

DUNDEE CITY LICENSING BOARD  
STATEMENT OF LICENSING POLICY  
2007-2010  
UNDER  
SECTION 6 OF  
THE LICENSING (SCOTLAND) ACT 2005

November 2007

## 1. INTRODUCTION

In terms of Section 6 of the Licensing (Scotland) Act 2005 ("**the 2005 Act**"), every Licensing Board is required to publish a statement of their policy with respect to the exercise of their functions under the Act during the succeeding three year period. In addition, the Licensing Board may, during that three year period, publish a supplementary statement of their policy with respect to the exercise of their functions during the remainder of that period (known as a "supplementary licensing policy statement"). The first three year period is to commence on 30th November 2007. This statement fulfils that statutory requirement for the Board.

In preparing its licensing policy statement (or a supplementary licensing policy statement), the Licensing Board must -

- (a) ensure that the policy statement seeks to promote the licensing objectives, and
- (b) consult -
  - (i) the Local Licensing Forum for the Board's area;
  - (ii) if the membership of the Forum is not representative of all of the interests required to be represented on it, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative; and
  - (iii) such other persons as the Board thinks appropriate (Section 6(3)(b) of the 2005 Act).

In exercising their functions under the 2005 Act during each three year period, the Board must have regard to its licensing policy statement (and any supplementary licensing policy statement) published by the Board in relation to that period.

The "licensing objectives" referred to above are contained in Section 4 of the 2005 Act and are as follows:-

- (a) preventing crime and disorder;
- (b) securing public safety;
- (c) preventing public nuisance;
- (d) protecting and improving public health; and
- (e) protecting children from harm.

Dundee City Licensing Board is constituted under Section 5 of, and Schedule 1 to, the 2005 Act. It consists of 10 members and the quorum is five. It is the successor to the Licensing Board with the same name which was previously constituted under Section 1 of the Licensing (Scotland) Act 1976 ("the 1976 Act"). The previous Board already had a number of policies concerning various matters under the 1976 Act and these are set out in Appendix 1 hereto.

Of course, the 2005 Act only makes provision for two types of licence, ie premises and personal licences, as opposed to the seven types of licence previously provided for by the terms of the 1976 Act. The 1976 Act licences continue in the meantime, however, pending the onset of the transition period for the 2005 Act which begins on 1st February 2008. At the moment, there are 477 licences issued by the Board under the 1976 Act and the types of licence are as follows:-

Public House Licences - 169;  
 Hotel Licences - 28;  
 Restaurant Licences - 56;  
 Restricted Hotel Licences - 7;  
 Refreshment Licences - 12;  
 Off Sales Licences - 162; and  
 Entertainment Licences - 43.

In August 2005, the Board issued a consultation document to enable it to obtain the views of interested parties in accordance with its duties under Section 6(3)(b) of the 2005 Act outlined above. As part of this consultation process, the following were invited to comment:-

The Local Licensing Forum;  
Dundee City Council  
Community Councils;  
Elected Members, MPs and MSPs for the City of Dundee area;  
Dundee Children's Protection Committee;  
Tayside Police;  
Tayside Fire and Rescue;  
NHS Tayside;  
Dundee Chamber of Commerce;  
Dundee Partnership;  
Visit Scotland Angus & Dundee;  
**Scottish Beer and Pub Association;**  
Anyone else with an interest in Licensing issues.

The original consultation document can be viewed on the Dundee City Council website [www.dundee.gov.uk](http://www.dundee.gov.uk)

**The Board has also had regard to the Guidance issued by Scottish Ministers referred to at p.6 of this document.**

**This policy will be kept under review during the succeeding 3 year period and we will consult regularly with interested parties and stakeholders in relation to the contents hereof.**

**This policy has been drawn up during a time when a number of the regulations to be made under the Act are still completing their legislative procedure. Accordingly, this policy may require further revision in light of any such regulations or further guidance issued by the Scottish Government.**

**This policy does not affect the right of any person to apply in terms of the 2005 Act and to have any such application considered on its individual merits. Any person may make representations in relation to an application or seek review of a licence where provision is made for this in the 2005 Act.**

## **2. THE LICENSING (SCOTLAND) ACT 2005 - A BRIEF OVERVIEW**

As mentioned in the Introduction, the provisions of the Licensing (Scotland) Act 2005 come fully into force from 1st September 2009. There is a transition period beginning on 1st February 2008 during which all of the existing licences granted under the Licensing (Scotland) Act 1976 will require to be transferred to the new system under the 2005 Act. All existing 1976 Act licences will continue to run until 1st September 2009 when they will terminate automatically.

Under the 2005 Act, the existing categories of licence (eg public house, hotel, refreshment etc.) are to be discontinued and, instead, will be replaced by a single premises licence in respect of the actual premises and, separately, a personal licence or licences allowing named individuals to supervise or authorise the sale of alcohol on the premises concerned. Whilst premises licences will last indefinitely (subject to payment of an annual retention fee to the licensing board), personal licences last for a period of 10 years from the date of issue and may then be renewed for further periods of 10 years at a time.

### **Premises Licences**

A premises licence authorises the sale of alcohol on the premises. It is granted by the Licensing Board for the area where the premises are situated. An application for a premises licence may be made by any person aged 18 or over and must contain a description of the premises; an operating plan for the premises; a layout plan of the premises; and appropriate certificates in relation to planning, building standards and food hygiene (if food is to be sold on the premises).

Of course, it should be noted that, during the transition period from 1 February 2008 until 1 September 2009, existing licence holders applying for new licences under the 2005 Act on a "like-for-like" basis will be exempt from the requirement to provide planning, building standards or food hygiene certificates.

Where a Licensing Board receives such an application, it must give notice to:-

- each person having an interest in neighbouring land;
- any Community Council within whose area the premises are situated;
- the Council within whose area the premises are situated;
- the appropriate Chief Constable; and
- the Enforcing Authority within the meaning of Section 61 of the Fire (Scotland) Act 2005 in respect of the premises.

Each notice of the premises licence application must be accompanied by a copy of the application. Once an application is received for a premises licence, the Licensing Board must hold a hearing for the purpose of considering and determining the application, taking into account appropriate plans and certificates accompanying the application, any police notices relating to convictions on the part of the applicant or any person connected with the applicant, or objections or representations made to it.

In considering and determining the premises licence application, the Board must consider whether any grounds for refusal of the application apply. If no grounds for refusal apply, the Board must grant the application. If there are grounds for refusal, the Board must refuse the application. The grounds for refusal are as follows:-

- the premises are "excluded premises";
- the application is within one year after the refusal of a previous premises licence application;
- the application is for a 24 hour licence (unless the Board is satisfied that there are exceptional circumstances to grant this);
- if the application is in relation to off-sales, it proposes hours for alcohol to be sold on the premises either before 10 am or after 10 pm or both;
- the Board considers that the granting of the licence would be inconsistent with any one or more of the licensing objectives (narrated in the Introduction hereto);
- the Board considers the premises to be unsuitable for use for the sale of alcohol; and
- the Board considers that granting the application will result in over-provision in the locality.

Where the Board considers that they would refuse the application in the form in which it is made, but would accept it if a moderation is made to the operating plan, they may propose this to the applicant and subsequently grant the application on this condition.

## **Personal Licences**

To be eligible to apply for a personal licence, the applicant must:-

- be 18 years or over;
- possess an accredited licensing qualification; and
- not have had a personal licence revoked within the period of 5 years ending with the day on which the application for the personal licence is made.

Applications require to be copied to the appropriate Chief Constable, who must respond to the Licensing Board within 21 days with a notice confirming any relevant or foreign offences of which the applicant for the licence has been convicted and, if there are such offences, the police can recommend refusal of the application.

The Licensing Board must grant a personal licence application if they are satisfied that the applicant meets the criteria above and there is no notice from the Chief Constable of any relevant or foreign offences. If there is such notice from the Chief Constable, the Board must hold a hearing for the purpose of considering and determining the application. After such hearing, the Board must, having regard to the notice from the Chief Constable, either grant the application or, if it is satisfied that it is necessary to do so for the purposes of the crime prevention objective, refuse the application.

## **Objections and Representations to Premises and Personal Licences**

Any person may, by notice to the Licensing Board, object to the premises licence application on any relevant ground for refusal. Such person may also make representations to the Board either in support of the application, seeking modifications to the operating plan or conditions to be imposed upon the grant of any licence. The Chief Constable may object to the premises licence application only on the ground that the applicant or any person connected with the applicant is involved in serious organised crime and that it is necessary for the purposes of the crime prevention objective that it is refused. Where notice of objection or representation is received by the Licensing Board, it must give a copy of the notice to the applicant and have regard to the notice in determining the application. A notice of objection or representation may be rejected by the Board if it considers it to be frivolous or vexatious.

(As noted above in relation to personal licences, only the Chief Constable may serve notice on the Board and this relates to any relevant or foreign offence of which the applicant for the licence has been convicted. In such circumstances, the Board is obliged to hold a hearing into the application.)

## **Other permissions**

Apart from the two types of licence referred to above, the 2005 Act also makes provision for a number of other permissions to be granted by a Licensing Board. These are set out in the following paragraphs, together with the powers of the Board to review existing licences.

## **Occasional Licences**

Premises (other than licensed premises) may be issued an occasional licence authorising the sale of alcohol on the premises, providing the application is made by a premises or personal licence holder, or a representative of any voluntary organisation. This type of licence is likely to be used for events (eg a wedding reception) not held in premises already licensed for the sale of alcohol. An occasional licence can have effect for no more than 14 days. Where an application is made for an Occasional Licence, any person may object to the application on any ground for refusal or make representations to the Board concerning the application. Representations can be made either in support of or against granting the application. Applications are also copied to the Chief Constable and any Licensing Standards Officers for the Licensing Board's area. Provided there are no adverse reports from the Chief Constable, 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. The grounds for refusal are similar to those relating to premises licence applications.

### **Provisional Premises Licences**

This is an application in relation to premises which are being constructed or converted for use as licensed premises. A provisional premises licence has no effect until confirmed by the Licensing Board. The licence has to be confirmed within two years, otherwise it will automatically be revoked. This two year period can be extended if the construction or conversion work of the premises is delayed for reasons outwith the control of the licence holder.

Section 47 of the 2005 Act makes further provision in respect of temporary premises licences and this applies where any licensed premises are undergoing, or are about to undergo, reconstruction or conversion. On application to the Licensing Board, the licence holder can obtain a temporary premises licence in respect of other premises within the Board's area, provided that the other premises are suitable for use for the sale of alcohol and the Board is satisfied that it is necessary to grant the application to enable the applicant to carry on business pending reconstruction or conversion of the principal premises. Such temporary licence has effect for a maximum period of two years and is subject to the same conditions as those to which the principal premises licence is subject. The two year period can be extended for a maximum further period of twelve months on application by the licence holder.

### **Extended Hours Applications**

The Licensing Board may, on application by a premises licence holder, extend the licensed hours by such period as is specified in the application or such other period as the Board consider appropriate, in connection with a special event or occasion to be catered for on the premises, or an event of local or national significance. Applications must be copied to the appropriate Chief Constable and Licensing Standards Officers. The Board must take into account any comments from the Chief Constable or Licensing Standards Officers and may hold a hearing for the purposes of determining the application. Where the Board decides not to hold a hearing, it must ensure that, before determining the application for extended hours, the applicant is given sufficient opportunity to comment with regard to any notices and reports submitted either by the Chief Constable or Licensing Standards Officers.

### **Variation and Transfer of Premises Licences**

A premises licence holder may apply to the Licensing Board for a variation of the licence. This can be any variation of:-

- conditions to which the licence is subject, other than mandatory conditions;
- information contained in the operating plan;
- the layout plan contained in the licence; and,
- any other information contained or referred to in the licence.

If the application is for a "minor variation", this must be granted by the Licensing Board. A "minor variation" means any variation of the layout plan which is not inconsistent with the operating plan, any restriction of the terms in which children or young persons are to be allowed entry to the premises or any variation of the information contained in the licence relating to the premises manager. If the variation does not fall within the categories of minor variation, the application must be the subject of a hearing before the Board for the purposes of considering and determining the application. If none of the statutory grounds for refusal apply, the Board must grant the application. Equally, a premises licence holder may apply to the Board for the transfer of the licence to another person. If the Board receives a notice stating that neither the person to whom the licence is proposed to be transferred nor any person connected with him has been convicted of any relevant or foreign offence, they must grant the application. If there is notice of any such convictions, the Board must hold a hearing for the purpose of considering or determining the application. The person to whom it is proposed to transfer the licence may make the application in certain prescribed circumstances, eg upon purchase of the licensed premises concerned.

## Operating Plan

This must accompany an application for a premises licence and should set out clearly the proposals for the operation of the licensed premises, including activities to be undertaken on the premises, proposed opening hours and the applicant's policy in relation to children. Applicants should be aware of the expectations of the Licensing Board and any responsible authorities on steps **which are necessary** for the promotion of the licensing objectives.

## Review of Premises Licences

Any person may apply to the Licensing Board for a review of a premises licence on the grounds that one or more of the licensing conditions attached to the licence have been breached, or any other ground relevant to one or more of the licensing objectives. The Board can also review any premises licence in their area on their own initiative. This must also relate to the grounds of review referred to above. Where the Board makes or receives a review application, they must hold a hearing for the purposes of considering and determining the application. If the Board is satisfied that there are grounds for review and that these are established, it can:-

- issue a written warning to the licence holder;
- vary a licence;
- suspend the licence for a period; or
- revoke the licence.

## Review of Personal Licences

The Licensing Board must hold a review hearing into a personal licence should it become aware of the holder of the licence having been convicted of a relevant or foreign offence. Following such a hearing the Licensing Board, should it consider that action should be taken, may revoke the licence, suspend it for a period or endorse the licence. Should a personal licence holder receive three endorsements from the Licensing Board, the Board must hold a further hearing where it can either take no action, or suspend or revoke the licence (**Section 86 of the 2005 Act**).

## 3. POLICY ISSUES

As can be seen from the preceding section outlining the powers of the new Licensing Board and the kind of decisions it will require to make under the 2005 Act, there is still a great deal of discretion involved in the discharge by the Board of its licensing functions. Applicants for, and holders of, licences require to have notice as to the manner in which the Board is likely to exercise these discretionary powers and also of the expectations of the Board as far as the conduct and operation of licensed premises is concerned. This is why the previous Board, although under no legal duty to do so, introduced the range of policies in relation to 1976 Act licences set out in Appendix 1.

The 2005 Act now imposes a statutory requirement upon Licensing Boards to produce three-yearly policy statements, as is explained more fully in the Introduction. Nevertheless, it will still be open to applicants and licence holders to seek to convince the Board that any policy or policies so adopted should **not** apply in the circumstances of their own individual case.

## Guidance for Licensing Boards and Local Authorities

Under the terms of Section 142 of the 2005 Act, Scottish Ministers have issued guidance to Licensing Boards as to the exercise of their functions under the Act. The final version of the first ministerial guidance was approved by the Scottish Parliament on 7th March 2007. As far as statements of licensing policy are concerned, the guidance contains a number of recommendations for Licensing Boards. As noted in the Introduction, Section 6 of the 2005 Act requires the Licensing Board, when preparing its policy statement, to ensure that this seeks to promote the licensing objectives. In addition, the Licensing Board must have regard to the ministerial guidance and it will, therefore, be useful to note the recommendations of the Guidance in so far as they relate to each of the policy issues detailed below.

In general terms, the Guidance says that statements of licensing policy should make clear that licensing is about regulating the sale of alcohol and the premises on which alcohol is sold, and for connected purposes within the terms of the Act. A statement of policy should also make clear that

licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are no longer on licensed premises and beyond the direct control of the licence holder.

### **Overprovision of Licensed Premises**

In terms of Section 7 of the 2005 Act, each licensing policy statement must include a statement as to the extent to which the Board considers there to be overprovision of either licensed premises in general or licensed premises of a particular description in any locality within its area. It is for the Board to determine the localities for this purpose and it must also have regard to the number and capacity of licensed premises in any particular locality. In making the assessment as to whether or not there is overprovision, the Board is required to consult with the Chief Constable and also such persons as appear to the Board to be representative of the interests of premises licence holders and persons resident within the locality, together with the views of such other persons as the Board thinks fit.

The duty under Section 7 does not come into effect until 1st September 2009 in recognition of the fact that the task of assessing the capacity of licensed premises is quite a significant one. The delay until September 2009 will give Licensing Boards sufficient time to assess the number and capacity of licensed premises in their area to enable a more accurate assessment of overprovision to be made. At that point, the Board will have more accurate information at its disposal to help it to inform any policy on overprovision.

### **Licensing Hours**

Under the 1976 Act, the opening hours of licensed premises were fixed according to the type of licence involved. These were as follows:-

- (a) Public House and Refreshment Licences -
  - Monday to Saturday - 11.00 a.m. to 11.00 p.m.;
  - Sunday - 12.30 p.m. until 2.30 p.m. and 6.30 p.m. until 11.00 p.m. (provided the premises have been granted Sunday opening);
- (b) Hotel, Restricted Hotel, Restaurant and Entertainment Licences:-
  - Monday to Saturday - 11.00 a.m. to 11.00 p.m.;
  - Sunday - 12.30 p.m. until 2.30 p.m. and 6.30 p.m. until 11.00 p.m.;
- (c) Off Sales Licences -
  - Monday to Saturday - 8.00 a.m. until 11.00 p.m.;
  - Sunday - 12.30 p.m. until 10.00 p.m.

These permitted hours could be extended on either a regular or occasional basis in respect of Public House, Hotel, Restricted Hotel, Restaurant, Entertainment and Refreshment Licences. Equally, registered Clubs could apply for extensions, even although their main registration was with the Sheriff Clerk. This is obviously different under the 2005 Act and Clubs require to obtain a premises licence in the same way as the other types of establishment referred to above.

Under the 2005 Act, the concept of permitted hours in terms of periods fixed by statute is discontinued. Instead, applicants for licences will require to specify in their operating plan the hours during which they intend to be open. (Although off-sales premises are to be restricted to a maximum period of 10.00 a.m. until 10.00 p.m. each day). As mentioned above, the previous Board introduced fairly detailed policies with regard to opening hours in the City of Dundee and these are shown in the first paragraph in Appendix 1 to this document.

The Guidance reminds Licensing Boards that they must observe the requirement set out in Section 64 of the 2005 Act which provides a presumption against routine 24 hour opening of licensed premises, other than in limited exceptional circumstances. It is recommended that Licensing Boards should consider exceptional circumstances to cover only special events such as one-off local or national festivals. In considering applications for licensed hours, Boards may wish to consider applications for

up to 14 hours as being reasonable but local circumstances and the views of the Local Licensing Forum should always be considered.

It should be borne in mind that premises which wish to open after 1.00 a.m. will be the subject of mandatory licence conditions and these are contained in The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007.

Having considered the views of consultees, the Board has decided to adopt a similar approach to its previous policy under the 1976 Act. This will mean that premises whose principal purpose is the provision of entertainment, eg discotheques and nightclubs, would be permitted to open until 2.30 am, as also would premises offering mainly restaurant facilities. All other licensed premises would be permitted to remain open until 12.00 am.

As far as the time of opening is concerned, the Board notes the terms of the Guidance referred to above. However, it has decided that 13 hours would be reasonable to meet local circumstances and to take account of the views of the Local Licensing Forum.

Of course, each application will be dealt with according to its individual merits. The Board will take into account all the statutory licensing objectives in assessing any application for a licence, including the hours of trading. Any applicants seeking to open outwith the terms of the policy outlined above will require to convince the Board that those are exceptional circumstances to justify this and that there would be no conflict with the licensing objectives. For example, the Board would generally favour allowing dedicated function suites within licensed premises to remain open until 1.00 am and entertainment premises providing food in accordance with the policy set out below to open until 3.30 am.

As noted on page 5 above, a premises licence holder may, under the 2005 Act, apply for an extension of the hours approved by the Board in the operating plan provided that this is in connection with a special event or occasion to be catered for on the premises, or an event of local or national significance. Under the 1976 Act, such applications are dealt with as applications for an occasional extension of the permitted hours and the current policy of the Board is detailed at paragraph 6 of Appendix 1. In addition to applications from individual licence holders, Section 67 of the 2005 Act will enable Licensing Boards to grant a general extension of licensed hours to enable premises to open for specified extended hours on particular specified occasions, e.g. local holidays, international sporting events, etc. The grant of such a general extension of hours can apply to the whole of the Board's area, to specified parts only, to all premises in the area or specified or particular types of premises. It is considered that this power would be akin to the Board's previous practice of designating occasional extension dates on an annual basis after consultation with the Local Licensing Forum. The Board will also request observations from the Chief Constable and other interested parties and will consider additions to the list of dates.

### **Provision of Food and Non-Alcoholic Refreshments in Entertainment-Licensed Premises**

On 20th October 2005, the Licensing Board approved a policy whereby entertainment licensed premises would be allowed to open for an additional hour from 2.30 a.m. until 3.30 a.m. on Saturdays and Sundays for the provision of food and non-alcoholic refreshments only. This followed a report containing recommendations from the Evening Economy Working Group which were aimed at tackling the increasing incidences of persons gathering outside late hours catering establishments once entertainment-licensed premises closed at 2.30 a.m. Any premises wishing to take advantage of this extra hour could either provide the food by means of an arrangement with late hours caterers in the area whereby food could be delivered to the entertainment-licensed premises and consumed by patrons thereon or, alternatively, the entertainment-licensed premises could provide the food themselves.

To date, regular extensions to 3.30 a.m. have been granted on the above understanding, but have not yet been implemented since a number of late hours catering establishments have appealed to the Sheriff against the decision of the Licensing Committee to curtail their opening hours to 2.30 a.m., unless such establishments were willing to enter into an arrangement to provide food to entertainment-licensed premises as narrated above. It is anticipated that, after some delay, these appeals will shortly be heard by the Sheriff. In the event that the policy is supported by the Courts, and given the fact that it has not yet been tested in practice, this policy will continue under the new Board.

### **Minimum Entry Charge for Premises Providing Entertainment**

Previously, the Board operated a policy whereby the undernoted condition was attached to Entertainment Licences for premises such as Discotheques, namely:-

"A minimum charge for entry to premises, applicable to persons of 18 years of age and over, must be charged. This charge shall be fixed by the Licensing Board at its meeting in June of each year for the year beginning 1st July and ending 30th June. This minimum charge must not be offset in any way. For the avoidance of doubt, offsetting the minimum charge includes, but is not limited to (a) the issue of complimentary tickets or vouchers; and (b) the advance purchase of tickets granting entry on more than one evening".

The Board has decided to maintain this condition and would intend attaching it to licensed premises whose primary function is the provision of entertainment and which seek to remain open after 12.00 am. It is proposed that, from 1st July 2008, the minimum charge be increased from £2.50 to £3.50.

### **Operating Plan**

All applications for premises licences must be accompanied by an operating plan making clear how the premises are to be run, what activities will be undertaken thereon and at what time(s). An operating plan in relation to any premises is a document in the prescribed form containing:-

- A description of the activities to be carried on in the premises;
- A statement of the times during which it is proposed that alcohol be sold on the premises;
- A statement as to whether alcohol is to be sold for consumption on the premises, off the premises or both;
- A statement of the times at which other activities in addition to the sale of alcohol are to be carried out on the premises;
- Where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are allowed entry, a statement of the terms on which they are to be allowed entry including, in particular, the ages of children or young persons concerned, the times at which they are to be allowed entry and the parts of the premises to which they are to be allowed entry;
- Information as to the proposed capacity of the premises;
- Prescribed information about the individual who is to be premises manager; and,
- Such other information in relation to the premises and to the activities to be carried thereon as may be prescribed.

As noted above, a premises manager must be specified in the operating plan. The Board will expect the premises manager to have day-to-day responsibility for running the premises and to be present at the premises on a regular basis when alcohol is being sold. Staff will require to be appropriately trained to the standards required by the 2005 Act. The Board will also expect applicants for premises licences to have arrangements in place for the management and supervision of the premises on those occasions when the premises manager is absent from the premises. Ideally, the Board would wish to see at least one personal licence holder on the premises at all times when alcohol is being sold. The Board appreciates that this may not be possible with smaller establishments. However, and in any event, the Board will expect there to be within all licensed premises proper management arrangements in place which will ensure that there are responsible, trained persons on the premises sufficient to comply with the premises licence holder's statutory responsibilities and the terms and conditions of the licence. The operating plan should also address the issue of controlling noise behaviour from the premises and the maintenance of both internal and external repair and decor.

Where applicants propose to provide outside seating, tables or other such facilities (excluding pavement cafes for which provision is made below), the area should be included on the plan of the premises to be licensed. In addition, the operating plan should indicate that due consideration has been given to the need to ensure that the use of such areas will not cause disturbance or nuisance to the occupiers of other premises in the vicinity and effective management controls, supervision and other measures will be put in place to ensure that the use of such areas does not have any detrimental impact in the vicinity.

### **Sale for Consumption off the Premises and Occasional Licences**

Applicants for licences for premises which are to be used for the sale of alcohol for consumption off the premises will be expected to address the five licensing objectives in their operating plan.

The Board is concerned to ensure that all possible steps are taken in this area to promote the licensing objectives. It will work towards the adoption of a policy concerning the layout of such premises and the responsible display of intoxicating liquor in premises, which are not exclusively or mainly used for the sale of alcohol. The Board will monitor developments in the area of test purchasing and will take appropriate action as part of its wider alcohol agenda.

Consideration will be given to adopting a standard condition relating to proof of age, without which no sale will be made.

The Board notes that, during the course of the consultation period, the Scottish Government have brought forward The Licensing (Mandatory Conditions NO 2) (Scotland) Regulations 2007 in draft form and that these contain a proposal for a mandatory condition regarding the display of alcohol for consumption off the premises. This is to the effect that displays of alcohol for consumption off the premises must be confined to a single area of the premises to be agreed between the applicant for a premises licence and the Board. This will require to be shown in the layout plan accompanying the application. In accordance with the proposed amendment to the Guidance to reflect this new requirement (which will come into effect from 1st February 2008), the Board would not be minded to approve any such layout plan including a number of alcohol display areas, or where empty aisle space is used to join up several displays which would not otherwise be regarded as a single separate display area. There will be no exceptions or special arrangements for seasonal or special displays for other events or occasions. Any wish to vary the area will require an application to the Board.

The Board proposes to continue with the practice of inviting applications for occasional licences in respect of pavement cafes. These would be considered for periods of 14 days at a time between March and October in each calendar year. In addition to the mandatory conditions contained in Schedule 4 to the 2005 Act, the Board would intend to impose some or all of the conditions shown at Appendix 3 to this statement of licensing policy, where it considers this to be necessary or expedient for the purposes of any of the licensing objectives.

With regard to occasional licences generally, the Board will expect applicants to ensure that they have sufficient management and other arrangements in place to comply with the licensing objectives, particularly where the application is from a voluntary organisation. The Board will consider the imposition of such additional conditions as it thinks are necessary under Section 60 of the 2005 Act, including the use of plastic containers, bottles and glasses.

### **Children on Licensed Premises**

The Board will, in furtherance of the licensing objective of protecting children from harm, seek advice from and have regard to the views of the Dundee Children's Protection Committee.

The Board wishes to see family friendly premises thriving in the city. It will welcome applications from those who wish to operate licensed premises which accommodates children. In determining any such application the risk of harm to children will be a paramount consideration for the Board.

Where applicants wish to operate such premises, the Board expects them to appreciate that this places additional responsibilities upon them, at the same time recognising that parents and other adults accompanying children also have responsibilities.

Applicants will be expected to demonstrate in their operating plan that suitable and sufficient measures have been identified and will be implemented and maintained to protect children from harm, relevant to the individual style and characteristics of their premises and the licensable activities for which a licence is being sought.

The following examples of control measures are given to assist applicants who may adopt them in any combination. They are considered to be among the most essential that applicants should take account of in their operating plan, having regard to their particular type of premises or activities:

- effective and responsible premises management
- appropriate instruction, training and supervision of those employed to secure the protection of children from harm
- adoption of best practice guidance
- limitations on the hours when children may be present, in all or parts of the premises
- limitations or exclusions by age when certain activities are taking place
- imposition of requirements for children to be accompanied by an adult
- acceptance of accredited proof of age cards with photographs, or passports
- measures to ensure children do not purchase, acquire or consume alcohol
- measures to ensure children are not exposed to incidences of violence or disorder

In preparing and presenting the operating plan, applicants should be aware that the Board expects premises to be run in a way compliant with, and promoting, the licensing objectives and will expect the operating plan to meet these objectives. Although guidance may be sought from the Clerk to the Board and Licensing Standards Officers, it is for the applicant to ensure that the operating plan is in the correct form and covers all aspects of the operation of the premises as outlined above.

### **Best Bar None**

In 2005, the Licensing Board approved the adoption of the "Best Bar None" (BBN) Scheme" in Dundee and the first award winners were announced in August 2006. The BBN award is granted to premises which demonstrate a commitment to social responsibility and the safety of people using them. The award, which aims to cut down on alcohol-related crime and irresponsible drinking, encourages premises to be safer, more sociable environments and allows customers to relax and enjoy their evening. Premises gaining the award are able to display a plaque to show the public that they have reached the required standard, thus giving customers more informed choices when deciding where to visit, and supporting premises who seek to trade at a higher standard.

The first year of this scheme was a great success and it is intended that it continue in the future. It is important that the new Board's policy reflects support for the continuance of the scheme and that this be reflected in this Statement. For the avoidance of doubt, however, the Board does not require licence holders to participate in the scheme, but it does commend such participation as good practice.

### **Procedure for Dealing with Applications for Licences, Etc.**

The various types of applications and matters which the Board will require to deal with have been set out in Part 2 of this document. However, the Act recognises that not every application should require to be the subject of a Hearing before the Board and allows quite a considerable amount of delegation to the Clerk, should the Board so decide.

Those applications which require to be submitted to the Board for a Hearing are as follows:-

- application for premises licence;
- application for variation of premises licence where the variation sought is not a minor variation;
- application for transfer of premises licence where the applicant has been convicted of a relevant or foreign offence;
- application for a personal licence (new application or renewal) where the applicant has been convicted of a relevant or foreign offence;
- a Hearing on an application for review of a premises or personal licence;
- making a closure order; and
- refusing an application for confirmation of a provisional premises licence.

All other matters can potentially be delegated and these include:-

- applications for transfer of a premises licence where the applicant has not been convicted of a relevant or foreign offence;
- applications for variation of a premises licence where the variation is a minor variation;
- applications for personal licences (new and renewal) where the applicant has not been convicted of a relevant or foreign offence;
- applications for occasional licences where there is no notice of objection or representation or no notice from the Chief Constable recommending refusal;

- grant of occasional extensions of licence to hours for a special event of local or national significance; and
- grant of extended hours applications where the Chief Constable has not submitted an objection.

It is proposed that only those matters where there is a statutory requirement for a hearing will be dealt with at a meeting of the Board and that all other matters be delegated to the Convener in terms of Paragraph 10(1) and (2) of Schedule I to the 2005 Act.

The procedure at any hearing before the Board will be to hear from the objector or person making a representation or making a complaint to the Board first. At that point the Board may ask questions of that person. The licence holder/applicant and/or their agent would then have the opportunity to respond and answer any questions that might be asked by members of the Board. After any further discussion, there would then be final submissions by all parties present, whereupon the Board would then consider its decision. It would not normally be the practice of the Board to hear evidence from witnesses. In the event that the procedure at hearings is made the subject of regulations or further guidance from Scottish Ministers, this policy statement would be superseded to that extent.

The Board acknowledges the mandatory conditions laid down in Schedules 3 and 4 to the 2005 Act and is aware that other conditions are to be included in various regulations under the Act. Appropriate use will be made of all such conditions and, in addition, where relevant representations are made, the Board will consider whether any other conditions need to be attached to a licence to secure achievement of the licensing objectives.

### **Relationship with other Strategies and Regimes**

The Board will endeavour to secure proper integration with local crime prevention, community safety, health, planning, transport, tourism, race equality and cultural strategies.

There are a number of wider issues which may need to be given due consideration when dealing with applications. The Board will receive, when appropriate, reports on the needs of the local tourism authority to make sure that these are reflected in the Board's consideration. Also, the Board recognises that licensing applications should not be seen as a re-run of the planning process and there will be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency. However, there will continue to be proper liaison and communication between these two regimes. The Board will, so far as possible, avoid duplication with other regulatory regimes such as health and safety at work and fire safety. The Board will liaise with the Dundee Drug and Alcohol Action Team (DAAT), which is represented on the Local Licensing Forum. The Board will also have regard to any strategy of the Scottish Government designed to address the social, health and crime and disorder issues raised by the misuse of alcohol.

All premises for which a licence is being sought will be expected to comply with the building standards requirements in force at the time of their construction, or at the time of any alteration. This is particularly relevant in respect of the licensing objectives relating to public health and public safety. Where construction work is proposed or completed, the applicant should be able to produce appropriate certificates issued by the local authority.

Other statutory requirements may apply to the provision of any activities at premises and the responsibility for compliance lies with the licence holder. For example, if the activity involves the preparation and/or sale of food then it is the responsibility of the applicant to ensure that all appropriate food safety legal requirements are met. It is not a requirement of any licence decision to address these matters but a responsible licence holder will conform to all relevant legislation.

The Board will at all times have due regard to the terms of the Sex Discrimination Act 1975 (as amended), the Race Relations Act 1976 (as amended) and the Disability Discrimination Act 1995 (as amended). In addition, the Board has already issued gender, race and disability equality schemes which are available on the Dundee City Council website [www.dundee.gov.uk](http://www.dundee.gov.uk).

**Enforcement**

Dundee City Council, as the appropriate local authority, will employ Licensing Standards Officers in accordance with the terms of the 2005 Act. LSO's will investigate allegations of unlicensed activities, ensure compliance with licensing conditions and provide information and guidance to applicants and licence-holders. At the time of publication of this document, it has not yet been decided how many LSO's will be appointed or where they will be based within the Council's framework. Further details will be provided in this regard in due course.

**APPENDIX 1****LICENSING BOARD - 1976 ACT POLICIES****1. Regular Extensions**

Public houses will be granted permission to open all day until midnight Mondays to Sundays for the general public and on Sunday afternoons from 2.30 pm to 6.30 pm. Extensions have not been granted in public houses prior to 11 am.

Public houses which have a function suite which is used solely for private functions and no other purpose will be granted extensions in respect of the function suite only until 1 am Mondays to Sundays. If the function suite doubles as a lounge bar then permission would not be granted beyond 12 midnight.

Discos would normally be granted permission to open until 2.30 am daily, including Sundays and casinos until 4 am.

Where Regular Extensions are granted the following conditions are usually attached:-

1. Where the licence holder employs or uses any person at or near the entrance or within these premises to ascertain or satisfy his or herself as to the suitability of customers to be allowed into the premises and/or maintain order and/or safety at or in the premises, the person so employed must be registered as suitable for such employment or usage by the Licensing Board.
2. All music or vocals must be controlled to the satisfaction of the Head of Environmental Health and Trading Standards of Dundee City Council so that no noise is audible within the same building as the licensed premises or in a nearby building.
3. Where in doubt as to a person's age, Licensees must ask for photographic ID and operate a "no proof no sale" policy.
4. Licensees must not encourage binge drinking via the use of "Happy Hours" on their licensed premises. This will also extend to "all in" promotions whereby unlimited amounts of alcohol may be obtained upon payment of a fixed price or entrance fee.
5. Licensees must avoid the use of advertising campaigns designed specifically to entice younger patrons to the licensed premises by virtue of promotions for the sale of alcoholic liquor at discounted prices.
6. Maximum occupant capacities of a venue, as advised by the Clerk to the Licensing Board, must not be exceeded.
7. Licensees of Nightclubs must comply at all times with any minimum charge for entry for patrons condition imposed by the Licensing Board.
8. There must be no touting by or on behalf of entertainment licence holders by whatever means (excluding within their own premises) within the areas from time to time designated by the Board. Without prejudice to the foregoing generality, there shall be no tickets, leaflets, flyers, vouchers or similar items issued to prospective patrons for the purpose of advertising, or otherwise obtaining custom for, particular entertainment-licensed premises.
9. Licence holders shall not, either themselves or by any employee or agent, attract custom by the use of illegal fly-posting".

## 2. **Entertainment Licences**

The undernoted conditions are always attached to Entertainment Licences as far as discos are concerned:-

"A minimum charge for entry to premises, applicable to persons of 18 years of age and over, must be charged. This charge shall be fixed by the Licensing Board at its meeting in June of each year for the year beginning 1 July and ending 30 June. This minimum charge must not be offset in any way. For the avoidance of doubt, offsetting the minimum charge includes, but is not limited to (a) the issue of complimentary tickers or vouchers; and (b) the advance purchase of tickets granting entry on more than on evening".

The present charge is £2.50.

## 3. **Amusements with Prizes**

A resolution in November 1977 limits the number of machines for gaming by way of amusements with prizes within any premises to two. Premises means the premises as a whole, so a public house consisting of a public bar and a lounge bar would only be permitted to have a total of two machines and not two in each of the public and lounge bars. (This policy will be redundant after 1 September 2007 when the provisions of the Gambling Act 2005 take effect.)

## 4. **Children's Certificates**

The hours of operation are normally restricted to the recognised lunchtime and teatime periods unless the applicants can demonstrate that meals are provided all day between 11 am and 8 pm. The Board have also refused to grant certificates in the vicinity of Dens Park and Tannadice on match days.

The Board also attach the following condition to Children's Certificates:-

During hours when the Children's Certificate is in force, smoking shall be prohibited in all parts of the licensed premises of which the premises specified in the application for the certificate form part.

## 5. **Visits to Premises by Members**

A Sub-Committee will visit a selection of licensed premises prior to each quarterly meeting.

## 6. **Occasional Extensions**

The Board will grant an Occasional Extension of the Permitted Hours for a maximum period of four weeks on the grant of a new licence and will also grant a similar extension to licence holders who forget to re-apply for a regular extension.

The Board will also grant any additional hours, i.e. to 1 am and 3.30 am for public houses and nightclubs respectively on holiday weekends etc throughout the year.

## 7. **Pavement Cafes**

The Board will grant permission to licence holders to allow them to operate pavement cafes immediately outside their premises subject to conditions. Applications will be granted for two week periods at a time. The fee is £17 per application.

## 8. **Beer Gardens**

Any publican or hotelier who wishes to turn any exterior ground into a beer garden will require to apply for the grant or the provisional grant of a new licence.

9. **Proprietary Clubs**

Where proprietary clubs (normally snooker clubs) apply for an Entertainment Licence, then the Board normally attach a condition to the effect that the club must be operated in terms of the rules as approved by the Board, and these rules must be submitted with the application. Any amendment to the rules must also be approved by the Board. Consideration of minor amendments is delegated to the Chairman and Clerk.

10. **Price Lists**

The Board have, in the past, expressed concern if price lists were not displayed in a prominent position. The proper authority for the regulation of price lists within licensed premises is the Trading Standards Department.

11. **Renewal Notice**

Renewal notices are not issued unless the licence holder is a member of the renewal scheme, which involves the payment of a separate fee. Full details of the scheme are given to licence holders upon the grant of a new licence or the transfer of an existing licence. (Under the Licensing (Scotland) Act 2005, only personal licences will require to be renewed.)

**APPENDIX 2****OCCASIONAL EXTENSION DATES 2007**

1	30th March - 2nd April, 2007	Spring Holiday Weekend (2nd April)
2	6th April - 9th April, 2007	Easter Holiday
3	4th May - 7th May, 2007	May Holiday Weekend (7th May)
4	25th May - 28th May, 2007	Victoria Day (28th May)
5	29th June - 1st July, 2007	Dundee Blues Bonanza
6	1st July - 8th July, 2007	Broughty Ferry Gala Week
7	18th July - 5th August, 2007	Annual Trades Holiday & Open Golf
8	28th September - 1st October, 2007	Autumn Holiday Weekend (1st October)
9	3rd December - 2nd January, 2008	Christmas & New Year Holiday

**APPENDIX 3****PAVEMENT CAFE****CONDITIONS**

1. To avoid public nuisance the licence shall cease at 9.00 pm each evening.
2. The Licensee shall ensure that an employee is supervising the Pavement Cafe area at all times.
3. The Licensee shall ensure that all litter associated with the cafe is cleared up promptly and in particular at the conclusion of the operating hours that the pavement area is cleared and swept clear of cigarette ends.
4. The Licensee shall ensure that a portable cigarette bin, with a stubbing out facility is situated in the Pavement Café area. This bin to be removed at 9pm.
5. Only table service shall be allowed in the pavement cafe and no persons should be standing whilst consuming alcohol. A sign to that effect should be displayed in the area of the Pavement Café.
6. The Licensee shall place a sign in a prominent position at the door of the premises indicating that the Pavement Café is table service only and that alcohol should not be removed from the premises.
7. Each application for an occasional licence shall be accompanied with a plan of the area within which alcohol is to be served and consumed and the said plan shall illustrate the table and chairs layout.
8. The area of the pavement cafe must be cordoned off using suitable materials.
9. Tables and chairs must be stored in such a manner so as not to impede any entrances to or exits from the building.
10. All furniture eg tables and chairs must be a minimum of 2 metres away from the kerbside.