

Item: 7

Orkney Islands Area Licensing Board: 5 October 2023.

Licensing (Scotland) Act 2005.

Review of Statement of Alcohol Licensing Policy.

Report by Clerk to the Board.

1. Purpose of Report

To consider adoption of a revised Statement of Alcohol Licensing Policy.

2. Recommendations

The Board is invited to note:

2.1.

That, on 1 June 2023, the Board resolved that the Clerk to the Board should undertake statutory consultation in respect of the Board's Statement of Alcohol Licensing Policy.

2.2.

That the statutory consultation process was undertaken during the period 22 June to 25 August 2023, with the outcome detailed in section 6 of this report.

It is recommended:

2.3.

That the revised Statement of Alcohol Licensing Policy, attached as Appendix 3 to this report, be adopted.

3. Introduction

3.1.

In accordance with the Licensing (Scotland) Act 2005, the Orkney Islands Area Licensing Board (the Board) is under a duty to publish a Statement of Alcohol Licensing Policy, the current version of which is available from the Related Downloads section of the following Council webpage [here](#).

3.2.

Previous Decisions of the Board regarding review of its Statement of Alcohol Licensing Policy are detailed in Appendix 1 to this report.

4. Background

4.1.

In terms of section 6 of the Licensing (Scotland) Act 2005 (the Act), the Board must publish an updated Statement of Alcohol Licensing Policy by November 2023.

4.2.

When preparing its Policy, the Board is required to indicate how it will carry out its licensing functions so as to promote the five licensing objectives, being:

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

4.3.

The Statement of Alcohol Licensing Policy requires to set out the policies to be applied by the Board to promote the licensing objectives when determining applications. In addition, regard must be had to the [Guidance](#) for Licensing Boards issued in terms of section 142 of the Act by the Scottish Government (the Guidance).

4.4.

Section 7 of the Act requires that each licensing policy statement published by a licensing board must, in particular, include a statement as to the extent to which the Board considers there to be overprovision of licensed premises or licensed premises of a particular description in any locality within the Board's area. The Board may determine that the whole of the Board's area is a locality.

4.5.

As stated in Appendix 1 to this report, the Board has previously determined:

- That the locality to consult on whether or not there was overprovision of alcohol licensed premises or licensed premises of a particular description, should be Orkney as a whole.
- That there was no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.

4.6.

The determinations set out in section 4.5 above do not preclude subsequent alternative findings by the Board. For example, after consideration of evidence received as a result of the consultation on the draft revised Statement of Alcohol Licensing Policy, the Board could determine that a different locality or localities should apply or that overprovision of licensed premises or licensed premises of a particular description exists within that locality or those localities.

5. Consultation

5.1.

The Clerk to the Board undertook the statutory consultation process in respect of the Board's Statement of Alcohol Licensing Policy during the period 22 June to 25 August 2023, with the outcome detailed in section 6 below.

5.2.

When consulting upon its draft revised Statement of Alcohol Licensing Policy, the Board required to consult with the Local Licensing Forum, the relevant health board and the following, in so far as they are not represented in the membership of the Local Licensing Forum:

- Holders of premises licences and personal licences.
- The Chief Constable.
- Persons having functions relating to health, education or social work.
- Young people.
- Persons resident within the Forum's area.
- Such other persons as the Board thinks appropriate.

5.3.

In accordance with previous consultations on the review of the Board's Statement of Alcohol Licensing Policy, the following parties were consulted:

- Alcohol Focus Scotland.
- Citizens Advice Bureau (Orkney).
- Community councils.
- Holders of premises licences throughout Orkney.
- Licensing Standards Officer.
- Local firms of solicitors.
- Local Licensing Forum.
- NHS Orkney.
- Officials of the Council in respect of planning, building standards, environmental health, education, social services and housing.
- Orkney Alcohol and Drugs Partnership.
- Orkney Public Protection Committee.
- Orkney Health and Social Care Partnership in respect of mental health, social work and substance abuse functions.
- Orkney Partnership.
- Police Scotland.
- Residents via a public notice on www.orkney.gov.uk.
- Scottish Beer and Pub Association.

- Scottish Fire and Rescue Service.
- Scottish Licensed Trade Association.
- Visit Scotland (Kirkwall Office).
- Voluntary Action Orkney.

6. Responses to Consultation

6.1.

Seven timeous responses were received as a result of the consultation. These are referred to in sections 6.2 to 6.8 below.

6.2.

A response to the consultation was received from Alcohol Focus Scotland (AFS) and is attached as Appendix 2 to this report.

6.2.1.

The response from AFS stated that they were not in a position to provide an individually tailored response to each of the licensing boards in Scotland, but they offered their views on the general policy direction. Accordingly, the response did not contain information or data relating specifically to Orkney.

6.2.2.

As the submission did not propose any amendment to the revised draft of the Board's Statement of Alcohol Licensing Policy, none has been made.

6.3.

A response to the consultation was received from the Scottish Fire and Rescue Service, stating that they had no comments or objections.

6.3.1.

As the submission did not propose any amendment to the revised draft of the Board's Statement of Alcohol Licensing Policy, none has been made.

6.4.

A response to the consultation was received from Flotta Community Association, stating that they had no further additions to the public consultation.

6.4.1.

As the submission did not propose any amendment to the revised draft of the Board's Statement of Alcohol Licensing Policy, none has been made.

6.5.

A response to the consultation was received from the Council's Licensing Standards Officers (LSOs), which is a role undertaken by officers in the Council's Environmental Health Team.

6.5.1.

A number of the comments related to the presentation of the document (for example, the location of the Licensing Objectives within the document) and the layout of the Council's website, rather than substantive policy issues. The substantive comments by the LSOs are summarised within this report.

6.5.2.

The Policy has been edited to remove the previously visible table gridlines. The presentation is similar to that of other licensing board policies, including those of Shetland Islands and the Western Isles. The presentation also uses a Council template, which is accessible by assistive reader technology and, as previously reported to the Board, satisfies online web-accessibility standards. No complaints have been received about the presentation or accessibility of the Policy.

6.5.3.

The structure and layout of the Council's website is a separate matter to content of the Policy. The Licensing Service publishes a lot of information on the Council's website and will continue to consider whether Licensing information webpages would benefit from review at any time when the website is reviewed.

6.5.4.

In relation to the substantive comments from the LSOs, a Definitions section has been moved from the Preamble to a section on its own, prior to the Preamble. A paragraph providing a definition of Voluntary Organisation has been moved from section 10 of the Policy to the new Definitions section. A paragraph providing a definition of "adult entertainment" has also been moved from section 15 of the Policy to the new Definitions section.

6.5.5.

- The LSOs suggested that section 8 of the Policy (Overprovision) could be simplified by stating "The Board has published an Overprovision Policy which considers that there is no overprovision of licenced (sic) premises of a particular designation within the locality of Orkney." Further, a "copy of the policy could then be included as an appendix or provided as a link to the document".
- This suggestion has not been accepted, as the Board's assessment of Overprovision is not a separate policy. Rather, it is part of the whole Policy and should remain included within the body of the Policy.

6.5.6.

- The LSOs noted that paragraph 9.4 of the Policy (Occupancy Capacity) refers to “particular locality”. They asked “Does “locality” in this context mean all of Orkney or is it drawn more narrowly? It is recommended that this ambiguity is addressed.”
- This suggestion has not been accepted, as the meaning of “particular locality” will depend on the particular application being considered, with applicants and objectors being able to put forward arguments as to the locality to be determined, for the Board’s consideration.

6.5.7.

The LSOs suggested phrasing particular matters in a more mandatory manner. However, the Licensing Service is conscious of matters which are prescribed in legislation as mandatory and those which are suggested best practice in nature.

- For example, the LSOs suggested making the inclusion of a compliance assessment with the Licensing Objectives mandatory when submitting an occasional licence application. This is, however, not included within the list of information required, set out by section 56(7)(b) of the Act and the application form prescribed in terms of the Occasional Licence (Scotland) Regulations 2007. The Licensing Objectives compliance assessment is, therefore, not mandatory.
- The Licensing Service also favours a more flexible approach to matters, where possible, in order to assist and support applicants and licence holders whenever feasible.
- The LSOs suggested a four-weeks hard deadline in respect of paragraphs 10.12 and 10.22 of the Policy, but the Board has, in the past, avoided such hard deadlines in order to facilitate flexibility on suitable cause being shown.
- The LSOs asked "Does the board have a view on back-to-back (i.e., consecutive) occasional licences? If so, we recommend that this is addressed in the policy with reference made to the words from the guidance regarding potential circumvention of the need for a premises licence". The recommendation has not been incorporated, as the current text allows for flexibility on suitable cause being shown and, as a result, has been retained.

6.5.8.

- The LSOs referred to paragraph 10.6 of the Policy ("Where a representative of a voluntary organisation applies for an occasional licence for a barn dance, or a marquee dance, where more than 100 persons are expected, the Board expects there to be a person in charge of the bar at the event who is a personal licence holder and evidence of that training must be submitted to the Board with the application for the occasional licence") and asked how the limit of 100 persons had been established.
- Neither section 56(7)(b) of the Act nor the application form for an occasional licence, prescribed in terms of the 2007 Regulations referred to above, ask for information about numbers of persons expected at the relevant event. Accordingly, paragraph 10.6 of the Policy has been marked to be removed.

6.5.9.

- The LSOs referred to paragraph 10.7 of the Policy ("In all other circumstances, where a voluntary organisation applies for more than 4 occasional licences in any calendar year, the Board expects there to be a person in charge of the bar at the event who is a personal licence holder and evidence of training must be submitted to the Board with the application for the occasional licence") and asked for an explanation for the provision.
- The provision narrated in paragraph 10.7 of the Policy is not a requirement of the Act, Regulations, or the Guidance. Accordingly, the paragraph has been marked to be removed.

6.5.10.

The LSOs suggested that a number of matters which are currently determined by the Board should be delegated to the Clerk. For example, providing the Clerk with delegated authority to take a view on frivolous or vexatious objections or representations. These have not been accepted, as the Licensing Service is conscious of possible implications under the European Convention on Human Rights and seeks to promote openness and transparency by referring certain matters to the Board for determination in terms of Appendix 2 to the Policy (Scheme of Delegation).

6.5.11.

The LSOs suggested that the example Risk Factors and Control Measures provided at Appendix 6 (now numbered 3) to the Policy (Guide to Risk Assessments for Applications for Occasional Licences and Occasional Extensions) should be removed, as applicants have simply used the generic information, with no regard to the circumstances of the particular premises, event or activity concerned. However, it is suggested by the Licensing Service that the example risk factors and control measures provided are useful in providing guidance to applicants who might otherwise be unaware as to the type of information that might be suitable when conducting risk assessments. The narrative in Appendix 3 makes clear that the factors and control measures shown are only examples and that applicants will still need to conduct a thorough analysis of their own practices and procedures when devising appropriate control measures. Accordingly, it is suggested that the example information should be retained within the revised Statement of Alcohol Licensing Policy.

6.5.12.

The revised Statement of Alcohol Licensing Policy incorporates some amendments throughout, in response to comments received from the LSOs.

6.6.

A response to the consultation was received from the Council's Environmental Health Service.

6.6.1.

A number of the comments related to the presentation of the document or the layout of the Council's website, rather than substantive policy issues. Further, some of the comments replicated comments from the LSOs. Further information is provided at section 6.5 above.

6.6.2.

The revised Statement of Alcohol Licensing Policy incorporates some amendments at paragraphs 1.17, 5.5, 12.3 in response to comments received from the Environmental Health Service (and the LSOs).

6.7.

A response to the consultation was received from the Orkney Street Pastors.

6.7.1.

- The response stated "Para 1.18 [now 1.17] Is there effective CCTV coverage of Kirkwall streets in operation? It reads as though it is the responsibility of the Board to provide CCTV. Based on current situation, CCTV coverage should be provided for the harbour end of Bridge Street and on Harbour Street from Bridge Street to Helgis."
- The wording at paragraph 1.18 [now 1.17] of the revised draft of the Board's Statement of Alcohol Licensing Policy does not suggest that the Board will be responsible for providing CCTV. For example, the Board would not provide street cleaning, which is also mentioned in this paragraph.

6.7.2.

- The response stated "para 10.21.2 [now 10.18.2] The requirement of the occasional license to only serve in plastic containers seem unreasonable and not enforceable. Most young people now prefer to drink directly from bottles which reduces the risk of spiking. Maybe this requirement needs revision."
- The paragraph 10.21.2 [now 10.18.2] of the revised Statement of Alcohol Licensing Policy refers to additional conditions which are only attached to some occasional licences when relevant, usually events taking place outwith permanent premises, for example, marquees. It was previously adopted at the request of the Scottish Fire and Rescue Service.

6.7.3.

- The response stated "para 17.3 & 17.4 As stated above, many young people drink directly from bottles and this drinking often continues outside the licensed premises. The bottles are then dropped onto the pavement. Often there are insufficient refuse bins in the vicinity of the heavily populated areas and those fill very quickly. In June Street Pastors picked up over 109 discarded bottles and glasses on Saturday nights in Kirkwall. About 10% of these were broken and had to be swept up. This issue needs further consideration by the Board."

- Section 17 of the revised draft of the Board’s Statement of Alcohol Licensing Policy relates to **Smoking and Nuisance**. Accordingly, the text relates to nuisance, in the common meaning of inconvenience or annoyance, which could include littering, arising from smoking, but does not include littering caused by dropping of bottles, which is a separate matter. The licensing legislation is concerned solely with the desire to regulate and control licensed activities. It cannot be used to address concerns that are regulated by separate legislation.

6.7.4.

- The response stated “para 19.16 Does the Board do sufficient to encourage responsible license holders to participate in schemes like Pubwatch. To be successful, Pubwatch needs to represent all the major drinking establishments in Kirkwall for the benefit of everyone.”
- Whilst the Board supports voluntary membership of local schemes, such as those identified at section 19.16 of the revised draft of the Board’s Statement of Alcohol Licensing Policy, it is not responsible for encouraging membership of third-party organisations. Neither can it enforce membership, as this would be open to challenge on the grounds of proportionality and human rights. Applicants for new licences are encouraged to familiarise themselves with the Policy, but numbers are small and not every new licence application relates to on-sales or to premises in Kirkwall. Existing premises in Kirkwall will be aware of the scheme(s) and can make decisions about membership. Further, at meetings of the Local Licensing Forum, members have advised that the local Pubwatch organisation did not support suggestions of compulsory membership, as they thought that would be counterproductive. In addition, the Board has no locus to enforce the rules and conditions of membership of a third-party organisation.

6.7.5.

It is therefore suggested that the above submissions have not been substantiated and no amendment to the revised Statement of Alcohol Licensing Policy has been made.

6.8.

A response to the consultation was received from Mr Barry Cockerham on behalf of the Local Licensing Forum, stating:

“I acknowledge that the consultation on the draft revised Statement of Alcohol Licensing Policy was published by the Orkney Islands Area Licensing Board on 22 June 2023. I am also grateful that the consultation was intimated by the Board to the Convener of the Forum on the same date.

Unfortunately, due to internal communication issues affecting the Forum, the Forum was not in a position to review or agree a response when it met on 21 August 2023. Accordingly it was agreed at the meeting that I should confirm that no response is being submitted by the Forum. This is in my capacity as Chair of the meeting as both the Convenor Andrew McGinn and the Depute Convenor Angela Crawford had intimated their apologies.

I acknowledge that this position has arisen for reasons that are outwith the control of the Board.

I confirm that a number of Members of the Forum are consultees in their own right and I understand that several of these Members have submitted or will be submitting individual responses to the consultation.”

6.8.1.

As the submission did not propose any amendment to the revised draft of the Board’s Statement of Alcohol Licensing Policy, none has been made.

6.9.

A response to the consultation was received from Police Scotland, after the consultation had closed. The response stated that Police Scotland had no issues with the changes made to the revised draft of the Board’s Statement of Alcohol Licensing Policy and in particular they supported the changes at paragraphs 2.10; 8.2 to 8.4; and 21.7 of the document.

6.9.1.

As the submission was received late and did not propose any amendment to the revised draft of the Board’s Statement of Alcohol Licensing Policy, none has been made.

7. Revised Draft Policy

7.1.

Paragraphs and appendices considered to no longer be required have been marked as “Deleted” throughout the document. Some paragraphs have also been moved within the document and are marked accordingly.

7.2.

Textual changes are shown as follows:

- Text which is intended to be removed is marked as crossed through, and coloured green for example: ~~Example crossed through~~.
- Small instances of text which are intended to be inserted are coloured red, although larger instances are black and appropriately marked as “New”.
- Remarks have been provided in the numbering column to highlight, for example, proposed changes to and movement of text.

8. Financial Implications

There are no direct financial implications to the Board arising from the recommendations of this report.

9. Legal Aspects

The legal aspects are contained within the body of this report.

10. Contact Officers

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11. Appendices

Appendix 1: Previous Decisions.

Appendix 2: Consultation response from Alcohol Focus Scotland.

Appendix 3: Statement of Alcohol Licensing Policy 2023.

Appendix 1.

Licensing (Scotland) Act 2005 – Review of Statement of Alcohol Licensing Policy

1. At its meeting held on 19 January 2023, the Board noted:

- That the Board's current Statement of Alcohol Licensing Policy, adopted on 6 December 2018, required review during 2023.
- That the Statement of Alcohol Licensing Policy must, in particular, include a statement as to the extent to which the Board considered there to be overprovision of licensed premises or licensed premises of a particular description in any locality within the Board's area.
- That the first stage of the process in updating the Statement of Alcohol Licensing Policy was for the Board to determine the locality or localities for the purpose of consultation on the assessment of overprovision.
- That the locality for the purpose of assessing overprovision could be the whole Board area.

2. The Board resolved:

- That, for the purposes of consultation on the assessment of overprovision of alcohol licensed premises, the locality should be Orkney as a whole.
- That the Clerk to the Board should undertake statutory consultation on whether or not there was overprovision of alcohol licensed premises within the locality determined by the Board, namely Orkney as a whole.
- That the Clerk to the Board should submit a report, to the meeting of the Board to be held on 27 April 2023, on the outcome of the consultation, referred to above.

3. At its meeting held on 27 April 2023, the Board noted:

- That, on 19 January 2023, the Board resolved that the Clerk to the Board should undertake statutory consultation on whether or not there was overprovision of alcohol licensed premises within the locality determined by the Board, namely Orkney as a whole.
- That the statutory consultation process was undertaken during the period 20 January to 17 March 2023, with the outcome detailed in section 9 of the report by the Clerk to the Board.

4. The Board resolved:

- That the consultation responses, referred to at paragraph 3 above, met the terms of the legislation and guidance issued by the Scottish Government.
- That the outcome of the consultation on overprovision of licensed premises or licensed premises of a particular description within Orkney had not demonstrated, on a balance of probabilities, a “dependable causal link” between the availability of alcohol in Orkney and alcohol-related harm, whereby, based on the evidence of harm in Orkney, it was more likely than not that alcohol availability was a cause of harm, or that increasing the availability of alcohol in Orkney would increase that harm.
- That, as no evidence of overprovision of licensed premises or licensed premises of a particular description existed in the locality of Orkney, the draft statement on overprovision of alcohol licensed premises, included in the Minute, be incorporated within the Board’s draft Statement of Alcohol Licensing Policy 2023.

5. At its meeting held on 1 June 2023, the Board noted:

- That the Board’s Statement of Alcohol Licensing Policy, which was adopted on 6 December 2018, required review during 2023.
- The draft revised Statement of Alcohol Licensing Policy attached as Appendix 1 to the report by the Clerk to the Board.

6. The Board resolved:

- That, subject to minor amendments as proposed by Members, the draft revised Statement of Alcohol Licensing Policy, referred to above, be approved for consultation.
- That the Clerk to the Board should submit a report, to the meeting of the Board to be held on 5 October 2023, on the outcome of the consultation, referred to above, together with a final version of the Statement of Alcohol Licensing Policy 2023 for adoption.



RESPONSE TO CONSULTATION ON STATEMENT OF LICENSING POLICY

Alcohol Focus Scotland (AFS) welcomes the opportunity to provide comment on the development of local licensing policy statements. Their production provides licensing boards with an opportunity to stand back from routine administrative practice and consider the bigger picture in relation to licensing in their area. Once published, if effectively implemented, policy statements can help make licensing decisions more strategic, support consistent and well-reasoned decision-making, and make the licensing process more transparent.

1. About us

AFS is the national charity working to prevent and reduce alcohol harm. Our strategic priorities include ensuring the effective implementation of licensing legislation by supporting licensing boards and forums to promote the licensing objectives. We regularly engage and work with a wide range of licensing stakeholders, including licensing board members, licensing clerks, Licensing Standards Officers, NHS, police, Alcohol and Drug Partnerships, communities, and local licensing forums.

AFS also provides training courses for those involved in the regulation of licensing to meet the requirements of the Licensing (Scotland) Act 2005; this includes the Licensing Board Members Training and Licensing Standards Officers Training in Scotland.

2. About our response

As a national charity, AFS is not in a position to provide an individually tailored response to each of the 40 licensing boards in Scotland. However, we can offer our views on the general policy direction and emerging issues relevant to alcohol licensing, and suggestions about aspects of licensing policy that may warrant particular scrutiny during this round of policy development.

Our response has been informed by recent work AFS has undertaken to identify areas of progress and ongoing challenge within the licensing system, including a [review of the Statements of Licensing Policy for 2018-2023](#). We believe that this work and our ongoing engagement with a breadth of licensing stakeholders affords us a unique, national perspective on the licensing system. We hope that this insight and the suggestions we have provided below will be helpful to inform the Board's licensing policy review.

3. The national context

The development of licensing policies provides boards with a timely opportunity to consider emerging issues and legislative developments, and to adapt their approaches accordingly. As such, this section sets out key national developments which may be of particular relevance to licensing boards.

3.1. Post-COVID Recovery

AFS expects that, during this round of policy development, boards will be particularly keen to consider the actual and projected impact of COVID-19 on the licensing objectives and the licensed sector. While we do not yet know the full impact of the pandemic, there is evidence of its effects in a number of areas. The following topics are highly relevant to licensing and AFS would therefore recommend that they are taken into consideration as part of the licensing policy review process:

Changing drinking patterns: Evidence indicates that drinking habits have polarised as a result of the pandemic, with an overall decrease in consumption for lighter drinkers and an increase for heavier drinkers.^{1 2 3} Of major concern is the increase in high-risk drinking observed in England,^{4 5} which has sustained over the entirety of the pandemic.⁶ While equivalent research is not yet available for Scotland, it is likely that we will be experiencing similar increases, especially considering our historically higher levels of alcohol consumption and harm compared to the rest of the UK.⁷ Combined with reduced access to services, these changing drinking patterns have tragically translated into increased harm; alcohol-specific deaths in Scotland increased by 17% in 2020 and a further 5% in 2021.⁸ However, it can take 20 years to see the full effects of changes in alcohol consumption on harms, such as for cancers.⁹ The pandemic and economic crisis is also being experienced differently by different parts of our population, widening existing inequalities and creating new ones.

Home drinking: Linked to the above, the pandemic has further shifted alcohol sales and drinking from the on-trade to the off-trade, exacerbating existing trends. In Scotland, 73% of alcohol was sold in off sales prior to the pandemic, with this proportion increasing to 90% in 2020 before decreasing slightly to 85% in 2021.¹⁰ The home is an unregulated environment and the continued shift to home drinking may lead to long-term public health consequences and an upwards trend in alcohol-related injuries and accidents occurring at home. In addition, while alcohol itself does not directly cause domestic violence, there are strong associations between alcohol use and domestic violence and abuse.¹¹ Home drinking also poses potential risks for children and young people, such as neglect or modelling of parental drinking.¹² As such, it will be vital that boards consider the factors that can impact on the licensing objectives outwith a licensed setting, and that local licensing policies take account of alcohol-related harms occurring in private spheres as well as public.

The hospitality sector: Although the licensing regime does not have responsibility for promoting business growth, a recurrent theme within existing licensing policies is the need for boards to strike an appropriate balance between supporting the local licensed economy, while also upholding the five licensing objectives. During the pandemic, the hospitality sector was severely affected, with sales of alcohol in bars and restaurants plummeting by 49% overall from 2019 to 2021, while off-premises sales, such as e-commerce and supermarkets, grew significantly (by 11% between 2019 and 2021).¹³ In 2020, the Scottish Government issued guidance to advise that it “*considers flexibility and pragmatism in decision-making and sensitivity to the wider economic situation should be at the forefront of how a board decides to operate*”.¹⁴ Boards will likely be very reluctant to be seen to hurt already suffering hospitality sectors but will also want to ensure that the licensing objectives continue to be promoted. As such, decision makers, advocates, and local stakeholders alike will need to identify policies that can do both. It has been suggested that policies which may protect on-trade businesses, while reshaping the night-time economy away from alcohol-related harms, could offer a ‘win-win’ for policymakers and health advocates.¹⁵ However, this raises questions regarding how boards should seek to manage competing priorities within their policies and decision-making.

Use of outdoor areas: A growing trend for outside seating areas had been identified in many areas prior to the pandemic, with a number of boards setting out their expectations and requirements in this regard. However, COVID-19 related restrictions on sales of alcohol indoors led to an increase in applications from bars/pubs to serve alcohol in spaces outdoors e.g., car parks, pavements. If outdoor spaces are licensed on a permanent basis it could result in a significant increase in the overall capacity of venues and the visibility of alcohol, including to children and people in recovery who may be passing by. However, it is unclear how and whether boards will now seek to reverse outdoor licences granted during the pandemic, or whether the trend for outdoor seating areas will continue to grow.

Online sales/deliveries: The COVID-19 related restrictions have accelerated the general trend to online shopping and led to an increase in premises offering home deliveries of alcohol. The types of businesses that sell alcohol online now range from small independent traders, specialist drinks retailers/clubs, local convenience stores, and supermarkets through to multinational e-commerce companies (e.g., Amazon). There is also a growing variety of app-based retailers who have arrangements with restaurants, takeaways and off-licences to deliver alcohol directly to people's homes. Despite the reopening of physical stores, it is predicted that online sales will remain high as people have become more accustomed to online shopping. However, there is currently a distinct lack of information available about the business operations of online retailers in Scotland. In addition, it is unclear how age verification and other requirements can be effectively implemented when alcohol is being purchased on-line or delivered to people's homes. The majority of boards have responded to this issue at a local level by setting out their approach to alcohol deliveries within their policies, for example by making clear that delivery staff must be trained to the same level as those on licensed premises, that challenge 25 checks must be conducted, and that licensees using courier services must ensure that they are compliant with the Board's requirements.

3.2. Policy and legislative developments

Alcohol Framework: Scotland's current alcohol harm prevention framework was published in 2018 and takes a whole population approach to reducing alcohol harm. Whole population measures work to reduce and prevent alcohol harm across the entire population, reducing the likelihood of 'normal' drinkers becoming high risk. This is because targeting only harmful drinkers would not reach the majority of people who consume alcohol and who are therefore at risk of developing problems related to their alcohol consumption. Licensing is a whole population intervention. It works to safeguard individuals and communities from experiencing alcohol problems by controlling the overall availability of alcohol (through the number, type and opening hours of licensed premises), and by regulating the way individual on- and off-licences do business. The Framework therefore identifies the licensing system - alongside action on price and marketing - as being one of the key mechanisms through which the ambitions of the Alcohol Framework can be realised.

Minimum Unit Pricing (MUP): MUP came into force on 1st May 2018 and, along with restrictions on irresponsible promotions, there are now greater controls on the sale of alcohol from off-sales. Boards appear to be approaching these developments differently; for example, some state in their policies that these safeguards alone cannot adequately mitigate the link between the availability of responsibly sold alcohol and its unregulated consumption, while others state that the introduction of MUP of alcohol has the potential to be a more effective tool in reducing alcohol harm than overprovision. Many boards will be re-evaluating the relevance of MUP to their policies now that more information on the evaluation of the impact of MUP is available. In addition, in a recent legal case,¹⁶ an overprovision policy was struck down as unlawful because the sheriff upheld the argument that it didn't take into account that MUP had come into force. The price, availability and marketing

of alcohol can all impact consumption levels, which can in turn impact on harm, and it will be important that boards consider how different measures to tackle alcohol harm can be mutually reinforcing. In any local area it is impossible to say with any certainty what percentage of changes in alcohol consumption and alcohol related harms are due to changes in price/income as compared to availability or marketing. Accordingly, it is important to focus on the local evidence of alcohol related harm, to determine whether there is sufficient evidence of harm to support a case for controlling availability using an overprovision policy. It may also be useful for boards to consider the differential in price between on- and off-sale, as although the introduction of MUP created a floor price, it did not elevate the price of off-trade alcohol enough to reduce the gap between on- and off-trade prices.

Licensing Guidance update: In January 2023 [new guidance](#) to Scottish licensing boards on carrying out their functions was issued by Scottish ministers. The revised 'section 142' guidance replaces the original version which was first issued in 2009 and had become outdated due to subsequent changes. The purpose of the guidance is to assist boards in carrying out their functions under the 2005 Act, including the preparation of statements of licensing policy. We have therefore highlighted relevant sections of the guidance within this response to assist boards to have regard to it when undertaking their policy reviews.

Consultation on occasional licences: In 2019 the Scottish Government consulted¹⁷ on whether to raise the fee for an occasional licence from the current price of £10, and to seek views on considering a limit on the number and duration of occasional licences for premises licence holders and personal licence holders. The Scottish Government advised it would analyse the responses and, if considered appropriate, draft and lay secondary legislation embedding any new fee level or limit on the number and duration of occasional licences into Scottish law. At the time of writing there has been no secondary legislation proposed and AFS is not aware of any decisions as yet having been taken as a result of the consultation.

4. Issues to consider when reviewing the policy

4.1. Promoting the licensing objectives

It is a legal requirement that the policy must seek to promote the licensing objectives. For all objectives, AFS would suggest using the following format within the policy:

1. State the licensing objective.
2. Give a statement as to what the licensing board is trying to achieve with this objective.
3. Detail any concerns and/or trends in the area relating to this objective – identify what evidence was used to identify these.
4. List what the licensing board intends to do to promote the objective. Note that this could include actions like declaring overprovision, controlling licensed hours, or applying certain conditions (referring to the relevant section/s in the policy). However, other measures could include ensuring all policies are fit-for-purpose, working to ensure information is kept up-to-date and accessible, liaising with local partners, endorsing local initiatives relevant to the objectives, carrying out spot checks of premises, highlighting good practice, and conducting reviews of licences. A full list of board measures to promote the objectives is provided in our online resource: [Measures to promote the licensing objectives](#).
5. List any suggested actions the licensing board would like to see the licensed trade in the area undertake to meet this objective. The types of actions licensees can take often relate to specific control measures that can be put in place, the training and supervision of staff,

maintenance of premises, and co-operation with local stakeholders (e.g., LSO, police). A full list of example licensee measures to promote the objectives is provided in our online resource: [Measures to promote the licensing objectives](#).

Many boards have adopted new approaches to the promotion of objectives as knowledge and understanding of how to best promote them has evolved since the Licensing (Scotland) Act 2005 was first introduced. Examples of different policy approaches are now included within the section 142 guidance, including in relation to:

Preventing crime and disorder: “Alcohol related crime and disorder does not only occur within or immediately outside licensed premises. A significant proportion of alcohol is bought to be consumed at home or in other private dwellings. Whilst alcohol licensing alone cannot directly address issues such as domestic violence, licensing boards may wish to consider supporting work in this regard through partnership working. One example of a licensing board demonstrating a wider understanding of alcohol related crime can be found within West Lothian Licensing Board’s statement of licensing policy 2018.”

Protecting children and young persons from harm: “Licensing Boards will wish to be mindful that children and young people can be impacted by exposure to marketing and promotion of alcohol within licensed premises. For example, Falkirk Licensing Board comments in its statement of licensing policy 2018 that: “Where licensed premises intend to hold events where alcohol is not provided and those events are specifically targeted at children or young persons (for, example, underage discos or parent and toddler groups), consideration should be given to taking steps to avoid any obvious promotion of alcohol”.”

Protecting and improving public health: “This licensing objective encourages licensing boards to consider the cumulative effect of licensed premises on alcohol-related harm, within their licensing area, rather than the actions of any individual premises. Collecting harm data for localities will build a picture of the health and wellbeing of the people in the locality, and doing so on a consistent basis over time means the long-term health and wellbeing of a locality can be monitored and improvements made. City of Glasgow Licensing Board is an example of one of a number of licensing boards which have adopted an approach of looking at alcohol and health issues at their local authority area level, and then made a policy that seeks to promote the public health objective”.

In relation to the above, the Glasgow policy includes a section specifically pertaining to off-sales and the public health objective. This explains that the board is concerned by a number of areas suffering from high levels of alcohol-related harm but containing very few licensed premises. The board does not consider it appropriate to declare these areas as being overprovided for, but the policy makes clear that it may nonetheless be inconsistent with the public health objective to grant a licence which would enable easier access to alcohol – thereby having the potential to exacerbate existing alcohol-related health problems in the area. This is set out in section 9.2 of the [Glasgow Licensing Policy](#).

In addition, many policies set out local conditions that may and/or will be applied by the board in pursuance of the objectives. Including local conditions within policies not only provides an important indication of the ways in which the board will promote the objectives, it also provides examples of what conditions applicants could be subject to or volunteer themselves, and provides people making representations/ objections with suggestions of the kinds of conditions they can suggest. A full list of example conditions is set out in our online resource: [Examples of conditions to promote the objectives](#).

4.2. Overprovision

Overprovision is undoubtedly one of the most complex and contentious areas of licensing. AFS's review of the current licensing policies identified that boards have adopted differing approaches to how overprovision should be assessed, and seem to have different understandings of what is required in order to meet the legal tests that apply.

The primary cause of this divergence appears to be the way in which boards have interpreted and understood the concept of 'causal link'. While decisions are to be made on a balance of probabilities, there is wide variation between boards' interpretations of what evidence is required in order to meet the legal test to evidence a causal link. Although some boards seem confident to declare overprovision applying a test that considers on a balance of probabilities whether there are links between numbers of premises and levels of harm, others appear to consider that a higher bar requires to be met for causal link to be established. However, the updated guidance provides clarity around approaches to overprovision assessments and interpreting the causal link, stating that:

- *"If a Licensing Board considers there is at least potential for, or a reasonable basis for, concluding that there will be a risk of adverse impact on the objectives (should more premises licences be granted), it is entitled to come to the view that there is a state of overprovision."*
- *"Consideration should be given as to whether aggregate information and evidence from a number of sources demonstrates a link between the availability of alcohol in an area and alcohol-related harm."*
- *"To demonstrate a "dependable causal link", the proof of the link must be on a balance of probabilities. What this means in practice is that based on the evidence of harm in a locality, it is more likely than not that alcohol availability is a cause, or that increasing the availability of alcohol in that area will increase that harm."*

Boards have the flexibility to decide the approach they take to addressing overprovision in their area and can choose to focus on only the factors that cause them concern in the light of the evidence. It is likely that many boards will be keen to identify how the pandemic has impacted on the licensed economy in their area and will be considering this as part of their overprovision assessment.

At a national level, the number of off-licences in Scotland has reached the highest level since 2010, when the relevant statistics first started to be collected.¹ The closure of pubs and restaurants during the pandemic caused people to buy alcohol from other outlets and more shops and supermarkets applied for licences to meet demand. The number of off licences increased by 133 between March 2020 - March 2022, reaching a total of 5,155. Conversely, the nature of Covid-19, and the measures needed to reduce transmission, invariably had a disproportionate impact on the hospitality sector. While it is likely that many bars, pubs and other licensed premises will have closed permanently as a result, the available statistics don't enable for an assessment of how many licences were surrendered or lost. As such, it may be that the overprovision assessments will have a particular focus on the disparities between on and off sales, and the continued shift to home drinking.

¹ While the number of off-sales only premises is at its highest level since records began, due to variations in how the available statistics have been published in different years, it is impossible to say for certain whether this is true for all off-sales i.e., off-sales only premises combined with those providing both on-sales and offsales.

The boards consideration of overprovision need not be confined to only considering numbers and capacity but can take account of other factors. For example, inequality is a particularly important consideration in relation to overprovision. There is a stark inequalities gradient to alcohol harm, and a growing awareness that the impact of harmful drinking and alcohol dependence is much greater for those experiencing the highest levels of deprivation. For example, in 2021 alcohol-specific deaths were 5.6 times as frequent in the most deprived areas of Scotland compared to the least deprived areas. This compares to a ratio of 1.9 times for all causes of death.¹⁸ By taking account of evidence of inequalities, boards are able to meaningfully consider how different communities are impacted differently by alcohol and formulate an appropriate policy response.

4.3. Licensed hours

Policy statements should provide information on a licensing board's policy on licensed hours, which are important not only to individual licensed premises but can have a wider impact for an area.

AFS has identified numerous studies into the links between temporal availability and alcohol harm, which found that policies regulating times of alcohol trading can contribute to reductions in injuries, alcohol-related hospitalisations/ emergency department visits, homicides and crime.¹⁹ The vast majority of boards permit off-sales between 10am and 10pm each day, which is the maximum allowed by law. However, boards can stipulate shorter hours if they consider it to be appropriate. AFS believes that the maximum permitted off-sales hours should be the exception and not the norm, particularly in areas of high-rates of alcohol harm. In addition, the hours permitted for onsales and the night-time economy can have implications for matters such as crime and public order.

Boards can also grant a general extension of licensed hours for particular specified occasions. As such, AFS would recommend that the policy outlines the principles that the board will apply when considering applications for extended hours. For example, some policies make clear that if regular applications are made for the same premises, then applicants will be expected to consider whether they should apply to vary the premises licence. Others outline what might constitute an event of national or local significance. AFS believes that, in many cases, events and festivals can be appropriately accommodated within normal licensing hours and should not serve as automatic justification for extended licensed hours.

4.4. Children and young persons' access

It is largely for licensing boards to set out their expectations regarding factors like when children and young people should normally be allowed entry to licensed premises, including the ages at which they should be allowed entry, and the types, times and parts of premises to which they should have access. It is also for boards to determine the measures that may be necessary to protect children and young people from harm.

As such, AFS would recommend that the policy provides a clear indication of what the board might deem to be acceptable in terms of children and young peoples' access. Overall, it is the extent to which premises are likely to provide a family-friendly environment that tends to be the determining factor in boards' approaches to children's access. Conversely, premises where the supply of alcohol is the primary purpose of the service provided are frequently cited by boards as being unsuitable for children and young people.

The updated guidance provides examples of how different boards have approached this issue. Some restrict children's access to licensed premises for the primary purpose of consuming a meal or attending an event, while others set out expectations with regards to young peoples' access to

specific parts of premises, or specify the hours when young people should normally be allowed entry.

It is apparent that the majority of boards are seeking to encourage licensed premises to become more child and family friendly within their policies. However, it can also be seen that they are giving consideration to the potential impacts of alcohol on children and young people, and the objective to protect children and young people from harm. In particular, there is increased recognition that the scope of this objective is not restricted to preventing people under the legal purchase age from being sold/supplied with alcohol. Boards are also seeking to address impacts on children and young people resulting from the drinking behaviours they observe, adults drinking, and their general exposure to alcohol. Some boards are also being more directive in their approach than others, by setting out their expectations regarding children's access and applying relevant conditions as standard practice.

4.5. Supporting public participation

The updated guidance states that *"licensing boards should have effective engagement strategies in place to enable them to engage with and seek the views of their local community."* Given the public interest purpose that underpins alcohol licensing, AFS believes it essential that communities are empowered to participate in licensing processes and can feel confident that their contributions will be given due regard. The publication of policy statements provides an opportunity to set out the mechanisms available to enable community engagement and participation.

There are numerous ways in which the general public can choose to engage with the licensing system, ranging from commenting on applications and observing/participating at board meetings, to joining their local licensing forum. However, communities may not currently be aware of the various ways in which they can get involved or the types of information/supports available to enable them to participate. For example, some boards have developed pro formas to assist anyone wishing to make an objection or representation, while others highlight that LSOs are available to offer appropriate support. Many boards include a commitment in their policies that they will conduct business in a way that is not off-putting to members of the public. For example, by creating a less formal and more relaxed atmosphere so as not to intimidate parties.

4.6. Identifying strategic links

Although boards are quasi-judicial and need to undertake their decision-making independently, this does not prevent them from considering their policies in the broader context of identified local and national priorities etc. The pandemic has also highlighted the importance of partnership working across sectors. As such, the policy should indicate how the board will take into account other matters relating to alcohol, for example local crime prevention, community safety strategies, and health.

Boards in many areas have adopted a collaborative approach and committed to work with local partners where they share common objectives. As such, AFS would recommend the policy includes reference to Local Outcome Improvement Plans (LOIPs), Alcohol and Drug Partnership strategic plans, and the strategic plans of the Health and Social Care Partnerships (HSCP). Scotland's alcohol strategy 'Changing Scotland's relationship with Alcohol a Framework for Action' is of key relevance to the policy and should also be referenced. The Board should also take into account the views of local partners, the Forum, communities, when developing and implementing their new policy. The Licensing (Scotland) Act 2005 and accompanying guidance should inform the Board's approach to how this can best be achieved, for example the updated guidance states:

“The alcohol licensing regime in Scotland does not exist in a vacuum and Licensing Boards should clearly explain how they will take into account other pertinent strategies and regimes when developing their statement of licensing policy. For example, the Western Isles Licensing Board statement of licensing policy comments that “The Board will work and appoint a Board Member to work with the Outer Hebrides Alcohol and Drug Partnership and the Outer Hebrides Community Safety Partnership in the Western Isles; the importance of such co-operation is recognised as part of the wider alcohol agenda”.”

4.7. Occasional licences

During 2021-2022, 23,269 occasional licences were granted in Scotland.²⁰ Occasional licence applications can be granted under delegated powers, a limited number of people are required to be notified of occasional licence applications, and the consultation period is much shorter than that for new premises applications – reducing the scope for objections or representations.

This has led to concern that some applicants have sought to use the occasional licence process as an alternative to applying for a full premises licence. As such, AFS would recommend that boards set out measures to ensure that this type of application is subject to appropriate scrutiny. For example, by including a provision to ensure that repeated occasional applications from the same applicant will be automatically referred to the board for a decision.

In addition, AFS would recommend that boards set out conditions that will specifically apply to occasional licences, either as standard practice or on a case-by-case basis. These could relate to issues such as management, supervision, security, signage and training.

4.8. Presentation and readability

Legislation does not specify how a policy statement should be organised and presented and consequently the 2018 published policy statements vary considerably in structure and length. AFS’s review of the documents identified that shortest was 25 pages while the longest policy statement was 166 pages (including appendices). Some policy statements, but not all, were written in legalistic language and provided excessive detail of administrative processes and procedures, making them somewhat laborious and difficult to read.

The updated guidance states that licensing policies:

“Must also not simply be a repeat of what is set out in legislation or statutory guidance. It should provide a clear indication to the local community as to the Licensing Board’s evidenced based policy and should seek to promote the licensing objectives (see Chapter 2 for more about the licensing objectives) set out in the 2005 Act. It is important that statement of licensing policies should be written in terms that can be easily understood by the local community as consultation with the local community (including Local Licensing Forums), is a key part of providing feedback to Licensing Boards.”

Lengthy policy statements written in legalistic and bureaucratic language can be off-putting for some stakeholders and potentially act as a barrier to community engagement in the licensing process. As such, AFS recommends that boards make conscientious efforts to create policies that are accessible to all. For example, by providing definitions of terms used throughout the policy within an appendix, and providing links to statutory provisions, guidance etc. wherever possible. Web-links and signposting can similarly be used to direct interested parties to more detailed information where required.

-
- ¹ Alcohol Focus Scotland (23 April 2020). [Scots report changing drinking patterns during coronavirus lockdown](#). Alcohol Focus Scotland.
- ² Alcohol Focus Scotland (23 July 2020). [Survey shows Scots lockdown drinking rise caused by stress](#). Alcohol Focus Scotland.
- ³ Angus, C. et al. (2022). [Modelling the impact of changes in alcohol consumption during the COVID-19 pandemic on future alcohol-related harm in England](#). The University of Sheffield.
- ⁴ Jackson, S.E. et al. (2021). [Moderators of changes in smoking, drinking and quitting behaviour associated with the first COVID-19 lockdown in England](#). *Addiction*, 117(3), 772-783.
- ⁵ Jackson, S.E. et al. (2021). [Association of the COVID-19 lockdown with smoking, drinking and attempts to quit in England: an analysis of 2019–20 data](#). *Addiction*, 116(5):1233–44.
- ⁶ Angus, C. et al. (2022). [Modelling the impact of changes in alcohol consumption during the COVID-19 pandemic on future alcohol-related harm in England](#). The University of Sheffield.
- ⁷ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ⁸ National Records of Scotland (2022). [Alcohol specific deaths 2021](#).
- ⁹ Holmes, J. et al. (2012). [The temporal relationship between per capita alcohol consumption and harm: a systematic review of time lag specifications in aggregate time series analyses](#). *Drug and Alcohol Dependence*, 123(1-3), 7-14.
- ¹⁰ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ¹¹ World Health Organization (2006). [Intimate partner violence and alcohol](#).
- ¹² Alcohol Focus Scotland (2019). [Parental Drinking in Scotland Discussion Paper](#).
- ¹³ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ¹⁴ Scottish Government (2022). [Coronavirus \(COVID-19\): Licensing \(Scotland\) Act 2005 section 142 – statutory guidance](#).
- ¹⁵ Fitzgerald, N. et al. (2021). [Lockdown and licensed premises: COVID-19 lessons for alcohol policy](#). *Drug and Alcohol Review*, 41(3), 533-545.
- ¹⁶ Aldi Stores Limited Vs Dundee City Licensing Board, Case Number: B109/21, March 2022
- ¹⁷ Scottish Government (2019). The Licensing (Scotland) Act 2005: [Consultation on Occasional Licences](#), Published 23 April 2019
- ¹⁸ National Records of Scotland (2022). [Alcohol-specific deaths 2021](#).
- ¹⁹ For example: Sanchez-Ramirez DC, Voaklander D (2018). The impact of policies regulating alcohol trading hours and days on specific alcohol-related harms: a systematic review. *Injury Prevention* 2018;24: 94-100.
- ²⁰ Scottish Government (2022). [Liquor Licensing Statistics for Period 01/04/2021 to 31/03/2022](#)

Draft Statement of Alcohol Licensing Policy

Orkney Islands Area Licensing Board

Licensing (Scotland) Act 2005

~~1 June 2023~~ November 2023 – November 2028

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Definitions

- Moved from paragraph 0.1.
- Definitions: In this Statement the following words shall have the meaning set out:
- “the Act” means the Licensing (Scotland) Act 2005 as amended from time to time.
 - “the 2015 Act” means the Air Weapons and Licensing (Scotland) Act 2015 as amended from time to time.
 - “the Board” means the Orkney Islands Area Licensing Board constituted in terms of section 5 and schedule 1 of the Act.
 - “the Council” means Orkney Islands Council constituted in terms of the Local Government etc. (Scotland) Act 1994 and subsequent legislation.
 - “the LSO” means the Licensing Standards Officer(s) appointed by the Council in terms of section 13 of the Act.
 - “the Police” means Police Scotland, which reference throughout this document includes reference to the Police Service of Scotland.
 - “the 1982 Act” means the Civic Government (Scotland) Act 1982 as amended from time to time.
 - “Guidance” means the Guidance for Licensing Boards and Local Authorities issued by the Scottish Ministers in terms of section 142 as amended from time to time.

- Moved from paragraph 10.5.
- The Board has adopted the following definition of a voluntary organisation:
- “An independent organisation established for purposes that add value to the community as a whole and which is not permitted, by its constitution, to make a profit for private distribution. Such an organisation does not include local government, other public bodies or statutory authorities. It is an organisation formally constituted, self-governing and primarily non-commercial.”

- Moved from paragraph 15.1.
- ~~The Board notes that~~ In terms of ~~regulations published by the Scottish Government, the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007~~, “adult entertainment” means any form of entertainment which:
- involves a person performing an act of an erotic or sexually explicit nature; and
 - is provided wholly or mainly for the sexual gratification or titillation of the audience.

Preamble

- ~~0.1.~~
Deleted.
- ~~Definitions: In this Statement the following words shall have the meaning set out:~~
- ~~“the Act” means the Licensing (Scotland) Act 2005 as amended from time to time.~~

- ~~“the 2015 Act” means the Air Weapons and Licensing (Scotland) Act 2015 as amended from time to time.~~
- ~~“the Board” means the Orkney Islands Area Licensing Board constituted in terms of section 5 and schedule 1 of the Act.~~
- ~~“the Council” means Orkney Islands Council constituted in terms of the Local Government etc. (Scotland) Act 1994 and subsequent legislation.~~
- ~~“the LSO” means the Licensing Standards Officer(s) appointed by the Council in terms of section 13 of the Act.~~
- ~~“the Police” means Police Scotland, which reference throughout this document includes reference to the Police Service of Scotland.~~
- ~~“the 1982 Act” means the Civic Government (Scotland) Act 1982 as amended from time to time.~~
- ~~“Guidance” means the Guidance for Licensing Boards and Local Authorities issued by the Scottish Ministers in terms of section 142 as amended from time to time.~~

~~0.2.~~
0.1. In terms of section 6 of the Act, licensing boards, once appointed following local government elections, must publish, within a period of 18 months, **following ordinary local government elections**, a statement of their policy to assist in the implementation and administration of the licensing of the sale and supply of alcohol within their area and to outline the way they intend to exercise their functions under the Act.

~~0.3.~~
0.2. 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. Details of consultees are provided in paragraph 2 of this policy. 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.

~~0.4.~~
0.3. In preparing this policy, the Board has had due regard to the guidance issued by the Scottish Government. In particular, the Board has 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 and young persons from harm.

~~0.5.~~
0.4. 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.

- ~~0.6.~~ You can contact the Licensing Board offices:
- 0.5.
- by email to: licensing@orkney.gov.uk;
 - by fax to: 01856 871604;
 - by telephone to: 01856 873535 extensions 2232 or 2229;
 - in writing to: Clerk to the Licensing Board, ~~Corporate Services,~~ **Strategy, Performance and Business Solutions**, Orkney Islands Council, Council Offices, Kirkwall, Orkney KW15 1NY.
- ~~0.7.~~ Comments on this policy must be submitted in writing by email or letter.
- 0.6. Paper and electronic copies of this statement are also available on request from these email or postal addresses.
- ~~0.8.~~ Comments will be made public. ~~Names and addresses of persons or organisations submitting comments will be made public.~~
- 0.7.
- ~~0.9.~~ If assistance is required, please discuss this with any member of staff, who will be glad to help.
- 0.8.
- ~~0.10.~~ All our written information can be made available, on request, in a range of different formats and languages. If you would like this document in any other language or format, please contact us at the above telephone number or email or postal addresses.
- 0.9.
- ~~0.11.~~ During the consultation period, this document will be published at <https://www.orkney.gov.uk/News> and will be available for inspection at the Council Offices, Kirkwall, Orkney between 09:00 and 17:00 Mondays to Fridays.
- 0.10.
- ~~0.12.~~ The final document, following adoption, will be published in the Related Downloads section of the following webpage:
- 0.11. <https://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>

- 0.13. The consultation period ~~will commence~~ ~~commenced~~ from 22 June 2023 and ~~will run to~~ ~~ran until~~ 25 August 2023. The policy will be applied for the relevant period. This will be from the date agreed by the Board until a period of 18 months following the next ~~ordinary~~ local government elections. It will be kept under review and be subject to ongoing consultation with stakeholders and revised, if appropriate, by the issue of supplementary statements, during its currency.
- 0.12.

Section A – General

1. Introduction

- 1.1. The Board is a licensing authority for the purposes of the Act and is responsible for granting:
- extensions of licensing hours;
 - occasional licences;
 - premises licences;
 - personal licences;
 - provisional licences;
 - temporary licences;
 - transfers of licences; and
 - variations of licences,
- in respect of:
- the sale of alcohol by retail for consumption on or off premises;
 - the supply of alcohol in members' clubs.
- ~~1.2. Orkney comprises 70 or so islands and skerries, of which up to 19 may be inhabited depending on the time of year. The Islands had a population of 21,349 in 2011, the majority of whom (17,162) lived on the main island called Mainland. The main population centres are located on Mainland. They are: Kirkwall, with a population of 7,200 (2011) and Stromness with a population of 2,050 (2011).~~
- Deleted.
- 1.2. Orkney comprises 70 or so islands and skerries, of which up to 19 may be inhabited depending on the time of year. Based on National Records of Scotland mid-year population data for 2021, Orkney had an estimated population of 22,540, the majority of whom (around 19,740) lived on the main island called Mainland and the linked south isles, while approximately 2,800 people lived on the north and south ferry-linked isles. The main population centres are located on Mainland. They are: Kirkwall, with an estimated population of 8,400 (2021) and Stromness with an estimated population of 2,100 (2021).
- Update of 1.2 deleted.
- 1.3. At the time of preparation of this statement of Policy, there were 105 premises licences in force within the Board's area, being 14 on-sales, 36 off-sales, 46 both on and off-sales and 9 members' clubs.
- 1.4. At the time of preparation of this statement of Policy, there were 285 personal licences in force within the Board's area.
- 1.5. ~~The Board is committed to ongoing improvements to the website and encouraging wider use of the internet to inform the public about licensing matters.~~
- Moved from paragraph 3.9. **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.**

- 1.6. The Board publishes a considerable amount of information, including requirements relating to layout plans, application forms, guidance, fire safety checklists and fees at:
https://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm
- 1.7. The Act requires the Board to publish annual reports in relation to its Financial Information and Functions. These are published in the Related Downloads section of the following webpage:
<https://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>
- 1.8. The Act requires the Board to publish Registers of specific information. The Board's Registers of premises and personal licences are published in the Related Downloads section of the following webpage:
<https://www.orkney.gov.uk/Service-Directory/C/Current-Register-of-Premises.htm>
- 1.9. The Board's Registers of occasional licences are published in the Related Downloads section of the following webpage:
<https://www.orkney.gov.uk/Service-Directory/O/Occasional-Licences.htm>
- 1.10. Information about the members of the Board, together with agendas, reports and Minutes relating to meetings of the Board, are published through links from the following webpage:
<https://www.orkney.gov.uk/Council/C/orkney-islands-area-licensing-board.htm>
- 1.11. Deleted. Since the implementation of the Act, the Board has issued:
- ~~one general extension of licensed hours (Queen's Diamond Jubilee, 2012);~~
 - ~~three general extensions of licensed hours for: the Queen's Diamond Jubilee 2012; the Queen's Platinum Jubilee 2022; and the King's Coronation 2023;~~
 - ~~occasional licences 2009 (4 months) — 42;~~
 - ~~occasional licences 2010 — 178;~~
 - ~~occasional licences 2011 — 220;~~
 - ~~occasional licences 2012 — 200;~~
 - ~~occasional licences 2013 — 215;~~
 - ~~occasional licences 2014 — 184;~~
 - ~~occasional licences 2015 — 215;~~
 - ~~occasional licences 2016 — 204;~~
 - ~~occasional licences 2017 — 212~~ 203;
 - ~~occasional licences 2018 (9 months) — 124~~ 166;
 - ~~occasional licences 2019 — 193;~~
 - ~~occasional licences 2020 — 99;~~

- ~~occasional licences 2021 – 140;~~
- ~~occasional licences 2022 – 177;~~
- ~~occasional licences 2023 (4 months) – 16;~~
- ~~occasional extensions 2009 (4 months) – 1;~~
- ~~occasional extensions 2010 – 3;~~
- ~~occasional extensions 2011 – 5;~~
- ~~occasional extensions 2012 – 4;~~
- ~~occasional extensions 2013 – 3;~~
- ~~occasional extensions 2014 – 2;~~
- ~~occasional extensions 2015 – 1;~~
- ~~occasional extensions 2016 – 1;~~
- ~~occasional extensions 2017 – 1; and~~
- ~~occasional extensions 2018 (9 months) – 0 1;~~
- ~~occasional extensions 2019 – 1;~~
- ~~occasional extensions 2020 – 0;~~
- ~~occasional extensions 2021 – 0;~~
- ~~occasional extensions 2022 – 0; and~~
- ~~occasional extensions 2023 (5 months) – 1.~~

~~4.12.~~ The Act requires the Board to carry out its various licensing functions
 1.11. 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 and young persons from harm.

~~4.13.~~ The pursuit of these five objectives is a principal feature of this
 1.12. 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.~~ **must be based on an objective or a combination of the objectives.**

~~4.14.~~ The Act further requires that the Board publish a statement of
 1.13. licensing policy which sets out the policies the Board will generally apply to promote the licensing objectives when making decisions on applications.

~~4.15.~~ The Board is required to have regard to the Guidance issued by the
 1.14. Scottish Government and to consult with:

- ~~4.15.1.~~ ● The local licensing forum for the Board's area.
- ~~4.15.2.~~ ● 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;
 - persons having functions relating to health, education or social work;
 - young people; and
 - persons resident within the forum's area.
- 4.15.3. • The relevant health board.
- 4.15.4. • Such other persons as the Board thinks appropriate.
Details of specific consultees are provided at paragraph 2.1 of this policy.
- 4.16. This policy has been prepared in accordance with the provisions of
 1.15. the Act. It will be applied for the relevant period. This will be from the date agreed by the Board until a period of 18 months following the next **ordinary** local government elections. It will be kept under review and be subject to ongoing consultation with stakeholders and revised, if appropriate, by the issue of supplementary statements, during its currency.
- 4.17. ~~It should be recognised that~~ This policy covers a wide variety of
 1.16. activities and premises including public houses, restaurants, nightclubs and private members' clubs, 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.
- 4.18. The Board acknowledges that the licensing function cannot be used
 1.17. 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. ~~Other mechanisms exist to be utilised, where appropriate, to tackle unruly or unlawful behaviour of consumers when beyond the control of an individual, club or business holding a licence.~~ **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 **city 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 **and** street cleaning ~~and litter patrols~~;
 - designating parts of the local authority area as places where alcohol may not be consumed publicly
<https://www.orkney.gov.uk/Council/C/drinking-in-public-places-in-kirkwall.htm>;
 - enforcement of the 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 **or those who are underage**.

~~1.19.~~
1.18. 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. ~~If there are no grounds for refusal, the Board must grant the application.~~ The policy 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.

1.19. **If there are no grounds for refusal, the Board must grant the application.**
Moved
from 1.18.

2. Consultation and Links to Other Policies, Strategies and Legislation

2.1. 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 account of the views of:

- Alcohol Focus Scotland.
- Citizens Advice Bureau (Orkney).
- Community councils.
- Holders of premises licences throughout Orkney.
- **Licensing Standards Officer.**
- Local firms of solicitors.
- Local Licensing Forum.
- NHS Orkney.
- Officials of the Council in respect of planning, building standards, environmental health, education, social services and housing.
- ~~Orkney Alcohol Counselling and Advisory Service.~~
- Orkney Alcohol and Drugs Partnership.
- Orkney **Child Public** Protection Committee.
- Orkney **Community Planning** Partnership.
- Orkney Health and **Social Care Partnership.**
- Police Scotland.
- Residents via a public notice on www.orkney.gov.uk.
- Scottish Beer and Pub Association.
- Scottish Fire and Rescue Service.
- Scottish Licensed Trade Association.
- Visit Scotland (Kirkwall Office).
- Voluntary Action Orkney.

- 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 the Council.
- 2.3. ~~The Human Rights Act 1998 incorporated the European Convention on Human Rights and made it unlawful for a local authority to act in a way which is incompatible with a Convention Right. The Board will have regard to the ECHR in respect of its licensing responsibilities.~~
The Human Rights Act 1998 incorporated the European Convention on Human Rights into United Kingdom law and makes it unlawful for a public 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 Freedom of Information (Scotland) Act 2002 requires licensing boards to publish information on the basic structure of the board, how it is administered, details of the type of information available to the public and how it can be accessed. The Board's publication scheme, setting out this information, is published ~~at~~ in the Related Downloads section of the following webpage:
<https://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>.
- 2.5. The Board also has responsibility for certain licensing functions under the Gambling Act 2005. The Board's statement of policy in respect of the exercise of its functions under that Act is contained in a separate document published ~~at~~ in the Related Downloads section of the following webpage:
<https://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>.
- 2.6. The Board recognises its responsibilities under the Equality Act 2010 and related legislation. ~~The Board adopted a Multi Equality Strategy in 2013, which replaced its previous policies in relation to Disability, Race and Gender. Subsequently,~~ The Board's Equality data and outcomes ~~have been~~ are reported together with those of the Council and Education Authority. The reports and outcomes are published ~~at~~ in the Related Downloads section of the following webpage:
<https://www.orkney.gov.uk/Council/C/Equality-and-Diversity.htm>.

- 2.7. 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.
- 2.8. The Board will avoid duplication with other regulatory regimes and will not use its powers under the Act to arrive at outcomes that can be achieved under other legislation or by other enforcement agencies.
- 2.9. In particular, the Board's licensing functions will be discharged separately from the functions of the 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 the 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.
- 2.10. ~~It is appropriate~~ **The Act requires** 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.
- 2.11. 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.
- 2.12. There is a presumption of 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. Where this is the case, operating plans should make reference to those planning conditions.
- 2.13. 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.
- 2.14. 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.
- 2.15. 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.

- 2.16. The Board will maintain effective communication with the Orkney Alcohol and Drugs Partnership. The importance of such cooperation is recognised as part of the wider alcohol agenda.
- 2.17. 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. Information about the Local Licensing Forum is published at <https://www.orkney.gov.uk/Service-Directory/O/Orkney-Local-Licensing-Forum.htm>.
- 2.18. The Council publishes agendas, reports and Minutes relating to meetings of the Orkney Local Licensing Forum through links on the following webpage: <https://www.orkney.gov.uk/Service-Directory/O/Orkney-Local-Licensing-Forum-Agendas-and-Reports.htm>.

3. Applications for **Premises** Licences and Disposal of Business

- 3.1. The Board will not accept any premises licence application which fails to satisfy statutory requirements as to matters to be included in or to accompany an application. Any such application will be returned to the applicant. The Board ~~seeks eventually to~~ holds plans of premises electronically and encourages all applications to be accompanied by an electronic copy of any plans to be submitted.
- 3.2. With reference to section 123 of the Act (Excluded Premises), the Board determined in 2007 that 22 garages subject to off-sale licences at the time of drafting its first policy served a wider local function or were a required community resource. **No applications for new petrol filling station premises have subsequently been received. Such** applications will be considered on their merits to determine whether they would serve a similar function. In general, premises used as a garage or which form part of a garage shall be excluded from obtaining a licence.
- 3.3. With reference to section 125 of the Act, members' clubs are regulated under the Act and a premises licence is required to authorise the sale of alcohol.
 - 3.3.1. The Scottish Government acknowledges that it would be reasonable to reflect their special characteristics. In order to benefit from the exemptions available members' clubs require to meet the criteria prescribed in the Licensing (Clubs) (Scotland) Regulations 2007 (<https://www.legislation.gov.uk/ssi/2007/76/contents/made>).
 - 3.3.2. When members' clubs apply to the Board they require to provide a copy of their Constitution and Rules to show that they comply with the criteria referred to above in order to benefit from the exemptions.
 - 3.3.3. Members' clubs are subject to the same provisions regarding access by children as any other licensed premises. They require to specify in their operating plans whether or not it is proposed that children and young persons are to be allowed entry to the premises and, if so, to specify the terms, the times, the ages of such children and the parts of the premises to which they would be permitted access.
 - 3.3.4. The Board considers that the following would be good practice:
 - clubs should keep their constitutions updated and, when revised, submit a copy of the revised constitution to the Clerk; and
 - at least two members of staff or committee members or volunteers involved in the management of the club should obtain a training qualification to the standard required by personal licence holders.
- 3.4. The Board will dispose of its business in an open and transparent manner. Hearings will be conducted in as informal a manner as possible. Guidance will be made available to those persons who wish to apply for a licence, to make representations or to lodge objections. 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. A statement of agreed procedures for Board meetings is attached at Appendix 1.

3.5. The Board will generally operate in the Chamber of the Council Offices. However, circumstances may dictate that the Board will operate elsewhere on occasion. The Board will comply with timescales laid down for dealing with applications. The Board meets on a regular basis and the meeting dates are published at <https://www.orkney.gov.uk/diary-of-council-meetings.htm>.

New. 3.6. Meetings of the Board are broadcast live at www.orkney.gov.uk and audio recordings of meetings are available from the appropriate webpage for a meeting of the Board, published at <https://www.orkney.gov.uk/diary-of-council-meetings.htm>

New. 3.7. ~~During the COVID-19 pandemic, through 2020 into 2022, the Board held its meetings online and enabled access by applicants. Following the relaxation of public health measures, the Board has continued to enable Board members and applicants to attend meetings online.~~ **The Board holds its meetings in person and online and enables Board members and applicants to attend meetings online.** This arrangement provides ease of access for applicants based outwith the main town of Kirkwall, as well as other participants who may find it difficult or inconvenient to attend the Council Offices in person.

~~3.6.~~ 3.8. All members appointed to the Board have been trained in accordance with regulations made under the Act which require members to undertake an accredited course of training within three months of being elected or re-elected as a member of the Board.

~~3.7.~~ ~~3.9.~~ 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.

Moved to paragraph 1.5.

~~3.8.~~ 3.9. Applications are advertised for the statutory periods on the Council's website at <https://www.orkney.gov.uk/News>.

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 intends to delegate its various licensing functions is attached at Appendix 2.

4.4. Unless there are justifiable reasons or, as provided in regulations made under the Act, the Board will meet in public, although members may

retire into private session to consider their decision. However, any decision will be made in public in accordance with the Act or regulations made thereunder.

5. Notification of Application, Objections and Representations

- 5.1. The Board will give notice of each premises licence application it receives to those persons referred to in the Act or their successors, namely:
 - each person with a notifiable interest in neighbouring land;
 - any community council within whose area the premises are situated;
 - the Council;
 - the relevant health board, being NHS Orkney;
 - Police Scotland; and
 - Scottish Fire & Rescue Service.
- 5.2. In providing notice, the Board is committed to ensuring that application details are provided in a clear, concise and understandable way, by means of Site Notices provided to applicants for display, by means of notification to the consultees detailed at paragraph 5.1 above and by online notification at <https://www.orkney.gov.uk/News>.
- 5.3. The Board expects the Police to consider all applications and to give one of the statutory notices as appropriate. The Board will consider all relevant representations or objections from any person. The objection must relate to one of the licensing objectives. Objections or representations which are regarded as frivolous or vexatious may not be considered and in the case of an application for review of a licence may be rejected by the Board if it does not disclose any matter relevant to any ground for review.
- 5.4. Where an objection or representation in respect of a premise licence application or a variation application is received late, after the specified date for receipt, the Board will normally treat the objection as not made unless the objector has provided an explanation for late receipt. If the Board decides there are good reasons to treat the objection as made, consideration will be given in the interests of justice to a continuation of the hearing into the application, objections and representations to a future meeting of the Board.
- 5.5. The Board will seek the advice of the Council's **Development and Infrastructure service Neighbourhood Services and Infrastructure directorate** in relation to applications for provisional premises licences regarding suitability. This will enable a pro-active approach to be adopted permitting applicants sufficient notice of any issues that may require to be addressed within premises prior to completing construction or renovation when it would be likely to be too late to incorporate changes into the design at the stage of confirmation.

6. Conditions Attaching to Licences

- 6.1. The Board acknowledges the mandatory conditions attaching to premises and occasional licences laid down in schedules 3 and 4 of the Act, together with mandatory conditions attached by regulation to premises which are open beyond 1 a.m. on any day. ~~Mandatory conditions current at the date of publication of this policy are attached at Appendices 3 to 5.~~
- 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. The Board will seek to avoid the imposition of disproportionate conditions. ~~In this connection,~~ The Board may consider attaching a condition requiring the premises licence holder and / or designated premises manager to take-up membership of any Pubwatch or similar scheme operating in the area and to participate fully in its operation, including the effective sharing of information.
- 6.3. The Board recognises that all applications should be considered on their own merits. Any condition attached to a licence will be derived either from the licence holder's operating plan or a representation and will be tailored to each individual premises.
- 6.4. The Board understands that applicants may suggest conditions which they consider are necessary to achieve the five licensing objectives. If an applicant volunteers a prohibition or restriction in their operating plan because their assessment has determined such prohibition or restriction to be appropriate, such prohibition or restriction if adopted by the Board will be attached as a condition of the licence and will be enforceable as such.

7. ~~Need for Licensed Premises~~

- 7.1. Deleted following updated Guidance from Scottish Government. The Board acknowledges ~~Guidance issued by the Scottish Government that licensing boards should not take into account the need or demand for licensed premises in any locality, as commercial considerations are irrelevant to boards' policies. Licensing decisions will not therefore be based upon this issue.~~ **Subsequent sections of this document are re-numbered.**

87. Consideration of Applications by the Board.

- 7.1. In assessing the following matters, the Board will have regard to the licensing objectives and will expect applicants to pay similar regard to their terms.
- 7.2. When considering whether any licence should be granted, the Board will assess the likelihood of it having an adverse impact. The Board may take into account relevant matters including:
 - the nature of the premises, the style and type of use, the potential number and profile (for instance, ages or disabilities) of the customers likely to attend the premises;
 - the proposed hours of operation;
 - whether children are to be admitted to the premises and the arrangements made for them;
 - the means of access to the premises including the location and adequacy of customer entrances and exits;
 - the level of public transport accessibility for customers either arriving or leaving the premises and the likely means of public or private transport that will be used by them;
 - the likely level of car parking demand on principal roads and surrounding residential streets in comparison with the existing situation, its effect on local residents and on residential parking and emergency access;
 - the provision of toilet facilities and ventilation of the premises.
- 7.3. Where it is possible to take steps to mitigate or prevent any potential impact it may still be possible to grant a licence subject to conditions. Each case will be considered on its merits.
- 7.4. 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 and any antisocial behaviour report made available by the Police. The Board will also consider measures put into effect by the applicant to mitigate any adverse impact.

98. Overprovision.

- 8.1. 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.
- 8.2. On ~~25 January 2018~~ **19 January 2023**, the Board determined that, for the purposes of consultation on the assessment of overprovision of alcohol licensed premises, the locality should be Orkney as a whole.

- 8.3. On ~~3 May 2018~~ 27 April 2023, the Board determined that there is no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.
- 8.4. ~~The Board concluded that there was not a dependable causal link between the evidence provided to the Board and the operation of licensed premises, to suggest that a saturation point had been reached, or was close to being reached, within the locality of Orkney defined by the Board.~~
- The Board concluded that, on a balance of probabilities, there was not a dependable causal link between the availability of alcohol in Orkney and alcohol-related harm, in that, based on the evidence of harm in the locality of Orkney as defined by the Board, it was ~~not more likely than~~ ~~not~~ unlikely, on balance, that alcohol availability was a cause of harm in Orkney, or that increasing the availability of alcohol in Orkney would increase that harm. A copy of the full report is available at <https://www.orkney.gov.uk/council-meetings.htm?postid=7018&postdiaryentryid=15369>

109. Occupancy Capacity.

- 9.1. Reference is made to the provisions of ~~paragraph 9~~ section 8 of this policy, which relate to overprovision. The occupancy capacity of premises is one factor in the assessment of overprovision.
- 9.2. The occupancy capacity for premises and events is an important factor in the achievement of the five licensing objectives, except in respect of premises licensed only for the consumption of alcohol off the premises. The Board will seek the advice of the Council's building standards service in relation to maximum occupancy limits to ensure the safety of persons in the premises and safe escape in the case of an emergency.
- 9.3. The Board will expect applicants to consider various factors when assessing the appropriate capacity for premises. These include:
- the design and layout of the premises;
 - the location, availability and size of exits including emergency exits;
 - the nature of the premises or event;
 - the nature of the activities being provided;
 - the provision or removal of temporary structures such as a stage or furniture;
 - the number of staff available to supervise customers both ordinarily and in the event of an emergency;
 - the profile of the customers (for instance, ages or disabilities);
 - the availability of suitable and sufficient sanitary accommodation;
 - the nature and provision of facilities for ventilation.
- 9.4. 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.

11 10. Occasional Licences and Extended Hours.

Occasional Licences

- 10.1. An occasional licence authorises the temporary sale of alcohol on premises other than licensed premises.
- 10.2. They may be applied for by:
- the holder of a premises licence;
 - the holder of a personal licence; or
 - a representative of any voluntary organisation.
- to cover a period of up to 14 days.
- 10.3. The holders of a premises licence or a personal licence may make unlimited applications.
- 10.4. There are restrictions on the number of applications voluntary organisations and registered clubs can make, in any period of 12 months:
- not more than 4 occasional licences each having effect for a period of 4 days or more; and
 - not more than 12 occasional licences each having effect for a period of less than 4 days
- provided that, in any period of 12 months, the total number of days on which occasional licences issued in respect of the voluntary organisation, or the premises of the registered club have effect does not exceed 56.
- 10.5. ~~On 14 October 2009, the Board adopted the following definition of a voluntary organisation:~~
Moved to Definitions section. “An independent organisation established for purposes that add value to the community as a whole and which is not permitted, by its constitution, to make a profit for private distribution. Such an organisation does not include local government, other public bodies or statutory authorities. It is an organisation formally constituted, self-governing and primarily non-commercial.”
- 10.6. ~~Where a representative of a voluntary organisation applies for an occasional licence for a barn dance, or a marquee dance, where more than 100 persons are expected, the Board expects there to be a person in charge of the bar at the event who is a personal licence holder and evidence of that training must be submitted to the Board with the application for the occasional licence.~~
Deleted.
- 10.7. ~~In all other circumstances, where a voluntary organisation applies for more than 4 occasional licences in any calendar year, the Board expects there to be a person in charge of the bar at the event who is a personal licence holder and evidence of training must be submitted to the Board with the application for the occasional licence.~~
Deleted.

- 10.8. The Board considers that it would be good practice for at least one or
10.5. two committee members or volunteers involved in the operation of the
voluntary organisation to obtain a training qualification to the standard
required by personal licence holders.
- 10.9. The Board considers the commencement of the sale of alcohol shall
10.6. not be earlier than 10 a.m. For the terminal hour beyond which alcohol
must not be sold on the premises, the Board considers that the time
frames detailed in ~~paragraph 20~~ section 19 of this policy are
appropriate.
- 10.10. Applicants seeking licensed hours for times outwith the Board's policy
10.7. will require to demonstrate to the Board that the additional requested
hours are appropriate in the circumstances.
- 10.11. Registered clubs should ~~ensure that occasional licences applied for in~~
10.8. ~~respect of their premises are for events for the benefit of the club or~~
~~their members to which members of the public are admitted or for~~
~~which there are insufficient numbers of members attending the event~~
~~to sign in the required number of guests.~~ be aware that when an
occasional licence has effect in terms of the premises, the conditions
of the premises licence temporarily do not apply, and the conditions of
the occasional licence apply instead. This means that sales of alcohol
are permitted on the club premises to persons who are not members
or accompanied by a member. When the occasional licence ceases to
have effect then the conditions attached to the premises licence once
more come into effect.
- 10.12. Voluntary organisations ~~should~~ must ensure that occasional licences
10.9. applied for are for events for the benefit of the organisation to which
members of the public may be admitted.
- 10.13. All applications for occasional licences should be accompanied by an
10.10. assessment of how the application complies with the licensing
objectives. Guidance is attached at Appendix 3.
- 10.14. Applicants should be aware that it is a mandatory condition of an
10.11. occasional licence that an Age Verification Policy, as referred to in the
Guidance, must be in place. Further information is published at
https://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm
- 10.15. To allow time for the statutory consultation process, applications
10.12. should be submitted as far in advance of the event as possible but not
later than 4 weeks before the event is due to take place. An
application received after that deadline may not be processed in time.
Any applicant unable to meet the deadline should communicate with
the Clerk's office as a matter of urgency.
- 10.16. Applicants should be aware that they may also require a public
10.13. entertainment licence issued by the Council in terms of the 1982 Act,
dependent upon the nature of the event. Further information is
published at
https://www.orkney.gov.uk/Service-Directory/P/Public-Entertainment_2.htm.

- 10.17. Applicants should be aware that they may also require a late hours catering licence issued by the Council in terms of the 1982 Act if the event commences before or continues after alcohol sales. Further information is published at <https://www.orkney.gov.uk/Service-Directory/L/Late-Hours-Catering.htm>.
- 10.14.
- 10.18. The Board recognises the right of any person to object to an application for an occasional licence.
- 10.15.
- 10.19. The grant of an occasional licence is subject to the mandatory conditions laid out in schedule 4 to the Act. Reference is made to the provisions of ~~paragraph section 6 and Appendix 5~~ of this policy.
- 10.16.
- 10.20. ~~The Board will consider on an individual basis whether it is necessary or expedient to impose additional conditions,~~ To promote one or more of the licensing objectives or otherwise to give effect to the provisions of this policy or the Act, **the Board will consider on an individual basis whether it is necessary or expedient to impose additional conditions.**
- 10.17. The decision whether to impose conditions will be made on an objective basis, any representations made and any other relevant information available to the Board when considering the application. The Board will seek to avoid the imposition of disproportionate conditions.
- 10.21. The Board commonly attaches some local conditions.
- 10.18.
- 10.21.1. The following local condition is attached to all occasional licences:
- 10.18.1. Noise from the premises to which the occasional licence applies shall:
- not be discernible within residential accommodation between 2300 hrs and 0700 hrs; and
 - at no time be such as to give rise to a nuisance.
- 10.21.2. The following local conditions are attached to some occasional licences when relevant, usually events taking place outwith permanent premises, for example, marquees:
- 10.18.2.
- The licence holder shall provide the facilities and fire precautionary measures as stated on the Fire Safety Checklist completed by the licence holder and submitted to the Scottish Fire and Rescue Service.
 - The licence holder shall ensure that all alcoholic liquor sold at the event shall be served in plastic containers. No bottles or glass containers shall be sold or served.

Extended Hours

- 10.22. Extended hours applications allow for an occasional extension of licensed hours within licensed premises and operate only for a period of up to one month. If the Board receives a number of applications to extend licensed hours it will expect the applicant to consider whether
- 10.19

an application should be made to vary the premises licence, by adjustment of the operating plan.

~~40.23.~~
10.20. Occasional extensions can be applied for by premises licence holders in connection with a special event or occasion to be catered for on the premises or a special event of local or national significance.

~~40.24.~~
10.21. Where the hours sought fall outwith the on-sale hours detailed in ~~paragraph 20~~ **section 19** of this policy, the applicant will require to demonstrate that the hours requested are appropriate in the circumstances. The applicant shall provide the Board with sufficient information to enable a decision to be made. In addition to the information provided on the application form, this will include:

- why the event or occasion is considered to be special;
- why the event or occasion cannot take place within the usual on-sales hours operated on the premises; and
- an assessment of how the application complies with the licensing objectives (guidance is attached at Appendix **3**).

~~40.25.~~
10.22. To allow time for the statutory consultation process, applications should be submitted as far in advance of the event as possible but not later than 4 weeks before the event is due to take place. An application received after that deadline may not be processed in time. Any applicant unable to meet the deadline should communicate with the Clerk's office as a matter of urgency.

~~40.26.~~
10.23. The Board will have complete discretion as to whether to grant the application taking into account any Police objections and comments from the LSO 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 LSO.

~~40.27.~~
10.24. The Board may grant a general extension of licensed hours under section 67 of the Act to enable premises to remain open longer in connection with a special event of local or national significance. The Board will request observations from the Police and the LSO in relation to the licensing objectives. It will notify its determination to the Police and LSO, to holders of licences and other relevant parties and will take appropriate steps to publicise the determination as widely as necessary, including publication at <https://www.orkney.gov.uk/News>.

~~40.28.~~
10.25. The Board believes that in many cases, such **special** events can be appropriately accommodated within the Board's normal licensed hours policy and should not be regarded as routinely in need of extended licensed hours. Any extension beyond normal licensed hours policy will only be granted after careful consideration of the particular event and will require increased control measures in place aimed at

preventing or limiting problems with their potential impact on the five licensing objectives.

12 11. Licensing Standards Officers and Enforcement Compliance.

- 11.1. The Council's appointed LSOs work within its Environmental Health Service. **An LSO is neither an agent nor an employee of the Licensing Board.** Their LSO function incorporates ~~three~~ the following roles:
- providing information and guidance to interested persons concerning the operation of the 2005 Act in their area;
 - providing mediation services to avoid or resolve disputes or disagreements between licence holders and other persons; ~~if a member of the public complains about a premises, the LSO will investigate; and~~
 - **if a complaint is received about a premises, the LSO will consider whether an investigation is required to ascertain the circumstances and any necessary remedial action;**
 - supervising licence holders' compliance with **the conditions of their licences and** the legislation; and
 - **providing information to the Board about any conduct of holders of, or persons applying for, personal licences in the area, which is inconsistent with the licensing objectives.**
- 11.2. The LSOs will take a stepped approach to **enforcement compliance**, from verbal advice through to written. The LSOs can take formal action when appropriate by means of issuing of compliance notices and referral to the Board for review. The LSOs are also members of the Local Licensing Forum.
- 11.3. The LSOs can be contacted:
- by email to: env.health@orkney.gov.uk; LSO@orkney.gov.uk;
 - by telephone to: 01856 873535 extension 2801;
 - by writing to: Licensing Standards Officer, **Environmental Health, Development and Infrastructure, Environmental Health Service, Neighbourhood Services and Infrastructure**, Orkney Islands Council, Council Offices, Kirkwall, Orkney, KW15 1NY.
- 11.4. Resources will be targeted towards **high-risk higher-risk** premises and activities ~~that require greater attention~~.
- 11.5. 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's adopted enforcement policy will be reviewed during 2023 and will be published at:**
- <https://www.orkney.gov.uk/Service-Directory/E/enforcement-policy.htm>

- ~~11.6.~~ Deleted. 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.
- ~~11.7.~~ 11.6. 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.~~
- ~~11.8.~~ 11.7. 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 and to share information where appropriate in order to enhance the promotion of the five licensing objectives.
- ~~11.9.~~ 11.8. The Board recognises the Hampton principles of inspection and enforcement, including:
- no inspection should take place without a reason; and
 - regulators should recognise that a key element of their activity will be to allow or even encourage, economic progress and only intervene when there is a clear case for protection.

13 12. Review of Premises Licences.

- 12.1. 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.
- 12.2. 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 matter relevant to any ground for review.
- 12.3. ~~Reviews may result from enforcement activity by the Police or the LSO.~~
Reviews may result from relevant licensing enforcement activity by the Police or the LSO.

14 13. Management of Licensed Premises.

- 13.1. A premises manager must be identified in an operating plan for licensed premises, except members' clubs. The person can only be the premises manager for one licensed premises. The Board will expect the premises manager to have the day-to-day responsibility for running the premises and to be present at the licensed premises on a regular basis when alcohol is being sold. 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.
- 13.2. The premises manager must hold a personal licence.

- 13.3. 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. Premises are recommended to have other personal licence holders in addition to the premises manager.

15 14. Personal Licences.

- 14.1. Any individual may seek a personal licence whether or not they have current employment or business interests associated with the use of the licence.
- 14.2. The Board will grant a personal licence if it is satisfied that the applicant:
- is 18 years of age or older;
 - possesses a relevant licensing qualification;
 - does not already hold a personal licence issued in Scotland
 - has not had a personal licence revoked within the period of 5 years, ending with the day on which the application was received (other than for failure to complete mandatory refresher training); and
 - has not been convicted of any relevant offence or foreign offence.
- 14.3. When an applicant has an unspent conviction for a relevant or foreign offence, the Board will hold a hearing at which it will consider carefully whether it is satisfied that the grant of a licence would not breach the objectives of the Act. 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 so satisfied the Board will refuse the application.

16 15. Adult Entertainment.

- 15.1. ~~The Board notes that in terms of regulations published by the Scottish Government, the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007, “adult entertainment” means any form of entertainment which:~~
Moved to Definitions section.
- ~~involves a person performing an act of an erotic or sexually explicit nature; and~~
 - ~~is provided wholly or mainly for the sexual gratification or titillation of the audience.~~
- 15.2. Where the operating plan for a premises licence application identifies that adult entertainment will take place in the premises, 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.
- 15.1. 15.1. 15.1. 15.1.
- 15.3. 15.2. All applications involving adult entertainment of any kind will be considered in relation to the licensing objectives on their own merits.

- 16.4. Deleted. At the time of preparation of this statement of Policy, the Board noted the Scottish Government's intentions for licensing of venues offering sexual entertainment. It noted that the relevant provisions of the 2015 Act were not yet in force and that licensing of such venues would be a matter for the Council.
- 15.4. 15.3. Update of 16.4 deleted. At the time of preparation of this statement of Policy, the Board noted that the relevant provisions of the 2015 Act, permitting local authorities to choose to license venues offering sexual entertainment, came into force in 2019 and that licensing of such venues was a matter for the Council. **The Council has not adopted those provisions.**

17 16. Off-sales.

- 16.1. The Board notes that regulations concerning display of alcohol for consumption off the premises must be observed in the layout of premises. Information about the requirements relating to layout plans is available **in the Board's Guidance Notes, published as a Related Download**, at:
https://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm
- 16.2. Paragraphs ~~20.2 and 20.3~~ **19.2 and 19.3** of this policy outline the Board's policy approach with respect to off-sale trading hours.
- 16.3. The Board encourages the installation of an effective CCTV system, which complies with current legislative requirements (including, for the avoidance of doubt, Data Protection legislation), in off-sales licensed premises. Reference is made to ~~paragraphs 20, 22 and 24~~ **sections 19, 21 and 23** of this policy relating to hours of trading and the licensing objectives of prevention of crime and disorder and prevention of public nuisance.

18 17. Smoking and Nuisance.

- 17.1. The Board acknowledges that smoking **and vaping** is not a licensing matter but one for other legislation.
- 17.2. The health risks associated with smoking and with passive smoking continue to be well publicised. Licence holders **will should** be aware of their own statutory responsibilities, public opinion generally, the expectations of their patrons and the legislation concerning smoking in public places.
- 17.3. The Board expects ~~that~~ licence holders **will to comply with the law and have regard to good practice and any relevant guidance appropriate to those matters**. It is their responsibility to ensure that patrons do not create a nuisance or disturbance for ~~residents living nearby~~ **neighbours or members of the public**. This includes noise arising as a result of patrons smoking, including vaping, outside the premises and any associated littering of the area. Where appropriate the Board may impose conditions requiring licence holders to provide litter bins and cigarette disposal containers in the vicinity.

- 17.4. 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 18. Outdoor Facilities.

- 18.1. The Board will expect any licence holder who intends to provide outdoor facilities to hold a premises licence which includes the outside area. These areas ~~should~~ **must** be shown on the required plan of the premises and will be taken into account in the overall assessment of capacity, particularly in relation to exits and sanitary facilities.
- 18.2. When applicants propose to provide outdoor facilities (whether covered or not), regard should be had to the need to ensure that the use of such outdoor areas will not cause disturbance or nuisance to the occupiers of other premises in the vicinity. Applicants should demonstrate how they intend to mitigate these issues.
- 18.3. The Board expects that licence holders will not only comply with any conditions of grant of a permit which may be applied in respect of tables and chairs, but will also put into place effective management controls, supervision, and other measures to ensure that the use of such areas by patrons or by any other persons does not have a negative impact in the vicinity. In this connection, the Council operates a scheme whereby consent may be applied for to occupy the footway with tables and chairs. This scheme is operated under the Roads (Scotland) Act 1984.

20 19. Hours of Trading.

- 19.1. This section relates to licensed premises where alcohol is sold with or without any other licensable activity.

Off-sales

- 19.2. For applications relating to premises licences and to occasional licences, the licensed hours for the sale of alcohol for consumption off the premises (off-sale hours) are 10 a.m. to 10 p.m. each day. The Board has no discretion to permit licensed hours outwith these times in terms of the Act. In determining applications and licensed hours within these times, the Board will, in considering the merits, have particular regard to the effect (if any) which the proposed off-sales hours may have on the licensing objectives relating to crime, children, public health and public nuisance in particular.
- 19.3. There is no entitlement to a grant of maximum trading hours for off-sale premises. The hours granted by the Board to off-sale premises will reflect the actual hours of operation of the premises. There will be flexibility to build in extended or reduced trading to reflect seasonal variations, such as the Festive Season.

On-sales

- 19.4. For applications relating to premises licences, including extensions of hours, the licensed hours for the sale of alcohol for consumption on the premises (on-sale hours), the Board considers the commencement of the sale of alcohol shall generally be no earlier than 10 a.m. Licensed hours for on-sales premises in particular can have an impact not only within the individual premises, but also within the locality in which the premises are situated.
- 19.5. Any opening time earlier than 10 a.m. will require strong evidence before being permitted by the Board.
- 19.6. The Board will consider extending the commencement of the sale of alcohol in premises from 10 a.m. to 9 a.m. on condition that the sale of alcohol is ancillary to a table meal taken by persons within the premises.
- 19.7. A table meal generally consists of a meal eaten by a person sitting at a table, counter or other structure which serves the purpose of a table. The meal must be eaten with cutlery or similar accoutrements. Snacks, sandwiches and crisps are not considered to constitute table meals.
- 19.8. The Board may attach conditions to such licences. The earlier premises wish to open, the more the Board will expect applicants to demonstrate measures that promote the licensing objectives and justify the request for the early hours. The Board further considers that it would be difficult for any application to justify the sale of alcohol before 9 a.m.
- 19.9. Having regard to the licensing objectives, but subject to considering the individual merits of each case, for on-sale licensed premises the Board considers the following to be appropriate for terminal hours:
- 19.9.1. Regular evenings:
- 12 midnight Sundays to Thursdays inclusive; and
 - 1 a.m. Fridays/Saturdays and Saturdays/Sundays; or
 - 2 a.m. Fridays/Saturdays and Saturdays/Sundays for premises which, in terms of their operating plan and the Board's understanding, will be operating as nightclubs. **Reference is made to the provisions of paragraph 19.18 of this policy.**
- 19.10. The Board expects applicants to apply for the hours they normally or usually trade in their operating plan. There is no automatic entitlement to the maximum hours for on-sales set in terms of the Board's policy. Provision can be built into operating plans for longer or shorter opening at certain times of the year, such as the Festive Season.
- 19.11. The following may be included within the Seasonal Variations section of operating plans:
- 19.11.1.
- Annual agricultural shows – to 1 a.m. any morning where an event related to the show is being held within the premises.
 - Local festivals – to 1 a.m. any morning where an event related to the festival is being held within the premises.
 - Private Functions – to 1 a.m. any morning.

- Weddings – to 1.30 a.m. any morning.
- 19.11.2. Festive Season:
- Block applications for Christmas and New Year festivities for the period from 24 December to 3 January each year – 1 a.m. any morning (for the avoidance of doubt, terminating at 1 a.m. on 3 January each year).
 - 24/25 December (Christmas Eve) and 31 December/1 January (Hogmanay) each year – 2 a.m. in premises which, in terms of their operating plan and the Board’s understanding, will be operating as nightclubs.
- 19.12. The Board wishes to make it clear that any Festive Season hours should be accounted for within the Seasonal Variations section of operating plans and should not routinely be the subject of extended hours applications.
- 19.13. The Board is satisfied that the Act does not contain a specific duty to trade. It does not contain a provision imposing a duty to trade on premises licence holders.
- 19.14. The Board is satisfied that the provision in schedule 3 to the Act that “alcohol is to be sold on the premises only in accordance with the operating plan” should be construed as preventing licensees from operating outwith the hours stated in their operating plans rather than requiring licensees to trade for the full complement of hours.
- 19.15. The Board recognises:
- that there may be circumstances that would reasonably cause a temporary deviation from the licensed hours given in the operating plan; and
 - the need for businesses, especially in a rural environment, to remain economically viable when faced with a lack of demand.
- 19.16. The Board will continue to support local schemes such as Pubwatch, Safer Towns initiatives, Shop-watches, Best Bar None, radio-links and Door Safe Schemes. The Board recognises that such schemes help to reduce public disorder and nuisance offences taking place within local communities, thereby promoting the licensing objectives. The Board encourages responsible licence holders to participate in such schemes.
- 19.17. Section 64 of the Act contains a presumption against 24-hour drinking unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period. **Guidance provides that Licensing Boards should consider “exceptional circumstances” to cover social events such as one-off local or national festivals.**
- 19.18. Premises opening after 1 a.m. are subject to mandatory conditions – ~~reference is made to the provisions of paragraph section 6 and Appendix 3 of this policy~~ – **in terms of the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 (published at: <https://www.legislation.gov.uk/ssi/2007/336/contents/made>)**

and the Board may attach additional conditions.

- 19.19. The following issues should be considered **by the applicant and the Board in respect of any application for premises opening after 1 a.m.**
- the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance, public health and children;
 - the proposed hours when any music, including incidental music, will be played;
 - the hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises;
 - the existing hours of licensable activities and the past operation of the premises if any and hours of licensable premises in the vicinity;
 - whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night;
 - the capacity of the premises;
 - the type of use, recognising that premises which sell alcohol, play music for dancing, provide late night refreshment or takeaway food, are more likely to be associated with crime and disorder and public nuisance than restaurants, theatres, cinemas or other performance venues;
 - the hours at which noise may occur and the disturbance of nearby residents' rest, relaxation and sleep.
- 19.20. The Board recommends that applicants give 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 intermittently** in small groups on a gradual basis rather than simultaneously.
- 19.21. Restricted licensing hours may be appropriate in cases where licensed premises are situated in the vicinity of residential property or where the trading hours of the premises and competing businesses in the vicinity are likely to lead to undue pressure on public transport systems or additional public nuisance, disorder or anti-social behaviour and where licensed premises include external areas. Where the whole circumstances of particular premises dictate, including promotion of the licensing objectives, the Board will consider restricting the opening hours. The Board may impose different restrictions on hours for different licensable activities and for different days of the week.
- 19.22. 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.

- 19.23. 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.
- 19.24. 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 larger towns, 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 Board's policy and the licensing objectives;
 - restrictions are not placed on hours of trading which may contribute to rapid binge drinking near closing time.

Section B – Licensing Objectives.

21 20. Overview.

- 20.1. 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; and
 - protecting children and young persons from harm.
- 20.2. 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 may address all aspects relevant to the individual style and characteristics of their premises and the licensable activities for which they are seeking a licence.
- 20.3. In each sub-section, a list of possible control measures is provided. This is intended to be of assistance to applicants, but again is not intended to be an exhaustive list. Many control measures achieve more than one objective but have not necessarily been listed under each objective.
- 20.4. 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.
- 20.5. 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.
- 20.6. The Board encourages applicants and licence holders to ensure that they have adequate arrangements in place for the 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.

22 21. Licensing Objective – Preventing Crime and Disorder.

- 21.1. The Council together with other agencies 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.
- 21.2. 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.
- 21.3. 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 encouraged 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.
- 21.4. 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.
- 21.5. The following examples of control measures are given to assist applicants, having regard to their particular type of premises and/or licensable activities:
- effective and responsible management of premises;
 - appropriate instruction, training and supervision of staff;
 - adoption of best practice guidance where available;
 - acceptance of accredited photographic proof of age cards, EU photographic driving licences, passports, Ministry of Defence Form 90 (Defence ID Card), Biometric Residents Permit or national identity card issued by an EU member state, Norway, Iceland, Liechtenstein or Switzerland;
 - written Age Verification Policy and appropriate signage;
 - 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.
- 21.6. The Board notes the Scottish Government's requirements in respect of the installation of CCTV in late opening premises. In order to ensure the greatest possible degree of protection for the public this Board recommends the installation of an effective CCTV system in off-sales premises. Reference is made to paragraph 47 16.3 of this policy in this connection.
- 21.7. In 2011 the Council made byelaws prohibiting the consumption of alcohol in designated public places in Kirkwall. The byelaws ~~are~~ **were updated in 2021 and are** available at <https://www.orkney.gov.uk/Council/C/drinking-in-public-places-in-kirkwall.htm>.

23 22. Licensing Objective – Securing Public Safety.

- 22.1. 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 will be ~~encouraged~~ **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.
- 22.2. When addressing the issue of public safety, applicants will be encouraged to demonstrate that those factors which impact on standards of public safety have been considered, including:
- the occupancy capacity of the premises;
 - the condition, design and layout of the premises, including means of escape in the event of fire;
 - the adequacy of vehicular access to the premises by the emergency services;
 - 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 alcohol is sold, if different;
 - customer profile – for instance age, disability;
 - the use of special effects such as lasers, pyrotechnics, smoke machines and foam machines.
- 22.3. The following examples of control measures are given to assist applicants, having regard to their particular type of premises and/or activities:

- suitable and sufficient risk assessments, including compliance with the Fire (Scotland) Act 2005;
- 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;
- a prohibition on customers taking open bottles or drinking glasses outwith the areas to be subject to the premises licence.

24 23. Licensing Objective – Preventing Public Nuisance.

- 23.1. 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.
- 23.2. 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.
- 23.3. 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 to paragraph ~~47~~ 16.3 of this policy in this connection.
- 23.4. ~~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, **applicants need to be aware that the Board may apply stricter conditions, including controls on licensed hours.**
- 23.5. 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 depending on where the premises are situated or the likelihood of their becoming a source of antisocial behaviour. The Board will consider each case on its merits.

23.6. Applicants will be encouraged 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.

23.7. When addressing the issue of prevention of public nuisance, the following factors 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.

23.8. The following examples of control measures are given to assist applicants, 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;
- effective ventilation systems to prevent nuisance from odour and noise from air conditioning units.

25 24. Licensing Objective – Protecting and Improving Public Health.

- 24.1. ~~The Board is concerned about the link between the consumption of alcohol and public health which has been widely documented.~~ 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. The Board welcomes information provided by those bodies and intends to monitor the circumstances. The Board would welcome further research.~~
- 24.2. Applicants will be encouraged to demonstrate that suitable and sufficient measures have been identified and will be implemented and maintained to protect patrons' health.
- 24.3. 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. 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. Reference is made to ~~paragraph~~ **section 6** of this policy relating to conditions attaching to licences
- 24.4. The measures identified by an applicant may depend on the individual characteristics of the premises for which the licence is sought. The Board ~~would~~ **will** encourage applicants to consider steps which may assist in the promotion of this licensing objective.
- 24.5. 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. **Reference is made to section 25 of this Policy, which relates specifically to Protecting Children and Young Persons from Harm.**

- 24.6. Licence applicants, **licence holders**, 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.
- 24.7. 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.
- 24.8. The following examples of control measures are given to assist applicants, having regard to their particular type of premises and/or activities:
- making available information with regard to sensible drinking, the effects of excessive alcohol consumption and contact points where assistance is available to address problem drinking;
 - prominent display of informative signage in appropriate places within premises;
 - use of drink mats with sensible drinking messages;
 - use of posters in areas of circulation and toilet areas;
 - particular care to introduce measures designed to protect children's health while in or around premises;
 - provision of food on premises, so that patrons may eat at the same time as consuming alcoholic beverages, if they wish;
 - appropriate instruction, training and supervision of staff.

26 25. Licensing Objective – Protecting Children and Young Persons from Harm.

- 25.1. The Board will have particular regard to the views of the Orkney **Child Public** Protection Committee.
- 25.2. 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 and young persons. In determining any such application the risk of harm to children and young persons will be paramount.
- 25.3. 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 and young persons also have responsibilities.

- 25.4. Applicants may be encouraged to demonstrate that suitable and sufficient measures have been identified and will be implemented and maintained to protect children and young persons from harm, relevant to the individual style and characteristics of their premises and the licensable activities for which a licence is being sought. A written Age Verification Policy and appropriate signage should be in place.
- 25.5. Children and young persons 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 and young persons from harm, the applicant will be encouraged to demonstrate that those factors, which may particularly impact on harm to children and young persons 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 or offences against children or young persons;
 - there has been a known association with drug taking, drug dealing or other criminal activity on the premises; and
 - the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided there.
- 25.6. 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;
 - appropriate instruction, training and supervision of employees;
 - adoption of best practice guidance;
 - limitations on the hours when children and young persons 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 and young persons to be accompanied by an adult;
 - acceptance of accredited photographic proof of age cards, EU photographic driving licences, passports, Ministry of Defence Form 90 (Defence ID Card), Biometric Residents Permit or national identity card issued by an EU member state, Norway, Iceland, Liechtenstein or Switzerland;

- written Age Verification Policy and appropriate signage;
 - measures to ensure children and young persons do not purchase, acquire or consume alcohol;
 - measures to ensure children and young persons are not exposed to incidences of violence or disorder.
- 25.7. The Board requires applicants who submit operating plans including children and young persons 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.
- 25.8. The Board notes the statutory requirements relating to identification of areas where children and young persons will be permitted, the activities to be operated within those areas and the provision of baby changing facilities for children under five years of age (accessible to all carers).
- 25.9. In addition to those requirements, the Board also expects that holders of a premises licence which allows children and young persons entry to the premises will seek to ensure:
- that seating facilities for children and young persons, if appropriate, would be separate from normal licensed premises facilities;
 - whilst separate toilet facilities may not be available for use by children and young persons, if appropriate, disabled toilets would be adapted to encourage use by children and young persons, if appropriate;
 - that children and young persons should not be exposed to foul or intemperate language or behaviour;
 - provision of safe high chairs;
 - provision for heating of children's food at no cost;
 - that heating sources would be adequately protected;
 - that a menu would be available at all times when children were allowed on the premises with either a children's section or indicating that half portions were available for children; and
 - that no gaming machines would be situated in the part of the premises accessible to children except in accordance with the provisions of the Gambling Act 2005.

Appendix 1

Practice **Process** at Licensing Board Meetings

New. **Prior to the meeting starting**

- 0.1. At the time set for the meeting to begin, the Convener will confirm with the appropriate staff members that s/he is ready to begin recording/broadcasting the meeting.

New. **Attendance via Teams**

- 0.2. All members/officers attending by Teams should ensure their camera is switched on and their microphone muted.
- Should any member attending remotely wish to speak, please use the Raise your hand function.

New. **Once Meeting Commences and Recording Starts**

- 0.3. The Convener should remind members:

- New.
- That the meeting is being live broadcast over the internet and that the recording will also be publicly available for listening following the meeting for 12 months thereafter.
 - Any member who indicates they wish to speak, when invited to speak, should use the microphone, and switch off once finished.
 - That should a vote be required on any of the items, this will be done by a show of hands.

In Presence of Applicants and any Objectors

1. **The Convener will** identify all parties – applicant and agent (if any) and objector(s) and agent(s) (if any); also members of the Board and licensing staff.
2. **Should any participant, be that a Board member, an officer, applicant, agent or objector, be attending remotely, it is considered good practice to follow Orkney Islands Council's Standing Orders, including the Protocol for Remote Attendance (Appendix 4 of the Standing Orders). Accordingly, those attending remotely will be asked to confirm that they are in a secure location and cannot be heard by anyone in their vicinity, particularly when confidential information is being considered.**
- ~~2.~~ Licensing staff introduce report and cover any preliminary legal matters.
- 3.
- ~~3.~~ Applicants, objectors and their agents will be permitted to speak during the meeting in accordance with the points below, but such participation should normally be limited to 5 minutes in respect of each point below. The Board reserves the right to permit slightly longer participation in appropriate circumstances in each case.
- 4.
- ~~4.~~ Applicant/agent to be invited to speak.
- 5.

5. Objector(s)/agent(s) (in order if more than one) and the Board to be invited
6. to ask questions of the applicant/agent. Questions must relate to the spoken information at point 4 above and be asked through the ~~Chair~~ **Convener**.
6. Objector(s)/agent(s) (in order if more than one) to be invited to speak.
7. Presentation must not introduce new information and refer solely to the matters raised in the written objection.
7. Applicant/agent and the Board to be invited to ask questions of the
8. objector(s)/agent(s). Questions must relate to the spoken information at point 6 above and be asked through the ~~Chair~~ **Convener**.
8. Objector(s)/agent(s) in turn to be asked to sum up.
- 9.
9. Applicant/agent to be invited to sum up.
- 10.
10. Board to determine application.
- 11.

Appendix 2

Scheme of Delegation

1. The 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 Act:
 - 1.1. minor variation of premises licence, including variation to substitute new premises manager – where the applicant has not been convicted of any relevant or foreign offence and no objections or representations have been received (sections 29 to 31 and 54);
 - 1.2. transfer of premises licence – where the transferee has not been convicted of any relevant or foreign offence (reference to sections 33 to 35);
 - 1.3. confirmation of a provisional premises licence – where no objections or representations have been received (section 46);
 - 1.4. occasional licence – within the Board’s normal licensing hours policy (see ~~paragraph 20~~ section 19 of this policy) – where no objections or representations have been received, the Police have not lodged a notice recommending refusal of the application and any report by the LSO does not recommend refusal (reference to sections 56 to 61);
 - 1.5. extension of licensed hours – within the Board’s normal licensing hours policy (see ~~paragraph 20~~ section 19 of this policy) – where no objections or representations have been received, the Police have not lodged a notice recommending refusal of the application and the report by the LSO does not recommend refusal (reference to sections 68 to 70);
 - 1.6. personal licence or renewal of a personal licence – where the applicant has not been convicted of a relevant or foreign offence [relevant and foreign offences – the Licensing (Relevant Offences) (Scotland) Regulations 2007, SSI 2007/513, published at: <https://www.legislation.gov.uk/ssi/2007/513/contents/made>]
2. The Board has delegated to the Clerk (which includes such Depute or Assistants as may be appointed by the Clerk for the purpose) authority to take the following action under the Act:
 - personal licence – revocation in accordance with section 87(3) (failure to comply with mandatory refresher training requirements).
3. The Board has delegated to the Clerk (which includes such Depute or Assistants as may be appointed by the Clerk for the purpose) authority to determine the following description of application under the Act in consultation with those members of the Board who may be available by telephone or email at any given time and at no time less than five members:

- 3.1. occasional licence – outwith the Board’s normal licensing hours policy (see ~~paragraph 20~~ **section 19** of this policy) – where no objections or representations have been received, the Police have not lodged a notice recommending refusal of the application and any report by the LSO does not recommend refusal (reference to sections 56 to 61);
- 3.2. extension of licensed hours – outwith the Board’s normal licensing hours policy (see ~~paragraph 20~~ **section 19** of this policy) – where no objections or representations have been received, the Police have not lodged a notice recommending refusal of the application and the report by the LSO does not recommend refusal (reference to sections 68 to 70).

Note: The Clerk or Depute Clerks may elect not to use their delegated powers in a particular case, in consultation with the Chair and Vice Chair of the Board, in which circumstances the matter will be referred to the Board.

Appendix 3 Deleted

Licensing (Scotland) Act 2005 – Schedule 3

Mandatory Conditions attaching to Premises Licences

Interpretation.		
1.		“The premises” means, in relation to any premises licence, the premises specified in the licence.
Compliance with the operating plan.		
2.	(1)	Alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence.
	(2)	Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63(2).
3.		Any other activity to be carried on in the premises is to be carried on only in accordance with the operating plan contained in the licence.
The premises manager (this condition does not apply to members’ clubs).		
4.	(1)	Alcohol is not to be sold on the premises at any time when:
	(a)	there is no premises manager in respect of the premises;
	(b)	the premises manager does not hold a personal licence;
	(c)	the personal licence held by the premises manager is suspended, or
	(d)	the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises.
	(2)	In sub-paragraph (1), “appropriate licensing qualification” in relation to any licensed premises means any licensing qualification prescribed as such in relation to licensed premises of that description in regulations under section 91(2)(d).
	(3)	Nothing in sub-paragraph (1) or paragraph 5 is to be read as requiring the premises manager to be present on the premises at the time any sale of alcohol is made.
Authorisation of sales of alcohol (this condition does not apply to members’ clubs).		
5.		Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by:
	(a)	the premises manager, or
	(b)	another person who holds a personal licence.

Training of staff.		
6.	(1)	No person (other than a person who holds a personal licence) is to work in the premises in the capacity mentioned in sub-paragraph (2) unless that person has complied with such requirements as to the training of staff as may be prescribed for the purposes of this paragraph.
	(2)	That is a capacity (whether paid or unpaid) which involves the person:
	(a)	making sales of alcohol, or
	(b)	where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person.
	(2A)	At any time when a person (other than a person who holds a personal licence) is working in the premises in a capacity mentioned in sub-paragraph (2), there must be kept on the premises a training record which relates to that person and is in the form set out in the Schedule to the Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007.
	(2B)	A record kept on the premises under sub-paragraph (2A) must be produced to a Licensing Standards Officer on request.
	(3)	Regulations under sub-paragraph (1) prescribing training requirements may, in particular:
	(a)	provide for the accreditation by the Scottish Ministers of:
	(i)	courses of training; and
	(ii)	persons providing such courses,
		for the purposes of the regulations,
	(b)	prescribe different training requirements in relation to different descriptions of persons,
	(c)	require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualification as may be prescribed in the regulations, and
	(d)	require training to be undergone again at such intervals as may be prescribed in the regulations.
Pricing of Alcohol.		
6A.	(1)	Alcohol must not be sold on the premises at a price below its minimum price.
	(2)	Where alcohol is supplied together with other products or services for a single price, sub-paragraph (1) applies as if the alcohol were supplied on its own for that price.
	(3)	The minimum price of alcohol is to be calculated according to the following formula:

		$MPU \times S \times V \times 100$
		where:
		MPU is the minimum price per unit, S is the strength of the alcohol, and V is the volume of the alcohol in litres.
	(4)	The Scottish Ministers are to specify by order the minimum price per unit for the purposes of sub-paragraph (3).
	(5)	For the purposes of sub-paragraph (3), where:
	(a)	the alcohol is contained in a bottle or other container, and
	(b)	the bottle or other container is marked or labelled in accordance with relevant labelling provisions,
		the strength is taken to be the alcoholic strength by volume as indicated by the mark or label.
	(6)	The Scottish Ministers are to specify by order the enactments which are relevant labelling provisions for the purposes of sub-paragraph (5).
6B.	(1)	A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale on the premises.
	(2)	Sub-paragraph (1) applies:
	(a)	only where each of the alcoholic products is for sale on the premises separately, and
	(b)	regardless of whether or not the package also contains any item which is not an alcoholic product.
	(3)	In this paragraph, "alcoholic product" means a product containing alcohol and includes the container in which alcohol is for sale.
7.		Where the price at which any alcohol sold on the premises for consumption on the premises is varied:
	(a)	the variation (referred to in this paragraph as "the earlier price variation") may be brought into effect only at the beginning of a period of licensed hours, and
	(b)	no further variation of the price at which that or any other alcohol is sold on the premises for consumption on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.
7A.		Where the price at which any alcohol sold on the premises for consumption off the premises is varied:

	(a)	the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and
	(b)	no further variation in the price at which that alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.
Irresponsible drinks promotions.		
8.	(1)	An irresponsible drinks promotion must not be carried on in or in connection with the premises.
	(2)	Subject to sub-paragraph (3), a drinks promotion is irresponsible if it:
	(a)	relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18;
	(b)	involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks);
	(c)	involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink;
	(d)	involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises);
	(e)	encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume;
	(f)	is based on the strength of any alcohol;
	(g)	rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or
	(h)	offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.
	(3)	Paragraphs (c) to (e) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.
	(4)	The Scottish Ministers may by regulations modify sub-paragraph (2) or (3) so as to:
	(a)	add further descriptions of drinks promotions;
	(b)	modify any of the descriptions of drinks promotions for the time being listed in it, or
	(c)	extend or restrict the application of any of those descriptions of drinks promotions.

	(5)	In this paragraph, “drinks promotion” means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.
Provision of non-alcoholic drinks.		
9.	(1)	The conditions specified in this paragraph apply only to the extent that the premises licence authorises the sale of alcohol for consumption on the premises.
	(2)	Tap water fit for drinking must be provided free of charge on request.
	(3)	Other non-alcoholic drinks must be available for purchase at a reasonable price.
Age verification policy.		
9A.	(1)	There must be an age verification policy in relation to the sale of alcohol on the premises.
	(2)	An “age verification policy” is a policy that steps are to be taken to establish the age of a person attempting to buy alcohol on the premises (“the customer”) if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy).
	(3)	The condition specified in this paragraph does not apply in relation to any sale of alcohol which takes place on the premises merely by virtue of being treated, by section 139, as taking place on the premises.
Payment of annual or recurring fees.		
10.	(1)	The condition specified in sub-paragraph (2) applies only in relation to a premises licence in respect of which an annual or other recurring fee is to be paid by virtue of regulations under section 136(1).
	(2)	The fee must be paid as required by the regulations.
Notices: admission of persons under 18.		
11.	(1)	The condition specified in this paragraph applies only in the case of premises on which alcohol is sold for consumption on the premises.
	(2)	There is to be displayed so that it is reasonably visible to customers entering the premises a sign of at least A4 size which:
	(a)	states that persons under the age of 18 are not permitted on the premises; or
	(b)	states that such persons are permitted on the premises or on such parts of the premises as are specified on the sign.

Baby changing facilities.		
12.	{1}	The condition specified in this paragraph applies only in the case of premises:
	{a}	which are not:
	{i}	a vehicle;
	{ii}	a vessel;
	{iii}	a moveable structure; or
	{iv}	used wholly or mainly for the purposes referred to in section 125(1);
	{b}	on which alcohol is sold for consumption on the premises; and
	{c}	to which children under the age of 5 are to be admitted.
	{2}	There are to be on the premises facilities for baby changing which are to be accessible to persons of either gender.
Display, or promotion of the sale, of alcohol for consumption off the premises.		
13.	{1}	Subject to sub-paragraph (3), alcohol which is for sale only for consumption off the premises may be displayed only in one or both of the following:
	{a}	a single area of the premises agreed between the Licensing Board and the holder of the licence; or
	{b}	a single area of the premises which is inaccessible to the public.
	{1A}	Sub-paragraphs (1B) to (1D) apply where the premises, in so far as they are used for the sale of alcohol, are so used only or primarily for the sale of alcohol for consumption off the premises.
	{1B}	Any drinks promotion on the premises may take place only in any one or more of the following:
	{a}	an area referred to in sub-paragraph (1)(a) and (b),
	{b}	a room on the premises which is used for offering the tasting of any alcohol sold on the premises (for consumption off the premises) and the resulting tasting and is separate from those areas.
	{1C}	A drinks promotion in connection with the premises may not take place in the vicinity of the premises.
	{1D}	For the purposes of sub-paragraph (1C), the "vicinity" means the area extending 200 metres from the boundary of the premises (as shown on the layout plan).

	(2)	In an area agreed in terms of sub-paragraph (1)(a), a product other than alcohol may be displayed only if it is:
	(a)	a non-alcoholic drink;
	(b)	packaged with, and may be purchased only along with, alcohol,
	(c)	a branded non-alcoholic product, or
	(d)	a newspaper, magazine or other publication.
	(2A)	Sub-paragraph (2) is without prejudice to sub-paragraph (1B).
	(3)	This paragraph does not apply in respect of premises:
	(a)	whose main function is to provide a visitor attraction, and
	(b)	where:
	(i)	the premises form part of a larger site which is used principally for the production of alcoholic drinks, or
	(ii)	the visitor attraction is used principally to provide information about and promote the history and attributes of a particular alcoholic drink or a particular category of alcoholic drink.
	(4)	In this paragraph:
		“branded non-alcoholic product” means a product which does not consist of or contain alcohol and which:
	(a)	bears a name or image of, or
	(b)	is an image of,
		an alcoholic product (namely, a product consisting of or containing alcohol),
		“drinks promotion” means any activity which promotes, or seeks to promote, the buying of any alcohol sold on the premises for consumption off the premises but does not include the display of any product which is:
	(a)	a branded non-alcoholic product for sale on the premises, or
	(b)	a newspaper, magazine or other publication:
	(i)	for sale on the premises, or
	(ii)	if not for sale on the premises, which does not relate only or primarily to alcohol.

Appendix 4 / 3 Deleted

Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007

Published at: <https://www.legislation.gov.uk/ssi/2007/336/contents/made>

~~Condition 1 applies to all premises licences where the operating plan indicates opening beyond 1 a.m. on any day.~~

- ~~1. A person trained to the satisfaction of the licensing board in administering First Aid must be present on the premises from 1 a.m. (on any day when the premises are open at that time) until whichever is the earlier of:
 - ~~(a) the time at which the premises next close; and~~
 - ~~(b) 5 a.m.~~~~

~~The following conditions 2 to 6 apply to premises where it appears to the Board, based on the operating plan, that the premises have a capacity of at least 250 people and:~~

- ~~(a) will regularly provide at any time in the period between 1 a.m. and 5 a.m.:
 - ~~(i) live or recorded music with a decibel level exceeding 85dB;~~
 - ~~(ii) facilities for dancing; or~~
 - ~~(iii) adult entertainment; or~~~~
- ~~(b) when fully occupied, are likely to have more customers standing than seated.~~

~~The following types of premises are exempt from conditions 2 to 6:~~

- ~~(i) premises whose primary function is the provision of food;~~
 - ~~(ii) premises which include, or are part of larger premises which include, at least 6 letting bedrooms;~~
 - ~~(iii) premises which are the subject of a theatre or cinema licence;~~
 - ~~(iv) premises which are, or are part of, an art gallery.~~
- ~~2. A designated person who is the holder of a personal licence must be present on the premises from 1 a.m. (on any day when the premises are open at that time) until whichever is the earlier of:
 - ~~(a) the time at which the premises next close; and~~
 - ~~(b) 5 a.m. or such other time as the licensing board may specify.~~~~
 - ~~3. There must be written policies in existence concerning:
 - ~~(a) the evacuation of the premises; and~~
 - ~~(b) the prevention of the misuse of drugs on the premises.~~~~
 - ~~4. A CCTV system must be installed on the premises to the satisfaction of the appropriate chief constable and must be kept in good working order.~~

5. ~~There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.~~
6. ~~A person who holds a licence granted under section 8 of the Private Security Industry Act 2001 must be positioned at every entrance to the premises from 1 a.m. (on any day when the premises are open at that time) until whichever is the earlier of:~~
 - (a) ~~the time at which the premises next close; and~~
 - (b) ~~5 a.m. or such other time as the licensing board may specify.~~

Appendix 5 Deleted

Licensing (Scotland) Act 2005 – Schedule 4

Mandatory Conditions attaching to Occasional Licences

Interpretation.		
1.		“The premises” means, in relation to any occasional licence, the premises specified in the licence.
Compliance with licence.		
2.	(1)	Alcohol may be sold on the premises only in accordance with the terms of the licence.
	(2)	Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63(2).
3.		Any other activity to be carried on in the premises may be carried on only in accordance with the description of the activity contained in the licence.
Authorisation of sales of alcohol (this condition does not apply to members' clubs).		
4.	(1)	The condition specified in sub-paragraph (2) applies only to an occasional licence issued to the holder of a premises licence or personal licence.
	(2)	Every sale of alcohol made on the premises to which the licence relates must be authorised (whether generally or specifically) by the holder of a personal licence.
Voluntary organisations.		
5.	(1)	The condition specified in sub-paragraph (2) applies only to an occasional licence issued to a representative of a voluntary organisation.
	(2)	Alcohol may be sold on the premises only at an event taking place on the premises in connection with the voluntary organisation's activities.
Pricing of alcohol.		
5A.	(1)	Alcohol must not be sold on the premises at a price below its minimum price.
	(2)	Where alcohol is supplied together with other products or services for a single price, sub-paragraph (1) applies as if the alcohol were supplied on its own for that price.

	(3)	The minimum price of alcohol is to be calculated according to the following formula:
		$MPU \times S \times V \times 100$
		where:
		MPU is the minimum price per unit, S is the strength of the alcohol, and V is the volume of the alcohol in litres.
	(4)	The Scottish Ministers are to specify by order the minimum price per unit for the purposes of sub-paragraph (3).
	(5)	For the purposes of sub-paragraph (3), where:
	(a)	the alcohol is contained in a bottle or other container, and
	(b)	the bottle or other container is marked or labelled in accordance with relevant labelling provisions,
		the strength is taken to be the alcoholic strength by volume as indicated by the mark or label.
	(6)	The Scottish Ministers are to specify by order the enactments which are relevant labelling provisions for the purposes of sub-paragraph (5).
5B.	(1)	A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale.
	(2)	Sub-paragraph (1) applies:
	(a)	only where each of the alcoholic products is for sale on the premises separately, and
	(b)	regardless of whether or not the package also contains any item which is not an alcoholic product.
	(3)	In this paragraph, "alcoholic product" means a product containing alcohol and includes the container in which alcohol is for sale.
6.		Where the price at which any alcohol sold on the premises for consumption on the premises is varied:
	(a)	the variation (referred to in this paragraph as "the earlier price variation") may be brought into effect only at the beginning of a period of licensed hours, and
	(b)	no further variation of the price at which that or any other alcohol is sold on the premises for consumption on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.
6A.		Where the price at which any alcohol sold on the premises for consumption off the premises is varied:

	(a)	the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and
	(b)	no further variation in the price at which that alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.
Irresponsible drinks promotions.		
7.	(1)	An irresponsible drinks promotion must not be carried on in or in connection with the premises.
	(2)	Subject to sub-paragraph (3), a drinks promotion is irresponsible if it:
	(a)	relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18;
	(b)	involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks);
	(c)	involves the supply free of charge or at a reduced price of one or more measures of an alcoholic drink on the purchase of one or more measures of the drink;
	(d)	involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises);
	(e)	encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume;
	(f)	is based on the strength of any alcohol;
	(g)	rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or
	(h)	offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.
	(3)	Paragraphs (c) to (e) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.
	(4)	The Scottish Ministers may by regulations modify sub-paragraph (2) or (3) so as to:
	(a)	add further descriptions of drinks promotions;
	(b)	modify any of the descriptions of drinks promotions for the time being listed in it, or
	(c)	extend or restrict the application of any of those descriptions of drinks promotions.

	{5}	In this paragraph, “drinks promotions” means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.
Provision of non-alcoholic drinks.		
8.	{1}	The conditions specified in this paragraph apply only to the extent that the occasional licence authorises the sale of alcohol for consumption on the premises.
	{2}	Tap water fit for drinking must be provided free of charge on request.
	{3}	Other non-alcoholic drinks must be available for purchase at a reasonable price.
Age verification policy.		
9.	{1}	There must be an age verification policy in relation to the sale of alcohol on the premises.
	{2}	An “age verification policy” is a policy that steps are to be taken to establish the age of a person attempting to buy alcohol on the premises (“the customer”) if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy).
	{3}	The condition specified in this paragraph does not apply in relation to any sale of alcohol which takes place on the premises merely by virtue of being treated, by section 139, as taking place on the premises.

Appendix 3

Guide to Risk Assessments for Applications for Occasional Licences and Occasional Extensions

This document is designed to provide advice and assistance to applicants for Occasional Licences and Occasional Extensions with regard to carrying out a risk assessment exercise in terms of the 5 Licensing Objectives.

The Orkney Islands Area Licensing Board in its Statement of Alcohol Licensing Policy has indicated that a risk assessment should be undertaken before any application is made to the Board for an Occasional Licence or Extension.

The results of that risk assessment should then be exhibited to the Board, by every applicant, when making the application for an Occasional Licence or Extension under the Licensing (Scotland) Act 2005. By requiring applicants to undertake risk assessments the Orkney Islands Area Licensing Board is promoting the Licensing Objectives. Applicants will also promote the licensing objectives through any actions taken in response to their assessment.

The Licensing Objectives are:

- preventing crime and disorder;
- securing public safety;
- preventing public nuisance;
- protecting and improving public health;
- protecting children and young persons from harm.

In preparing this document we have sought to give applicants as much assistance with the process as possible. Each premises is unique and not all matters will be relevant to each premises.

The table overleaf includes a few examples of risk factors and possible control measures for a Country Dance. It is not meant to be a comprehensive approach. Applicants must conduct thorough analyses of their own practices and procedures and devise suitable control measures.

The risk assessment overleaf is only an example. The amount of detail you will need in your risk assessment will depend on your business and your activities.

The completed risk assessment will provide valuable information to the Board and demonstrate that applicants have taken these matters into account.

Examples of Licensing Objectives Risk Assessment.

Name of Event:

Date of Event:

Licensing objectives.	Crime and disorder.	Public safety.	Public nuisance.	Protecting and improving public health.	Protecting children and young persons from harm.
Risk Factors:	Customers getting hold of drugs. Fighting inside or outside premises. Under-age drinking.	Premises overcrowded. Inadequate fire safety procedures. Blocked escape routes. Excess heat build-up.	Noisy customers leaving premises – affecting nearby residents. Excessively loud music affecting nearby residents.	Drink driving, excessive drinking.	Under-age access might be an issue and the potential illegal sale of alcohol.
Control Measures:	Drugs, weapons and glass policies implemented. Good door-security. Proof-of-age policy.	Capacity checks. Regular testing of fire equipment and alarms and checking fire escape routes. Adequate ventilation system. Appropriate staff training.	Signs promoting considerate behaviour. Staff intervention/ assistance on customer departure. Nuisance audit. Sound insulation work to structure. Use of noise limiters.	Consideration has been given to the provision of alternatives to alcoholic drinks (including reasonably priced alternatives to alcohol) i.e. soft drinks, tea and coffee, food and non-alcoholic substitutes.	Good door security. Proof of Age card scheme. Signage supporting the above measures.

I confirm that a written Age Verification Policy is in place and has been signed by each person serving or selling alcohol; and that appropriate signage is in place.

Completed by:

Date:

YES / NO [delete as appropriate]

Completed by [print name]:

Signed by [signature]:

Completed on [print date]:

Version:

2018-12-06: Policy Adopted.

2023-06-01: Draft Policy for Consultation: Paragraph 8.4 wording amended from “it was not more likely than not” to “it was unlikely, on balance,”.

2023-10-05: Updated Draft Policy for Adoption.