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**The Moray Licensing Board
Statement of Licensing Policy
for the Licensing (Scotland) Act 2005
Effective Period 30/11/2013 to 29/11/2018**

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This is the Statement of Licensing Policy of the Moray Licensing Board ("the Board") issued under the Licensing (Scotland) Act 2005 ("the Act").

The Board recognises that licensing is about regulating the sale of alcohol, the premises on which alcohol is sold, and for connected purposes within the terms of the Act.

1. Mission Statement

The Moray Licensing Board's aim is to serve the licensing needs of Moray as quickly and efficiently as possible, striking a balance between the business needs of its customers and the interests of the community as a whole in order to protect the public and further the licensing objectives.

To achieve this aim the Board will:

When deciding on policies, reach out to all parts of society and genuinely reflect their interests through the medium of the Forum;

Encourage an open and honest exchange of information in a customer - friendly setting and make decisions in a fair and reasoned manner based around agreed and published policies; and

Be fair in all matters and in this context fairness includes having regard to and an interest in equality and diversity in all forms.

2. Overriding Principle

The overriding principle will be that each matter will be judged on its own merits and each person will have the right to make representations on an application or to seek a review of a licence where such provision has been made in the Act. Applicants wishing to persuade the Board to depart from this statement of policy will need to demonstrate, by means of evidence, good reasons for so doing.

3. Introduction

3.1 The Moray Area

Moray has a population of 87,000 with three quarters of those living in or around the five main centres of Elgin, Forres, Keith, Buckie and Lossiemouth.

Traditionally there has been a reliance on fishing, farming, food, forestry, textiles and whisky. Service industries, including information services, continue to grow. The two RAF bases at Kinloss and Lossiemouth contribute greatly to local earnings and bring skilled and qualified staff in the area. Main transport links are via Inverness to the west and Aberdeen to the east, both of which have their own air connections.

3.2 The Duty to Consult On & Publish a Statement of Policy

Section 6 of the Licensing (Scotland) Act 2005 requires every Licensing Board to prepare and publish a statement of its licensing policy every three years. The policy must also be kept under review during the three year period and revised as necessary.

Before determining this policy, the Board consulted the persons listed in Appendix I. The Board has had regard to the views of all those listed and the views were given appropriate weight when the policy was determined.

3.3 The Board

The Board is made up of 9 members of the Moray Council with a quorum of 5. The Board is supported by a Clerk, Depute Clerks and administrative support staff. From time to time, the Board may also form sub-committee(s) to perform certain functions.

For details of the Board's scheme of delegation see paragraph 11 below.

3.4 Contacts

The Clerk to the Board is Rhona Gunn however for daily enquiries the Depute Clerk is Sean Hoath:

Moray Licensing Board
Council Offices
High Street
Elgin
IV30 1BX
01343 563077
sean.hoath@moray.gov.uk

In his absence you can contact Tracey Thorrowgood on 01343 563030 or tracey.thorrowgood@moray.gov.uk

3.5 The Forum

The Moray Council has established a Local Licensing Forum ("the Forum") for the area of Moray. The Forum is representative of the community and will advise the Board on general matters of policy only. The Forum will not advise on or discuss individual cases.

Members of the Forum include (where relevant*) persons resident within the Moray area, holders of premises and personal licenses and persons having functions relating to health, education and social work. After the period of transition, 2009, the Forum will meet at least four (4) times per year and once a year with the Board.

The Board will have regard to the views of the Forum and will give reasons should it decide to depart from those views.

*The business of the Forum is not invalidated by the absence of one or more such persons.

3.6 Other Responsible Authorities

In formulating this statement of policy the Board has had regard to the views, if any, expressed by the following bodies:

- Planning and Building Standards Departments
- Environmental Services Department
- The Police
- The Fire Authority
- The NHS
- The Moray Local Licensing Forum
- The Scottish Tourist Board

3.7 Tourism

The Moray area is well known for its whisky trails and coastal scenery and as such is a popular tourist destination. Tourism contributes greatly to the local economy and is welcomed.

Accordingly, the Board will welcome measures in operating plans that actively seek to promote tourism and stimulate the local economy.

3.8 Transport

Main transport links are via Inverness to the west and Aberdeen to the east, both of which have their own air connections.

Guidance requires this policy statement to identify any arrangement between the LSO and the Police for reporting views/concerns to the local Transport Committee. There are currently no such arrangements.

4. Objectives

4.1 Licensing Objectives

The Board will seek to promote the following 5 licensing objectives set out in the Act within this statement of policy and its decision making processes:

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

4.2 Measures to Promote the Objectives

Set out below are general measures that the Board has decided will help to promote the five licensing objectives. The Board has found it helpful to ask other public bodies for sector specific guidance to include with this statement. Where such additional guidance has been made available, it can be found in the Appendices.

It should be noted that Licensing law is not the primary mechanism for the control of nuisance and antisocial behaviour by individuals once they are no longer on the licensed premises and beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned.

5. General Communication

5.1 Communication

In general communication will be accepted by letter sent by post or document exchange (to the addresses above), by facsimile (to the number above) or by electronic mail addressed to licensing@moray.gov.uk

All communication should be addressed to the Clerk to the Moray Licensing Board.

If a party has made representations and wishes to withdraw the same then that party should indicate this to the Clerk of the Board in writing no later than 7 days before the hearing. If all representations are withdrawn then, in some cases, the hearing may be cancelled and the application may be considered under delegated powers. Otherwise the application may be considered as unopposed.

If an objection / representation is not withdrawn and so must be heard then if the Board decides to reject the notice of objection / representation as frivolous or vexatious, the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

Except where otherwise provided, a requirement to give a notice (or to notify) is a requirement to give notice in writing; and for that purpose, a message sent by facsimile transmission or electronic mail must be treated as a notice given in writing.

5.2 Information Sharing

As part of application processing and/or pursuant to promoting the licensing objectives information may be exchanged with and/or sought from partner organisations such as those detailed in paragraph 8.1 below.

5.3 FOI publication scheme

See section 12.2 below

5.4 Data Protection

Licensing applications contain a lot of data, some of which may be personal data or even sensitive personal data as defined within the Data Protection Act 1998.

Personal data is anything relating to an individual who can be identified from the data or a combination of the data and other information held.

Sensitive personal data is defined by reference to a list of particular information including, amongst other things, details of past convictions for offences.

The data controllers are the Moray Licensing Board and the Moray Council.

The data controllers exercise functions under the Licensing (Scotland) Act 2005, the Gambling Act 2005 and associated legislation for the purposes of regulation, the administration of justice and other functions of a public nature in the interest of the public.

5.5 Irregularities / Mistakes

The Board may disregard any irregularity resulting from a failure to comply with a procedural provision where that irregularity comes to its attention prior to it making a determination of the matter in hand.

If the Board considers that any person may have been prejudiced by any such irregularity, it must take such steps that it considers necessary to remedy the consequences of the irregularity, before reaching its determination.

The Board may correct clerical mistakes in any document recording a determination of the Board, or errors arising in such a document from an accidental slip or omission.

5.6 Translation

Please see the start of this policy for statements regarding translation services. Translations are available upon request.

6. General Considerations

6.1 Children in Licensed Premises

It is a licensing objective that children should be protected from harm.

The protection of children from harm is an important consideration for the Board and the Board will welcome measures from applicants to increase accessibility for families, where appropriate, including provision of facilities suitable for children and young persons.

In general applicants are free to choose whether to allow access for children and young persons including the terms of such access, the ages to be allowed, the times for access and the places to which access will be granted. Detailed arrangements should be made very clear in the operating plan.

The Board will generally make a site visit to inspect the premises both in respect of new premises licence applications as well as applications to vary the provisions for access for children/young persons.

The Board has decided that it will not automatically add conditions to a premises or occasional licence where children and young persons are to be allowed access.

Instead, once particular area(s) have been identified the onus will be on applicants to demonstrate to the Board that those areas are suitable for children and/or young persons. Applicants should consider doing this through the medium of the risk assessment. This again emphasises the importance of applicants completing the risk assessment document. If the pro-forma document itself is felt to be inadequate then applicants are free to supplement the same with as much information as possible.

The Board will take into account the local knowledge of members about particular premises and may call applicants to a hearing to be questioned on the suitability of access for children and young persons.

The Board will naturally be more concerned about children and young persons potentially entering a vertical drinking establishment. In traditional “bar” type premises or areas the general atmosphere is less likely to be suitable for under 18’s as adults tend not to moderate their behaviour. Problem indicators would include:

- General culture of drinking and/or vertical drinking
- Absence of substantial food
- General absence of tables/chairs
- TV screens e.g. televised sport
- Pub games like pool and darts that are not separated (e.g. in another room) from the main bar area
- General adult atmosphere or areas e.g. unsuitable language and/or behaviour

In addition the Board is concerned with ensuring that wherever possible children and young persons are not required to pass through unsuitable areas in order to reach the toilets.

Of less concern will be those premises that establish a family friendly atmosphere with facilities designed to cater for families, including children and young persons. This may include areas such as:

- Areas set aside specifically for use by families or children or young persons (note such areas should be identified on the layout plan in accordance with Regulations)
- Dining areas
- Designated function halls
- Bars with more of a traditional lounge bar atmosphere e.g. tables, chairs, carpets

Whether or not designated play areas exist, where applicants detail areas to which they intend to allow access for children and young persons it would be helpful for applicants to detail the sorts of facilities that will be available in those areas.

Applicants should pay particular attention to matters set out below when addressing the suitability of areas for children/young persons:

- Times for access. Suitability will be derived from a combination of information detailed in the operating plan. An essential element of this is the times as to when children/young people will be allowed access. Times will be examined in detail by the Board and times will need to be justifiable in terms of suitability. Traditionally 8:00pm (20:00) has been considered as a suitable terminal hour for younger children. Nevertheless the Board recognises that certain activities like functions may justify later access. Particular attention will be paid to applications that appear to request persistent late night access for under 18’s.

- Applicants should consider the suitability of children having access to gaming machines. Gambling is regulated by the Gambling Act 2005 and for gaming purposes children are considered to be all under 18's. Under that Act applicants have a duty under the Gambling Act 2005 to ensure that children do not access gaming machines above category D (as specified in the Gambling Act 2005). Licensed premises may have both Category C and Category D gaming machines and applicants should consider siting Category C machines (or possibly all machines) away from family-friendly areas, especially where no, or no satisfactory, measures in place to deny children access.
- The Board recognises that it is becoming more common for families to want to play games such as pool together. The Board is of the opinion that pool (or similar) tables may be suitable for children or young persons to access under the right circumstances/conditions. Again applicants should consider the proximity of any bar area and the potential for vertical drinking creating an unsuitable atmosphere. Applicants should also address in the risk assessment the desirability of moving tables away from such areas or at least decommissioning them at certain times.
- Dart boards or any such similar game(s) equipment are generally not suitable to be deployed and used in areas of licensed premises at times when children may have access. Where applicants wish to do so then they should address the issues in the risk assessment. The Board considers that access for young people to these facilities should be explained in the risk assessment. This will be particularly true where young people may be taking part in darts leagues where the presence of adults in a vertical drinking atmosphere may render access unsuitable.
- Families are often welcomed into licensed premises for the purpose of dining and a dining room will generally be one of the more suitable areas for access for children and young persons. Where catering facilities are offered applicants should consider the desirability of making children's portions and/or specific food suitable for children available.

To address the above, where the Board considers that inclusion of a particular item within child-friendly areas is not consistent with the licensing objectives and where it appears necessary to the Board to promote the licensing objective of protecting children from harm, in areas and at times to which children have access to licensed premises the Board may consider adding conditions as follows:-

- Category C machines (or possible all gaming machines) should be cited away from child-friendly areas and measures should be put in place to the satisfaction of the Moray Licensing Board to ensure that children and young persons are denied access.
- Pool tables / dart boards / similar game(s) or equipment should be moved away from areas where children and/or young persons have access and/or measures should be put in place to the satisfaction of the Moray Licensing Board to ensure that children and/or young persons are denied access.
- Children's portions and/or specific food suitable for children should be made available at times when children and/or young persons are present and catering facilities are on offer.

Each case must be judged on its own merits. Therefore this list is not, and cannot, be an exhaustive one. The Board reserves the right to add further conditions in specific cases.

6.2 Baby changing

It is a mandatory condition attached to all premises licences where alcohol is sold for consumption on the premises and to which children under the age of 5 are to be admitted that there must be facilities for baby changing which are to be accessible to either gender.

There is no definition of what constitutes baby changing facilities. Usually customers would expect to have somewhere to go as a safe environment to change a baby. Many premises have facilities incorporated into a disabled toilet. Alternatively there are specially designed, portable baby changing tables / trolleys.

Members' Clubs are exempt from this premises licence condition.

6.3 Outdoor Areas

Outdoor areas will normally form part of the licensed area of the premises and should be clearly defined on the layout plan. This is essential in places that are the subject of a byelaw against drinking in public places.

Where an outdoor area is not part of the licensed area of the premises then it can only be used for the consumption of alcohol where the premises has the facility to sell alcohol for consumption off the premises and where no byelaw is in place.

The Moray Council Environmental Health section can provide advice regarding smoking shelters.

Use of pavement areas for outdoor drinking facilities is subject to permission from the Council's Roads department, which should be obtained separately. Particularly for pavement areas, applicants should give consideration to the following matters and where appropriate some or all of these matters may be the subject of conditions on the licence:

- the outside area will be delineated for patrons in accordance with the layout plan, this may include the use of barriers
- use of the outside area for consuming food and alcohol will normally be subject to patrons being seated and therefore use will be limited by the number of seats available
- the maximum number of seats available should be stated so as to ensure that no patron strays outside of the licensed area
- patrons should not normally be allowed to take any drinks (including alcohol) or food outside the premises (which expression includes the outside area) other than off sales sold on the premises
- the licence holder will provide adequate signage in appropriate places to advise patrons of the terms of use of the outside area and particularly to warn patrons that consumption of alcohol outside of the premises (inclusive of the outside area) will be an offence if there is a byelaw against drinking in public places
- the terminal hour for the consumption of food and alcohol within the outside area shall generally be 22:00 (10:00pm) after which food and alcohol will not be allowed in the outside area
- consideration should be given as to when children and young persons will be allowed in the outside area – perhaps up to 21:00 (9:00pm)
- the tables, chairs and associated furniture/removeable items will be removed from the outside area immediately following closure of the outside area and the area will be cleared by 22:30 (10:30pm). Tables, chairs and associated furniture/removeable items will not be placed outside before 08:30 (8:30am)
- the outside area will be suitably monitored (along with the remainder of the premises) at all times it is in use whether for eating, drinking or smoking for example by the use of CCTV, and staff (including door staff whether employed or contracted for) for compliance with all conditions
- the outside area should be controlled and reasonable efforts must be made so as to minimise potential noise and/or light nuisance to neighbours and no music amplified or otherwise will be permitted in the outside area
- the premises will provide suitable receptacle(s) for patrons to dispose of rubbish, particularly that related to smoking, and will ensure that the outside area remains clean and tidy at all times

6.4 Members' Clubs

Members' Clubs that are qualifying clubs enjoy certain exemptions/privileges. Those include reduced fees, no requirement to have a premises manager etc.

For a club to qualify, its constitution must contain a whole list of matters as set out in the Clubs Regulations. In turn the club must comply with its constitution. It is also an essential element of any Members' Club/Voluntary Organisation that it is established and run otherwise than for financial gain. A club must not be conducted for the purpose of making a profit.

Clubs will be asked to provide a copy of their constitution with any application. Clubs should also keep the Board advised of changes to the constitution.

If all the required provisions are not in the constitution, then it does not prevent the club being a club or even holding a licence. It will mean, however, that all the exemptions like reduced fees will be lost. Similarly, if the provisions are in the constitution but are not being complied with then again it will mean the loss of all privileges or even the loss of the licence itself if the Moray Licensing Board decides to hold a review hearing.

Two key requirements for a qualifying club mean that anyone who is to be supplied with alcohol on the premises must be:

- a member or genuine guest of a member or a member of another qualifying club; AND
- for guests properly signed in.

There is no obligation to sign in persons who are not supplied with alcohol but in practical terms it would seem easier just to sign everyone in. Otherwise clubs will need to be very sure that such persons will not be supplied with alcohol. It is also the case that where a non member is to be supplied with alcohol then:

- he/she must be on the premises at the invitation of a member and must be accompanied by that member; AND
- he/she must be signed in.

There is no definite answer to the question of how many people can be signed in? The answer may be stated in the club's constitution. If not then the natural limit will be the number of people that the member can reasonably accompany. It would not generally be acceptable, for example, for members to sign a blank visitors' book and leave anyone and everyone to simply sign their name underneath. If a member is inviting a guest then the member should really know everyone who is there at his/her invitation.

Another privilege enjoyed by clubs is the ability to apply for an occasional licence, even where a premise licence is currently in force. This is a very important entitlement because the normal members and guests and signing in rules are suspended when an occasional licence is in force. This means that a club can admit members of the public in general and can supply them with alcohol without having to sign them in, by obtaining an occasional licence for that particular occasion/event.

By virtue of it being a very generous provision, clubs are limited in the number of occasional licences that can be obtained. So the entitlement must be used but must also be used wisely. The limit is:

- not more than 4 occasional licenses each having effect for a period of 4 days or more; and
- not more than 12 occasional licences each having effect for a period of less than 4 days

provided that, in any period of 12 months, the total number of days does not exceed 56.

6.5 Hours

The overriding principle is that each application will be considered on its individual merits.

The Board expects that customers be given adequate notice about opening hours in general and advanced warning of last orders and time. This may be in the form of signage as well as announcements. In terms of the adequacy of an advanced warning, what is adequate will vary with circumstances but applicants may consider 30 minutes as reasonable in this regard.

To assist applicants the Board has given the following general indications with regard to opening hours:

6.5.1 General Operating Hours

Licensed hours must be detailed in the operating plan of every premises.

The Board will generally consider applications for up to 15 hours in any 24 hour period as being reasonable. Any application for licensed hours for more than 15 hours will be the subject of additional scrutiny and applicants may be expected to justify their requests.

The Board does not wish to unnecessarily inhibit the development of a thriving and safe evening and night-time local economy, which is important for investment, employment, and tourism.

6.5.2 Off Sale Hours

The Board must refuse an application for off sales that would result in alcohol being sold before 10.00 a.m., after 10.00 p.m. or both on any day.

However, this does not automatically mean that applicants requesting an off-sales licence for the whole of the time from 10.00 a.m. to 10.00 p.m. will automatically be granted the same. The Board will still have regard to the licensing objectives.

6.5.3 24 Hour Opening

The Board observes the presumption against routine 24 hour opening of licensed premises. The Licensing Board must refuse the application unless they are satisfied that there are exceptional circumstances for justification.

In this context limited exceptional circumstances will only be justified by a specific event of very high local, national or international importance.

6.5.4 Early and Late opening Hours

6.5.4.1 Early Opening

Early opening will be considered as any premises that wish to open before 11:00 a.m. Where such an application is made the Board is of the opinion that it would be more consistent with the licensing objectives for the operational emphasis to be on food or tourism as opposed to vertical drinking establishments. The Board will expect applicants to demonstrate measures that promote the licensing objectives. The Board further considers that it would be difficult for any application to justify the sale of alcohol prior to 9:00 a.m. unless there are exceptional circumstances.

6.5.4.2 Late Opening

The national position is that late opening will be considered as any premises that wish to remain open after 1:00 a.m. Such premises will be subject to mandatory late opening conditions and the Board may attach further conditions. The later a premises wishes to open, the more the Board will expect applicants to demonstrate measures that promote the licensing objectives and justify the request for late hours. The Board further considers that it would be difficult for any application to justify the sale of alcohol after 3:00 a.m. unless there are exceptional circumstances.

The Board will continue to support local Schemes such as Pub Watch, Safer City Centre Initiatives and Door Safe Schemes. The Board recognises that Voluntary Schemes amongst licensees can reduce public disorder and nuisance offences taking place within local communities. Where appropriate, the Board will encourage membership of such Schemes.

6.5.5 Curfew

Certain late opening premises have traditionally been subject to a curfew in Moray.

The curfew is designed to prevent customers intending to drink past 1:30 a.m. from drifting between premises and/or remaining on the streets to possibly be the source of antisocial behaviour, public nuisance or public disturbance. It also staggers leaving times for certain premises thus reducing the overall numbers of people on the streets at any one time.

The Board fully supports the idea of a curfew and has decided that a curfew should be in place for 12:30 a.m. on premises with opening hours of later than 1.30 a.m. at any time. This includes seasonal opening hours and extended opening hours as well as core opening hours.

The Board considers that it will be promoting the licensing objectives by supporting a curfew and such a condition will be attached to premises licence or extension of hours or occasional licence as appropriate whenever opening hours pass 1:30 a.m..

This is a sample of the curfew condition:

Curfew

The premises will be subject to a curfew at any time when the premises will be open after 01:30 (1.30am), including seasonal variations. A curfew will apply at 00:30 (12.30am) such that the premises must deny entry to patrons (except residents) after 00:30, including re-entry to those patrons (except residents) that leave the licensed area of the premises for any reason after 00:30.

It would be helpful for applicants to indicate a willingness to voluntarily adopt the curfew. This does not mean that the curfew is a voluntary measure. What it does mean is that applicants that do not accept the curfew will be required to put their case to the Board at a hearing.

Customers intending to drink past 1:30 a.m. should be made aware they must be in the late opening premises before the curfew.

6.5.6 Seasonal Hours

This section should include details of all hours in respect of regular/special events that can be anticipated.

Christmas and New Year are obviously special occasions but given that they occur every year on the same dates allowance should be made for opening hours within operating plans. Applicants should also refer to the section on the curfew at 4.1.4 above.

The Board issues Christmas and New Year guideline hours and applicants that include reference to those guideline hours within their operating plan will be allowed to trade to those hours if they wish.

Licensing hours required outside of those detailed in the operating plan would have to be the subject of an extended hours application.

6.5.7 Drinking Up

Drinking up time is 15 minutes under normal circumstances and 30 minutes where alcohol was sold for consumption with a meal.

Premises should consider a winding down policy and measures within such a policy to promote the licensing objectives through effective dispersal of patrons.

6.5.8 General Extension of Hours

On occasions of national, local or possibly international significance the Board has the authority to apply a general extension of licensing hours.

The Board will notify those affected of the granting of any general extension of hours. Such grants will always be posted on the Licensing Section of the Moray Council's website. In addition, in respect of either sector or local specific grants, the Board will notify premises individually. The Board may also publish details in local newspapers as it sees fit.

6.5.9 Duty to Trade

The information provided in operating plans will enable the Board and the Licensing Standards Officer to determine if a breach of the operating plan and/or the licence conditions has occurred. Where this is the case the Licensing Standards Officer or the Board may initiate a review of the licence.

Applicants should note that the Act allows anyone to apply to the Board for a review of the licence on any of the grounds set out in section 36 of the Act.

Applicants should not, for example, grossly overestimate their trading hours "just in case" they may be required.

The Board recognises that there may be circumstances that would reasonably cause a temporary reduction in the trading hours given in the operating plan. Such circumstance will not ordinarily be considered a breach of the operating plan.

The Board also recognises the need for businesses, especially in a rural environment, to remain economically viable when faced with a lack of demand. Licensed premises may wish to close early owing to a lack of customers and, therefore, not trade for their full complement of licensed trading hours. In this regard there is not considered to be a duty to trade and this will not ordinarily be treated as a breach of the operating plan.

However, in considering such issues, the Board will give particular attention to whether these "un-used" hours are preventing new entrants into the market. If so, it may be appropriate to review and/or amend the operating plan of the premises concerned.

6.5.10 BST

Section 66 of the Licensing (Scotland) Act 2005 states that the beginning or, as the case may be, ending of British Summer Time is to be disregarded for the purpose of determining the time at which that period of licensed hours ends and, accordingly, the period ends at the time it would have ended had British Summer Time not begun or ended.

Traditionally the time for changes to the clock is 1:00 a.m. Greenwich Mean Time.

Start of BST

On such date as is prescribed as the date in the Spring when the clocks go forward to mark the change over to British Summertime at 1:00 a.m. GMT clocks go forward to 2:00 a.m. BST.

Licensees who enjoy licensing hours beyond 1:00 a.m. GMT will be judged by reference to the number of hours after midnight when their operating plan authorises them to be open rather than by the actual time shown on the clock. This will mean that licensees who enjoy hours until 3:00 a.m. will have 3 hours beyond midnight.

The clocks will move forward at 1:00 a.m. to 2:00 a.m. At that point the terminal hour will be when the clock shows 4:00 a.m. (assuming immediate alteration of the clock).

End of BST

On such date as prescribed as the date in the Autumn when the clocks go back to mark the changeover from BST back to GMT at 2:00 a.m. BST clocks go back to 1:00 a.m. GMT.

Licensees who enjoy licensing hours beyond 1:00 a.m. will similarly close according to the number of hours after midnight which they are authorised by the Licensing Board to be open rather than the actual time shown on the clock. Therefore premises licensed until 3:00 a.m. will close 3 hours after midnight, when the clock should again show 3:00 a.m. (assuming immediate alteration of the clock).

Any Licensee who enjoys hours up until 1.00 a.m. is unaffected by the change of clocks. The Board does not accept that those licensed until 1.00 a.m. gain an additional hour on the changeover to British Wintertime.

6.6 Byelaws

The Moray Council has introduced bye-laws prohibiting the consumption of alcohol in designated public places. These bye-laws in terms of the Local Government (Scotland) Act 1973 currently apply to Elgin, Forres, Buckie, Keith and Lossiemouth.

The effect of the bye-laws is that any person who consumes alcoholic liquor in a designated public place shall be guilty of an offence. Licensed premises and Registered Clubs are exempt from the bye-laws. The bye-laws also state that they shall not have effect on 31 December from 6:00 p.m. until the end of that day and on 1 January until 6:00 a.m.

As licensed premises are exempt it is in the interests of applicants to take care to clearly mark on layout plans where external areas are to be counted as part of the licensed premises, for the purpose of outdoor drinking. Applicants within areas affected by a bye-law should also take all reasonable steps to notify customers of the existence of the bye-law and the obligation not to consume alcohol in public.

6.7 Underage Drinking

The Board strongly supports the use of the Access Moray Young Persons Card, which bears the Proof of Age Standards Scheme logo (PASS logo) available free to all young people under 26. To protect children and young persons and avoid crime the Board strongly urges licence holders and their staff to require the production of valid identification cards on a “no ID – no sale” basis.

Licensees are therefore strongly urged to practice due diligence to avoid underage sales. Due diligence will include:

- complying with the requirement to have an identification/challenge policy, i.e. to require ID if a customer appears under 25. This should also include clear signage to leave customers in no doubt as to the policy;
- training staff in the policy;
- ensuring that staff and customers comply with the policy; and
- keeping records regarding compliance including refusals.

This list is only illustrative and is not exhaustive.

6.8 Irresponsible Promotions

Protecting and improving public health is a licensing objective and the Board will view actions that encourage binge drinking as a serious matter.

Measures to tackle irresponsible drinks promotions include the prohibition of price varying within a 72 hour period, targeting irresponsible promotions such as ‘happy hours’.

The Scottish Executive is of the opinion that the comprehensive list below makes it clear as to whether any particular activity is considered irresponsible and the Board supports this opinion. An irresponsible promotion is one which:

- relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18;
- involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks)*;
- involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink*;
- involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises)*;
- encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume;
- is based on the strength of any alcohol;
- rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly;
- offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.

*applies to on - sales only.

The Board will require clear evidence linking the sale of alcohol to an inducement to the consumer to immediately drink to excess before a promotion will be considered as possibly irresponsible.

Initially complaints should be dealt with at a local level by the Licensing Standards Officer, who will mediate between the licensee and the Board to agree whether or not any promotion breached the mandatory licence conditions. In most cases it is hoped that these cases can be resolved in discussion between the LSO and the licensee without any sanctions being applied by the Board.

However, where the Board feels that further action is appropriate, it would instigate a review hearing to determine what action, if any, needed to be taken against the licensee concerned.

6.9 Overprovision

Section 7 of the Licensing (Scotland) Act 2005 requires each Licensing Board to include in its policy statement: a statement as to the extent to which the Board considers there to be an overprovision of:-

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

The Moray Licensing Board has undertaken an assessment of overprovision and a copy of that assessment is included at Appendix II.

For reasons given within the assessment it has not been possible to identify any locality within Moray where data supports a robust and compelling argument that the prevalence of licensed premises has reached, or is close to reaching, saturation point.

Therefore there is no presumption against the granting of new licences within any locality within Moray. Nevertheless, the Moray Licensing Board recognises that each application for a premises licence is still to be judged on its own merits.

7. Licensing Standards Officer (LSO)

The LSO for the Moray area can be contacted via the Moray Council's Trading Standards Department at 232 High Street, Elgin, IV30 1DJ.

The LSO cannot provide legal advice on particular issues and advice should be sought from a solicitor.

The Board will work with the Police, LSO, Fire Authority, and other Council departments for the targeting of agreed problem and high-risk premises. Lower risk premises which are well managed and well maintained will be subject to less regular inspections.

7.1 LSO Roles

The Licensing Standards Officer (LSO) for Moray has three primary roles:

- Advice – The LSO will be the first point of contact for anyone who requires general advice on the provisions of the Licensing (Scotland) Act 2005 and the Gambling Act 2005;
- Mediation – The LSO will also have a role in mediating on disputes involving alcohol licensed premises;
- Compliance – The LSO will undertake a programme of compliance visits. The LSO has certain powers to ensure licence holders comply with the Acts. In the worst case the LSO may recommend that the Board hold a hearing to review a licence. The LSO should be the first point of contact for anyone with a complaint or dispute and the Board envisages that most matters will be resolved at a local level through the mediation process involving the LSO.

7.2 LSO Consultations

The LSO is consulted on all applications where consultation is required.

8. Other Regulation

The Moray Licensing Board will not be used as an enforcement agency for other regulatory regimes.

Accordingly the Board will avoid, so far as possible, duplicating the roles of other regulatory regimes. 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 licence holder. The Board encourages applicants to consult with other relevant bodies when preparing their operating plans and any risk assessment.

Responsibility lies with applicants to comply with other regulatory regimes provided for by other Acts and Regulations. Applicants should make themselves aware of the requirements of other regimes and enforcement bodies and comply with the same. Complainants that come to the Moray Licensing Board regarding matters that could more properly be dealt with by other enforcement bodies will automatically be directed to the appropriate person(s).

Nevertheless the Board has a duty to promote the licensing objectives and, in this regard, will view certain matters as particularly serious and as having an impact on the regulation of the sale of alcohol, the premises on which alcohol is sold and connected purposes within the terms of the Licensing (Scotland) Act 2005. Examples of particularly serious matters are included at Appendix III.

8.1 Partners

8.1.1 Planning & Building Standards

The Board will expect planning permission to be in place before it deals with an application for a premises licence.

The Board will not cut across decisions taken by the Local authority planning committee, nor seek to challenge decisions taken by that committee. Similarly, the granting by the Licensing Board of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building warrant where appropriate.

8.1.2 Fire

Fire safety places a range of duties on the self-employed, employers and operators of venues and responsibility for enforcement of the same lies with the appropriate fire authority.

8.1.3 Police

The Board will co-operate with the Police and will seek to deal with the issues of excessive consumption of alcohol, binge drinking and underage drinking in so far as it is able to do so within the law.

The Board has asked the Police as a responsible authority to prepare a note on possible scenarios relating to licensed premises for door stewards to consider, for example search and seizure procedures.

The Moray Council and the police also operate in partnership in respect of local CCTV. Guidance on the specification and use of CCTV appears on the Licensing Board's website pages and is subject to updating from time to time.

Both of these documents have been produced on the Moray Council website and should be referred to by applicants.

8.1.4 The NHS

The Board must consult the NHS in respect of certain applications and policy issues and will take relevant comments into account.

8.1.5 Environmental

The Board will look at the impact of the licensed activity on members of the public living, working or engaged in normal activity in the area in question. This can include matters such as the type of use, numbers and type of customers likely to attend the premises, the proposed hours of operation, the level of public transport, the adequacy and impact of car parking and the frequency of the activity.

The Board has also asked The Moray Council Environmental Services Department as a responsible authority to prepare useful information and applicants will find at Appendix V a guide to preventing noise nuisance from licensed premises.

8.2 Relationships

Matters raised in relation to any application must be on relevant grounds and must relate to the sale of alcohol. Inevitably there will be a cross over between the licensing objectives and matters relevant to other regulatory regimes e.g. noise, planning, smoking, unsafe premises, fire prevention etc. Matters under these headings all relate to the licensing objectives. However they are also covered by other legislation and other regulators.

Please note that the Scottish Government and the Moray Licensing Board have made it clear that the licensing system must not duplicate other regulatory regimes. This means that the Moray Licensing Board will not allow licensing to be used simply as a means of putting additional pressure on an applicant where matters complained of should be dealt with by another regulator.

Where it is considered that objectors or representers are merely using the licensing system to their own ends rather than addressing the licensing objectives then matters raised may be rejected as vexatious.

8.3 Consultation

As part of application processing and/or pursuant to promoting the licensing objectives information may be exchanged with and/or sought from partner organisations.

8.4 Extra Information for Partner Organisations

Please refer to section 10.1.1 below.

Guidance issued by the Moray Licensing Board in respect of particular application types will indicate whether additional information is sought, particularly for the benefit of partner organisations. All information received in connection with an application may be shared with relevant consultees/partner organisations.

Where further information is sought then applicants are strongly advised to provide the same with their application. In the absence of information that may be required by consultees/partner organisations to meaningfully comment the application may be delayed by objections/representations that will need to be addressed (by additional information) before the application can proceed.

9. Types of Licence & Applications

For application processes please see section 10 below.

9.1 Premises

The operating plan should set out clearly the applicant's proposals including the activities that would be undertaken on the premises, proposed opening hours and their policy in relation to access for children.

The Moray Licensing Board will welcome accessibility for families including children and facilities suitable to cater for children.

The form of the operating plan and layout plan are set out in regulations made under the Act and applicants should also see relevant sections in this policy.

The Board should be able to determine with certainty the kind of operation which would be permitted in terms of the licence, and be assured that the premises will continue to operate on that basis once a licence is granted.

9.1.1 Variations

When a premises licence is in place, the licence lasts indefinitely and so to allow for changes to circumstances it is possible to apply to vary that licence. There are two types of variation application:

9.1.1.1 Variation

Section 29(5) defines a variation as meaning any variation (which includes addition deletion or other modification) of:

- (a) any of the conditions to which the licence is subject (*other than those to which the licence is subject by virtue of section 27(1) which are Schedule 3 mandatory conditions*);
- (b) any of the information contained in the operating plan contained in the licence;
- (c) the layout plan contained in the licence (subject to s.29(6)(a) below); or
- (d) any other information contained or referred to in the licence.

Many variations will be structural variations like changes of layout, extensions being built etc. Most such variations, irrespective of the scale of work, will constitute a

(major) variation to the licence. Structural alterations should be the subject of a variation application before work starts so as to ensure the licence variation will be granted. Once the variation is granted then the Board will retain the varied licence so as to allow the premises to continue to trade under the original licence whilst building works are undertaken. Once building works are complete the applicant can confirm conformity to the varied licence and the varied licence can be issued.

There is no provision to obtain s.50 certificates for structural alterations although in practice if alterations take place without relevant permissions then the relevant council department(s) are likely to make a representation. It would therefore be wise for applicants to produce copy permissions or s.50 certificates with the application in order to confirm compliance with other regulatory regimes.

In respect of very large scale works like reconstruction consideration should be given to instead applying for a new provisional premises licence, which may be more suitable than a variation.

9.1.1.2 Minor Variation

Section 29(6) defines a minor variation as:

- (a) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,
- (b) where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises,
- (c) any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and
- (d) any other variation of such description as may be prescribed for the purposes of this subsection.

The following have been prescribed for this purpose:

- (a) where the name of the premises is disclosed in the premises licence, any change in that name;
- (b) a temporary or permanent reduction in the licensed hours which does not result in the premises opening any earlier or closing any later than stated in the premises licence and operating plan;
- (c) in relation to the access of children or young persons onto the premises any variation to the operating plan so as to—
 - (i) increase the minimum age at which children or young persons may be allowed onto the premises;
 - (ii) reduce the times at which children or young persons are allowed onto the premises;
 - (iii) restrict the access of children or young persons to certain parts of the premises;
- (d) any reduction in the capacity of the premises whether resulting from a variation to the layout plan or otherwise;
- (e) any variation resulting in the cessation of the provision of live or recorded music at a decibel level exceeding 85 decibels;
- (f) any variation to provide that, when the premises are fully occupied, more customers are likely to be seated than standing.

Despite the lack of further prescription it seems inherently correct that the greater should include the lesser and that minor variations should also include any restriction in trading that has already been allowed. Therefore, in appropriate circumstances, the Board will consider treating the following as minor variations:

- Any change of address of the licence holder, premises manager or connected person.
- Taking part of the premises out of use
- Any reduction in activities approved in the operating plan

Note that where a premises manager leaves a premises or becomes incapable of performing that function has his/her personal licence suspended/revoked then the licence holder must give notice to the Board within 7 days of that event. The licence holder then has 6 weeks in which to apply to substitute the premises manager. Section 31 also applies in relation to a premises licence variation application where the variation sought is the substitution of another individual as the premises manager and the applicant requests in the application that the variation should have immediate effect. Where section 31 applies, the premises licence to which the application relates has effect during the application period (the time from receipt of the application by the Board to its determination or withdrawal) as if it were varied as proposed in the application.

9.1.2 Transfers

There are two types of transfer application, either by the licence holder or the intended transferee.

The Licensing Board must give notice of it to the appropriate chief constable. Within 21 days the chief constable must respond to the notice with details of any convictions by the transferee or any connected person. Where convictions exist the chief constable may include a recommendation for refusal if necessary for the purpose of the crime prevention objective.

Section 33 Application by Licence Holder to Transfer

By s.33(1) A premises licence holder may apply to the appropriate Licensing Board for the transfer of the licence to such person as is specified in the application and the transferee may not be an individual under the age of 18 (s.33(2)).

By s.33(3) An application must be accompanied by the premises licence (or a lost licence declaration).

9.1.2.1 Section 34 Application by a Person OTHER than the Licence Holder to Transfer

By s.34(1) the applicant must not be an individual under 18, must not be a premises licence holder and must fall within one of these categories (specified within the Licence Transfer (Prescribed Persons) (Scotland) Regulations 2007 SSI 2007 No. 34). Application must be made within 28 days of the specified event. The specified event and the person who can apply in each circumstance are:

- 9.1.2.1.1 Death – on the death of the licence holder the person who may apply is any executor or personal representative of the licence holder.
- 9.1.2.1.2 Incapacity – on the incapacity of the licence holder (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) the person who may apply is: (a) any person who has been granted a power of attorney by the licence holder; or (b) any person authorised to act on behalf of the licence holder by virtue of the Adults with Incapacity (Scotland) Act 2000.
- 9.1.2.1.3 Insolvency – when the licence holder (individual/partnership/company) becomes insolvent the person who may apply is any person acting as insolvency practitioner (within the meaning of section 388 of the Insolvency Act 1986) in relation to the licence holder. An individual or partnership becomes insolvent on: (i) the approval of a voluntary arrangement proposed by the individual or partnership; (ii) being adjudged bankrupt; (iii) the individual's or partnership's estate being sequestrated; (iv) entering into a deed of arrangement made for the benefit of creditors; or (v) granting a trust deed for creditors. A company becomes insolvent on: (i) the approval of a voluntary arrangement proposed by its creditors; (ii) the appointment of an administrator or administrative receiver in respect of it; or (iii) going into liquidation.
- 9.1.2.1.4 Dissolution – when the licence holder (OTHER than individual/partnership/company) is dissolved the person who may apply is any person responsible for administering the dissolution of the licence holder.
- 9.1.2.1.5 Transfer of business – where the business carried on in the licensed premises is transferred (whether by sale or otherwise) to another person the person who may apply is any person to whom the business in question is transferred.

The application must be accompanied by the premises licence or a lost licence declaration. The applicant should also provide evidence of their status to bring the application e.g. the executor's confirmation, the attorney's power of attorney, the licensed insolvency practitioner's certificate of appointment. In cases of a transfer of business please provide evidence to confirm the transfer e.g. concluded missives and separate confirmation of settlement.

9.1.3 Extended Hours

An occasional extension allows for ad hoc occasions for specific premises where a licensee wishes to provide for the sale of alcohol for a period beyond the normal hours during which alcohol may be sold under the premises licence.

The Board wishes to make it clear that regular seasonal events like Christmas should be accounted for within operating plans.

Where it is not possible to predict the demand for additional hours because premises are being asked to handle or wish to provide for an event at short notice, the application must relate to a special event or occasion to be catered for on the premises.

The Board will have complete discretion as to whether to grant the application taking into account any Police objections, any comments from the Licensing Standards Officer(s) (LSO – for which see section 7 above) and having regard to the licensing objectives. The Board may hold a hearing for the purposes of determining any application, but this is not mandatory. Where the Board does not hold a Hearing, the Board will ensure that before determining the application, the applicant is given an opportunity to comment on any objections from the Police or adverse comments from the Licensing Standards Officer(s).

No extension can be granted to operate for a period of more than one month and such an extension cannot be further extended.

9.2 Provisional Premises

A provisional premises licence may be granted prior to building / during renovation of a premises.

The provisional premises licence has to be confirmed within 2 years, otherwise it will automatically be revoked. Upon confirmation the Board may make a variation of the conditions to which the licence is subject.

9.3 Personal

Every premises will require one or more personal licence holders.

The personal licence is intended to ensure that anyone managing premises is suitably capable of doing so. Whilst the Act requires every sale to be "authorised" by a personal licence holder, such authorisation can be a general one.

The Board will expect the terms of any general authorisation for the sale of alcohol to be specific, available for inspection by any Licensing Standards Officer, brought to the attention of and signed by all parties involved and enforced by the premises manager.

The Board does not consider that a personal licence holder is required to be on the premises at all times. However where a personal licence holder is not present they are not removed from all responsibility. This should be addressed in the terms of the authorisation.

9.4 Temporary Premises

Where a licence holder wishes to carry out alterations etc to the principal licensed premises then the Board can issue a temporary licence for a secondary premises to enable the licence holder to continue to trade pending completion of the works.

To issue a Temporary Premises Licence the Board must be satisfied that:

- the temporary premises are suitable for use for the sale of alcohol; and
- that it is necessary to grant the application to enable the applicant to carry on business pending reconstruction or conversion of the principal premises.

The Board may vary the conditions to which the licence is subject, if it considers appropriate to do so.

9.5 Occasional

An occasional license may be granted to the holder of a premises licence / the holder of a personal licence / a representative of a voluntary organisation authorising him/her to sell alcohol at an occasion/function for a period of not more than 14 days where the event is taking place outwith their licensed premises.

Voluntary organisations and members' clubs are restricted in the number of occasional licences they can request. Voluntary organisations are also subject to the mandatory condition that Alcohol may be sold on the premises only at an event taking place on the premises in connection with the voluntary organisation's activities.

The Board must give notice of it, together with a copy of the application, to—

- (a) the appropriate chief constable: and
- (b) the Licensing Standards Officer (LSO).

Within 21 days of receiving the notice the chief constable may recommend refusal if it is considered necessary to prevent crime. Also within 21 days the LSO can provide comments on the application.

These minimum time periods mean that late applications may not be accepted.

At the same time as notice is given to those above the application will also be advertised on the Board's website for a continuous period of 7 days and during that 7 day period any person may lodge an objection or representation in respect of the application.

"Any person" will include, for example, the council's Building Standards department and/or Environmental Health department. Those departments are especially interested when an occasional licence is sought for a temporary structure e.g. marquee or previously unused area/building where there may be issues of public safety, public nuisance etc in accordance with the licensing objectives.

If there are no objections/representations at all then the application must be granted. It is likely these will be dealt with under delegated powers (unless they are complex or made at short notice).

If there are objections/representations then the Board must consider whether grounds for refusal exist. If so then the application must be refused. If no grounds for refusal exist then the application must be granted. Where the Board must consider the application, applicants will be dependent upon arrangements for Board meetings.

In terms of refusal, the grounds for possible refusal are:

- That the premises to which the application relates are excluded premises;
- That the application must be refused under section 64(2) (presumption against 24 hour opening) or 65(3) (off sales outside the period 10a.m. to 10p.m.);
- That the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives;
- That, having regard to the nature of the activities proposed to be carried on, the location, character and condition of the premises, and the persons likely to frequent the premises, the Board considers that the premises are unsuitable for use for the sale of alcohol.

An occasional licence will be subject to the mandatory conditions as set out in Schedule 4 of the Licensing (Scotland) Act 2005. An occasional licence may also be subject to the following:

- The Board's condition regarding a curfew for which see section 6.5.5 above
- The mandatory condition regarding first aid as contained in Schedule 3 to the Licensing (Scotland) Act 2005
 - Section 60 provides for conditions of occasional licences. Section 60(4) in particular provides that:
"...where a Licensing Board grants an occasional licence, the Board may impose such other conditions (in addition to those to which the licence is subject..." by virtue of mandatory conditions "... as they consider necessary or expedient for the purposes of any of the licensing objectives. "
- The Board will take any consultee response into account when granting a licence and before making a final decision may seek agreement from the applicant as to whether the applicant agrees certain conditions. The Board may publish a list of possible conditions to which the licence may be subject from time to time.
- Where the Board considers it appropriate in accordance with a licensing objective, an occasional licence for a voluntary organisation may be subject to additional requirements as above
- NB where stewards are required applicants are advised to review the requirements for stewards to have appropriate SIA registration at <http://sia.homeoffice.gov.uk/Pages/home.aspx>

The following matters are also relevant to occasional licences:

- There are no specific training requirements with regard to staff for occasional licences but note a mandatory condition regarding the sale of alcohol being authorised by a personal licence holder. This condition applies only where the applicant is a premises or personal licence holder and NOT where the applicant is a voluntary organisation.
- Whilst ever an occasional licence is in force there must be displayed on the premises in a position where it is readily visible to any person seeking to buy alcohol, a sign regarding the sale of alcohol to under 18's.
- Whilst ever an occasional licence is in force in respect of premises used wholly or mainly for the purposes of a club the conditions of any premises licence issued in respect of the premises are not to have effect.
- Occasional licences authorise the sale of alcohol only and the issue of a licence is not to be taken as any endorsement of the event or other arrangements e.g. those related to fire safety or food hygiene. It is always up to the organisers to undertake their own risk assessments and organisers remain responsible for public safety. Licences may be issued with a disclaimer to that effect.

9.6 EU SD & Electronic Applications

Applications can be accepted in electronic format, paper format or a combination of the two.

10. Applications Processes

10.1 General Pre Application Matters

10.1.1 Info & Docs Required

10.1.1.1 Risk Assessment

The Board strongly recommends that applicants complete a risk assessment in respect of the premises and to provide a copy of this to the Board with the application and operating plan. A risk assessment should be an end-to-end process with thought being given to the potential risks for patrons queuing up to gain access to the premises right through to patrons leaving the immediate vicinity of the licensed premises. Licensees are reminded that all activity directly connected to their premises, both inside and out, should be considered.

Adopting a risk assessment approach will mean that applicants should better understand what steps are required to complete the operating plan in a manner which enables the Board and Responsible Authorities and Interested Parties to assess how they will seek to promote the licensing objectives. A risk assessment is as individual as an operating plan and will vary according to the nature of the business.

The Board recognises that applicants best understand their business and it is for applicants to decide what is appropriate in each case.

Completion of a Risk Assessment enables the Moray Licensing Board to be less prescriptive in terms of conditions. To assist applicants the Moray Licensing Board has devised a risk assessment proforma. It contains many of the key factors which the responsible authorities will be expecting applicants to meet in order to fulfil the licensing objectives. The contents are not exhaustive but the risk assessment approach will reduce the possibilities of adverse representations. An applicant who decides not to complete or provide a risk assessment may face additional representations.

It is recognised that wherever possible the Moray Licensing Board should seek to avoid duplication of other regulatory regimes. Some areas of the risk assessment may duplicate issues which applicants have previously addressed in order to satisfy other legislation. Where this does occur, applicants may cross reference to such alternative documents and copies of the same may accompany the application. An example of this is an existing fire risk assessment.

If a risk assessment is not completed then applicants should be demonstrating how these matters have been addressed through the operating plan provided.

Applicants are particularly directed towards the section regarding children in licensed premises (at 11.2) as the risk assessment will be particularly important in this regard.

The pro-forma risk assessment can be found at Appendix VI.

10.1.1.2 Operating Plan

The operating plan for the premises should comply with regulations. Every operating plan must set out clearly the applicant's proposals including the activities that would be undertaken on the premises, proposed opening hours and their policy in relation to access for children.

Operating plans will encourage a flexible licensing regime. They must make clear to the Board how the premises are to be run, including full details of all activities to be undertaken on the premises and the times they will be undertaken. This will include seasonal variations. Operating plans must be provided with each application in a

prescribed format and should be particular to each premises and not completed in general terms.

The operating plan should include detailed information and, in turn, the information provided will enable the Board to make an informed decision and later determine if a breach of the operating plan and/or the licence conditions has occurred.

The Board recognises that it is not always possible for licence holders to predict customer demand and requirements. However a balance must be struck between vague references to potential activities and definite details of actual activities. Matters that cannot be predicted when formulating an operating plan can be the subject of an occasional license, an occasional extension or, for regular activities, a variation to the operating plan.

Where a material breach of the operating plan has occurred, the Licensing Standards Officer or the Board may initiate a review of the licence. The Act allows anyone to apply to the Board for a review of the licence.

10.1.1.3 Layout Plan

The layout plan of the premises should comply with Regulations.

Where applicants wish to depart from the prescribed scale then plans that are line drawings will be accepted on a scale of 1:50.

Applicants are requested to pay particular attention in plans to area(s) where alcohol will be sold, seating arrangements and area(s) suitable for children, beer gardens, outdoor seating areas and smoking areas.

Where the premises covers more than one floor then there should be a layout plan for each floor.

The Board expects plans as far as possible to be of good quality. Inadequate and/or illegible plans may be rejected. Plans will be accepted in paper or electronic format.

For ease of distribution and security applicants are requested to note that wherever possible electronic format should be **.pdf**. Other types of specialist application, like .cad, or general applications prone to manual alteration should not be used as they may hinder processing and delay issue of any licence.

In addition electronic format files should be under 4 megabytes in size. This is owing to physical limitations of the current computer systems that support the Board's functions. Applicants are warned that file sizes over this limit may not be delivered at all and may not, therefore, be processed.

10.1.2 Guidance

Guidance is available on the Moray Licensing Board's web pages (at www.moray.gov.uk/licensing) or upon request (see contact section 3.4 above).

10.1.3 Forms and Fees

Forms and details of fees are also available on the Moray Licensing Board's web pages (at www.moray.gov.uk/licensing) or upon request (see contact section 3.4 above).

10.2 Specific Pre Applications Matters

10.2.1 New Premises/Occasional Applications – Application in the first instance will be checked by the Clerk of the Licensing Board to ensure that they are

competent, complete and correct. It is therefore advisable that applicants complete all questions on the relevant application form and provide as much detail as possible.

- 10.2.2 Application to Vary a Premises Licence – Premises licence holders can apply for variations to the terms and conditions of the premises licence. All such applications must be accompanied by the original premises licence or a written explanation as to its loss. Each variation application will be considered on its own merits. It is in the interests of applicants, and acceptable, for applicants to be able to include as many proposed variations as they wish within a single variation application and again each proposed variation will be judged individually. This could mean that the variation application itself may be granted/refused in part.
- 10.2.3 Application to Transfer a Premises Licence – A premises license holder (s.33) or other prescribed person (s.34) may apply to the Licensing Board to transfer the licence. They must transfer the licence to a legal persona and in accordance with the conditions sets out in ss.33-34 of the Act.
- 10.2.4 Extended hours – An extension of permitted hours can be granted to a licence holder in connection with any occasion/function taking place on his/her licensed premises and lasting not more than one month.
- 10.2.5 Occasional Licence – Please see section 9.5 above.

10.3 General Processing Application

10.3.1 Timescales

Attached at Appendix XI is a list of application types and their respective processing target dates.

The Moray Licensing Board aims to process all applications within the target dates and in many cases processing times will be significantly shorter than those quoted.

Tacit consent will not apply to the types of applications listed as it is a criminal offence to sell alcohol without the correct licence in place.

10.3.2 Notification of Applications

The Board will have to deliver, within 21 days of receipt of the application, notification of each application to every occupier of any property within a 4 metre radius of any part of the boundary of the premises. The Board will also publish notice of each application on the Moray Council's website and/or a designated public access system available on the internet.

10.3.3 Objections / Representations

The new licensing system allows anyone to object to or make representations to a Licensing Board about any application for a premises licence.

An objector is someone who opposes the grant of any licence at all. Objectors should address the statutory grounds for refusal of a licence including the licensing objectives.

A person making a representation is someone who is not concerned with the issue of a licence in principle. A representation is concerned with the conditions or the suggestion of possible modifications that could be made to the operating plan and layout plan. Representations can also be made in support of an application.

The Board will reject what it considers to be frivolous or vexatious objections or representations and may seek to recover resultant wasted expenses.

The Board will address each case on its own merits, based on its local knowledge of the area and those that will be directly affected by the granting of a licence.

10.3.4 Hearings

The Moray Licensing Board has produced a standard set of hearing procedures that are set out in full in Appendix IX.

The Moray Licensing Board will always endeavour to ensure that the rules of natural justice are observed.

Hearings will generally be conducted in public although The Moray Licensing Board may deliberate in private.

In exceptional circumstances, for example to protect a particular commercial interest, a party may request that a hearing be conducted in private. Consideration will be given to this having regard to the interests of natural justice, fairness and potential prejudice to other parties.

In general a hearing will take the form of a discussion led by The Moray Licensing Board and in particular the Convenor. The Moray Licensing Board wishes to create, as far as possible, a less formal and more relaxed atmosphere so as not to intimidate parties.

Each party will have the opportunity to address the Board and present evidence.

10.3.5 Conditions

Flexibility to deal with local circumstances is a vital component of the new licensing regime. However, local discretion must be balanced with a clear and effective national framework within which Licensing Boards operate.

Applicants should take note of mandatory conditions that apply to all premises opening late i.e. after 1:00 a.m. as well as certain types of premises opening after 1:00 a.m. Applicants should confirm in their operating plans the measures put in place to comply with any such conditions.

The Board when considering any premises licence whose operating plan states that they wish to operate after 1:00 a.m. may find it appropriate to supplement the mandatory late opening conditions with other conditions. Sample additional conditions can be found in Appendix VII.

The addition of such conditions will be appropriate and proportionate and made on a case by case basis after consideration of antisocial behaviour reports submitted by the Police and the effective delivery of the licensing objectives of the 2005 Act.

The Board may attach a condition to a premises licence which is mandatory for certain premises which falls outwith the prescribed definition of conditions if it is thought to be necessary and proportionate. The Board may also decide the time at which individual conditions should come into operation for each licence.

10.4 Specific Processing of Applications

Applications in the first instance will be checked by the Clerk of the Licensing Board to ensure that they are competent, complete and correct. It is therefore advisable that applicants complete all questions on the relevant application form and provide as much detail as possible.

10.5 General Post Application

10.5.1 Form of Licence

Licences will be issued within a target date of 7 days from the date of grant at the Licensing Board.

Licences are issued with guidance relevant to the particular licence. In particular the following will also apply:

- Occasional licences may be issued with a disclaimer (see occasional licences above at section 9.5).
- Personal licences will be issued with a credit card style badge as evidence that the holder has a personal licence. The badge does not take the place of the paper licence. It is merely issued for convenience so that the holder can carry evidence of the licence without having to carry the licence at all times. The police and the LSO have agreed to accept the badge as evidence that a licence is in place but they may still require production of the paper licence itself.

10.5.2 Duties

Under section 52 of the Act the premises licence holder must secure that the premises licence, or a certified copy of it, is kept at the premises under the control of the licence holder or the premises manager.

The summary licence, or a certified copy of the summary, must be prominently displayed on the premises so as to be capable of being read by anyone frequenting the premises.

The premises licence must be produced on demand by a constable or the Council's Licensing Standards Officer.

Failure to comply with any of the above is an offence.

Section 53 allows the licence holder to apply for a replacement licence or summary licence where the original is lost or stolen as long as the loss or the theft of the licence has been reported to the police to obtain a crime or reference number.

10.5.3 First aid

The mandatory condition attached to every premises licence where opening hours pass 1:00a.m. (01:00) is that a person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 1.00a.m. (on any day when the premises are open at that time) until whichever is the earlier of:

- a. the time at which the premises next close; and
- b. 5.00a.m.

The Moray Licensing Board has decided that the training standard set by the Health and Safety Executive for either the Basic First Aid at Work (FAW) or the newer Emergency First Aid at Work (EFAW) certificate will be adopted as suitable for the purpose of the mandatory condition.

The standard adopted is equivalent to emergency first aid being a 6 hour one day course designed to meet the needs of persons appointed to be first aiders in the work place which covers those aspects of first aid required to meet emergency situations such as bleeding, breathing and resuscitation.

The HSE runs an accreditation scheme for first aid training providers and currently publishes a list of training organisations approved by the HSE to deliver First Aid at Work courses.

HSE first aid certificates expire after 3 years and towards the end of that period the certificate holder needs to undergo a refresher first aid course in order to renew the certificate. This will be a requirement of continuing to hold a valid certificate.

10.5.4 Late night conditions

Certain late opening premises (as defined below) are also subject to additional late opening premises licence conditions.

Late opening premises subject to additional conditions are those where the premises has a capacity of at least 250 people and which–

- (a) will regularly provide at any time in the period between 1:00 am and 5:00 am–
 - (i) live or recorded music with a decibel level exceeding 85dB;

- (ii) facilities for dancing; or
- (iii) adult entertainment; or
- (b) when fully occupied, are likely to have more customers standing than seated.

Exempt from the above are premises:

- where the primary function is the service of food;
- which include, or are part of larger premises which include, at least 6 letting bedrooms;
- Licensed Cinema or Theatre
- which are, or are part of, an art gallery.

The conditions are:

- A personal licence holder must be present on the premises from 1:00 am until closure or 5:00 a.m. (whichever is the earlier)
- There must be written policies in existence concerning evacuation and misuse of drugs
- A CCTV system must be installed on the premises to the satisfaction of the appropriate Chief Constable and must be kept in good working order.
- There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.
- An SIA registered door supervisor must be positioned at every entrance to the premises from 1:00 am until closure or 5:00 a.m. (whichever is the earlier).

11. Scheme of Delegation

Attached at Appendix VIII is a copy of the Board's scheme of delegation.

12. Other Board Policies

12.1 Gambling 5.9

Attention is drawn to the Board's statement of licensing policy under the Gambling Act 2005 which can be accessed by following this link:

www.moray.gov.uk/moray_standard/page_51234.html

12.2 FOI Publication Scheme

12.3 Equalities

The Board has equality schemes in respect of race, disability and gender. The schemes can be found on the Moray Council's website at the following link:

www.moray.gov.uk/licensing

As with the duty to promote the licensing objectives, the Moray Licensing Board is acting under various duties placed on it by legislation connected with equality strands. In all things it does, including formulating policies, the Board must have regard to the need to eliminate discrimination and promote equalities. The Board would welcome all attempts by licensees to address equality issues in the operating plan, including facilities for disabled persons.

However, ultimately responsibility lies with applicants to comply with other regulatory regimes, including equalities, provided for by other Acts and Regulations. Applicants should make themselves aware of the requirements of other regimes and enforcement bodies and comply with the same. Complainants that come to the Moray Licensing Board regarding matters that could more properly be dealt with by other enforcement bodies will automatically be directed to the appropriate person(s).

13. Complaints Procedure

The LSO will investigate complaints against licensed premises in relation to matters relating to the licensing objectives. In the first instance, complainers are encouraged to raise the complaint directly with the licensee or business concerned to seek a resolution.

If direct communication with the licence holder proves ineffective then the complaint may be raised with the LSO, perhaps for mediation.

Where an interested party has made valid representations about licensed premises, or a valid application for a license to be reviewed, the LSO may initially recommend a conciliation meeting to address and clarify the issue of concern.

The Moray Licensing Board will expect all complaints to go through the mediation process before being referred to the Board.

Where a matter is not resolved by mediation, the Board will give each party the chance to make written submissions and comments on the other party's submissions before making a decision based on the facts. The Board may also choose to hold a hearing and will give the parties reasonable notice if they do so. If a hearing is to take place, procedures regarding the conduct of hearings can be found in Appendix IX.

The Board will consider the activities listed in Appendix III to be particularly serious matters when considering enforcement of the licensing objectives.

A full copy of the Complaints Procedure is also included at Appendix X.

14. Enforcement

14.1 Test Purchasing

Test purchasing may be carried out by the Police. In the event of one or more test purchase failures The Police may make a review application.

14.2 Licence Reviews

The Licensing Board may, for the purposes of the premises review hearing, obtain further information from such persons, and in such manner, as the Board thinks fit, and take the information into account. In particular, the Board may request the attendance of any person for the purpose of providing information and the production of any documents in any person's possession or control. All such information may be taken into account.

14.3 Sanctions

Each matter will be taken on its own merits and the Board's will be proportionate when deciding upon a course of action.

14.3.1 Premises Licence

If a ground for review is established then the Board may:

- Take no action
- Issue a written warning to the licence holder,
- Make a variation of the licence,
- Suspend the licence for such period as the Board may determine,
- Revoke the licence.

14.3.2 Personal Licence

Where the Board receives notice of relevant conviction(s) on the part of the licence holder then the Board must hold a hearing and at the hearing. The Board must also hold a hearing upon request from the police if it is alleged that a licence holder has

acted in a manner that is inconsistent with any of the licensing objectives.

After hearing the parties and considering the matter and any recommendation from the police, the Board may take no action or revoke, suspend (for a period not exceeding 6 months) or endorse the licence. The Board must be satisfied that action is necessary for the purposes of any of the licensing objective.

15. Registers

Information supplied by an applicant for a licence to the Board will be held and processed by the Board for its purposes as a licensing authority. That data will be disclosed to the Police and other public bodies involved with licensing, processing and enforcement. The Board will enter data on its register of applications which may be inspected by members of the public on request and certified copies of entries on this register may be issued to members of the public on request and on payment of the appropriate fee. Applicants may check or amend data held or request deletion of data by contacting the Clerk of the Licensing Board, Council Offices, High Street, Elgin, IV30 1BX.

The Moray Licensing Board will keep registers of applications/licences in accordance with statutory requirements.

The Board has adopted a freedom of information scheme under section 23 of the Freedom of Information (Scotland) Act 2002. A copy of this scheme can be accessed on the Moray Council website – www.moray.gov.uk/licensing