

**Draft for Consultation**

**SHETLAND ISLANDS AREA LICENSING BOARD**

**LICENSING (SCOTLAND) ACT 2005**

**STATEMENT OF LICENSING POLICY**

**November 2016 – November 2019**

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## **PREAMBLE**

1. Section 6 of the Licensing (Scotland) Act 2005 (the Act) requires all licensing authorities such as the Shetland Islands Area Licensing Board (the Board) to publish every three years a statement of licensing policy (the policy). This statement fulfils that statutory requirement for the Board, and is the fourth three-year statement to be published by the Board.
2. In accordance with the requirements of section 6 of the Act, and prior to the publication of this policy, the **Board has consulted with** and taken cognisance of the views of:
  - the local licensing forum for the Board area
  - NHS Shetland
  - Police Scotland
  - Shetland Islands Council officials in respect of planning, building standards and environmental health
  - the Shetland Child Protection Committee
  - Shetland Adult Protection Committee
  - Shetland Children's Rights Officer
  - Shetland Alcohol Support Services
  - Community Alcohol and Drugs Service Shetland
  - Alcohol Focus Scotland
  - Visit Shetland
  - Education & Social Work, Housing, Scottish Fire & Rescue Service, licence holders, the public (via website)
  - Community Councils
  - Shetland Licensed Trade Association
  - Scottish Beer and Pub Association
3. In preparing the policy, the Board has had due regard to the guidance issued by the Scottish Ministers.

The Board has also recognised its duty to promote the **five licensing objectives** set out at section 4 of the Act:

- preventing crime and disorder
  - securing public safety
  - preventing public nuisance
  - protecting and improving public health and
  - protecting children from harm
4. The Board welcomes the powers given to it by the Act and intends to use those powers in a socially responsible way. In so doing, the Board recognises that the interests of the public, residents, businesses and patrons of licensed premises require to be balanced. The five licensing objectives outlined in the Act will provide a starting point.

5. Comments may be submitted

by email to: legal.services@shetland.gov.uk  
by fax to: 01595 744585  
in writing to: Clerk to the Licensing Board  
Shetland Islands Council  
Governance and Law  
Corporate Services Department  
Office Headquarters  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

by telephone to: 01595 744087

If assistance is required to make your comments please discuss this with the Depute Clerk on the above telephone number, who will be glad to assist.

You can also access this document on the Council's website at:  
[www.shetland.gov.uk/licensing](http://www.shetland.gov.uk/licensing)

6. This policy is operational from 30 November 2016. The policy will be applied during the three year period to November 2019; it will be kept under review and be subject to on-going consultation with stakeholders and revised, if appropriate, by the issue of supplementary statements, during the three year period.

## SECTION A - GENERAL

### 1 INTRODUCTION

1.1 The Shetland Islands Area Licensing Board is a licensing authority for the purposes of the Licensing (Scotland) Act 2005 (“the Act”) and is responsible for granting:

- premises licences
- personal licences
- occasional licences
- provisional licences
- extensions of licensing hours
- temporary licences
- transfers of licences
- variations of licences

in respect of:

- the sale of alcohol by retail;
- the supply of alcohol in members’ clubs.

1.2 The Shetland Islands Area Licensing Board as Licensing Authority for the area is also responsible for reviewing Licences in order to maintain the licensing objectives.

1.3 **The Shetland Islands** are a group of more than 100 islands of which 15 are inhabited, located in the North Atlantic and are virtually equidistant between Norway to the east and the UK mainland to the south. The Islands have a population of approximately 22,000 with the main population centre being Lerwick with approximately 9,000 inhabitants.

1.4 Under the Act, the **current number of premises** holding premises licences which permit the sale/supply of alcohol as at 31 December 2015 is 150:-

The number of Personal Licences issued by Shetland Islands Area Licensing Board and still current since the introduction of the 2005 Act as at 31 December 2015 is 385.

1.5 The number of Occasional Licences granted in the calendar year from 1 January to 31 December 2015 was 166.

The Act requires the Board to carry out its various licensing functions so as to promote the **five licensing objectives**. These are:

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health and
- protecting children from harm

The pursuit of these five objectives is a principal feature of this Board’s policy. The

objectives provide a basis for refusal of an application for the grant of a premises licence or of an occasional licence; their breach may lead to the imposition of sanctions on a personal licence holder or provide grounds for the review of a premises licence. The attachment of conditions to a premises licence or occasional licence may be based on any of the objectives.

- 1.6 The Act further requires that the Board publishes a statement of licensing policy which sets out the policies the Board will generally apply to promote the licensing objectives when making decisions on applications.
- 1.7 The Board is required to have regard to the **guidance** issued by the Scottish Ministers and to **consult** with:
- the local licensing forum for the Board's area
  - the following, in so far as they are not represented in the membership of the forum –
    - holders of premises licences and personal licences
    - the chief constable for the police area in which the forum's area is situated
    - persons having functions relating to health, education or social work
    - young people and
    - persons resident within the forum's area and
  - such other persons as the Board thinks appropriate.
- 1.8 This policy has been prepared in accordance with the provisions of the Act. It takes effect on **30 November 2016** and will remain in force for a period of not more than three years. It will be subject to regular review and further consultation prior to October 2019. If necessary the Board will prepare and publish supplementary statements of licensing policy.
- 1.9 It should be recognised that this policy covers a wide variety of activities and premises including public houses, restaurants, nightclubs, private members' clubs, sports clubs, and community halls, as well as off-licences. It cannot provide for every eventuality but seeks to detail those factors and the Board's policies which will influence the achievement of the licensing objectives.
- 1.10 The Board acknowledges that the licensing function cannot be used for the general control of the anti-social behaviour of individuals once they are beyond the direct control of the licence holder of any premises. However, in exercising its licensing function the Board will have due regard to the role and responsibilities of **other responsible authorities** within the local government area. These include:
- planning controls
  - positive measures to create a safe and clean town environment, in partnership with local businesses, transport operators and various services of the local authority
  - the provision of close circuit television (CCTV) surveillance, taxi ranks, street cleaning and litter patrols
  - enforcement of the general law concerning disorder and anti-social behaviour
  - greater use of the powers to deal with those who commit offences, such as selling alcohol to people who are drunk.

- 1.11 This policy does not seek to undermine the right of any individual to apply under the terms of the Act and to have such an **application considered on its individual merits**. It does not seek to override the right of any person to make representations on an application or to seek a review of a licence where provision has been made for this in the Act.

## **2 CONSULTATION AND LINKS TO OTHER POLICIES, STRATEGIES AND LEGISLATION**

- 2.1 In developing this policy, the Board has consulted widely and given due consideration to the views of all those who responded to that consultation process. There are many organisations and people who have a stake in the leisure industry, including providers, customers, residents, law enforcers and the emergency services, all of whom have views and concerns that require consideration in the promotion of the licensing objectives.

- 2.2 In administering its responsibilities in respect of licensing the Board believes that it is important that it does not operate in isolation. Due regard will be given to the policies and decisions of Shetland Islands Council.

- 2.3 The **Human Rights Act 1998** incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a Convention Right. The Board will have particular regard to the following relevant provisions of the European Convention on Human Rights in respect of its licensing responsibilities:

- Article 1 of the First Protocol: that every person is entitled to the peaceful enjoyment of their possessions, including for example the possession of a licence
  - Article 6: that in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law and
- Article 8: that everyone has the right to respect for their home and private life.

- 2.4 The Board recognises its responsibilities under the **Equalities Act 2010**. The Board has adopted an Equalities Statement along with its Community Planning Partners.

The Board shall seek to ensure equality of access to its services and shall monitor its performance. The progress and aspirations of the Board and its Community Planning Partners in this area can be accessed in the Shetland's Equalities Mainstreaming Report and Equality Outcomes 2013-17 ([http://devweb.shetland.gov.uk/about\\_introduction/documents/ShetlandsEqualitiesMainstreamingReportandEqualityOutcomes2013-2017.pdf](http://devweb.shetland.gov.uk/about_introduction/documents/ShetlandsEqualitiesMainstreamingReportandEqualityOutcomes2013-2017.pdf)).

- 2.5 The Board will continue to work as an observer with the Shetland Alcohol and Drugs Action Team; the importance of such co-operation is recognised as part of the wider alcohol agenda.

- 2.6 The Board will 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.
- 2.7 The Board are firmly committed to avoiding duplication with other regulatory regimes so far as possible and will not use its powers under the Licensing (Scotland) Act 2005 to arrive at outcomes that can be achieved more appropriately under other legislation or by other enforcement agencies.
- 2.8 In particular, the Board's licensing functions will be discharged separately from the functions of Shetland Islands Council as the **local planning authority**. The Board recognises that planning and licensing regimes are separate and that the processing of licensing applications should be an exercise distinct from the processing of planning applications. The Board as the licensing authority will not be bound by decisions made by Shetland Islands Council as the local planning authority. Applicants for licences are reminded that planning permission may be required for certain uses and that planning consents may carry conditions.
- 2.9 It is appropriate that planning permission is obtained first, or alternatively that a certificate of lawful use or development has been obtained in terms of the proposed activities and trading hours.
- 2.10 In general, planning permissions authorise a broad type of use of premises, whereas licences are granted for a particular type of activity. A planning permission may cover a number of activities that can have a wide range of different impacts in the locality.
- 2.11 There may be a common approach in the reasoning behind planning and licensing decisions and conditions attached to planning permissions may relate to one or more of the five licensing objectives.
- 2.12 The Council's planning policies are set out in its Development Plan. Government guidance in the form of Scottish Planning Policy (SPP) is also relevant.
- 2.13 The formulation of this policy involved consultation with the **Local Licensing Forum**, which will keep under review the operation of the Act in this Board's area and will advise and make recommendations to the Board as appropriate. The Board will have regard to any advice given or recommendation made to it. To ensure proper communication with the Local Licensing Forum, the Board may provide reports particular to it from time to time to enable it to have regard to the detail of such matters when deliberating.



- 2.14 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.
- 2.15 **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.
- 2.16 There is considerable overlap between the licensing regime and wider health and safety regulatory regimes. Many specific licensing requirements relate to matters potentially affecting public health and public safety, two of the licensing objectives.

### **3 APPLICATIONS FOR LICENCES AND DISPOSAL OF BUSINESS**

- 3.1 Applicants can obtain general advice from the Licensing Standards Officer. Applicants should be aware that there are considerable responsibilities involved in being a Licensee and should take their own legal advice from a solicitor if necessary.
- 3.2 The Board will not accept any premises licence application which fails to satisfy the requirements of section 20 of the Act and any regulations made under the Act. Any such application will be returned to the applicant.
- 3.3 The Board will dispose of its business in an open and transparent manner. Information will be made available to interested members of the public on the Board's Website:  
[http://www.shetland.gov.uk/about\\_introduction/LegalLicensing.asp](http://www.shetland.gov.uk/about_introduction/LegalLicensing.asp)  
The Board will remain at all times mindful of the need to be accessible to all and assistance will be available on request to those who require any special arrangements to be made.
- 3.4 The Board will generally operate in the Chamber of the Shetland Islands Council Town Hall. Timescales will be laid down for applications to the Board, in accordance with any regulations issued and these will be widely publicised. The Board will meet on a regular basis and the meeting dates will be published on the calendar of meetings on the Shetland Islands Council's website.
- 3.5 Training of members will be a priority and will be carried out within the three month period following election of any member to the Board. Members will be kept informed of developments in the licensing arena and further training will be initiated as necessary.

- 3.6 The Board is committed to the use of e-government technology and to applying its benefits so as to ensure continuous improvement of the Board's operation.

#### **4 DELEGATION OF LICENSING FUNCTIONS**

- 4.1 It is the Board's policy to provide a speedy, efficient and cost effective service to all parties involved in the licensing process.
- 4.2 Decisions on licensing matters will be taken in accordance with an approved scheme of delegation aimed at underlining the principles of timely, efficient and effective decision-making.
- 4.3 The delegations will be made by the Board in accordance with the Act. A table setting out how the Board has delegated its various licensing functions is attached at **Appendix 1**. Many of the decisions and functions are largely administrative in nature such as the grant of non contentious applications, including for example those occasional licences where no representations have been made. These decisions will be delegated to the Clerk to the Board.
- 4.4 In order to maintain an overview the Board will receive regular reports regarding the use of delegated decision-making powers.
- 4.5 In general the Board will meet in public, although members may retire into private session to consider confidential materials provided to them or their decision in appropriate cases. Divisions of the Board, together with reasons, will be made public.

#### **5 NOTIFICATION OF APPLICATION, OBJECTIONS AND REPRESENTATIONS**

- 5.2 Objections or representations which are regarded as frivolous or vexatious will not be considered and in the case of a review of a licence, any representation which is regarded as irrelevant will be discarded. Otherwise, the Board will give a copy of the notice of objection or representation to the applicant, in terms of the prescribed procedure, and will have regard to the objection or representation in determining the application.

#### **6. CONDITIONS ATTACHING TO LICENCES**

- 6.1 The Board acknowledges the **mandatory conditions** laid down in Schedules 3 and 4 of the Act and is aware that other conditions have been or are to be published as Regulations. Appropriate use will be made of all such conditions.
- 6.2 Where relevant representations are made, the Board will make an objective judgement as to whether **other conditions** may need to be attached to a licence to secure achievement of the licensing objectives. Any conditions arising as a result of representations will primarily focus on the impact of the activities taking place at the licensed premises, on those attending the premises and members of

the public living, working or engaged in normal activity in the vicinity of the premises, and will cover matters that are within the control of the licence holder.

- 6.3 The Board recognises that all applications should be considered on their own merits. Conditions attached to a licence may be derived from the licence holder's operating plan, or as a result of a representation and will be tailored to each individual premises, in order to avoid the imposition of disproportionate and other burdensome conditions on those premises. Conditions will only be applied when necessary, appropriate and proportional, based on the individual consideration of the merits of each application.
- 6.4 To assist applicants, and in the interests of consistency, the Board may consider preparation of a series of model conditions which may be used with or without modification.
- 6.5 If an applicant volunteers a prohibition or restriction in their operating plan because their own assessment has determined such prohibition or restriction to be appropriate, such volunteered prohibition or restriction if accepted will become a condition attached to the licence and will be enforceable as such.

## **7 NEED FOR LICENSED PREMISES**

- 7.1 The Board acknowledges that need, in the sense of the commercial demand for further licensed premises, is not a licensing policy matter. Licensing decisions will not therefore be based upon this issue.

## **8 CONSIDERATION OF APPLICATIONS BY THE BOARD**

- 8.1 When considering whether any licence should be granted, the Board will assess the likelihood of it having an adverse impact. The Board will take into account relevant matters including:
- 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 location, character and condition of the premises
- 8.2 Where it is possible to take steps to mitigate or prevent any potential adverse impact it may still be possible to grant a licence subject to conditions if these steps are reliable.
- 8.3 When considering any application for premises which have been previously licensed, or in any review of an existing licence, the Board will take into account the impact on local residents as borne out by any history of complaints and investigations into these. The Board will also look at the measures put into effect by the applicant to mitigate the adverse impact.

## **9 OVERPROVISION**

- 9.1 The Board is under a duty in terms of section 7 of the Act to publish in this policy a statement on the extent to which it considers there to be overprovision of licensed premises or licensed premises of a particular description in any locality within the area of the Board.
- 9.2 Overprovision of licensed premises in a particular locality impacts on the promotion of the licensing objectives. The Board has considered whether there are areas within the Shetland Islands Area where the concentration of particular types of licensed premises is having an adverse impact.

**SPECIFIC CONSULTATION IS UNDERWAY. UNDER THE CURRENT POLICY NO AREAS OF OVERPROVISION HAVE BEEN IDENTIFIED. ANY PERSON OR ORGANIZATION WITH VIEWS OR EVIDENCE ON OVER PROVISION IS SPECIFICALLY REQUESTED TO SUBMIT THEIR COMMENTS TO THE DEPUTE CLERK ON [susan.brunton@shetland.gov.uk](mailto:susan.brunton@shetland.gov.uk)**

## **10 OCCUPANCY CAPACITY**

- 10.1 Reference is made to the provisions of paragraph 9 above, which relate to overprovision. The occupancy capacity of premises is one factor in the assessment of overprovision.
- 10.2 Each case will be considered on its merits but the Board will consider very carefully the type, size and capacity of licensed premises in the particular locality in respect of which the application is made. The Board recognises its responsibility to assess overprovision, not only on the number of licensed premises but on the number of premises of a particular description in any locality.

## **11 REVIEW OF PREMISES LICENCES**

- 11.1 A licence may be reviewed on the application of any person on the grounds that one or more conditions to which the premises licence is subject has been breached or any other ground relevant to one or more of the licensing objectives. A review will include consideration being given to the suspension, revocation or variation of a licence or alternatively to the issue of a written warning.
- 11.2 The Board may reject a premises licence review application if it is considered to be vexatious or frivolous or if it does not disclose any relevant matter.

## **12 OCCASIONAL GRANTS**

- 12.1 An **occasional licence** under section 56 of the Act authorises the temporary sale or supply of alcohol on premises which are otherwise not licensed premises.

It may be applied for by:

- the holder of a premises licence
- the holder of a personal licence
- a representative of any voluntary organisation

to cover a period of a maximum of 14 days.

- 12.2 Event organisers are encouraged to provide as much notice of their event as possible to the Board. The minimum period of notice which any applicant for such a licence will usually be 28 days, to allow for the statutory consultation with the Police Service of Scotland and Licensing Standards Officer. Applications received with less than 28 days notice may be rejected by the Board or may not be fully processed by the required date.
- 12.3 The Board shall give careful consideration to ensuring the licensing objectives are being met, when dealing with repeat occasional applications for the same premises, which have the effect that the premises are operating as if they held a premises licence.
- 12.4 The Board has power to reduce the notice period for an occasional licence where they are satisfied that the application requires to be dealt with quickly. Exercising this power has administrative cost implications and the Board will usually only be prepared to exercise their discretion to do so when the applicant could not reasonably be expected to have submitted an application under the usual timescales. The power will not usually be exercised merely because the event organizer has failed to appreciate the need to plan appropriately.
- 12.5 The notice period for the submission of occasional licences during the Christmas and New Year period will be extended to take account of the closure of the Council offices over the festive period. Applicants should note that no applications received within two days of the office closure date will be processed until after the offices reopen.
- 12.6 Any applicant for such a licence should be aware of their responsibility to apply for a public entertainment licence and late night catering licence, issued under the Civic Government (Scotland) Act 1982, where appropriate.
- 12.7 **Extended hours applications** under section 68 of the Act allow for an occasional extension of licensed hours for licensed premises and operate only for a period of up to one month. They may be granted where the Board considers it appropriate in connection with a special event or occasion to be catered for on the premises or a special event of local or national significance. If the Board receives a number of applications to extend licensed hours it will expect the applicant to consider whether an application should be made to vary the premises licence, by adjustment of the operating plan.
- 12.8 A general extension of licensing hours under section 67 of the Act may be granted to enable premises to remain open longer in connection with a special event of local or national significance. The Board believes that in many cases, such events

can be appropriately accommodated within the Board's normal licensing hours policy and should not be regarded as routinely in need of extended licensing hours. Further detail of the licensing hours policy for general extensions is contained in paragraph 21 below.

### **13 ENFORCEMENT AND LICENSING STANDARDS OFFICERS**

- 13.1 Shetland Islands Council will employ **licensing standards officers (LSOs)** to investigate allegations of unlicensed activities, to ensure that licence conditions are complied with and to provide information and guidance to members of the public. The Council employs the Team Leader Environmental Health who is appointed to the statutory LSO role. The Team Leader is supported in that role by other Environmental Health Officers, who are fully trained.
- 13.2 Resources will be targeted towards high-risk premises and activities that require greater attention. A lighter touch will be provided in respect of low-risk premises, where the Board and LSOs identify good management practices in operation.
- 13.3 The Council delivers a wide range of enforcement services aimed at safeguarding the environment and the community and at providing a level playing field on which businesses can trade fairly. The enforcement of the licensing regime is one of these services. The Council has adopted the Government's **Enforcement Concordat** designed to ensure effective and efficient public protection services.
- 13.4 Specifically, the Council has confirmed that it is committed to the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.
- 13.5 The Board recognises the interests of both citizens and businesses and will work closely with its partners, to assist licence holders to comply with the law and the five licensing objectives it seeks to promote. Proportionate but firm action will be taken against those who commit offences.
- 13.6 The Board expects enforcement agencies to adopt a similar approach and will seek to work actively with them to enforce the licensing legislation. In particular the Board anticipates co-operation with the Police Service of Scotland and to share information where appropriate in order to enhance the promotion of the five licensing objectives.

### **14 MANAGEMENT OF LICENSED PREMISES**

- 14.1 Within the operating plan for premises on which alcohol will be sold, a premises manager must be specified. The Board will expect the **premises manager** to have the day to day responsibility for running the premises. The Board expects that there will be in place appropriate arrangements for monitoring the sale of alcohol and activities taking place on the premises, by the premises manager and/or by another person who is a personal licence holder. The premises licence holder is expected to ensure that the premises manager has experience commensurate

with the size, capacity, nature and style of the premises.

14.2 The premises manager must hold a personal licence.

14.3 Within all licensed premises, whether or not alcohol is to be sold, the Board will expect there to be proper management arrangements in place which will ensure that there is an appropriate number of responsible, trained persons on the premises and will also ensure compliance with all statutory responsibilities and the terms and conditions of the premises licence.

## **15 PERSONAL LICENCES**

15.1 An individual may seek a personal licence whether or not they have current employment or business interests associated with the use of the licence.

15.2 The Board will grant a personal licence if it is satisfied that the applicant:

- is over 18 years of age
- possesses a relevant licensing qualification
- has not been convicted of any relevant offence or foreign offence

15.3 When an applicant has an unspent conviction for a relevant offence, the Board will liaise with the Police Service of Scotland. If the Police Service of Scotland object to the application, the application will be dealt with at a Board meeting, when it will consider carefully whether the grant of the licence will be in the interests of the crime prevention objective. It will consider the seriousness and relevance of any conviction, the period that has elapsed since the offences were committed and any mitigating circumstances. If not satisfied that grant of the application will promote the crime prevention objective, the Board will refuse it.

## **16 ADULT ENTERTAINMENT**

16.1 Subject to any regulations which may be promulgated, this Board will seek to regulate standards in relation to licensed premises offering adult entertainment on a case by case basis.

16.2 In particular the Board will expect licence applicants to have given consideration to the promotion of the licensing objectives in relation to the protection of children and the prevention of crime and disorder.

16.3 Where premises licence applications include adult entertainment in the planned activities, the Board will have particular regard to the location of the premises in relation to places of religious worship, schools, youth clubs or other premises where significant numbers of children are likely to congregate.

16.4 All applications involving adult entertainment of any kind will be considered on their own merits but particular regard will be given to this section of the statement of policy.

## **17 OFF-SALES**

- 17.1 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.
- 17.2 The Board expects licence applicants to note that **Regulations** impose **restrictions** on the areas within premises in which **alcohol** for consumption off the premises **may be displayed**. The areas for display are restricted to one or both of (a) a single area of the premises agreed with the Board or (b) a single area of the premises which is inaccessible to the public.
- 17.3 With regard to **opening hours of off-sales premises** and taking into account the lack of any history of problems associated with the operation of off-sales premises in its area to date, the Board is inclined to the view that the terminal hour should be defined as 10 p.m. In terms of the Act, off-sales will not be permitted before 10 a.m. on any day. Each case will be taken on its merits and the Board is concerned to ensure that the licensing objectives relating to crime, children, public health and public nuisance in particular are promoted in this area and will consider very carefully whether earlier closing hours may be justified in any particular case. Reference is made also to paragraph 26 of this policy, relating to public nuisance.
- 17.4 Shops where sales will not be limited to alcohol should be able to demonstrate the ability to close off areas containing alcohol outwith the licensing hours of 10 a.m. to 10 p.m. any day.

## **18 SMOKING, THE USE OF E-CIGARETTES AND NUISANCE**

- 18.1 The Board acknowledges that smoking and vaping is not a licensing matter but one for other legislation.
- 18.2 The health risks associated with smoking and with passive smoking continue to be well publicised; licence holders will be aware of their own statutory responsibilities, public opinion generally, the expectations of their patrons and the legislation concerning smoking in public places.
- 18.3 THE BOARD IS CONSIDERING WHETHER TO ADOPT A POSITION IN RESPECT OF E-CIGARETTES. ANY CONSULTEE WITH VIEWS ON THIS TOPIC IS SPECIFICALLY REQUESTED TO CONTACT THE DEPUTE CLERK ON [susan.brunton@shetland.gov.uk](mailto:susan.brunton@shetland.gov.uk)
- 18.4 The Board expects that licence holders will have regard to good practice. It is their responsibility to ensure that patrons do not create a nuisance or disturbance for residents living nearby. This includes any noise nuisance arising as a result of patrons smoking outside the premises and any associated littering of the area. Where appropriate the Board may impose conditions requiring licence holders to



provide litter bins in the vicinity.

- 18.5 Every business has a duty to ensure that waste is disposed of securely and to keep their premises clear of all litter generated by staff and customers; the Board expects licence holders to be aware of their responsibilities and of the possibility of statutory street litter control notices in the case of non compliance.

## **19 OUTSIDE SEATING AREAS**

- 19.1 When applicants propose to provide outside seating, tables or other facilities in any outdoor area (whether covered or not), the area should be included in the layout plan of the premises to be licensed. Further, 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 by patrons or by any other persons does not have a negative impact in the vicinity. Managers of premises in Lerwick should take appropriate steps to alert customers to the effect of the byelaw prohibiting consumption of alcohol in public, if the customers were to take alcohol outwith the licensed area. Managers should also give consideration to how such areas should be clearly delineated, in coming forward with any proposals for licensing of outside drinking areas. Subject to the foregoing, the Board would look favourably on proposals for suitable outside drinking areas aimed at creating a more family friendly environment.

## **20 HOURS OF TRADING**

- 20.1 This section primarily relates to premises where alcohol is sold for consumption on the premises with or without any other licensable activity. The Board expects that all applicants for all types of licensed premises will consider hours of trading to be an important issue when preparing their operating plans. Paragraph 17.3 above outlines the Board's policy approach with respect to off-sale trading hours.
- 20.2 In determining its approach to the hours of trading, the Board will give full consideration to the Scottish Executive guidance under the Act and to the provisions at sections 62 to 66 of the Act itself. Each case will be dealt with according to its individual circumstances.
- 20.3 As a starting point, but subject to considering the individual merits of each case, the Board intends to approve an **opening hour of 11 a.m.** each day for on-sale premises unless this conflicts with any statutory provisions or exceptional circumstances exist.
- 20.4 Having regard to the licensing objectives, and particularly that of protecting and improving public health, as a starting point, but subject to considering the individual merits of each case, for on-sale licensed premises the Board has approved the following for terminal hours.

The guideline **terminal hours** are –

1 a.m. on any night for the generality of premises and 3 a.m. on weekend nights for premises which are operating as a nightclub. For this purpose the Board regards premises or a part of premises which meet the following criteria as a night club:-

- recorded music is played live by a person or persons; and
- an area is specifically laid out for dancing; and
- a fee is charged for entry;

Whilst each case will be considered on its merits, the Board will generally consider applying the following additional conditions on premises seeking to operate as a nightclub. These conditions are:-

- CCTV coverage;
- A Personal Licence holder is present on the premises during late hours opening;
- The use of Security Industry Authority licensed door supervisors.

20.5 As a starting point, but subject to considering the individual merits of each case, the Board intends to follow the times laid down in those guidelines unless they conflict with any statutory provisions or exceptional circumstances exist. The Board remains satisfied with the opening hours which have operated under their guidelines.

20.6 With respect to **occasional licences** and **extended hours applications** reference is made to paragraph 12 above. Additionally as a guideline the Board would be prepared to approve applications which fall within the general guideline hours set out above for on-sale premises, namely with an opening hour of 11am and a terminal hour of 1am.

20.7 The Board believes that when preparing operating plans there is merit in applicants giving consideration to the principle of winding down periods at the end of the night. By gradually increasing the lighting and winding down entertainment such as loud music before ending the sale of alcohol and the end of trading hours, thereby creating a calmer ambience, patrons leaving licensed premises may be inclined to behave less boisterously. In addition patrons may be inclined to leave the premises spasmodically in small groups on a gradual basis rather than simultaneously.

20.8 Consideration will always be given to an applicant's individual case and the Board will take into account any proposals the applicant has to minimise the risk of nuisance or disorder being caused or exacerbated by customers departing from the premises

20.9 Where no relevant representations are received from either a responsible body or any interested party and there is no departure from the Board's adopted policies, the Board will consider granting an application in accordance with the terms of the operating plan.

20.10 The Board believes that by adopting an approach which is sufficiently flexible, it is

possible to ensure that:

- all areas of the Islands, including the town of Lerwick, their businesses and residents will be treated equitably and arbitrary restrictions will be avoided
- restrictions on the hours of trading will only be applied where this is necessary in order to promote the licensing objectives
- restrictions are not placed on hours of trading which may contribute to rapid binge drinking near closing time.

## **21 General Extensions of Licensed Hours**

- 21.1 The Board has powers under S67 of the Act to grant a general extension of licensed hours in connection with special events of local or national significance. The Board will consider the views of the Police Service of Scotland particularly with regard to crime prevention and public safety objectives before granting any such general extension.
- 21.2 The Board will consider annually whether to grant a general extension of licensed hours for the Christmas and New Year period. During any such general extensions of licensed hours for the Christmas and New Year period the Board will consider permitting all licensed premises to remain open until 2am, and nightclubs to remain open until 3am provided they meet conditions required to ensure the promotion of the licensing objectives.
- 21.3 The Board recognises that Fire Festival and Up Helly Aa celebrations are special events of local significance for the Shetland Islands Area. The Board will annually grant a general extension of licensed hours with respect to appropriate licensed premises in the relevant vicinity for recognised Fire Festival or Up Helly Aa celebrations.
- 21.4 The currently recognised Fire Festival or Up Helly Aa celebrations are: Scalloway Fire Festival; Lerwick Up Helly Aa; Nesting and Girsta Up Helly Aa; Uyeasound Up Helly Aa; Northmavine Up Helly Aa; Bressay Up Helly Aa; Cullivoe Up Helly Aa; Norwick Up Helly Aa; South Mainland Up Helly Aa and Delting Up Helly Aa. Additional Fire Festivals or Up Helly Aa celebrations will require to be recognised by the Board prior to being included in the terms of the general extension.
- 21.5 During the general extension for a recognised Fire Festival or Up Helly Aa event the Board will permit identified licensed premises to remain open until 4am provided that the bar operations cease at 3.30am with respect to all events except the Lerwick Up Helly A'. Premises involved in the Lerwick Up Helly A' will cease bar operations at 3.30am but may remain open until 9am. Provision may also be made for additional hours for the Jarl's breakfast on the day of the event, or other events associated with the Lerwick Up Helly A'.
- 21.6 The Board delegates to the Clerk to formalise the dates and other content of the general extension for Fire Festivals and Up Helly Aa celebrations and notify the affected premises on an annual basis.

## **SECTION B - LICENSING OBJECTIVES**

### **22 OVERVIEW**

- 22.1 The following sub-sections set out the Board's policy relating specifically to the five licensing objectives:
- preventing crime and disorder
  - securing public safety
  - preventing public nuisance
  - protecting and improving public health
  - protecting children from harm
- 22.2 In each section relating to the objectives, the Board has defined its intended outcome. Each section lists the influencing factors on the achievement of that objective but, because of the wide variety of premises and activities to which this policy applies, the lists provided are not exhaustive. Applicants will know their premises best and will be expected to address all aspects relevant to the individual style and characteristics of their premises and the licensable activities for which they are seeking a licence.
- 22.3 In each sub-section, a list of possible control measures is provided, to be of assistance to applicants, but again is not intended to be an exhaustive or a prescriptive list. Many control measures achieve more than one objective but have not necessarily been listed under each objective.
- 22.4 The selection of control measures should be based upon a risk assessment of the premises, the proposed activities and the type of customers expected to attend – for example their age range and numbers. Risk assessment is considered to be good practice and a useful tool in the instruction and training of staff, as well as a sound basis for review by the licence holder, in the event of requiring to make application for a variation or in response to changing circumstances or conditions at the premises.
- 22.5 Additional measures may be necessary on an occasional or specific basis such as when a special event is planned which is intended to, or is likely to, attract larger audiences or audiences of a different nature; this can have a significant impact on the achievement of the licensing objectives.
- 22.6 The Board considers that the applicant should make provision for appropriate arrangements for effective and responsible management of the premises and for instruction, training and supervision of staff. This is considered to be an essential control measure for the achievement of all the licensing objectives.

### **23 LICENSING OBJECTIVE - PREVENTING CRIME AND DISORDER**

- 23.1 The Shetland Islands Council together with its Community Planning Partners supports a strategy aimed at making the Islands Area a safe place to live in and visit. The Board is committed to further improving the quality of life for the people of the Islands Area by continuing to adopt policies and to introduce measures

designed to increase community safety and to reduce crime, the fear of crime and disorder.

23.2 There are already in existence a wide range of measures for preventing and reducing crime and disorder. The Act reinforces the duty of the Board to make this a top priority.

23.3 The promotion of the licensing objective to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. Applicants will be expected to demonstrate that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and the activities at those premises.

23.4 The applicant should be able to demonstrate that all those factors, which impact on crime and disorder have been considered. These include:

- underage drinking
- drunkenness on premises
- public drunkenness
- illegal possession and/or use of drugs
- violent behaviour
- anti-social behaviour
- litter
- unauthorised advertising

23.5 The following examples of control measures are given to assist applicants who may need to take account of them, having regard to their particular type of premises and/or licensable activities:

- effective and responsible management of premises
- training and supervision of staff
- adoption of best practice guidance where available, including those relating to drinks promotions
- acceptance of accredited proof of age cards or photographic driving licences or passports
- provision of effective CCTV in and around the premises, which complies with all current legislative provisions and provision of external lighting and other security measures
- employment of Security Industry Authority licensed door supervisors
- provision of litterbins outside premises
- membership of any local pubwatch schemes or similar organisations
- responsible advertising
- distribution of promotional leaflets and posters.

## **24 LICENSING OBJECTIVE – SECURING PUBLIC SAFETY**

24.1 The Board is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. To this end, applicants may be expected to demonstrate that suitable and sufficient

measures have been identified and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and the licensable activities for which the licence is being sought.

- 24.2 When addressing the issue of public safety, an applicant must demonstrate that those factors which impact on standards of public safety have been considered, including –
- the occupancy capacity of the premises
  - the age, design and layout of the premises, including means of escape in the event of fire
  - the nature of the activities to be provided, in particular the sale or supply of alcohol and the provision of music and dancing, including whether those activities are of a temporary or permanent nature
  - the hours of operation – differentiating the hours of opening from the hours when licensable activities are provided, if different
  - customer profile – for instance age, disability
  - the use of special effects such as lasers, pyrotechnics, smoke machines and foam machines
- 24.3 The following examples of control measures are given to assist applicants who may need to take account of them, having regard to their particular type of premises and/or activities:
- suitable and sufficient risk assessments
  - effective and responsible management of premises, including installation of a CCTV system which complies with current legislative requirements in and around premises
  - provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons
  - appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons
  - adoption of best practice guidance
  - implementation of crowd management measures
  - proof of regular testing and certification where appropriate of procedures, appliances and safety systems.

## **25 LICENSING OBJECTIVE - PREVENTING PUBLIC NUISANCE**

- 25.1 The Board believes that licensed premises may have a significantly adverse impact on communities, through public nuisances which arise from their operation. It wishes to maintain and protect the amenity of residents and occupiers of other businesses from the potential consequence of the operation of licensed premises, whilst recognising the valuable cultural, social and business importance that such premises provide.
- 25.2 The Board will interpret public nuisance in its widest sense and will take it to include such issues as noise, light, odour, litter and anti-social behaviour, where

these matters impact on those living, working or otherwise engaged in normal activity in an area.

- 25.3 The Board acknowledges the provisions of section 65 of the Act in relation to off-sales by shops, stores, supermarkets and other premises selling alcohol for consumption off the premises. Subject to the overall limits in section 65, the Board may permit the hours during which alcohol is sold to match the normal trading hours during which other sales take place, unless there are reasons for not doing so, such as disturbance or disorder attributable to the location and/or the premises. Reference is made in this connection to paragraph 17 of this policy, relating to off-sales.
- 25.4 However, applicants need to be aware that the Board may apply stricter conditions, including controls on licensed hours, where premises are in residential areas or where their activities may impact on residents or other business premises and where relevant representations have been received.
- 25.5 The Board believes that the impact licensed premises can have on a neighbourhood is significantly influenced by the times when those licensed premises are open. The Board may stipulate shorter hours when considering a premises licence application, if it considers this to be appropriate for instance where the premises are, or may be, a source of antisocial behaviour. The Board will consider each case on its merits.
- 25.6 Applicants may be expected to demonstrate that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.
- 25.7 When addressing the issue of prevention of public nuisance, the following facts are relevant:-
- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices, care homes and places of worship
  - the hours of opening, particularly between 11 p.m. and 7 a.m.
  - the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises
  - the design and layout of premises and in particular the presence of noise limiting features and a CCTV system, which complies with current legislative requirements
  - the occupancy capacity of the premises
  - the availability of public transport
  - the wind down period between the end of the licensable activities and the closure of the premises
  - the last admission time
- 25.8 The following examples of control measures are given to assist applicants who may need to take account of them in their operating plan, having regard to their particular type of premises and/or activities:-

- effective and responsible management of premises
- appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance – for instance to ensure that customers leave quietly
- control of operating hours for all or parts of the premises – for instance garden areas – including deliveries
- adoption of best practice guidance
- installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- management of people, including staff and vehicular traffic and resulting queues, arriving and leaving premises
- liaison with public transport providers
- siting of external lighting, including security lighting and installation of an effective CCTV system which complies with current legislative requirements
- management arrangements for collection and disposal of waste and empty bottles, including reference to the management's Duty of Care in terms of the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) (Scotland) Regulations 1994
- effective ventilation systems to prevent nuisance from odour.

## **26 LICENSING OBJECTIVE – PROTECTING AND IMPROVING PUBLIC HEALTH**

- 26.1 The Board wishes to see premises thriving in the Islands Area, but this cannot be at the expense of patrons' health and wellbeing. The Board will have particular regard to the views of the relevant bodies responsible for, and interested in, the protection and improvement of public health in the Islands Area. It will take advice from those relevant bodies.
- 26.2 Applicants may be expected to demonstrate that suitable and sufficient measures have been identified and will be implemented and maintained to protect patrons' health. This will include such measures as making available information with regard to sensible drinking, the effects of excessive alcohol consumption and contact points where assistance is required with problem drinking.
- 26.3 One concern about excessive alcohol consumption is the impact on people's health. This may in part be due to ignorance of the advisable daily and weekly units of alcohol which should be consumed and the number of units in commonly consumed drinks. Although some manufacturers are taking an initiative in this regard and publishing information on the labels of their products, it is considered that greater awareness of this issue would be achieved by more overt displaying of information. The Board wish to impress upon licence holders the importance of raising awareness of this issue and therefore will expect prominent informative signage to be displayed in appropriate places within their premises. If necessary, and as the result of a relevant representation, such a requirement may be imposed by way of a condition on a premises licence.

The measures identified by an applicant may depend on the individual characteristics of the premises for which the licence is sought. The Board will be



receptive to conditions which are proposed by individual applicants in respect of the promotion of this licensing objective. This might include the use of drink mats with sensible drinking messages and the use of posters on areas of circulation and in the toilet areas.

- 26.4 The Board is very aware of the risk of harm to children's health and this will be of paramount consideration when determining applications. Children may be adequately protected from harm by the action taken to protect adults but they also may need special consideration. It is recognised that no policy can anticipate every situation but applicants will be expected to demonstrate that they have given particular care to introduce measures designed to protect children's health while in or around their premises.
- 26.5 Licence applicants, door supervisors where employed and premises managers, as well as other staff employed in the premises, must remain vigilant at all times to the risks of excessive consumption. There should be established practice within the premises to ensure that a standard approach is taken where patrons' demeanour demonstrates an excessive consumption of alcohol. There should also be a clear understanding of the offences committed in connection with the service of alcohol to children or drunk persons.
- 26.6 With reference to Schedule 3 of the Act, applicants should demonstrate that they are aware that they must provide tap water fit for drinking free of charge on request and a wide selection of non alcoholic beverages must be available for purchase at a reasonable price during the whole period the premises are open. Applicants will also be encouraged to provide food on the premises, so that patrons may eat at the same time as consuming alcoholic beverages if they wish.

## **27 LICENSING OBJECTIVE – PROTECTING CHILDREN FROM HARM**

- 27.1 The Board will have particular regard for the views of the Shetland Child Protection Committee.
- 27.2 The Board wishes to see family friendly premises thriving in the Islands Area; it would welcome applications from those who wish to operate licensed premises which will accommodate children. In determining any such application the risk of harm to children will be paramount.
- 27.3 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.
- 27.4 Applicants may be expected to demonstrate 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.

27.5 Children may be adequately protected from harm by the action taken to protect adults, but they may also need particular measures to be taken; no policy can anticipate every situation. When addressing the issue of protecting children from harm, the applicant must demonstrate that those factors, which may particularly impact on harm to children have been considered.

These include whether:-

- entertainment or services of an adult or sexual nature are commonly or regularly provided
- there have been convictions of members of the current staff at the premises for serving alcohol to children
- the premises have a reputation for under age drinking
- there has been a known association with drug taking or dealing or the sale of legal highs
- the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided there

27.6 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, having regard to their particular type of premises or activities:

- effective and responsible premises management
- provision of a sufficient number of people employed to secure the protection of children from harm
- 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 photographic driving licences 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

27.7 The Board requires applicants who submit operating plans including children to ensure that they are not given access to premises when activities such as adult entertainment are taking place. The Board has given particular consideration to these types of entertainment and has included within this statement of policy at paragraph 16 its expectation of applicants in respect of adult entertainment.

**SHETLAND ISLANDS AREA LICENSING BOARD**

**LICENSING (SCOTLAND) ACT 2005**  
**SCHEME OF DELEGATION**

The Shetland Islands Area Licensing Board has delegated to the Clerk (which includes such Depute or Assistants as may be appointed by the Clerk for the purpose) authority to grant the following descriptions of application under the Licensing (Scotland) Act 2005 –

- (a) minor variation of premises licence (section 29).
- (b) variation to substitute new premises manager – where the applicant has not been convicted of any relevant or foreign offence (section 31 and with reference to section 54).
- (c) transfer of premises licence – where the transferee has not been convicted of any relevant or foreign offence (reference to sections 33 to 35).
- (d) grant of a provisional licence when the Board has held a hearing and proposed a modification to the operating plan and the applicant has accepted the modification, as proposed by the Board.
- (e) confirmation of a provisional premises licence – where no objections or representations have been received (section 46).
- (f) occasional licence – when all the following criteria are met
  - no objections or representations have been received;
  - the Police Service of Scotland have not recommended refusal;
  - the proposed licensed hours are within the guideline licensing hours of 11am to 1am; and
  - the hours applied for do not cover a period in excess of 48 hours.
- (g) extension of licensed hours – within the Board’s guideline licensing hours of 11am to 1am – where no objections or representations have been received, the Police Scotland have not lodged a notice recommending refusal of the application and the report by the Licensing Standards Officer does not recommend refusal (section 68).
- (h) personal licence or renewal of a personal licence where the applicant has not been convicted of a relevant or foreign offence.
- (i) revocation of personal licence when a licence holder has failed to comply with the statutory retraining requirements.
- (j) general extension for Fire Festival and Up Helly Aa events - within the Board’s Policy Statement and provided no adverse comments have been received from Police Scotland or the Licensing Standards Officer.