



Clackmannanshire  
Council

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Comhairle Siorrachd  
Chlach Mhanann

# Clackmannanshire Council Statement of Licensing Policy 2023



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## **Foreword**

Clackmannanshire Licensing Board has approved this statement of licensing policy following an extensive review process.

This policy is intended to be a straightforward statement of policy for all audiences; including the Board in determining applications, applicant, licence holders, and the wider community. The Board acknowledges the changing context of alcohol licensing, given the increase in online shopping and changes in drinking habits.

The Board is clear that its remit is to regulate the sale of alcohol in Clackmannanshire and to regulate licensed premises on which alcohol is sold. The Board further recognises that the licensing objectives must be considered in this context. Therefore this policy statement begins by setting out the Board's approach to each of the licensing objectives and then moves on to consider specific areas of policy and finally the Board's approach to overprovision.

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# Preventing Crime and Disorder

## Overview

In determining applications the Board will consider any impact the granting of licences may have on crime and disorder in the area.

The Board recognises that its decisions contribute to making Clackmannanshire a safe environment for residents and visitors. The Board will work with partners and license holders to ensure our licensed premises are safe, well-regulated and supply alcohol in a responsible manner in the context of the framework of the Act and the licensing objectives.

## Summary of key concerns on the prevention of crime and disorder

In having regard to the objective of preventing crime and disorder the Board will consider the impact of and how to reduce the following issues in particular:

- offences by licence holders, in particular the sale of alcohol to under age persons and agent purchasing;
- drunkenness and disorderly conduct on and connected to licensed premises;
- violent or disorderly behaviour including assault, breach of the peace and domestic abuse;
- anti-social behaviour;
- drink driving;
- observance of Byelaws;
- illegal possession, supply and/or use of drugs and other substances (including New Psychoactive Substances) on licensed premises.

## Factors which the Board will consider in relation to this objective

In considering any application for a licence the Board will take into account some or all of the following factors as relevant to the application:

- effective and responsible management of premises including outdoor drinking areas;
- training and supervision of staff including training on alcohol;
- the requirement to produce accredited proof of age cards and/or photographic driving licences or passports and the adoption of age verification or challenge schemes such as Challenge 25;
- provision of external lighting and security measures;
- employment of a sufficient number of Security Industry Authority licensed door supervisors;
- responsible advertising and promotions;

- responsible management and accountability for persons within premises and also when patrons are leaving the premises; and
- the use of unbreakable drinkware at relevant events, particularly those events where children and young persons are present;
- display of prominent notices which set out the Management's policy on illegal substances as well as relevant contact details for local support services;
- availability of low alcohol and non-alcoholic drinks;
- promotion of availability of designated driver schemes.

The Board may also consider other factors, such as the provision of effective CCTV equipment acceptable to Police Scotland and the UK or Scottish Information Commissioner.

### **Specific requirements under this objective**

#### **Applicant and licence holder convictions**

There are specific statutory requirements imposed on applicants for licences and on licence holders in relation to the disclosure of criminal convictions. The Licensing Standards Officer, Licensing Administrator or the Clerk may be able to provide guidance about what needs to be disclosed however it remains the responsibility of the applicant or licence holder to ensure that the correct information is made available to Courts (where applicable) and the Board.

In the event that an applicant fails to declare a relevant conviction and the Board is subsequently notified of such, the Board will request that the applicant provides a satisfactory explanation as to why the conviction was not declared. The Board will not consider lack of knowledge or awareness to be a satisfactory reason. Applicants are strongly recommended to check this part of their applications with the Licensing Administrator or Clerk before lodging.

Where an applicant fails to provide a sufficient justification, the Board may report this matter to the Chief Constable of Police Scotland for investigation. Applicants are also reminded that on conviction, the 2005 Act provides for a review procedure in respect of both personal and premises licences which may ultimately result in the suspension or revocation of the licence applied for.

#### **Curfew Conditions**

A curfew condition may be applied to late night entertainment premises to prohibit entry to premises after a certain time. Entertainment premises in this context are those premises where the operating plan specifies that they intend to provide live or recorded music and facilities for dancing or other entertainment and in the statement of core hours for consumption on the premises are likely to have specified a terminal hour of later than 12 midnight Sundays to Thursdays and later than 1am on Fridays and Saturdays. The application of this type of condition has been shown to be successful in reducing the prevalence of antisocial behaviour associated with the migration of drinkers.

It is also likely to deter patrons moving from a vertical drinking or other establishment where entertainment is not provided to an entertainment premises solely or principally to utilise an extra period of drinking time. However, it is unlikely to apply to licensed premises providing a significant food offering and adequate seating throughout the majority of its licensed hours. It is generally used to refer to premises where the primary purpose is the sale and consumption of alcohol and a high percentage of customers will be standing.

It is the Board's view that permitting this type of migration contravenes the protection and improvement of public health, the crime prevention and the prevention of public nuisance objectives of the Act.

The Board is minded, subject to consideration of the merits of individual applications and representations by applicants, to impose a condition restricting entry after 12.30 am (or such other time as the Board considers appropriate having regard to the nature of the premises in question and the activities taking place or proposed to take place therein) where it decides to grant or vary the terminal hour to a time outwith the indicative times stated in this policy. The Board will also taken into account where there are a number of licensed premises in close proximity to the premises in respect of which the grant or variation of terminal hour is sought and the migration of drinkers to those premises may increase the risk of crime and disorder, public nuisance or have a detrimental impact on public health.

## **Securing Public Safety**

### **Overview**

The Board is committed to ensuring that the safety of any person visiting or working on licensed premises is not compromised by the use of the premises for the sale of alcohol and the carrying on of other activities on the premises. The Board will, where it considers it necessary or expedient for the purposes of securing public safety, impose conditions requiring anything to be done or prohibiting or restricting anything from being done in connection with the sale of alcohol on the premises or in connection with any of the other activities carried on in the premises.

The Board acknowledges support for all schemes and policies that make alcohol licensed venues and events a safer environment for visitors and employees alike.

The Board also accepts that it has no specific remit in relation to health and safety issues involving staff working within licensed premises. It does however recognise that there will be occasions where the safety of staff may be compromised by customers who are intoxicated, particularly where they have been refused service or access to the premises. The Board therefore believes that licence holders have an added responsibility towards their staff flowing from issues directly relating to the sale of alcohol and the specific provisions of their licence.

The Board believes that all licence holders and particularly those operating or applying for later licensed hours, should consider what arrangements are in place for staff getting home safely after the premises have closed when transportation options may be more limited. The Licensing Board fully supports the "Safe Home" initiatives adopted in other parts of Scotland by some licence holders for their staff. The Board would strongly encourage licence holders in Clackmannanshire to take a similarly responsible approach to the safety of staff working within their premises late at night.

### **Summary of key concerns on securing public safety**

The Board will review any applications (including as appropriate the operating plan and layout plan). Securing public safety will be a relevant consideration in connection with the following matters:

- the occupancy capacity of the premises;
- the design and layout of the premises, including the means of escape in the event of fire;
- the fire safety regimes in place;
- the hours of operation – differentiating the core licensed hours from times when activities specified in operating plans are to be provided outwith core licensed hours; and
- the nature of activities and promotions to be provided at the premises.

### **Factors which the Board will consider in relation to this objective**

Suggested measures which applicants should consider in connection with securing public safety (for both on and off sales) may include:

- carrying out suitable and sufficient risk assessments;
- effective and responsible management of premises including the installation of CCTV equipment acceptable to Police Scotland and the Scottish Information Commissioner;
- employment of sufficient numbers of suitably trained staff;

- proof of regular testing and certification where appropriate of procedures, appliances and safety systems;
- implementation of customer management measures;
- ensuring compliance with statutory requirements in relation to safety;
- if appropriate, using sufficient numbers of SIA licensed door supervisors.

In most cases, the Board will not normally impose a condition regarding the use of SIA licensed door supervisors for private functions. This condition will, however, normally be imposed for certain public or commercial events such as live music performances, sporting events and other similar matters where the Board considers it necessary and expedient to impose this condition for the purposes of any or all of the 5 licensing objectives.

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# Preventing Public Nuisance

## Overview

The Board wishes to protect and maintain the amenity of residents and occupiers of commercial premises from any adverse consequences due to the operation of licensed premises, whilst at the same time recognising the valuable cultural, social and business importance of such premises.

## Summary of key concerns on the preventing of public nuisance

The Board will interpret public nuisance in its widest sense and will have regard to such issues as:

- noise, light, or odour, litter and
- anti-social behaviour.

Where these matters impact on those living, working or otherwise engaged in normal activity in Clackmannanshire.

Although there may be several similarities in the types of nuisance involved, the Board recognises that “Public Nuisance” in terms of the Licensing Scotland Act, 2005, is different to a “Statutory Nuisance” referred to in the Environmental Protection Act, 1995.

## Factors which the Board will consider in relation to this objective

Licensees are expected to be aware of the impact on neighbours of noise from their premises and are expected to take reasonable steps to prevent public nuisance.

- the possibility of public nuisance arising due to the proximity of the premises to residential and other noise-sensitive premises, such as hospitals, hospices, care homes and places of worship and any mitigating measures proposed by the applicant;
- the possibility of public nuisance arising due to the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside the premises and any mitigating measures proposed by the applicant. The Board will have particular regard to these issues in the case of proposed pavement cafes and other outdoor drinking areas and, if minded to grant such applications, will attach appropriate conditions;
- the design and layout of the premises and any proposals by the applicant regarding noise-limiting features such as the installation of a sealed sound limiter, sound proofing, air conditioning, keeping doors and windows closed or siting of external lighting, including security lighting effective use and/or maintenance of plant, including air extraction and ventilation systems to prevent nuisance from odour;
- the applicant's proposals, in so far as a matter within his/her/their power, regarding dispersal of customers;
- the introduction of a wind down period between the end of the activities specified in an operating plan and closure of the premises;
- the proposed last admission time;

- effective and responsible management of premises;
- appropriate instruction, training and supervision of those employed or engaged to prevent instances of public nuisance, for example, to ensure that customers leave quietly;
- control of operating hours for all or parts of the premises, for example in Outdoor Drinking Areas;
- Management arrangements for collection and disposal of waste and empty bottles.

### **Specific Requirements**

#### **Off sales**

Statutory restriction of the maximum hours of off sales. Subject to that restriction, The Board will usually permit off sales of alcohol during the trading hours of premises. The Board will, however, in considering whether granting an application would be inconsistent with any of the licensing objectives, consider whether the proposed off sales hours will have any effect on the occurrence of antisocial behaviour.

Applicants should be aware that the Board may apply local conditions or may grant licensed hours of less than 10a.m. and 10p.m. where it considers that the grant of the hours proposed will have an adverse effect on the occurrence of antisocial behaviour. Such considerations will be particularly important where premises are situated in residential areas and there is evidence of strong likelihood of public nuisance in the absence of restrictions in the operation of licensed premises. The Board may vary existing licences to apply such local conditions or restrict licensed hours where there is evidence that existing hours are having an adverse impact on the occurrence of anti social behaviour. Similar considerations may apply in the case of commercial premises which have been affected by public nuisance due to the operation of licensed premises.

#### **Anti-social behaviour**

The Board believes that the impact licensed premises can have on a neighbourhood is significantly influenced by behaviour of customers and the nature of the activities within and in the vicinity of licensed premises. The Board will look to licensees to manage their premises effectively and responsibly to minimise the potential for public nuisance. The Board may vary licensed hours at a review hearing, if it considers this to be appropriate for instance, where the premises are a source of anti-social behaviour (particularly in relation to outdoor areas and dispersal of patrons).

#### **Disposal of glass**

Having received various complaints from residents whose properties adjoin or are in proximity to licensed premises, the Board will impose a condition prohibiting the disposal of glass and other receptacles between the hours of 9pm and 9am inclusive either at the time of grant or by variation if established as a ground review at a review hearing.

# Protecting and Improving Public Health

## Overview

The Board is concerned about the link between the consumption of alcohol and public health which has been widely documented. The Board is keen for licensed premises to thrive in Clackmannanshire but this cannot be at the expense of the health and well being of all customers and staff using licensed premises. The Board looks to the licensed trade to promote a culture of moderate and responsible consumption of alcohol. It is their responsibility to ensure that such a culture is promoted and encouraged by their managers and staff.

## Summary of key issues to ensure the protection and improvement of public health

- patrons or customers being served alcohol when they are approaching drunkenness or already drunk;
- the sale of large quantities, particularly of high strength alcohol;
- familiarity with the low risk drinking guidelines recommended by the Chief Medical Officer.

## Factors which the Board will consider in relation to this objective

- making available information which promotes moderate drinking along with awareness of units of alcohol in alcoholic drinks and recommended guidelines for consumption for men and women;
- promotion of local support services for individuals and/or family members affected by alcohol and/or drugs;
- displaying anti-drink driving materials and active promotion of campaigns such as designated driver schemes
- participation in national campaigns, for example Alcohol Awareness Week;
- having in place a protocol to deal with patrons who have consumed excessive alcohol and who appear to be drunk.
- ensuring compliance with the provisions of any legislative provisions that relate to public health in a licensed setting;
- having a robust age verification policy in place and ensuring that managers and staff are aware of and are applying it;
- Ensuring that all members of staff have been trained to understand low risk drinking limits, units and strength of alcohol and best practice in terms of standards of service and refusing service;
- being thoroughly conversant with and ensuring managers and staff are complying with the law regarding pricing of alcohol and irresponsible drinks promotions.
- Ensuring the availability of reasonably priced soft drinks and free drinking water.

# Protecting Children and Young People from Harm

## Overview

The Board's general policy is to welcome and encourage well thought out applications for premises licences and occasional licences which will accommodate children and young persons. In determining any such application the risk of harm will be a paramount consideration for the Board. For applicants who wish to operate such premises, the Board expects them to appreciate this places additional responsibilities upon them in terms of the safety of children and ensuring a suitable environment for children, at the same time recognising that parents and other adults accompanying children have primary responsibility for controlling and keeping safe children in their company.

## Summary of key concerns

### Children purchasing and obtaining alcohol

Children being exposed to excessive or irresponsible alcohol consumption, gambling, smoking, strong or offensive language or behaviour. The health and safety of children being taken into account while on licensed premises

### Factors which the Board will consider in relation to this objective

The following matters are indicated as measures which the Board may consider when determining an application where they are to allow children and young persons within their premises:

- appropriate measures (eg good quality staff training, age verification policy) to ensure children do not purchase or consume alcohol on the premises (unless such consumption is permitted by a young person in terms of the restricted provisions of Section 105(5) of the Act - a person other than a child or young person may purchase beer, wine, cider or perry for consumption by a young person with a meal supplied on the premises);
- instructions to managers and staff regarding taking reasonable steps to establish the age of a child or young person and acceptable documents for that purpose. Staff should also be trained in identifying counterfeit or forged identification documents;
- effective and responsible premises management;
- ensuring compliance with the provisions of The Smoking, Health and Social Care (Scotland) Act 2005 and The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 and taking all reasonable steps to ensure that children and young persons within the premises are not put at any risk by the presence of second hand smoke; and limitations on the hours when children may be present throughout or in parts of the premises.
- measures to ensure that the environment for children is appropriate, which would include the bar area
- measures to ensure that children and young people are not exposed to inappropriate language, violence or disorder, aggression or intoxication. These should relate to the particular application and will be considered by the Board on its own merits.

## **Specific cases**

The Board is of the view that children and young persons should be allowed to attend family events, such as weddings, anniversary celebrations and birthday parties. Where the sale of alcohol is permitted by means of a premises or occasional licence, applicants should set out any requirements for children's access and the hours during which it is proposed they be allowed on the premises.

The Board also considers that it is appropriate to allow young persons (those aged 16 and 17 years) access to Licensed Premises for the purposes of participating in organised pool, darts or other competitions providing that they do not remain on the premises beyond the completion of the tournament and that suitable arrangements are in place to prevent such young persons from purchasing or consuming alcohol on the premises. The Board will regulate this issue by the imposition of appropriate conditions.

Where an event relates to the provision of advertised entertainment (whether provided for profit or on a not for profit basis) such as a live band or a sporting event, the Board are of the view that it is inappropriate to allow unaccompanied children and young persons other than members of bands or participants in sporting events access to such an event, although each application will be considered on its merits. Applicants and licensees should be mindful of the views of the Board on this issue when framing their operating plans or applying for occasional licences or extensions of licensed hours.

In the event that an applicant seeks a licence for an eighteenth birthday party or in the case of other events or occasions where the Board determines it to be appropriate, the Board if minded to grant the application may impose additional conditions regulating entry and the sale of alcohol to reduce the risk of harm caused to young persons in attendance through consumption of alcohol. It will generally be recommended that the Board impose a condition requiring the employment of SIA licensed stewards for these types of events. Applicants should have regard to these considerations when applying for occasional licences for such events and should ensure that the organisers are aware of the Board's likely requirements.

Where premises elect to allow children and young people onto the premises, they need to ensure that they are appropriately protected from harm and meet the terms of the mandatory conditions.

## **Community and gala events**

The design of the event, in terms of where the alcohol sales are located and how that location would relate to the protection of children and young persons from potential harm.

In general terms alcohol sales and consumption at family orientated community events will always be restricted to a clearly defined area with a physical barrier and management procedures in place to prevent alcohol being removed from the licensed area.

## **Licensed Hours and Extended Hours**

Each application to the Board shall be considered on its individual merits. The Board will at all times give consideration to the Licensing Objectives and the other provisions of the Act. The Board will not permit 24 hour licensed hours.

The Board's general policy is as follows:

### **Off Sales**

The maximum licensed hours for the sale of alcohol for consumption off the premises are laid down as between 10 a.m. and 10 p.m. each day. These hours are applicable to the sale of alcohol for consumption off the premises to premises licences and occasional licences.

The Board will have no discretion to permit licensed hours outwith these times.

In dealing with applications where it is indicated in the proposed operating plan that it is intended to sell alcohol for consumption off the premises the Board will determine such applications having regard to:

- the documents accompanying the application;
- any objections or representations received;
- this Licensing Policy Statement or any Supplementary Licensing Policy Statement;
- guidance issued by Scottish Ministers; and
- whether any of the grounds of refusal apply.

### **On Sales**

#### *General*

There are many factors that may be relevant to the Board's consideration of licensed hours in relation to each individual application. However, each application must be consistent with the licensing objectives. The Board will have regard to the licensing objectives in determining licensed hours in respect of each application. Applicants will be required to satisfy the Board that additional hours are not merely to allow increased consumption of alcohol.

The following factors are a non-exclusive list of matters which the Board considers may be relevant:

- the Location of the premises;
- proximity to residential premises;
- evidence of existing or potential anti-social behaviour in the vicinity;
- proximity of noise sensitive establishments such as Hospitals, Churches or Care Homes;
- any noise limiting measures present on the premises; and
- the occupancy capacity of the premises;
- the operating hours of other premises in the locale.

### **Commencement Hour**

In applications for premises licences, variations and extensions of hours where the proposed operating plan indicates that it is intended to sell alcohol on the premises (on

sale hours) the Board considers that the commencement of licensed hours should generally be no earlier than 11 a.m. However, the Board also recognises that earlier opening may be appropriate for certain types of premises or for certain events such as:

- to meet the requirements of certain customer groups;
- to recognise the importance of tourism in certain locations within Clackmannanshire and the need to meet the reasonable demands of tourists;
- to allow for the televising of certain international sporting events on licensed premises;
- to allow the sale of alcohol at sporting clubs prior to or during sporting competitions;
- to facilitate the sale of alcohol at special events in cinemas and other places of public entertainment.

The Board has reached the view that it will not generally be appropriate to grant an application seeking a commencement hour of earlier than 11am having regard to the protection and improvement of public health objective, subject to the considerations set out above.

The Board has a presumption against granting any applications that are out with this policy, and that solely seek an additional period of drinking with no indication of an entertainment or special event purpose.

### **Terminal Hours**

The Board recognises that different terminal hours may be appropriate having regard to the nature of the premises and the activities taking place or proposed to take place thereon.

Subject to the Licensing Objectives and consideration of the merits and circumstances of each individual application, the Board regards the following indicative terminal hours as reasonable:

Licensed premises operating in the style of a traditional public house, hotel or restaurant

- Sunday – Thursday: 12midnight
- Friday and Saturday: 1am

These premises will in the main be premises where the only or main activity is consumption of alcohol, or the consumption of alcohol is ancillary to the offering of food, accommodation, special events, sports facilities or gaming facilities., such as hotels, restaurants, members' clubs and bingo halls.

Premises where the operating plan specifies that there may be provided live or recorded music or other entertainment or other facilities or activities of a similar nature and where the provision of alcohol is ancillary to the entertainment offered on the premises.

The main purpose of premises in this category will be to provide music and dance facilities in the form of night club style premises which will normally have specified a later commencement of licensed hours in their operating plans than premises falling with category of traditional public house, hotel or restaurant.

- Sunday – Thursday: 1am
- Fridays and Saturdays: 3am

Subject to the individual merits of any application, the Board will consider applications for

a terminal hour out with these times from any applicant or existing licence holder who can demonstrate that no conflict with the licensing objectives will occur as a result of the being granted a terminal hour later than 1am.

The Board does not consider that a terminal hour of later than 3am on any night is appropriate. This position has been adopted after careful consideration of the Clackmannanshire area as a whole and to ensure that the public health licensing objective is met.

In considering an application for a premises licence or for a variation (or otherwise) seeking a 3am terminal hour, the Board will expect the operating plan and any supporting material to indicate that the sale of alcohol will be ancillary to significant entertainment being provided on the premises.

The Board is of the view that the following activities on their own would not amount to significant entertainment:

- pre-recorded Music provided through PA system, jukebox or equivalent;
- live performances in the form of Karaoke, Open mike nights, impromptu performances by patrons.

Regardless of the above, what the Board considers to amount to provision of entertainment or other facilities or activities will be determined on the facts and circumstances of each application. It is up to the applicant to satisfy the Board that genuine entertainment or other activities or facilities will be provided.

The Board will not in general be disposed to grant an application where that application purely seeks an additional period for drinking where no entertainment or other activities or facilities are provided on the grounds that this is inconsistent with the protecting and improving of public health licensing objective.

### **Special Events - Extended Hours**

The Board may on application extend the licensed hours in respect of licensed premises by such period as the Board considers appropriate.

The Board will expect each application for extended hours to demonstrate that the extended hours applied for are in relation to either:

- (a) a special event or occasion to be catered for on the premises; or
- (b) a special event of local or national significance.

The applicant will be required to satisfy the Board that the hours sought are appropriate in the circumstances of the application. It will be the responsibility of the applicant to provide the Board with sufficient information to enable it to reach a decision.

The information which will assist the Board in making a decision will include:

- the hours sought;
- the description of the special event or occasion;
- what activities are proposed;
- if more than one activity, the duration of each activity;
- the reason for the event or occasion being regarded as special and requiring extended hours.



The Board will not grant an extended hours application where the applicant fails to satisfy the Board that a genuine special event is taking place and the application merely relates to an extra hours drinking time. The Board will take into account any report completed by the Licensing Standards Officer and any comments made by The Chief Constable when determining an application for extended hours.

### **Festive Policy**

The Board considers that it is appropriate to allow extra trading hours over the Christmas and New Year period. This will be referred to by the Board as the Festive Policy.

The period of the festive policy will be identified by the licensing Board each year its meeting in August.

In relation to the identified the "Festive Period" the board has determined that it is appropriate to grant a general extension of one additional hour added on to the terminal hour of all On Sales licensed premises.

This general extension will not allow any premises that are not already permitted to do so, to trade beyond 2am on any day.

### **Christmas Eve and Hogmanay**

Additional Special provisions to allow a 2am terminal hour, may be put in place by the Licensing Board where Christmas Eve and New Years Eve fall on a day other than a Friday and Saturday. These additional hours will be publicised and communicated to license holders by the Licensing Board after the August meeting.

### **Mandatory Conditions**

The Board assumes that licence holders will familiarise themselves with the mandatory conditions applicable to all premises licences and occasional licences. Alcohol may not be sold except under and in accordance with a premises licence or an occasional licence.

Anyone who sells alcohol or who knowingly allows alcohol to be sold in breach of the above provision commits an offence. Failure to comply with a condition of the licence will constitute an offence.

It is the Board's policy to regard any substantive or repeated breach of any condition of the licence as a serious matter which is likely to result in a review in the case of a premises licence. This may lead to an objection or representation in the case of future applications for an occasional licence by the same applicant.

The Board in considering individual applications will decide whether it is necessary or appropriate to impose additional local conditions for the purposes of one or more of the licensing objectives. The Board will only impose additional conditions which it considers proportionate and appropriate to the circumstances of the application.

The Board recognises the Act does not require that a premises manager (or other personal licence holder) be present at any time when a sale of alcohol is made. However to ensure that adequate management provisions for the licensed premises are in place, it is recommended that, as a matter of good practice, either the premises manager or another personal licence holder is on the premises for a sufficient period of time.

## **Changes to Mandatory Conditions**

From time to time and as a result of legislative changes the mandatory conditions of all premises and occasional licences may change. The Board will notify these changes to licence holders in a variety of ways, depending on the circumstances.

In most circumstances the Board will send additional pages containing any new or amended conditions along with written instructions directly to the premises licence holders. The Board will expect Licence Holders to make these amendments to their premises licence on receipt of the instructions.

Occasional licences will always be issued with the current conditions attached.

## **Home Delivery of Alcohol and Age verification**

The Licensing Board is aware of the growing trend for deliveries of alcohol from licensed premises.

While no clear evidence of harm being caused in Clackmannanshire by this activity exists the Licensing Board considers it necessary to ensure that it supports a robust policy in relation to home delivery of alcohol going forward.

Premises Licence holders should be aware that the Operating Plan, associated with their premises licence details all of the activities that are permitted to take place on the licensed premises or in connection with the sale of alcohol from that premises.

If “delivery of alcohol” is not specified in the operating plan and approved by the Licensing Board then Premises Licence holders are not permitted to make deliveries of alcohol to customers at their home address or elsewhere.

Section 108 of the Licensing (Scotland) Act, 2005 makes certain provisions in relation to the delivery of alcohol to or by a child or young person – licence holders making deliveries of alcohol should familiarise themselves with the detail of this section along with the detail of Section 119 of the 2005 Act, which makes provisions in relation to record keeping connected with all deliveries made.

In addition to the statutory requirements detailed in Sections 108 and 119, Clackmannanshire Licensing Board have formed the view that in most cases it will be necessary and expedient to add local licensing conditions to any premises licence where home delivery is included in the operating plan.

Local Conditions may include the following requirements:

- Any age verification Policy in operation on the premises will also be applied to the point of delivery;
- Information will be provided to customers whether online or in store that Alcohol will only be left at the delivery address with a person who can prove that they are over 18 years of age;
- Licence holders will ensure that all persons involved in the delivery of alcohol have received appropriate training in the application of the Age verification Policy to be used;

- Licence holders will ensure that all persons involved in the delivery of alcohol have received appropriate training to ensure that deliveries of alcohol are not made to persons who are or appear to be drunk or whom appear to be likely to come to harm by supplying them with alcohol;
- Licence holders using Royal Mail, a private postal service, a courier service or independent delivery drivers will ensure that an age verified and signed for delivery option is utilised that requires any package containing alcohol to be left with an adult over 18 at the delivery address and no other place.

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## Occasional Licences

From time to time the Licensing Board will consider applications made in accordance with The Licensing Scotland Act, 2005, for an occasional licence to sell alcohol from premises that are not normally licensed.

The Board may take up to 42 days from the date of application to determine and application and on that basis applicants are strongly recommended to make applications no later than 42 days prior to the event for which application is made.

The time limit is required to allow the Board to carry out all necessary administration and fulfil its statutory duties in respect of consultation.

Whilst it may be possible to deal with straightforward applications which do not attract objections or representations from the police or the Licensing Standards Officer in a much shorter period of time, applicants are reminded that the Board may not be able to determine any application made with less than 42 days notice.

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

This commonly arises in the case of funeral arrangements where the Board is clearly amenable to exercising this power.

The Board considers that the acceptable trading hours for an occasional licence will mirror those hours contained with the statement of Licensing policy covering licensed hours.

Each application will be considered on its merits and in the event of no report from the Licensing Standards Officer or notice of objection or representation being received, the Board must and will grant the application.

The Board has delegated the authority to grant straightforward licensing applications to Council officers acting on behalf of the Clerk of the Board.

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

- the provision of SIA licensed door supervisors;
- the use of trained staff;
- having a personal licence holder (or a greater number sufficient for the occasion or event) in attendance throughout the occasion or event.

The Board will have particular regard as to the suitability of all events for the attendance of children and young persons.

When considering the suitability of an event the Board will take into account the hours sought, whether it is appropriate that children should be allowed entry for the full duration of the event, and the parts of the proposed licensed premises to which children and young persons will be permitted access.

The Board is minded to grant applications which seek to allow children and young persons to attend family orientated events, where food and soft drinks are available and where any entertainment or other activities referred to in the application are suitable for persons of the youngest age identified to attend the event.

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

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

## **Voluntary Organisations**

Due to the complexity of the Act, employment of a personal licence holder is highly recommended in the case of occasional licences granted to voluntary organisations.

Responsibility for being aware of the requirements of the Act rests with the licence holder.

The Act, does not define the term “Voluntary Organisation”, however the Licensing Board considers that a voluntary organisation seeking an occasional licence should meet the general understanding of what a Voluntary Organisation is.

In particular the organisation should be properly constituted with a clear purpose, have written rules, and have a recognised structure.

The organisation must be operated in such a way that it is “Not for Profit”, non profit distributing and not for personal gain.

The purpose of the organisation must be to carry out some benefit for the wider community other than just its members.

## Outside Drinking Areas

### General

Many licensed premises provide outdoor drinking area for customers which are attached to the existing licensed premises. In most cases these areas are part of the licensed footprint contained within the layout plan which forms part of the premises licence.

The provision of an outdoor drinking area can give rise to particular concerns due to the increased potential for noise and disturbance due to the presence of a number of persons outside consuming alcohol. Nuisance can arise, for example, from loud talking, shouting and laughter, the playing of music, boisterous or anti-social behaviour and litter.

It is particularly important that where a proposed or existing outdoor drinking area is situated within close proximity to residential properties or an educational establishment or children's facilities, that may be affected by the conduct of persons using the area, or where a proposed or existing facility will be (or is) located adjacent to or near to a public footpath or other public area to provide a pavement cafe facility, that the licence holder ensures that appropriate management and supervision of the area is in place to ensure compliance with the licensing objectives and the terms of the Licensing (Scotland) Act, 2005.

The Licensing Board acknowledges the benefits of there being a range of attractive, and well managed licensed premises offering a pleasant ambience, good food and other facilities such as an outside drinking area.

Given the potential for noise, nuisance and disturbance, however, the Board considers it necessary to lay down guidelines and conditions to assist licence holders who may be considering varying their existing operating plan to include an outdoor drinking area and for applicants for premises licences who indicate in their proposed operating plan that they wish to operate outdoor drinking facilities.

Applicants or licence holders requiring further advice and assistance regarding applications should contact either the Licensing Standards Officer or the Licensing Administrator.

Whilst any person may make a representation or objection to an application, the Board will make enquiry of the Council's regulatory services to obtain their views on individual applications. Notwithstanding the general policy guidelines below and also based on any representations made or information available to them, the Board may impose additional conditions relating to the use and management of an outside drinking area, provided that these conditions are necessary and expedient for the purposes of the licensing objectives.

### **Matters Board will have regard to:**

The matters which the Board will consider in dealing with the applications which include an outdoor drinking area are:

- the location of the area and, in particular, its relationship and proximity to adjoining property and whether any adjoining property is overlooked by or overlooks the proposed facility;
- All aspects of the condition of the proposed outdoor drinking area;

- the nature and extent of the proposed use of the outdoor drinking area;
- the persons likely to frequent the outdoor drinking area; and
- whether the use of the outdoor drinking part of the premises is likely to cause undue public nuisance or constitute a threat to public order and safety.

**The nature and proposed method of management of the outdoor area when it is in use.**

The Board will have particular concerns in the case of applications where the proposed facility will be situated wholly or partially on any part of a public footpath or any other public area or in a car park given the clear conflicts which may arise. The Board will expect applicants seeking such a facility to be in a position to explain clearly how any outdoor licensed area will not conflict with the rights of the public to free and unimpeded passage on a public footpath and what plans they will operate to prevent antisocial behaviour.

**The proposed hours during which the outdoor drinking area will be operational.**

Depending on the proximity of residential property and the nature of the licensed premises, the Board will not normally approve the use of an outdoor drinking facility after 10 pm; any premises seeking to utilise an outdoor drinking area after this time will be expected to demonstrate to the satisfaction of the Board that its use can be suitably managed in accordance with the licensing objectives.

**The number of tables and chairs to be provided.**

The Board believes that in most cases it is appropriate that the number of customers using the outdoor drinking facility at any one time should be restricted to the number for which seating is provided.

The creation of an outdoor area will in most cases create an increase in the total capacity of the premises, consideration will be taken of public safety and any overprovision concerns when considering this increase.

**Single Use Plastic Containers/drinkware.**

The Licensing Board recognises the environmental impact connected to single use plastic containers. Historically the Licensing Board has placed local licensing conditions on licences for many outdoor areas and at many events that require the use of plastic drinkware. These conditions were applied in connection with the protecting children from harm and the protecting public safety licensing objective. However the Board now acknowledge that these licensing objectives should be effectively managed by the licence holder and they should take steps to ensure events and outdoor spaces are safely managed.

In most cases the licensing Board will no longer apply local conditions that impose a requirement for plastic drinkware, instead they will leave this matter to the discretion of the event organiser, or relevant licence holder. Licence holders and event operators are reminded that they still need to take all reasonable steps to secure compliance with the 5 licensing objectives. In particular licence holders should carry out effective risk assessments when considering the use of glass vessels at events or in areas where children and young persons are in attendance, on any ground which is a public space,

used by animals or for sporting purposes.

Licence Holders seeking to have existing licence conditions relating to plastic drinkware removed from their licence should contact the Licensing Standards Officer to discuss their individual case.

### **Additional factors**

The Board will require the outdoor drinking areas to be clearly delineated. A structural barrier will require to be provided where the facility is adjacent to a public footpath or any other area outwith the premises to which the public have access.

If smoking is to be permitted in any outdoor drinking area the Board will take particular notice of the protecting children and young persons from harm licensing objective.

The Board will require to be satisfied that the applicant has in place suitable and adequate measures for the management of the outdoor drinking area at all times when it is in use.

### **Local Conditions**

Where the Board is minded to grant an application, some or all of the pool conditions contained in appendix 1 may be applied to the licence. The decision to impose these additional local conditions will be made after taking account of the circumstances of the individual application, any objections and representations that have been made, and only where the Board determines that it is necessary and expedient to do so for the purposes of the licensing objectives.



## Members' Clubs

Members' clubs are fully regulated by the Act in respect of the sale of alcohol. Accordingly, members clubs are holders of a premises licence, although they are exempt from the application of certain provisions of the Act.

The Board recognises that within Clackmannanshire there are a high percentage of members clubs in relation to the overall number of licensed premises, when compared to other parts of Scotland

To avoid any potential difficulty in relation to the interpretation of the legislation surrounding the sale of alcohol in members clubs, the Board felt that it was necessary and expedient for the purposes of the licensing objectives to apply 3 local conditions to the Premises Licence of all members clubs in the area.

Those conditions are:

1. The sale of alcohol and any activities which will take place on the premises occupied by the member's club will be carried out strictly in accordance with the constitution and rules in force from time to time.
2. In the event of any amendment being made to the member's club's constitution and rules, the Board's Licensing Administrator will be provided with a copy of the amended constitution and rules certified and signed by the club secretary within 14 days of the amendment taking effect.
3. Within 14 days of any change in the office bearers of the management committee or other governing body elected by members of the club, the Board's Licensing Administrator will be provided with a copy of the updated list of office bearers dated and certified by the club secretary.

These conditions clarify the Board's position in relation to the additional areas of compliance required by members clubs to ensure that they continue to qualify from the benefits and exemptions contained within Section 125 of the Licensing (Scotland) Act, 2005 Children and Young Persons on Members Club Premises.

The Board recognises that sporting clubs in the area may encourage participation in their primary activities by children and young persons.

The Board also understands that members social functions are an important part of the member's club activities and that children and young persons may wish to attend these events.

Clubs are reminded that extra steps may require to be taken to protect children and young persons from harm where those groups are on the premises during hours in which alcohol is for sale.

The Board expects all office bearers and other relevant committee members to be aware of the terms of the premises licence and to take responsibility for ensuring that alcohol is only sold on the premises in accordance with that licence.

The Licensing Standards Officer is available to answer any queries and offer guidance to clubs in relation to their operation under the Licensing (Scotland) Act, 2005.

## **Closed Premises – No Longer Being Used for the Sale of Alcohol**

When licensed premises are closed for a significant period of time, the Licensing Board will make an assessment as to the likelihood of the premises re-opening.

Section 28(5)(b) of the 2005 Act, states that a Premises Licence will “cease to have effect” on any of a list of occurrences taking place

One of those occurrences is that the premises have “ceased to be used for the sale of alcohol”.

There is no further explanation of what this means and no details in the Licensing (Scotland) Act, 2005 of the process that should follow.

Clackmannanshire Licensing Board considers that where a premises has not been open for a period of 1 year and the annual fee has been paid or is not yet due, then they should at that point gather evidence including evidence from the current licence holder about the future of the premises. The Licensing Standards Officer and Licensing Administrators may make contact with licence holders to obtain this information.

Licence holders wishing to secure the ongoing rights in relation to a Premises Licence in relation to a long term closed premises should make regular contact with the Licensing Standards Officer at an agreed review period to ensure that the licence remains in effect. The responsibility for providing these regular updates will fall on the licence holder.

After a period of 1 year of closure, the licence may be referred to a hearing of the Licensing Board for consideration.

Where the premises have been closed for more than 3 months and where the annual fee has not been paid, or where the licence holder no longer has any right to occupy the property, or where the premises have de facto been converted to a different use that does not involve the sale of alcohol, then the premises licence will be deemed to have ceased to have effect.

The licensing Board will consider the matter at a hearing and note by declaration that will be communicated to the licence holder that the licence has been so deemed.

If any licence holder wishes to seek advice about the long term closure of any licensed premises in Clackmannanshire they should contact the licensing Standards Officer without delay.

## **Overprovision**

The Board carefully assessed the matter of overprovision and determined that the whole of the Boards area was a single locality.

The Board has determined that there is no overprovision of licensed premises in Clackmannanshire.

In coming to this decision the Board followed the statutory rules and guidance contained within Section 7 of the Licensing (Scotland) Act, 2005.

Having had regard to the number and capacity of all licensed premises in the Boards area, and having carefully considered all of the information available to them, including the statutory consultation responses: NHS Forth Valley, Clackmannanshire and Stirling Alcohol and Drugs Partnership, and Police Scotland, the Board are satisfied that there is no available evidence that could support a position that there is overprovision of licensed premises or of licensed premises of a particular type in Clackmannanshire.

The Board will keep this decision under review during the lifespan of the Policy and understands their right and obligations under the Act, to produce supplementary Policy Statements should the need arise.