



**The Moray Licensing Board  
Statement of Licensing Policy  
for the Licensing (Scotland) Act 2005  
Effective Period 30/11/2007 to 29/11/2010**

**Mission Statement**

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

To achieve this aim the Board will:

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

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

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

**Overriding Principle**

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

## **1. Introduction**

This is the statement of licensing policy of the Moray Licensing Board (“the Board”) issued under the Licensing (Scotland) Act 2005 (“the Act”).

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

### **1.1. Duty to Consult on and Publish a Statement**

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

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

### **1.2. The Board**

The Board is made up of 9 members of the Moray Council with a quorum of 5. The Board is supported by a Clerk, Depute Clerks and administrative support staff.

### **1.3. The Moray Local Licensing Forum**

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

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

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

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

### **1.4. Other Responsible Authorities**

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

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

## **2. Licensing Objectives**

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

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

### **3. Overprovision**

#### **3.1. Duty to Assess Overprovision**

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

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

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

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

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

#### **4. General Measures to Promote the Objectives**

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

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

##### **4.1. Hours**

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

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

###### **4.1.1. General Operating Hours**

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

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

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

###### **4.1.2. Early Opening**

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

for any application to justify the sale of alcohol prior to 9:00 a.m. unless there are exceptional circumstances.

#### 4.1.3. Late Opening

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

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

#### 4.1.4. Curfew

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

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

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

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

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

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

#### 4.1.5. Off Sale Hours

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

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

#### 4.1.6. 24 Hour Opening

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

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

#### 4.1.7. Extended Hours Applications

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

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

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

The Board will have complete discretion as to whether to grant the application taking into account any Police objections, any comments from the Licensing Standards Officer(s) (LSO – for which see section 5.1 post) and having regard to the licensing objectives. The Board may hold a hearing for the purposes of determining any application, but this is not mandatory. Where the Board does not hold a Hearing, the Board will ensure that before determining the application, the applicant is given an opportunity to comment on any objections from the Police or adverse comments from the Licensing Standards Officer(s).

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

#### 4.1.8. General Extensions

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

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

#### 4.1.9. Lack of Demand and the Duty to Trade

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

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

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

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

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

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

#### 4.1.10. Drinking Up Time and Dispersal Policy

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

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

#### 4.1.11. Christmas and New Year

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

#### 4.1.12. British Summer Time

On such date as is prescribed as the date in the Spring when the clocks go forward to mark the change over to British Summertime, Licensees who enjoy licensing hours beyond 1:00 a.m. (the official time for clock changes) will be judged by reference to the number of hours after midnight when their operating plan authorises them to be open rather than by the actual time shown on the clock.

On such date as prescribed as the date in the Autumn when the clocks go back to mark the changeover from British Summertime to British Wintertime, Licensees who enjoy licensing hours beyond 1:00 a.m. will similarly close according to the number of hours after midnight which they are authorised by the Licensing Board to be open rather than the actual time shown on the clock.

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

#### 4.1.13. Notice of Hours

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

## 4.2. Bye-laws

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

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

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

### **4.3. Underage Drinking**

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

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

- having an identification policy, for example to require ID if a customer appears under 21. This should also include clear signage to leave customers in no doubt as to the policy;
- training staff in the policy;
- ensuring that staff and customers comply with the policy; and
- keeping records regarding compliance including refusals.

This list is only illustrative and is not exhaustive.

### **4.4. Irresponsible Drinks Promotions**

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

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

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

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

\*applies to on - sales only.

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

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

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

## **5. Regulation and the Relationship with Other Regulatory Regimes & Strategies**

The Moray Licensing Board will avoid, so far as possible, duplicating the roles of other regulatory regimes. Licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are no longer on the Licensed Premises and beyond the direct control of the licence holder. The Board encourages applicants to consult with other relevant bodies when preparing their operating plans and any risk assessment.

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

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

## **5.1 Licensing Standards Officer**

The Licensing Standards Officer(s) (LSO) for Moray will also have a role in mediating on disputes involving alcohol licensed premises. The LSO(s) should be the first point of contact for anyone with a complaint or dispute and the Board envisages that most matters will be resolved at a local level through the mediation process involving the LSO(s).

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

The LSO will also be the first point of contact for anyone who requires general advice on the provisions of the Licensing (Scotland) Act 2005 and the Gambling Act 2005. The LSO cannot provide legal advice on particular issues and advice should be sought from a solicitor.

The LSOs last function will be one of compliance. The LSO has certain powers and will undertake monitoring visits in order to ensure licence holders comply with the Acts. In the worst case the LSO may recommend that the Board hold a hearing to review a licence.

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

## **5.2. Planning & Building Standards**

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

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

## **5.3. Fire**

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

#### **5.4. Police**

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

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

The Moray Council and the police also operate in partnership in respect of local CCTV. Guidance on the specification and use of CCTV has been prepared separately and appears at Appendix IV.

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

#### **5.5. Environmental**

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

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

#### **5.6. Equalities**

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

[www.moray.gov.uk](http://www.moray.gov.uk)

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

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

#### **5.7. Tourism**

The Moray area is well known for its whisky trails and coastal scenery and as such is a popular tourist destination. Tourism contributes greatly to the local economy and is welcomed. A statement from the Scottish Tourist Board has been produced and can be found on the Moray Council website.

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

## **5.8. Transport**

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

Guidance requires this policy statement to identify any arrangement between the LSO and the Police for reporting views/concerns to the local Transport Committee. This will be provided for in future statements.

## **5.9. Gambling**

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

[www.moray.gov.uk/moray\\_standard/page\\_51234.html](http://www.moray.gov.uk/moray_standard/page_51234.html)

## **6. Types of Licence**

### **6.1. Personal Licences**

Every premises will require one or more personal licence holders.

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

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

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

### **6.2. Premises Licences**

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

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

The form of the operating plan and layout plan are set out in regulations made under the Act and applicants should also see sections 7.3 and 7.4 below.

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

### **6.3. Provisional Premises Licence**

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

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

#### **6.4. Temporary Premises Licence**

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

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

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

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

### **7. Application Process**

#### **7.1. Risk Assessment**

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

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

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

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

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

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

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

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

## **7.2. General**

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

## **7.3. Operating Plans**

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

Operating plans will encourage a flexible licensing regime. They must make clear to the Board how the premises are to be run, including full details of all activities to be undertaken on the premises and the times they will be undertaken. This will include seasonal variations. Operating plans must be provided with each application in a prescribed format and should be particular to each premises and not completed in general terms.

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

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

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

## **7.4. Layout Plan**

The layout plan of the premises should comply with Regulations.

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

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

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

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

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

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

## **7.5. Forms and Fees**

Forms and fees are available on the Moray Council's website at:

[www.moray.gov.uk/licensing](http://www.moray.gov.uk/licensing)

## **8. Objections**

### **8.1. Notification of Application**

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

### **8.2. Objections and Representations**

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

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

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

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

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

## **9. Types of Premises Applications**

### **9.1. New Application**

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

### **9.2. Application to Vary**

Premises licence holders can apply for variations to the terms and conditions of the premises licence. All such applications must be accompanied by the original premises licence or a written explanation as to its loss. Each variation application will be considered on its own merits.

### **9.3. Application to Transfer**

A premises license holder may apply to the Licensing Board to transfer the licence. They must transfer the licence to a legal persona and in accordance with the conditions sets out in ss.33-34 of the Act.

## **9.4. Occasional Extension**

An Occasional Extension of permitted hours can be granted to a licence holder in connection with any occasion/function taking place on his/her licensed premises and lasting not more than one month.

## **10. Other Licences**

### **10.1. Occasional Licences**

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

## **11. Conditions**

### **11.1. General**

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

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

### **11.2. Children and Young Persons**

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

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

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

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

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

The Board will naturally be more concerned about children and young persons potentially entering a vertical drinking establishment where the general atmosphere is less likely to be suitable.

Of less concern will be those premises that establish a family friendly atmosphere with facilities designed to cater for families, including children and young persons. This includes, but is not limited to, areas set aside specifically for use by children or young persons (note such areas should be identified on the layout plan in accordance with Regulations). Whether or not designated play areas exist, where applicants detail areas to which they intend to allow access for children and young persons it would be helpful for applicants to detail the sorts of facilities that will be available in those areas.

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

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

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

- 11.2.1. Category C machines (or possible all gaming machines) should be cited away from child-friendly areas and measures should be put in place to the satisfaction of the Moray Licensing Board to ensure that children and young persons are denied access.

11.2.2. Pool tables / dart boards / similar game(s) or equipment should be moved away from areas where children and/or young persons have access and/or measures should be put in place to the satisfaction of the Moray Licensing Board to ensure that children and/or young persons are denied access.

11.2.3. Children's portions and/or specific food suitable for children should be made available at times when children and/or young persons are present and catering facilities are on offer.

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

### **11.3. Discretionary Conditions for Certain Specified Premises Open After 1:00 a.m.**

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

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

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

## **12. Delegation and Decision Making**

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

## **13. Complaints and Enforcement**

### **13.1. Licensing Standards Officer**

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

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

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

### **13.2. The Board**

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

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

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

## **14. Freedom of Information**

### **14.1. Public Registers**

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

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