

APPENDIX 1

CONSULTATION RESPONSES AND AMENDMENTS MADE

RESPONSES	AMENDMENTS/ACTIONS
Are off sales hours reasonable?	
Consider a clause in its policy regarding reducing certain off-sale hours in certain areas where there is a clear harm from alcohol abuse.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy has been amended to reflect that these are the maximum hours that may be granted.
Consider reducing standard off-sale hours in certain high risk areas and for the maximum permitted hours should be an exception rather than the norm.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy has been amended to reflect that these are the maximum hours that may be granted.
Too late in evening, particularly weekends.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy has been amended to reflect that these are the maximum hours that may be granted.
Too late in the evening.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy has been amended to reflect that these are the maximum hours that may be granted.
To retain section in the old policy entitled 'Lack of demand and duty to trade'	The Board agrees that there is no legal 'duty to trade' but expects Licence Holders to keep their trading hours under review and to seek appropriate Variations if these change significantly. This is now reflected in a new

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	section in the Policy.
Assumption that hours on a Sunday are 12.30 – 10pm.	This is incorrect. The statutorily permitted hours for off sales are now 10.00am to 10.00pm, 7 days a week.
Ridiculous that if shopping early that you cannot purchase alcohol.	The statutorily permitted hours for off sales are now 10.00am to 10.00pm, 7 days a week. The Board cannot grant hours in excess of these.
A responsible adult working shifts who cannot purchase alcohol at time which 'society' seems strange.	The statutorily permitted hours for off sales are now 10.00am to 10.00pm, 7 days a week. The Board cannot grant hours in excess of these.
Off-sale should be reduced to 9pm every evening.	The Board is prepared to permit off sales between 10.00am and 10.00pm but is mindful that these are the maximum hours to be granted and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this. The Policy will be amended to reflect that these are the maximum hours that may be granted.
Are on sale hours reasonable?	
Hours maybe reasonable depending on the circumstances. Setting a limit on the total number of hours for trading is an important measure.	The Board is prepared to permit on sales in accordance with its policy hours in most cases but is mindful that these may not always be appropriate and can be reduced in certain cases. The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this.
Supports applications for later licensed hours depending on facilities offered and location of premises. However, such premises should be monitored to ensure that alcohol related nuisance is minimised and conditions attached to licence if necessary.	The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this.
1am reasonable for younger element and if problems then surely Board can curtail time to midnight.	The Board would intend to deal with these circumstances as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this.
In Prestonpans all pubs/clubs are closed by 1am.	Noted
The words 'the available' should be re-added from beginning of line 3 of section 14.1 to make statement more accurate.	Accepted – this change has been made.
City centres and tourist orientated sites should be able to be licensed from 9am.	The Board deals with these applications as and when they arise. They currently have these powers in the legislation so it is not considered necessary to amend the policy to reflect this.

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<p>Do you agree with approach taken by the Board regarding the analysis of statistics to identify where there is overprovision in East Lothian?</p>	
<ul style="list-style-type: none"> • The experience and local knowledge of Licensing Board Members is an important source of evidence. • Suggest including statistical and expert opinion as well as any available local data. • Supports decision to declare Prestonpans and Whitecraig as overprovided and supports the proposal in identifying Musselburgh, Dunbar and Haddington, as potentially overprovided, based on the same approach. • Supports paragraph 17.3 in stating that the surrender of a licence does not automatically mean that there is capacity for a new licence. • Suggest an amendment to paragraph 17.3 to reflect that a licence application can be refused if it is considered that it will undermine any of the objectives and/or it will lead to or contribute to overprovision. • Would be useful to make it clear that a licence can be refused on overprovision ground even where there are no inconsistencies with the licensing objectives. 	<ul style="list-style-type: none"> • Noted. No amendment required. • Agreed – statistical and other evidence will be appended to the Policy • Board is yet to determine final approach to Overprovision • Noted. No amendment required • Reflects current case law but this may change over the period of the Policy. The Board will take account of most up to date case law at the time it reaches any decisions on this subject. No amendment required. • Reflects current case law but this may change over the period of the Policy. The Board will take account of most up to date case law at the time it reaches any decisions on this subject. No amendment required.
<p>The problem is with users of alcohol as opposed to the number of premises and the question is what will local councils do to resolve the growing problem, which may escalate.</p>	<p>The Board has only a limited remit in addressing the wider issue of alcohol misuse in Scotland. It is attempting to address local issues through the Overprovision Statement.</p>
<p>Acknowledge the Board was right to go down the route of an evidence-based overprovision policy.</p>	<p>Noted. No amendment required.</p>
<p>MELDAP endorses the approach taken by the Licensing Board.</p>	<p>Noted. No amendment required.</p>
<p>Judgement on overprovision should take into account the style and type of premises rather than simply the number.</p>	<p>There is no robust evidence as to which style and type of premises contribute more or less to alcohol related harm so this has not been a factor in the current Overprovision assessment. The Board intends to keep this issue under review over the period of the policy and may reflect these matters in the next version of its Overprovision statement.</p>

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These statistics are not related to over-provision, they are related to people concerned not the outlets.	The Board has only a limited remit in addressing the wider issue of alcohol misuse in Scotland. It is attempting to address local issues through the Overprovision Statement.
Do you agree it is reasonable to reject any new licence applications in the following areas – Prestonpans and Wallyford and Whitecraig?	
Evidence has been gathered that points to these areas being acutely affected by alcohol abuse.	Noted. No amendment required.
The problem is the users, not the premises. The 'users' will merely move to another premises.	The Board cannot address the actions of individual drinkers but is obliged to consider the question of Overprovision on a locality basis. No amendment required.
Data provided clearly shows impact of alcohol abuse and misuse in these areas.	Noted. No amendment required.
If overprovision is identified then it is reasonable to reject any new licence.	Noted. No amendment required.
Concerned that other businesses may not use premises available which mean empty premises. Perhaps another bar/restaurant is better than an empty space?	Noted. The Board has considered the possible economic impact when assessing overprovision but has given more weight to the alcohol related health and disorder impacts. No amendment required.
Agree. They have both clubs and pubs where some villages only have clubs and would need a pub.	Noted. No amendment required.
Do you agree that there should be a presumption against new licenses in the following areas – Dunbar, Haddington and Musselburgh?	
Any new licensee should be asked to explain in details how their application is not going to add to these issues.	Agreed. This would be required with any application in these areas. No amendment required.
The problem is the users, not the premises. The 'users' will merely move to another premises.	The Board cannot address the actions of individual drinkers but is obliged to consider the question of Overprovision on a locality basis. No amendment required.
Not supported by evidence. View is that there is an overprovision problem as a whole in East Lothian and that there should be a 'rebuttable presumption' against any new premises licences and increased capacity applications for the whole of East Lothian.	Board is yet to determine final approach to Overprovision
Small town, plenty of existing premises to serve the population adequately.	Noted. No amendment required.
Each case should be taken on its own merit. If the style and quality of the new premises will improve overall provision, this should be considered.	Each case will be considered on its own merits, in the context of a rebuttable presumption against new licences in these areas.
New premises may provide better services for	Each case will be considered on its own merits,

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customers, more jobs etc.	in the context of a rebuttable presumption against new licences in these areas.
IF overprovision indentified it is reasonable to reject any new licence applications.	Noted. No amendment required.
They have plenty of choice and the council need to encourage more than food and drink in these areas.	Noted. No amendment required.
Is there anything not covered that should be in the policy?	
Recommend that the Board carefully considers whether family-orientated events are appropriate for the sale of alcohol through Occasional Licences.	The Board has no discretion to refuse applications for Occasional Licences in the absence of an objection or representation. These events have not been regularly licensed in East Lothian in the past 6 years and there is no perception that this is a major issue in this area. No amendment required.
Would like reinstatement of details of Occasional Licences and the application process for them etc. Representatives of voluntary organisations may have no previous knowledge of licensing.	Agreed. This section has been reinstated in the Policy.
Unhappy of the exclusion of 'Management of Licensed Premises'. It makes clear that 'best practice' is to have a personal licence holder on site (where possible) and we do not want this statement lost.	Agreed. This section has been reinstated in the Policy.
Do you have any other comments?	
Consultation has been very accessible and clearly set out. It is a model for other Boards to follow. It is a strong statement and gives the Licensing Board the tools to respond to issues in the Board's area.	Noted.
<ul style="list-style-type: none"> Reference to 'Links to other policies and strategies' should be complemented with the specific detail and local context that applies to East Lothian, particularly the MELDAP Delivery Plan for 2012-2015. Good practice outlined for the 5 licensing objectives but would encourage clarification of the particular actions that the Board will undertake to promote them. Encourage the Board to specifically annex the evidence as to how the overprovision policy and overprovided areas were decided. 	<ul style="list-style-type: none"> Agreed. This section has been amended to add this link. The Board will consider these matters as applications arise as they do not consider there is a generic set of actions that will always be appropriate. Agreed – statistical and other evidence will be appended to the Policy
It is the individuals who have to be educated/corrected and not the owners of premises.	Noted. The Board cannot address the actions of individual drinkers. No amendment required.
<ul style="list-style-type: none"> The Overprovision sections are not 	<ul style="list-style-type: none"> Formatting and editing issues will be

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<p>numbered consistently with the rest of the document and are not referred to correctly in the Index.</p> <ul style="list-style-type: none"> • The references in Sections 9.4 and 12.3 to different sized glasses of wine should refer to different sized MEASURES. • Section 22.0 on LSO should be re-written in gender-neutral language. • There are some minor typos eg the misspelling of 'Saltire' in Section 21.3 and the wrong Appendix number being used in Section 21.5. 5. • The population of East Lothian was 98,170 in 2011 according to the GRO, not 82,000 as stated in Section 2.2 	<p>addressed in the final version.</p> <ul style="list-style-type: none"> • Agreed – this amendment has been made. • Agreed – this amendment has been made. • Formatting and editing issues will be addressed in the final version. • Agreed – this amendment has been made.
<p>Should be more of an incentive to open restaurant instead of just bars.</p>	<p>The Board has no control over what applications are made to it and can offer no incentives to applicants. No amendment required.</p>
<p>Would love another pub to open in Macmerry.</p>	<p>Noted. No amendment required.</p>
<p>POLICE COMMENTS</p>	
<p>The use of CCTV on premises is an important measure in complying with the licensing objectives and although the Board cannot make this a condition of the licence, it would be beneficial for the Board to support the use of such systems and encourage licensees to make use of these.</p>	<p>Agreed. An amendment has been made to reflect this.</p>
<p>The section on Occasional Licences should remain within the Policy as it is extremely useful. There should also be clarity in relation to these licences being applied for in the spirit of the legislation, such licences were intended for use to cover special events in unlicensed premises and not to be used to by-pass the need to obtain a full premises licence.</p>	<p>Agreed. This section has been reinstated in the Policy.</p>
<p>The section on Management of Licensed Premises should remain within the policy</p>	<p>Agreed. This section has been reinstated in the Policy.</p>
<p>The Policy should clarify that there is no 'duty to trade' as this could be used in an argument for obtaining a licence where overprovision may be an issue.</p>	<p>The Board agrees that there is no legal 'duty to trade' but expects Licence Holders to keep their trading hours under review and to seek appropriate Variations if these change significantly. This is now reflected in a new section in the Policy.</p>
<p>Supportive of the Overprovision statement but should consider new applications on a case by case basis. Should be clear that it is in relation to on and off sales premises and should be a</p>	<p>Board is yet to determine final approach to Overprovision</p>

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<p>rebuttable presumption against the grant of a new premises licence or increase in capacity of an existing premises.</p>	
<p>LSO COMMENTS</p>	
<p>Duty to Trade is a frequent topic during inspections. Would be beneficial to be able to refer to the policy on this issue.</p>	<p>The Board agrees that there is no legal ‘duty to trade’ but expects Licence Holders to keep their trading hours under review and to seek appropriate Variations if these change significantly. This is now reflected in a new section in the Policy.</p>
<ul style="list-style-type: none"> • Desirable that businesses be properly licensed and not run with Occasional Licences. In the spirit of the legislation such licences were intended for use to cover special events in unlicensed premises and not to be used to by-pass the need to obtain full premises licences. • Board should consider issuing a statement that applications will not generally be granted for activities which are predominately related to children’s events. 	<ul style="list-style-type: none"> • Agreed. This section has been reinstated in the Policy. • The Board has no discretion to refuse applications for Occasional Licences in the absence of an objection or representation. These events have not been regularly licensed in East Lothian in the past 6 years and there is no perception that this is a major issue in this area. No amendment required.
<p>Suggest that a link to the Local Licensing Forum’s website be included in the Policy</p>	<p>Agreed. This amendment has been made.</p>