



MINUTES OF THE MEETING OF THE EAST LoTHIAN LOCAL LICENSING FORUM

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TUESDAY 3rd SEPTEMBER 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON

Forum Members Present: Heather Bowsher
Ricky Ross
Bernard Harkins
Jim Goodfellow
Pat Hanson
Rudi Fruzynski
Garry Naysmith
David Forrest
Stuart Baxter
Christine O'Brien
Stewart Logan

Council Officials Present: None

Other Licensing Board Members Present: None

Visitors Present: George Hood

Apologies: Dave Dickson (received later)
Nico de Freitas
Kirstie MacNeill
Julie Foster and Andrew Leggatt
Inspector Andrew Harbour
John Thayers

In the absence of the Chair, who had in fact been taken ill on the way to the meeting, Pat Hanson was elected Acting Chair and Bernard Harkins was elected Acting Secretary.

1. FORUM MEMBERSHIP

New members Christine O'Brien, Stewart Logan and Garry Naysmith were welcomed to their first Forum meeting and introductions were made.

2. MINUTES OF THE MEETING HELD ON 4th JUNE 2013

The minutes had been previously circulated. It was noted that David Forrest's name should have been included in the Apologies for Absence.

Decision

The minutes of the Forum meeting held on 4th June 2013 were agreed as a correct record subject to the above addition.

3. MATTERS ARISING FROM THE MINUTES

i Refresher Training for Personal Licence Holders The Acting Chair thanked Forum members for providing information from a number of refresher course providers. As a result he had been in discussion with a company called ITA Training, who had indicated that a course could be run in East Lothian for about £70 including VAT, depending on numbers and venue. Members discussed a number of possible locations for the training.

Decision

It was agreed to continue pursuing the provision of courses in East Lothian under the banner of the Forum (and possibly the Licensing Board), which would also help to raise the profile of the Forum.

ii Forum Membership and Recruitment The Acting Chair confirmed that an item seeking further Forum members had appeared in the summer edition of the Council's newspaper. Noted.

4. EAST LOTHIAN LICENSING BOARD'S DRAFT STATEMENT OF LICENSING POLICY 2013-2016

The Acting Chair introduced this item and described the four papers that the Licensing Board had published as part of their consultation exercise on the new three-year statement. In general terms the length of the policy statement had been reduced, but at the expense of some items which he felt should be retained. He then went on to lead discussion through the various parts of his own discussion paper, which had also been circulated previously.

There was a full discussion on all of the issues raised in the discussion paper. Members felt that the previous section on 'Duty to Trade' should be retained as this was particularly important for rural areas. Heather Bowsher said that the police would be asking that this clause should be retained.

It was agreed that the draft statement about on-sales hours should be supported but that there needed to be an amendment to the statement about off-sales hours.

Members agreed that the section on 'Management of Licensed Premises' should be retained in some form because it gave guidance on best practice in relation to the presence of personal licence holders on the premises.

Members welcomed the fact that the Board had strengthened the references to active membership of Pubwatch schemes.

Members agreed that much of the detail about Occasional Licences that had been removed from the current statement should be retained.

Members discussed the 'Overprovision' proposals, and the analysis of the proposals and supporting data contained in the discussion paper, at some length. They noted that aspects of the data were unsatisfactory and inconsistent and queried whether this was a suitable basis for the split geographical policy put forward by the Board.

Finally, members agreed that all of the more minor 'Other' items in the discussion paper should be put forward to the Board in the response.

Decision

It was agreed that the suggestions in the discussion paper relating to 'Licensed Hours' and 'Other' should be adopted. In respect of 'Overprovision' it was agreed that, because the quality and consistency of the data presented did not justify the use of three separate geographical categories, there should be an overall 'rebuttal presumption' in respect of all applications.

The Acting Chair was asked to communicate all of the Forum's recommendations to the Licensing Board by the deadline of 6th September 2013.

5. PUBWATCH – REPORTS FROM LOCAL SCHEMES

i R.A.S.P. RASP members present asked whether the police had changed their attitude towards Pubwatch schemes since police reorganisation. There had been no police presence at the recent RASP AGM and this was perhaps sending the wrong message. Also there had been incidents where the police had been called out but had not attended.

Heather Bowsher advised that the police had not changed their attitude and that licensing was in fact moving up the priority list; responsibility was being centralised in Glasgow. It was still important that incidents should be reported.

ii Other Schemes There were no reports from other Pubwatch schemes.

6. POLICE REPORT

Heather Bowsher reported that it had been fairly average month for incidents reported to the police. She also detailed some of the changes that had occurred with police reorganisation; 'J Division' now covered East Lothian, Midlothian, West Lothian and the Scottish Borders. In respect of the 'monitored' list there were currently no licensed premises in East Lothian on this. The report was noted with thanks.

7. LICENSING STANDARDS OFFICER'S REPORT

Rudi Fruzynski reported that the Licensing Board had been fairly quiet over the last three months, with only two new applications and six variations being dealt with. The trend for clubs to apply for open licences was continuing. There had been one review; 139 occasional licences had been granted; and there had been 15 applications for occasional variations. Environmental Protection had been called out to three premises.

The extended hours for the Open had been well received and there had been only three incidents during the Open across East Lothian.

Rudi said that he was seeing a lot of applications for occasional licences to cover events which were essentially children's events such as school fundraisers where parents were present. He was rather concerned about this because it was possible that the licensing objectives might not be as well observed as for a regular premises licence. In respect of the Licensing Board's policy review Rudi had responded on the duty to trade and occasional licences. Finally, Licensing Standards Officers in Scotland had written to the Scottish Government calling for a national statement on overprovision. The report was noted with thanks.

8. ALCOHOL FOCUS SCOTLAND

It was noted that the Chair and Secretary would be attending the AFS National Licensing conference in Glasgow on 9th September 2013. A report would be circulated in advance of the next Forum meeting. The July 'eFocus' Newsletter was noted.

There being no further business, the meeting was closed after a vote of thanks to the Acting Chair.

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**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.

John Boyce
Public Health Practitioner
East Lothian Community Health
Partnership

Jim Sherval
Public Health Specialist
Public Health
NHS Lothian

Rebecca Kaye
Statistician
Health Intelligence Unit
NHS Lothian

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 be 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)

rebuttable presumption against the grant of a new premises licence or increase in capacity of an existing premises.	
LSO COMMENTS	
Duty to Trade is a frequent topic during inspections. Would be beneficial to be able to refer to the policy on this issue.	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.
<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.
Suggest that a link to the Local Licensing Forum's website be included in the Policy	Agreed. This amendment has been made.

**CHIEF CONSTABLES REPORT TO THE
EAST LOTHIAN LICENSING BOARD**

**FOR THE PERIOD
1ST April 2012 to 31st March 2013**

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Foreword

It gives me great pleasure to introduce my first report to Licensing Boards and to the Licensing Forums as the first Chief Constable of Police Scotland. As you will be aware, 1st April 2013 saw the formation of the Police Service of Scotland, merging eight forces to provide great opportunities to share resources and expertise and also to develop a consistent level of policing across the country.

My report to you reflects the work carried out by the eight legacy forces under their respective Chief Constables over the 2012/13 year and it outlines what steps I will take in connection with the operation of the Licensing (Scotland) Act 2005 in this current year.

There is an increasing body of evidence to demonstrate the harm that is caused by alcohol across all our communities and the cost of this is a huge burden on the public purse. Where alcohol is sold irresponsibly or when alcohol is misused or abused, we will seek all necessary steps to prevent any recurrence, reporting licence holders to COPFS and also to the relevant Licensing Board.

Police Scotland will build on the existing foundations and successes we have achieved so far and working together with partners we will identify and tackle alcohol misuse at its core, reduce alcohol related crime and the harm it causes. I want to deliver long term change, positively improving the quality of life for individuals, families and communities throughout Scotland, underpinned by our core message - keeping people safe.

Steve House
Chief Constable

EAST LoTHIAN LICENSING BOARD AREA

Police Service of Scotland Priorities

The national priorities for the Police Service of Scotland for 2013-2014 are:

- **Reduce violence, disorder and antisocial behaviour**
- **Protect the public**
- **Increase road safety and reduce road crime**
- **Tackle serious organised crime and terrorism**
- **Effectively police major events and threats**
- **Maintain high levels of public confidence in policing**
- **Deliver our equality and diversity outcomes**

East Lothian Policing Priorities

Following our public consultation process, the policing priorities for East Lothian, as set out in our Local Policing Plan are as follows;

- Protecting people
- Reducing antisocial behaviour
- Reducing violence
- Tackling substance misuse
- Making our roads safer
- Tackling serious and organised crime

Senior Officers

The senior officers who hold responsibility for licensing within the East Lothian area are as follows;

Chief Superintendent Jeanette McDiarmid	Divisional Commander
Superintendent Graham Jones	Partnerships Superintendent
Chief Inspector Colin Brown	Area Commander
Chief Inspector Amanda Mcgrath	Divisional Co-ordination Unit

PART 1: OPERATION OF THE LICENSING (SCOTLAND) ACT 2005

Introduction

Alcohol pervades across a wide range of issues in our society and is often a causal factor in violence, domestic abuse and anti-social behaviour; incidents that the Police Service of Scotland deals with every day in each area of the country.

Our focus is to ‘keep people safe’ and we seek to reduce the impact that alcohol has on our communities; encouraging the responsible sale and supply of alcohol in well run licensed premises and taking positive action to stop the irresponsible supply of alcohol to children and young persons or indeed, preventing the over supply to already intoxicated individuals in licensed premises.

Consultation and Review processes

Breakdowns of licensing applications, interventions and review applications received by East Lothian Division are contained within Appendix A of this report.

A great deal of work is undertaken to prevent crimes and offences occurring in and around licensed premises and we actively work with the licensed trade to problem solve issues before there is any need for an application to be made for a review of a premises licence. This includes partnership work with Licensing Standards Officers (LSO's) and engagement with Pubwatch, Best Bar None and local schemes.

The Intervention process

We utilise an intervention process as part of our operational policing toolkit. An intervention is a formal agreement entered into between the Licensing Department and premises licence holder, designed to assist premises management to reduce alcohol fuelled violence and other incidents of note which are directly linked to their premises. The process involves meeting with those responsible for the premises and agreeing an action plan with crime prevention/reduction recommendations provided by the Licensing Department in close consultation with the licence holder. This is recorded on the intervention form, a copy of which is given to the licence holder, with the original copy kept for future reference. Every intervention agreement follows SMART objective settings; Specific, Measurable, Achievable, Realistic, Timed. At the conclusion of a mutually agreed period, if there are no further issues identified then the intervention agreement will have been deemed to be complied with and there will be no further requirement for police action.

If further incidents of note occur within the premises, or if the licence holder has failed to implement the terms of the intervention, they can expect that the next incident may lead to an application for a review of a premises licence. The intervention document may be presented as evidence as part of an application for a premises licence review.

The intervention system is ultimately designed to support the licence holder before any premises review is sought, although a serious or significant incident may merit an immediate review application without any recourse to the use of an intervention.

b) Particular views about matters relating to policing in connection with the operation of the Act in the Board's area during the reporting year:

During the reporting year there has been a lot of good preventative and proactive work carried out by the legacy Lothian and Borders police. We have tackled agent purchase issues in the Tranent area by pro actively working with off sales and reducing the accessibility of alcohol to teenagers.

There have been joint visits and operations to our licensed premises, carried out by police and Licensing Standards Officers, to ensure compliance with the Act.

The use of ferroguard poles and cocaine swabbing in licensed premises has assisted in deterring the carrying of weapons and identifying potential drug misuse on licensed premises. This activity allowed us to work closely with managers and licence holders and had a very positive impact.

Joint working with the Anti Social Behaviour Team also resulted in a member of a serious and organised crime group being banned from every licensed premises within East Lothian (with the exception of his golf club and off sales).

There is ongoing work in relation to licensing window cleaners and second hand dealers within East Lothian and this will play a major role in tackling serious and organised crime groups operating within East Lothian.

c) Looking ahead (2013-2014) - Particular views about matters relating to policing in connection with the operation of the Act in the Board's area for the coming year and any areas identified for development.

Communities across the length and breadth of Scotland have given us their views during our public consultation processes and all have a common theme at the top of their list; that our communities have had enough alcohol fuelled anti social behaviour which blights our villages, towns and cities.

Utilising analytical products, we are able to identify locations where there is the greatest need for police attendance and we use this information to tactically deploy resources where they can be of greatest benefit, reducing the numbers of victims of crime and making our communities safer places to work, socialise and reside.

The establishment of a National Licensing Policy Unit allows the co-ordination of licensing activity and the sharing of best practise across the country. This small team will support the local delivery of policing services by ensuring a consistent approach is taken in tackling alcohol fuelled violence, disorder and anti-social behaviour.

The identification of problematic licensed premises is an integral part of our core policing tactics in reducing anti-social behaviour and reducing the levels of intoxication in our communities. We will endeavour to seek solutions to issues by engaging with the licensed trade, utilising a problem solving approach to day to day issues. By working with the licensed trade, we seek to drive up licensing standards in premises and utilise a robust Inspection policy to identify any potential shortcomings.

The application for a review of a premises or personal licence is not a decision that is taken lightly and such applications will often be submitted at the conclusion of an ongoing dialogue attempting to rectify an issue. Our submissions to licensing boards will detail the steps taken and will contain disclosable evidence, closely linked to the licensing objectives to justify the application.

PART 2: PREVENTING THE SALE OR SUPPLY OF ALCOHOL TO CHILDREN OR YOUNG PEOPLE

Introduction

Understanding why children and young persons drink alcohol can be complex and the risks to their health whilst still developing can be significant. Alcohol misuse amongst children and young persons can also result in behavioural issues and offending; such as violence, and antisocial behaviour, as well as increasing vulnerability and susceptibility to exploitation.

Police Scotland can make a positive impact on the future outcomes for children and families, by addressing the sale and supply of alcohol to young persons, by problematic premises or by proxy (agent purchase), and working with our partners take the appropriate action to address both the potential and actual misuse of alcohol within the early years.

Identifying young people that drink, or those on the periphery of offending through alcohol, or otherwise, will allow intervention and diversionary activities to be progressed and consistently applied, such as parent alerts schemes, formal warnings or diversionary sporting activities. These complement ongoing enforcement activity within our communities.

The Scottish Government, 'Preventing Offending by Young People – A Framework for Action', introduced the Early and Effective Intervention (EEI) concept for children and young people under 16 years of age. It follows considerable research suggesting that the earlier an intervention is delivered to a young person who offends, at the lowest level, the more likely they are to engage and not re-offend. Consideration is also given to the impact of offending upon victims and communities.

The Whole System Approach further extends the EEI process to 16 and 17 year olds and aims to ensure that only those under 18 years of age, who need formal measures such as supervision by the Children's Hearings System, prosecution, secure care or custody, will receive them. Again, research indicates that young people are less likely to re-offend following community sentences, compared to those who are incarcerated.

Where alcohol has been an issue relative to offending behaviour Alcohol Brief Interventions (ABIs) have the potential to establish alcohol consumption levels and more effectively challenge behaviour and encourage better choices. Police Scotland will support partners and the delivery of ABI's.

Questioning children and young persons as to consumption levels, drinking habits and trends, choice of alcohol and place of purchase will enhance intelligence and information capture. This will also assist identify the supply of alcohol and enable us to focus resources accordingly.

The introduction of Challenge 25 from 1st October 2011 has not seen any reduction in the consumption of alcohol by children and young persons, however there is a move towards 'agent purchase' of alcohol and much less instances of children or young persons purchasing alcohol themselves¹

The provision of Test Purchasing in terms of Section 105 of the Act is a tactic which is used where there is an underlying body of evidence to suggest that alcohol is being supplied or purchased from a particular off sales premises. Case Law has shaped the use of such a tactic and it is something which is carried out only where there is an evidential base in support of the needs for a test.

The use of bottle marking tactics has encountered adverse comment and the threat of legal action from some sectors of the licensed trade; however this is a tactic which we will continue to use as an intelligence gathering opportunity, identifying the source of discarded alcohol litter in public places. The use of tamper proof labels on bottles is a voluntary scheme which enables more information to be gathered regarding the source of alcohol being drunk in drinking dens, public parks and other open spaces. This tactic does not stop the abuse of alcohol by children and young persons, but provides community intelligence in support of further police and partner agency activities to prevent sales and the supply of alcohol to young persons.

¹ Needs analytical data

Appendix A

East Lothian
Summary of Policing in connection with the operation of the
Licensing (Scotland) Act 2005

Applications for a Premises Licence Review		Total
Premises Licences (Sec 36)	On sale	2
	Off sale	0
Personal Licences (Sec 84A)	On sale	0
	Off sale	0

Interventions		Total
Premises Interventions	On sale	4
	Off sale	0
No. of interventions which led to a review application		0
No. of interventions where no further action was required		4

Test Purchasing Operations		Total
Number of Test Purchases conducted		2
Number of first failures		1
Number of second failures		0
Number of Premises Licence Review applications based on Test Purchase failure		0
Number of Personal Licence Review applications based on Test Purchase failure		0

Number of offences reported to COPFS		Total
Section 63 (allowing consumption outwith permitted hours)		4
Section 102 (sale of alcohol to a child)		1
Section 105 (sale on behalf of a child)		7
Section 111 (Drunk persons within licensed premises)		1
Section 114 (DPM not to be drunk)		2
Section 116 (Refusal to leave licensed premises)		12

EAST LOTHIAN LOCAL LICENSING FORUM

ALCOHOL FOCUS SCOTLAND 'NATIONAL LICENSING CONFERENCE 2013'

(9TH September 2013)

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Report by the Secretary

1. The Conference was held at the Marriott Hotel, Glasgow. There were approximately 180 delegates, a handful of whom were Local Licensing Forum members. From East Lothian there were also two members of the Council's licensing/legal team and two members of the Licensing board in addition to myself. Dave Dickson was unfortunately unable to attend due to illness.
2. The theme of the Conference, as explained by Alcohol Focus Scotland (AFS) Chief Executive *Dr Evelyn Gillan*, was 'Developing a deeper understanding of overprovision in day-to-day decision making'. She was followed by *Kenny MacAskill MSP*, the Justice Minister. He referred to the fact that Licensing boards would currently be preparing their updated Statements of Licensing Policy and said that, although there had been some improvements, there were still serious issues to address in Scotland, with 50% of men and 40% of women regularly exceeding the recommended guidelines for alcohol consumption. He also discussed recent legislation and said that the Scottish Government would not shirk the legal processes required to get Minimum Unit Pricing off the ground.
3. As in the previous year, the Conference was being chaired by *Lesley Riddoch*, who was slightly less strident this time in putting forward her own views (although she was too fond of trying to get participation in trite 'straw polls' on a number of issues). She introduced the next speaker, who was Chief Constable *Sir Stephen House* (Police Scotland). He said that alcohol related violence was a major issue for Police Scotland, with more than 50% of homicides and more than 70% of incidents of domestic abuse having alcohol intake as a factor. Every weekend there was a number of serious incidents linked to alcohol. For the weekend just passed six of 40 incidents had taken place on licensed premises, an unusually high total. He praised the on-trade for their efforts but said there were still, in his view, issues of overprovision in some areas. There was also a need for licensees to continue upskilling bar staff and door staff.
4. *Dr Michael Livingston* talked about some of his post-doctoral research at the University of New South Wales in Australia. He did not provide many statistical details from his Australian studies, although it became clear that there was a different drinking culture there, with 'bottle shops' being popular. The data had demonstrated steady increases in all measures of alcohol-related harm, but no real trend in 'risky drinking'. As with all of

the sessions, this was followed by questions from the floor and a lunch break was then taken.

5. *Scott Blair*, an advocate with Terra Firma Chambers, started the afternoon session by looking at some notable legal cases in Scotland and elsewhere, with particular reference to overprovision. He said that much of the case law emphasized the need for Licensing boards to consider the five licensing objectives as well as overprovision issues. Boards should also utilize local knowledge when determining individual cases. Boards should uphold their policy, with applicants making a case for exception if appropriate. Some questions arose on issues like noise prevention and internet purchasing.
6. The final session was a panel discussion in which, refreshingly, five of the six panelists were women. One of them was *Michelle Ballantyne*, Convener of the Scottish Borders Local Licensing Forum and she said that they would be holding a local licensing conference in November, 2013. The panelists discussed questions from the floor on three aspects of overprovision.
7. *Dr Gillan* of AFS then summarised the proceedings and made final comments. This was again an interesting conference, in which there was a decent balance between the various interested parties in the debates on overprovision and alcohol licensing in Scotland generally. I picked up a number of interesting A5 format reports from around the country on overprovision and related issues which will be available for inspection at our Forum meeting.
8. I am grateful for the opportunity of attending the AFS National Licensing Conference 2013 and will be happy to answer questions at the Forum meeting.

Pat Hanson

Resources

[ScotPHO website](#)

Alcohol data and publications have now been moved from the Alcohol Information Scotland site to ScotPHO.

[Alcohol misuse and minimum unit pricing briefing](#)

Briefing aimed at MEPs produced by the British Medical Association (Scotland), AFS and SHAAP.

[Understanding Glasgow website](#)

Describes the city and its people with a wide range of indicators, including health.

Events

The Recovery Summit

Scotland's Road to Recovery from Drug and Alcohol Addiction
18 October 2013, Glasgow
[More info](#)

AFS news

[AFS Annual Report 2012-13](#)

Our latest annual report summarises our activities and achievements in the year to 31 March 2013.

National Licensing Conference

Around 180 delegates attended our annual conference on 9 September on the theme '[over-provision](#)'. Look out for a summary on the [AFS website](#).

Alcohol Policy



1 in 4 men and 1 in 5 women 'hazardous or harmful drinkers'

The latest [Scottish Health Survey](#) reveals 25% of men drink on average more than 21 units and 18% of women drink more than 14 units of alcohol a week. While the proportion of adults drinking at hazardous or harmful levels has fallen

over the past decade, the 2012 figures are the same as those published in 2011. One in five adults in Scotland (19%) exhibited signs of a possible alcohol use disorder, according to their scores on the AUDIT screening tool.

Glasgow consults on licensing policy

Glasgow Licensing Board's [draft policy statement](#), which is out for consultation until 31 October, includes allowing city centre pubs to open until 1am, scrapping early morning licensed hours, and relaxing the 10pm curfew for outside drinking at venues where the impact on residential properties is not a major factor. The statement places more emphasis on the promotion of the five licensing objectives and a separate draft overprovision assessment document has also been prepared.

Alcohol marketing in TV football should be restricted

Researchers have called for much tighter government restrictions or even a ban on the marketing of alcohol during televised football matches, arguing that the messages are seen by and affect millions of children. The research, published in the journal *Alcohol and Alcoholism*, suggests football fans see around two references to alcohol brands every minute when they watch a match on TV - in addition to the formal advertising during commercial breaks.
[Read more](#)

Alcohol charities fear conflict of interest

Alcohol Focus Scotland and [SHAAP](#) have expressed surprise that a senior civil servant in a key department dealing with the implementation of minimum unit pricing has been confirmed as the incoming chief executive of the Scotch Whisky Association. Part of the SWA's campaign against minimum pricing has been focused on the trade implications for Europe. The appointment of Mr Frost, the senior official responsible for the UK government's trade policy with the EU, raises questions about potential conflict of interest.
[Read more](#)

'Last drink' data suggests premises breaking law in Cardiff

Between September 2012 and March 2013, 306 night-time revellers were admitted to Cardiff's Alcohol Treatment Centre with severe alcohol intoxication. Testimony received from patients - and their friends - named 76 of the city's licensed venues as having served them their last drink. One in ten people who required treatment for intoxication had their last drink at a private residence. Cardiff University's Violence and Society Research Group who analysed the data, said it offered new insights into potential breaches of licence conditions. The 'last drink' data is passed to South Wales Police and Cardiff County Council licensing department.
[Read more](#)



Police call for debate on use of 'drunk tanks' in Scotland

A senior Scottish police officer has called for a debate on drunk tanks being introduced north of the border after [proposals](#) made in England. David Hamilton, the Scottish Police Federation's north area chairman, expressed concern about privately-run facilities being used to deal with people who have had too much to drink but suggested the Scottish Prison Service may be the best vehicle.
[Read more](#)

Funding for family support

Families affected by substance misuse will be offered further support thanks to Scottish Government funding for [Scottish Families Affected by Alcohol and Drugs](#). The organisation has already seen an increase in people joining local

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family support groups since the inclusion of alcohol in its remit. The Scottish Families helpline (08080 10 10 11) offers support for families and friends affected by an individual's alcohol or drug use.

Ipswich super-strength alcohol campaign a success

A campaign by Suffolk Police to stop shops in Ipswich selling super-strength beer and cider has helped cut crime. The Reducing the Strength campaign had signed up two thirds of the town's shops to the project. Officers said the number of identified street drinkers had dropped from 78 to 38 since last September, and in the first six months of the scheme, the number of anti-social 'incidents of concern' dropped from 191 to 94 compared with the same period the previous year. [Read more](#)

Binge drinking increases risk of underweight baby

Mother's-to-be who binge drink even once a month when they are between four and six months pregnant are greatly increasing their risk of giving birth to an underweight baby, doctors warn. Drinking five units of alcohol during the second trimester of pregnancy is enough to raise a woman's risk of having a child who is small for its gestational age by 68%. The research examined the alcohol consumption of 10,851 women in Bradford who gave birth between 2007 and 2010. [Read more](#)

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