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## SCOTTISH BORDERS LICENSING BOARD FRIDAY 20TH APRIL 2018

A MEETING of the SCOTTISH BORDERS LICENSING BOARD will be held in COMMITTEE ROOMS 2 AND 3, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS on FRIDAY, 20 APRIL 2018 at 10.00 am

N McKINLAY  
Clerk to the Licensing Board

13 April 2018

<b>BUSINESS</b>	
1.	<b>Apologies for Absence</b>
2.	<b>Order of Business</b>
3.	<b>Declarations of Interest</b>
4.	<b>Minute</b> (Pages 3 - 6) Minute of Meeting of 23 March 2018 for approval. (Copy attached.)
5.	<b>Licences dealt with under Delegated Powers</b> (Copy to follow.)
6.	<b>Statement of Licensing Policy</b> (Pages 7 - 44) Consider report by the Clerk seeking approval of the Board's Draft Statement of Licensing Policy for the period November 2018 to November 2023 to enable the statutory consultation to be commenced before a revised Policy Statement is published. (Copy attached.)
7.	<b>Licensing (Scotland) Act 2005:</b>
(a)	<b>Section 36: Review of Premises Licence</b> (Pages 45 - 48) Consider application for review of Premises Licence received from the Licensing Standards and Enforcement Officer for breach of mandatory Condition 10 - failure to pay annual fee (licenceholder cited to attend). (Copy report attached.)  <b>Andria Gardner</b> <span style="float: right;">George &amp; Abbotsford Hotel High Street Melrose</span>
(b)	<b>Section 72: Application for Grant of Personal Licence</b> (Pages 49 - 54) Consider application for Grant of Personal Licence received from Rowland Swatton (applicant cited to attend). (Copy application and notification of relevant offence from Police Scotland attached.)

8.	<b>Any other items previously circulated</b>	
9.	<b>Any other items which the Convener decides are Urgent</b>	

**Membership of Committee:** Councillors J Greenwell (Convener), J Brown, D Paterson, N Richards, S Scott, R Tatler, E Thornton-Nicol, G Turnbull, T Weatherston.

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Please direct any enquiries to:

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## Agenda Item 4

MINUTE of MEETING of the SCOTTISH BORDERS  
LICENSING BOARD held in Committee Rooms 2 & 3, Council  
Headquarters, Newtown St Boswells on Friday 23 March 2018  
at 10.00 a.m.

Present:- Councillors J. Greenwell (Convener), N. Richards, S. Scott, R. Tatler, E. Thornton-Nicol, T. Weatherston.  
Apologies:- Councillors J. Brown, D. Paterson, G. Turnbull.  
In Attendance:- Managing Solicitor (Property and Licensing), Licensing Team Leader, Licensing Standards and Enforcement Officers (Mr I. Tunnah and Mr M. Wynne), Democratic Services Officer (F. Henderson), Inspector Hodges, PC T. Ray - Police Scotland.

### 1.0 **MINUTE**

1.1 The Minute of Meeting of 19 January 2018 had been circulated.

### **DECISION APPROVED.**

### 2.0 **LICENCES DEALT WITH UNDER DELEGATED POWERS**

2.1 For Members' information there had been circulated copies of a list of licences dealt with under delegated powers for the period 8 February 2018 – 13 March 2018.

### **DECISION NOTED.**

### 3.0 **LICENSING (SCOTLAND) ACT 2005:**

3.1 **Section 20: Application for Premises Licence.** The Board considered the following application for the Grant of a Provisional Premises Licence:-

T J Morris Limited

Home Bargains  
Stirling Street  
Galashiels

Licensed hours applied for:

On Sale

None

Off Sale

Monday to Sunday

10 a.m. – 10 p.m.

Representations received:

Police Scotland - none

Licensing Standards Officer - none

Health - none

Other - none

There had been circulated copies of the Application and proposed operating plan. There were no objections and the Licensing Standards and Enforcement Officer advised that the premises had held a licence throughout its history.

Mr David Crank, DWF, Solicitors and Melissa MacLeod, the applicant's Area Manager were present. Mr Crank advised that Home Bargains currently had 80 stores throughout Scotland and operated as a general grocer supplying a wide range of products including bakery, clothes, garden supplies and some alcohol. He advised that his clients current licensed premises were situated in Channel Street, Galashiels and they planned to move

into the new, larger premises in Stirling Street, Galashiels where parking provision would be provided for its customers and 15 new members of staff would be employed. With regard to the alcohol, which was limited to beer, lager, wine and Christmas gift packs, there were measures in place to control its sale, such as age restriction prompt at the till, staff being trained initially and then continually re-trained. There was always a Manager on duty and a check-out manned continually. It was anticipated that construction work on the new premises would be completed by the end of April and following the shop fitting would be fully operational in summer 2018.

**DECISION  
GRANTED.**

- 4.1 **Section 29: Application for Variation of Premises Licence.** The Board considered the following applications for Variation of Premises Licence:-

**Aldi Stores Limited**

Aldi Stores  
King Street  
Galashiels

Amendments to Operating Plan and Layout Plan, to include an increase in capacity from 24.75 square metres to 29.0067 square metres and removal of seasonal variation.

Representations received:

Police Scotland - none

Licensing Standards Officer - none

Health - none

Other - none

There had been circulated copies of the Application, current operating plan and proposed operating plan. The Licensing Standards and Enforcement Officer advised that as a result of re-fitting the shop, the area of alcohol had increased slightly and the variation for the Festive Period was to be removed.

Mr Niall Hazzard, TLT Solicitors accompanied by the applicant's Area Manager were present. Mr Hazzard explained that Aldi Stores Limited had undertaken a nationwide refurbishment of its stores and the new shelving configuration had resulted in an increase in alcohol capacity.

**DECISION  
GRANTED.**

- 4.2 **Stobo Castle Health Spa Ltd**

Stobo Castle Health Spa  
Stobo  
Galashiels

Amendments to Operating Plan to amend core hours.

There had been circulated copies of the Application, current operating plan and proposed operating plan. The Licensing Standards and Enforcement Officer advised that the operating plan had not been updated for some considerable time and the amendments were all within the Board's Policy.

Mr Elliot Winyard, the Designated Premises Manager was present and explained that the business had evolved over the last few years and the changes to the existing Operating

Plan would allow scope for more flexible operation.

**DECISION  
GRANTED.**

4.3 **Lidl UK GmbH**

Lidl UK GmbH  
31-33 Shedden Park Road  
Kelso

Amendments to Operating Plan and Layout Plan to include seasonal variation to allow for an increased capacity of alcohol display for the period 1 December each year until 2 January of the following year; increase capacity of alcohol display area from 41.80m<sup>2</sup> to 45.28m<sup>2</sup> (non-seasonal), with the seasonal variation to increase this area to 54.82m<sup>2</sup> between 1 December each year and 2 January the following year.

Representations received:

Police Scotland - none  
Licensing Standards Officer - none  
Health - none  
Other - none

There had been circulated copies of the Application, current operating plan and proposed operating plan. The Licensing Standards and Enforcement Officer advised that the application was for a small increase, which was within policy.

Ms Tracey Broomfield, the applicant's local representative and Mr Andrew Hunter, Solicitor were present. Mr Hunter explained that the increase was in relation to how the alcohol would be displayed all year round and the inclusion of the seasonal variation to increase the alcohol between 1 December each year and 2 January the following year. He stated that the increase would equate to only 4.2% of the overall floor space in comparison to the current 3.9% currently and there were 5 personal licence holders employed on the premises with the result that there had been no concerns regarding alcohol sales on the premises.

**DECISION  
GRANTED.**

5.3 **Section 56: Application for Occasional Licence.**

Malcolm Cooper

WG Sports Complex  
(Former Auld Baths)  
Bath Street  
Hawick

The Board were advised that the application for an Occasional Licence on Saturday, 14 April 2018 between the hours of 11.00am and 9.00pm for an Orange March had been withdrawn

**DECISION  
NOTED.**

**PRIVATE BUSINESS**

6.0 **DECISION**

**AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 14 of Part I of Schedule 7A to the Act.**

## **SUMMARY OF PRIVATE BUSINESS**

### **7.0 MINUTE**

The Board approved the Private Section of Minute of Meeting of 19 January 2018.

*The meeting concluded at 10.25 a.m.*



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## **SCOTTISH BORDERS LICENSING BOARD STATEMENT OF LICENSING POLICY**

**Report by Clerk to the Licensing Board**

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## **SCOTTISH BORDERS LICENSING BOARD**

**20 April 2018**

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### **1 PURPOSE AND SUMMARY**

- 1.1 This report seeks approval of the Scottish Borders Licensing Board to the draft Statement of Licensing Policy for the period November 2018 to November 2023 and also seeks authority to carry out the statutory consultation on the statement to allow consideration of a final Statement thereafter.**
- 1.2 In terms of the Licensing (Scotland) Act 2005 as amended ("the Act"), the Scottish Borders Licensing Board ("the Board") must publish a Statement of their Policy ("the Statement") with respect to the exercise of their functions under the Act. The current Statement was originally for the period November 2013 to November 2016 but its effect was extended by Section 42 of the Air Weapons and Licensing (Scotland) Act 2015 up to the date falling eighteen months after the local government election. The period of the new statement will be from November 2018 to November 2023.
- 1.3 The Board must ensure that their Statement seeks to promote the five licensing objectives, must carry out consultation on it prior to publication and have regard to it when exercising their functions once the statement has been finalised and published following the consultation process.
- 1.4 The Statement must also set out the extent to which the Board considers there to be overprovision of licensed premises or those of a particular description in any locality within the Board's area.

### **2 RECOMMENDATIONS**

- 2.1 **I recommend that the Board:-**
  - (a) Approves the draft Statement of Licensing Policy for the period November 2018 to November 2023;**
  - (b) Agrees to carry out the statutory consultation on the draft Statement of Policy for the period November 2018 to November 2023; and**
  - (c) Instructs the Clerk to bring forward a report to the Board on the outcome of the consultation following the expiry of the consultation period.**

### **3 BACKGROUND**

- 3.1 The Act requires that the Board publish a statement of their policy within eighteen months of any local government election which will have effect until eighteen months after the next local government election with respect to the exercise of their functions under the Act during that period. In preparing this, the Board must ensure that the Statement seeks to promote the five licensing objectives. The Board must consult on the Statement with the Local Licensing Forum for their area, and if the membership of the Forum is not representative of these parties then also:
- holders of premises and personal licences,
  - the Chief Constable
  - persons having functions relating to health, education or social work,
  - young people and
  - persons resident within the area
- and such other persons as the Board thinks appropriate. A list of suggested consultees has been given in Appendix 1 to the Draft Statement.
- 3.2 Once finalised and published, the Board must have regard to the Statement for that period. The Board are required to make copies of the Statement available for public inspection free of charge and publicise that the Statement has been published and how the public can inspect.
- 3.3 The Board agreed at their meeting on 22 September 2017 to appoint Councillors Greenwell, Richards, Tatler and Thornton-Nicol to a Short Life Working Group ("the Group") to consider the current Statement valid for the period November 2013 to November 2018. The Group considered what revisals might be required.
- 3.4 The Group met on 15 November 2017 and 14 February 2018 assisted by the Managing Solicitor of Property and Licensing and Officers from the Licensing Unit to consider matters and the attached draft Statement is the outcome of these deliberations.
- 3.5 The Board are now required to consider the draft Statement and to instruct the Clerk to carry out the statutory consultation. Appendix 1 of the draft statement contains the list of Consultees being both the statutory consultees and others as identified by the Board as having an interest. It is suggested that a twelve week period be allowed for such consultation, that being the time period favoured by the Scottish Borders Council for consultations. The consultation will be available on the Council's website to ensure that the general public can easily engage with the consultation process.
- 3.6 The Clerk will bring forward a further report in September 2018 following the conclusion of the consultation period on the outcome of that consultation process. This will allow the Board to determine the Statement for publication in order that the Statement can be effective from November 2018.



## 4 IMPLICATIONS

### 4.1 Financial

The costs attached to the recommendations contained in this report can be met within the Board's budget.

### 4.2 Risk and Mitigations

When revising the Policy Statement, the statutory consultation process helps mitigate the risk of challenge to the Statement post-approval, as all comments will be considered before it is finalised. The Policy also details the role of the Board, the obligations of the licensee within the Act and recommendations on how they can adhere to them. The multi-agency approach to Licensing in the Scottish Borders should help ensure that the objectives of the Act are achieved, although the risks can never fully be mitigated by the Policy alone.

### 4.3 Equalities

An Equalities Impact Assessment is in the process of being carried out and will be finalised upon conclusion of the public consultation process. A copy of the signed off assessment will be attached to the further report to be brought to the Board following the expiry of the consultation period.

### 4.4 Acting Sustainably

There will be positive impacts upon the quality of community life and improvements in local amenities as the activities described in the report will result in the Board promoting the five Licensing Objectives in the exercise of its duties.

### 4.5 Carbon Management

There are no effects on carbon emissions arising from the proposals contained in this report.

### 4.6 Rural Proofing

There are no effects on rural proofing arising from the proposals contained in this report.

### 4.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to either the Scheme of Administration or the Scheme of Delegation arising from the proposals contained in this report.

## 5 CONSULTATION

- 5.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Service Director HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

**Approved by**

**Nuala McKinlay**

**Clerk, Scottish Borders Licensing Board Signature .....**

**Author(s)**

Name	Designation and Contact Number
Ron Kirk	Managing Solicitor, Property and Licensing, 01835 826764

**Background Papers:**

**Previous Minute Reference:** Licensing Board, 22 September 2017

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Ron Kirk can also give information on other language translations as well as providing additional copies.

Contact us at Legal & Licensing, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA. 01835 825225.

[Legal@scotborders.gcsx.gov.uk](mailto:Legal@scotborders.gcsx.gov.uk)

**SCOTTISH BORDERS LICENSING BOARD**

**STATEMENT OF LICENSING POLICY**

**LICENSING (SCOTLAND) ACT 2005**

**November 2018 - November 2023**

## Foreword

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### 1 INTRODUCTION

1.1 For the purposes of the Licensing (Scotland) Act 2005 as amended (“the Act”), the Scottish Borders Licensing Board (“the Board”) is the Licensing Authority for the Scottish Borders area

1.2 The Act requires the Board to publish a Statement of Licensing Policy. It is expected that Boards will generally publish their Policy within 18 months of any local government election which will have effect until 18 months after the next local government election.

This Statement fulfils that statutory duty for the Scottish Borders for the period from November 2018 to November 2023.

1.3 The Board’s role is to regulate the sale of alcohol and the premises on which it is sold. In doing so, it is required to ensure its policies promote the licensing objectives as set out in the Act.

1.4 The licensing objectives are:

- (a) Preventing Crime and Disorder
- (b) Securing Public Safety
- (c) Preventing Public Nuisance
- (d) Protecting and Improving Public Health
- (e) Protecting Children and Young Persons from Harm

1.5 The Board will consider the individual circumstances of each application based on the information provided to it. This Policy will assist applicants put in place appropriate measures to ensure the licensing objectives are met. The Board is aware of the

importance of sporting, local traditional festival and historical common riding events within its area. Evidence of the potential impact on the licensing objectives within the Board area is highlighted in the Scottish Borders Alcohol Profile which can be accessed on the Council's website [insert f/URL].

Where the Board considers there to be any inconsistency with one or more of the licensing objectives, this may form the basis of a decision for refusal of an application. Before making a decision, the Board will invite applicants and relevant interested parties to make representation to them either in person or in writing.

1.6 Overall the number of licensed premises in the Scottish Borders has remained relatively stable over previous years. 466 as at October 2017 compared with 468 in the previous three year policy period. The Act requires Boards to produce a statement of overprovision and with this in mind, Scottish Borders Licensing Board may take the view that if premises are not trading and annual fees remain unpaid for a period in excess of twelve months a premises review application may require to be considered.

1.7 The Board's licensing powers are not the main statutory mechanism for dealing with all regulatory regimes. Responsibility for meeting any other statutory requirements rests with individual applicants. A contacts list for other regulatory functions is provided at Appendix 2

The Board will avoid duplication with other statutory or other systems of control outwith the licensing remit but will always exercise its powers where necessary with regard to any of the licensing objectives.

1.8 The Board complies with its duties under the Equality Act 2010 and its Equalities Outcomes and Mainstreaming Report for 2017 to 2021 has been published on its website. It opposes all forms of unlawful discrimination and will expect all parties to work to delivering equality for all people.

1.9 You can contact the Licensing Unit of Scottish Borders Council by:

E-mail [liquorandlicensing@scotborders.gcsx.gov.uk](mailto:liquorandlicensing@scotborders.gcsx.gov.uk)

Phone 01835 826662

Fax 01835 826693

Or in writing: Licensing Unit, Regulatory Services – Legal and Licensing, Scottish Borders Council, Council Headquarters, Newtown St Boswells, TD6 0SA

## 2 LICENSING OBJECTIVES

2.1 The Board's Policy Statement will promote and consider the licensing objectives. The Board requires licensees to have policies in place that demonstrate how they will meet the licensing objectives. The following are examples of what should be considered and simple measures that can be put in place.

### 2.1.1 Preventing Crime and Disorder

Underage drinking:

- Use of accredited proof of age cards
- Enforcement of mandatory Challenge 25 policy

Drunkenness on the premises

- Effective and responsible management of premises
- Training and supervision of staff
- Drink driving awareness

Illegal possession and/or use of drugs

- Implementation of a drugs policy, induction and ongoing CPD training

Violent, aggressive behaviour and antisocial behaviour

- Effective and responsible management of premises
- Suitable stewarding
- Consideration of CCTV systems

### **2.1.2 Securing Public Safety**

- Premises to be kept in a safe manner including the occupancy, design, stability, layout of the premises
- All access and exits to the premises for pedestrians and vehicles to ensure ease of access for emergency vehicles
- Measures to limit the accumulation of glass bottles or litter on the premises and in their immediate vicinity
- Compliance with the Fire (Scotland) Act 2005 as amended and associated Regulations (see Appendix 8)

### **2.1.3 Protecting and Improving Public Health**

- Refusal book
- Promotion of responsible drinking
- Strict compliance to mandatory conditions particularly to irresponsible promotions
- Consider providing a suitable selection of reasonably priced non-alcoholic beverages
- Display comprehensive price list of alcoholic and non-alcoholic beverages available as a matter of good practice

### **2.1.4 Preventing Public Nuisance**

- Signage relating to litter, noise or antisocial behaviour when leaving premises
- Appropriate stewarding
- Provision of contact details for local transport

### **2.1.5 Protecting Children and Young Persons from Harm**

The Board expects that children and young persons will normally be admitted to on sale premises for the purpose of consuming light refreshments or a meal, participating in a relevant sporting activity or attending a pre-arranged function or event.

Children should always be accompanied by a responsible adult. Young persons access will be assessed in relation to the nature of activity and consistency with the licensing objectives.

The following are suggested control measures

- Effective and responsible premises management and training
- Consideration on the hours, appropriate areas and supervision requirements for children and young persons who may be present
- Strict enforcement of mandatory Challenge 25 Policy

### 3 BOARD BUSINESS

- 3.1 The Board will deal with all its business in an open, accessible and transparent way. Meetings will be held in public but for legal reasons, some matters may require to be held in private. The procedure at Board hearings is attached at Appendix 3.
- 3.2 The Board has adopted a Scheme of Delegation to ensure that decisions can be made in an efficient and timely manner. This is attached as Appendix 4 to this Statement and will be kept under review by the Board.
- 3.3 For applications that cannot be dealt with by delegated powers, the Board will normally meet on a monthly basis in the premises of Scottish Borders Council. The Board will give notice of applications received and publish application forms, agendas and minutes of its meetings on Scottish Borders Council's website [www.scotborders.gov.uk](http://www.scotborders.gov.uk). These are available in alternative formats on request.
- 3.4 The Board will consider all applications on their own merits with regard to its Policy and the licensing objectives.

### 4. OVERPROVISION

- 4.1 The Act places a legal requirement on Board's to include a statement of its overprovision assessment within its Policy.

The Scottish Borders Licensing Board will consider overprovision when relevant applications come before it. Members Clubs are exempt from the overprovision assessment. The Board will take into consideration the likely impact on the licensing objectives in the area where the premises are located, the type of premises along with the proposed licensed hours and capacity. The Board will refer to all the evidence available.

- 4.2 The Board acknowledges the work carried out by and on behalf of the Scottish Borders Licensing Forum by way of the multi agency data gathering project and the subsequently produced report "Scottish Borders Alcohol Profile". The Alcohol Profile forms an invaluable evidence base which has been most useful in the compilation of this Policy and the Board will have regard to the Profile when determining applications.
- 4.3 When considering applications for a particular type of premises in a particular area the Board will consider the locality as the Intermediate Geographies detailed in the Alcohol Profile as the area within which the premises are situated, but will also take into account the immediate adjoining areas.
- 4.4 The Board is aware that almost three-quarters of alcohol is sold in supermarkets and off sale premises. Given the rural spread of the Scottish Borders area, alcohol may not be consumed and associated harm may not take place in the area it was purchased. When considering overprovision in a specific locality, the Board will also take into account the overall availability in the Borders.
- 4.5 The number of late night hours entertainment premises (after 1.00am) within Scottish Borders is currently four. The Board is of a view that any increase beyond that number could be overprovision.
- 4.6 The Board strongly considers well run on sale premises are a preferred and safer environment for alcohol consumption and should be encouraged over drinking in the home or any other unlicensed environment. On sale premises which provide a full range of services, for example food and quality accommodation, will be encouraged in most areas.

- 4.7 With regard to off sales, the Board is conscious of the fact that the capacity required to be shown within the premises can sometimes be confusing and even seem somewhat irrelevant. The Board does acknowledge that display areas can be a factor in encouraging purchase and ultimately consumption and as such will look for detailed justification for any application to have a display area in excess of 10% of the overall sales area of premises, other than dedicated wine and spirit merchants.

While Regulations\* dictate the requirement for display areas to be shown as height and width of display with a linear measurement of displays outwith that on a layout plan, the Board will further require layout plans to clearly show the area, lined and shaded, as a square metres of floor area given over to alcohol display when any relevant application is submitted.

- 4.8 When the Board is aware of licensed premises which are not trading, it may take steps to review those premises licences to maintain an accurate assessment of overprovision.

\* *The Premises Licence (Scotland) Regulations 2007 (SSI 452) and The Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007 (SSI 546)*

## 5. OCCUPANCY

- 5.1 Occupancy capacity is a factor in the assessment of overprovision and a factor for premises and events to achieve the licensing objectives.
- 5.2 The Board will take account of any maximum occupancy limit set by Scottish Borders Council's Building Standards service if deemed appropriate to ensure safety of persons in premises and safe escape in the case of emergency. If there are additional concerns about crime and disorder or public nuisance, the Board may consider setting a lower maximum occupancy limit than recommended by Building Standards.
- 5.3 The Board will expect applicants to consider various factors when assessing the appropriate capacity for premises or events. Depending on the individual premises, examples of these include:
- The design and layout of the premises
  - The location, availability and size of exits including emergency exits
  - The nature of the premises or event
  - The nature of the activities being provided
  - The provision or removal of temporary structures such as a stage or furniture
  - The number of staff available to supervise customers both ordinarily and in the event of an emergency
  - The profile of the customers
  - The attendance of customers with disabilities
  - The provision of suitable and sufficient accessible toilet facilities
  - The nature and provision of facilities for ventilation

## 6. PREMISES LICENCES

- 6.1 Premises that wish to sell alcohol for consumption on or off the premises are required to have a Premises Licence. This will regulate, amongst other things, what activities are allowed on the premises and what hours the premises can be open for business. There must be a description of the premises, an operating plan and a layout plan of the whole premises.

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. Once in place, any changes to a premises licence will require an application for variation to be submitted for further approval by the Board.

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 and young persons. With particular reference to children and young persons, whilst the Board wishes to encourage inclusive activities, it will have particular concerns in permitting children and young persons into premises where the supply and consumption of alcohol is the main activity. The Board considers premises more suitable to be accessed by children and young persons where there is food provision, a relevant sporting activity or pre-arranged function or event. It will assess the times of access and supervision arrangements based on the individual circumstances with regard to the licensing objective protecting children and young persons from harm.

The layout plan should show, among other things, the area where alcohol will be sold, including any proposed licensed outside drinking area(s), seating arrangements, any accessible arrangements, the location of any gaming machines and areas where children and young persons are to be allowed.

The Board's licensing support staff will provide guidance and advice to applicants in relation to the requirements for operating plans and layout plans and applicants are encouraged to contact them prior to submission of an application. It should be noted that neither the Board nor any of its support staff can provide legal advice in relation to applications and applicants should seek independent legal advice prior to submission of an application.

**6.1.1 Notification of Premises Licence applications.** The Licensing Board must give notice of a Premises Licence application to the following:

- Chief Constable, Police Scotland
- Scottish Fire and Rescue Service
- Scottish Borders Council
- the local Health Board for the area
- each person having a notifiable interest in neighbouring land
- any Community Council within whose area the premises are situated

All applications will be advertised on the Council's website – [www.scotborders.gov.uk](http://www.scotborders.gov.uk) and the applicant has a legal duty to display a public notice at the premises for 21 days

**6.1.2 Objections and Representations.** Any person may object to an application for Premises Licence. The Board will consider any objection received if it relates to one or more of the licensing objectives. Where this is not the case, the Board may consider the objection to be frivolous or vexatious and determine not to take account of it in determining an application.

**6.1.3. Consideration of Premises Licence application.** The Board will determine each premises licence application on its individual merits having regard to the information provided in the operating plan, layout plan, any supplementary papers in support of the application ie applicant's in-house policy statements and any competent objections received. In addition, the Board will assess the application in relation to its overprovision statement policy and may request an Anti Social Behaviour Report if it deems necessary to do so.

The Board will have particular regard to:

- The nature of the premises, the style and type of use, the potential number and profile of the customers likely to attend the premises;
- The proposed hours of operation;

- The means of access to the premises including the location of customer entrances and exits taking account of accessibility;
- The provision of toilet facilities including consideration to provision of sufficient accessible toilet facilities;
- Whether children and/or young persons are to have access to the premises or part(s) of the premises and upon what terms;
- Areas or activities which have potential crime and disorder or public nuisance and any measures to mitigate those issues ie the requirement for CCTV and door steward arrangements to be put in place.

6.1.4 **Conditions.** Mandatory Conditions for all Premises Licences are prescribed in the Act attached as Appendix 5, and Regulations. In determining an application, the Board may impose additional conditions to promote one or more of the licensing objectives or otherwise give effect to the terms of its Policy Statement or the provisions of the Act.

## 6.2 Management of Premises.

6.2.1. The Board expects that licence holders and their staff will operate their premises in a manner consistent with the licensing objectives. Applicant's in-house policies will require to be evidenced to address the following areas:

- Proof of Age
- Staff Training
- Incident Book
- Noise
- Dispersal of Patrons
- Smoking and monitoring the behaviour of patrons in the vicinity of licensed premises in particular beer gardens and outside smoking areas
- Litter and Waste Management
- CCTV
- Compliance with the requirements of the Equality Act 2010
- Safe evacuation of all patrons in the case of emergency
- Consideration of undertaking and reviewing an Access Audit
- the prevention of the misuse of drugs on the premises.

6.2.2 **Condition of Premises.** Licence holders and their staff are expected to ensure that the premises, both internally and externally, are maintained in a good, clean and tidy condition at all times.

6.2.3 **Seating Provision.** The Board will expect adequate seating to be available within on sale premises.

6.2.4 **Pubwatch.** Pubwatch can be useful to licence holders and their staff in preventing crime and disorder and undue public nuisance. The Board supports and encourages Pubwatch schemes within its area.

6.2.5 **Best Bar None.** The Best Bar None Scheme is a nationally recognised award scheme which assists licence holders and staff in addressing the licensing objectives. The Board supports the Scheme and encourages involvement with it.

6.2.6 **Door Stewarding.** The Board, taking into account the licensing objectives of preventing crime and disorder, securing public safety and preventing public nuisance may consider the provision of door stewards appropriate depending on the nature of activities and events carried on at licensed premises and would support the use Security Industry accredited stewards for this purpose. Whether or not door stewards are required and, if so, the number of stewards, the occasions and hours they must be present will be determined according to the merits of each individual application.

**6.3 Adult Entertainment.** Any application for premises licence proposing to include adult entertainment in its operating plan will be considered on an individual basis. The Board will expect applicants to give consideration to the licensing objectives and to ensure that where such adult entertainment provision is available there will be stringent measures in place to prevent commercial sexual exploitation. (Note: At the time of review of this Policy the Board is aware of the Scottish Government's intention to introduce the licensing of sexual entertainment venues ("SEV Licence"). Once commenced, any Premises Licence operating plan including adult entertainment will be restricted to a maximum four such occasions a year, otherwise a separate SEV Licence may be required.)

## 7. LICENSED HOURS AND EXTENDED HOURS

- 7.1 Whilst the Act removes set permitted hours for on sales and leaves applicants to decide what is appropriate to include in the operating plan, the Board recognises the impact licensing hours have in an area. They will consider the individual requirements of applicants and premises and how such hours may impact on a particular area.
- 7.2 Off sale hours may only be permitted between the hours of 10.00am and 10.00pm and the Board may restrict off sale hours where it is satisfied that any of the licensing objectives may not be met. Licence holders should be aware that any off sale should be off the premises within 15 minutes of the terminal hour. The Board must refuse any application for off sales hours outwith the permitted times.
- 7.3 As far as on sale hours are concerned, the Board will not normally grant applications for more than 14 hours in any 24 hour period. Where there is no significant entertainment and alcohol consumption is the principal activity, hours should not extend beyond 12.00midnight Sunday to Wednesday and 1.00am Thursday to Saturday, with a commencement time of 11.00am seven days a week.
- 7.4 Applicants for on sale licensed premises with an off sale facility should be aware that the off sale hours on the licence cannot extend either prior to 10.00am or after 10.00pm. They should also be aware that this applies to customers who purchase a drink intended as an on sale and subsequently carry it off the licensed premises.
- 7.5 Where applicants intend to apply for any core on sale hours outwith those detailed in 7.3 above, they will be expected to show how any activity to be carried out on the premises is consistent with the licensing objectives. Any inclusion of seasonal variations should state precise fixed dates and times.

In relation to festive seasonal hours for inclusion within the premises operating plan, the Board will normally consider acceptable extension of on sale core hours until 1.00am on Christmas Eve, Christmas Day, Boxing Day, New Years Eve and New Years Day.

- 7.6 While all applications will be subject to the Mandatory Conditions under the Act, attached as Appendices 5 and 6, the Board reserves the right to apply further conditions where it sees fit in order to promote one or more of the licensing objectives or otherwise give effect to the terms of its Policy Statement or the provisions of the Act. Examples of additional conditions which may be considered appropriate are attached as Appendix 8.
- 7.7 It is acknowledged that there will be events and occasions which cannot be catered for or anticipated within the core hours of an operating plan and as such the Board will consider applications for Extended Hours on their individual merits in relation to its policy at 7.3 above and the licensing objectives.
- 7.8 **Late Hours.** Applicants should be aware of the additional mandatory conditions as attached at Appendix 6, applied to late opening premises (after 1.00am) and the Board

reserves the right to consider further additional conditions to promote the licensing objectives.

The Board will only consider applications for on sale core hours after 1.00am from specific late night venues, where substantial live entertainment is being provided and the alcohol sold is intended as being ancillary to that entertainment.

The Board is, however, aware of the variety of events, functions and festivals which occur in the Scottish Borders and the importance of these to the area. With this in mind they will consider applications for occasional licences and extensions for times outwith normal hours and will in appropriate circumstances grant such applications.

The Board does not consider that all events connected with historic common ridings and summer festivals should automatically be seen as justification for an occasional licence or to extend licensed hours. Applicants will require to specify how their application is connected to the local common riding or festival event and the Board will consider each on its individual merits in relation to the licensing objectives.

If granting an application for occasional licence or extended hours which includes the late hours period, the Board will consider attaching some or all of the late hours conditions (Appendix4) along with any other appropriate additional conditions.

Any licensees operating in the late hours period will be expected to dispense drinks in plastic or toughened vessels.

## **8. HOME DELIVERIES/REMOTE SALES**

8.1 The Board expects that premises which intend to provide home deliveries of alcohol must specify this activity in their operating plan and provide details of how this will operate with particular regard to the licensing objectives. These details should include the hours of delivery, the steps taken to identify the age of the person ordering and receiving, payment arrangements, and arrangements to protect the safety of those delivering alcohol.

8.2 Orders for delivery of alcohol can only be taken during the off sale core times stipulated in the Premises Licence. Deliveries may take place outwith these times but not between midnight and 6.00am.

## **9. MEMBERS CLUBS**

9.1 Members Clubs are required to be licensed in the same way as any other premises selling alcohol, they are however exempt from some provisions of the Act. Appendix 9 refers.

9.2 Members Clubs will be expected to abide by the rules governing membership and the introduction of non members to the premises. They are required to have an appropriate Constitution detailing category of membership and which adequately reflects Members Club status, along with all the requirements contained in Appendix 7. The operating plan for a Members Club should also reflect its status, including sign in provisions and the Board expects Members Clubs to thereafter abide by the terms of such operating plan.

9.3 Any Members Club seeking to vary its licence to remove Members Club status should be aware that before consideration of any such variation the Board will require evidence of this having been agreed by the membership, ie a certified copy of approved minute from AGM or EGM showing the membership decision to such a variation.

It should be noted that neither the Board nor any licensing support staff can provide legal advice in relation to applications and applicants should seek independent legal advice prior to submission of an application.

## 10. GARAGES

10.1 The Act excludes some premises from authorising the sale of alcohol including premises or parts of premises used as a garage. Such premises are used as a garage if there is:

- sale by retail of petrol or derv (diesel);
- the sale of motor vehicles; or
- the maintenance of motor vehicles.

However, where those premises or parts of premises are used for sale by retail of petrol or derv, alcohol may be authorised to be sold in some circumstances. Alcohol may be sold where the Board determines that in relation to such premises, persons resident in the locality are, or are likely to become, reliant to a significant extent on the premises as the principal source of (a) petrol or derv, or (b) groceries.

10.2 For any application in respect of a garage premises in its area, the Board will require the applicant to provide sufficient information to satisfy it that the premises meets the criteria to permit the authorised sale of alcohol.

## 11. OUTSIDE DRINKING AREAS

11.1 Where applicants for a premises licence propose within their operating plan to provide an outside drinking area or areas, such area(s) must be included within the layout plan for the premises and clearly indicated as such.

11.2 The off sale terminal hour is 10.00pm and the Board considers this should be the terminal hour for the operation of any outside drinking area in order to ensure that the licensing objective of preventing public nuisance is met. The Board will only grant any applications to include outside area(s) in a Premises Licence where it is satisfied that that there is no likelihood of nuisance being caused to neighbours. Although patrons may still use outside areas after 10.00pm, staff should ensure that noise is kept to a minimum, clear signage should be displayed to that effect and policies should be in place to promote this. The Licensing Board will expect the applicant to show that he has control of any outside area to ensure that the licensing objectives are met.

11.3 Sufficient ashtrays and other litter receptacles are to be provided in the outdoor areas which are excluded from the definition of “no smoking premises” as prescribed in the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006.

## 12. OCCASIONAL LICENCES

12.1 An Occasional Licence allows for the sale of alcohol on unlicensed premises. There are periods when a large number of occasional licences are in force, particularly during common riding and summer festival events which result in an increase of alcohol availability and the Board recognises the need to consider the impact of such applications in relation to the licensing objectives. The Board will generally look for the applicant to demonstrate that an occasional licence application is for a specific event. The Board accepts many fundraising and community events benefit from the granting of an occasional licence but would expect any organisation considering applying, to take into account whether or not it is appropriate to have the sale of alcohol forming a normal

part of the event with particular regard to the Protecting Children and Young Persons from Harm objective. This should be particularly considered for child centred events.

12.2 The Board will not normally consider an application for occasional licence which relates to any premises in respect of which a Premises Licence is in existence but is currently suspended unless exceptional circumstances can be evidenced.

12.3 A Members Club can also apply for an Occasional Licence to authorise the sale of alcohol on their premises for events where access is not restricted to its Club Members and their signed in guests.

12.4 An application for an Occasional Licence may be made by any of the following:

- the holder of a Premises Licence (including a Members Club for events to be held on the Club premises);
- the holder of a Personal Licence; or
- a representative of any Voluntary Organisation (for events or fundraising events connected to the activities of the organisation).

12.5 The holder of a Premises Licence or a Personal Licence may make an unlimited number of applications. However, there are restrictions on the number of applications a Voluntary Organisation and a Members Club can make in any period of 12 months. The Board defines the 12 month period as 1 January to 31 December. Further guidance on this is available from the Licensing Unit contactable as detailed at 1.9 above.

12.6 The Board will expect that applicants will be able to evidence that the following factors have been considered when organising their event:

- The design and layout of the premises
- The location, availability and size of exits including emergency exits
- The nature of the premises or event
- The nature of the activities being provided
- The provision or removal of temporary structures such as a stage or furniture
- The number of staff available to supervise customers both ordinarily and in the event of an emergency
- The profile of the customers
- The attendance of customers with disabilities
- The provision of suitable and sufficient accessible toilet facilities
- The nature and provision of facilities for ventilation
- The accessibility of the event premises for emergency services

12.7 Applications for Occasional Licence can be made for one-off or longer duration events, but can only last up to a maximum of 14 days.

12.8 To allow time for consultation with the Police, the Licensing Standards Officer and for objections or representations to be considered, applications should be submitted as far in advance as possible, and not later than 42 days before the event takes place. It is recognised that in some circumstances applications will be submitted at short notice and the Board will endeavour to process these if possible but organisers should be aware that late submission may result in a request for written reasons for late lodgement and a licence not being granted due to lack of time to fully assess the impact on the licensing objectives. Provided there are no adverse reports from the Police, Licensing Standards Officers or any objections or representations, the Board must grant the application. Failing this, the Board must hold a hearing to determine the application at which it may grant the licence as applied for, grant the licence with conditions or refuse the licence, all as detailed in Section 59 of the Act. The Conditions attached to

all Occasional Licences are attached as Appendix 7 and the Board may impose additional conditions as it determines appropriate to promote the licensing objectives.

12.9 With regard to the commencement and terminal hours for the sale of alcohol in connection with any Occasional Licence application, refer to 7.2 and 7.3 above.

12.10 The provision of live music, discos or karaoke could cause nuisance and are often elements of Occasional Licences. Applicants will therefore be required where they wish to have these activities to give details of how they will take reasonable steps to prevent noise nuisance, to ensure that there will be no noise from amplified and non-amplified music, singing or speech sourced from licensed premises audible in any adjoining or neighbouring property. (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 end of the evening.) If required, advice is available from Scottish Borders Council's Environmental Health section.

12.11 The Board expects any licensee or organisation catering for an event to have written policies in place, with an undertaking to abide by them, which show how the licensing objectives will be met. These policies should relate to and be appropriate to the particular event, as follows:

- (a) Adequate and appropriate stewarding to be in place.
- (b) The use of toughened glass or plastic drinking vessels, where appropriate
- (c) An age identification/verification scheme should be detailed.
- (d) An undertaking that there will be full compliance with any guidance or advice from the Licensing Standards Officer, the Police, the Fire and Rescue Service and any other appropriate authority.
- (e) Details of measures put in place or steps taken to lessen the chance of noise nuisance from any entertainment should be detailed.
- (f) Any further policies relating to the event should be shown under the appropriate licensing objective heading. If children or young persons are to be present in licensed areas then particular attention and detail should be given to showing how they will be protected from harm.

12.12 The Board is concerned to ensure that the availability of Occasional Licences as a short term means of licensing premises is not abused. Where repeated occasional licence applications are submitted in respect of premises where it considers that insufficient measures as detailed in 12.10 above can be taken and there are concerns regarding the suitability of the premises having regard to any of the licensing objectives, the Board will refuse these.

*General Note: In relation to events covered by an occasional licence, applicants should also be aware that they may require a Public Entertainment and/or Late Hours Catering Licence issued by Scottish Borders Council, under the Civic Government (Scotland) Act 1982. Clarification should be sought from the Licensing Unit as detailed in 1.9 above.*

### 13. IRRESPONSIBLE PROMOTIONS

13.1 It is important that licensees and their staff are aware that some promotions may be irresponsible to ensure they do not breach any of the mandatory conditions of any Premises or Occasional Licence.

13.2 While the offering of free alcoholic drink in connection with the purchase of another drink is categorised in the list of irresponsible promotions, the Board takes the view that advertising alcoholic drinks on licensed premises as being free as a result of any purchase or activity is inconsistent with the licensing objective of protecting and improving public health. While the inclusion of a bottle or glass of wine for example in the cost of a meal or meals has been common practice this should not be highlighted as being free and should not be used as a means to entice patrons to consume alcohol

they may not have otherwise intended to. The price quoted should be shown as being inclusive of the alcoholic drink with non-alcoholic alternatives being available. There should be no advertising of free alcoholic drinks as a result of attendance at licensed premises for any purpose such as a sporting event or the scoring of a goal or suchlike.

## 14. PERSONAL LICENCES

14.1 All premises licences, with the exception of Members Clubs, require a Designated Premises Manager who must be the holder of a Personal Licence. Whilst all alcohol sales require to be authorised by a Personal Licence holder, the Act does not require the Personal Licence holder to be present on the premises when the sale is made

14.2 When considering an application for a Personal Licence, the Licensing Board will consult with the Police and Licensing Standards Officer to ascertain whether the applicant is fit and proper to hold a licence. The Police will also provide information of convictions for any relevant offences detailed in SSI 2007 No. 513, which can be accessed on the Office of Public Sector Information website at [www.legislation.gov.uk](http://www.legislation.gov.uk). Where any representation is received from the Police or Licensing Standards Officer the Board will consider whether the application should be granted or refused under the Act. In making a decision the Board will have regard to the seriousness and age of the conviction together with any other circumstances it considers to be relevant.

14.3 The Licensing Board expects 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 the 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 any such hearing, the Licensing Board may, if satisfied that it is necessary to do so for the purposes of any of the licensing objectives: revoke the Personal Licence; suspend the Personal Licence for an agreed period; or endorse the Personal Licence.

## 15. DESIGNATED PREMISES MANAGERS

15.1 The Board expects that a Designated Premises Manager will take an active role in the day to day management of the premises and in circumstances where this is not the case or a Designated Premises Manager is absent for long periods of time on a regular basis, the Board expects that the Premises Licence holder will take steps to review the management arrangements of the premises to ensure adequate measures are in place for authorisation of alcohol sales. Where it considers it appropriate for the purposes of any of the licensing objectives, the Board may apply a condition requiring a Personal Licence holder to be present at all times.

## 16. ANNUAL FEES

16.1 Where a premises licence is in effect or is suspended, the holder of that licence must make payment of an annual fee. First annual fees are due 30 days after the date on which the licence takes effect. Subsequent annual fees are due on 1 October each year. The Licensing Board has a statutory duty to give notice to Premises Licence holders of the amount of fee payable not later than 30 days before the date on which the fee is due. The Licensing Board will not issue invoices and the Premises Licence holder is responsible for ensuring that payment is made. Payment of the annual fee is a mandatory condition attached to the Premise Licence and therefore non payment is a breach of that condition. Non payment of the annual fee may result in an application to the Board for Premises Licence review and the Board, if satisfied that a ground for review exists, may take any of the following actions:

1. Issue a written warning;



2. Make a Variation of the Premises Licence;
3. Suspend the Premises Licence or
4. Revoke the Premises Licence.

16.2 Where a Premises Licence has been suspended following application for review on the grounds of non payment the Board may consider revocation of the Premises Licence in the event that payment remains outstanding for a period in excess of twelve months.

## 17. LICENSING STANDARDS OFFICERS

17.1 The Act requires that the Council employ Licensing Standards Officers. The Board recognises the importance of the role within the Act and as officers of Scottish Borders Council will be provided with the relevant training to allow them to carry out their role.

17.2 The role of a Licensing Standards Officer involves the following:

Guidance A Licensing Standards Officer may provide the licensed trade, the public and any other interested party with information and guidance concerning the operation of the Act in the Board's area. The Act requires that Licensing Standards Officers be consulted as part of the process for determining applications. Therefore they may not give legal advice or make applications or objections on behalf of any party.

Mediation Where appropriate, a Licensing Standards Officer will be expected to mediate between the public, the licensed trade and any other interested party in order to resolve any issues without involving the Licensing Board.

Compliance The regulatory role of a Licensing Standards Officer is to ensure that licensees comply with their Premises Licence or Occasional Licence and the licensing legislation.

17.3 The Licensing Standards Officers are contactable through the Licensing Unit as detailed in 1.9 above.

## APPENDIX 1

### List of Consultees

#### Consultees

1. Scottish Borders Licensing Forum.
2. Police Scotland.
3. Scottish Fire and Rescue Service.
4. British Beer and Pub Association.
5. Scottish Beer and Pub Association.
6. Scottish Licensed Trade Association.
7. Director of Public Health, NHS Borders.
8. Borders Alcohol and Drugs Partnership.
9. Alcohol Focus Scotland.
10. Directors of Social Work, Environment and Infrastructure, Education and Lifelong Learning, Participation/equalities Officer all Scottish Borders Council. – new titles inc policy advisor dept
11. Visit Scotland.
12. All Scottish Borders Premises Licence Holders.
13. Heriot Watt University.
14. All Community Councils in the Scottish Borders.
15. Face 2Face.
16. The Church of Scotland.
17. The Roman Catholic Church of Scotland.
18. The Scottish Episcopal Church of Scotland.
19. Reporter to Children's Panel (SCRA)
20. Scottish Borders Elder Voice.
21. Ishuze Youth Action.
22. Borders Disability Forum and Borders Visual Impairment Network.
23. Tweeddale Access Panel.
24. Borders Talking Newspaper.
25. Deaf and Hard of Hearing Network, c/o Borders Disability Forum.
26. Borders Deaf Children's Society.
27. Borders Deaf Club.
28. Action on Hearing Loss.
29. People First Borders.
30. Borders Voluntary Community Care Forum.
31. Borders Equality Forum.
32. Edinburgh and Lothian Race Equality Council.
33. Migrant Support Service.
34. Scottish Inter Faith Council.
35. LGBT Equality Forum.
36. LGBT Youth Scotland.
37. Stonewall Scotland.
38. Equality Network / Scottish Transgender Alliance.
39. Scottish Borders Housing Association.
40. Berwickshire Association of Voluntary Service.
41. The Bridge.
42. Age Concern Scotland.
43. Alcohol Addaction Borders

**APPENDIX 2 – CONTACTS to be agreed**

## APPENDIX 3

### PROCEDURE TO BE FOLLOWED AT HEARINGS

#### REPRESENTATION AT THE HEARING

Parties may be represented if they so wish at a hearing.

Before reaching a final decision, the Licensing Board will have regard to the licensing objectives, its Licensing Policy Statement and all the evidence and submissions presented to it. It may retire to consider the evidence and parties will be invited to return when it is reconvened to give its decision. A letter will be sent to the applicant/licenceholder confirming the decision after the hearing.

In the event that the applicant/licenceholder fails to attend and in the absence of any representative, the Licensing Board will make a decision on whether or not to continue with the hearing having regard to the advice of the legal adviser and any relevant information made available by officers.

**\*NOTE: BOTH PARTIES HAVE THE RIGHT TO SUBMIT WRITTEN COMMENTS ONLY AND RELY ON THESE**

#### PROCEDURE AT HEARING

- 1 The legal adviser to the Licensing Board will:
  - Clarify who the parties are
  - explain the general format the hearing will take, advise in which order the parties will be invited to speak and at what stage opportunities for questions/clarification of matters will be appropriate
  - confirm that all parties are in agreement with the format outlined
  - advise all present that all questions or comments should be addressed through the Convener
2. The Licensing Team Leader will give a brief outline of the matter to be considered and the reason it has been referred to the Licensing Board
- 3 The Convener will invite anyone making an objection or representation or his/her representative to present his/her objection/representation\*
4. The Convener will invite questions to the objector/person making representation from:
  - (a) Board members,
  - (b) the applicant/licenceholder or their representative.
5. The Convener will invite the applicant/licenceholder or their representative to present their case in answer to the objection(s)/representation(s).\*
6. The Convener will invite questions to the applicant/licenceholder from:
  - (a) Board Members,

- (b) the objector(s)/person(s) making representation.
7. The legal adviser to the Licensing Board will summarise the options for disposal of the matter with reference to the Licensing (Scotland) Act 2005 and offer Members the opportunity to take legal advice on any matters raised
  8. The Convener will clarify with all present that they have no further questions or comments to make before requesting that the objector(s)/anyone making a representation and the applicant/licenceholder or their representative make any final points regarding the matters discussed
  9. The objector(s)/anyone making a representation will be asked if they have anything else to say before the Licensing Board makes its decision.
  10. The applicant/licenceholder will be asked if they have anything else to say before the Licensing Board makes its decision.
  11. The Licensing Board may seek legal advice from the legal adviser present before retiring to consider matters or moving to determine the matter.
  12. The Convener will deliver the Licensing Board's decision.

#### **OPTIONS, CONDITIONS FOR LICENCES GRANTED AND APPEALS**

The Licensing Board will make a decision, attach any conditions and advise of the Appeal process having regard the relevant Sections of the Licensing (Scotland) Act 2005,

## APPENDIX 4

### SCOTTISH BORDERS LICENSING BOARD LICENSING (SCOTLAND) ACT 2005

#### Scheme of Delegation adopted by the Scottish Borders Licensing Board at their meeting held on 22 June 2012

By virtue of the powers conferred on us by the Licensing (Scotland) Act 2005 ("the 2005 Act") we hereby make this scheme of delegation.

1 The following are not delegated and are reserved to the Board to be made at a meeting arranged by the Clerk:

- 1.1 (a) determining the Board's policy for the purposes of a licensing policy statement or supplementary licensing policy statement.
- (b) determining, for the purposes of any such statement, whether there is overprovision of licensed premises, or licensed premises of any particular description, in any locality
- (c) determining a Premises Licence application
- (d) determining a Premises Licence variation application where the variation sought is not a minor variation
- (e) determining an application for the transfer of a Premises Licence where the applicant has been convicted of a relevant offence or a foreign offence
- (f) determining:
  - (i) a Personal Licence application, or
  - (ii) a Personal Licence renewal applicationwhere the applicant has been convicted of a relevant offence or a foreign offence
- (g) conducting a hearing under the 2005 Act (including taking any of the steps mentioned in paragraph 2(2) below at, or as a result of, the hearing)
- (h) making a closure order
- (i) refusing an application for confirmation of a provisional Premises Licence

1.2 The steps referred to in paragraph 2.1(g) above are:

- (a) at a review hearing in respect of a premises licence:
  - (i) issuing a written warning to the licence holder
  - (ii) revoking or suspending the licence, or
  - (iii) making a variation of the licence, or
- (b) making an order revoking, suspending or endorsing a Personal Licence.

1.3 A Licensing Board may delegate to the Clerk of the Board the function of granting an occasional licence application only where there is no notice of objection or representations in relation to the application, or no notice from the appropriate Chief Constable or any report from the Licensing Standards Officer recommending refusal of the application. Check amendments to Act – may now be delegated?

## 2 DELEGATION TO THE CLERK OR DEPUTE CLERK OF THE LICENSING BOARD

Decisions on the following matters are delegated to the Clerk or Depute Clerk or any nominated staff:

References to section in the following paragraph are references to sections of the 2005 Act, except where otherwise stated.

2.1 Any application for a minor variation of Premises Licence (Section 29).

- 2.2 Any application for variation to substitute a new Premises Manager – where the applicant has not been convicted of any relevant or foreign offence (Sections 31 and 54).
- 2.3 Any application to transfer a Premises Licence – where the transferee has not been convicted of any relevant or foreign offence (Sections 33 to 35).
- 2.4 Any application for confirmation of a provisional Premise Licence – where no variation (other than a minor variation) has been made to the operating plan or layout plan for the premises to which the licence relates since the provisional licence was issued or since a variation of the provisional Premises Licence was granted (Section 46).
- 2.5 Any application for an occasional licence – where no objections or representations have been received, nor a notice recommending refusal from the Chief Constable or any report from the Licensing Standards Officer recommending refusal (Sections 56 to 61).
- 2.6 Any application for extended hours – where no objections or representations have been received, nor a notice recommending refusal from the Chief Constable or any report from the Licensing Standards Officer recommending refusal (Sections 68 to 70).
- 2.7 The determination in terms of Section 70(2) of the 2005 Act as to whether or not the Licensing Board will hold a hearing to determine an application for extended hours where an objection, representation or a notice recommending refusal from the Chief Constable or a report from the Licensing Standards Officer recommending refusal has been received.
- 2.8 Where a decision has been taken not to hold a hearing in terms of Section 70(2) of the Act, the determination of the application.
- 2.9 Any application for a Personal Licence or renewal of a Personal Licence where the applicant has not been convicted of a relevant or foreign offence (Section 74).
- 2.10 Although an application or decision may fall within the above categories, the Clerk of the Board or any member of staff appointed by the Clerk, may decline to exercise their delegated power in which case the matter will be referred to the Board.

## APPENDIX 5

### PREMISES LICENCES: MANDATORY CONDITIONS

(Applicable from 1 October 2011)

#### Mandatory Conditions

1. In this schedule, “the premises” means, in relation to any premises licence, the premises specified in the licence.

#### Compliance with the operating plan

2. (1) Alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence.  
(2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63(2).
3. Any other activity to be carried on in the premises is to be carried on only in accordance with the operating plan contained in the licence.

#### The Premises Manager

4. (1) Alcohol is not to be sold on the premises at any time when:
  - (a) there is no premises manager in respect of the premises,
  - (b) the premises manager does not hold a personal licence,
  - (c) the personal licence held by the premises manager is suspended, or
  - (d) the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises.
- (2) In sub-paragraph (1), “appropriate licensing qualification” in relation to any licensed premises means any licensing qualification prescribed as such in relation to licensed premises of that description in regulations under section 91(2)(d).
- (3) Nothing in sub-paragraph (1) or paragraph 5 is to be read as requiring the premises manager to be present on the premises at the time any sale of alcohol is made.

#### Authorisation of sales of alcohol

5. Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by -
  - (a) the premises manager, or
  - (b) another person who holds a personal licence.

#### Training of staff

6. (1) No person (other than a person who holds a personal licence) is to work in the premises in the capacity mentioned in sub-paragraph (2) unless that person has complied with such requirements as to the training of staff as may be prescribed for the purposes of this paragraph.  
(2) That is a capacity (whether paid or unpaid) which involves the person -
  - (a) making sales of alcohol, or
  - (b) where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person.
- (2A) At any time when a person (other than a person who holds a personal licence) is working in the premises in a capacity mentioned in sub-paragraph (2), there must be kept on the



premises a training record which relates to that person and is in the form set out in the Schedule to the Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007.

- (2B) A record kept on the premises under sub-paragraph (2A) must be produced to a Licensing Standards Officer on request.
- (3) Regulations under sub-paragraph (1) prescribing training requirements may, in particular:
  - (a) provide for the accreditation by the Scottish Ministers of:
    - (i) courses of training, and
    - (ii) persons providing such courses,for the purposes of the regulations,
  - (b) prescribe different training requirements in relation to different descriptions of persons,
  - (c) require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualification as may be prescribed in the regulations, and
  - (d) require training to be undergone again at such intervals as may be prescribed in the regulations.

#### Minimum price of packages containing more than one alcoholic product

- 6B (1) A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale on the premises.
- (2) Sub-paragraph (1) applies:
  - (a) only where each of the alcoholic products is for sale on the premises separately, and
  - (b) regardless of whether or not the package also contains any item which is not an alcoholic product.
- (3) In this paragraph, "alcoholic product" means a product containing alcohol and includes the container in which alcohol is for sale.

#### Pricing of alcohol -

- 7. Where the price at which any alcohol sold on the premises for consumption on the premises is varied:
  - (a) the variation (referred to in this paragraph as "the earlier price variation") may be brought into effect only at the beginning of a period of licensed hours, and
  - (b) no further variation of the price at which that or any other alcohol is sold on the premises for consumption on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.

#### Off-sales: variation of pricing of alcoholic drinks

- 7(A) Where the price at which any alcohol sold on the premises for consumption off the premises is varied:
  - (a) the variation (referred to in this paragraph as "the earlier price variation") may be brought into effect only at the beginning of a period of licensing hours, and
  - (b) no further variation in the price at which that alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.

## Irresponsible drinks promotions

- 8
- (1) An irresponsible drinks promotion must not be carried on in or in connection with the premises.
  - (2) Subject to sub-paragraph (3), a drinks promotion is irresponsible if it:
    - (a) relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18,
    - (b) involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks),
    - (c) involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink,
    - (d) involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),
    - (e) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,
    - (f) is based on the strength of any alcohol,
    - (g) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or
    - (h) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.
  - (3) Paragraphs (c) to (e) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.
  - (4) The Scottish Ministers may by regulations modify sub-paragraph (2) or (3) so as to:
    - (a) add further descriptions of drinks promotions,
    - (b) modify any of the descriptions of drinks promotions for the time being listed in it, or
    - (c) extend or restrict the application of any of those descriptions of drinks promotions.
  - (5) In this paragraph, "drinks promotion" means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.

## Provision of non-alcoholic drinks

- 9
- (1) The conditions specified in this paragraph apply only to the extent that the premises licence authorises the sale of alcohol for consumption on the premises.
  - (2) Tap water fit for drinking must be provided free of charge on request.
  - (3) Other non-alcoholic drinks must be available for purchase at a reasonable price.

## Age verification policy

- 9(A)
- (1) There must be an age verification policy in relation to the sale of alcohol on the premises.
  - (2) An "age verification policy" is a policy that steps are to be taken to establish the age of a person attempting to buy alcohol on the premises ("the customer") if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy).
  - (3) The condition specified in this paragraph does not apply in relation to any sale of alcohol which takes place on the premises merely by virtue of being treated, by section 139, as taking place on the premises.

## Payment of annual or recurring fees

- 10
- (1) The condition specified in sub-paragraph (2) applies only in relation to a premises licence in respect of which an annual or other recurring fee is to be paid by virtue of regulations under section 136(1).
  - (2) The fee must be paid as required by the regulations.

## Notices – admission of persons under 18

- 11 (1) The condition specified in this paragraph applies only in the case of premises on which alcohol is sold for consumption on the premises.
- (2) There is to be displayed so that it is reasonably visible to customers entering the premises a sign of at least A4 size which–
- (a) states that persons under the age of 18 are not permitted on the premises; or
  - (b) states that such persons are permitted on the premises or on such parts of the premises as are specified on the sign.

## Baby changing facilities

- 12 (1) The condition specified in this paragraph applies only in the case of premises:
- (a) which are not–
    - (i) a vehicle;
    - (ii) a vessel;
    - (iii) a moveable structure; or
    - (iv) used wholly or mainly for the purposes referred to in section 125(1);
  - (b) on which alcohol is sold for consumption on the premises; and
  - (c) to which children under the age of 5 are to be admitted.
- (2) There are to be on the premises facilities for baby changing which are to be accessible to persons of either gender.

## Display or promotion of the sale of alcohol for consumption off the premises

- 13 (1) Subject to sub-paragraph (3), alcohol which is for sale only for consumption off the premises may be displayed only in one or both of the following:
- (a) a single area of the premises agreed between the Licensing Board and the holder of the licence; or
  - (b) a single area of the premises which is inaccessible to the public.
- (1A) Sub-paragraphs (1B) to (1D) apply where the premises, in so far as they are used for the sale of alcohol, are so used only or primarily for the sale of alcohol for consumption off the premises.
- (1B) Any drinks promotion on the premises may take place only in any one or more of the following -
- (a) an area referred to in sub-paragraph (1)(a) and (b),
  - (b) a room on the premises which is used for offering the tasting of any alcohol sold on the premises (for consumption off the premises) and the resulting tasting and is separate from those areas.
- (1C) A drinks promotion in connection with the premises may not take place in the vicinity of the premises.
- (1D) For the purposes of sub-paragraph (1C), the "vicinity" means the area extending 200 metres from the boundary of the premises (as shown on the layout plan).
- (2) In an area agreed in terms of sub-paragraph (1)(a), a product other than alcohol may be displayed only if it is:
- (a) a non-alcoholic drink;
  - (b) packaged with, and may be purchased only along with, alcohol;
  - (c) a branded non-alcoholic product, or
  - (d) a newspaper, magazine or other publication.
- (2A) Sub-paragraph (2) is without prejudice to sub-paragraph (1B)

- (3) This paragraph does not apply in respect of premises:
- (a) whose main function is to provide a visitor attraction, and
  - (b) where:
    - (i) the premises form part of a larger site which is used principally for the production of alcoholic drinks, or
    - (ii) the visitor attraction is used principally to provide information about and promote the history and attributes of a particular alcoholic drink or a particular category of alcoholic drink.

- (4) In this paragraph:

"branded non-alcoholic product" means a product which does not consist of or contain alcohol and which:

- (a) bears a name or image of, or
- (b) is an image of, an alcoholic product (namely, a product consisting of or containing alcohol),

"drinks promotion" means any activity which promotes, or seeks to promote, the buying of any alcohol sold on the premises for consumption off the premises but does not include the display of any product which is:

- (a) a branded non-alcoholic product for sale on the premises, or
- (b) a newspaper, magazine or other publication:
  - (i) for sale on the premises, or
  - (ii) if not for sale on the premises, which does not relate only or primarily to alcohol.

## APPENDIX 6

The following are also mandatory conditions if the premises will, on any occasion, be open (to the public – residents of a hotel are excluded from) after 1.00am. Condition 1 is always applied in such circumstances. Conditions 2 to 6 apply depending on certain other detailed criteria.

1. A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:
  - (a) the time at which the premises next close; and
  - (b) 5.00am.
2. A designated person who is the holder of a personal licence must be present on the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:
  - (a) the time at which the premises next close; and
  - (b) 5.00am or such other time as the Licensing Board may specify.
3. There must be written policies in existence concerning:
  - (a) the evacuation of the premises; and
  - (b) the prevention of the misuse of drugs on the premises.
4. A CCTV system must be installed on the premises to the satisfaction of the appropriate chief constable and must be kept in good working order.
5. There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.
6. A person who holds a licence granted under section 8 of the Private Security Industry Act 2001 must be positioned at every entrance to the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:
  - (a) the time at which the premises next close; and
  - (b) 5.00am or such other time as the Licensing Board may specify.

## APPENDIX 7

### Occasional Licences - Mandatory Conditions (Applicable from 1 October 2011)

#### Interpretation

- 1 In this schedule, "the premises" means, in relation to any occasional licence, the premises specified in the licence.

#### Compliance with Licence

- 2 (1) Alcohol may be sold on the premises only in accordance with the terms of the licence.  
(2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63(2).
- 3 Any other activity to be carried on in the premises may be carried on only in accordance with the description of the activity contained in the licence.

#### Authorisation of Sales of Alcohol

- 4 (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to the holder of a premises licence or personal licence.  
(2) Every sale of alcohol made on the premises to which the licence relates must be authorised (whether generally or specifically) by the holder of a personal licence.

#### Voluntary Organisations

- 5 (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to a representative of a voluntary organisation.  
(2) Alcohol may be sold on the premises only at an event taking place on the premises in connection with the voluntary organisation's activities.

#### Minimum price of packages containing more than one alcoholic product

- 5B (1) A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale.  
(2) Sub-paragraph (1) applies:  
(a) only where each of the alcoholic products is for sale on the premises separately, and  
(b) regardless of whether or not the package also contains any item which is not an alcoholic product.  
(3) In this paragraph, "alcoholic product" means a product containing alcohol and includes the container in which alcohol is for sale.

#### Pricing of Alcohol

- 6 Where the price at which any alcohol sold on the premises for consumption on the premises is varied:  
(a) the variation (referred to in this paragraph as "the earlier price variation") may be brought into effect only at the beginning of a period of licensed hours; and  
(b) no further variation of the price at which that or any other alcohol is sold on the premises for consumption on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.
- 6A Where the price at which any alcohol sold on the premises for consumption off the premises is varied:  
(a) the variation (referred to in this paragraph as "the earlier price variation") may be brought into effect only at the beginning of a period of licensed hours; and  
(b) no further variation in the price at which that alcohol is sold on the premises may be brought into effect before the expiry of 72 hours beginning with the coming into effect of the earlier price variation.

### **Irresponsible Drinks Promotions**

- 7 (1) An irresponsible drinks promotion must not be carried on in or in connection with the premises.
- (2) Subject to sub-paragraph (3), a drinks promotion is irresponsible if it:
- (a) relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18;
  - (b) involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks);
  - (c) involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink;
  - (d) involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises);
  - (e) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume;
  - (f) is based on the strength of any alcohol;
  - (g) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly; or
  - (h) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.
- (3) Paragraphs (c) to (e) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.
- (4) The Scottish Ministers may by regulations modify sub-paragraph (2) or (3) so as to:
- (a) add further descriptions of drinks promotions;
  - (b) modify any of the descriptions of drinks promotions for the time being listed in it; or
  - (c) extend or restrict the application of any of those descriptions of drinks promotions.
- (5) In this paragraph, "drinks promotion" means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.

### **Provision of Non-Alcoholic Drinks**

- 8 (1) The conditions specified in this paragraph apply only to the extent that the occasional licence authorises the sale of alcohol for consumption on the premises.
- (2) Tap water fit for drinking must be provided free of charge on request.
- (3) Other non-alcoholic drinks must be available for purchase at a reasonable price.

### **Age verification policy**

- 9 (1) There must be an age verification policy in relation to the sale of alcohol on the premises.
- (2) An "age verification policy" is a policy that steps are to be taken to establish the age of a person attempting to buy alcohol on the premises ("the customer") if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy).
- (3) The condition specified in this paragraph does not apply in relation to any sale of alcohol which takes place on the premises merely by virtue of being treated, by section 139, as taking place on the premises.

## APPENDIX 8 – EXAMPLE ADDITIONAL CONDITIONS

1. The music must be turned off at midnight.
2. A noise steward to patrol the outside of the marquee every 30 minutes - must be someone **not** on duty inside the marquee at any time during the evening.
3. The sound system limiter to be set to a reasonable level and no bypass facility permitted.
4. That during the whole period of the event or occasion, an adequate number of stewards are employed at all entry and exit points to facilitate the safety of patrons and the public.
5. That there is a clearly identifiable person in charge whether it is the licence holder or not.
6. That all approaches to the venue are at all times kept clear of all obstructions including vehicles to ensure Emergency vehicle access if required.
7. At the end of the evening, guests should be reminded that they should leave the marquee in a quiet, orderly manner.
8. To continue to carry out the sound reduction measures agreed with Environmental Health.
9. All reasonable steps should be taken to ensure that customers using any areas outside the premises to smoke do not cause a nuisance to residents in the vicinity of the premises by creating noise, litter etc.
10. Drinks supplied in any public beer tent or bar to be dispensed in plastic containers.
11. Any drinks carried out, from any hospitality tent, to be in a plastic container.
12. The applicant named on the licence should be present and available throughout the event.
13. There should be a clearly identified person in charge at each bar/ point of sale.
14. Policy Statements should be in place showing how the Five Licensing Objectives contained within the Licensing (Scotland) Act 2005 are to be achieved.
15. Challenge 25 to be strictly enforced with staff trained and signage displayed accordingly.
16. Adequate and appropriate stewarding should be in place at all licensed areas.
17. A system should be in place to identify and distinguish between those attending the event who are under or over 18 years of age.
18. Any staff employed in the sale of supply of alcohol should be trained to the same level as the mandatory staff training required when employed in licensed premises and a record of that training should be available for inspection.



## APPENDIX 9

### WHAT IS A CLUB

Clubs are defined in The Licensing (Clubs) (Scotland) Regulations 2007, as follows:

They must not be conducted for the purpose of making a profit;

They must have a written Constitution and Rules that provide for the following:

- (i) The business of the club is to be under the management of a committee or other governing body elected by the members;
- (ii) No person under 18 is to be admitted as a member of the club (unless the club is devoted primarily to some sporting purpose or is a students union);
- (iii) No member of the committee or employee is to have a personal interest in the sale of alcohol on the club premises or in the profits from the sale of alcohol;
- (iv) Except when an occasional licence is in force, alcohol can only be supplied to members, their guests or members of other qualifying clubs;
- (v) Other than when an occasional licence is in force, where a guest is supplied with alcohol an entry must be made in a book recording the name of the guest, the name of the member accompanying him or her and the date;
- (vi) Correct accounts and books are to be kept showing the financial affairs of the club;
- (vii) The club must have at least 25 members to be properly constituted; and
- (viii) No person is to be allowed honorary or temporary membership of the club or to be relieved of the payment of the regular entrance fee or subscription, except:
  - (a) to allow temporary participation in the activity which is the prime purpose of the club; and
  - (b) in accordance with specific provisions set out in the club rules.

A club **MUST HAVE** a proper Constitution to comply with the regulations. The Board will therefore expect clubs to provide a copy of their Constitution and rules along with their Premises Licence application.

### WHAT ARE THE EXEMPTIONS FOR CLUBS UNDER THE 2005 ACT

Section 125 of the Act provides for some exemptions for clubs who fall within the description above.

Clubs are exempted from:

The assessments of overprovision (Section 7);

The ground for refusal of Premises Licence or Premises Licence Variation application relating to overprovision (Section 23(5)(e) and 30(5)(d));

The requirement for the Operating Plan to contain information about the Premises Manager (Section 20(4)(g));

The requirement for the name and address of the Premises Manager to be specified in the Premises Licence (Section 26(2)(a)(ii));

The requirement for there to be a Premises Manager for licensed premises (Schedule 3 para 4);

The requirement for the sale of alcohol under the Premises Licence to be authorised by a Personal Licenceholder (Schedule 3, para 5); and

The requirement for sales of alcohol under certain Occasional Licences to be authorised by a Personal Licenceholder. (Schedule 4, para. 4).

These exemptions mean that clubs will not generally need a Personal Licenceholder or a Premises Manager. The exception is where they were to be open after 1 a.m. and satisfy certain other requirements (beyond the scope of this guidance) in which case they may become subject to certain mandatory conditions that include the presence of a Personal Licenceholder.

## **WHAT ARE THE TRAINING REQUIREMENTS**

The Premises Licence Mandatory Conditions contained in Schedule 3 to the Act provide, at Para 6, for the training of staff selling or serving alcohol. There is no exemption for clubs from this provision and clubs cannot use untrained staff. (A copy of the Mandatory Conditions is attached as Appendix 4).

Where a person undertakes the role of selling or serving alcohol then that person must be trained to the standard prescribed in the Licensing (Training of Staff)(Scotland) Regulations 2007 (SSI 95). That standard is at least 2 hours of relevant training from a person who holds a Personal Licence or who is accredited by the Scottish Qualifications Agency ([www.sqa.org.uk](http://www.sqa.org.uk)).

Club representatives have undergone recognised training in the past. Some clubs may choose to have someone undergo the necessary training and to apply for a Personal Licence, even though there is no requirement for this, the Personal Licenceholder could then carry out training for any other staff or members internally. Each club must make its own decision on this. As a matter of good practice Scottish Borders Licensing Boards strongly recommend that clubs do have a Personal Licenceholder on their staff or indeed a Committee Member or Official.

**FIRE SAFETY INFORMATION FOR LICENCE APPLICANTS**

Part of any licence application involves consultation with the Fire and Rescue Service in order to ensure that the Fire (Scotland) Act 2005 as amended and the Fire Safety (Scotland) Regulations 2006 are being complied with. The responsibility for complying with these fire safety laws lies with the employer (and/or any other person who may have control of the premises e.g. owner/licensee/tenant/manager; this person is designated as the “*duty holder*”) **and they MUST ensure that a fire safety risk assessment is carried out by a competent person and the outcomes recorded.**

More detailed guidance on the Fire (Scotland) Act 2005 as amended, the Fire Safety (Scotland) Regulations 2006 and fire safety risk assessment is available, **under ‘firelaw’**, on the Scottish Government website; [www.scotland.gov.uk](http://www.scotland.gov.uk)

Also, detailed information regarding the benchmark standards for licensed premises can be found on the above website. These are contained within the sector specific guides “*Practical Fire Safety Guidance for Places of Entertainment and Assembly*” (PFSGPEA) **(for ON sales)** and “*Practical Fire Safety Guidance for Offices, Shops and Similar Premises*” (PFSGOSSP) **(for OFF sales)**. These sector specific guides can be downloaded free of charge from the above website.

**In relation to your licence application, plans are NOT to be submitted to the Fire and Rescue Service. As part of the process to issue a licence the Fire and Rescue Service MAY require to visit and audit the fire safety arrangements in the premises. This may not be required in every instance.**

Free advice is available from Scottish Fire and Rescue Service about issues relating to general fire safety, but it must be remembered that the duty holder is responsible for carrying out the fire safety risk assessment for their premises and identifying the fire safety measures necessary as a result of the fire safety risk assessment outcomes.

Scottish Fire and Rescue Service can be contacted using any of the following methods;

**Phone –** 01896 758326

**Email –** [enquiries@firescotland.gov.uk](mailto:enquiries@firescotland.gov.uk)

**Postal address –** Scottish Fire and Rescue Service,  
Community Safety (Prevention and Protection),  
143 Croft Street  
Galashiels  
TD1 3BS

**Website -** [www.firescotland.gov.uk](http://www.firescotland.gov.uk)

## **BENCHMARK FIRE SAFETY STANDARDS FOR OFF/ON SALES**

- a) Emergency/Escape Lighting System(s) should comply with British Standard 5266: Parts 1, 7 and 8, current edition (BS EN 1838).  
(Category – non-maintained 60 for off licence, maintained 180 for all other licence types).  
**\*See sector specific guides: Technical Annexe 13.10**
- b) Signs and Notices should comply with the Health and Safety (Safety Signs and Signals) Regulations 1996 and/or British Standard 5499: Parts 1, 4 and 5, current edition.  
**\*See sector specific guides: Technical Annexe 13.11**
- c) Fire Warning/Automatic Fire Detection System(s) should comply with BS 5839: Part 1, current edition (category M, L1, L2, L3, L4 or L5) **\*if applicable**  
**\*See sector specific guides: Technical Annexe 13.12**
- d) Firefighting Equipment should comply with British Standard EN3, British Standard 7863 (current edition), British Standard 5306 Part 3, current edition and British Standard 5306 Part 8, current edition.  
**\*See sector specific guides: Technical Annexe 13.13**
- e) Furniture and Textiles should conform to the relevant guidance/standard(s).  
**\*See PFSGPEA: Technical Annexe 13.15**
- f) Tents, Marquees, Air Supported and Pneumatic Structures should conform to the relevant guidance/standard(s).  
**\*See PFSGPEA: Technical Annexe 13.16**
- g) Auditoria, Stages, Fixed Seating and Gangways should conform to the relevant guidance/standard(s).  
**\*See PFSGPEA: Technical Annexe 13.18**
- h) Open Air Events should conform to the relevant guidance/standard(s).  
**\*See PFSGPEA: Technical Annexe 13.19**
- i) Fire safety policy, emergency fire action plans, fire safety information, training, fire drills, maintenance of fire safety measures, recording information/keeping records should all conform to the relevant guidance/standard(s).  
**\*See sector specific guides: Chapter 5 Managing Fire Safety**
- j) Any other fire related standard which is relevant to your premises (e.g. fire doors, dry risers, fire service access, water supplies etc)  
**\*See sector specific guides and relevant Technical Annexe(s)**

Any staff training needs that are identified from the fire safety risk assessment process are also the responsibility of the duty holder to address.

**The above recommendations should not be regarded as the only option for achieving the benchmark standards. Other fire safety risk assessment methods or fire safety measures which achieve the same end should be considered.**

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**Report by LICENSING STANDARDS AND ENFORCEMENT OFFICER**

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**Scottish Borders Licensing Board**

**20 April 2018**

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**1 PURPOSE AND SUMMARY**

- 1.1 This report requests a Review of a Premises Licence in terms of Section 36 of the Licensing (Scotland) Act 2005 ("the 2005 Act"), in respect of the premises known as The George and Abbotsford Hotel, High Street, Melrose - SB/PREM/315.
- 1.2 The grounds for the request are that the following condition to which the premises licence is subject has been breached, namely Mandatory Condition 10 of Schedule 3 to the Act – failure to pay the annual fee as required by regulation made under terms of Section 136 of the Act.
- 1.3 The annual licensing fee (£500) for the premises fell due on 1 October 2017. A reminder letter was issued to the licence holder, Andria Gardner ("the licensee") in September 2017. No payment was made by 1 October with the licensee eventually making contact and arranging to pay by quarterly instalments. The first instalment of £125 was overdue and paid on 1 December 2017. The second instalment of £125 was due on 1 January 2018, however, to date remains unpaid. The licensee has been visited by the Licensing Standards and Enforcement Officer when she gave assurances to immediately rectify the situation and make arrangements to have the outstanding instalment paid. Despite a further visit the unpaid quarterly instalment remains outstanding with no further contact being made by the licensee. A compliance notice under terms of Section 14 of the Act was issued by the Licensing Standards Officer dated 2 April 2018. The notice required payment of the outstanding portion of the annual fee (£375).

**2 RECOMMENDATIONS**

- 2.1 I recommend that the Board
  - (a) find that there are grounds for review,
  - (b) determine if any of the following options, which are available to them under terms of Section 39 of the 2005 Act would be appropriate in the circumstances:
    - (i) to issue a written warning to the licence holder,
    - (ii) to make a variation of the licence,
    - (iii) to suspend the licence for such period as the Board may determine,
    - (iv) to revoke the licence.

### **3 BACKGROUND**

- 3.1 The review of the above premises licence is requested by the Council's Licensing Standards and Enforcement Officer under the terms of Section 36 of the Act. Mandatory Condition 10 of Schedule 3 attached to all premises licences requires the payment of annual or recurring fees.
- 3.2 The annual licensing fee (£500) for the premises fell due on 1 October 2017. A reminder letter was issued to the licence holder, Andria Gardner ("the licensee") in September 2017. No payment was made by 1 October 2017 however the licensee eventually made contact and elected to pay by quarterly instalment (£125) with the first of these being overdue and paid on 1 December 2017. The second instalment which was due on 1 January 2018 remains unpaid despite two reminder follow up visits by the Licensing Standards and Enforcement Officer and assurances from the licensee to immediately rectify the situation and arrange payment of the outstanding instalment. To date no further contact has been made and the remainder of the outstanding annual fee, £375 remains unpaid.
- 3.3 As a result of failure to make payment of the annual fee a Compliance Notice under the terms of Section 14 of the Act was issued by the Licensing Standards and Enforcement Officer on 2 April 2018. The notice was sent by recorded delivery and 1<sup>st</sup> class ordinary post. The notice required compliance with Mandatory Condition 10 of Schedule 3 to the Act within seven days of the date of the notice, ie payment of the outstanding portion of the annual premises fee as required by Regulation made under terms of Section 136 of the Act.
- 3.4 The premises operate as a Hotel with on and off sale facility and remain open and trading at this time.

### **4 IMPLICATIONS**

#### **4.1 Financial**

There are no financial implications for the Licensing Board in considering the application for review, dependent on the outcome of the review hearing there could be a subsequent appeal by the Premises Licence Holder to the Sheriff Principal under Section 131 of the Licensing (Scotland) Act 2005 which could then have financial implications for the Board.

#### **4.2 Risk and Mitigations**

Should the Board fail to consider the review request, it could be seen as failing to address its legal duties. The risk is therefore mitigated by this report.

#### **4.3 Equalities**

It is anticipated there will be no adverse impact due to race, disability, gender, age, sexual orientation or religion/belief arising from the proposals contained in this report.

#### **4.4 Acting Sustainably**

There are no economic, social or environmental effects as a result of the proposals contained in this report.

#### **4.5 Carbon Management**

There is no impact on the Council's carbon emissions as a result of the proposals contained in this report.

**4.6 Rural Proofing**

Not applicable as this is not a new policy.

**4.7 Changes to Scheme of Administration or Scheme of Delegation**

No changes to either the Scheme of Administration or the Scheme of Delegation are required as a result of the recommendations in this report.

**5 CONSULTATION**

5.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer Human Resources, and the Clerk to the Council have been consulted in the preparation of this report

**Approved by**

**Licensing Team Leader**

**Signature .....**

**Author(s)**

Name	Designation and Contact Number
Ian Tunnah	Licensing Standards and Enforcement Officer 01835 825246

**Background Papers:**

**Previous Minute Reference:** N/A

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jackie Wilson can also give information on other language translations as well as providing additional copies.

Contact us at: Licensing Unit, Scottish Borders Council, Regulatory Services, Council Headquarters, Newtown St Boswells, Melrose, TD6 OSA Tel: 01835 826662, email [liquorandlicensing@scotborders.gcsx.gov.uk](mailto:liquorandlicensing@scotborders.gcsx.gov.uk)

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SCOTTISH BORDERS COUNCIL

19 MAR 2018

LICENSING UNIT



SCOTTISH BORDERS LICENSING BOARD

Application for a personal licence

FIRST APPLICATION/~~RENEWAL APPLICATION~~ (delete as appropriate)

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.

<b>1. Your personal details. If relevant please enter details of any previous names or maiden names. Please continue on a separate sheet if necessary. Read note 1</b>	
TITLE (delete as appropriate): Mr <del>Mrs</del> <del>Miss</del> <del>Ms</del> <del>Other</del> (please state)	
Surname	SWATON
Forenames	ROWLAND MARK
Date and Place of Birth	[REDACTED]
NI Number	[REDACTED]
<b>ADDRESS WHERE ORDINARILY RESIDENT (We will use this address to correspond with you unless you complete the separate correspondence box below)</b>	
[REDACTED]	
Post town	[REDACTED]
Post code	[REDACTED]
<b>TELEPHONE NUMBERS</b>	
Daytime	[REDACTED]
Evening	[REDACTED]
Mobile	[REDACTED]
<b>FAX NUMBER</b>	
E-mail address (if you would prefer us to correspond with you by e-mail)	
Address for correspondence associated with this application (if different to the address above) ALDI STORES LTD M8/54 POTTISHAW	
Post town	BATHGATE
Post code	EH48 2FB

2. Your licensing qualification		
<b>Read note 2</b>	Please tick	
I hold an accredited qualification	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If you have ticked yes please provide a copy of your qualification with your application.		

3. FIRST APPLICATIONS ONLY		
This section should only be completed if you are submitting your first application to this Licensing Board. If answering Yes to any question please provide details below.		
<b>Note: You may only hold one personal licence at a time</b>		Please tick
Do you currently hold a personal licence?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Do you currently have any outstanding applications for a personal licence, with this or any other Licensing Board?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Has any personal licence held by you been forfeited in the last 5 years?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Licensing Board		
Licence number		
Date of issue		
Date of expiry		
Any further details		

4. RENEWAL ONLY		
This section should be completed only if you are applying for a renewal of your existing licence		
Your personal licence must accompany your application for a renewal. If you are unable to send your personal licence, you must explain why you cannot do so in the box provided below		
<b>Details of current personal licence</b>		
Licensing Board		
Licence number		
Date of issue		
Date of expiry		
Any further details		
If you cannot provide your personal licence, provide a statement explaining why		
Other personal licence		
<b>Note: You may only hold one personal licence at a time</b>		Please tick
I confirm that I do not hold any other personal licences other than the one submitted for renewal	Yes <input type="checkbox"/>	No <input type="checkbox"/>

5. CHECKLIST	
I have yes	Please tick
• Enclosed two photographs of myself, one of which is endorsed as a true likeness of me by a person of standing in the community. Read note 3.	✓
• Enclosed a copy of any licensing qualification I hold	✓
• Enclosed my current personal licence (renewal only)	
• Made or enclosed payment of the fee for the application	✓

6. Previous Convictions
You must provide details below of any conviction for a relevant or foreign offence that is not considered spent under the Rehabilitation of Offenders Act 1974. Please continue on a separate sheet if necessary. If you are declaring that you have no such convictions please write "none". Read note 4

Offence	Court	Date	Penalty
PUBLIC ORDER	JEDBURGH SHERIFF COURT	2014	FINE

7. Declaration	
The contents of this application are true to the best of my knowledge and belief	
SIGNATURE read note 5	Date 16-1-18

#### NOTES

Information on the Licensing (Scotland) Act 2005 is available on the website of the Scottish Parliament (<http://www.opsi.gov.uk/legislation/scotland/acts2005/20050016.htm>)

**1. Change of name or address** - Section 88 of the Licensing (Scotland) Act 2005 requires that a personal licence holder must, no later than one month after any change in the licence holder's name or address, give the Licensing Board which issued the licence notice of the change. It is an offence not to do so.

**2. Licensing qualifications** - Licensing qualifications are dealt with in section 91 of the Licensing (Scotland) Act 2005. In summary, to be eligible for a personal licence, an applicant must be aged 18 or over and possess a licensing qualification, and no personal licence previously held by the applicant must have been revoked within the period of 5 years ending with the day on which the application was received by the Licensing Board.

**3. Photographs** - One of the photographs submitted with your application should be endorsed on the back. This endorsement should, contain the words "I certify that this is a true likeness of (*name of applicant*)", followed by the full name of the person endorsing the photograph.

**4. Convictions** - Section 75 of the Act places a duty on an applicant for a personal licence to notify the Licensing Board if he or she has been convicted of any relevant or foreign offence during the time between making the application and the application being determined by the Licensing Board. Furthermore, section 82 of the Act requires personal licence holders to notify their Licensing Board of any convictions for relevant or foreign offences within one month of the licence holder being convicted.

**5. Data Protection Act 1988** - The information on this form may be held on an electronic public register which may be available to members of the public on request.

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26/03/2018

Your Ref:

Our Ref: IK 310297

The Clerk to the Licensing Board  
Licensing Unit  
Legal & Democratic Services  
Scottish Borders Council HQ  
Newtown St Boswells  
TD6 0SA



**POLICE  
SCOTLAND**

Keeping people safe

Iain Livingstone QPM  
Deputy Chief Constable Designate

Local Area Commander  
The Lothians and Scottish Borders Division  
Hawick Police Station  
Wilton Hill  
Hawick  
TD9 8BA

Dear Madam,

**LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR THE GRANT OF A  
PERSONAL LICENCE**

**Applicant - ROLAND MARK SWATTON,** [REDACTED]

I refer to the above application and in terms of Section 73(3)(b) of the Licensing (Scotland) Act 2005, I have to advise you that, based upon the information provided to Police Scotland, the applicant has been convicted of the following relevant offence(s).

Date	Court	Crime/Offence	Disposal
13/06/2014	Jedburgh Sheriff Court	Breach of the Peace	£200

I am unable to confirm the existence of any foreign offence in respect of the applicant.

Yours faithfully

[REDACTED]  
Iain Livingstone QPM  
Deputy Chief Constable Designate

For enquiries please contact the Licensing Department on 01896 823855.

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