

DRAFT

**East Lothian Licensing Board
Statement of Licensing Policy**

**In accordance with Licensing (Scotland) Act 2005
1 November 2013 – 31 October 2016**

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PART 1

INTRODUCTION

1.0 The Licensing (Scotland) Act 2005

1.1 The Licensing (Scotland) Act 2005 as amended (“the Act”) makes provision for regulating the sale of alcohol and for regulating licensed premises and other premises on which alcohol is sold.

1.2 Under the Act, Licensing Boards are responsible for considering applications for:-

- premises licences
- occasional licences
- provisional licences
- temporary licences
- personal licences
- transfer of premises licences
- variation of premises licences
- extensions of licensing hours

in respect of:

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

2.0 East Lothian Licensing Board

2.1 East Lothian Licensing Board (“the Board”) is the licensing authority for the local government area of East Lothian for the purposes of the Act.

The Board comprises six members, all of whom are elected members of East Lothian Council. The Board is responsible for the functions set out in paragraph 1.2 above within East Lothian.

2.2 East Lothian shares borders with the City of Edinburgh, Midlothian and Scottish Borders Councils and covers around 680 square kilometres benefiting from 82km of coastline. Around 82,000 people live with the area which stretches from the former mining parishes of Tranent and Prestonpans, and Musselburgh in the west to the fishing community of Dunbar in the east, from the tourist resorts, such as North Berwick on the Firth of Forth to the farming lands of Garvald and Whittinghame on the border with Berwickshire. The main administrative centre for East Lothian is based in Haddington.

3.0 The Licensing Objectives

3.1 The Act sets out the following five licensing objectives (“the licensing objectives”):-

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

3.2 The licensing objectives provide a basis for the administration of the licensing regime. They also provide potential reasons for refusal of an application for the grant or variation of a premises licence or an occasional licence. Breach of the objectives may provide grounds for reviewing a premises licence. Conditions attached to a premises licence or an occasional licence may be based on any one or more of the licensing objectives.

3.3 In exercising its functions under the Act, the Board must have regard to the licensing objectives. Details of how the Board will seek to promote the licensing objectives are set out in Part 2 below.

4.0 Statement of Licensing Policy

4.1 Section 6(1) of the Act requires every Licensing Board to publish every three years a statement of their policy with respect to the exercise of their functions under the Act. Section 7 of the Act requires each licensing policy statement published by a Licensing Board to 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.

4.2 The Board has published this policy statement in fulfilment of the requirements of sections 6 and 7 of the Act. Section 6(3)(a) of the Act also requires a Licensing Board, in preparing a licensing policy statement, to ensure that the policy set out in the statement seeks to promote the licensing objectives.

4.3 This policy statement shall be effective until **[enter date]**. It will be kept under review during that period. During that period the Board has the power under section 6(2) of the Act to publish a supplementary policy statement.

4.4 In preparing this policy statement, the Board has had due regard to the guidance issued by the Scottish Government.

- 4.5 This policy statement covers a wide variety of issues. However, it cannot cover every eventuality and it seeks to detail those factors which will influence the achievement of the licensing objectives. If matters arise which are not covered by this policy statement, the Board may publish a supplementary policy statement to cover such matters.
- 4.6 Section 6(4) of the Act requires the Board, in exercising its functions under the Act, to have regard to this policy statement. However, the Board will consider all applications on their own individual merits and it is open to an applicant to seek a decision from the Board which is inconsistent with the terms of this policy statement. Further, this policy statement will not override the right of any person to make representations on any application or seek a review of a premises licence where permitted to do so under the Act. Where persons seek a decision from the Board which is inconsistent with the terms of this policy statement, the Board expects them to fully address the issue of why the policy statement should not be followed.
- 4.7 This policy statement should be read in conjunction with the Act and all regulations made thereunder. It is designed to be a strategic policy statement, not an operational guide to the legislation.

5.0 Consultation on Statement of Policy

5.1 Section 6(3)(b) of the Act states that in preparing this statement of policy the Board must consult the following:-

- East Lothian Local Licensing Forum;
- if the membership of the Forum is not representative of all of the various membership categories, such persons as appear to the Board to be representative of the under represented categories;
- the relevant Health Board; and
- such other persons as the Board thinks appropriate.

5.2 The Board has consulted widely on this statement of policy in fulfilment of the requirements of section 6(3)(b). The consultation took place from **[enter date]** to **[enter date]**. A list of the parties consulted is contained in Appendix 2 to this policy statement. In finalising this policy statement appropriate weight has been given to the views of those who responded to the consultation.

6.0 Links to Other Policies and Strategies

- 6.1 The Board recognises its responsibilities under equalities legislation. The Board has an Equality Scheme which is part of East Lothian Council's Equality Scheme which can be viewed at www.eastlothian.gov.uk. The Board will at all times act in accordance with the public sector equality duties.
- 6.2 The Board will make arrangements to receive, when appropriate, reports on the needs of the local tourist economy for East Lothian to ensure that these are reflected in its considerations.

7.0 Tourism, planning and building standards

- 7.1 The Licensing Board will make arrangements to receive, when appropriate, reports on the needs of the local tourist economy for the area to ensure that these are reflected in their considerations.
- 7.2 Planning, building standards and licensing regimes will be properly managed to avoid duplication and inefficiency. An application for a premises licence must be from a business with planning consent for the property concerned.

PART 2

PROMOTION OF THE LICENSING OBJECTIVES

8.0 Overview

8.1 This Part 2 sets out the Board's general approach to the promotion of the licensing objectives. In relation to each licensing objective the Board has set out the general policy it will pursue in seeking to promote that objective.

8.2 In respect of each licensing objective, the Board has:-

- defined its intended outcome; and
- listed factors which, in its view, have an impact on the achievement of that objective.

Because of the wide variety of premises and activities to which this policy statement applies, these lists are not exhaustive. Applicants and licence holders will know their own premises best and will be expected to address all aspects relevant to the individual style and characteristics of their premises and the licensable activities for which they are seeking, or have obtained, authorisation.

8.3 The Board considers that effective and responsible management of licensed premises is key to securing consistency with the licensing objectives. In respect of each licensing objective, the Board has specified a list of measures ("control measures") which it commends to applicants and licence holders as worthy of consideration in seeking to secure consistency with that objective.

These lists are intended to assist applicants and licence holders but, again, are not exhaustive. Some control measures apply to more than one licensing objective.

8.4 Additional measures may be necessary on an occasional or specific basis such as when a special event is planned which is intended to, or likely to, attract larger audiences or audiences of a different nature.

9.0 Preventing Crime and Disorder

9.1 In carrying out its functions under the Act the Board will have regard to the likely impact licensed premises may have on crime and disorder.

9.2 The Board supports a strategy aimed at making East Lothian a safe place to live in and visit. The Board is committed to further improving the quality of life of people in East Lothian by playing its part in ensuring that licensed premises are run in such a way as not to contribute to crime and disorder.

9.3 Applicants and licence holders should be able to demonstrate that all factors which impact on crime and disorder have been considered. These include:-

- underage drinking, including agency purchases
- drunkenness on or around the premises

- illegal possession and/or use of drugs
- violent behaviour/public disorder
- antisocial behaviour
- drink driving
- litter

9.4 Suggested control measures include:-

- appropriate instruction, training and supervision of staff to include conflict management and preventing crime and disorder
- acceptance of accredited proof of age card schemes
- provision of effective CCTV in and around the premises
- security policies and regular toilet checks
- employment, when necessary, of Security Industry Authority licensed door staff
- proper management of people entering and leaving the premises
- active membership of Pubwatch or a similar scheme
- provision of litter bins and lighting outside the premises
- prominent display of material discouraging drink driving
- promoting awareness of schemes such as the designated driver scheme
- choice of size of glasses, particularly for wine

10.0 Securing Public Safety

10.1 The Board is committed to ensuring that the safety of any person visiting, or working in, or in the vicinity of, licensed premises is not compromised.

10.2 Applicants and licence holders should be able to demonstrate that all factors which impact on public safety have been considered. These may include:-

- the occupancy capacity of the premises
- the design and layout of the premises, including means of escape
- the nature of the activities on the premises
- the hours of operation
- customer profile (e.g. age, disability)

10.3 Suggested control measures include:-

- carrying out risk assessments
- provision of effective CCTV in and around the premises
- active membership of Pubwatch or a similar scheme
- employment of adequate numbers of suitably trained staff
- appropriate first aid facilities
- proof of regular testing and, where appropriate, certification of procedures, appliances and safety systems
- employment, when necessary, of Security Industry Authority licensed door staff

11.0 Preventing Public Nuisance

11.1 The Board believes that licensed premises can potentially have an adverse impact on communities as a result of public nuisance arising from their operation. The Board aims to protect and maintain the amenity of residents and occupiers of other business premises from any adverse consequences of the operation of licensed premises whilst also recognising the valuable cultural, social and business importance that such premises provide.

11.2 Although interpretation is ultimately a matter for the courts, the Board intends to interpret “public nuisance” widely to include such issues as noise, light, odour, litter and antisocial behaviour where these impact on the local community.

11.3 Applicants and licence holders should be able to demonstrate that all factors which might contribute to public nuisance have been considered. These include:-

- the location of the premises and the type of neighbouring premises
- the hours of opening
- the nature of the activities to be provided on the premises
- the occupancy capacity of the premises

11.4 Suggested control measures include:-

- appropriate instruction, training and supervision of staff to prevent incidents of public nuisance
- proper management of people entering and leaving the premises
- installation of sound proofing and sound limiting devices
- sound tests for equipment used in providing live or amplified music

- liaison with public transport providers
- effective ventilation systems to prevent nuisance from odour
- active membership of Pubwatch or a similar scheme
- provision of effective CCTV in and around the premises
- employment, when necessary, of Security Industry Authority licensed door staff
- management arrangements for the collection and disposal of waste and empty bottles

12.0 Protecting and Improving Public Health

12.1 The Board wishes to see responsibly managed licensed premises thriving in East Lothian but not at the expense of patrons' health and wellbeing.

One of the Board's priorities will therefore be the protection and improvement of the health and wellbeing of patrons of licensed premises. The Board will have regard to the views of any other bodies responsible for, or having an interest in, public health.

12.2 Applicants and licence holders should be able to demonstrate the measures which will be, or have been, put in place to protect public health.

12.3 Suggested control measures include:-

- displaying material discouraging drink driving
- making available information promoting moderate drinking along with awareness of units of alcohol and recommended guidelines
- having a workplace alcohol policy in order to raise awareness, minimise harm and ensure that staff are able to access help (without fear of job loss) when an alcohol related problem arises
- ensuring that customers are aware of choice in relation to alcohol measures, especially in the case of wine, e.g. small. medium and large glasses should be available
- ensuring that customers are aware of choice in relation to the strength of alcohol in drinks such as wine and beer
- availability of low alcohol alternatives
- providing contact details where assistance for alcohol related problems may be sought
- having in place a policy/practice to deal with patrons who have consumed excessive alcohol

12.4 Licence holders should have a clear understanding of the offences in connection with the sale of alcohol to a person who appears drunk and allowing drunkenness

on the premises

13.0 Protecting Children from Harm

13.1 The Board wishes to see family friendly premises thriving in East Lothian. It will welcome premises licence applications from those who wish to operate licensed premises which accommodate children. The Board recognises that additional responsibilities will be placed on such applicants whilst at the same time recognising that parents and other adults accompanying children also have responsibilities. In determining any such application the need to protect children from harm will be a major consideration and the Board therefore wishes to ensure that such premises are run in a way that is suitable for children.

13.2 The Board also takes very seriously the issue of underage drinking and wishes to remind licence holders that they and their staff must comply with all legislation in relation to children and young persons, including not selling, or allowing the sale of, alcohol to children and young persons.

13.3 Applicants and licence holders should therefore be able to demonstrate the measures which will be, or have been, put in place to protect children and young persons from harm.

13.4 Suggested control measures include

- appropriate instruction, training and supervision of staff
- appropriate measures to ensure that children and young persons do not purchase or consume alcohol on the premises (unless such consumption is permitted by a young person in terms of section 105(5) of the Act)
- appropriate checks for staff who will be working in premises where children and young persons will be present
- acceptance of accredited proof of age card schemes
- measures to ensure that children are not exposed to strong language, violence or disorder

It should be noted that the Board have imposed a Local Condition that in the interests of public safety, children must be excluded from an area of 1.5 metres from any bar servery in the premises.

PART 3

LICENSED HOURS

14.0 Off Sales

14.1 In terms of the Act, the sale of alcohol for consumption off the premises is not permitted before 10.00 am and after 10.00 pm. The Board's general policy is that licensed hours of 10.00 am to 10.00 pm each day are appropriate for off sales. Each off sales application will be assessed on its own merits against these licensed hours and the Board will wish to ensure that the licensing objectives are being promoted in such applications.

15.0 On Sales

15.1 For applications relating to premises licences and occasional licences, the Board's general policy on the licensed hours for the sale of alcohol for consumption on the premises is:-

11.00 am to 11.00 pm Monday to Wednesday (inclusive)

11.00 am to 1.00 am Thursday to Saturday (inclusive)

11.00 am to 12.00 midnight on Sunday

15.2 In formulating the on sale policy hours, the Board has taken account of the licensing objectives, Scottish Government Guidance under the Act and the provisions of the Act itself. The Board recognises that licensing hours are important to individual licensed premises but can have a wider impact for an area. Balanced against this, the Board does not wish to unnecessarily inhibit the development of thriving and safe evening and night time local economies which are important for investment, employment and tourism. The Board considers that the on sale policy hours are appropriate for East Lothian and represent a balance between the interests of the public, residents, licensed businesses and patrons of licensed premises.

15.3 Each application for a premises licence will be assessed on its own merits against the on sale policy hours appropriate to the type of activity for which a licence is being sought. Where an application is received requesting licensed hours exceeding 14 hours, the Board will require further information for the consideration of such applications and the Board will take into account the effect granting such a licence will have on the area.

15.4 Should an application be received in respect of opening earlier than 11am, the Board will expect the applicant to justify their request and demonstrate measures that promote the five licensing objectives.

15.5 Licence applicants seeking licensed hours which extend after 1.00 am should note that mandatory conditions will be imposed on the licence. These mandatory conditions are set out in regulations under the Act

15.6 The Board has an existing practice of permitting long licensed hours over the Christmas/New Year festive period. The Board will make an annual announcement, if it decides to do so, with any longer licensing hours they have agreed to permit to on-sales only. This will be announced publically at the meeting of the Board held in October of each year and advertised on the Licensing section of East Lothian Council website.

16.0 Extended Hours Applications

16.1 The Board may extend the licensing hours in respect of premises by a period not exceeding one month. The Board may do so in connection with:-

- a special event or occasion to be catered for on the premises; or
- a special event of local or national significance.

16.2 Each extended hours application will be assessed on its own merits. When the extended hours sought in respect of on sale premises fall outwith the on sale policy hours appropriate to the applicant premises, the applicant will require to demonstrate to the Board that there are good reasons for the hours sought and that the hours are appropriate in the circumstances. The applicant will require to provide the Board with sufficient information to enable a decision to be made in this regard. This information will include:-

- the hours sought;
- a description of the special event or occasion;
- the proposed activities to take place during these hours;
- when each activity will take place;
- why the event or occasion is considered to be special;
- why the event or occasion cannot take place within the on sale policy hours appropriate to the applicant premises.

PART 4

OVERPROVISION

17.1 Section 7 of the Act requires each Licensing Board's Statement of Policy to 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, having considered data regarding rates of alcohol related police incidents, alcohol related hospital admissions and information regarding the number, type and capacity of licensed premises in all areas of East Lothian, and having regard to the evidence of a correlation between the density of outlets and alcohol related problems, is of the view that there is overprovision of licensed premises in certain localities within East Lothian.

The localities concerned are as follows:

- Prestonpans (postcode areas EH.....)
- Whitecraig and Wallyford (postcode area EH....)

These localities have rates of alcohol related hospital admissions per 10,000 population that are above the average rate for Scotland and rates of alcohol related police incidents that are above the average rates for East Lothian. In addition, they currently have, or the Board considers that people living in these areas have easy access to, more licensed premises (a combination of on sales and off sales premises) than the average for a locality in East Lothian. Taking account of all these factors, the Board considers that the health and police statistics, combined with local knowledge about patterns of alcohol purchase and consumption combine to justify the decision to declare that there is overprovision in these localities. Accordingly, any application for a new premises licence or an increase in capacity of an existing licence within these localities will *prima facie* fall to be refused in terms of Sections 23(5)(e) and 30(5)(d) respectively.

17.2 In addition the Board has concerns about the level of provision in the following localities:

- Dunbar (postcode areas EH.....)
- Haddington (postcode areas EH.....)
- Musselburgh (postcode areas EH.....)

These localities have relatively high rates of alcohol related hospital admissions per 10,000 population and of alcohol related police incidents when compared to other areas within East Lothian. They also have, or the Board considers that people living in these areas have easy access to, more licensed premises (a combination of on sales and off sales premises) than the average for a locality in East Lothian. Taking all these factors in to account, the Board considers that there should be a rebuttable presumption against the grant of an application for a new premises licence or the increase in capacity of an existing premises licence within these localities.

17.3 Each application still requires to be determined on its own merits and there may be exceptional cases where an applicant can demonstrate that the grant of an application or the variation of an existing licence to increase capacity within one of these localities would not undermine the licensing objectives. The Board will expect applicants to provide robust and reliable evidence to support their application sufficient to demonstrate that the grant of their application would outweigh the presumption against grant in terms of this Overprovision Statement. The Board would expect to be addressed on each of the Licensing Objectives.

If an existing licence in any of the relevant localities ceases to be in force, this will not necessarily mean that there is capacity for a new licence in that locality. The localities identified are currently subject to overprovision and this may continue to be the case should a number of existing licences cease to be in force. Each application will be considered in the context of the statistics available to the Board at the time of the application.

PART 5
MISCELLANEOUS

18.0 Board Business

- 18.1 The Board will deal with its business in an open and transparent manner. Information and assistance will be made available to persons wishing to apply for a licence, make representations or lodge objections. Whilst Board staff will give advice, it should be understood that they will not complete applications or operating plans.
- 18.2 The Board is aware of the need to ensure that the licensing process is accessible to all. Assistance will therefore be available on request for those who require special arrangements to access any part of the process.
- 18.3 The Board will generally meet in the The Salitre Rooms, 1st Floor John Muir House, Haddington. In terms of Schedule 1 to the Act, Board meetings will be held in public
- 18.4 Where a hearing is to take place, the Board will attempt to make the process as informal as possible consistent with the carrying out of the Board's quasi judicial function.
- 18.5 The Board's aim is to provide a speedy, efficient and cost effective service to all parties involved in the licensing process. To this end, the Board has adopted a scheme of delegation to ensure that decisions are made in a manner which fulfils this aim. The scheme sets out decisions which may be made by the Clerk of the Board and other specified Board officers and is set out in Appendix 4 to this policy statement.

19.0 Licensing Standards Officers

- 19.1 A licensing standards officer is employed by East Lothian Council to exercise the functions set out in the Act. His role will involve guidance, mediation and compliance. He will work with the public and licensees in the promotion of the licensing objectives and in ensuring compliance with the Act. The Board recognises that the licensing standards officer plays a key role in the licensing regime.
- 19.2 Whilst the licensing standards officer is not in a position to give legal advice or make applications or objections on behalf of any party, he will be expected to advise both licence holders and the public on their rights and responsibilities.
- 19.3 The licensing standards officer's resources will be targeted at high risk premises and activities which require greater attention. A lighter touch will be employed in respect of low risk premises which are well operated.
- 19.4 The licensing standards officer will be a member of East Lothian Licensing Forum.

20.0 Members Clubs

20.1 The Board has agreed to attach 2 local conditions to the premises licence for a members club. These are as follows:

- The Police & Licensing Board to be notified of any change in office bearers within 14 days of such change.
- No more than 6 guests may be signed in by any one member

21.0 Excluded Premises

21.1 The Act states that an application for a premises licence must be refused if the subject premises are 'excluded premises'. Excluded premises are defined as motorway service stations and, with certain qualifications, garage premises.

21.2 Garage premises are not excluded if the applicant can demonstrate that the local residents in the locality are reliant to a significant extent for the premises to be a principle source of petrol or are used for the retail of groceries.

22.0 Outdoor Areas

22.1 Where an applicant proposes providing seating, tables or other facilities in any outdoor area (whether covered or not), the Board will assess the suitability of such area having regard to the licensing objectives, particularly those relating to preventing crime and disorder and preventing public nuisance. The Board reiterates that it considers effective and responsible management to be key in ensuring that such areas operate in a manner consistent with the licensing objectives.

22.2 In each individual case where an outdoor area is proposed, the Board will consider whether there should be a physical demarcation of the area, unless such demarcation already exists.

22.3 The Board's general policy is that there shall be no consumption of alcohol in any outdoor area after 10.00 pm on any day. As narrated elsewhere in this policy statement, every application will be considered on its own merits.

22.4 Licensing Law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are no longer on the licensed premises and beyond the direct control of the individuals, club or business holding the licence, certificate or authorisation concerned.

23.0 Smoking

- 23.1 The Board welcomes the legislation prohibiting smoking in enclosed public places. Licence holders have been effective in ensuring that patrons do not smoke within their premises. However, at times other issues can arise in the area around licensed premises such as noise nuisance, litter, disorder and smoke drift into neighbouring residences or back into the licensed premises.
- 23.2 The Board expects licence holders to have regard to good practice to ensure that patrons do not create a nuisance or disturbance for neighbouring residents. This includes noise arising as a result of patrons smoking outside the premises, smoke drift and litter becoming a nuisance to members of the public and obstructions that may be caused as a result of patrons standing in public areas.

APPENDIX 1

MAP OF EAST LOTHIAN LOCAL AUTHORITY AREA



APPENDIX 2

LIST OF CONSULTEES

East Lothian Local Licensing Forum

The Licensing Standards Officer

East Lothian Council in respect of planning, building standards and environmental health

Community Councils

Police Scotland

Scottish Fire & Rescue Service

Scottish Beer & Pub Association

Parent Councils throughout East Lothian

NHS Lothian

East Lothian Tenants and Residents Panel

MELDAP

ELVON

The public generally through East Lothian Council's website

APPENDIX 3

SCHEME OF DELEGATION

1.0 INTRODUCTION

- 1.1 This scheme of delegation sets out the powers under the Licensing (Scotland) Act 2005 delegated by East Lothian Licensing Board to the Clerk and Depute Clerk.
- 1.2 In any particular case where powers are delegated to an officer under this scheme of delegation, if it appears to them that it is appropriate for the power to be exercised by the Board itself then they shall be entitled to refer the case to the Board for the exercise of the power.

2.0 POWERS DELEGATED UNDER THE LICENSING (SCOTLAND) ACT 2005

- 2.1 The following powers are delegated to and exercisable by the Clerk or Depute Clerk:-
- Determining a premises licence variation application where the variation sought is a minor variation.
 - Determining an application for the transfer of a premises licence where the applicant has not been convicted of a relevant offence or a foreign offence.
 - Determining a personal licence application or a personal licence renewal application where the applicant has not been convicted of a relevant offence or a foreign offence.
 - Granting an application for confirmation of a provisional premises licence with no variation of licence conditions.
 - Determining an application for extended hours where no competent objections or representations are received or where such objections or representations have been withdrawn following discussion between the applicant and the party making the objection or representation.
 - Determining an application for an occasional licence where no competent objections or representations are received or where such objections or representations have been withdrawn following discussion between the applicant and the party making the objection or representation.
 - Determining an application for a variation of a premises licence under section 54(6) – no longer any premises manager specified in the licence.
 - Deciding whether or not to accept an application for a Review of a Premises Licence, in conjunction with two members.