

# **GUIDANCE ON COMPLETING YOUR APPLICATION FORM AND OPERATING PLAN**

## **CAPACITY AND OVERPROVISION**

At **question 7** of your operating plan you are required to state the “proposed capacity of the premises..”

This guide aims to assist you in calculating a figure(s) for your particular premises.

The reasons a capacity figure is requested are as follows:-

- As an indication to the Licensing Board of the size and scale of the premises
- For the purposes of the assessment of overprovision of licensed premises in a locality by the Licensing Board. In terms of the new legislation the Licensing Board require to look at both the number and the capacity of licensed premises in a locality when assessing whether there is overprovision; and
- In respect of whether the mandatory licensing conditions relating to late opening premises apply i.e. these are to apply to on sale premises open after 1am with a capacity of over 250 persons.(other factors also apply to the implementation of these conditions. Please see other guidance attached)

### **Risk Assessments**

You have been provided with a sample form of risk assessment with your copy of the Moray Licensing Boards Policy Statement.

**The Moray Licensing Board are requesting that all applicants for a premises licence submit a completed risk assessment with their application form. Note this does not have to be in the form of the sample provided as long as it covers all the necessary points for your premises.**

The carrying out of fire risk assessments is also a statutory duty on employers in terms of **Part 3 of The Fire (Scotland) Act 2005 as amended by The Fire Safety (Scotland) Regulations 2006** and is always best practice for any premises.

By conducting such risk assessments it will help you further in calculating your capacity figure.

### **On-Sale – Calculating your Capacity Figure**

The maximum occupancy for on sales premises should be calculated by reference to the Buildings (Scotland) Regulations 2004. Assessment methods are set out in the Technical Handbooks issued in support of these regulations. The regulations require the use of occupancy load factors. A copy of the relevant part of the regulations is attached, but the relevant load factors for Licensed Premises are as follows:-

- Bar (public area) 0.5
- Dance Floor 0.7
- Dining Room, Conference Room,

Lounge(other than lounge bar)	
Meeting Room, Restaurant	1.0
• Bedroom	8.0

If you are having new plans drawn up to submit with your Premises Licence application your architect or technician will be able to advise you regarding the calculation of this figure. Fire Safety Consultants may also be able to provide you with this information.

It is recommended that the above load factors be applied to the fitted out public areas of the building in order for you to arrive at a realistic maximum operating capacity (e.g. calculate the figure with reference to any fixed seating, tables etc)

Also very relevant is the use to which the particular public space is used for, is it a dining area, a dance floor or bar area...

If your premises has separate areas with separate uses please list all of these at question 7 (e.g. lounge bar – 50; dining room – 35; function suite – 150...)

Your first step is to come up with a figure using the buildings regulations load factor relevant to your premises, as detailed above. To do this you will require a detailed layout plan, to scale, of your premises. **(You require to lodge 7 copies of a layout plan with your premises licence application in terms of the Licensing (Scotland) Act 2005.) See further guidance notes attached as to the scale and specification of plans required by the Licensing Board.**

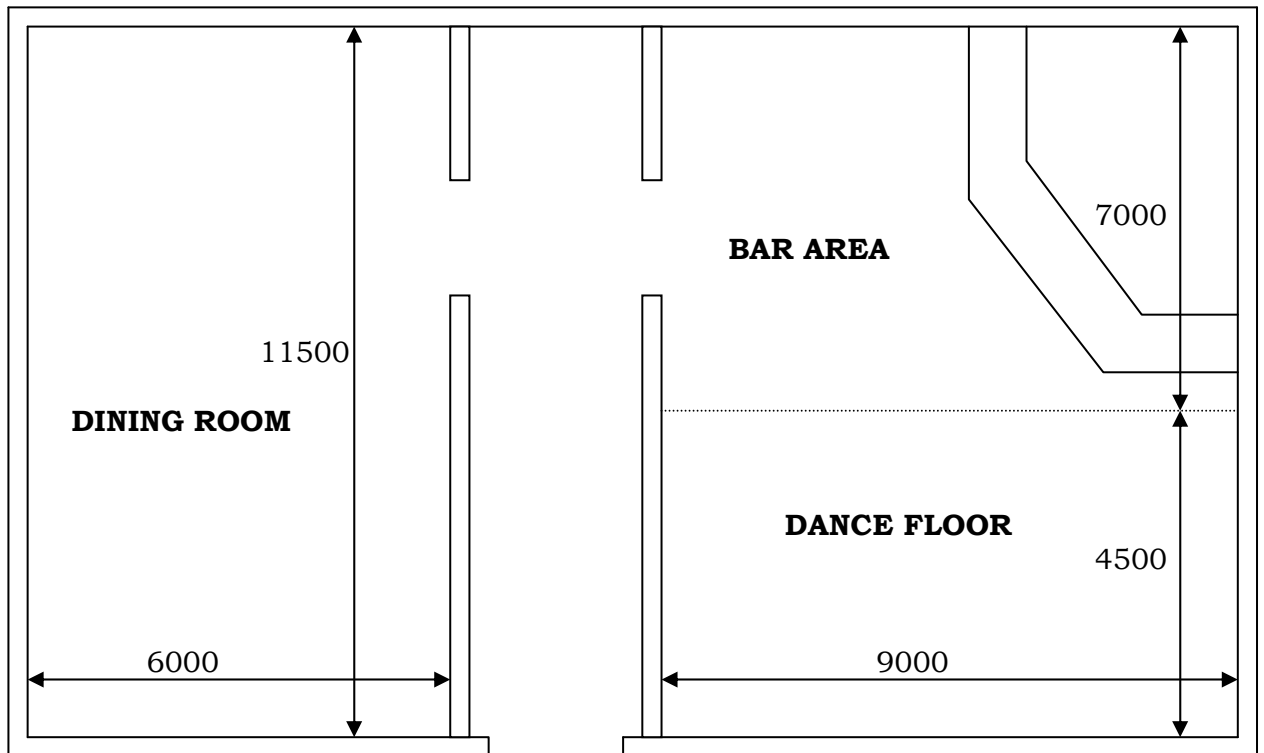
Then measure the area(s) of public floor space in your premises, in **square metres**.

Divide this figure by the relevant occupancy load factor relevant to your premises from the list above.

Lastly round up this figure to the next whole number. **See calculation example below**

Secondly carry out a risk assessment taking into account factors such as the number of fire exits your premises has, whether you have a fire detection system and/or a sprinkler system, think how safely and quickly you can get your customers out, this will enable you to calculate a realistic and workable maximum capacity for your premises. For example Buildings regulations restrict capacity to 60 people where there is only one fire exit therefore you may have to demonstrate in your risk assessment the suitability of a higher number of people being accommodated in your premises.

**Calculation Example – On Sale**



To calculate the occupancy of a room or area:

Dance Floor

Area = 9.0 x 4.5 = 40.5 m<sup>2</sup>

Occupancy Load Factor (OLF) = 0.7

Number of people (occupancy) =  $\frac{\text{Area}}{\text{OLF}} = \frac{40.5}{0.7} = 57.8$  rounded up = 58.

To calculate the occupancy of the building:

<u>Room/Area</u>	<b>Area (m<sup>2</sup>)</b>	<b>OLF</b>	<b>Capacity</b>
Dining	69.0	1.0	69*
Bar Area	42	0.5	84
Dance Floor	40.5	0.7	58
<b>Total Capacity</b>			<b>211</b>

\*NB. If there are set tables in a dining room, and the number of seats is less than this figure, the lower number must be taken.

## **Off-Sale – Calculating Your Capacity Figure**

For off-sale premises the “capacity” figure which requires to be stated in the operating plan is the amount of space in the premises ( or part of the premises) given over to the display of alcohol for sale.

**The Scottish Government have advised that they are looking here for the applicant to stipulate the volume of space given over to the display of alcohol.**

Therefore the figure you require to calculate is the maximum linear measurement, **in metres**, of the frontage used to display alcohol followed by the height of any such display and depth. This should then give you a volume measurement in cubic metres.

Note on your layout plan you also require to state the location of the area or areas to be used for the display of alcohol, the max width and height **(in metres)** of the frontage to be used for the display and the maximum linear measurement **(in metres)** of any displays outside the main frontage.

**Note Off-Sale premises are to be confined to the display of alcohol in only 2 specific areas in the premises.**

### ***Calculation Example – Off-Sale***

#### **Supermarket**

Aisle measuring 8 metres in frontage, height of shelving 2 metres, depth of shelving 75centimetres (0.75m).

$$8 \times 2 \times 0.75 = 12\text{m}^3$$

Chiller Cabinet measuring frontage 1metre 20centimetres, height 1 metre 75 centimetres, depth 60 centimetres.

$$1.2 \times 1.75 \times 0.60 = 1.26\text{m}^3$$

Circular display tower radius 1metre, height 1metre 50 centimetres

$$\pi(3.14) \times 1^2(\text{radius}^2) \times 1.5(\text{height}) = 4.71\text{m}^3$$

#### **Gift Shop**

Behind counter display shelving frontage/length 1metre 50 centimetres, height 1metre 25centimetres, depth 30 centimetres.

$$1.5 \times 1.25 \times 0.3 = 0.56\text{m}^3$$

Square based pyramid display of bottles or cans, area of base (80cm side)<sup>2</sup> Height 1m.

$$1/3 \times 0.8^2 (= 0.64 \text{ m}^2\text{area}) \times 1 = 0.213\text{m}^3$$

## **Checking the Capacity Figure – On and Off-Sale**

The Licensing Board is authorised to consult with the Building Standards Department of the Moray Council in order to verify the figure(s) stated by you in your operating plan. We therefore shall be consulting building standards officers on all premises licence applications during the transition period.

**Please note it is necessary for you to calculate a figure for your premises, the building standards officers will not do this for you.** On receipt of your application they will check your figure and if they do not agree with the figure stated by you we will require you to show in writing your calculation.

## **OVERPROVISION**

### **Existing Licence Holders – During Transition Period**

If you apply for your premises licence and it is demonstrated in your application form, operating plan and layout plan that you will continue to trade on a **like for like basis**; and

You complete the declaration in the Additional Materials part attached to your Premises Licence Application Form; and

You apply on or before your designated last lodging date

**You will be able to claim limited grandfather rights, which are:-**

- Exemption from the consequences of the **overprovision assessment** and from the **overprovision ground of refusal** of a licence, where there is no change to the size capacity or activities taking place on the premises;
- Exemption from the need to provide building standards, planning and food hygiene certificates where transfer is on a like for like basis;
- Where transfer is on a like for like basis but the licensing board considers that they would nevertheless be minded to refuse the licence on the grounds of the “location, character or condition of the premises” but that suitable modifications can be made to address this, the licence must be granted and the licensee given a period of 12 months to make the necessary modifications. If the modifications are not made within this period the licence would be revoked

Therefore during transition overprovision should not be an issue for the majority of existing premises.

The Licensing Board will be required to refuse applications, either those which have not got grandfather rights or are new applications, on the grounds of overprovision from 1 February 2008 where they have determined there is overprovision in any locality or localities within the Moray area.

However there is not a duty on the Licensing Board to provide a statement on overprovision in their policy statement during the transition period. This will however require to be done after 1 September 2009. The Moray Licensing Board has not yet done so. You will receive a copy when it is published next year.

## **Overprovision – Arrangements for Transition Period**

The Scottish Government has issued the Licensing Board with the following advice as to how to deal with overprovision during the transition period.

The guidance set out above will apply during this period but Boards are not required to have regard to the number and capacity of all licensed premises within their area.

1. Boards should determine localities or a locality in their area based on their local knowledge and understanding of their areas and in consultation with their local licensing forum where they are aware of problems caused by the density of licensed premises;
2. Boards should use the services of the Building Standards Department to assist in determining the capacity of licensed premises in those localities using the methods outlined above;
3. Boards should provide a statement in their Policy Statement (although boards are not under a statutory duty to do so for the first Policy Statement) setting out a clear indication that a locality or localities have been deemed to be overprovided for. As such it should be assumed that no more applications would be accepted in relation to that area or those areas. Boards will then be in a position to refuse licences in a locality deemed to be overprovided for “having regard to the number and capacity of licensed premises”, as provided for in section 23.

This is not a statutory duty for the first Policy Statement but it would be good practice for Licensing Boards to undertake this work so as to provide licensees and the local communities with a clear indication of how they will implement their statutory ability to refuse applications on the grounds of overprovision.