

Notice of Meeting and Agenda



Midlothian Licensing Board

Venue: Council Chambers,
Midlothian House, Dalkeith, EH22 1DN

Date: Thursday, 15 November 2018

Time: 11:00

Director, Resources

Contact:

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Further Information:

This is a meeting which is open to members of the public.

1 Apologies

2 Minute of Previous Meeting

- | | | |
|------------|---|-------|
| 2.1 | Minute of Meeting of the Board held on 13 September 2018
Paper No. 1 | 3 - 4 |
| 2.2 | Minute of Meeting of the Board held on 23 October 2018 - Paper
No. 2 | 5 - 6 |

3 Applications to be Considered

- | | | |
|------------|--|----------|
| 3.1 | Draft Licensing Policy - Report by Clerk to the Board - Paper No.
3 | 7 - 62 |
| 3.2 | Gambling Act 2005 Review - Report by Clerk to the Board - Paper
No. 4 | 63 - 98 |
| 3.3 | Summary Report of applications received for consideration | 99 - 100 |

4 Any Other Matters

5 Date of Next Meeting

The next meeting will be held on 20 December 2018 at 11.00 am

MINUTES of MEETING of MIDLOTHIAN LICENSING BOARD held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith, on Thursday, 13 September 2018 at 11am.

Present:

Dianne Alexander, Colin J Cassidy, Russell Imrie, Janet Lay-Douglas, Derek Milligan (Chairman), Margot Russell, Peter Smail, Pauline Winchester, Kenneth Baird and Kieran Munro.

Minutes

Minutes of Meeting, dated 21 June 2018 were approved by the Board

1. **Licensing (Scotland) Act 2005 - Application for Variation of Premises Licence – Polton Inn, Polton Road, Lasswade**

With regard to the Application by Punch Partnerships (PTL) Limited, the Board noted that all reports were satisfactory and granted the application.

2. **Licensing (Scotland) Act 2005 – Application for Variation of Premises Licence – Morrisons, Eskbank Road, Dalkeith.**

With regard to the Application by Wm Morrison Supermarkets plc, the Board noted the representation from NHS Lothian and heard Elizabeth Oldcorn in support of the representation. The Board then heard the applicant's agent, Niall Hassard in support of the Application. After hearing all parties, the Board granted the Application.

3. **Licensing (Scotland) Act 2005- Application for Variation of Premises Licence – 103a Burnside Road, Gorebridge**

With regard to the Application by Safdar Sardar, the Board noted that all reports were satisfactory and granted the Application.

4. Licensing (Scotland) Act 2005 - Application for Variation of Premises Licence – Stobsmill Inn, 25 Powdermill Brae, Gorebridge

With regard to the Application by A and F White Limited, the applicant agreed to comply with the recommendations in the report by Police Scotland, dated 23 August 2018. The Board granted the Application.

5. Licensing (Scotland) Act 2005 – Application for Provisional Premises Licence – Shell, Newtonloan Toll, Gorebridge

With regard to the Application by Shell UK Oil Products Limited, after considering all reports and objection from NHS Lothian the Board then heard Andrew Hunter, the applicant's agent, in support of the Application who also circulated a market research report for the Board Members to consider. After considering all reports, the Board found that the premises were not excluded premises in terms of Section 123 of the Act and granted the Application.

6. Licensing (Scotland) Act 2005 – Application for Premises Licence – 12A Stobhill Road, Gorebridge.

With regard to the Application by Mary Caulfield, her agent, Alistair Macdonald agreed to comply with the recommendations in the representation from NHS Lothian, dated 13 August 2018 and report from the Licensing Standards Officer dated 30 August 2018. The Board granted the Application.

The meeting terminated at 12 noon.

MINUTES of MEETING of MIDLOTHIAN LICENSING BOARD held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith, on Tuesday, 23 October 2018 at 11am.

Present:

Dianne Alexander, Colin J Cassidy, Russell Imrie, Derek Milligan (Chairman), Margot Russell, Kenneth Baird and Kieran Munro

Apologies: Janet Lay-Douglas and Peter Smail

1. Licensing (Scotland) Act 2005 - Premises Licence Review Application - U Save, 8-10 Dundas Bonnyrigg – remitted for re-consideration by Edinburgh Sheriff Court.

With regard to the Application there were reference to appendices regarding CCTV footage which was then circulated to the Board Members.
The Board heard Inspector Dryden in support of the report dated 26 July 2017.

The Board then heard Niall Hassard on behalf of Aziz Mustafa. Mr Hassard advised that Mr Mustafa has fresh eyes on moving forward having previously been very distressed and was lacking in confidence and that since the previous Hearing his client had taken time to take stock of what had happened. Mr Hassard advised that Robin Morton, Solicitor in licensing law had completed a compliance visit to the premises (copies of compliance visit circulated to Board Members), CCTV had been installed at the premises and that it would be wrong to punish Mr Mustafa and it would be better if he was given the chance to move forward.

After questions from Board Members and answers from Mr Hassard and Inspector Dryden, the Board found that the grounds for review had been established and agreed that a written warning be issued to Mr Mustafa regarding preventing the sale of alcohol to children and young persons.

The meeting terminated at 12.35pm

Licensing Board Policy

Report by Alan Turpie, Clerk

1 Purpose of Report

The purpose of this report is to seek approval of the terms of the proposed Licensing Board Policy November 2018 to November 2023.

2 Background

- 2.1** As Board members are aware, the Board is required, in terms of section 6 of the Licensing (Scotland) Act 2005, to publish a Licensing Policy Statement in respect of the exercise of their powers under the Act. Previously, each Policy Statement had a duration of three years but this has been amended and the Act now requires that a Licensing Policy Statement must be in place by November 2018 and run for a period of 5 years.
- 2.2** In preparing the Licensing Policy Statement, the Board must ensure that the policy seeks to promote the licensing objectives. The Board must also consult the Midlothian Licensing Forum, the Health Board and any other persons the Board considers appropriate.
- 2.3** Accordingly, in preparing the Policy document, in addition to the Forum and the Health Board, the following bodies have been consulted as well as a public consultation:
- Midlothian Council
 - Police Scotland,
 - Scottish Fire & Rescue Service,
 - Midlothian Child Protection Committee,
 - Community Councils within the Midlothian area
 - MDAAT,
 - Alcohol Focus Scotland
 - Representatives of licensees.
- 2.4** In terms of Section 7 of the Act, the Licensing Policy Statement also has to include a statement as to the extent to which the Board considers there to be overprovision of (a) licensed premises or (b) licensed premises of a particular description in any locality within the Board's area. When considering overprovision, the Board must consult:
- Police Scotland
 - The Health Board
 - Representatives of premises licence holders
 - Representatives of local residents; and
 - Any other persons the Board considers appropriate.

- 2.5** In order to be effective, the Policy should be evidence based. ^{Item 3.1} The Community Safety team of Midlothian Council have provided statistics on alcohol use within Midlothian and these statistics have formed part of the public consultation and the basis of the joint meeting between the Forum and the Licensing Board held earlier this year to consider overprovision.
- 2.7** Other than the overprovision statement, there have been relatively few amendments to the draft policy through the consultation process. The proposed Licensing Policy Statement is attached at Appendix 1 to this report. The amendments are shown track-changed on the Statement and Members are referred specifically to Part 4 Overprovision

3 Report Implications

3.1 Resource

There are no resource implications in this report.

3.2 Risk

It would be a breach of the Licensing (Scotland) Act 2005 should the 2018 Licensing Policy Statement not be approved by November 2018. Further, it could be claimed that the Board would not be fully supporting the Licensing Objectives if decisions were based on an out of date Policy.

3.3 Single Midlothian Plan and Business Transformation

Themes addressed in this report:

- ☐ Community safety
- ☐ Adult health, care and housing
- ☐ Getting it right for every Midlothian child
- ☐ Improving opportunities in Midlothian
- ☐ Sustainable growth
- ☐ Business transformation and Best Value

x None of the above

3.4 Key Priorities within the Single Midlothian Plan

This report does not affect key priorities within the Midlothian Single Plan

3.5 Impact on Performance and Outcomes

This report does not have an impact on performance and outcomes.

3.6 Adopting a Preventative Approach

Item 3.1

This report does not affect the preventative approach

3.7 Involving Communities and Other Stakeholders

In addition to a public consultation the views of the communities and other stakeholders detailed in paragraph 2.4 above have been sought.

3.8 Ensuring Equalities

An EQIA was carried out during the process to ensure the new Policy will not have a negative impact on any equalities group.

3.9 Supporting Sustainable Development

There are no sustainable development issues raised in this report.

3.10 IT Issues

There are no IT issues raised in this report.

4 Recommendations

The Licensing Board are requested to approve the terms of the 2018 – 2023 Licensing Policy Statement, subject to any amendments the Board may wish to instruct.

Date 06 November 2018

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LICENSING (SCOTLAND) ACT 2005

MIDLOTHIAN LICENSING BOARD

POLICY STATEMENT

November 2018 – November 2023

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2018 DRAFT

1.0 The Licensing (Scotland) Act 2005

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

2.0 Midlothian Licensing Board

- 2.1 Midlothian Licensing Board (“the Board”) is the licensing authority for the local government area of Midlothian for the purposes of the Act. The Board comprises ten members, all of whom are elected members of Midlothian Council.
- 2.2 Midlothian shares borders with the City of Edinburgh, East Lothian and Scottish Borders Councils. Around 88,000 people live within the area. The main administrative centre for Midlothian is based in Dalkeith.
- 2.3 Under the Act, Licensing Boards are responsible for considering applications for:-
- premises licences
 - occasional licences
 - provisional licences
 - temporary licences
 - personal licences
 - transfer of premises licences
 - variation of premises licences
 - extensions of licensing hours

in respect of:

- the sale of alcohol by retail; and
- the supply of alcohol in member’s clubs
- the supply of alcohol by relevant voluntary organisations or personal licence holders

3.0 The Licensing Objectives

- 3.1 The Act sets out the following five licensing objectives (“the licensing objectives”):-
- preventing crime and disorder
 - securing public safety
 - preventing public nuisance
 - protecting and improving public health
 - protecting children and young persons from harm

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

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

4.0 Local Licensing Forum

4.1 The Midlothian Licensing Forum's role is to keep under review the operation of the Licensing Act in the Midlothian area and to give advice and make recommendations to the Board in relation to those matters the Forum considers appropriate. The Forum is the community's voice on alcohol licensing issues. This will be mainly at a policy level as the Forum cannot comment on individual cases. The Forum meets at least four times a year, at quarterly intervals, and will have at least one joint meeting with the Board each year. Members of the press and public are entitled to attend Forum meetings.

5.0 Statement of Licensing Policy

5.1 Every five years Licensing Boards require to publish a statement, of their policy on the exercise of their functions. Each licensing policy statement must include a statement as to the extent to which the Board considers there is overprovision of: -

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

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

5.3 This policy statement shall be effective until 2023. It will be kept under review during that period and the Board has the power under section 6(2) of the Act to publish a supplementary policy statement.

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

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

5.6 Section 6(4) of the Act requires the Board, in exercising its functions under the Act, to have regard to this policy statement. However, the Board will consider all

applications on their own individual merits and it is open to an applicant to seek a decision from the Board, which is inconsistent with the terms of this policy statement. Further, this policy statement will not override the right of any person to make representations on any application or seek a review of a premises licence where permitted to do so under the Act. Where persons seek a decision from the Board which is inconsistent with the terms of this policy statement, the Board expects them to fully address the issue of why the policy statement should not be followed. The applicant will therefore be required to demonstrate, by means of evidence, good reason for doing so, and in particular, evidence how a departure will comply with, and promote, any or all of the five licensing objectives.

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

6.0 Consultation on Statement of Policy

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

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

- 6.2 The Board has consulted widely on this statement of policy in fulfilment of the requirements of section 6(3)(b). The consultation took place from April to June 2018. A list of the parties consulted is contained in Appendix 1 to this policy statement. In finalising this policy statement, appropriate weight has been given to the views of those who responded to the consultation.

7.0 Links to Other Policies and Strategies

- 7.1 The Board values and celebrates the diversity that exists within Midlothian, and would like to ensure that everyone can fully participate in the social, cultural, political and economic life of the County.
- 7.2 The Board opposes all forms of unlawful discrimination including discrimination on the grounds of race, ethnicity, gender, sexual orientation, age, religion and disability and recognises that discrimination creates barriers to achieving equality for all people.
- 7.3 The Board will, at all times, have due regard to the Equality Act 2010 and any subsequent and similar legislation and to the need to: -
- eliminate unlawful discrimination, and
 - promote equality of opportunity.

Midlothian Council has an Equalities Policy which promotes access, for disabled people, to services and facilities which can be viewed at: Item 3.1
https://www.midlothian.gov.uk/downloads/file/2095/midlothian_equality_plan_2017-2021

Applicants for premises licences will be expected to demonstrate in their operating plans how they intend to support this policy.

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

8.0 Planning, food hygiene and building standards

- 8.1 Premises must have appropriate licensing, planning and building standards permissions. An application for a premises licence must be accompanied by relevant certificates as to planning, building standards and food hygiene as per Section 50 of the Licensing legislation.

9.0 Planning Public Events

- 9.1 The Licensing Board will consider applications for the licensing of the sale and supply of alcohol at public events. However, it must be made clear that organisers have a responsibility to ensure that they check and apply for other types of licence or permit that may be required under other legislation in relation to the activity they intend to hold.
- 9.2 Organisers of a public event need to be aware that a great deal of planning and organisation is required to run an event successfully. The safety of all involved and the compliance with a wide range of legislation must be considered. As an organiser it must be remembered that, at all times, you are responsible for all aspects of the event under your control.
- 9.3 Midlothian Council chairs the Safety Advisory Group (SAG) for events planned within its area. Organisers of public events should complete the notification form: https://www.midlothian.gov.uk/forms/form/131/en/give_advance_notice_of_a_public_event

PART 2 PROMOTION OF THE LICENSING OBJECTIVES

10.0 Overview

Item 3.1

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

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

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

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

10.3 The Board considers that effective and responsible management of licensed premises is key to securing consistency with the licensing objectives. In respect of each licensing objective, the Board has specified a list of measures ("control measures") which it commends to applicants and licence holders as worthy of consideration in seeking to secure consistency with that objective. These lists are, intended to assist applicants and licence holders but, again, are not exhaustive. Some control measures apply to more than one licensing objective. Failure to implement these measures may make licensees open to review that they are not fit and proper persons to operate licensed premises and hold a premises licence.

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

10.5 BYOB on licensed premises

It is the Board's preference that license holders do not allow BYOB (bring your own bottle) on their premises.

Should a licence holder allow a BYOB event to take place on their licensed premises, they must state this in the 'activities' part of their 'operating plan'.

Licensees should also understand that by permitting BYOB they will still be responsible for the conduct of persons within their premises and have a duty to control what and how much alcohol persons are consuming.

It should be clear that the use of BYOB facilities cannot be used to extend drinking time before or after core hours as consumption of alcohol out with the licensed hours granted by the Licensing Board is illegal without the grant of an extended hours licence.

The Board encourages any unlicensed Restaurant/Café/Commercial premises that allow customers to BYOB, to apply for a premises licence. Item 3.1

11.0 Preventing Crime and Disorder

- 11.1 In carrying out its functions under the Act, the Board will have regard to the likely impact licensed premises may have on crime and disorder.
- 11.2 The Board supports a strategy aimed at making Midlothian a safe place to live in, work and visit. The Board is committed to further improving the quality of life of people in Midlothian by playing its part in ensuring that licensed premises, are run, in such a way as not to contribute to crime and disorder.
- 11.3 Byelaws – In Midlothian there are byelaws prohibiting the consumption of alcohol in designated public places. These restrictions were introduced to prevent crime and disorder, and anti-social behaviour. Please check the Council website to see if there are any byelaws in your area which may impact on the planning of an event.
- 11.4 Applicants and licence holders should be able to demonstrate that all factors which impact on crime and disorder have been considered. These include but are not restricted to: -
- underage drinking, including agent purchases
 - drunkenness on or around the premises
 - illegal possession and/or use of drugs
 - violent behaviour/public disorder
 - sexual exploitation of children and young persons
 - sexual exploitation of vulnerable adults
 - antisocial behaviour
 - drink driving
 - litter
 - theft
- 11.5 Suggested control measures include:-
- Implementation of a crime prevention strategy.
 - Appropriate instruction, training and supervision of staff to include conflict management; protection of the vulnerable; raising awareness of what child sexual exploitation is, who is involved and actions to be taken; and general procedures to prevent crime and disorder. Guidance on how to recognise and deal with sexual exploitation of children and young persons can be found at: [http://emppc.org.uk/file/Child_Protection/EMPPC - Inter-agency Guidance on Child Sexual Exploitation - 23-03-16 v1.pdf](http://emppc.org.uk/file/Child_Protection/EMPPC_-_Inter-agency_Guidance_on_Child_Sexual_Exploitation_-_23-03-16_v1.pdf)
 - Acceptance of accredited proof of age card schemes.
 - Provision of effective and well maintained CCTV in and around the premises. All licence holders and staff must be able to operate the system. Images should be kept, for at least one month. For operational purposes in the investigation of crime and disorder, police officers should be shown footage of any images held in respect of incidents on or about licensed premises. Viewing of images must also be made available to the Licensing Standards Officer. If

copies of images are required for evidence purposes by Police Scotland, this should be accommodated on written request. Item 3.1

- Display of prominent notices which set out the management's policy on illegal substances.
- Security policies and regular toilet checks.
- Employment, when necessary, of Security Industry Authority (SIA) licensed door staff.
- Proper management of people entering and leaving the premises.
- Active membership of Pub Watch or a similar scheme.
- Provision of litter bins and lighting outside the premises.
- Prominent display of material discouraging drink driving.
- Promoting awareness of schemes such as the designated driver scheme.
- Choice of size of measures, particularly for wine.
- Introduction of a sales refusals book.
- Calling last orders earlier than the daily terminal hour.
- Keeping of an incident book and daily register which lists complaints, incidents and actions taken by staff and management, including type of entertainment provided and approximate number of patrons in attendance. Other items of interest are details of official visitors to the premises i.e. LSO, Police and other officials, the time premises are cleared of patrons and street cleared at closing time.
- Monitoring of display areas (via staffing in larger shops or layout consideration in smaller shops).

11.6 Notification of Incidents – Licence Holders and their staff are expected to contact and co-operate with the Police when incidents of a violent, anti-social or otherwise criminal nature occur. This type of communication will be seen as a positive sign of good management. This also allows for the effective use of Exclusion Orders issued by the courts.

11.7 As stated above, the Board consider membership of a Pub Watch or similar scheme to be an effective control measure in preventing crime and disorder. Premises are therefore strongly encouraged to join such schemes.

12.0 Securing Public Safety

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

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

- the occupancy capacity of the premises
- the age, design and layout of the premises, including means of escape
- the nature of the activities on the premises
- the hours of operation

- customer profile (e.g. age, disability)
- having a glass policy in place covering the collection and use of glass and the risk to patrons and employees from glass
- having a risk policy concerning the use of special effects such as lasers, pyrotechnics, foam and smoke machines
- having a risk policy concerning cleaning and housekeeping processes, deliveries and property maintenance
- first aid facilities

12.3 Suggested control measures include: -

- Carrying out risk assessments.
- Effective and responsible management of the premises.
- Provision of effective and properly maintained CCTV in and around the premises. The Board supports the use of such systems and particularly encourage licensees to use them.
- Active membership of Pub Watch or a similar scheme.
- Employment of adequate numbers of suitably trained staff.
- Having a written policy on how to deal with customers and any other person on the premises who may have become incapacitated or vulnerable through drink or drugs.
- Empty bottles and glasses are regularly cleared from tables and public areas.
- All furniture and barriers included in an approved outdoor area that forms part of a public footpath or roadway, must be taken out of use at the designated closing time.
- Outdoor areas located on a public footway should only be used for the consumption of alcohol by those seated in the area. No vertical drinking should be permitted on a footway. This practice would not apply to a beer garden in the enclosed area of private grounds unless otherwise directed in a condition imposed by the Board to control nuisance.
- Appropriate first aid facilities, including having defibrillation equipment at hand and available to suitably trained staff to deal with medical emergencies.
- Proof of regular testing and, where appropriate, certification of procedures, relating to electrical, gas, heating and like appliances and safety systems.
- Informing the police and Licensing Standards Officer of any special event that is to take place on the premises or of any incident or issues that relate to public safety.
- Employment, when necessary, of Security Industry Authority licensed door staff and implementation of a crowd management policy.
- Ensuring that premises, both internally and externally, are maintained in good, clean and tidy condition at all times, this includes public footways directly outside licensed premises. At no time should litter of any description be swept and left beyond the perimeter of premises or into the gutter for others to clean up.

13.0 Preventing Public Nuisance

- 13.1 The Board believes that licensed premises can potentially have an adverse impact on communities as a result of public nuisance arising from their operation. The Board aims to protect and maintain the amenity of residents and occupiers of other business premises from any adverse consequences of the operation of licensed premises whilst also recognising the valuable cultural, social and business importance that such premises provide.
- 13.2 The Board, in assessing applications for licensed premises, may attach conditions as considered necessary, in order to prevent or control any potential detrimental impact of the premises in relation to issues of public nuisance.
- 13.3 Although interpretation is ultimately a matter for the courts, the Board intends to interpret “public nuisance” widely to include such issues as noise, light, odour, litter and antisocial behaviour where these have an impact on the local community.
- 13.4 Applicants and licence holders should be able to demonstrate that all factors, which might contribute to public nuisance, have been considered, these include: -
- the location of the premises and the type of neighbouring premises
 - the hours of opening
 - the nature of the activities to be provided on the premises
 - the occupancy capacity of the premises
- 13.5 Suggested control measures include: -
- Adherence to any local conditions imposed by the Licensing Board and Planning Department.
 - Appropriate instruction, training and supervision of staff to prevent incidents of public nuisance.
 - Proper management of people entering and leaving the premises.
 - Implementing a terminal hour dispersal policy including the placement of notices to request customers to leave the premises quietly.
 - Using the wind down time between the end of licensable activities and the closure of the premises to indicate to customers that it is time to leave.
 - Implementing a policy of last admission time to manage safe capacity, prevent disorder and overconsumption.
 - An effective policy on controlling noise and movement of patrons using outdoor areas, including areas used by smokers.
 - A litter and waste management policy, including a plan for the disposal of cans, glass bottles and rubbish in appropriate receptacles at responsible times between 9am and 9pm which will not affect nearby residents. The policy should detail management arrangements for the collection and disposal of waste and empty bottles.
 - Installation of sound proofing and sound limiting devices.

- Sound tests to ensure that noise from equipment used in providing live or amplified music, non-amplified music, singing and speech sourced from licensed premises is not intrusive in any adjoining or nearby residential property.
- Reduction of volume of amplified music and live entertainment to protect health and prevent neighbour nuisance.
- Consideration of sufficient provision of transport for patrons leaving premises, to prevent nuisance due to patrons loitering in the vicinity of the premises, particularly after closing. This would include liaison with public transport and taxi providers.
- Efficient cooking and extraction systems to prevent nuisance from odour and noise.
- Installation of a well maintained air conditioning system to provide adequate cooling of public areas of premises during hot weather. This will negate the need to open windows and doors, and therefore prevent noise breakout.
- Active membership of Pub Watch or a similar scheme.
- Provision of effective and properly maintained CCTV in and around the premises. The Board supports the use of such systems and particularly encourages licensees to use them.
- Employment, when necessary, of Security Industry Authority (SIA) licensed door staff.

13.6 **Antisocial Behaviour** – victims of noise nuisance, should contact the police on 101 or report the problem through the anti-social behaviour helpline on 0131 271 6677.

13.7 **18th or 21st birthday parties** - All premises hosting 18th or 21st birthday parties should give a minimum of 14 days' notice of these events to the Police Licensing Officer and the Licensing Standards Officer by e-mail. Good practice would also be for Licensees to additionally notify any immediate neighbours or those who live along obvious dispersal routes of such parties.
(LothianScotBordersLicensingEastMid@Scotland.pnn.police.com and Licensing@Midlothian.gcsx.gov.uk)

14.0 Protecting and Improving Public Health

14.1 The Board is concerned about the link between alcohol consumption and public health. The Board wishes to see responsibly managed licensed premises thriving in Midlothian but not at the expense of the public's health and wellbeing. One of the Board's priorities will therefore be the protection and improvement of the health and wellbeing of the population of Midlothian and visitors to Midlothian. The Board will have regard to the views of any other bodies responsible for, or having an interest in, public health.

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

14.3 Suggested control measures include: -

- Displaying material discouraging drink driving.
- Promotion of designated driver schemes.
- Making available information promoting moderate drinking along with awareness of units of alcohol and recommended guidelines.
- Having a workplace alcohol policy in order to raise awareness, minimise harm and ensure that staff are able to access help (without fear of job loss) when an alcohol related problem arises.
- Ensuring that customers are aware of choice in relation to alcohol measures, especially in the case of wine, e.g. small, medium and large measures should be available.
- Ensuring that customers are aware of choice in relation to the strength of alcohol in drinks such as wine and beer.
- Where deliveries of alcohol are made to households or other premises, delivery staff must be trained to the same level as those involved in the sale or supply of alcohol from licensed premises. Challenge 25 checks must be made and the mandatory delivery records must be kept in accordance with statutory regulations. No alcohol must be left at premises if the occupier or a responsible adult is not present. Applicants for licences which include delivery of alcohol will be required to give details of how they are going to enforce Challenge 25, training of staff and record-keeping requirements when making deliveries. These measures will help protect the health of the young and the vulnerable.
- Availability of low alcohol and alcohol free alternatives.
- Provision of tap water that is fit for drinking free of charge on request. Other non-alcoholic drinks must be available at a reasonable price.
- Licence holders are encouraged to provide food or a selection of reasonably priced snacks to encourage patrons to eat at the same time as consuming alcohol.
- Providing contact details of where assistance for alcohol-related problems may be sought.
- Compliance with the law on alcohol pricing and irresponsible drinks promotions.
- Having in place a policy/practice to deal with patrons who have consumed excessive alcohol.
- Reduction of volume of amplified music and live entertainment to protect the health of patrons and staff and prevent neighbour nuisance.
- Consider using plastic or toughened glassware at relevant events particularly those where children and young persons are present and ensure compliance with local conditions.
- Having defibrillation equipment at hand and available to suitably trained staff to deal with medical emergencies. More information can be obtained <http://www.scottishambulance.com/YourCommunity/defibrillators.aspx>

- 14.4 Licence holders should have a clear understanding that it is illegal to sell alcohol to a person who appears drunk or to allow drunkenness on the premises. For the purposes of clarity, a drunk person can be considered to be someone that has drunk intoxicating liquor to an extent which affects steady self-control.

15.0 Protecting Children and Young Persons from Harm

- 15.1 The Board wishes to encourage family friendly premises within Midlothian and to ensure that such premises are run in such a way that they are suitable for children and young people. The Board understands that additional responsibilities will be placed on such applicants whilst at the same time recognising that parents and other adults accompanying children also have responsibilities. In determining any application where the operating plan indicates that children and young persons are to be allowed on the premises, the Board will consider the need to protect children and young people from harm as its paramount concern.
- 15.2 The Board has serious concerns about the prevalence of under-age drinking in Midlothian and the links between excess consumption of alcohol and the commission of crimes, in particular crimes of public disorder and violence. Licence holders are reminded that they and their staff must comply with all legislation in relation to children and young persons and failure to do so will be treated extremely seriously by the Board.
- 15.3 Each application for children and young person's access will be judged on its own merits and the Board may limit the hours that children are permitted to remain on the premises. Where there are no identified issues during the normal course of business children will normally only be allowed to remain on licensed premises until 22:00 hours. However, if any child or young person is attending a pre-arranged function they may remain on the premises until the end of the function.
- 15.4 Access for children and young people will only be granted for on-sales premises when a meal is to be consumed e.g. restaurants, pubs serving food, i.e. not vertical drinking establishments, or for organised events e.g. sports.
- 15.5 In terms of The Alcohol etc (Scotland) Act 2010, it is a mandatory condition on every premises and occasional licence to sell alcohol (for both on and off sales) that a policy is in place requiring steps to be taken to verify the age of anyone attempting to purchase alcohol who appears to the seller to be under 25 years of age – a **“Challenge 25”** policy.
- 15.6 The Board encourages all licence holders to have a written policy in this regard and will require licensees who do not have a written policy to provide other evidence to prove a policy is in place.
- 15.7 The Board will not normally grant a premises licence in respect of children's access where:
- Children under the age of 12 have unsupervised access to pool tables, dart boards or areas where category C or above gaming machines are located.
 - The premises are of unsuitable character or atmosphere.
 - Parts of the premises are very small, enclosed and unable to provide a family-friendly environment.

- The premises have very few suitable facilities for children, including toilet provision. Item 3.1
- The premises have a history for underage drinking.
- There is a serious element of gambling within the premises.
- The supply of alcohol for consumption on the premises is the exclusive or primary purpose of the service provided.
- There has been a known association with drug taking or dealing on the premises.

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

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

15.10 Suggested control measures include

- Appropriate instruction, training and supervision of staff in accordance with recognised standards.
- Risk assessments for all areas to which children and young persons have access.
- Where deliveries of alcohol are made to households or other premises, delivery staff must be trained to the same level as those involved in the sale or supply of alcohol from licensed premises. Challenge 25 checks must be made and the mandatory delivery records must be kept in accordance with the law. No alcohol must be left at the delivery address if the occupier or a responsible adult is not present. Applicants for licences that include delivery of alcohol will be required to give details of how they are going to enforce Challenge 25, training of staff and record-keeping requirements.
- Develop a Policy on recognising and dealing with the sexual exploitation of children and young persons. Guidance on this can be found at [http://emppc.org.uk/file/Child_Protection/EMPPC - Inter-agency Guidance on Child Sexual Exploitation - 23-03-16 v1.pdf](http://emppc.org.uk/file/Child_Protection/EMPPC_-_Inter-agency_Guidance_on_Child_Sexual_Exploitation_-_23-03-16_v1.pdf)
- Where possible, a separate servery accessible to children and young persons should be used for the sale and supply of soft drinks and foodstuffs.
- Alcohol aisles in supermarkets should be segregated from other goods, with greater separation between alcohol and commodities popular with children and young persons i.e. soft drinks.
- All electrical sockets in public areas of the licensed premises must have safety appliances fitted. Likewise, fixed fireguards must be fitted to all open fires and mobile heaters should not be used when young children are on the premises.
- Non glass drinking containers must be available for children on request.
- Appropriate measures to ensure that children and young persons do not purchase or consume alcohol on the premises (unless such consumption is permitted by a young person in terms of section 105(5) of the Act).
- Appropriate disclosure checks of staff who will be working in premises where children and young persons will be present.

- Exclusion of children from areas in which gambling is taking place such as casino, poker or race nights and areas where category C or above gaming machines are available for use.
- Acceptance of accredited proof of age card schemes.
- Measures to ensure that children are not exposed to strong language, violence or disorder.
- Where children under five years are permitted on the premises, baby-changing facilities must be provided which are accessible to persons of either gender.
- High chair facilities must be available for use by young children.
- Children's menus should be provided where food is served on the premises.
- Applicants could be asked to make explicit what measures they are going to take to prevent children and young people getting access to alcohol, which would include details of how they are going to enforce Challenge 25, training and record-keeping.
- Premises are expected to pay special attention to monitoring the consumption and level of intoxication from alcohol of those in charge of children whilst on the premises, paying particular reference to section 15.4.

15.11 It should be noted, that the Board has imposed a Local Condition that in the interests of public safety, children must be excluded from an area of 1 metres from any bar servery in the premises.

15.12 The Licensing Board may approve adult entertainment facilities. Each application will be given due consideration on its own merits and the nature of the entertainment must be clearly stated within the application. Conditions may be imposed to protect the vulnerable from harm. Included in any conditions will be that such entertainment will be for adult consumption only and children and young persons will not be permitted access to any part of the premises at times when adult entertainment is being provided.

PART 3 LICENSES

16.0 Premises License

Premises that wish to sell alcohol for consumption on or off the premises must have a Premises Licence. It is a single form of licence for premises which sell alcohol, each licence being tailored to the type of premises by reference to an operating plan and a layout plan. Drafts of these must be lodged by the applicant with the application for a premises licence.

Each premises licence will be considered on its own merits.

The application must enable the Board to determine with certainty the kind of operation that would be permitted in terms of the licence.

Applicants should pay particular attention to the Operating Plan and the layout plan. If a particular activity is not mentioned in the Operating Plan that activity cannot take place on those premises until further authorisation is sought from the Board by way of seeking a variation of the Premises Licence.

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

When considering an application for premises that have been previously licensed, or a review of an existing licence, the Board will take into account any relevant evidence on the impact of the operation of the premises on local residents. Such evidence will be made available to the applicant in order that s/he may advise of any measures proposed to mitigate any such adverse impact.

Mandatory conditions are set out in the Act and in Regulations. The Board will consider on an individual basis if it is necessary or expedient to impose additional conditions to promote one or more of the licensing objectives or give effect to the provisions in this policy statement or to the provisions of the Act. The decision to impose additional conditions will be made on an objective basis, having regard to the operating plan, any representations made and all relevant information before the Board when considering the application. The Board will only seek to impose conditions which are proportionate.

The premises licence will remain in force for as long as the premises continue to operate in compliance with the licence and the operating plan, or until such time as it is suspended or revoked by the Board.

17.0 Licensing hours

- 17.1 While licensing hours are important to individual licensed premises, they do have a wider impact for an area. For example, the simultaneous closure of a number of premises in a town centre means large numbers of customers spill out onto the pavements at the same time, often creating disorder and disturbance. By removing permitted hours the Scottish Government has sought to alleviate such disorder.

The Board will always seek to promote the prevention of crime and disorder, the prevention of nuisance and the protection of the public. Accordingly the Board, in considering applications, will take into account the effect of trading hours on the surrounding neighbours. Complaints arise not only from the general noise of activities on the premises but also from people leaving and the opening and closing routines, for example the disposal of glass bottles and brewery deliveries.

18.0 Off Sales licensing hours

- 17.1 In terms of the Act, the sale of alcohol for consumption off the premises is not permitted before 10:00 am and after 10:00 pm. The Board's policy is that maximum available licensed hours of 10:00 am to 10:00 pm each day are generally appropriate for off sales. However, each off sales application will be assessed on its own merits against these licensed hours and the Board will wish to ensure that the licensing objectives are being promoted in such applications. If this is not demonstrated to the Board, the Board may grant reduced hours for off sales.

19.0 On Sales licensing hours

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

11:00 am to 12:00 pm Sunday to Wednesday (inclusive)
11:00 am to 1:00 am Thursday to Saturday (inclusive)

Item 3.1

Applications to open out with these hours will only be granted in exceptional circumstances, and applicants will be required to be explicit about why they require the additional hours and demonstrate that they will not contravene the licensing objectives.

- 19.2 In formulating the on sale policy hours, the Board has taken account of the licensing objectives, Scottish Government Guidance under the Act and the provisions of the Act itself. The Board recognises that licensing hours are important to individual licensed premises but can have a wider impact for an area. Balanced against this, the Board does not wish to unnecessarily inhibit the development of thriving and safe evening and night time local economies which are important for investment, employment and tourism. The Board considers that the on sale policy hours are appropriate for Midlothian and represent a balance between the interests of the public, residents, licensed businesses and patrons of licensed premises.
- 19.3 Each application for a premises licence will be assessed on its own merits, against the general on sale policy hours and the appropriateness of the type of activity for which a licence is being sought. Where an application received is requesting licensed hours exceeding 14 hours, the Board will require further information for the consideration of such applications and the Board will take into account the effect of granting such a licence will have on the area.
- 19.4 Should an application be, received in respect of opening earlier than 11am, the Board will expect the applicant to justify their request and demonstrate measures that promote the five licensing objectives.
- 18.5 All premises will be subject to the mandatory licensing conditions under the Act and the Board may apply additional conditions. Applicants seeking licensed hours which extend after 1.00 am should note that mandatory conditions will be imposed on the licence. These mandatory conditions are set out in regulations under the Act. <http://www.legislation.gov.uk/ssi/2007/336/contents/made>
- 18.6 The Act makes it clear that a Board must refuse an application to allow alcohol to be sold during a continuous period of 24 hours unless the Board is satisfied there are exceptional circumstances. Exceptional circumstances will only be justified by a specific event of very high local, national or international importance. As such events are rare, the Board considers that it would not be possible to allow for the same in the operating plan.
- 18.7 Licensed hours will be made up of core hours, i.e. regular hours when the premises will be open, as well as regular seasonal variations to those hours. It should be possible for applicants to anticipate all regular variations to core hours. It is stressed that regular seasonal events, for example Christmas and New Year, should be accounted for in the operating plan.
- 18.8 To allow time to consult the police and the Licensing Standards Officer, applications should be submitted as far in advance of the event as possible but in

any event no later than 28 days before the event is due to take place. The Board may however be prepared to consider applications for emergency or unusual events on a minimum of 72 hours notice being given. The Board would not however expect to reduce the timescale unless good reason is shown why the application could not be made 28 days prior to the event.

The Board may hold a hearing for the purposes of determining any such application. If a hearing is not held, the applicant will be given an opportunity to comment on any objections from the Chief Constable or adverse comments from the Licensing Standards Officer.

- 18.9 The Board has an existing practice of permitting longer licensed hours over the Christmas/New Year festive period. However this only applies to ON-SALES premises, and only when the premises has included the use of seasonal demand within their existing operating plan. The Board's policy is to allow an extension of up to 1 hour, up to a maximum of 2am, on existing licensed hours for Christmas Eve, Christmas Day, Boxing Day, New Year's Eve and New Year's Day.

The Board may also from time to time make other such declarations in recognition of events of local or national significance as these arise.

20.0 Extended Hours Applications

An application for an Extended Hours Application allows for ad hoc occasions for specific premises where a licence holder 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. It should however normally be possible to anticipate special occasions that occur regularly every year. Applicants should incorporate appropriate opening hours for these occasions in the operating plan.

It is understood however that there will be occasions which cannot be anticipated, e.g. a wedding, and the Act allows the Board to process such extensions where there is no provision for the extended hours in the operating plan. In considering such an application, the Board will have regard to the comments of the Chief Constable and the Licensing Standards Officer.

The Board accepts that there may be events of local or national importance which could not have been anticipated in the preparation of the operating plan. Such events could give rise to a large number of applications. In these circumstances the Board will consider making a determination for premises to be open for specified general extended hours on these special occasions.

- 19.1 The Board may extend the licensing hours in respect of premises by a period not exceeding one month. The Board may do so in connection with; -
- a special event or occasion to be catered for on the premises; or
 - a special event of local or national significance.
- 19.2 Each extended hours application will be assessed on its own merits. When the extended hours sought, in respect of on sale premises, fall out with the on sale policy hours as appropriate to the premises, the applicant will require to demonstrate to the Board that there are good reasons for the hours sought and that the hours are appropriate in the circumstances. The applicant will require to

provide the Board with sufficient information to enable a decision to be made in this regard. This information will include; Item 3.1

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

The Board discourages any applications for early drinking prior to sporting events.

21.0 Personal licenses

- 21.1 Every premises will require one or more personal licence holders.
- 21.2 The personal licence is intended to ensure that anyone managing premises is capable of doing so. The Board will expect any applicant to have undertaken an appropriate training qualification and to produce evidence of this with the application.
- 21.3 The Act requires all sales of alcohol to be authorised (whether generally or specifically) by a personal licence holder. While the Board considers that this does not require the personal licence holder to be present on the premises when the sale is made, it is considered that it would normally be appropriate for a personal licence holder to be present during peak hours.
- 21.4 The Board will expect all Personal Licence holders to carry out their duties in a manner which is consistent with the promotion of the Licensing Objectives. Where a review of a Premises Licence has uncovered conduct on the part of a Personal Licence holder which is inconsistent with one or more of the Licensing Objectives, a Personal Licence hearing may be required. At the conclusion of such a hearing, the Board may, if satisfied that it is necessary to do so for the purposes of any of the Licensing Objectives, revoke, suspend for a period or endorse the Personal Licence.
- 21.5 Where the Chief Constable has advised that an applicant has a conviction for a relevant offence, the Board will consider whether the application should be refused under the Act. In making their decision, the Board will have regard to the seriousness and age of the conviction along with any other circumstances the Board considers relevant.

22.0 Temporary licences

- 22.1 Where a licence holder wishes to carry out alterations to the principal licensed premises the Board can issue a temporary licence for other premises to enable the licence holder to continue to trade pending completion of the works.
- 22.2 Prior to issuing such a licence the Board will require to be satisfied that the alternative premises are suitable for use for the sale of alcohol and it is necessary to grant the application to enable the applicant to carry on business pending the reconstruction or conversion of the principal premises.

23.0 Provisional premises licenses

Item 3.1

23.1 An application may be made in relation to any premises still to be, or in the course of being, constructed or converted for use as licensed premises. The licence must be confirmed within 4 years, although this period may be extended by the Board if the works being carried out are delayed for reasons out with the licence holder's control.

The application for confirmation must be accompanied by;

- the provisional premises licence
- the operating plan for the premises to which the licence relates including a statement as to the identity of the premises manager
- the layout plan for the premises, and
- the certificates required under section 50(3) of the Act

When considering an application for confirmation the Board must confirm the licence if satisfied that since the provisional premises licence was granted there has been no variation made to the operating plan or layout plan other than by formal application for variation in terms of the Act.

24.0 Occasional Licences

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

- the holder of a premises licence
- the holder of a personal licence; or
- a representative of any voluntary organisation including a non-profitmaking members club

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

24.2 In order that Licensing Board members and all relevant interested parties can appreciate and properly assess the merits of each occasional licence application, applicants must complete the supplementary information appendix attached to the application form.

24.3 To allow time to consult the Police and the Licensing Standards Officer, and for a hearing to be convened if any objections are received, applications should be submitted not later than 42 days before the event is due to take place. Where an application is submitted later than this, applicants are warned that it may not be possible to fully process and/or determine the application in time for the planned event. To be clear, where an application is lodged late, and accepted for processing, applicants cannot be assured that their application will be processed in time, therefore, applicants lodge them at their own risk.

24.4 Fast tracking of late occasional licence applications, where there is insufficient time for the normal processing procedures to take place will not be entertained.

The only exception to this rule, as approved by delegated authority of the Board, is when an application for a funeral proceedings is submitted 48 hours in advance of the event.

24.5 Applicants should be aware that they might also require a public entertainment and/or a late night catering licence issued by Midlothian Council under the Civic Government (Scotland) Act 1982. Other forms of licence may also be required and it is the responsibility of the applicant to check and apply for these licences as appropriate. If a public event is planned the Council should be separately notified. More information is available at:
https://www.midlothian.gov.uk/info/200269/licences_and_permits/533/organising_an_event

24.6 It is the view of the Licensing Board that events which are predominantly organised for children should not necessarily attract the need for an alcohol licence to be granted in relation to it. Therefore, applicants for events mainly focused towards children and families, where the majority of attendees will be children, young persons and families, where the application has been challenged, will be required to justify why an alcohol licence is required and may be required to attend a Licensing Board hearing for a determination.

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

- An identification policy, for example to require ID if a customer appears under 25. This should also include clear signage to leave customers in no doubt as to the policy.
- Provisions to ensure that staff comply with the policy
- Training, in respect of the policy for those individuals who will be responsible for the sale of alcohol.

25.0 Repeated Occasional Licence Applications

25.1 It is the preference of the Board that premises should consider an application for a Premises Licence, rather than repeated applications for occasional licences for the same premises and which are;

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

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

- securing public safety
- protecting and improving public health
- protecting Children and Young Persons from harm

The scrutiny given to an application for a Premises Licence is not available where premises operate under a series of consecutive or repeated Occasional Licences. In the interests of securing public safety, and/or, for protecting and improving public health, the Board, considers that it is not appropriate for a premises to operate on a series of consecutive Occasional Licences, rather than apply for a Premises Licence. Applications for multiple or consecutive licenses will be flagged up to the public and consultees on the Council website. The Board may require an applicant to explain at a Hearing, should an objection be received, why an application for a Premises Licence is not being made unless the Clerk of the Board is satisfied that there are good reasons that prevent such an application that are not within the control of the applicant.

- 25.2 Mandatory conditions are automatically applied to occasional licences by virtue of the licensing legislation. Local conditions are also applied by authority of the Licensing Board. A list of approved local conditions added to every occasional licence granted by Midlothian is shown at Appendix '3(A)'.

Additional conditions based on the type of each event, venue, and those attending, can also be added. A list of approved additional local conditions is shown at Appendix '3(B)'.

Although there is a list of approved local conditions, it is not an exhaustive list, and other conditions may be requested and imposed dependant on the circumstances of the event, however these will require to be agreed by the Board on application.

26.0 Members Clubs

- 26.1 The Board has agreed to attach local conditions to premises licences for members clubs, which is defined by regulation at <http://www.legislation.gov.uk/ssi/2007/76/regulation/2/made> . These are;

- The Police and Licensing Board must be notified of any change in office bearers within 14 days of such change.
- The Club shall maintain a register of those people admitted to the premises as members of other Registered Clubs; and
- Other than for private functions, no member will be able to introduce more than 10 visitors on any one occasion (or such lower number as may be specified in the Club Constitution).
- All visitors must be accompanied by that member at all times when alcohol is supplied.
- Private functions must be booked in advance by a member of the Club.
- All guests at the function must be signed in and accompanied by that member for the duration of that function.

- 26.2 Club licences will be open to review for failure to comply with the above conditions.

27.0 Excluded Premises

- 27.1 An application for a premises licence must be refused if the subject premises are 'excluded premises'. Excluded premises are defined as motorway service stations and, with certain qualifications, garage premises or petrol/derv filling stations.

27.2 These premises are not excluded if the applicant can demonstrate that local residents are reliant to a significant extent for the premises to be a principal source of petrol/derv or groceries.

In determining such an application the Board will expect the applicant to provide sufficient information to enable it to consider the locality in which the premises are situated, the other sources of petrol or derv and/or groceries in the locality and the extent to which the persons resident in the locality are, or are likely to become, reliant to a significant extent on the premises as a principal source of petrol or derv, or groceries.

PART 4 OVERPROVISION

28.0 Overprovision statement

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 Board acknowledges the work carried out by the Midlothian Licensing Forum which has undertaken an assessment of overprovision and produced a report profiling alcohol misuse in Midlothian and advising the result of the 2018 public consultation on overprovision. This report has formed a useful evidence base and the Board will have regard to the report in determining applications.

The Board, having considered data regarding rates of alcohol related police incidents, alcohol related hospital admissions and information regarding the number, type and capacity of licensed premises in all areas of Midlothian, and having regard to the evidence of a correlation between the density of outlets and alcohol related problems, has concerns about the level of provision in the following localities:

- Dalkeith and Thornybank (on and off sales)
- Loanhead (on and off sales) and Straiton (off sales)

The extent of availability and harm in these localities is shown in the Appendix to this policy statement.

Dalkeith is experiencing over double the rate of alcohol related harm per 10,000 population when compared to the Midlothian average and compares particularly poorly to other areas within Midlothian and Scotland as a whole. It shows the second highest rate of licensed premises per 10,000 population in Midlothian, with a significantly higher rate of both on and off sales providers. Thornybank, in close proximity to Dalkeith, is also overprovided for on sales and also shows above average levels of alcohol related harm, particularly in rates of alcohol related violence and anti-social behaviour per 10,000 population.

As of 2017/18, Straiton has the highest rate of licensed premises per 10,000 population in Midlothian, largely attributed to a high number of off sales providers at Straiton Retail Park. 2018 consultation rejected considerations that "out of town retail parks" should be

Item 3.1
treated differently in overprovision policy, arguing that the high supply contributes to alcohol-related harm in Midlothian as a whole. Neighbouring Loanhead also has a high rate for on and off sales and increasing rates of alcohol related harm, particularly in regards to alcohol related violence and anti-social behaviour and alcohol related death.

Taking these factors into account, the Board considers that there should be a rebuttable presumption against the grant of an application for a new premises licence or the increase in capacity of an existing premises licence within these localities

Each application in the Dalkeith, Thornybank Straiton and Loanhead locality still requires to be determined on its own merits and there may be exceptional cases where an applicant can demonstrate that the grant of an application or the variation of an existing licence to increase capacity within the locality would not undermine the licensing objectives. **The Board will expect applicants to provide robust and reliable evidence to support their application sufficient to demonstrate that the grant of their application would outweigh the presumption against grant in terms of this Overprovision Statement. The Board would expect to be addressed on each of the Licensing Objectives.**

If an existing licence in the relevant locality ceases to be in force, this will not necessarily mean that there is capacity for a new licence in that locality. The locality has been identified as currently subject to overprovision and this may continue to be the case should a number of existing licences cease to be in force. Each application will be considered in the context of the statistics available to the Board at the time of the application.

Based on information and evidence gathered as part of this overprovision exercise, the Licensing Board is concerned at the high number of off-sales licensed premises in the Penicuik, Bonnyrigg, Gorebridge localities.

Whilst there is not a sufficient evidence to suggest correlation between the number of licensed premises in these localities and alcohol related harm, the Board considers the following to be areas of concern:

- Penicuik Southeast
- Bonnyrigg North
- North Gorebridge, Gorebridge and Middleton

There is not a rebuttable presumption against the grant of a new premises licence or the increase of an existing premises licence within these localities. Nevertheless, while each application will be considered on its own merits, taking into account the intended nature of operation of the applicant premises, the Licensing Board will wish to satisfy itself that any increase in the number of licensed premises in the Penicuik, Bonnyrigg and Gorebridge localities will not be inconsistent with one or more of the Licensing Objectives underpinning the licensing system.

Newtongrange also presents concerns despite a low rate of licensed premises, with almost triple the rate of alcohol related deaths per 10,000 population compared to the Midlothian average. While there is insufficient evidence to determine the root cause of this harm and therefore no presumption against granting of a new premises licence or the increase of an existing premises licence, the Licensing Board will make due consideration to the likely impact of increasing alcohol provision within locality.

PART 5 OPERATION OF PREMISES

29.0 Management of Premises

- 29.1 All premises should be operated in a manner consistent with the five licensing objectives. There are certain aspects of running licensed premises that are of particular concern to the Board and it has therefore determined to provide guidance in these areas.
- 28.2 All licensed premises (other than those premises that hold non-profitmaking members club premises licence status) must have a designated premises manager (DPM), whose details must be shown in the Premises Licence. A DPM must be a personal licence holder and cannot be the DPM for more than one premises.
- 28.3 The Board expects the DPM to have day to day responsibility for the running of the premises, the training and supervising of staff and ensuring that the premises are run in accordance with the requirements of the licence. The DPM is expected to be present on the premises the majority of time when alcohol is being sold. The premises licence holder is expected to ensure that the DPM has experience appropriate for the size, capacity, nature and style of the premises.
- 28.4 Although the legislation does not require the DPM to be on the premises at all times, each sale of alcohol must be authorised (either generally or specifically) by a personal licence holder. The Board suggests that licence holders ensure that, where possible, a personal licence holder is present on the premises to authorise the sale of alcohol at all times during licensed hours.
- 28.5 Alcohol must not be sold on the premises (other than where an application has been made for a change of manager) at any time when:-
- there is no DPM in respect of the premises
 - the DPM and personal licence holder are not present
 - the DPM does not hold a personal licence
 - the personal licence held by the DPM has been suspended
 - the licensing qualification held by the DPM is not the appropriate qualification in relation to the premises

30.0 Operating Plan

The operating plan is a document in the prescribed form containing

- (a) a statement as to whether alcohol is to be sold for consumption on or off the premises or both
- (b) a statement of the core times during which it is proposed to sell alcohol for consumption on the premises
- (c) a statement of the core times during which it is proposed to sell alcohol for consumption off the premises
- (d) seasonal variations
- (e) other activities or services that will be provided on the premises in addition to the supply of alcohol
- (f) a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises

- (g) where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and if they are, a statement as to the terms on which they will be allowed entry including, in particular-
- (i) the ages of children or young persons to be allowed entry
 - (ii) the times at which they are to be allowed entry, and
 - (iii) the parts of the premises to which they are to be allowed entry
- (h) information as to the proposed capacity of the premises, and
- (i) information about the individual who is to be the premises manager

Where alcohol is to be sold for consumption both on and off the premises, the operating plan may state different times for such consumption. As already noted, off sales may only take place between 10.00am and 10.00pm.

The operating plan is the document to which each licensed premises will be tied for trading purposes. Licence holders will not be able to trade out with the terms of the operating plan. The information contained within it will enable the Board and Licensing Standards Officers to determine if a breach of the operating plan and/or licence conditions has occurred.

Operating plans should make it clear to the Board how the premises are to be run and set out what activities will be undertaken on the premises and at what times, for as long as the premises are in operation. The Board should be able to determine with certainty from the operating plan the kind of operation that would be permitted in terms of the licence.

The Board expects the operating plan to be specific to the application being made and not completed in general terms. Applicants must therefore detail each and every activity likely to take place on the premises. The Board recognises that it is not always possible to predict customer demand. Matters that cannot be predicted when formulating the operating plan can be the subject of an occasional licence, an extended hours application or, for regular activities, a variation to the operating plan.

In terms of the Act, alcohol cannot be sold on any premises except in accordance with the operating plan. Applicants should take care as to the hours they detail in the operating plan as the public may reasonably expect the premises to be open for the sale of alcohol during those hours. Applicants are encouraged to be realistic in the hours stated in the operating plan. If there are regular deviations from the trading hours as stated in the operating plan, the Board will take into account whether “unused” hours are preventing new entrants into the market. If so, consideration will be given to changing the operating plan to reflect the true trading hours position.

Where a material breach of the operating plan has occurred, the Licensing Standards Officer or the Board will initiate a review of the licence.

The Board recognises that there may be circumstances that would reasonably cause a deviation from the trading hours in the operating plan, for example, a bereavement or illness. Such circumstances would not ordinarily constitute a breach of the operating plan.

31.0 Layout Plans

Item 3.1

30.1 The layout plan is a document in prescribed form and must show

- (a) the extent and dimensions of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter and dimensions of the premises to be licensed, including outside drinking areas
- (b) the location and names of any streets surrounding the premises from which members of the public have access to the premises
- (c) the location and width of each point of access to and egress from the premises
- (d) the location and width of any other escape routes from the premises
- (e) the location of any equipment used for the detection or warning of fire or smoke or for fighting fires
- (f) the location of any steps, stairs, elevators or lifts on the premises
- (g) the location of any toilets on the premises (identified as male, female or disabled as appropriate)
- (h) any area on the premises set aside specifically for the use of children and young persons, and
- (i) any area on the premises to which children and young persons will have access

The layout plan for premises to be licensed for the sale of alcohol for consumption on the premises must also specify the uses or uses to which each part of the premises will be put (under reference to the activities identified in the operating plan).

The layout plan for premises to be licensed for the sale of alcohol for consumption off the premises must also specify

- (a) the location of the area or areas to be used for the display of alcohol
- (b) the maximum width and height (in metres) of the frontage to be used for the display of alcohol within that area or those areas, and
- (c) the maximum linear measurement (in metres) of any displays of alcohol outside the frontage referred to head (b)

The Board expects layout plans to be to scale and of architect's quality, on the scale of 1:100 millimetres on A3 sized paper. Alternative scales must be clear and readable and contain all the information required under the Premises Licence (Scotland) Regulations 2007. **The Electronic submissions of layout plans is preferred** otherwise applicants will require to submit 7 copies of paper plans.

30.2 Security of stock. Theft of alcohol is a serious problem for off-sales premises, especially large supermarkets. The Board will have particular interest in the location of alcohol displays and the security that is put in place. The Board may place conditions on licences designed to prevent theft of alcohol. These thefts adversely impact on the health of those who are involved in them or others to whom the stolen alcohol is passed by sale or otherwise.

In considering the layout of alcohol displays it is recommended that:

- displays in supermarkets and large retail outlets are covered by CCTV cameras

- displays in smaller shops should be easily visible to counter staff
- particularly in larger stores, that a member of staff should be located in the alcohol display area at all times
- where the risk of theft in small stores is high, consideration should be given to storing and displaying all alcohol behind the sales counter
- alcohol aisles in supermarkets be segregated from other goods, with greater separation between commodities popular with children and young persons e.g. soft drinks

Item 3.1

32.0 Outdoor Areas

- 31.1 Where an applicant proposes providing seating, tables or other facilities in any outdoor area (whether covered or not), the Board will assess the suitability of such area having regard to the licensing objectives, particularly those relating to preventing crime and disorder and preventing public nuisance. The Board reiterates that it considers effective and responsible management to be key in ensuring that such areas operate in a manner consistent with the licensing objectives.
- 31.2 In each individual case where an outdoor area is proposed, the Board will consider whether there should be a physical demarcation of the area, unless such demarcation already exists.
- 31.3 The Board's general policy is that there shall be no consumption of alcohol in any outdoor area after 22:00 on any day. As narrated elsewhere in this policy statement, every application will be considered on its own merits.
- 31.4 Licensing Law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are no longer on the licensed premises and beyond the direct control of the individuals, club or business holding the licence concerned. Good practice includes regular checks of outdoor areas to preserve the peace, dissuade anti-social behaviour and identify when there is a need to clean up and deposit litter into a suitable waste receptacle.
- 31.5 The Board may make conditions relating to outdoor seating areas to prevent nuisance and for the protection of public safety.
- 31.6 Applicants are advised to seek consent of the Roads/Transportation section of the Midlothian Council prior to submitting any application where the proposed area forms part of the public footpath or road.
- 31.7 If an occasional licence is obtained for an event to be held on Midlothian Council land a permit must also be obtained from the Landscape and Countryside Management Service of the Council.

33.0 Noise

Licence holders are expected to be aware of the impact on neighbours of noise from the premises and are expected to take reasonable steps to prevent noise nuisance. This may include installation of a sound limiter, sound proofing, keeping doors and windows closed and asking patrons to leave quickly and quietly at the

34.0 Smoking

- 33.1 Licence holders have been effective in ensuring that patrons do not smoke within their premises. However, at times other issues can arise in the area around licensed premises such as noise nuisance, litter, disorder, obstruction of footways and smoke drift into neighbouring residences or back into the licensed premises.
- 33.2 The Board expects licence holders to have regard to good practice to ensure that patrons do not create a nuisance or disturbance for neighbouring residents. This includes noise arising as a result of patrons smoking outside the premises, smoke drift and litter becoming a nuisance to members of the public and obstructions that may be caused as a result of patrons standing in public areas. Good practice includes regular checks of outdoor areas to preserve the peace, dissuade anti-social behaviour and also identify when there is a need to clean up and deposit litter into a suitable waste receptacle. Cigarette ends and any other rubbish must not be swept into the roadway/gutter. Such practice will be considered a breach of the licensing objective of preventing public nuisance.

35.0 Occupancy capacity

The Board may consider setting maximum occupancy limits to ensure the safety of persons in the premises and safe escape in the event of an emergency. It will be advised by the Scottish Fire and Rescue Service and the Council's Building Standards Manager in this regard.

36.0 Duty to Trade

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

37.0 Premises that have ceased to be used for the sale of alcohol

- 37.1 Premises that cease trading in the sale or supply of alcohol must notify the Licensing Board of the reason for closure and the timescale for re-opening. The Board may decide to hold a hearing to determine whether in the circumstances the premises licence has ceased to have effect. If premises have been closed for a period of 18 months or more the Board will consider that the premises licence has ceased to have effect. In making a determination on this matter, the Board will consider any representations made by the licence holder as to the circumstances in which the premises closed and the likelihood of them reopening for trade.
- 37.2 Licence Holders - Dissolved/Insolvent Companies or Individuals. It should be noted that the Board takes the view that if any Licence Holder becomes dissolved

or insolvent, the licence will no longer exist unless an application for it to be transferred has been made within 28 days. Item 3.1

38.0 Deliveries

- 38.1 Applicants for licences that include any type of alcohol delivery should produce a 'policy' on preventing children and young persons accessing the alcohol. This should include the staff training that will be provided, and how deliveries are recorded. Police and LSO will have access to delivery records. (ref. Section 119 L(S)A 2005)
- 38.2 Applications for deliveries from cafes, restaurants and other food businesses (not considered to be predominantly grocers/supermarkets outlets) may be granted home delivery services, provided the order is ancillary to a meal and, any alcohol purchased with the order, is proportionate. The licensee will be expected to be responsible for deciding what is proportionate in relation to individual orders placed.
- 38.3 When making a delivery that includes alcohol, certain checks should be carried out such as Challenge 25 and checking that the customer is 18 years or over. No orders that include alcohol are therefore to be left in nominated safe places. Staff delivering alcohol must be trained to the same level as staff who sell or supply alcohol in licensed premises.
- 38.4 A meal is considered to be a substantial food offering. Snacks, sandwiches and crisps are not considered to constitute a substantial meal.
- 38.5 Internet and mail order sales. A premises licence will not be required for the premises at which an order is taken or placed. It will be required for the premises from which alcohol is selected for and despatched to the purchaser e.g. a warehouse. Operators of such sales should take care to exclude the possibility of the sale of alcohol to under 18s and breaching the rules on trading hours.

39.0 Fire risk assessment

The Board would remind all applicants that they require to carry out a risk assessment in terms of the Fire Precautions (Workplace) (Amended) Regulations 1997.

Further information regarding fire safety risk assessment can be obtained from the Fire and Rescue Service or at www.infoscotland.com/firelaw.

40.0 CCTV

It is recognised that the use of CCTV can be an important tool in the prevention of crime and disorder and preventing public nuisance. The Board supports the use of such systems and would encourage licence holders to make use of them. Where used, the system must be kept in good working order, all staff must be able to operate the system, and if the system allows, images must be kept for a minimum of one month and must be made available to the police or Licensing Standards Officer on request.

The Board expects all off sales premises to install a CCTV system within 12 months of the application for the premises licence being granted.

PART 5 MISCELLANEOUS

Item 3.1

41.0 Board Business

- 41.1 The Board will deal with its business in an open and transparent manner. Information and assistance will be made available to persons wishing to apply for a licence, make representations or lodge objections. Whilst Board staff will give advice, they will not complete applications or operating plans or give legal advice.
- 41.2 The Board is aware of the need to ensure that the licensing process is accessible to all. Assistance will therefore be available on request for those who require special arrangements to access any part of the process.
- 41.3 To address increasing postal costs, The Board will, wherever practical, take steps to reduce such costs by communicating with licensees, legal and licensing agents and all other interested parties by way of email. It is therefore, in the best interests of licensees that they keep the Board informed of their current email address, telephone number and preferred means of communication.
- 41.4 The Board will generally meet in the Council Chambers, Midlothian House, Dalkeith. In terms of Schedule 1 to the Act, Board meetings will be held in public.
- 41.5 The Board will attempt to make Hearings as informal as possible consistent with it carrying out its quasi judicial function. All actings of the Board will follow best practice and will be proportionate, accountable, consistent, transparent and targeted.
- 41.6 In order that Licensing Board members and all relevant interested parties can appreciate and properly assess the merits of each application other than a Minor Variation, applicants must complete the supplementary information appendix attached to the application form (see appendix 4). The Licensing Board reserves the right to return incomplete application forms unprocessed.
- 41.7 Processing applications will be dealt with as quickly as possible and within timescales set out by statute. When the Board receives a properly completed application it will be acknowledged and confirmation will be given that the application and list of documents meets the prescribed requirements and will be dealt with within an approximate period of time. This period will be no later than 9 months from the date of acceptance ("the determination period"). This period can only be extended if the Board makes an application to a Sheriff showing there is good reason to do so and where no previous extension has been granted.
- 41.8 Applications will be deemed to have been granted if the determination period has expired and no extension has been granted by a Sheriff.
- 41.9 The Board will prepare and publish a report, no later than 3 months after the end of each financial year, explaining how the Board has had regard to the licensing objectives and its statement of licensing policy during the course of the preceding year. In addition, the Board will similarly publish and prepare an annual financial report. This will include a breakdown of the relevant income received, during the preceding financial year, in connection with the exercise of the Board's functions associated with the various licensing Acts and regulations. It will detail the amount

of expenditure during that period, along with an explanation of how the amounts were calculated.

Item 3.1

41.10 The Board's aim is to provide a speedy, efficient and cost effective service to all parties involved in the licensing process. To this end, the Board has adopted a scheme of delegation to officers. The scheme sets out those decisions which may be, made by the Clerk of the Board and other specified Board officers and is set out in Appendix 2 to this policy statement.

41.11 The Board will comply with statutory regulations regarding its dealings with the Forum. The Board has a duty to "have regard" to the Forum's views and must offer reasons where it takes decisions against the advice of the Forum. This will include responding in writing to correspondence from the Forum within the statutory period of 21 days.

42.0 Objections

The Board must give notice of a premises licence application to

- each person having a notifiable interest in neighbouring land*
- any community council within whose area the premises are situated
- Midlothian Council
- the Chief Constable of Police Scotland
- Scottish Fire and Rescue Service
- NHS Lothian

In addition the applications will be published on the Midlothian Council website.

*Regulations define a person with a "notifiable interest" as the occupier of neighbouring land and "neighbouring land" is defined as land within 4 metres in any direction of any boundary of the premises to which the application relates and is not part of a road, land covered by water or a railway line.

Any person may submit an objection or representation to the Board. This is not restricted to those to whom notice of the application has been intimated. An objection or representation must relate to one of the licensing principles and to specific premises.

An objection or representation may be made in relation to

- an application for a premises licence
- an application for a major variation of a premises licence
- application for an occasional licence

It should be noted there is a difference between an objection and a representation: an objection goes to the very essence of the application as an objector opposes the grant of any licence at all. A representation is not concerned with the issue of a licence in principle, but is a comment on the way in which the premises are to be operated. It may suggest possible modifications to the operating and layout plans.

Representations may also be made in support of an application.

Each case will be considered on its own merits and objections considered to be vexatious or frivolous will be rejected by the Board. Expenses can be recovered from anyone who makes vexatious or frivolous objections.

43.0 Annual Fees

Item 3.1

- 43.1 Details of the fees are available on the Midlothian Council website by following this link: www.midlothian.gov.uk. Payment of the Annual Fee is a mandatory condition attached to every Premises Licence and failure to pay may be treated as a breach of the terms of the licence.

Licence holders are reminded that it is their responsibility to ensure that the fee is paid before or on the due date. Due to the number of licence holders who pay the annual fee after the due date of 1 October and to encourage prompt payment, the Board has decided to deal firmly with those licence holders who fail to pay on time.

- The Board will notify licensees in early July of the due date and amount of the annual fee along with details of how payment can be made. A final email reminder will be issued at the beginning of September.
- The Board has determined that all those in default on 1 October will be required to attend a review hearing at the Licensing Board to explain the breach of a mandatory condition of their licence.
- The Board may on review of a licence:
 - (a) issue a written warning to the licence holder
 - (b) make a variation of the licence
 - (c) suspend the licence for such period as it may determine
 - (d) revoke the licence

44.0 Licensing Standards Officer

- 44.1 A licensing standards officer (LSO) is employed by Midlothian Council to exercise the functions set out in the Act. The LSO will work with the public and licensees to ensure compliance with premises licence conditions. The Board recognises that the LSO plays a key role in the licensing regime. The LSO will also bring this policy to the attention of Licence holders and prospective licence holders and will encourage compliance with its terms.
- 44.2 The LSO will be a member of the Midlothian Licensing Forum.

Appendix 1: List of Consultees

Item 3.1

- Midlothian Local Licensing Forum
- The Licensing Standards Officer
- Police Scotland
- NHS Lothian
- MELDAP
- Midlothian Council in respect of Planning, Building Standards, Environmental Heath, Adult & Children's Services, Community Planning Partnerships, Education/Schools, Event Planning and other service areas
- Community Councils
- Scottish Fire & Rescue Service
- Scottish Beer & Pub Association

- Integrated Joint Board
- Midlothian Tenants and Residents Panel
- Youth Bank Scotland
- Midlothian Youth Platform
- Scottish Youth Parliament
- The public generally through Midlothian Council's website

Appendix 2: Scheme of Delegation

Item 3.1

INTRODUCTION

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

POWERS DELEGATED UNDER THE LICENSING (SCOTLAND) ACT 2005

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

Appendix 3a: List of Approved Mandatory Local Conditions

These will be attached to all Occasional Licences in addition to the Mandatory Conditions contained within Schedule 4 of the Act:

1. The licence holder or appropriate nominee shall be in charge and present on the licensed site at all times members of the public are present, and have a primary and continuing obligation and responsibility to ensure the safety of all persons at all times during the event.
2. All persons engaged in the sale or supply of alcohol must have received staff training to the standard provided for in the Licensing (Scotland) Act 2005 Schedule 3 Paragraph 6. Evidence of such training must be available for inspection by Police and/or any authorised officer(s) of Midlothian Council.
3. Appropriate signage must be clearly displayed within the bar area, relative to age restrictions and the relevant conditions of the licence, and must include:
 - a. A sign prohibiting sale or supply of alcohol to persons Under 18 to be clearly displayed at any bar server
 - b. Challenge 25 policy
 - c. Children are permitted within 1 metre of any bar server
 - d. The specific opening and closing times of the bar
 - e. Responsible drinking message
 - f. No smoking
4. Appropriate provision is to be made in order to care for persons refused entry to the premises/event, or ejected from the premises/event, due to alcohol intoxication or being under the influence of other substances - such persons are not to be left unattended.
5. The licence holder should ensure that at the terminal hour, persons exit the premises/venue as quickly as possible, in order, and as quietly as possible.
6. The license holder shall co-operate fully with the Director, Education, Communities and Economy and appointees to ensure all music, amplified or otherwise, is controlled in accordance with the guidance contained in the "Good Practice Guide on the Control of Noise from Pubs and Clubs" Institute of Acoustics, March 2003.
7. All music and vocals shall be controlled to the satisfaction of the Director, Education, Communities and Economy.
8. Any authorised Officer(s) of Midlothian Council shall be permitted access to the premises at all reasonable times for the purposes of determining if the licensing conditions are being complied with.
9. The applicant will comply with all reasonable / lawful requests made by any Police Officers.
10. No children or young persons (0-17 years) to be permitted within 1 metre from any bar server.
11. Hand washing facilities must be provided at all bars for the use of bar staff in accordance with Regulation (EC) No. 852/2004 on the hygiene of foodstuffs.
12. Where it is proposed to use plastic glasses, the applicant must ensure that they are of food grade material (i.e. marked with the "wine glass and fork" symbol).
13. Where catering is provided by a third party, the applicant shall ensure that the catering provider has a current PASS Certificate under the Food Standards Scotland Food Hygiene Information Scheme.

Appendix 3b: List of Approved General Local Conditions

These are additional Conditions which may be attached to Occasional Licences on a case by case basis.

Note that this list is not exhaustive and other conditions may be attached as required:

1. The organiser should obtain a guest list, which will be made available to the police for inspection in the event of an incident.
2. There should be a personal licence holder present within the bar area at all times and all staff involved in the sale and/or supply of alcohol should have received the two hours mandatory training, as required under the legislation.
3. Plastic drinking containers should be used throughout the duration of the event.
4. Wrist banding of 18 year olds and above to assist in easily identifying persons who are under 18 years.
5. Security Industry Accredited door staff to be used for search purposes and checking ID on entry to the premises
6. The marquee/outside area, must be clearly delineated and stewarded by the organiser to ensure that there is no alcohol taken from this area.
7. Children and Young Persons (0-17 years) may remain for the duration of the event as long as a responsible parent or guardian is present.
8. Children and Young Persons (0 – 17 years) may only gain entry to the event if supervised by a responsible parent or guardian over the age of 25 years.
9. Children and Young persons (**** - **** years) may remain until **** hours as long as a responsible parent or guardian is present.
(The ages and hours will be stipulated by the police or Licensing Standards Officer)
10. Children and Young persons (**** - **** years) may remain until **** hours as long as a responsible parent or guardian is present.
(The ages and hours will be stipulated by the police or Licensing Standards Officer)

Appendix 4: Supplementary Application Information

This information is required in relation to all Premises Licence/Provisional Licence applications or any application which is a Premises Licence Variation, not considered to be a Minor Variation.

Application submissions generally tend to be insufficiently detailed as to provide a complete picture of what businesses propose to provide the public. Therefore, Licensing Boards often have too little information, in advance of Board hearings, to fully appreciate what is being applied for. This situation often leads to numerous unnecessary objections and representation being made due to interested parties, such as neighbouring residents, not understanding what proposed activities really relate to i.e. What does Live Music actually mean and how will it impact on their lives. For these reasons, the Board has made a policy decision to require applicants to provide a fuller description of their business proposals and detail how the five licensing objectives will be met.

Business Profile

Please describe your business offering.

(extend this box if you require additional space)

On/Off Consumption

(a) Please describe the type of business you intend to operate in respect of On consumption.

a)

(b) Please describe the type of business you intend to operate in respect of Off consumption & deliveries

b)

Clarification is required in relation to the content of your proposed Operating Plan
(extend the boxes below if you require additional space)

To what extent do you intend to use any of the following: Accommodation;
Conference Facilities; Restaurant Facilities; Bar Meals:

Social Functions – Weddings; Birthdays; Retirements; Other - If you intend to provide for any of these functions please describe the nature and extent and likely frequency of each:

Entertainment – Recorded Music; Live Performances; Dance Facilities; Theatre;
Films; Gaming;

Indoor/outdoor sports; Televised Sport - If you intend to provide for any of these facilities please describe the nature and extent and likely frequency of each:

Outdoor Drinking Facilities - If you intend to provide outdoor drinking facilities please describe where and what the facilities will be used for. You will also be required to provide a statement in the objectives section how you intend to prevent public nuisance from use of such facilities:

Adult Entertainment – If you intend to provide any entertainment of a sexual nature please state the type and likely frequency if use. Adult entertainment is any form of sexual stimulation and includes adult humour or explicit language. The Board will also expect you to address the objective of preventing harm to children and young persons:

Activities Out with Licensed Core Hours - In your Operating Plan, directly below question 5(e), you should have given details of any activity that will be provided out with core licensed hours. If you wish you can expand on your explanation here:

Any Other Activities - In your Operating Plan at 5(f) you should have given details of any other type of activity you are likely to cater for. It would be useful to give an indication of the extent and frequency of such events. It should be noted that any proposal to allow a BYOB event to take place on your licensed premises, this activity should be stated in the other activities part of the operating plan.

Children and Young Persons – If you intend to provide access for children and young persons on the premises please provide details of what facilities you have on the premises in respect of different age groups. In addition, please state where and what type of baby changing facilities will be provided for children under five years.

Licensing Objectives - Please provide details below of how you will ensure that the 5 Licensing Objectives are complied with. It may be helpful in answering this section if you refer to the Midlothian Council Licensing Board's 'Statement of Licensing Policy, which can be found at the following link or the Council website [add policy link](#)

(extend the boxes below if you require additional space)

Preventing Crime and Disorder:

Securing Public Safety:

Preventing Public Nuisance:

Protecting and Improving Public Health:

Protecting Children and Young Persons from Harm:

Additional Information:

Supporting Comments: i.e. reasons why the Board should support your application.

SIGNATURE AND DECLARATION BY APPLICANT

IT IS AN OFFENCE TO MAKE A FALSE STATEMENT IN OR IN CONNECTION
WITH THIS APPLICATION

(Criminal Law (Consolidation)(Scotland) Act 1995 Section 44(2)(b))

The contents of this Application are true to the best of my knowledge and belief.

Signature

Date

Appendix 5: Occasional Licence and Supplementary Information Form

MIDLOTHIAN LICENSING BOARD

Item 3.1

APPLICATION FOR OCCASIONAL LICENCE

Before completing this form please read the guidance notes at the end of the form.

If you are completing this form by hand, please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written or typed in black ink. Use additional sheets, if necessary.

You may wish to keep a copy of the completed form for your records.

1. LICENCE DETAILS (see note 1)				
Premises licence number (if applicable)				
Personal licence number (if applicable)				
Name of voluntary organisation (if applicable)				
2. PERSONAL DETAILS				
TITLE (delete as appropriate): Mr Mrs Miss Ms Other (please state)				
Surname				
Forenames				
DATE OF BIRTH		Day	Month	Year
ADDRESS WHERE ORDINARILY RESIDENT TO BE USED FOR CORRESPONDENCE PURPOSES				
Post town		Post code		
TELEPHONE NUMBERS				
Daytime				
Evening				
Mobile				
FAX NUMBER				
E-MAIL ADDRESS (if you would prefer us to correspond with you by e-mail)				
3. THE PREMISES				
Description of premises				
Description of activities to be carried on in the premises – (including number of persons expected to attend)				

Full postal address of premises which this application refers to

4. DURATION OF LICENCE

From:

To:

5. Is alcohol to be sold on & off the premises YES/NO* - Provide relevant details as to hours requested when alcohol will be sold on/off the premises-* delete as appropriate

Times for sale of alcohol for consumption on premises

Times for sale of alcohol for consumption off premises

Statement of the times at which any activities other than the sale of alcohol will be carried on in the premises

6. CHILDREN (see note 2)

This section must be completed where alcohol is for sale for consumption on the premises

Are children or young persons permitted entry? YES/NO (if answered yes the remainder of this section must be completed)

Ages of children or young persons permitted entry

Times at which children or young persons permitted entry

Parts of premises to which children or young persons permitted entry

7. CHECKLIST

I have - Please tick for yes

Made or enclosed payment of the fee for the application

8. Signature and declaration by applicant (see note 3)

DECLARATION

The contents of this Application are true to the best of my knowledge and belief.

SIGNATURE		DATE	Item 3.1
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NOTES

1. Section 56 of the Licensing (Scotland) Act provides that only: –
 - The holder of a premises licence;
 - The holder of a personal licence; or
 - A representative of any voluntary organisation
 is eligible to apply for an occasional licence
2. Where alcohol is to be sold for consumption on the premises, the Act requires that a clear statement be made as to whether children or young persons are to be allowed entry and, if they are, a statement of the terms on which they are allowed entry
3. Data Protection Act 2018: The information on this form may be held on an electronic register which may be available to members of the public on request.
4. Information on the Licensing (Scotland) Act 2005 is available on the website of OPSI (<http://www.opsi.gov.uk/legislation/scotland/acts2005/20050016.htm>)

PLEASE SUBMIT THIS SHEET WITH YOUR OCCASIONAL LICENCE APPLICATION FORM

SUPPLEMENTARY INFORMATION

<p>1. <u>Event</u></p> <p>(a) Please detail the type of event (e.g. birthday party, anniversary celebration, ceilidh, etc.)</p> <p>(b) What entertainment, if any, will be provided? (e.g. live music, recorded music etc.)</p>	<p>(a)</p> <p>(b)</p>								
<p>2. Attendance</p> <p>(a) Approximately how many people are expected to attend?</p> <p>(b) How is this figure obtained? (e.g. previous events, ticket sales, capacity of venue)</p> <p>(c) In the main, what age group will form the majority of those attending? (this does not include parents accompanying children for a children's event, the organisers and carers) Tick one box.</p> <p>(d) How is access gained to the event? (e.g. ticket purchased in advance, ticket purchased at the door, private invitation)</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p> <table border="0"> <tr> <td><input type="checkbox"/></td> <td>Under 18</td> </tr> <tr> <td><input type="checkbox"/></td> <td>18 - 30</td> </tr> <tr> <td><input type="checkbox"/></td> <td>30 – 50</td> </tr> <tr> <td><input type="checkbox"/></td> <td>over 50</td> </tr> </table> <p>(d)</p>	<input type="checkbox"/>	Under 18	<input type="checkbox"/>	18 - 30	<input type="checkbox"/>	30 – 50	<input type="checkbox"/>	over 50
<input type="checkbox"/>	Under 18								
<input type="checkbox"/>	18 - 30								
<input type="checkbox"/>	30 – 50								
<input type="checkbox"/>	over 50								

<p>3. Stewarding</p> <p>Please note it is an offence under the Private Security Industry Act 2001 to <u>employ</u> unlicensed door stewards.</p> <p>Unpaid volunteers performing this function are not covered by the Act, however. More information can be found at http://www.the-sia.org.uk/home</p> <p>a) Please state the number, if any, of stewards to be employed at the event. (a)</p> <p>b) Of that number, please state how many will be SIA registered stewards and how many will be volunteers. (b)</p>	<p>Item 3.1</p>
<p>4. Layout Plans</p> <p>Please indicate if -</p> <p>a) there is a plan attached to a Public Entertainment Licence issued for the premises; or (a)</p> <p>b) the premises is a registered club which has been issued with a premises licence; or (b)</p> <p>c) attach a detailed layout plan of the venue with the application (c)</p>	
<p>5. Applications Lodged by Voluntary Organisations or Registered Clubs Only</p> <p>Please list the dates of previous occasional Licences granted by the Board between 1 January and 31 December</p>	
<p>6. Will alternatives to glass receptacles be provided?</p>	
<p>7. Where the event is for more than 100 persons, or where the event is relating to a Voluntary organisation where more than four occasional licences per year are applied for, please give details here of the person trained to personal licence holder standard</p>	<p>Please attach a copy of your training certificate to this application</p>

LICENSING OBJECTIVES **

All holders of occasional licences must demonstrate how they will promote the 5 Licensing Objectives. Please provide practical examples of what you plan to do to comply with each objective.

8. How will you prevent Crime and Disorder at the event?	Item 3.1
9. How will you secure Public Safety at the event?	
10. How will you prevent Public Nuisance at the event?	
11. How will you protect and improve Public Health at the Event?	
12. How will you protect Children and Young Persons from Harm at the Event?	

SIGNATURE AND DECLARATION BY APPLICANT DECLARATION

IT IS AN OFFENCE TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

(Criminal Law (Consolidation)(Scotland) Act 1995 Section 44(2)(b))

The contents of this Application are true to the best of my knowledge and belief.

Signature		Date	Item 3.1
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** You can submit a separate Licensing Objectives Assessment where this is already in place.

2018 DRAFT

2018 DRAFT

**Gambling Act 2005
Licensing Board Policy****Report by Alan Turpie, Clerk****1 Purpose of Report**

The purpose of this report is to seek authority from the Board to go out to consultation on a proposed Gambling Act policy to take effect from 31 January 2019 to 30 January 2022.

2 Background

- 2.1** The Board's current Gambling Act policy covers the period from 31 January 2016 to 30 January 2019 and a new policy will require to be approved to cover the three year period from 31 January 2019 onwards. An updated draft policy has been prepared for consideration by the Board and is attached as an Appendix to this report. This draft policy has been track-changed to show the major amendments from the 2016-19 policy.
- 2.2** Gambling is currently the fastest growing leisure industry in Scotland. This in turn has brought concerns about the level of gambling taking place and the amount of money being staked. The Gambling Act 2005 is very clear however that, in determining an application, the Board should not consider the morality of gambling per se but rather whether an application conforms to the licensing objectives in terms of the Gambling Act. Accordingly, in preparing the Licensing Policy Statement, priority has been given to actions which will promote and support those objectives.
- 2.3** It is proposed that, as well as a public consultation, the following bodies be asked to comment on the draft policy:
- Midlothian Council
 - Police Scotland,
 - Scottish Fire & Rescue Service,
 - Midlothian Child Protection Committee,
 - Community Councils within the Midlothian area
 - East Lothian and Midlothian Public Protection Committee,
 - Gambling Commission
 - HM Revenue and Customs
- It is recommended that consultation take place over 4 weeks following this meeting.
- 2.4** A copy of the proposed 2019-2022 Gambling Act Policy is attached at Appendix 1. Board members are invited to suggest any amendments and otherwise to agree that it be put out for consultation.

3 Report Implications

Item 3.2

3.1 Resource

There are no resource implications in this report.

3.2 Risk

The current policy will expire on 30 January 2019. The Board would not be fully supporting the Licensing Objectives if decisions were based on an out of date Policy.

3.3 Single Midlothian Plan and Business Transformation

Themes addressed in this report:

- ☐ Community safety
- ☐ Adult health, care and housing
- ☐ Getting it right for every Midlothian child
- ☐ Improving opportunities in Midlothian
- ☐ Sustainable growth
- ☐ Business transformation and Best Value

x None of the above

3.4 Key Priorities within the Single Midlothian Plan

This report does not affect key priorities within the Midlothian Single Plan

3.5 Impact on Performance and Outcomes

This report does not have an impact on performance and outcomes.

3.6 Adopting a Preventative Approach

This report does not affect the preventative approach

3.7 Involving Communities and Other Stakeholders

In addition to a public consultation the views of the communities and other stakeholders detailed in paragraph 2.4 above will be sought.

3.8 Ensuring Equalities

An EQIA will be carried out during the process to ensure the new Policy will not have a negative impact on any equalities group.

3.9 Supporting Sustainable Development

There are no sustainable development issues raised in this report.

3.10 IT Issues

There are no IT issues raised in this report.

4 Recommendations

The Licensing Board are requested to approve that the 2019-2022 Gambling Act Policy Statement be put out to consultation.

Date 01 November 2018

Report Contact:

Alan Turpie Tel No 0131 271 3667

alan.turpie@midlothian.gov.uk

**MIDLOTHIAN LICENSING BOARD
STATEMENT OF PRINCIPLES
GAMBLING ACT 2005
31 JANUARY 2019 TO 30 JANUARY 2022**

1. Introduction

1.1. Midlothian Licensing Board (“the Board”) is made up of ten members. The Board is comprised of a Convener (who is elected at the first meeting after a council election and holds office until the next election) and nine ordinary members. The quorum for a Board meeting is five members.

1.2. The Board’s area is the Midlothian Council Local Government Area.

1.3. The Board has a range of functions under the Gambling Act 2005 (“the 2005 Act”). This includes determining applications for premises licences and permits for different gambling activities and issuing licences and permits where such applications are granted. For premises licences this may include attaching conditions to a licence. The Board’s functions also include, for example, issuing notices permitting the temporary or occasional use of premises for gambling purposes.

1.4. Under the 2005 Act the issuing of operating and personal licences and the regulation of remote gambling (i.e. gambling in which persons participate by use of the internet, telephone, television, radio or any other kind of electronic or other technology for facilitating communication) do not fall within the Board’s remit, as these functions fall within the remit of the Gambling Commission.

1.5. In terms of section 349 of the 2005 Act, the Board is required to prepare and publish, before each successive period of three years, a statement of the principles it propose to apply in exercising its functions under the 2005 Act during the relevant three year period (a policy statement). This policy statement contains the principles the Board proposes to apply in exercising its functions under the 2005 Act in the period from 31 January 2019 to 30 January 2022.

1.6. In preparing this statement the Board has consulted with the persons listed in Appendix 1.

1.7. Nothing in this statement will override the right of any person to make an application to the Board under the 2005 Act or to have the application considered on its individual merits, nor shall anything in it undermine the right of any person to make representations on an application or to seek a review of a licence where provision has been made for them to do so.

1.8. The Board has had regard to its Equality Outcomes in preparing this statement.

1.9. In terms of section 349(2), the Board shall review this policy from time to time and, if it thinks it necessary in light of a review, shall revise it, publishing any revision before giving it effect.

2. The Licensing Objectives

2.1. Under section 153 of the 2005 Act the Board, in exercising its functions in relation to premises licences under the 2005 Act, shall aim to permit the use of premises for gambling insofar as the Board thinks it, among other principles, reasonably consistent with the three licensing objectives contained in section 1 of the 2005 Act:-

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- ensuring that gambling is conducted in a fair and open way; and
- protecting children, young persons and other vulnerable persons from being harmed or exploited by gambling.

2.2. Under other provisions of the 2005 Act, including those applicable to temporary use of premises and permits including, for example, licensed premises gaming machine permits, the Board is either required or otherwise may have regard to the three licensing objectives in exercising its functions.

2.3. The Board expects all licence and permit holders to be able to inform the Board of any voluntary initiatives or similar they participate in to address issues such as underage access, staff safety and security, if requested.

2.4. Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime

2.4.1. In having regard to this licensing objective, the Board may have regard, among other things, to the location of the premises, and whether any controls (such as by way of licence conditions) are necessary in order to prevent the premises being associated with or used to support crime.

2.4.2. In considering whether any premises has operated other than in accordance with this objective (see section 11 on premises licence reviews below), the Board may require to consider whether activity has constituted disorder which, in accordance with guidance from the Gambling Commission, is generally considered to be more serious and disruptive than nuisance. The Board will consider each set of facts and circumstances on its own merits. Factors to which the Board may have regard include, but are not limited to, whether police assistance was required, and how threatening any relevant behaviour was to persons who could see or hear it.

2.4.3. In the event of persistent or serious disorder problems which the Board considers an operator could or should do more to prevent, or in the event of the Board receiving information during the course of considering a premises licence application or at any other time which calls into question the suitability of an applicant to hold an Operating Licence, the Board may bring this to the attention of the Gambling Commission (see section 24 on exchange of information below).

2.5. Ensuring that gambling is conducted in a fair and open way

2.5.1. The Gambling Commission has stated that it would not generally expect licensing authorities to find themselves dealing with issues of fairness and openness frequently. The Gambling Commission has explained that any issues in this area are likely to be concerned with gambling operating and personal licences, both of which fall within the Gambling Commission's remit.

2.5.2. However, if the Board suspects that gambling is not being conducted in a fair and open way, it may bring this to the attention of the Gambling Commission (see section 24 on exchange of information below). Should any such issues arise in relation to tracks, the Board may have more direct involvement due to the track owner not necessarily having an operating licence.

2.6. Protecting children and young persons from being harmed or exploited by gambling

2.6.1. As with its alcohol licensing policy under the Licensing (Scotland) Act 2005, the Board considers supervision to be a key component in the operation of premises to which children and young persons have access.

2.6.2. The Board emphasises that supervision is relevant not only to premises which are age restricted i.e. to ensure that under 18s do not gain entry, but also to premises to which children and young persons do have access and in which gambling facilities are available.

2.6.3. The Board expects all licence and permit holders to be able to demonstrate that staff will be able to supervise gambling premises adequately, having regard to this objective. The Board also expects all licence and permit holders to be able to offer their own solutions where any impediment to supervision arises, in order to avoid this objective being compromised and to mitigate associated risks.

2.6.4. The Board may consider that specific measures are required at individual premises to promote this licensing objective. Appropriate measures may include:

- supervision of access points or machines,
- segregation of specific areas of the premises

- clear signage externally regarding age restricted premises (over 18 years of age)
- age verification checks
- clear segregation of gambling and non gambling areas
- Clear signage regarding age restricted areas
- Supervision of access to gambling areas
- Supervision of gambling machines
- Age verification checks of employees and persons employed through an external agency

2.7. Protecting vulnerable persons from being harmed or exploited by gambling

2.7.1. The term "vulnerable persons" is not defined for the purposes of gambling law but the Gambling Commission has stated that it assumes for regulatory purposes that this group includes:

- people who gamble more than they want to;
- people who gamble beyond their means; and
- people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance misuse relating to alcohol or drugs.

2.7.2. The Board does not seek to define vulnerable persons either, but expects licence and permit holders to have regard to this licensing objective and to comply with licence conditions and implement policies and procedures, as appropriate, which seek to mitigate the risks of harm or exploitation by gambling due to vulnerability, however such vulnerability may arise.

2.7.3. Applicants may consider the following example measures for protecting and supporting vulnerable persons:

- Leaflets offering assistance to problem gamblers being made available on gambling premises at locations that are both prominent and discreet. A discreet location might be, for example, toilets
- Training for staff members which focuses on building an employee's ability to maintain a sense of awareness of how much (eg for how long) customers are gambling as part of measures to detect persons who may be vulnerable
- Trained personnel for the purpose of identifying and providing support to vulnerable persons
- Self exclusion schemes which may extend to co-operation amongst operators on self-exclusion schemes
- Stickers or notices on gaming machines to identify the stakes/prizes

- Operators should demonstrate their understanding of best practice issued by organisations that represent the interests of vulnerable people
- Fixed odds terminals should clearly display the odds
- Stickers/posters with GamCare Helpline and website in prominent locations
- Careful selection and review of the placing and content of advertisements and other promotional material

3. Designation of body which is competent to advise the Board about the protection of children from harm

3.1. Under section 157(h) of the 2005 Act, for the purposes of carrying out its functions in relation to premises licences, the Board is required to designate in writing a body that is competent to advise it about the protection of children from harm. The Board has discretion to determine the most appropriate competent body to advise it, and must consider which body best fulfils this function.

3.2. The Board designates the East Lothian and Midlothian Public Protection Committee (“EMPPC”) for this purpose. In doing so the Board has had regard to the following considerations and principles:

- geography – EMPPC operates throughout the whole of the Board’s area; and
- knowledge and expertise – the Board considers that EMPPC has the relevant specialist knowledge and expertise to fulfil this role.

3.3. The Board will consult with EMPPC regarding applications, as required, in order to identify any concerns over access for children, young persons or vulnerable persons to the relevant premises.

4. Premises Licences in General

4.1. The Board notes that under section 159(3) of the 2005 Act an application for a premises licence may only be made by a person who either (a) holds an operating licence authorising them to carry on the activity in respect of which the premises licence is sought or (b) has made an application, which has not yet been determined, for an operating licence which authorises them to carry on the activity in respect of which the premises licence is sought. There is therefore a relationship for gambling law purposes between operating licences issued by the Gambling Commission and premises licences issued by the Board.

4.2. Under Part 8 of the 2005 Act the Board is responsible for:

- processing and determining applications and issuing premises licences for the following classes of gambling premises:

1. adult gaming centres;
2. betting premises, including tracks;
3. bingos;
4. casinos (by law only certain licensing boards are authorised to issue casino licences. This does not currently include the Board); and
5. family entertainment centres

which may include attaching conditions to any such premises licence issued;

- processing and determining applications to vary (change the details of) premises licences, which may include adding, amending or removing an authorised activity under the licence (the activities for which the licence authorises the premises to be used);

- processing and determining applications for transfer of premises licences from one licence holder to another;

- processing and determining any applications for reinstatement of premises licences which have lapsed; and

- processing and determining any applications for review of premises licences which may be made by a “responsible authority” or “interested party”, which could result in the relevant premises licence being:

1. revoked;
2. suspended for a period not exceeding three months; or
3. the conditions of the licence being changed (including the addition, removal or amendment of condition(s)).

The list of responsible authorities is contained in Appendix 2. For the meaning of interested party, see section 13 below.

4.3. The 2005 Act sets out the procedure for the Board to determine premises licence applications. In terms of section 162 of the 2005 Act, in determining an application for a premises licence, unless the applicant and any interested party or responsible authority who has made (and not withdrawn) a representation agrees otherwise, the Board must hold a hearing if:

- an interested party or responsible authority has made (and not withdrawn) representations about the application;

- the Board proposes to attach a condition to the licence; and/ or

- the Board proposes to exclude a default condition which would otherwise be attached to the licence (for further information regarding premises licence conditions, please see section 8 below).

4.4. The Board notes that the Gambling Commission's Guidance to Local Authorities (5th Edition) states, in relation to applications for premises licences for premises which are still to be constructed or altered, that licensing authorities, in addition to the general requirements of the 2005 Act regarding determination of applications for premises licences, will need to consider if appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place. The Board also notes guidance from the Gambling Commission which states that, if changes to the pre-grant plans which accompanied the application are made, parties who have made representations should be able to comment on the changes made.

5. Provisional Statements

5.1. The Board notes that, under section 204 of the 2005 Act, a person may make an application to the Board in respect of premises that they expect to be constructed or altered or which they expect to acquire a right to occupy (known for the purposes of the 2005 Act as a "Provisional Statement").

5.2. Under section 205 of the 2005 Act, if a Provisional Statement has been issued in respect of a premises, and an application for a premises licence for the premises is subsequently made, the Board is required to disregard any representations made in relation to the premises licence application unless it considers that the representations:

- address matters that could not have been addressed in representations in relation to the application for a Provisional Statement; or
- reflect a change in the applicant's circumstances.

The Board will consider each representation on its own merits for the purposes referred to above.

5.3. The Board notes that, under section 210 of the 2005 Act and in terms of Gambling Commission Guidance, in making a decision regarding a Provisional Statement (or premises licence application) the Board shall not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning or building.

6. Gaming Machines in General

6.1. The 2005 Act and relevant Regulations identify a number of different categories of gaming machine and prescribe the number and type of machine permitted in different

gambling premises. The categories referred to range from A to D, with category B divided into a further five subcategories. The Board notes that there is a minimum age of 18 for all players of category A, B and C machines, however there is no minimum age for players of category D machines.

6.2. The Board notes that section 172 of the 2005 Act prescribes the number and category of gaming machines permitted under the different classes of premises licence and that the Board does not have the power to set different limits or further expand or restrict the categories of machine that are permitted. The 2005 Act contains similar provisions regarding the number and category of gaming machines permitted under the different kinds of permit the Board is responsible for issuing under the 2005 Act.

6.3. The Board expects all gambling licence and permit holders to be familiar with the category and number of gaming machines permitted by their licence or permit and to comply with the requirements of the 2005 Act and Regulations in this regard.

6.4. The Board also notes that, under section 181 of the 2005 Act, a condition of a betting premises licence imposed by the Board may relate to the number of machines used on the premises for the purposes of making or accepting bets, the nature of those machines and the circumstances in which those machines are made available for use. In accordance with the Gambling Commission's guidance, the Board notes that such machines are separate from the categories of gaming machine referred to above, and are commonly referred to as self-service betting terminals ("SSBTs"). In considering whether to attach a condition to a licence for this purpose the Board will take account of factors including the size of the premises, the number of counter positions available for person to person transactions and the ability of staff to monitor the possible use of the machines by children and young persons or otherwise by vulnerable people.

6.5. The Board also notes that, for alcohol licensed premises holding gaming machine permits (see section 21 below), under Paragraph 4(2) of Schedule 13 of the 2005 Act, the Board has discretion to specify the number of permitted gaming machines, including a smaller number of machines than that specified in the application, a different category of machines from that specified in the application or both. In accordance with the 2005 Act, in considering whether to exercise this power the Board will have regard to the licensing objectives, any relevant guidance issued by the Gambling Commission and such other matters as it thinks relevant, with each case being considered on its own merits.

6.6. In consulting for the purposes of this statement the Board has received responses from the public highlighting concerns regarding fixed-odds betting terminals ("FOBTs"), referred to in the 2005 Act and Regulations as category B2 machines. The Board notes that it does not currently have the power to restrict the number of FOBTs permitted on certain licensed premises. The Board also notes that, at the time of preparation of this statement, devolution of relevant legal powers from the UK Government to the Scottish Government remains under consideration. The Board will continue to monitor the

position with interest, and will prepare and publish any required revision to this statement based on any further developments in this area in due course.

7. Principles to be applied in relation to Premises licences

7.1. Under section 153 of the Act the Board, in exercising its functions in relation to Premises licences, shall aim to permit the use of premises for gambling in so far as the Board thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives referred to in section 2 above; and
- in accordance with the contents of this statement.

7.2. Under section 153(2) of the 2005 Act the Board, in determining whether to grant a premises licence, may not have regard to the expected demand for the facilities which it is proposed to provide. In accordance with guidance from the Gambling Commission, the Board notes that premises licence applications should not be refused where relevant objections can be dealt with by way of licence conditions. The Board also notes that it has significant scope to request additional information for the purposes of determining applications, including in order to identify whether conditions are or are not required and, if so, what any such conditions should be. The Board notes that other considerations, such as moral or ethical objections, are not a valid reason to reject applications for premises licences.

7.3. Under section 152(1)(b) of the 2005 Act, subject to a specific exclusion in relation to tracks, a premises licence may not be issued in respect of premises if a premises licence already has effect in relation to the premises. Where applications seek a premises licence for premises which form part of a larger building, the Board may require to consider whether different parts of the building can reasonably be regarded as separate premises.

8. Premises Licence Conditions

8.1. Under sections 167 to 169 of the 2005 Act, premises licences are subject to:

- premises licence conditions which apply automatically to specific classes of premises licence under the 2005 Act;
- mandatory conditions prescribed under Regulations by the Scottish Ministers; and
- default conditions prescribed under Regulations by the Scottish Ministers, which will apply to the relevant class or classes of premises licence unless excluded by the Board.

They may also be subject to conditions attached by the Board.

8.2. In determining premises licence applications the Board may consider attaching some or all of the conditions contained in Appendix 7 to the licence. Each application will be considered on its own merits. Please see section 10 below for factors the Board may take into particular consideration in relation to different classes of premises licence for the purposes of determining whether any conditions should be attached to the licence.

8.3. Any condition(s) attached by the Board to a premises licence will be:

- relevant to the need to make the premises suitable as a gambling facility;
- directly related to the premises (including the locality and any identified local risks) and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises;
 - consistent with the licensing objectives;
 - proportionate; and
- reasonable in all other aspects.

8.4. The Board may consider attaching specific conditions to premises licences for adjoining areas e.g. for adjoining areas within the same building. Such conditions may concern, for example, supervision of entrances, segregation of gambling and non-gambling areas frequented by children, the supervision of gaming machines and the display of notices highlighting age restrictions.

8.5. The Scottish Ministers have prescribed a range of mandatory and default conditions under The Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007, some of which apply to all premises licences and some to different classes of premises licence. Various sections of the 2005 Act contain conditions which apply automatically to premises licences, some of which apply to all premises licences and some to different classes of premises licence.

8.6 Where certain measures are not already addressed by the mandatory/default conditions or by the applicant, the Board may consider licence conditions to cover such issues as:

- proof of age schemes
- CCTV
- Supervision of entrances
- Supervision of machine areas

- physical separation of area
- location of entrance points
- notices/signage
- specific opening hours
- a requirement that children must be accompanied by an adult
- enhanced CRB checks of the applicants and/or staff
- support to persons with gambling addiction
- policies to address seasonal periods where children and young persons may more frequently attempt to gain access to premises and gamble such as school holidays
- policies to address the problems associated with truant children who may attempt to gain access to premises and to gamble

This list is not exhaustive and is merely indicative of examples

8.7. The Board expects all premises licence holders to know what conditions apply to their licence, and to comply with the relevant conditions. The Board reminds all premises licence holders that failure to comply with the conditions of their licence could lead to review of their licence by the Board (see section 12 below). The Board recommends that any licence holder who is unsure what conditions apply to their licence seeks legal advice immediately.

9. Door Supervision Condition

9.1. Premises licence conditions may include a condition for door supervision by virtue of a mandatory condition, a default condition or a condition imposed by the Board. In terms of section 178 of the 2005 Act this means a condition requiring that one or more persons be responsible for guarding the premises against unauthorised access or occupation, against outbreaks of disorder or against damage.

9.2. The Board may consider imposing a door supervision condition on a premises licence if, for example, it is concerned that the relevant premises may attract disorder, or be subject to attempts for unauthorised access, for example, by children or young persons.

9.3. The Board reminds premises licence holders that, should their licence be subject to a door supervision condition, if a person carrying out the relevant supervision is required by the Private Security Industry Act 2001 to hold a licence under that Act authorising them to do so, by virtue of section 178(3) of the 2005 Act the requirement for any such person to be so licensed is treated for the purposes of the 2005 Act as if it were also a condition of their premises licence.

10. Specified Classes of Premises Licence

10.1. Adult Gaming Centres (“AGCs”)

10.1.1. The Board notes that AGCs are not permitted to admit children and young persons. The Board expects all AGC premises licence holders to be familiar with the prohibition under the 2005 Act on children and young persons entering their premises and the offences under the 2005 Act relevant to children and young persons and AGCs.

10.1.2. The Board will have regard to the location of and entry to AGCs to minimise the opportunities for children and young persons to gain access. The Board expects AGC premises licence holders to ensure and to be able to demonstrate that their policies and procedures take account of the structure and layout of their premises in order to prevent underage gambling. This may be of particular importance in areas where young people may be unsupervised, for example, in a shopping centre.

10.1.3. The Board expects all AGC premises licence holders to be familiar with the conditions attached to their licence (whether mandatory, default or otherwise) and to comply with them. The Board also expects all AGC premises licence holders to understand what categories of gaming machine and of what number are permitted on their premises and to comply with the requirements of the 2005 Act and Regulations in this regard.

10.2. Casinos

10.2.1. The Board has not passed a “no casino” resolution (resolving not to issue any Casino Premises licences) under section 166 of the 2005 Act. The Board however reserves its right to review this situation at any time.

10.3. Betting premises other than tracks

10.3.1. The 2005 Act contains a single class of licence for betting premises which, in the Board’s area, are most commonly comprised of betting shops and tracks.

10.3.2. With the exception of tracks, which are subject to specific rules, the Board notes that betting premises are not permitted to admit children and young persons. The Board expects all betting premises licence holders for premises other than tracks to be familiar with the prohibition under 2005 Act on children and young persons entering their premises and the offences under the 2005 Act relevant to children and young persons and betting premises.

10.3.3. The Board will have regard to the location of and entry to betting premises to minimise the opportunities for children and young persons to gain access. The Board expects all betting premises licence holders to ensure and to be able to demonstrate that their policies and procedures take account of the structure and layout of their premises in order to prevent underage gambling. This may be of particular importance in areas where young people may be unsupervised, for example, in a shopping centre.

10.3.4. The Board will follow the Gambling Commission's Guidance for Local Authorities that "should a licensing authority receive an application to vary a premises licence for betting in order to extend the opening hours, the authority should satisfy itself that the reason for the application is in line with the requirements of the operating conditions."

10.3.5. The Board expects all betting premises licence holders to be familiar with the conditions attached to their licence (whether mandatory, default or otherwise) and to comply with them. The Board also expects all betting premises licence holders to understand what categories of gaming machine and of what number are permitted on their premises and to comply with the requirements of the 2005 Act and Regulations in this regard.

10.4. Tracks

10.4.1. The Board notes that the law relating to betting premises licences for tracks differs from other premises licences in a number of material respects. The Board encourages applicants and licence holders to seek legal advice immediately if they are in any way unsure of their position.

10.4.2. In terms of section 353 of the 2005 Act, tracks include horse racecourses, greyhound tracks or other premises on any part of which a race or other sporting event takes place or is intended to take place.

10.4.3. In accordance with guidance from the Gambling Commission, the Board notes that there are a number of venues where sporting events do or could take place and which could include the accommodation of betting facilities (and which could therefore qualify as a track for the purposes of the 2005 Act even though they may not commonly be thought of as tracks):

- A point-to-point horserace meeting;
- Football, cricket and rugby grounds;
- An athletics stadium;
- A golf course;
- Venues hosting darts, bowls or snooker tournaments;
- A premises staging boxing matches;
- A section of river hosting a fishing competition; or
- A motor racing event.

10.4.4. The Board expects all betting premises licence holders for tracks to be familiar with the limited terms under section 182 of the 2005 Act upon which children and young persons may access their premises, and to take sufficient steps to comply with the requirements of the legislation. The Board expects betting premises licence holders for tracks to ensure and to be able to demonstrate that their policies and procedures set out how they will meet these requirements. Steps which they may wish to take include but are not limited to:

- locating all betting areas inside an area of the premises that is separated from the remainder of the premises by a physical barrier, thereby preventing access other than through a designated entrance;
- only admitting adults to the part of the track where betting areas are located, by establishing procedures for verifying customer ages and refusing entry to adult-only areas for those unable to produce an acceptable form of identification (and taking appropriate action where there are unlawful attempts to enter adult-only premises); and
- placing prominent notices in front of and inside each entrance stating that access to the area is prohibited to persons under 18.

10.4.5. The Board expects all betting premises licence holders for tracks to be familiar with the conditions attached to their licence (whether mandatory, default or otherwise) and to comply with them. The Board also expects all betting premises licence holders for tracks to understand what categories of gaming machine and of what number are permitted on their premises and to comply with the requirements of the 2005 Act and Regulations in this regard.

10.5. Bingos

10.5.1. The Board notes that children and young persons are allowed into bingo premises but that they are not permitted to participate in bingo and if category C machines or above are available for use these must be separated from areas to which children and young persons have access.

10.5.2. The Board expects all bingo premises licence holders to ensure and to be able to demonstrate that their policies and procedures take account of the structure and layout of their premises in order to meet these requirements and to prevent underage gambling.

10.5.3. The Board expects all bingo premises licence holders to be familiar with the conditions attached to their licence (whether mandatory, default or otherwise) and to comply with them. The Board also expects all betting premises licence holders to understand what categories of gaming machine and of what number are permitted on their premises and to comply with the requirements of the 2005 Act and Regulations in this regard.

10.6. Family Entertainment Centres (“FECs”)

10.6.1. The Board notes that, although children and young persons are permitted to enter FECs to use category D machines, they are not permitted to access areas where category C machines are situated. The Board expects premises licence holders for FECs to ensure and to be able to demonstrate that their policies and procedures take

account of the structure and layout of their premises in order to meet these requirements and to prevent underage gambling.

10.6.2. The Board notes that in its Guidance to Local Authorities (5th Edition) the Gambling Commission has stated, with reference to section 238 of the 2005 Act, that it is generally not permissible for FEC premises to correspond to an entire shopping centre, airport, motorway service station or similar. The guidance also states that typically the machines would be in a designated, enclosed area and that the Gambling Commission considers that it is not permissible for gaming machines which should be contained within FEC premises to be located within corridors and walkways which form part of a larger building.

10.6.3. The Board expects applicants to be able to demonstrate that the premises for which they are applying for a FEC premises licence will be wholly or mainly used for making gaming machines available for use. The Board also expects all applicants to be able to provide details of the measures they will take in order to protect children from being harmed by gambling, including the policies and procedures they will operate in this regard, if requested.

10.6.4. The Board expects all premises licence holders for FECs to be familiar with the conditions attached to their licence (whether mandatory, default or otherwise) and to comply with them. The Board also expects all premises licence holders for FECs to understand what categories of gaming machine and of what number are permitted on their premises and to comply with the requirements of the 2005 Act and Regulations in this regard.

11. Premises Plans

11.1. Under Regulation 4 of The Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Regulations 2007, applications for premises licences and provisional statements under section 159 of the 2005 Act must be accompanied by a scale plan of the premises which complies with the various provisions of the Regulations. Under the Regulations each plan must show:

- the extent of the boundary or perimeter of the premises;
- where the premises include, or consist of, one or more buildings, the location of any external or internal walls of each such building;
- where the premises form part of a building, the location of any external or internal walls of the building which are included in the premises;
- where the premises are a vessel or a part of a vessel, the location of any part of the sides of the vessel, and of any internal walls of the vessel, which are included in the premises;
- the location of each point of entry to and exit from the premises, including in each case a description of the place from which entry is made or to which the exit leads.

11.2. The Regulations contain a number of additional requirements for plans pertaining to specific classes of premises licence, including bingo premises licences, adult gaming centre premises licences and betting premises licences.

11.3. In addition under Regulation 7 of the Regulations an application for variation of a premises licence, where the application includes a variation to the plan which forms part of the licence, must be accompanied by a scale plan which complies with the above requirements, as appropriate, and includes the variation(s) proposed.

11.4. In the Board's experience compliance with the requirements of such regulations can pose difficulties for applicants and licence holders. The Board recommends that any applicant or licence holder who is in any way unsure of their position takes legal advice.

11.5. In accordance with guidance from the Gambling Commission, the Board notes that the precise location of where betting facilities are provided is not required to be shown on plans for tracks, but that licensing authorities should satisfy themselves that the plan provides sufficient information to enable them to assess an application.

11.6. In accordance with guidance from the Gambling Commission, if premises are located within a wider venue, the Board will request a plan of the venue on which the premises should be identified as a distinct unit. For applications for multiple licences for a building or relating to a discrete part of a building used for other (non-gambling) purposes, the Board expects entrances and exits to be separate and identifiable, so that the separation of different premises is not compromised. The plan of the premises should clearly denote entrances and exits.

12. Premises licence reviews

12.1. As referred to in section 4 above, a "responsible authority" or "interested party" may apply to the Board for review of a premises licence. In addition, in terms of section 200 of the 2005 Act, the Board may review:

- in relation to premises licences of a particular class, the use made of the premises, including arrangements made by licence holders to comply with their licence conditions; or
- any matter connected with the use of premises in reliance on a premises licence, if the Board has reason to suspect that the premises may have been used in purported reliance on a licence but not in accordance with a condition of the licence.

12.2. In terms of section 198 of the 2005 Act, an application for review of a premises licence may be rejected by the Board if the Board thinks that the grounds on which the review is sought:-

- do not raise an issue relevant to the principles to be applied in terms of section 7.1 above;
- are frivolous or vexatious;
- will certainly not cause the Board to revoke or suspend the licence or to change the conditions of the licence;
- are substantially the same as the grounds specified in an earlier application in respect of the same premises licence; or
- are substantially the same as representations made in relation to the application for the premises licence.

12.3. The Board generally expects applications for review to identify the principle or principles the issue(s) they raise are relevant to, and what the relevance is. If the principle concerned is whether the permitted use of the premises for gambling is reasonably consistent with the licensing objectives, the Board generally expects applications for review to identify the relevant objective(s) and, why in their view, the permitted use of the premises for gambling is not reasonably consistent with that objective or those objectives.

12.4. In determining whether to exercise the power to reject an application for review on the basis that the grounds on which the review is sought are substantially the same as the grounds specified in an earlier application in respect of the same premises licence or are substantially the same as representations made in relation to the application for the premises licence, the Board will take into account the length of time that has elapsed since the making of the earlier application or since the making of the representation.

13. Determination of whether a person is an interested party in relation to a premises licence or an application for or in respect of a premises licence

13.1. As referred to in section 4 above, in terms of section 158 of the 2005 Act an interested party in relation to a matter concerning a premises licence is a person who, in the Board's opinion:

- lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- has business interests that might be affected by the authorised activities; or
- in either case, their representative

13.2. The Board will decide whether a person is an interested party with regard to particular premises on a case by case basis. The Board may have regard to the following (non-exhaustive) factors and principles:

- the location and size of the premises;
- the nature of the activities taking place on the premises;
- the times during which those activities take place;
- proximity and remoteness, both in terms of the location in which a person lives relative to whether they are likely to be affected by the authorised activities, or the business interests a person has that might be affected by the authorised activity.

14. Local Area Profile

14.1. Midlothian Council area is one of 32 council areas in Scotland. It borders the City of Edinburgh, East Lothian and Scottish Borders council areas.

14.2. The population of Midlothian has risen to 87,390 in 2015 and is expected to continue to grow. It is estimated that approximately 68,000 residents of Midlothian are of legal age to gamble. Most of Midlothian's population resides in or around the main towns of Penicuik, Bonnyrigg, Loanhead, Dalkeith, Newtongrange, and Gorebridge.

Some parts of Midlothian have seen increasing levels of economic deprivation with the associated social and health issues. Deprivation is most acute in the communities of Gorebridge, Mayfield & Easthouses, and Dalkeith & Woodburn.

14.3. At the time of preparation of this policy, gambling licences and permits have been issued for the following numbers of premises in Midlothian:

- 15 betting shops;
- 1 bingo;
- 0 adult gaming centres;
- 0 track;
- 0 family entertainment centre; and
- 0 unlicensed family entertainment centres

The bingo premises are situated in Dalkeith. The betting shops are situated between the principle towns as follows:

Bonnyrigg	3
Dalkeith	5
Penicuik	3
Loanhead	1
Newtongrange	1
Gorebridge	1
Mayfield	1

14.4. The Gambling Commission has invited licensing boards to consider including a local area profile in their policy, identifying any gambling-related risks specific to their area.

14.5. As part of its consultation prior to the preparation of this policy, the Board has invited consultees by means of an online survey to provide the Board with information regarding any gambling related risks considered to be specific to:

- Midlothian;
- any part of Midlothian; and/ or
- any population group within Midlothian

The Board has also consulted a variety of stakeholders and groups as part of its consultation.

14.6. The Board has not received any responses to consultation identifying any such gambling related risks. The Board may undertake further consultation in this area should it consider it necessary or appropriate to do so.

14.7. The Board invites licence and permit holders to share information with it for example in relation to test purchasing results or any incidents in premises which managers are likely to be required to report to Head Office. The Board would welcome information, for example, regarding numbers of self-excluded gamblers from premises which could help to develop its understanding about the risk of problem gambling in its area.

15. Local Risk Assessments

15.1. The Board notes that, from 6 April 2016, under the Gambling Commission's Licence Conditions and Codes of Practice (LCCP), as amended, premises licence holders and applicants for premises licences will be required to:

- assess – and have policies, procedures and control measures to mitigate – local risks to the licensing objectives, taking account of the Board's policy as contained in this statement; and
- to share their risk assessment with the Board when applying for a new premises licence or to vary their licence, or on request.

15.2. The Board also notes that, under the relevant provisions of the LCCP, premises licence holders will be required to review their local risk assessment when there are significant changes in local circumstances or at the premises.

15.3. The Board will expect risk assessments to cover the following broad headings:

- the risks the applicant or licence holder has identified with regard to the licensing objectives and the requirements of the 2005 Act and Regulations relevant to the class of

premises licence they are applying for or hold, as referred to in this statement, and any specific local risks identified in relation to their premises;

- how they proposed to mitigate those risks; and
- how they will monitor them.

In assessing local risk applicants and licence holders may wish to have regard to the proximity of their premises to any non-gambling premises relevant to the licensing objectives e.g. schools, money advice centres or other premises which may be relevant to children and young persons or vulnerable persons as referred to in the 2005 Act.

15.4. The Board will expect applicants and licence holders to identify in their risk assessments that there will be sufficient measures in place to ensure that the provisions of the 2005 Act relating to children and young persons will be complied with, and what those measures will be. This will include, for example, what measures will be taken to ensure that children and young persons are not permitted access to the premises or, if limited access for children and young persons is permitted under the 2005 Act, how that will be managed.

15.5. The Board will expect licence holders to review and update (as necessary) their risk assessments to take account of significant changes in local circumstances, when there are significant changes at their premises that may affect mitigation of risks or if applying for variation of their licence.

16. Unlicensed Family Entertainment Centre Gaming Machine Permits

16.1. The Board notes that unlicensed family entertainment centres (“uFECs”) are able to offer category D machines by way of a gaming machine permit. Any operator who wishes to make category C machines available will require to obtain the relevant operating licence from the Gambling Commission and a premises licence from the Board.

16.2. The Board notes that, in its Guidance to Local Authorities (5th Edition) the Gambling Commission has stated, with reference to section 238 of the 2005 Act, that uFEC permits cannot be issued for entire shopping centres, airports or bowling alleys, for example. Under paragraph 7 of schedule 10 of the 2005 Act, in considering an application for a UFEC permit the Board may have regard to the licensing objectives, and shall have regard to any relevant guidance issued by the Gambling Commission.

16.3. The Board expects applicants to be able to demonstrate that the premises for which they are applying for a uFEC permit will be wholly or mainly used for making gaming machines available for use. Applications for uFEC permits can only be made by a person who occupies or plans to occupy the premises to be used as an uFEC and cannot be made if a premises licence is in effect for the same premises. The Board also

expects all applicants to be able to provide details of the measures they will take in order to protect children from being harmed by gambling, including the policies and procedures they will operate in this regard, if requested. Applicants may be asked to provide a plan of their premises, identifying the features of their operation relevant to the requirements of the 2005 Act and Regulations, to enable their application to be determined.

16.4. The Board may consider asking applicants to demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in uFECs;
- that they have no relevant convictions (as set out in Schedule 7 of the 2005 Act); and/or
- that employees are trained to have a full understanding of the maximum stakes and prizes.

this will be determined on a case by case basis.

16.5. Under paragraph 14 of schedule 10 of the 2005 Act an uFEC permit lapses if the Board notifies the holder that the premises are not being used as an uFEC. The Board may consider applying this provision of the legislation if it is satisfied that, since the grant of a permit, other activities have been introduced in the premises meaning that the premises is no longer wholly or mainly used as an uFEC.

17. Prize Gaming Permits

17.1. Under section 288 of the 2005 Act gaming is identified as “prize gaming” for the purposes of the 2005 Act if neither the nature nor the size of a prize played for is determined by reference to (a) the number of persons playing or (b) the amount paid for or raised by the gaming.

17.2. Under the 2005 Act the Board can issue permits (prize gaming permits) authorising the provision of facilities for gaming with prizes on specific premises. Facilities for prize gaming can be provided without an offence being committed under the 2005 Act if they are provided in accordance with a prize gaming permit and the gaming provided satisfies the conditions contained in section 293 of the 2005 Act.

17.3. The Board notes that the provisions of the 2005 Act concerning prize gaming are relatively complex and encourages any person thinking of providing facilities for prize gaming who is in any way unsure of their legal position to seek legal advice, if required.

17.4. Under the 2005 Act, subject to specific conditions, certain premises licence and permit holders and travelling fair operators may be entitled to provide facilities for either

prize gaming or equal chance prize gaming under their existing licence or permit, without requiring to hold a separate prize gaming permit. The Board recommends that any licence or permit holder who is in any way unsure of their position to seek legal advice, if required.

17.5. In considering applications for prize gaming permits, the Board will consider the suitability of the applicant and the premises and may have regard to the licensing objectives. The Board expects applicants for prize gaming permits to set out the type of gaming they are intending to offer in their application and to ensure and to be able to demonstrate that they understand the limits to stakes and prizes that are set out in the relevant regulations and that the gaming offered will be within the law. Applicants may be asked to provide a plan of their premises, identifying the features of their operation relevant to the requirements of the 2005 Act and Regulations, to enable their application to be determined.

18. Travelling Fairs

18.1. The Board notes that the types of fairs identified as travelling fairs for the purposes of the 2005 Act are those which (1) consist wholly or principally of the provision of amusements; (2) are provided wholly or principally by persons who travel from place to place for the purposes of providing fairs; and (3) are held in places no part of which has been used for the provision of a fair on more than 27 days in any calendar year. With regard to (3) above the Board notes that this applies to the relevant place regardless of whether it is the same or different travelling fairs which have occupied it.

18.2. The Board notes that, subject to each of the above requirements being met, under the 2005 Act travelling fairs may make one or more category D gaming machines available for use without committing an offence, provided that facilities for gambling (whether by way of gaming machine or otherwise) amount together to no more than ancillary amusement at the fair.

18.3. The Board notes that, in order to qualify for the above exemption, a number of requirements have to be met. The Board recommends that any travelling fair operator who is in any way unsure of their position seeks legal advice, if required.

19. Club Gaming and Club Machine Permits

19.1. For the purposes of the 2005 Act clubs are divided into two categories: (1) members' clubs (including miner's welfare institutes) and (2) commercial clubs. There are important differences between these two categories for the purposes of the 2005 Act, including the type of permit (club gaming or club machine permit) which can be applied for by each. The Board recommends that any club unsure of its gambling law requirements seeks legal advice, if required.

19.2. The Board requires to be satisfied that any club applying for a permit meets the requirements of the 2005 Act to obtain such a permit. Applicants may be asked to provide additional information, as required. This may include, but is not limited to:

- a copy of the club constitution; and
- list of committee members.

19.3. The Board expects all applicants and permit holders for club gaming and club machine permits to understand what categories of gaming machine and of what number are permitted on their premises and to comply with the requirements of the 2005 Act and Regulations in this regard. In addition the Board expects all club gaming permit holders to understand what additional gambling activities are permitted on their premises and to comply with the requirements of the 2005 Act and Regulations in this regard.

19.4. The Board reminds applicants that the grounds of refusal contained in Paragraph 6 of Schedule 12 of the 2005 Act include that the premises on which the applicant conducts its activities are used wholly or mainly by children, by young persons or by both.

19.5 in all other cases, Clubs must have regard to the protection of children, young persons and other vulnerable persons from harm or being exploited by gambling. They must provide sufficient measures to ensure that under 18 year olds do not use the adult only gaming machines. These measures may include:

- the machines being in close proximity to the bar, or in any other area where they are capable of being adequately supervised
- notices and signage
- the provision of information leaflets/helpline numbers for organisations such as GamCare

19.6. In considering applications for club gaming and club machine permits, the Board will consider the suitability of the applicant and the premises and may have regard to the licensing objectives. Applicants may be asked to provide a plan of their premises, identifying the features of their operation relevant to the requirements of the 2005 Act and Regulations, to enable their application to be determined.

20. Small Society Lotteries

20.1. Under the 2005 Act promoting or facilitating a lottery is illegal unless it is either (1) a licensed lottery licensed by way of an operating licence by the Gambling Commission or (2) an exempt lottery under Schedule 11 of the 2005 Act, which includes small society lotteries. In order to qualify for this exemption, the promoting society of a small society lottery must, throughout the period during which the lottery is promoted, be registered with the Board.

20.2. The Board does not consider that there is a clear legal definition of what constitutes a “society” for the purpose of small society lotteries. In the absence of a clear legal definition, the Board will rely on the dictionary definition of an organisation or club formed for a particular purpose or activity. Each application will be considered on its own merits. The Board will not accept applications from individuals for registration in their own name but will accept applications from individuals if they can demonstrate that they are an office bearer or authorised representative of a properly constituted non-commercial society (see paragraph 20.4 below).

20.3. In accordance with section 19 of the 2005 Act, the Board will require evidence from applicants that their society is non-commercial i.e. is established and conducted:

- for charitable purposes;
- for the purposes of enabling participation in, or of supporting, sport, athletics or cultural activity; or
- for any other non-commercial purpose other than that of private gain.

20.4. The Board may also require evidence from applicants that they are properly constituted as a non-commercial society. Evidence which may be requested includes, but is not limited to:

- a copy of the society constitution; and
- list of society members.

20.5. The Board reminds all lottery operators that participation in a lottery is a form of gambling and that lotteries require to be conducted in a socially responsible manner in accordance with the requirements of the 2005 Act, including the three licensing objectives. The Board notes that under the 2005 Act the minimum age for participation in a lottery is 16. The Board expects all lottery operators to be familiar with the requirements upon them particularly in relation to children and to have in place effective procedures to minimise the risk of lottery tickets being sold to children, including procedures for:

- checking the age of purchasers of lottery tickets; and
- taking action where there are unlawful attempts to purchase tickets.

The Board also expects all lottery operators to take reasonable steps to ensure that all those engaged in the promotion of lotteries understand their responsibilities in terms of the above.

20.6. In accordance with guidance from the Gambling Commission, the Board requests that all registered small society lottery operators maintain written records of any unsold and returned tickets for a period of one year from the date of their lottery draw.

20.7. In accordance with guidance from the Gambling Commission, the Board does not expect small society lottery tickets to be sold in the street unless from a static structure such as a kiosk or display stand.

20.8. In accordance with guidance from the Gambling Commission, the Board recommends that any lottery operator wishing to award items containing alcohol as prizes who is in any way unsure of their legal position seeks legal advice regarding the requirements of the Licensing (Scotland) Act 2005 before doing so.

21. Premises licensed to sell alcohol

21.1. In accordance with the requirements of the Licensing (Scotland) Act 2005, the Board has a separate policy in relation to the carrying out of its functions for the purposes of licensing persons and premises for the sale of alcohol.

21.2. The Board notes that, under section 282 of the 2005 Act, on sales premises licence holders under the Licensing (Scotland) Act 2005 are permitted to make available two gaming machines of category C or D on their premises, subject to their providing the Board with the relevant notification and prescribed fee. The Board reminds all premises licence holders and persons to whom a premises licence may be transferred or who may apply for a premises licence to be transferred to them that this entitlement ceases when the holder of the licence who has made the notification ceases to hold the licence. Applicants for transfer of premises licences and new premises licences are therefore reminded that, should they wish to take advantage of this entitlement, a fresh notification is required.

21.3. Under the 2005 Act the Board may issue a licensed premises gaming machine permit to the holder of a premises licence under the Licensing (Scotland) Act 2005 authorising a number of category C or D machines on the premises. When considering applications for such permits the Board will have regard to the licensing objectives and guidance from the Gambling Commission. The Board may take account of matters considered relevant to the application, which may include the licensing history of the premises under the Licensing (Scotland) Act 2005. The Board reminds licensed premises gaming machine permit holders that they must comply with the Gambling Commission's Code of practice for gaming machines in clubs and premises with an alcohol licence.

22. Temporary Use Notices

22.1. Temporary Use Notices (TUNs) allow premises to be used temporarily for gambling without a premises licence. Applicants must hold an operating licence issued by the Gambling Commission.

22.2. The Board notes that TUNs are available for “premises” but that section 218 of the 2005 Act states that a “set of premises” may be the subject of more than one TUN in a period of 12 months (provided that the aggregate of the periods for which the TUNs have effect does not exceed 21 days), but may not be the subject of temporary use notification for more than 21 days in a period of 12 months. Section 218 of the 2005 Act does not define what “set of premises” means but states that a set of premises is the subject of temporary use notification (or of a notice) if any part of the premises is the subject of temporary use notification (or of a notice).

22.3. In determining any question of whether the relevant TUN limit has been reached the Board will consider factors include the ownership/ occupation and control of the relevant premises and any relevant guidance issued by the Gambling Commission and regulations issued by the Scottish Ministers in this regard. Each case will be considered on its own merits.

23. Occasional Use Notices

23.1. The Board notes that, under section 39 of the 2005 Act, betting on a track on eight days or less in a calendar year may be permitted by way of an Occasional Use Notice (“OUN”).

23.2. The Board notes in terms of section 39 of the 2005 Act that OUNs are available to persons who are responsible for the administration of events on a track or are the occupier of the track, that an OUN must specify a day on which it has effect, and may not be given in respect of a track for a day in a calendar year if eight OUNs have been given in respect of that track for days in that year.

24. Exchange of Information between the Board and the Gambling Commission and between the Board and other persons

24.1. Under section 30 of the 2005 Act:

- the Gambling Commission may provide information received by it in the exercise of its functions to the Board for use in the exercise of the Board’s functions; and
- the Board may provide to the Gambling Commission for use in the exercise of its functions information received by the Board in the exercise of its functions.

24.2. Under section 350 of the 2005 Act, the Board may provide information to any of the following persons or bodies for use in the exercise of their functions under the 2005 Act:

- a constable or police force
- an enforcement officer
- a licensing authority (another licensing board in Scotland or local authority in England)
- Her Majesty's Commissioners of Customs and Excise (HMRC)
- The Gambling Appeal Tribunal
- The National Lottery Commission
- The Secretary of State
- The Scottish Ministers

and provide information obtained in the course of the exercise of any of its functions under the 2005 Act to HMRC for use in the exercise of any function.

24.3. In fulfilling its functions and obligations under the 2005 Act, the Board will exchange relevant information with other regulatory bodies and will establish protocols as necessary. In exchanging such information the Board will conform to the requirements of the Gambling Act, Data Protection and Freedom of Information legislation as well as the Gambling Commission's Guidance to Licensing Authorities.

24.4 Information on how Midlothian Licensing Board collects, uses and shares personal information is available on the Board's Privacy Notice on Midlothian Council's website at www.midlothian.gov.uk/privacy

25. Inspection of premises and criminal proceedings

25.1. In the first instance the Board wishes to foster a partnership approach to local regulation through working jointly with local businesses to tackle any issues linked to gambling premises.

25.2. Any inspection activities undertaken on behalf of the Board will be guided by the Gambling Commission's Guidance to Local Authorities and will be accountable, consistent, proportionate, targeted and transparent.

25.3. Inspection activities will generally only be undertaken for specific purposes including, but not limited to, the investigation of complaints e.g. due to non-compliance with licence conditions. Any wider inspection activities will generally form part of a co-ordinated or risk based approach e.g. as part of a wider checking of compliance with a specific obligation applicable to all premises licence holders or licence holders of a particular class of premises licence, or where any general risk of gambling related harm and/ or non-compliance with a provision of the 2005 Act has been identified.

25.4. In serious cases where there is information to suggest that an offence may have been committed, the Board or its officers may require to provide such information to Police Scotland (see section 24 above on exchange of information).

Appendix 1

SCHEDULE OF CONSULTEES TO THIS STATEMENT OF PRINCIPLES

This document is available on the website of Midlothian Licensing Board www.midlothian.gov.uk

It was sent to all the consultees listed below and will be sent to any other interested parties on request.

All responses will be considered and any appropriate adjustments will be made to the text.

If anyone has any queries, please contact the Licensing Section, Midlothian House, Buccleuch Street, Dalkeith EH22 1DN

- The Chief Executive Midlothian Council
- The Gambling Commission
- The Chief Constable, Police Scotland
- The Local Senior Officer, Scottish Fire and Rescue Service
- Director, Education, Communities and Economy, Midlothian Council
- Director, Health and Social Care, Midlothian Council
- Director, Resources, Midlothian Council
- Midlothian Licensing Forum
- East Lothian and Midlothian Public Protection Committee
- H.M. Revenue & Customs

Appendix 2

SCHEDULE OF RESPONSIBLE AUTHORITIES

GAMBLING ACT 2005

2. Midlothian Licensing Board, Midlothian House, Buccleuch Street, Dalkeith, EH22 1DN
3. The Gambling Commission, Victoria Square House, Victoria Square, Birmingham, B2 4BP
4. The Chief Constable, Police Scotland, Newbattle Road, Dalkeith EH22 3AX
5. The Local Senior Officer, Lothian & Borders Fire and Rescue Service, Dalkeith Fire Station, 36 Abbey Road, Dalkeith, EH22 3AD
6. Director, Education, Communities and Economy, Midlothian Council, Fairfield House, Dalkeith EH22 3ZP
7. Director, Health and Social Care, Midlothian Council, Fairfield House, Dalkeith EH22 3ZP
8. Director, Resources, Midlothian Council, Midlothian House, Buccleuch Street, Dalkeith, EH22 1DN
9. East and Midlothian Public Protection Committee, Brunton Hall, Ladywell Way, Musselburgh, EH21 6AF
10. H.M. Revenue & Customs, National Registration Unit, Portcullis House, 21 India Street, Glasgow, G2 4PZ.

Midlothian Licensing Board

Applications for Consideration – Summary Report

Exempt Information

Type of licence applied for	Name of applicant	Business Address	Description	Representations received
Provisional Grant Premises Licence	Ajay Kumar	72 Dundas Street Bonnyrigg	Provisional Grant of New Off Sale Licence	Police Scotland report – Appendix 1
Grant of New Licence	Pentland Still Limited	Pentland Still Limited Unit 35 Imex Business Centre Bilston Glen Industrial Estate Loanhead	Grant of New Off Sale Licence	Police Scotland report – Appendix 2 LSO report – Appendix 3

