

**Falkirk Council Licensing Board**

**Licensing (Scotland) Act 2005**

**Licensing Policy Statement**

**DRAFT**

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## 1. INTRODUCTION

1.1 Section 6 of the Licensing Scotland Act 2005 places a duty on all Licensing Boards in Scotland to publish a licensing policy statement every three years. The purpose of such a statement is to provide assistance to a Licensing Board in the implementation of the Act, decision making on, and administration of, the licensing of the sale and supply of alcohol within their areas and to outline the way in which Boards intend to exercise their functions under the Act. This statement fulfils that requirement for Falkirk Council Licensing Board.

1.2 **A paragraph is to be included with a description of the Falkirk area including population / number of wards/councillors and the range and number of licensed establishments. It may be considered appropriate to produce plans particularly for the consideration of overprovision issues.**

1.3 Falkirk Council Licensing Board must ensure that its policy stated herein seeks to promote the five licensing objectives set out in Section 4(1) of the Licensing (Scotland) Act 2005 which are as follows :-

- a) Preventing crime and disorder;
- b) Securing public safety;
- c) Preventing public nuisance;
- d) Protecting and improving public health; and
- e) Protecting children from harm.

The licensing policy statement should guide, at all times, the Board, its officers, licence holders and all persons involved in the control, management, operation and running of licensed premises and persons involved in the regulation of such.

1.4 This licensing policy statement has been prepared having regard to :-

- a) the licensing objectives noted above;
- b) the guidance for Licensing Boards and Local Authorities issued by the Scottish Government;
- c) the Scottish Government Plan for Action on Alcohol Problems Update and the accompanying partnership agreement between the alcohol industry and the Scottish Government; and
- d) the terms of the Licensing (Scotland) Act 2005 with particular reference to Section 6.

1.5 In preparing this statement, Falkirk Council Licensing Board consulted widely, including with the undernoted organisations and/or persons :-

- Falkirk Licensing Forum
- Central Scotland Licensed Trade Association
- British Entertainment and Dance Association
- Alcohol Focus Scotland

- BIIAB
- British Beer and Pub Association
- Existing licenceholders
- The Chief Constable of Central Scotland Police
- The Firemaster, Central Scotland Fire and Rescue Service
- Falkirk Council
- MP's and MSP's representing the Board's Area
- All Community Councils within the Board's Area
- Solicitors known to represent licence holders in the area

and had regard to all responses received.

- 1.6 This licensing policy statement will have effect from 30 November 2007 until 30 November 2010. This licensing policy statement will be kept under review. As considered appropriate, Falkirk Council Licensing Board may make necessary revisions in the course of the three year period to 30 November 2010. Such revisions will be by the issue of a supplementary licensing policy statement. Any such supplementary statements will be subject to appropriate prior consultation procedures.

## 2. **FALKIRK COUNCIL LICENSING BOARD**

### **General**

- 2.1 In exercising its functions under the Act, Falkirk Council Licensing Board will have regard to this Policy Statement.
- 2.2 The Board will consider each application and/or representations made to it on their own merits within the context of this Policy statement including whether or not an application conforms to any requirements set out therein. The Board expects that all applicants will be able to show how they intend to conform to the five licensing objectives set out in the Licensing (Scotland) Act 2005 and particularly how they will do so in the context of circumstances pertaining to the locality of the premises to which their application relates. Applicants will also require to take into account any relevant policy as set out in this statement.
- 2.3 The Board recognises that its licensing powers are not the main statutory mechanism for dealing with anti social behaviour and nuisance and will have appropriate regard to any other statutory systems of control which can be applied in circumstances where such may be considered to be necessary.
- 2.4 Falkirk Council Licensing Board will deal with all of its business in an open and transparent manner. Information and appropriate assistance will be made available to those persons who wish to apply for a licence, object to an application or make representations. **[Q Should procedure notes be made available on the Council's website ?]** The Board is aware of the need to ensure that the licensing process is accessible to all. Assistance will be available on request to those who require special arrangements to access any part of the process.

- 2.5 The Board has approved a Disability Access Policy (see Appendix XX) and will normally meet in the District Court, Falkirk or the Members Suite, Municipal Buildings, Falkirk where facilities are available for disabled persons.

### **Decision Making, Processes and Procedures**

- 2.6 Falkirk Council Licensing Board comprises 10 members appointed by Falkirk Council from those persons elected to serve as councillors on the Council. The quorum for meetings of the Board is five members. The Board is a separate legal entity from Falkirk Council and has its own procedures which are separate from those applicable to the Council and its committees.
- 2.7 The Board has various requirements it must adhere to in terms of article 6 of the European Convention for the protection of Human Rights and Fundamental Freedoms (incorporated into U.K. domestic law by the Human Rights Act 1998) including that it be an “independent and impartial tribunal”. Members of the Board will declare any interest at the outset of proceedings and will not participate in the consideration of any matter in respect of which there is either a conflict of interest or where they have had prior involvement either personally or in their capacity as a councillor if they feel that such prior involvement would compromise their impartiality.
- 2.8 The Board will aim to make proceedings at meetings of the Board as informal as possible so far as this is consistent with the quasi-judicial nature of its function. It recognises that persons appearing before it may have little or no experience of doing so and will seek to ensure, so far as possible, that all persons understand those proceedings.
- 2.9 The procedure for hearings and other proceedings before the Board will normally be conducted in the following manner. Firstly, submissions will be heard from, or on behalf of objectors, persons making representations or persons seeking reviews. Thereafter that person may be asked questions by the applicants or licensees or their representatives and then finally questions from Board members. Secondly, applicants or licensees or their agents will have an opportunity to make submissions to the Board followed by questions to them from or on behalf of the objectors, persons making representations or persons seeking reviews and finally again questions by Board members. Lastly, there will then be an opportunity for all parties in turn to make final submissions following the order of the submissions. The Board is entitled to adjourn to consider matters in private but will reconvene to resume consideration and/or make its decision before the parties concerned. If the Board has taken legal advice during any adjournment the Clerk will state what that advice was. **[Q Procedure note as above ?- to be discussed]**
- 2.10 It is not anticipated that in the normal conduct of its business the Board will require formal evidence to be called. The Board, however, notes that the Scottish ministers may make regulations under section 133 of the Act setting out procedures to be followed at any hearing where direct evidence is to be given by witnesses.
- 2.11 The Board will aim to provide an efficient and cost effective service to all those who are involved in the licensing process. Therefore, Falkirk Council Licensing Board has adopted a scheme of delegation of functions to ensure that decisions can be made in a way which is consistent with this aim. The

scheme of delegation of functions (contained in the undernoted paragraphs 2.14 and 2.16) sets out those decisions and matters which will be dealt with by the Board and those which will be delegated to the Clerk of the Board and/or officers.

- 2.12 The Board will aim to enhance and develop appropriate arrangements for the use of e-technology with regard to the submission and administration of applications and other documentation.

### **Delegation of Functions**

- 2.13 In terms of the Licensing (Scotland) Act 2005 Falkirk Council Licensing Board is responsible for the consideration of the following types of applications and matters:-

- premises licences;
- occasional licences;
- temporary licences;
- provisional licences;
- personal licences;
- variations of licences;
- review of licences;
- transfer of licences;
- extensions of licensing hours;
- the sale of alcohol by retail;
- the supply of alcohol in members clubs.

The Board is committed to decisions on licensing matters being taken in accordance with an approved scheme of delegation aimed at underlining the principles of timely, efficient and effective decision making.

- 2.14 In accordance with the requirements of paragraph 10 of Schedule 1 to the Act, those applications and matters which require to and will be submitted to the Board are as follows:-

- a. a premises licence application;
- b. a premises licence variation application where the variation applied for is not a minor variation;
- c. an application for the transfer of a premises licence where the applicant has been convicted of a relevant offence or a foreign offence;
- d. a personal licence application or a personal licence renewal application where the applicant has been convicted of a relative or a foreign offence;
- e. conducting any hearing including the issuing of a written warning, revoking or suspending a licence, making a variation of a licence or, in respect of a personal licence, making an order revoking, suspending or endorsing a personal licence;
- f. making of a closure order and

- g. refusal an application for confirmation of a provisional premises licence.
- h. refusal of an occasional licence
- i. refusal of an occasional extension

2.15 All other matters are delegated to the Clerk to the Board to deal with, including:-

**[Should there be any other delegations to either a) a member of the Board b) any committee established by the Board or d) any member of staff as allowed on said para 10 ?]**

- a) all applications for the transfer of a premises licence where the applicant has not been convicted of a relevant offence or a foreign offence;
- b) all applications for the variation of a premises licence where the variation is a minor variation, which means :-
  - i. any variation of the layout plan which does not result in any inconsistency with the operating plan;
  - ii. where, under the operating plan, children or young persons are allowed entry, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises;
  - iii. any variation of the information contained in the licence relating to the premises manager including substitution of a new premises manager;
- c) all applications for personal licences or for the renewal of personal licences where the applicant has not been convicted of a relevant offence or a foreign offence;
- d) all applications for occasional licences where there is no notice of objection or representation or no notice from the Chief Constable recommending refusal;
- e) grant of occasional extensions of licensed hours for a special event of local or national significance (following consultation with the Convenor of the Board).
- f) grant of extended hours applications where the Chief Constable has not submitted an objection.

### **3. PROMOTION OF THE LICENSING OBJECTIVES**

#### **Overview**

3.1 The following sub-sections set out the Board's policy relating specifically to the five licensing objectives:

- preventing crime and disorder



- securing public safety
  - preventing public nuisance
  - protecting and improving public health
  - protecting children from harm
- 3.2 In each section relating to the objectives, the Board has defined its intended outcome. Each section lists the influencing factors on the achievement of that objective but, because of the wide variety of premises and activities to which this policy applies, the lists provided are not exhaustive. Applicants will know their premises best and will be expected to address all aspects relevant to the individual style and characteristics of their premises and the licensable activities for which they are seeking a licence.
- 3.3 In each sub-section, a list of possible control measures is provided, to be of assistance to applicants, but again is not intended to be an exhaustive list. Many control measures achieve more than one objective but have not necessarily been listed under each objective. Some control measures are reproduced as possible model conditions in Appendix XX.
- 3.4 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.
- 3.5 The Board considers that the applicant should provide in the operating plan details of the arrangements for effective and responsible management of the premises and for instruction, training and supervision of staff. This is considered to be an essential control measure for the achievement of all the licensing objectives.

### **Preventing Crime and Disorder**

- 3.6 Falkirk Council Licensing Board is committed to improving the quality of life for people residing in its area and will seek to ensure that licensed premises are operated in such a way as not to contribute to crime and disorder. Responsibility is also placed on licence holders to be key partners in achieving this objective.
- 3.7 The Board is aware that a great deal of the alcohol fuelled violence and anti-social behaviour dealt with by police in the Falkirk area occurs in the vicinity of off-sales. Applicants should be aware that the Board may apply conditions to off-sales which are located in areas where these problems have been identified and may restrict the hours of operation of such premises for off-sales to hours less than the 10.00am to 10.00pm trading hours permitted under the Act. The Board will consider each case on its own merit.
- 3.8 Applicants for premises licences should be able to demonstrate that they will implement and maintain appropriate and robust policies, procedures and practices to address all the factors that impact on crime and disorder, including:-

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

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

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

3.10 Close circuit television makes a significant contribution to addressing antisocial behaviour across the Falkirk area. In recent years extensive investment in public space CCTV across the area has assisted in the identification and prosecution of criminals and provided reassurance to residents. With a network of [ ] cameras, CCTV cameras are a vital part of the Council's strategy to tackle antisocial behaviour as well as contributing to the development of safer communities. These cameras are designed both to deter and to detect anti social behaviour.

3.11 The Board is aware of the proposals by Scottish Ministers in particular 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

may consider conditions which go beyond those proposed by Scottish Ministers. In particular the Board may require CCTV to be installed in and around certain off sales premises. Reference is made to paragraph [ ] of this policy in connection with off sales premises.

- 3.12 Falkirk Council made byelaws prohibiting the consumption of alcohol in designated public places which came into effect on 5 January 1998. These were adopted as part of the overall strategy to make safe all the public areas within the Falkirk Council area. The text of the byelaws is produced as **Appendix 1. [ Note the relevant plans have still to be scanned, reduced and reproduced ]**

### **Securing Public Safety**

- 3.13 Falkirk Council Licensing 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 and will seek to ensure that the operators of licensed premises implement appropriate robust policies, procedures and practices and, where appropriate, provide and maintain all necessary facilities, preventative measures and equipment.
- 3.14 The Board has agreed to indicate that whilst at this time it does not wish to introduce a policy relating to the use of toughened glass or polycarbonate drinks containers for specific types of premises particularly those where there is a significant amount of vertical drinking, it recognises that the presence of glass in certain premises can pose a risk to public safety through violence or accidental injury.
- 3.15 When addressing the issue of public safety, an applicant must demonstrate that those factors which impact on standards of public safety have been considered. These include:
- the occupancy capacity of the premises
  - the standard of maintenance of the building having regard to its age and the design and layout of the premises, including the means of escape in the event of fire
  - the structural stability and integrity of the premises
  - the nature of the activities to be provided, in particular the sale or supply of alcohol and the provision of music and dancing, including whether those activities are of a temporary or permanent nature
  - the hours of operation differentiating the hours of opening from the hours when licensable activities are provided, if different
  - customer profile for instance age, disability
  - the use of special effects such as lasers, pyrotechnics
  - counter terrorism measures
  - provision of facilities for the hygienic service of food (including alcohol).
- 3.16 The following examples of control measures are given to assist applicants who may need to take account of them in their operating plan, having regard to their particular type of premises and/o licensable activities:-

- the provision and effective maintenance of an appropriate CCTV system as proposed at para [ ] under the Heading for the previous licensing objective and as proposed in the model conditions in Appendix 2. Where premises are mainly involved in off-sales, such provision will include at least one camera covering the till area in a manner where both members of staff and customers involved in the purchase of alcohol can be clearly identified at all times.
- the provision in vertical drinking premises of sealed containers of a substantial construction for the disposal of bottles. Such containers should be of a type where items deposited cannot be retrieved by patrons once placed in the container.
- suitable and sufficient risk assessments
- 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.
- evacuation procedures for the event of fire or discovery of suspect package or device or vehicle.

### **Preventing Public Nuisance**

- 3.17 Falkirk Council Licensing Board is committed to protecting and maintaining the amenity of residents and occupiers of other business premises from potential adverse consequences of the operation of licensed premises whilst at the same time recognising the valuable, cultural, social and business importance that such premises provide. The Board intends to interpret 'public nuisance' widely having regard to the impact varying forms of nuisance can have on those living, working or otherwise engaged in normal activity in an area or locality.
- 3.18 The Board recognises that many occurrences of crime and disorder as well as public nuisance occur at or immediately after the terminal hour for the supply of alcohol and is of the view that effective policies for the dispersal of patrons will be evidence of good practice.
- 3.19 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.
- 3.20 When addressing the issue of prevention of public nuisance, the following facts are relevant:

- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices, care homes and places of worship
- the hours of opening, particularly late at night or early in the morning
- 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 and proximity of taxi ranks
- the wind down period between the end of the licensable activities and the closure of the premises
- the last admission time
- provision of catering establishments.

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

- effective and responsible management of premises
- appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, for instance to ensure that customers leave quietly
- control of operating hours for all or parts of the premises, for instance garden areas, including deliveries and disposal of glass
- adoption of best practice guidance
- installation of soundproofing, air conditioning, acoustic lobbies, sound limitation devices and other mitigation measures including keeping doors and windows closed.
- 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
- dispersal policy – Specifically the Board anticipates that where premises have in excess of a **(to be determined)** capacity or where entertainment is provided such measures would include limiting the amount of alcohol sold just before the terminal hour, making sure patrons know well in advance that the last time for purchasing alcohol is approaching, adjusting

lighting, reducing tempo and volume of musical entertainment, inspection of all areas by stewards and external patrols of premises by stewards.

### **Protecting and Improving Public Health**

- 3.22 Falkirk Council Licensing Board is concerned about the link between the consumption of alcohol and public health. The Board wishes to see premises thriving in the area, but this cannot be at the expense of patrons' health and wellbeing. The Board will have regard to the views of the relevant bodies responsible for, and interested in, the protection and improvement of public health in the area. It will take advice from those relevant bodies.
- 3.23 A major concern about excessive alcohol consumption is its impact on people's health. There is ignorance of the advisable daily and weekly units of alcohol which may be consumed which are that men should not regularly drink more than 3 to 4 units a day and that women (excluding pregnant women) should not drink more than 2 to 3 units a day. There is also ignorance of the number of units in commonly consumed drinks. The Board is of the view that licence applicants, door supervisors where employed, premises managers, as well as other staff employed in the premises, must remain vigilant at all times to the risks of excessive consumption and that there should be established practice within 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.
- 3.24 The Board notes that in terms of schedule 3 of the Act, applicants must provide a wide selection of reasonably priced non alcoholic beverages during the whole period the premises are open. Applicants are encouraged to provide food on the premises, so that patrons may eat at the same time as consuming alcoholic beverages if they wish.
- 3.25 Applicants will be expected to demonstrate in their operating plan that suitable and sufficient measures have been identified and will be implemented and maintained to protect patrons' health. This will include such measures as making available information with regard to sensible drinking, the effects of excessive alcohol consumption and contact points where assistance can be obtained for problem drinking. The Board is also concerned to ensure that in those premises where, in addition to the sale of alcohol, food is also provided, that the highest of standards are maintained at all times in regard to food safety. Should the Board receive information regarding failure by operators to do so it may regard this as being grounds for the review of a premises licence.

### **Protecting children from harm**

- 3.26 Falkirk Council Licensing Board supports the development of family friendly premises within its area and will encourage applications that make venues family friendly and safe for children. The Board expects that applicants for licences for such premises will fully understand the additional responsibility that this will place upon them and that this will be reflected in the respective

operating and layout plans, facilities provided and the policies, practices and procedures implemented by operators whilst at the same time recognising that parents and other adults accompanying children also have responsibilities. The Board considers that the protection of children from harm includes protection of children from moral, psychological and physical harm. This would cover exclusion of children from serious gambling, lap or pole dancing or other sexually orientated entertainment whether live or on screen.

The Board will have particular regard to this objective when:-

- there have been convictions of staff or licence holders for serving alcohol to underage persons or where premises are in an area where there is a history or other evidence of underage drinking;
- there is a serious element of gambling within the premises (including premises with more than two category C machines);
- entertainment of an adult or sexual nature is provided;
- the operating plan shows that the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the service provided (referred to as vertical drinking establishments);
- licence holders or staff have criminal convictions for offences against children or have otherwise been found unsuitable to work with children.

3.27 The Board wishes to state its support for Test Purchasing schemes and to indicate that any failure of a Test Purchase would be seen as grounds for review of a premises licence.

3.28 The Board further wishes to state that it will not be minded to grant a licence for internet or telephone sales which includes the storage of alcohol at domestic premises due to this being inconsistent with the protecting children from harm objective.

3.29 The following examples of control measures are given for the assistance of applicants. The Board anticipates that in their operating plans applicants will be able to take account of a combination of the following matters:-

- measures to secure the safety of children such as Disclosure Certificates for staff working within the premises or employed as stewards;
- effective and responsible management of premises;
- appropriate instruction, training and supervision of staff;
- adoption of best practice, including a written policy on prevention of sales of alcohol to children;
- limitation on the hours when children may be present, in all or parts of the premises;
- limitations or exclusions by age;

- acceptance/
- acceptance of accredited proof of age schemes or photographic driving licences or passports;
- measures to ensure children do not purchase, acquire or consume alcohol;
- measures to ensure children are not exposed to incidences of strong and offensive language, violence or disorder; and
- use of fixed fire guards on open fires and prohibition of mobile heaters when young children are in the premises.

#### **4. TYPES OF LICENCE**

##### **Premises Licences**

- 4.1 The Board will consider applications for premises licences as required in terms of the Act or any regulation made there under where it is intended that alcohol is to be sold whether for consumption on or off the premises. The Premises Licence will govern the activities which are allowed to take place on the premises and the hours when the premises can be open for business. Premises licences will be tailored to the specific premises concerned. Applicants seeking such licences will require to provide a description of the premises, an operating plan, and a layout plan of the premises. Such plans will require to comply with the Act and any Regulation made thereunder.

##### **Provisional Premises Licences**

- 4.2 The Board will consider applications in relation to premises which are being constructed or converted for use as licensed premises. A provisional premises licence has no effect until confirmed by the Licensing Board. The licence requires to be confirmed within two years, otherwise it will automatically be revoked. This two year period can be extended if the construction or conversion work of the premises is delayed for reasons outwith the control of the licence holder. Section 47 of the 2005 Act makes further provision in respect of temporary premises licences and this applies where any licensed premises are undergoing, or are about to undergo, reconstruction or conversion. On application to the Licensing Board, the licence holder can obtain a temporary premises licence in respect of other premises within the Board's area, provided that the other premises are suitable for use for the sale of alcohol and the Board is satisfied that it is necessary to grant the application to enable the applicant to carry on business pending reconstruction or conversion of the principal premises. Such temporary licence has effect for a maximum period of two years and is subject to the same conditions as those to which the principal premises licence is subject. The two year period can be extended for a maximum further period of twelve months on application by the licence holder.

##### **Personal Licences**

- 4.3 The Board will consider applications for personal licences as required in terms of the Act or any Regulation made thereunder. This will normally relate



only to applications from persons residing in the Falkirk Council area although the Act makes provision for applications to be made by certain other persons.

- 4.4 The Board will work closely with Central Scotland Police to establish whether applicants have been convicted of any relevant offence. Where the police have advised that an applicant has an unspent conviction for a relevant offence, the Board will consider whether or not the application should be refused under the Act. In making a decision the Board will have regard to the seriousness and age of the conviction along with any other circumstances it considers relevant.

### **Occasional Licences**

- 4.5 The Board will consider applications for occasional licences authorising the sale of alcohol on premises which are not licensed for the sale of alcohol. Applications for occasional licences may be made by :-

- The holder of a premises licence.
- The holder of a personal licence.
- A representative of any voluntary organisation.

- 4.6 The Board considers that, in general, fund raising events and other activities by organised community groups, concerts, dinners, dances, discos, dinner dances, wedding receptions and other commemorative parties where a disco or band for dancing is provided are all acceptable for the granting of occasional licences.

## **5. APPLICATIONS**

### **Operating Plans**

- 5.1 An "operating plan" in relation to any premises is a document in the prescribed form containing:-

- (a) a description of the activities to be carried in the premises
- (b) a statement of the times during which it is proposed that alcohol be sold in the premises;
- (c) a statement as to whether the alcohol is to be sold for consumption in the premises, off the premises, or both;
- (d) a statement of the times at which other activities, in addition to the sale of alcohol, are to be carried out in the premises;
- (e) where alcohol is to be sold for consumption in the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are allowed entry, a statement of the terms on which they are allowed entry including, in particular:-
  - (i) the ages of children or young persons to be allowed entry;
  - (ii) the time at which they are to be allowed entry; and

- (iii) the parts of the premises to which they are to be allowed entry;
- (f) information as to the proposed capacity of the premises;
- (g) prescribed information about the individual who is to be the premises manager; and
- (h) such other information in relation to the premises and the activities to be carried on as may be prescribed.

Where alcohol is to be sold both for consumption in and for consumption off any premises, the operating plan for the premises may state different times for:-

- (a) the sale of alcohol for consumption in the premises; and
- (b) the sale of alcohol for consumption off the premises.

- 5.2 In preparing and presenting the operating plan, applicants should be aware that the Board will require to be satisfied that the premises are to be run in a way compliant with, and promoting, the five licensing objectives and will expect the operating plan to say how each of the objectives will be achieved. In respect of each of these therefore the Board will expect applicants to provide evidence that suitable and sufficient measures, as detailed in their operating plan, will be implemented and maintained, relevant to the individual style and characteristics of their premises and activities. Reference will also require to be made to additional measures to be taken on an occasional or specific basis, such as when a special event or promotion is planned, which is likely to attract larger audiences.
- 5.3 The Board suggests that in order to reduce the likelihood of religious, homophobic or racial hatred, applicants should include a statement in their operating plan to the effect that they intend their premises to be inclusive, regardless of a person's gender, sexuality, race or religion. Applicants should also seek to encourage an acceptable standard of dress among patrons which would not be inflammatory or incite disorder. This may include a reference to football colours.
- 5.4 The Board will further expect operating plans to have regard to the nature of the area where the premises are situated, the type of premises, the activities to be provided, operational procedures and the concerns of the local community. The Board will also expect the plan to demonstrate how it is intended that the premises will be good neighbours both to residents, to other venues and businesses.
- 5.5 In terms of the Act, Falkirk Council may itself make applications for premises licences. When this is the case, the Board and its officers will consider the matter from an entirely neutral standpoint. If relevant representations are made, they will be given full and equitable consideration by the Board.
- 5.6 The Board will not accept any premises licence application which fails to satisfy the requirements of Section 20 of the Act and any regulations made under the Act. Any such application will be returned to the applicant.

### **Layout Plans**

- 5.7 The layout plan of the premises should conform to the terms of the Act or any regulation made thereunder and show, among other things, the area where

alcohol will be sold, seating arrangements and areas suitable for children. Each area should be clearly delineated including any beer gardens, outdoor seating areas, smoking areas. Inclusion of any outside areas will avoid any doubts when it comes to bye-laws concerning the consumption of alcohol in public places. Where the premises covers more than one floor then there should be a layout plan for each floor. Off sales plans should clearly show all areas where alcohol will be displayed for the purpose of sale. This should include seasonal variations if additional areas are used at certain times. The Board expects plans as far as possible to be to the prescribed scale and of good quality. Inadequate plans may be rejected. The Board will accept plans in paper or electronic format. Paper plans should be of a size no larger than A3 for ease of conversion to electronic format. For ease of distribution and security applicants are requested to note that wherever possible electronic format should be .pdf. Other types of specialist application, like .cad, or general applications prone to manual alteration should not be used. In addition the Board would like electronic format files to remain under 4 megabytes in size.

### **Notification of Application**

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

### **Objections and Representations**

- 5.9 The new licensing system allows anyone to object to or make representations to a Licensing Board about any application for a premises licence.
- 5.10 An objector opposes the grant of a licence - objectors should address the statutory grounds including the licensing objectives.
- 5.11 A person making a representation is not concerned with the issue of a licence in principle. A representation is concerned with the conditions or the suggestion of possible modifications support of an application.
- 5.12 The Board will reject what it considers to be frivolous or vexatious objections or representations and may seek to recover any expenses incurred by the Board in considering the notice.

## **6. CONSIDERATION OF IMPACT/TOURISM**

- 6.1 When considering whether any licence should be granted, the Board will assess the likelihood of it having an adverse impact. The Board will take into account relevant matters including:
- the nature of the premises, the style and type of use, the potential number and profile of the customers likely to attend the premises
  - the proposed hours of operation

- the 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
- 6.2 Arrangements will be made for the Board to receive, when appropriate, reports on the needs of the local tourist economy for the area to ensure that the Board take note and reflect on these needs in the consideration of applications.

## **7. CONDITIONS**

- 7.1 Board acknowledges the mandatory conditions laid down in Schedules 3 and 4 of the Act and is aware that other conditions remain under discussion. Appropriate use will be made of all such conditions.
- 7.2 The Board has the opportunity of adding conditions to licences in addition to any statutory conditions.
- 7.3 The Board recognises that all applications should be considered on their own merits. Any condition attached to a licence will either be derived from the licence holder's operating plan, or as a result of a representation and will be tailored to each individual premises.
- 7.4 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.
- 7.5 The Board believes that it would be helpful for applicants to offer 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 own assessment has determined such prohibition or restriction to be appropriate, such volunteered prohibition or restriction if accepted will become a condition attached to the licence and will be enforceable as such
- 7.6 To assist applicants, and in the interests of consistency, the Board has prepared the model conditions detailed in **Appendix 2** to this Statement which have been drafted in recognition that any such condition should not duplicate other legislation or have the effect of making an existing mandatory or pool condition more onerous. The conditions must not be regarding as standard conditions which are to be automatically imposed, as they are

designed to be a range of possible conditions. These model conditions may be used with or without modification and the Board will draw upon these model conditions to impose conditions where this is considered necessary, appropriate and proportional. The Board may devise further conditions if considered necessary.

- 7.7 The Board welcomes comments in the course of the consultation on this document on any additional model conditions it may consider in addition to the mandatory and discretionary conditions laid down in regulations.

## **8. FORMS AND FEES**

Forms are available on Falkirk Council's website by following this link:

\*\*(link to be inserted when forms available on website)

Details of the fees are also available on Falkirk Council's website by following this link:

\*\*(link to be inserted when fee available on website)

## **9. OPERATING HOURS**

- 9.1 The Board expects that all applicants for licensed premises will consider hours of trading to be an important issue when preparing their operating plans. In particular the Board notes the duty to trade contained in the Act. Applicants should not overestimate their trading hours just in case they may be required, as this may precipitate a review of the licence.
- 9.2 In its approach to hours of trading the Board will distinguish mainly commercial town centres from mainly residential non town centre areas. In determining the hours of trading, the Board will give full consideration to the Scottish Executive guidance under the Act and to the provisions of the Act itself.
- 9.3 Each case will be dealt with according to its individual circumstances. The Board will deem 14 hours continuous trading in any 24 hour period to be reasonable. The Board will not normally grant hours beyond midnight outwith town centre areas on any day of the week. The Board will not normally grant hours beyond 2.00 am within town centre areas on weekdays and 3am on Fridays and Saturdays. Function rooms, for private functions only, wherever located will normally have a terminal hour of 1.00 am. Premises may have differing terminal hours for different parts of the premises.
- 9.4 Applicants wishing to trade before 10.00am and beyond 1.00am will have to show that they have taken account of all the following matters ;-
- the impact their patrons may have after leaving their premises, taking into account the likely exits of patrons from nearby licensed establishments
  - 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 and karaoke, 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
  - 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, 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.
- 9.5 The Board further considers that it would be extremely difficult for any applicant to justify the sale of alcohol prior to 10.00am and after 3.00am unless there are exceptional circumstances.
- 9.6 Late opening will be considered as opening beyond 12.00 midnight. Such premises will be subject to mandatory late opening conditions and the Board may attach further conditions. The later a premises wishes to trade, the more the Board will expect applicants to demonstrate measures that promote the licensing objectives and justify the request for later hours.
- 9.7 Premises which wish to open after 1.00am will be subject to a curfew. This will prevent customers who intend to drink alcohol past 1.00am from drifting between premises and/or remaining on the streets with the potential for anti-social behaviour and public nuisance. The Board is of the opinion that the curfew should be in place from 12.00am and customers should not be admitted to premises after this time. The Board will allow an extra hour of trading for all premises from the first Thursday in December of each year until 3 January each year for premises holding *bona fide* festive functions at which meals and/or entertainment is being provided. On these nights, the curfew referred to previously will be 1.00am.
- 9.8 The Board will expect licence holders who wish to trade late on the Sunday night preceding a Monday local holiday to apply for an occasional extension of hours.

For the avoidance of doubt the local holidays referred to are:-

**(to be detailed)**

- 9.9 Premises licensed for off sale only, will be subject to the statutory hours of 10.00am to 10.00pm daily. The Board however does have powers to restrict these hours if it considers it to be necessary to meet the licensing objectives.
- 9.10 The Board is of the view that when preparing operating plans there may be merit in applicants giving consideration to the principle of winding down periods at the end of the night. By gradually increasing the lighting and winding down entertainment such as loud music before ending the sale of alcohol and the end of trading hours, thereby creating a calmer ambience,

patrons leaving the premises may be inclined to behave less boisterously after they have left the premises. In addition patrons may be inclined to leave the premises spasmodically in small groups on a gradual basis rather than simultaneously.

- 9.11 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, additional public nuisance disorder or anti social behaviour, and where licensed premises include external areas. Where the circumstances relating to a particular premises dictate, the Board may impose different restrictions on hours for different premises and for different days of the week in order to achieve the licensing objectives.
- 9.12 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 caused or exacerbated by customers departing from the premises.
- 9.13 The Board is of the view that by adopting an approach which is sufficiently flexible, it is possible to ensure that restrictions on the hours of trading will only be applied where this is necessary in order to promote the licensing objectives.

## **10. OVERPROVISION**

### **Occupancy Capacity**

- 10.1 The Board's responsibilities in relation to overprovision are clearly defined in the Act and attached Regulations although it will not be able to properly address the issue until full information becomes available on the matter of over capacity. However, the Board is of the view that the current wide availability of alcohol and in particular from those premises specialising in off-sales raises concerns that this ease of access is inconsistent with the Licensing Objectives and contributes to the excessive and irresponsible drinking seen in communities on a daily basis. Accordingly, the Board may use its discretion to prevent the further proliferation of licensed premises generally unless good reason can be shown why there is an unmet demand in an area.

### **Occupancy Capacity**

- 10.2 The occupancy capacity of premises is an important factor in the assessment of overprovision. Except for off sale premises, the occupancy capacity for premises and for events is important in the achievement of the five licensing objectives. The Board will set maximum occupancy limits to ensure the safety of persons in the premises and safe escape in the case of an emergency. If there are additional concerns about crime and disorder or public nuisance, the Board may consider setting a lower maximum occupancy limit than that recommended by building standards officers.
- 10.3 The Board has concerns about the potential for so called vertical drinking establishments. Particular attention will be paid to any applications for a premises licence which demonstrates that large numbers of patrons will be

provided only with standing accommodation. It is considered that likely levels of disturbance and public nuisance caused by the number of licensed premises in a locality may be exacerbated where those premises have very high capacity levels. The Board will not look favourably on such applications and is of the view that a minimum provision of seating should be made available of 25% of the occupancy capacity of the premises.

- 10.4 The determination of a capacity should not be interpreted as a requirement to always provide permanent monitoring arrangements such as door staff or attendance clickers, to verify the number of persons present. The Board recognises that premises managers should be able to assess occupancy levels without resort to such measures. Operating plans should address the issue of how occupancy levels will be monitored on busy evenings such as at weekends and special events/promotions.

### **Review of Premises Licences**

- 10.5 A licence may be reviewed on the application of any person on the grounds specified in section 36 of the Act. A review may include consideration being given to the suspension, revocation or variation of a licence or alternatively to the issue of a written warning. If a premises licence review application does not disclose any matter relevant to any ground for review or if it is vexatious or frivolous the Board will reject it.

### **Enforcement/Licensing Standards Officers**

- 10.6 Falkirk Council will employ Licensing Standards Officers (LSOs) to investigate allegations of unlicensed activities, to ensure that licence conditions are complied with, and to provide information and guidance and a mediation service.
- 10.7 There is a firm commitment to ensuring that the LSOs are fully trained and that they will be enabled to carry out their functions efficiently, including participating as members of Falkirk Council Licensing Forum. Resources will be targeted towards high-risk premises and activities that require greater attention. Officers will work in co-operation with Central Scotland Police and there will be sharing of data between these parties as provided for in the relevant Data Sharing Protocol between Central Scotland Police and the Local Authority. Falkirk Council delivers a wide range of enforcement services aimed at safeguarding the environment and the community. The enforcement of the licensing regime is one of these services. The Council is committed to the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.
- 10.8 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. Proportionate but firm action will be taken against those who commit offences.
- 10.9 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 cooperation with the police and to share information where appropriate in order to enhance the promotion of the five licensing objectives.



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## **11. ADULT ENTERTAINMENT**

- 11.1 The Board will expect applicants who propose to offer adult entertainment to show evidence of having given consideration to the promotion of all the licensing objectives, in particular those relating to the protection of children, the prevention of crime and disorder and the prevention of public nuisance.
- 11.2 Where premises licence applications include adult entertainment in the planned activities, the Board will have particular regard to the location of the premises in relation to places of religious worship, schools, youth clubs or other premises where significant numbers of children are likely to congregate.
- 11.3 The Board recognises the potential for exploitation, abuse and human trafficking associated with the sex industry. With that in mind, those who operate for the purpose of adult entertainment must maintain a register of their 'performers', including their date of birth and address and a photograph and make this available at any time for the Police to inspect without warrant.
- 11.4 The Board will expect licence holders to ensure that "performers", while outside the premises smoking, do not cause a nuisance to neighbouring residents, businesses and/or the public.

## **12. OFF SALES**

- 12.1 Applicants for premises licences for the sale of alcohol for consumption off the premises, will be expected to address the five licensing objectives in their operating plans. The Board will monitor developments in the area of test purchasing and will take enforcement action where necessary. Consideration will be given to establishing a standard condition relating to proof of age, without which no sale will be made. On cause shown the Board may consider restricting the terminal hours of off sales premises taking into account all the licensing objectives.
- 12.2 Every application will be treated on its merits but the Board will have particular regard to applications for premises licences for domestic premises. The Board is inclined to the view that such applications are inappropriate insofar as the applicant will not be able to fully comply with the licensing objectives, in particular protecting children from harm or to provide what the Board regards as proper storage for the alcohol offered for sale. As previously indicated at paragraph 3.25, the Board will not be minded to grant applications for internet sales which include storage of alcohol at domestic premises.

## **13. BEER GARDENS**

- 13.1 The Board recognises a growing trend for outside seating areas in licensed premises. The Act allows the consumption of alcohol off the premises in these areas. However Falkirk Council operates Bye-laws which prohibit the consumption of alcohol in public places. with two main exceptions, 1) where the area is licensed and 2) where the area forms part of the public pavement and there is in place a permit to occupy the pavement, granted by Falkirk Council roads service. This latter exception allows only the consumption of alcohol outside and not the sale.

- 13.2 The Board will expect any licence holder who intends to provide outside seating, tables, or other facilities to hold a licence which includes the outside area. Where the premises do not currently include such an outside area the Board will expect licence holders to apply for a new licence. Applicants who propose to provide outdoor areas, should ensure that their use will not cause disturbance or nuisance to the occupiers of other premises in the vicinity. These areas should be shown on the layout plan and will be taken into account in the overall assessment, particularly in relation to exits and sanitary facilities.
- 13.3 Falkirk Council operates a scheme whereby a permit may be applied for to occupy the footway with tables and chairs. This scheme is operated under the Roads (Scotland) Act 1984. The Board expects that licence holders will not only comply with any conditions attached to such a permit 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.

#### **14. UNDER 18'S**

- 14.1 Certain licensed premises have, in the past, held events on the premises catering only for customers who are under 18 years of age. Previously during these events the licence holder would have ensured that no alcohol was sold or was on display. Under the Act licence holders are under a new duty to trade. The Board considers this will have the effect of prohibiting the holding of such events during the hours

#### **15. PREMISES MANAGER**

- 15.1 The Board recognises that there is no requirement in the Act for a premises manager or personal licence holder to be present on licensed premises at all times. However the Board expects either a premises manager or other personal licence holder to be present on the premises for sufficient periods to ensure personal supervision of the premises and considers this to be no less than 50% of the licensed trading hours of the premises other than during occasional periods when a licence holder may be on holiday. It would be seen as good practice to have a personal licence holder present at all times, including holiday periods and periods when the premises licence holder is absent through ill-health.

#### **16. MEMBERS CLUBS**

- 16.1 Members clubs are non-profit making with a constitution and limited access to members of the public. Each club in submitting an application for a premises licence should also submit a copy of its current constitution.
- 16.2 The Board expects clubs to reflect certain operational requirements in their constitution and may impose conditions on a premises licence to that effect on the following matters (though not limited to):-

- that the business and affairs of the club shall be under the management of a committee or governing body who shall be elected for not less than one year by a general body of members.
- that the committee or governing body shall hold periodic elections and meetings.
- that correct accounts and books shall be kept showing the financial affairs and intrusions of the club.
- that no member of the committee or governing body and no manager or staff employed in the club shall have any personal interest in the sale of alcoholic liquor in the premises or in the profits arising from.
- that there shall be a definable subscription payable in advance by members of the club.
- that no persons shall be allowed to become honorary or temporary members of the club or be relieved of the payment of the regular entrance fee or subscription, except those possessing certain qualifications defined in the constitution.
- that a maximum of 3 visitors per member shall be permitted in the club premises provided they are signed into the club by that member into a book kept for that purpose by the club.

## 17. **OTHER POLICIES, STRATEGIES & LEGISLATION**

- 17.1 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 Falkirk Council.
- 17.2 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a Convention Right. The Board will have particular regard to the following relevant provisions of the European Convention on Human Rights in respects 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 his private and family life, his home and his correspondence.
- 17.3 The Disability Discrimination Act 1995 introduced measures to tackle discrimination encountered by disabled people in certain Areas including employment, access to goods, facilities and services. The Board has adopted a Disability Equality Scheme and Action Plan under the said 1995 Act. It is subject to review every three years. **[Should there be reference to the Gender Equality Policy which is presently under consideration?]**
- 17.4 The Board recognises its responsibilities under the Race Relations Act 1976 and Sex Discrimination Act 1975. The impact of this Policy on race relations

will be monitored through the Board's Race Equality Scheme. The impact of this Policy on sex discrimination will be monitored through the Board's Gender Equality Scheme.

**18. TRANSPORT**

- 18.1 Over time the Board will develop arrangements with Central Scotland Police and Licensing Standards Officers for reporting concerns to Falkirk Council Roads and Transportation Service.

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**MODEL CONDITIONS**

1. The applicant is required to consult with Central Scotland Police Community Safety Department at the design stage, prior to detailed planning consent being applied for. Consideration must be given to incorporating the Secured By Design initiative into any such development. *(Applicable to new-build or refurbished premises applying for provisional grant under S45 )*
2. A digital CCTV system which complies with current legislative requirements covering all areas of the premises available to the public must be fitted and maintained in full working order in accordance with guidance provided by the Information Commissioner and to the satisfaction of the Chief Constable of Central Scotland Police. Should any CCTV footage be required by the police this must be provided without delay.
3. All sales of alcohol must be entered through a till with a facility to print itemised sales. Any such till must have a date and time facility and must be maintained in proper working order at all times. A print-out of relevant sales must be provided to police or a Licensing Standards Officer at any reasonable time.
4. A notice no less than A4 size must be displayed in a prominent place near to all exits from the premises with the following wording: "Respect Our Neighbours - Please Keep Noise to a Minimum on Leaving these Premises."
5. Display of alcohol in off-sales premises must be done in a responsible manner. The following would not be considered to comply with this requirement:
  - Displays located at the entrances/exits of the premises
  - Displays located in aisles which interfere with customer flow
  - Displays at or near check-outs
6. The premises are required to take-up membership of the PubWatch scheme operating in the area and participate fully in its operation including the effective sharing of information.
7. The premises manager must implement a Dispersal Policy in conjunction with Central Scotland Police in order to minimise disorder and public nuisance caused by persons leaving the premises at the terminal hour.
8. A minimum ratio of 1 steward to 40 patrons must be maintained at all times with an appropriate mix of male and female stewards. All stewards must be SIA licensed and a register of the stewards on duty maintained at all times. All incidents dealt with by stewards must be entered in a log book which should be made available for inspection by police or licensing standards officers at any reasonable time. *(Applicable to premises providing entertainment)*
9. The licence holder is required to co-operate fully with any initiative run by Central Scotland Police or their partner agencies as may be reasonably requested by them in the pursuance of any of the Licensing Objectives. Such schemes may include but are not limited to bottle marking, display of materials, provision of information.