

7.20 Consideration should be given as to whether aggregated information and evidence from a number of sources points towards a particular conclusion.

7.21 In considering their policy on overprovision and whether there is overprovision in any locality, the Licensing Board should not take into account:

- the manner in which individual premises in a locality are managed, since it is possible that well-managed premises may act as a magnet for anti-social behaviour, or may eject a substantial number of customers who collectively produce disorder and nuisance to a degree which is unacceptable;
- any concerns as to the quality of management of individual premises, which should be addressed separately through other statutory mechanisms.
- The need or demand for licensed premises in a locality. Commercial considerations are irrelevant.

7.22 If a Licensing Board comes to a conclusion that there is a causal link between the alleged cause and the alleged alcohol related harm in a locality to such an extent that it would be clearly inconsistent with any of the licensing objectives, the Licensing Board should include details of this in their licensing policy statement, which incorporates the overprovision assessment. A Licensing Board may wish to express this in such a way that interested parties are left in no doubt as to the reasons for

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adoption of the policy, specifying the relevant locality, and including information on the evidence upon which the Licensing Board relied and the material considerations which were taken into account.

7.23 The licensing policy statement or supplementary licensing policy statement (see Chapter 6 for an explanation of these terms) should identify the factors taken into account in the overprovision assessment and it should make it clear however that each application will be decided on its merits.

The effect of the overprovision assessment

7.24 When determining premises licence applications and applications for major variations, Licensing Boards should amongst other things, take into consideration the provisions under Section 23(5)(e) and 30(5)(d) of this Act respectively. These specifically relate to grounds for refusal, in the context of overprovision. Licensing Boards can refuse an application if they consider that there would be overprovision in the locality as a result of the application being granted.

7.25 The application need not be the subject of an objection for the application to be refused.

7.26 The effect of an overprovision policy, included in a licensing policy statement, is to create a rebuttable presumption against a grant of an application.

There may be exceptional cases in which an applicant is able to demonstrate that the grant of the application would not undermine the licensing objectives, or the objectives would not be undermined if the applicant's operating plan were to be modified or the grant of the licence was made subject to appropriate conditions.

If overprovision is established, Licensing Boards may (but are not obliged to) identify the matters that they consider specific and relevant to rebutting the presumption against grant. Licensing Boards may expect that applicants seeking a licence in such circumstances should provide robust and reliable evidence as to why the benefit to the licensing objectives, through the grant of their application, outweighs any detriment to the licensing objectives and the overprovision policy. In such circumstances, Licensing Boards may have grounds not to follow their own policy.

It is important to note that upholding the objectives is not something which, in itself, rebuts the presumption against grant created by overprovision. Every application granted by the Licensing Board is tested against the licensing objectives. If the Licensing Board considers that any application is inconsistent with one or more of the licensing objectives (regardless of overprovision) it is a ground for refusal and the application would fail.

7.27 As 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.

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7.28 If a Licensing Board has determined that there is no overprovision in any locality, it is still entitled to refuse an application based on overprovision.

Summary

7.29 The formulation of the statement on overprovision required by section 7 of the Act involves the following process:

- the selection of appropriate localities based on a broad understanding of provision across the Board's area;
- the identification of the number of licensed premises or premises of a particular description in those localities, including their capacities and may have regard to any such matters the Board thinks fit, including, in particular, licensed hours;
- consultation with the relevant persons;
- an assessment of the information gathered from those persons, taking into account only relevant considerations and material which has a proper evidential base to consider if there is a dependable causal link between the operation of licensed premises in a locality or localities and relevant harms; and
- reaching a decision as to whether it can be demonstrated that, having regard to the number and capacity of licensed premises or licensed premises of a particular description in a locality and other matters, it is undesirable to grant further licences or further licences for premises of a particular description, in any locality within the Licensing Board's area.
- including a statement on overprovision in the Licensing Board's published licensing policy statement.

It is important to identify and agree the proposed locality or localities before lawfully and rationally carrying out a consultation to allow consideration to be given to issues/concerns that may be raised and any assessment of overprovision.

Licensing Boards may review an overprovision statement at any time. For example, when new developments or new evidence comes to their attention. If they decide to amend it, they should publish a supplementary licensing policy statement and publicise the date on which it is to begin.

When Licensing Boards subsequently consider applications, they must consider the most recent licensing policy statement and act lawfully with regard to the legal principles underpinning the right to appeal and observe the correct legal tests in their decision making. Each application is to be considered on its own merits.

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Licensing Boards, in the context of carrying out an overprovision assessment, should therefore be mindful of the five grounds of appeal under this Act:

- that the Licensing Board erred in law;
- that the Licensing Board based its decision on an incorrect material fact;
- that the Licensing Board acted contrary to natural justice;
- that the Licensing Board exercised its discretion in an unreasonable manner; and
- in the case of review hearing, that the decision was disproportionate.