

**East Lothian Licensing Board
Statement of Licensing Policy**

**In accordance with Licensing (Scotland) Act 2005
1 November 2013 – 31 October 2016**

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PART 1

INTRODUCTION

1.0 The Licensing (Scotland) Act 2005

1.1 The Licensing (Scotland) Act 2005 as amended (“the Act”) makes provision for regulating the sale of alcohol and for regulating licensed premises and other premises on which alcohol is sold.

1.2 Under the Act, Licensing Boards are responsible for considering applications for:-

- premises licences
- occasional licences
- provisional licences
- temporary licences
- personal licences
- transfer of premises licences
- variation of premises licences
- extensions of licensing hours

in respect of:

- the sale of alcohol by retail; and
- the supply of alcohol in members clubs

2.0 East Lothian Licensing Board

2.1 East Lothian Licensing Board (“the Board”) is the licensing authority for the local government area of East Lothian for the purposes of the Act.

The Board comprises six members, all of whom are elected members of East Lothian Council. The Board is responsible for the functions set out in paragraph 1.2 above within East Lothian.

2.2 East Lothian shares borders with the City of Edinburgh, Midlothian and Scottish Borders Councils and covers around 680 square kilometres benefiting from 82km of coastline. Around 98,000 people live with the area which stretches from the former mining parishes of Tranent and Prestonpans, and Musselburgh in the west to the fishing community of Dunbar in the east, from the tourist resorts, such as North Berwick on the Firth of Forth to the farming lands of Garvald and Whittinghame on the border with Berwickshire. The main administrative centre for East Lothian is based in Haddington.

3.0 The Licensing Objectives

3.1 The Act sets out the following five licensing objectives (“the licensing objectives”):-

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health
- protecting children from harm

3.2 The licensing objectives provide a basis for the administration of the licensing regime. They also provide potential reasons for refusal of an application for the grant or variation of a premises licence or an occasional licence. Breach of the objectives may provide grounds for reviewing a premises licence. Conditions attached to a premises licence or an occasional licence may be based on any one or more of the licensing objectives.

3.3 In exercising its functions under the Act, the Board must have regard to the licensing objectives. Details of how the Board will seek to promote the licensing objectives are set out in Part 2 below.

4.0 Statement of Licensing Policy

4.1 Section 6(1) of the Act requires every Licensing Board to publish every three years a statement of their policy with respect to the exercise of their functions under the Act. Section 7 of the Act requires each licensing policy statement published by a Licensing Board to include a statement as to the extent to which the Board considers there to be overprovision of:-

- licensed premises, or
- licensed premises of a particular description,

in any locality within the Board’s area.

4.2 The Board has published this policy statement in fulfilment of the requirements of sections 6 and 7 of the Act. Section 6(3)(a) of the Act also requires a Licensing Board, in preparing a licensing policy statement, to ensure that the policy set out in the statement seeks to promote the licensing objectives.

4.3 This policy statement shall be effective until 31st October 2016. It will be kept under review during that period. During that period the Board has the power under section 6(2) of the Act to publish a supplementary policy statement.

4.4 In preparing this policy statement, the Board has had due regard to the guidance issued by the Scottish Government.

4.5 This policy statement covers a wide variety of issues. However, it cannot cover every eventuality and it seeks to detail those factors which will influence the achievement of the licensing objectives. If matters arise which are not covered by this policy statement, the Board may publish a supplementary policy statement to

cover such matters.

4.6 Section 6(4) of the Act requires the Board, in exercising its functions under the Act, to have regard to this policy statement. However, the Board will consider all applications on their own individual merits and it is open to an applicant to seek a decision from the Board which is inconsistent with the terms of this policy statement. Further, this policy statement will not override the right of any person to make representations on any application or seek a review of a premises licence where permitted to do so under the Act. Where persons seek a decision from the Board which is inconsistent with the terms of this policy statement, the Board expects them to fully address the issue of why the policy statement should not be followed.

4.7 This policy statement should be read in conjunction with the Act and all regulations made thereunder. It is designed to be a strategic policy statement, not an operational guide to the legislation.

5.0 Consultation on Statement of Policy

5.1 Section 6(3)(b) of the Act states that in preparing this statement of policy the Board must consult the following:-

- East Lothian Local Licensing Forum;
- if the membership of the Forum is not representative of all of the various membership categories, such persons as appear to the Board to be representative of the under represented categories;
- the relevant Health Board; and
- such other persons as the Board thinks appropriate.

5.2 The Board has consulted widely on this statement of policy in fulfilment of the requirements of section 6(3)(b). The consultation took place from 19th June 2013 to 6th September 2013. A list of the parties consulted is contained in Appendix 2 to this policy statement. In finalising this policy statement appropriate weight has been given to the views of those who responded to the consultation.

6.0 Links to Other Policies and Strategies

6.1 The Board recognises its responsibilities under equalities legislation. The Board has an Equality Scheme which is part of East Lothian Council's Equality Scheme which can be viewed at www.eastlothian.gov.uk. The Board will at all times act in accordance with the public sector equality duties.

6.2 The Board will make arrangements to receive, when appropriate, reports on the needs of the local tourist economy for East Lothian to ensure that these are reflected in its considerations.

6.3 The Board acknowledges the work undertaken by the voluntary sector in addressing the impact of alcohol misuse. It considers the work undertaken by the Midlothian and East Lothian Drugs and Alcohol Partnership (MELDAP) to be of particular significance in this area and a copy of the MELDAP Delivery Plan for 2012-2015 is available on the Board's webpage.

7.0 Tourism, planning and building standards

- 7.1 The Licensing Board will make arrangements to receive, when appropriate, reports on the needs of the local tourist economy for the area to ensure that these are reflected in their considerations.
- 7.2 Planning, building standards and licensing regimes will be properly managed to avoid duplication and inefficiency. An application for a premises licence must be from a business with planning consent for the property concerned.

PART 2

PROMOTION OF THE LICENSING OBJECTIVES

8.0 Overview

8.1 This Part 2 sets out the Board's general approach to the promotion of the licensing objectives. In relation to each licensing objective the Board has set out the general policy it will pursue in seeking to promote that objective.

8.2 In respect of each licensing objective, the Board has:-

- defined its intended outcome; and
- listed factors which, in its view, have an impact on the achievement of that objective.

Because of the wide variety of premises and activities to which this policy statement applies, these lists are not exhaustive. Applicants and licence holders will know their own premises best and will be expected to address all aspects relevant to the individual style and characteristics of their premises and the licensable activities for which they are seeking, or have obtained, authorisation.

8.3 The Board considers that effective and responsible management of licensed premises is key to securing consistency with the licensing objectives. In respect of each licensing objective, the Board has specified a list of measures ("control measures") which it commends to applicants and licence holders as worthy of consideration in seeking to secure consistency with that objective.

These lists are intended to assist applicants and licence holders but, again, are not exhaustive. Some control measures apply to more than one licensing objective.

8.4 Additional measures may be necessary on an occasional or specific basis such as when a special event is planned which is intended to, or likely to, attract larger audiences or audiences of a different nature.

9.0 Preventing Crime and Disorder

9.1 In carrying out its functions under the Act the Board will have regard to the likely impact licensed premises may have on crime and disorder.

9.2 The Board supports a strategy aimed at making East Lothian a safe place to live in and visit. The Board is committed to further improving the quality of life of people in East Lothian by playing its part in ensuring that licensed premises are run in such a way as not to contribute to crime and disorder.

9.3 Applicants and licence holders should be able to demonstrate that all factors which impact on crime and disorder have been considered. These include:-

- underage drinking, including agency purchases
- drunkenness on or around the premises

- illegal possession and/or use of drugs
- violent behaviour/public disorder
- antisocial behaviour
- drink driving
- litter

9.4 Suggested control measures include:-

- appropriate instruction, training and supervision of staff to include conflict management and preventing crime and disorder
- acceptance of accredited proof of age card schemes
- provision of effective CCTV in and around the premises
- security policies and regular toilet checks
- employment, when necessary, of Security Industry Authority licensed door staff
- proper management of people entering and leaving the premises
- active membership of Pubwatch or a similar scheme
- provision of litter bins and lighting outside the premises
- prominent display of material discouraging drink driving
- promoting awareness of schemes such as the designated driver scheme
- choice of size of measures, particularly for wine

10.0 Securing Public Safety

10.1 The Board is committed to ensuring that the safety of any person visiting, or working in, or in the vicinity of, licensed premises is not compromised.

10.2 Applicants and licence holders should be able to demonstrate that all factors which impact on public safety have been considered. These may include:-

- the occupancy capacity of the premises
- the design and layout of the premises, including means of escape
- the nature of the activities on the premises
- the hours of operation
- customer profile (e.g. age, disability)

10.3 Suggested control measures include:-

- carrying out risk assessments
- provision of effective CCTV in and around the premises. The Board would support the use of such systems and particularly encourage licensees to use them.
- active membership of Pubwatch or a similar scheme
- employment of adequate numbers of suitably trained staff
- appropriate first aid facilities
- proof of regular testing and, where appropriate, certification of procedures, appliances and safety systems
- employment, when necessary, of Security Industry Authority licensed door staff

11.0 Preventing Public Nuisance

11.1 The Board believes that licensed premises can potentially have an adverse impact on communities as a result of public nuisance arising from their operation. The Board aims to protect and maintain the amenity of residents and occupiers of other business premises from any adverse consequences of the operation of licensed premises whilst also recognising the valuable cultural, social and business importance that such premises provide.

11.2 Although interpretation is ultimately a matter for the courts, the Board intends to interpret “public nuisance” widely to include such issues as noise, light, odour, litter and antisocial behaviour where these impact on the local community.

11.3 Applicants and licence holders should be able to demonstrate that all factors which might contribute to public nuisance have been considered. These include:-

- the location of the premises and the type of neighbouring premises
- the hours of opening
- the nature of the activities to be provided on the premises
- the occupancy capacity of the premises

11.4 Suggested control measures include:-

- appropriate instruction, training and supervision of staff to prevent incidents of public nuisance
- proper management of people entering and leaving the premises
- installation of sound proofing and sound limiting devices

- sound tests for equipment used in providing live or amplified music
- liaison with public transport providers
- effective ventilation systems to prevent nuisance from odour
- active membership of Pubwatch or a similar scheme
- provision of effective CCTV in and around the premises. The Board would support the use of such systems and particularly encourage licensees to use them.
- employment, when necessary, of Security Industry Authority licensed door staff
- management arrangements for the collection and disposal of waste and empty bottles

12.0 Protecting and Improving Public Health

12.1 The Board wishes to see responsibly managed licensed premises thriving in East Lothian but not at the expense of patrons' health and wellbeing. One of the Board's priorities will therefore be the protection and improvement of the health and wellbeing of patrons of licensed premises. The Board will have regard to the views of any other bodies responsible for, or having an interest in, public health.

12.2 Applicants and licence holders should be able to demonstrate the measures which will be, or have been, put in place to protect public health.

12.3 Suggested control measures include:-

- displaying material discouraging drink driving
- making available information promoting moderate drinking along with awareness of units of alcohol and recommended guidelines
- having a workplace alcohol policy in order to raise awareness, minimise harm and ensure that staff are able to access help (without fear of job loss) when an alcohol related problem arises
- ensuring that customers are aware of choice in relation to alcohol measures, especially in the case of wine, e.g. small, medium and large measures should be available
- ensuring that customers are aware of choice in relation to the strength of alcohol in drinks such as wine and beer
- availability of low alcohol alternatives
- providing contact details where assistance for alcohol related problems may be sought
- having in place a policy/practice to deal with patrons who have consumed excessive alcohol

12.4 Licence holders should have a clear understanding of the offences in connection with the sale of alcohol to a person who appears drunk and allowing drunkenness on the premises

13.0 Protecting Children from Harm

13.1 The Board wishes to see family friendly premises thriving in East Lothian. It will welcome premises licence applications from those who wish to operate licensed premises which accommodate children. The Board recognises that additional responsibilities will be placed on such applicants whilst at the same time recognising that parents and other adults accompanying children also have responsibilities. In determining any such application the need to protect children from harm will be a major consideration and the Board therefore wishes to ensure that such premises are run in a way that is suitable for children.

13.2 The Board also takes very seriously the issue of underage drinking and wishes to remind licence holders that they and their staff must comply with all legislation in relation to children and young persons, including not selling, or allowing the sale of, alcohol to children and young persons.

13.3 Applicants and licence holders should therefore be able to demonstrate the measures which will be, or have been, put in place to protect children and young persons from harm.

13.4 Suggested control measures include

- appropriate instruction, training and supervision of staff
- appropriate measures to ensure that children and young persons do not purchase or consume alcohol on the premises (unless such consumption is permitted by a young person in terms of section 105(5) of the Act)
- appropriate checks for staff who will be working in premises where children and young persons will be present
- acceptance of accredited proof of age card schemes
- measures to ensure that children are not exposed to strong language, violence or disorder

It should be noted that the Board have imposed a Local Condition that in the interests of public safety, children must be excluded from an area of 1.5 metres from any bar servery in the premises.

PART 3

LICENSED HOURS

14.0 Off Sales

14.1 In terms of the Act, the sale of alcohol for consumption off the premises is not permitted before 10.00 am and after 10.00 pm. The Board's policy is that maximum available licensed hours of 10.00 am to 10.00 pm each day are generally appropriate for off sales. However, each off sales application will be assessed on its own merits against these licensed hours and the Board will wish to ensure that the licensing objectives are being promoted in such applications. If this is not demonstrated to the Board, the Board may grant reduced hours for off sales.

15.0 On Sales

15.1 For applications relating to premises licences and occasional licences, the Board's general policy on the licensed hours for the sale of alcohol for consumption on the premises is:-

11.00 am to 11.00 pm Monday to Wednesday (inclusive)

11.00 am to 1.00 am Thursday to Saturday (inclusive)

11.00 am to 12.00 midnight on Sunday

15.2 In formulating the on sale policy hours, the Board has taken account of the licensing objectives, Scottish Government Guidance under the Act and the provisions of the Act itself. The Board recognises that licensing hours are important to individual licensed premises but can have a wider impact for an area. Balanced against this, the Board does not wish to unnecessarily inhibit the development of thriving and safe evening and night time local economies which are important for investment, employment and tourism. The Board considers that the on sale policy hours are appropriate for East Lothian and represent a balance between the interests of the public, residents, licensed businesses and patrons of licensed premises.

15.3 Each application for a premises licence will be assessed on its own merits against the on sale policy hours appropriate to the type of activity for which a licence is being sought. Where an application is received requesting licensed hours exceeding 14 hours, the Board will require further information for the consideration of such applications and the Board will take into account the effect granting such a licence will have on the area.

15.4 Should an application be received in respect of opening earlier than 11am, the Board will expect the applicant to justify their request and demonstrate measures that promote the five licensing objectives.

15.5 Licence applicants seeking licensed hours which extend after 1.00 am should note that mandatory conditions will be imposed on the licence. These mandatory conditions are set out in regulations under the Act

15.6 The Board has an existing practice of permitting long licensed hours over the Christmas/New Year festive period. The Board will make an annual announcement, if it decides to do so, with any longer licensing hours they have agreed to permit to on-sales only. This will be announced publically at the

meeting of the Board held in October of each year and advertised on the Licensing section of East Lothian Council website.

16.0 Extended Hours Applications

16.1 The Board may extend the licensing hours in respect of premises by a period not exceeding one month. The Board may do so in connection with:-

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

16.2 Each extended hours application will be assessed on its own merits. When the extended hours sought in respect of on sale premises fall outwith the on sale policy hours appropriate to the applicant premises, the applicant will require to demonstrate to the Board that there are good reasons for the hours sought and that the hours are appropriate in the circumstances. The applicant will require to provide the Board with sufficient information to enable a decision to be made in this regard. This information will include:-

- the hours sought;
- a description of the special event or occasion;
- the proposed activities to take place during these hours;
- when each activity will take place;
- why the event or occasion is considered to be special;
- why the event or occasion cannot take place within the on sale policy hours appropriate to the applicant premises.

17.0 Occasional Licences

17.1 It is possible to make an application for an occasional licence authorising the sale of alcohol on premises that are not licensed premises. This may be made by:-

- the holder of a premises licence,
- the holder of a personal licence; or
- a representative of any voluntary organisation.

An occasional licence can only last up to a maximum of 14 days. The holders of a premises licence or a personal licence may make unlimited applications. Section 56 of the Act contains details in relation to the number of applications that can be made by a voluntary organisation.

17.2 To allow time to consult the Police and the Licensing Standards Officer, and for a hearing to be convened if any objections are received, applications should be submitted not later than 42 days before the event is due to take place. Where an application is submitted later than this, applicants are warned that it may not be

possible to fully process and/or determine the application in time for the planned event. Where an application is lodged late and accepted for processing, applicants will be asked to sign a waiver accepting this position.

17.3 Applicants should be made aware that they might also require a public entertainment and/or a late night catering licence issued by East Lothian Council under the Civic Government (Scotland) Act 1982.

17.4 Although an Operating Plan is not required when applying for an Occasional Licence, the Board still expects holders of an Occasional Licence to have and to observe an age identification policy, when operating under the Occasional Licence. This policy should incorporate the following:-

- an identification policy, for example to require ID if a customer appears under 21. This should also include clear signage to leave customers in no doubt as to the policy;
- provisions to ensure that staff comply with the policy; and
- training in respect of the policy for those individuals who will be responsible for the sale of alcohol.

18.0 Repeated Occasional Licence Applications

18.1 Repeated applications for Occasional Licences for the same premises and which are:-

- Not for specific events ; and/or
- For activities that have been occurring (either in identical or largely similar terms) on the premises regularly over a period of at least 3 months;

will not generally be considered to be suitable for the grant of an Occasional Licence and will not be granted by the Board under delegated authority but will require a hearing before the Board. It is generally expected that the premises in question should consider an application for a Premises Licence.

Section 59(6) of the Act specifies the grounds for refusal of an application for an Occasional Licence. These grounds include “that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives”. These licensing objectives include:-

- Securing public safety.
- Protecting and improving public health

The degree of scrutiny afforded by an application for a Premises Licence is not present where premises operate under a series of consecutive Occasional Licences. Accordingly, in the interests of better securing public safety and/or for better protecting and improving public health, the Board considers that it is not generally appropriate for a premises to operate on a series of consecutive Occasional Licences rather than apply for a Premises Licence and, in these circumstances, the Board will require an applicant to explain why an application for a Premises Licence is not being made.

PART 4

OVERPROVISION

- 19.1 Section 7 of the Act requires each Licensing Board's Statement of Policy to include a statement as to the extent to which the Board considers there to be overprovision of licensed premises or licensed premises of a particular description in any locality within the Board's area.
- 19.2 The Board, having considered data regarding rates of alcohol related police incidents, alcohol related hospital admissions and information regarding the number, type and capacity of licensed premises in all areas of East Lothian, and having regard to the evidence of a correlation between the density of outlets and alcohol related problems, has concerns about the level of provision across East Lothian as a whole.
- 19.3 Whilst particular localities have particularly high rates of alcohol related hospital admissions per 10,000 population and of alcohol related police incidents when compared to other areas within East Lothian and Scotland as a whole, the Board considers that people living throughout East Lothian have sufficient access to licensed premises (a combination of on sales and off sales premises) in the Board's area. The Board considers that it is not reasonable to assume that residents of particular localities are purchasing alcohol only in that locality or that alcohol related incidents recorded by the Police in one area are solely as a result of alcohol purchased or consumed in that locality. Taking these factors into account, the Board considers that there should be a rebuttable presumption against the grant of an application for a new premises licence or the increase in capacity of an existing premises licence within the Board's area as a whole.
- 19.4 Each application still requires to be determined on its own merits and there may be exceptional cases where an applicant can demonstrate that the grant of an application or the variation of an existing licence to increase capacity within one of these localities would not undermine the licensing objectives. The Board will expect applicants to provide robust and reliable evidence to support their application sufficient to demonstrate that the grant of their application would outweigh the presumption against grant in terms of this Overprovision Statement. The Board would expect to be addressed on each of the Licensing Objectives.
- 19.5 If an existing licence in any of the relevant localities ceases to be in force, this will not necessarily mean that there is capacity for a new licence in that locality. The localities identified are currently subject to overprovision and this may continue to be the case should a number of existing licences cease to be in force. Each application will be considered in the context of the statistics available to the Board at the time of the application.

PART 5

MISCELLANEOUS

20.0 Board Business

- 20.1 The Board will deal with its business in an open and transparent manner. Information and assistance will be made available to persons wishing to apply for a licence, make representations or lodge objections. Whilst Board staff will give advice, it should be understood that they will not complete applications or operating plans.
- 20.2 The Board is aware of the need to ensure that the licensing process is accessible to all. Assistance will therefore be available on request for those who require special arrangements to access any part of the process.
- 20.3 The Board will generally meet in the The Saltire Rooms, 1st Floor John Muir House, Haddington. In terms of Schedule 1 to the Act, Board meetings will be held in public
- 20.4 Where a hearing is to take place, the Board will attempt to make the process as informal as possible consistent with the carrying out of the Board's quasi judicial function.
- 20.5 The Board's aim is to provide a speedy, efficient and cost effective service to all parties involved in the licensing process. To this end, the Board has adopted a scheme of delegation to ensure that decisions are made in a manner which fulfils this aim. The scheme sets out decisions which may be made by the Clerk of the Board and other specified Board officers and is set out in Appendix 3 to this policy statement.

21.0 Licensing Standards Officer

- 21.1 A licensing standards officer (LSO) is employed by East Lothian Council to exercise the functions set out in the Act. The LSO's role will involve guidance, mediation and compliance. The LSO will work with the public and licensees in the promotion of the licensing objectives and in ensuring compliance with the Act. The Board recognises that the LSO plays a key role in the licensing regime.
- 21.2 Whilst the LSO is not in a position to give legal advice or make applications or objections on behalf of any party, it is expected that the LSO will advise both licence holders and the public on their rights and responsibilities.
- 21.3 The LSO's resources will be targeted at high risk premises and activities which require greater attention. A lighter touch will be employed in respect of low risk premises which are well operated.
- 21.4 The LSO will be a member of East Lothian Licensing Forum.

22.0 Members Clubs

22.1 The Board has agreed to attach 2 local conditions to the premises licence for a members club. These are as follows:

- The Police and Licensing Board to be notified of any change in office bearers within 14 days of such change.
- No more than 6 guests may be signed in by any one member

23.0 Excluded Premises

23.1 The Act states that an application for a premises licence must be refused if the subject premises are 'excluded premises'. Excluded premises are defined as motorway service stations and, with certain qualifications, garage premises.

23.2 Garage premises are not excluded if the applicant can demonstrate that the local residents in the locality are reliant to a significant extent for the premises to be a principle source of petrol or are used for the retail of groceries.

24.0 Outdoor Areas

24.1 Where an applicant proposes providing seating, tables or other facilities in any outdoor area (whether covered or not), the Board will assess the suitability of such area having regard to the licensing objectives, particularly those relating to preventing crime and disorder and preventing public nuisance. The Board reiterates that it considers effective and responsible management to be key in ensuring that such areas operate in a manner consistent with the licensing objectives.

24.2 In each individual case where an outdoor area is proposed, the Board will consider whether there should be a physical demarcation of the area, unless such demarcation already exists.

24.3 The Board's general policy is that there shall be no consumption of alcohol in any outdoor area after 10.00 pm on any day. As narrated elsewhere in this policy statement, every application will be considered on its own merits.

24.4 Licensing Law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are no longer on the licensed premises and beyond the direct control of the individuals, club or business holding the licence, certificate or authorisation concerned.

25.0 Smoking

25.1 The Board welcomes the legislation prohibiting smoking in enclosed public places. Licence holders have been effective in ensuring that patrons do not smoke within their premises. However, at times other issues can arise in the area around licensed premises such as noise nuisance, litter, disorder and smoke drift into neighbouring residences or back into the licensed premises.

25.2 The Board expects licence holders to have regard to good practice to ensure that patrons do not create a nuisance or disturbance for neighbouring residents. This includes noise arising as a result of patrons smoking outside the premises, smoke drift and litter becoming a nuisance to members of the public and obstructions that may be caused as a result of patrons standing in public areas.

26.0 Management of Premises

26.1 Each premises (other than a Registered Club) must have a named premises manager, whose details must be given in the Premises Licence. A premises manager, who must be a personal licence holder, cannot be the premises manager for more than one premises.

26.2 The Board expects the premises manager to have day to day responsibility for the running of the premises and to be present on the premises on a regular basis while alcohol is being sold. The premises licence holder is expected to ensure that the premises manager has experience commensurate with the size, capacity, nature and style of the premises.

26.3 Although the legislation does not require the holder of a personal licence to be on the premises at all times, every sale of alcohol must be authorised (either generally or specifically) by a personal licence holder. The Board suggests that licence holders adopt a best practice approach to ensure that, where possible, a personal licence holder is present on the premises to authorise the sale of alcohol during licensed hours.

27.0 Duty to Trade

27.1 The Board recognises the need for businesses, particularly in a rural environment, to remain economically viable when faced with a lack of demand. Premises may wish to restrict their opening hours during quieter periods and may, therefore, not be trading to the full extent of the hours set out in their Operating Plan. Whilst the Board will not treat an occasional incidence of such restricted trading as a breach of the terms of the Operating Plan, it would urge licence holders to keep their trading hours under review. If it becomes apparent that a premises is regularly trading on a restricted basis, an application should be made for a variation to the Operating Plan to reflect the actual trading hours.

28.0 Local Licensing Forum

28.1 The East Lothian Licensing Forum's role is to keep under review the operation of the Licensing Act in the East Lothian area and to give advice and make recommendations to the Board in relation to those matters as the Forum considers appropriate. The Forum is the community's voice on alcohol licensing issues. This will be mainly at a policy level as the Forum cannot comment on individual cases before the Board. The Forum meets at least four times a year at quarterly intervals and will have at least one joint meeting with the Board each year. Forum meetings are open to the press and public. Further details of the Forum's activities can be found on their website at www.eastlothianlicensingforum.co.uk

APPENDIX 1

MAP OF EAST LOTHIAN LOCAL AUTHORITY AREA



APPENDIX 2

LIST OF CONSULTEES

East Lothian Local Licensing Forum

The Licensing Standards Officer

East Lothian Council in respect of planning, building standards and environmental health

Community Councils

Police Scotland

Scottish Fire & Rescue Service

Scottish Beer & Pub Association

Parent Councils throughout East Lothian

NHS Lothian

East Lothian Tenants and Residents Panel

MELDAP

ELVON

The public generally through East Lothian Council's website

APPENDIX 3

SCHEME OF DELEGATION

1.0 INTRODUCTION

- 1.1 This scheme of delegation sets out the powers under the Licensing (Scotland) Act 2005 delegated by East Lothian Licensing Board to the Clerk and Depute Clerk.
- 1.2 In any particular case where powers are delegated to an officer under this scheme of delegation, if it appears to them that it is appropriate for the power to be exercised by the Board itself then they shall be entitled to refer the case to the Board for the exercise of the power.

2.0 POWERS DELEGATED UNDER THE LICENSING (SCOTLAND) ACT 2005

- 2.1 The following powers are delegated to and exercisable by the Clerk or Depute Clerk:-
- Determining a premises licence variation application where the variation sought is a minor variation.
 - Determining an application for the transfer of a premises licence where the applicant has not been convicted of a relevant offence or a foreign offence.
 - Determining a personal licence application or a personal licence renewal application where the applicant has not been convicted of a relevant offence or a foreign offence.
 - Granting an application for confirmation of a provisional premises licence with no variation of licence conditions.
 - Determining an application for extended hours where no competent objections or representations are received or where such objections or representations have been withdrawn following discussion between the applicant and the party making the objection or representation.
 - Determining an application for an occasional licence where no competent objections or representations are received or where such objections or representations have been withdrawn following discussion between the applicant and the party making the objection or representation.
 - Determining an application for a variation of a premises licence under section 54(6) – no longer any premises manager specified in the licence.
 - Deciding whether or not to accept an application for a Review of a Premises Licence, in conjunction with two members.

APPENDIX 4

OVERPROVISION STATISTICS

1.0 Police Scotland Statistics

Town	Area	Beat	Total Incidents	Total Alcohol Related Incidents	% of Incidents that are alcohol related
Haddington	Haddington	HD01	2421	142	5.87
	Haddington Landward	HD02	619	8	1.29
	Gifford	HD03	139	3	2.16
Dunbar	Dunbar	DB01	1482	82	5.53
	Dunbar Landward	DB02	423	7	1.65
	East Linton	DB03	213	3	1.41
North Berwick	North Berwick	NB01	1179	58	4.92
	North Berwick Landward	NB02	338	3	0.89
	Gullane	NB03	275	12	4.36
	Direlton	NB04	45	1	2.22
	Aberlady	NB05	98	2	2.04
Musselburgh	Musselburgh	MU01	2360	110	4.66
	Musselburgh Landward	MU02	1937	128	6.61
	Musselburgh Pinkie	MU03	742	34	4.58
	Whitecraig / Carberry	MU04	394	9	2.28
	Wallyford	MU05	551	31	5.63
Prestonpans	Prestonpans	PP01	2157	113	5.24
	Cockenzie / Port Seton	PP02	811	26	3.21
	Seton Sands	PP03	126	9	7.14
	Longniddry	PP04	189	4	2.12
Tranent	Tranent	TR01	2561	108	4.22
	Elphinstone	TR02	594	14	2.36
	Macmerry	TR03	206	9	4.37
	Ormiston	TR04	252	12	4.76
	Pencaitland	TR05	61	1	1.64
TOTAL FOR EAST LOTHIAN			20173	929	4.61

2.0 NHS Statistics

Alcohol related hospital admissions and number of licences and rates per 10,000 population (18+) for intermediate geographies in East Lothian¹

Intermediate Geography Name	Alcohol Hospital Admission Rates: 2007-9		Licensing Information							
	Number	Rate ²	Off Sales		On and Off Sales		On Sales		Total	
			Licenses	Rate	Licenses	Rate	Licenses	Rate	Licenses	Rate
Aberlady	111	53.6	6	13.4	9	20.1	3	6.7	18	40.1
Cockenzie and Port Seton	179	84.4	3	5.6	7	13.1	1	1.9	11	20.6
Dirleton	104	62.6	3	9.1	9	27.2	3	9.1	15	45.3
East Dunbar	96	85.4	4	12.9	9	29.0	7	22.5	20	61.2
East Elphinstone & Ormiston	79	75.0	4	15.7	3	11.8	1	3.9	8	31.4
East Linton	157	71.9	9	17.8	7	13.8	4	7.9	20	35.5
East Prestonpans	163	105.4	4	9.8	2	4.9	-	-	6	14.7
Fisherrow	176	101.0	4	9.6	15	35.9	9	21.6	28	67.1
Gifford & Rural South East Lothian	113	55.4	2	4.4	8	17.8	2	4.4	12	26.6
Haddington East	142	88.5	6	14.9	15	37.1	4	9.9	25	61.9
Haddington West	103	77.9	3	9.1	-	-	-	-	3	6.1
Inveresk	126	80.1	3	7.9	2	5.3	4	10.5	9	23.7
Kingston	87	67.4	4	13.3	3	10.0	1	3.3	8	26.5
Levenhall & Rigley Hill	113	98.8	1	2.8	3	8.3	2	5.5	6	16.5
Musselburgh	130	97.7	3	9.9	3	9.9	1	3.3	7	23.2
Musselburgh West	78	71.5	4	15.8	2	7.9	1	3.9	7	27.6
North Berwick	84	61.4	5	18.6	10	37.2	17	63.2	32	107.9
Tranent	159	92.0	3	7.1	6	14.2	1	2.4	10	26.0
Wallyford & Whitecraig	188	122.3	4	9.1	5	11.4	2	4.6	11	25.2
West Dunbar	96	86.8	3	11.5	4	15.3	5	19.2	12	46.0
West Elphinstone	151	107.3	4	9.4	3	7.0	3	7.0	10	23.4
West Prestonpans	110	122.1	5	23.3	4	18.6	3	14.0	12	55.8
East Lothian	2,745	83.0	87	10.8	129	16.1	74	9.2	290	36.1

¹ Source: GRO Scotland and Health & Well Being Profiles, ScotPHO (2010)

² Alcohol Hospital Admission rates are age-sex standardised per 10,000 population

Possible points to note:

- It is worth noting that Scotland's alcohol related hospital admission rate is 108.8 per 10,000 so that means that about 5 areas in East Lothian are on or above the Scottish rate which is not a good rate to be on or indeed above.
- Wallyford & Whitecraig, West Elphinstone, Prestonpans (East & West) and Fisherrow all have considerably higher than average rates of alcohol related hospital admissions. Hospital admissions correlate roughly with areas of greatest deprivation.
- Prestonpans West has more than twice the rate of Off Sales licences than the average for East Lothian. Off sales seem quite evenly spread although they are highest in Prestonpans West.
- Fisherrow and Haddington East have more than twice the rate of combined On & Off Sales licences than the East Lothian average.
- Fisherrow, East Dunbar and North Berwick more than twice the rate of On Sales licences than East Lothian as a whole
- Fisherrow, Haddington East and East Dunbar have almost twice the rate of licences overall than the East Lothian average while North Berwick has almost three times the East Lothian average of licensed premises. At 107.9 this is equivalent to a licensed outlet for every 100 adults over the age of 18. These high numbers may be due to high numbers of hotels, restaurants and golf clubs.

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August 2012

CONSULTATION RESPONSES AND AMENDMENTS MADE (Appendix 1)

RESPONSES	AMENDMENTS/ACTIONS
Are off sales hours reasonable?	
Consider a clause in its policy regarding reducing certain off-sale hours in certain areas where there is a clear harm from alcohol abuse.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy has been amended to reflect that these are the maximum hours that may be granted.
Consider reducing standard off-sale hours in certain high risk areas and for the maximum permitted hours should be an exception rather than the norm.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy has been amended to reflect that these are the maximum hours that may be granted.
Too late in evening, particularly weekends.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy has been amended to reflect that these are the maximum hours that may be granted.
Too late in the evening.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy has been amended to reflect that these are the maximum hours that may be granted.
To retain section in the old policy entitled 'Lack of demand and duty to trade'	The Board agrees that there is no legal 'duty to trade' but expects Licence Holders to keep their trading hours under review and to seek appropriate Variations if these change significantly. This is now reflected in a new

CONSULTATION RESPONSES AND AMENDMENTS MADE (Appendix 1)

	section in the Policy.
Assumption that hours on a Sunday are 12.30 – 10pm.	This is incorrect. The statutorily permitted hours for off sales are now 10.00am to 10.00pm, 7 days a week.
Ridiculous that if shopping early that you cannot purchase alcohol.	The statutorily permitted hours for off sales are now 10.00am to 10.00pm, 7 days a week. The Board cannot grant hours in excess of these.
A responsible adult working shifts who cannot purchase alcohol at time which 'society' seems strange.	The statutorily permitted hours for off sales are now 10.00am to 10.00pm, 7 days a week. The Board cannot grant hours in excess of these.
Off-sale should be reduced to 9pm every evening.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy will be amended to reflect that these are the maximum hours that may be granted.
Are on sale hours reasonable?	
Hours maybe reasonable depending on the circumstances. Setting a limit on the total number of hours for trading is an important measure.	The Board is prepared to permit on sales in accordance with its policy hours in most cases but is mindful that these may not always be appropriate and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this.
Supports applications for later licensed hours depending on facilities offered and location of premises. However, such premises should be monitored to ensure that alcohol related nuisance is minimised and conditions attached to licence if necessary.	The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this.
1am reasonable for younger element and if problems then surely Board can curtail time to midnight.	The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this.
In Prestonpans all pubs/clubs are closed by 1am.	Noted
The words 'the available' should re re-added from beginning of line 3 of section 14.1 to make statement more accurate.	Accepted – this change has been made.
City centres and tourist orientated sites should be able to be licensed from 9am.	The Board deals with these applications as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this.

CONSULTATION RESPONSES AND AMENDMENTS MADE (Appendix 1)

<p>Do you agree with approach taken by the Board regarding the analysis of statistics to identify where there is overprovision in East Lothian?</p>	
<ul style="list-style-type: none"> • The experience and local knowledge of Licensing Board Members is an important source of evidence. • Suggest including statistical and expert opinion as well as any available local data. • Supports decision to declare Prestonpans and Whitecraig as overprovided and supports the proposal in identifying Musselburgh, Dunbar and Haddington, as potentially overprovided, based on the same approach. • Supports paragraph 17.3 in stating that the surrender of a licence does not automatically mean that there is capacity for a new licence. • Suggest an amendment to paragraph 17.3 to reflect that a licence application can be refused if it is considered that it will undermine any of the objectives and/or it will lead to or contribute to overprovision. • Would be useful to make it clear that a licence can be refused on overprovision ground even where there are no inconsistencies with the licensing objectives. 	<ul style="list-style-type: none"> • Noted. No amendment required. • Agreed – statistical and other evidence will be appended to the Policy • Board is yet to determine final approach to Overprovision • Noted. No amendment required • Reflects current case law but this may change over the period of the Policy. The Board will take account of most up to date case law at the time it reaches any decisions on this subject. No amendment required. • Reflects current case law but this may change over the period of the Policy. The Board will take account of most up to date case law at the time it reaches any decisions on this subject. No amendment required.
<p>The problem is with users of alcohol as opposed to the number of premises and the question is what will local councils do to resolve the growing problem, which may escalate.</p>	<p>The Board has only a limited remit in addressing the wider issue of alcohol misuse in Scotland. It is attempting to address local issues through the Overprovision Statement.</p>
<p>Acknowledge the Board was right to go down the route of an evidence-based overprovision policy.</p>	<p>Noted. No amendment required.</p>
<p>MELDAP endorses the approach taken by the Licensing Board.</p>	<p>Noted. No amendment required.</p>
<p>Judgement on overprovision should take into account the style and type of premises rather than simply the number.</p>	<p>There is no robust evidence as to which style and type of premises contribute more or less to alcohol related harm so this has not been a factor in the current Overprovision assessment. The Board intends to keep this issue under review over the period of the policy and may reflect these matters in the next version of its Overprovision statement.</p>

CONSULTATION RESPONSES AND AMENDMENTS MADE (Appendix 1)

These statistics are not related to over-provision, they are related to people concerned not the outlets.	The Board has only a limited remit in addressing the wider issue of alcohol misuse in Scotland. It is attempting to address local issues through the Overprovision Statement.
Do you agree it is reasonable to reject any new licence applications in the following areas – Prestonpans and Wallyford and Whitecraig?	
Evidence has been gathered that points to these areas being acutely affected by alcohol abuse.	Noted. No amendment required.
The problem is the users, not the premises. The 'users' will merely move to another premises.	The Board cannot address the actions of individual drinkers but is obliged to consider the question of Overprovision on a locality basis. No amendment required.
Data provided clearly shows impact of alcohol abuse and misuse in these areas.	Noted. No amendment required.
If overprovision is identified then it is reasonable to reject any new licence.	Noted. No amendment required.
Concerned that other businesses may not use premises available which mean empty premises. Perhaps another bar/restaurant is better than an empty space?	Noted. The Board has considered the possible economic impact when assessing overprovision but has given more weight to the alcohol related health and disorder impacts. No amendment required.
Agree. They have both clubs and pubs where some villages only have clubs and would need a pub.	Noted. No amendment required.
Do you agree that there should be a presumption against new licenses in the following areas – Dunbar, Haddington and Musselburgh?	
Any new licensee should be asked to explain in details how their application is not going to add to these issues.	Agreed. This would be required with any application in these areas. No amendment required.
The problem is the users, not the premises. The 'users' will merely move to another premises.	The Board cannot address the actions of individual drinkers but is obliged to consider the question of Overprovision on a locality basis. No amendment required.
Not supported by evidence. View is that there is an overprovision problem as a whole in East Lothian and that there should be a 'rebuttable presumption' against any new premises licences and increased capacity applications for the whole of East Lothian.	Board is yet to determine final approach to Overprovision
Small town, plenty of existing premises to serve the population adequately.	Noted. No amendment required.
Each case should be taken on its own merit. If the style and quality of the new premises will improve overall provision, this should be considered.	Each case will be considered on its own merits, in the context of a rebuttable presumption against new licences in these areas.
New premises may provide better services for	Each case will be considered on its own merits,

CONSULTATION RESPONSES AND AMENDMENTS MADE (Appendix 1)

customers, more jobs etc.	in the context of a rebuttable presumption against new licences in these areas.
IF overprovision indentified it is reasonable to reject any new licence applications.	Noted. No amendment required.
They have plenty of choice and the council need to encourage more than food and drink in these areas.	Noted. No amendment required.
Is there anything not covered that should be in the policy?	
Recommend that the Board carefully considers whether family-orientated events are appropriate for the sale of alcohol through Occasional Licences.	The Board has no discretion to refuse applications for Occasional Licences in the absence of an objection or representation. These events have not been regularly licensed in East Lothian in the past 6 years and there is no perception that this is a major issue in this area. No amendment required.
Would like reinstatement of details of Occasional Licences and the application process for them etc. Representatives of voluntary organisations may have no previous knowledge of licensing.	Agreed. This section has been reinstated in the Policy.
Unhappy of the exclusion of 'Management of Licensed Premises'. It makes clear that 'best practice' is to have a personal licence holder on site (where possible) and we do not want this statement lost.	Agreed. This section has been reinstated in the Policy.
Do you have any other comments?	
Consultation has been very accessible and clearly set out. It is a model for other Boards to follow. It is a strong statement and gives the Licensing Board the tools to respond to issues in the Board's area.	Noted.
<ul style="list-style-type: none"> Reference to 'Links to other policies and strategies' should be complemented with the specific detail and local context that applies to East Lothian, particularly the MELDAP Delivery Plan for 2012-2015. Good practice outlined for the 5 licensing objectives but would encourage clarification of the particular actions that the Board will undertake to promote them. Encourage the Board to specifically annex the evidence as to how the overprovision policy and overprovided areas were decided. 	<ul style="list-style-type: none"> Agreed. This section has been amended to add this link. The Board will consider these matters as applications arise as they do not consider there is a generic set of actions that will always be appropriate. Agreed – statistical and other evidence will be appended to the Policy
It is the individuals who have to be educated/corrected and not the owners of premises.	Noted. The Board cannot address the actions of individual drinkers. No amendment required.
<ul style="list-style-type: none"> The Overprovision sections are not 	<ul style="list-style-type: none"> Formatting and editing issues will be

CONSULTATION RESPONSES AND AMENDMENTS MADE (Appendix 1)

<p>numbered consistently with the rest of the document and are not referred to correctly in the Index.</p> <ul style="list-style-type: none"> • The references in Sections 9.4 and 12.3 to different sized glasses of wine should refer to different sized MEASURES. • Section 22.0 on LSO should be re-written in gender-neutral language. • There are some minor typos eg the misspelling of 'Saltire' in Section 21.3 and the wrong Appendix number being used in Section 21.5. 5. • The population of East Lothian was 98,170 in 2011 according to the GRO, not 82,000 as stated in Section 2.2 	<p>addressed in the final version.</p> <ul style="list-style-type: none"> • Agreed – this amendment has been made. • Agreed – this amendment has been made. • Formatting and editing issues will be addressed in the final version. • Agreed – this amendment has been made.
<p>Should be more of an incentive to open restaurant instead of just bars.</p>	<p>The Board has no control over what applications are made to it and can offer no incentives to applicants. No amendment required.</p>
<p>Would love another pub to open in Macmerry.</p>	<p>Noted. No amendment required.</p>
<p>POLICE COMMENTS</p>	
<p>The use of CCTV on premises is an important measure in complying with the licensing objectives and although the Board cannot make this a condition of the licence, it would be beneficial for the Board to support the use of such systems and encourage licensees to make use of these.</p>	<p>Agreed. An amendment has been made to reflect this.</p>
<p>The section on Occasional Licences should remain within the Policy as it is extremely useful. There should also be clarity in relation to these licences being applied for in the spirit of the legislation, such licences were intended for use to cover special events in unlicensed premises and not to be used to by-pass the need to obtain a full premises licence.</p>	<p>Agreed. This section has been reinstated in the Policy.</p>
<p>The section on Management of Licensed Premises should remain within the policy</p>	<p>Agreed. This section has been reinstated in the Policy.</p>
<p>The Policy should clarify that there is no 'duty to trade' as this could be used in an argument for obtaining a licence where overprovision may be an issue.</p>	<p>The Board agrees that there is no legal 'duty to trade' but expects Licence Holders to keep their trading hours under review and to seek appropriate Variations if these change significantly. This is now reflected in a new section in the Policy.</p>
<p>Supportive of the Overprovision statement but should consider new applications on a case by case basis. Should be clear that it is in relation to on and off sales premises and should be a</p>	<p>Board is yet to determine final approach to Overprovision</p>

CONSULTATION RESPONSES AND AMENDMENTS MADE (Appendix 1)

<p>rebuttable presumption against the grant of a new premises licence or increase in capacity of an existing premises.</p>	
<p>LSO COMMENTS</p>	
<p>Duty to Trade is a frequent topic during inspections. Would be beneficial to be able to refer to the policy on this issue.</p>	<p>The Board agrees that there is no legal 'duty to trade' but expects Licence Holders to keep their trading hours under review and to seek appropriate Variations if these change significantly. This is now reflected in a new section in the Policy.</p>
<ul style="list-style-type: none"> • Desirable that businesses be properly licensed and not run with Occasional Licences. In the spirit of the legislation such licences were intended for use to cover special events in unlicensed premises and not to be used to by-pass the need to obtain full premises licences. • Board should consider issuing a statement that applications will not generally be granted for activities which are predominately related to children's events. 	<ul style="list-style-type: none"> • Agreed. This section has been reinstated in the Policy. • The Board has no discretion to refuse applications for Occasional Licences in the absence of an objection or representation. These events have not been regularly licensed in East Lothian in the past 6 years and there is no perception that this is a major issue in this area. No amendment required.
<p>Suggest that a link to the Local Licensing Forum's website be included in the Policy</p>	<p>Agreed. This amendment has been made.</p>