

## **APPENDIX 3**

### **SUPPLEMENTARY POLICY STATEMENT 4**

## Supplementary Policy 4: Operating Hours

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### Operating Hours

- 4.1 The Board does not wish to inhibit unnecessarily the development of a thriving and safe evening and night-time local economy, which is important for investment, employment and tourism.
- 4.2 The Board considers that the operating hours set out in this Supplementary Policy Statement meet the needs of businesses to routinely trade, while, at the same time, not impacting on the needs of the community in such a way that would be detrimental to compliance with the five licensing objectives.
- 4.3 Licensed hours, and trading hours, must be detailed in the operating plan of every premises. Operating hours will be made up of core hours and regular seasonal variations. The Board expects Applicants to be able to anticipate all such regular variations.
- 4.4 The Licensing (Scotland) Act 2005 (“the 2005 Act”) makes it very clear that routine, 24-hour opening is **NOT** allowed. The **Statutory Guidance** makes clear that where licensed hours exceed 14 hours, further consideration is required by the Board to take account of such extra hours.

### Off-Sales

- 4.5 For applications relating to premises licences and to occasional licences, the maximum licensed hours for the sale of alcohol for consumption off the premises (off-sales hours) are **10.00 a.m. to 10.00 p.m.**, each day. **The Board has no discretion to permit licensed hours outwith these times.** In determining applications and licensed hours within these times, the Board will, in considering the merits, have particular regard to the effect (if any) which the proposed off-sales hours would have in promoting the licensing objectives.
- 4.6 There is no entitlement to a grant of maximum trading hours for off-sale premises. The hours granted by the Board to off-sale premises should reflect the hours routinely operated at the premises. There will be flexibility to build in extended or reduced trading to reflect seasonal variations, such as the Festive Season, or public and local holidays.

### On-Sales

- 4.7 While each application is assessed on its own merits, the following section sets out the Board’s policy on licensed hours within Aberdeenshire. The Board has opted to have one policy covering Aberdeenshire as a whole, replacing the policies covering the former Divisions of North, Central and South Aberdeenshire.

- 4.8 Applicants or Licence holders wishing to apply for hours which fall outwith the terms of the Board's Policy, or that exceed 14 hours duration, will require to demonstrate to the Board that the additional requested hours are appropriate in the circumstances and will not be inconsistent with the licensing objectives.

**The Board recognises that the hours contained herein will only apply to applications made after the Policy takes effect. It will not affect hours on existing licences unless the licence holder wishes to vary the terms of their premises licence to conform to the hours set in this policy.**

#### Opening Hours

- 4.9 For applications relating to premises licences, including extensions of hours, the licensed hours for the sale of alcohol for consumption on the premises ("on-sales hours") the Board considers the commencement of the sale of alcohol would not normally be earlier than 10.00 a.m.
- 4.10 The Board will consider extending the commencement of the sale of alcohol in premises from 10.00 a.m. to 9.00 a.m. under certain circumstances (e.g. tourism, provision of food etc).
- 4.11 There are mandatory conditions that apply to premises licences and occasional licences granted by the Board. These are set out in Schedules 3 and 5 to the 2005 Act. The Board may also attach local conditions to such licences. The earlier a premises wish to open, the more the Board will expect Licence holders to demonstrate measures that promote the licensing objectives and justify the request for the early hours. The Board further considers that it would be difficult for any application to justify the sale of alcohol before 9.00 a.m. unless there are exceptional circumstances.

#### Terminal Hour

- 4.12 Licensed hours for on sales premises in particular can have an impact, not only within the individual premises, but also within the locality in which the premises are situated.

Considering the 5 licensing objectives, the presumption against 24-hour drinking and the **Statutory Guidance**, the Board considers the following to be appropriate for the terminal hour beyond which alcohol **must not** be sold on the premises or part(s) of the premises:

<b>Nightclubs etc.</b>	<b>Sunday to Thursday</b>	<b>2.00 a.m.</b>
	<b>Friday and Saturday</b>	<b>3.00 a.m.</b>
<b>Other On-Sales Premises</b>		<b>1.00 a.m.</b>

- 4.13 Premises open after 1.00 a.m. will be subject to mandatory late opening conditions

and the Board may attach further conditions. The later a premises wishes to open the more the Board will expect Licence Holders to demonstrate measures that promote the licensing objectives and justify the request for the late hours. The Board further considers that it would be difficult for any application to justify the sale of alcohol after 3.00 a.m. unless there are exceptional circumstances.

<b>Premises Licences</b>	<b>Applicants should refer to Appendix 2 – Local Conditions 12 to 17.</b>
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<b>Festive Hours</b>
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- 4.14 **The Board wishes to make it clear that the Festive Season hours should be accounted for within the Seasonal Variations section of the Operating Plan and should not be the subject of extended hours applications.**
- 4.15 On-sale premises (other than nightclubs) may open until **01.30 a.m.** on the following dates:-

<b>Friday and Saturday preceding the 25<sup>th</sup> of December.</b>
<b>24<sup>th</sup> to 26<sup>th</sup> of December inclusive.</b>
<b>Friday and Saturday preceding the 31<sup>st</sup> of December.</b>
<b>1<sup>st</sup> of January.</b>

- 4.16 Such premises may also open on the **31<sup>st</sup> of December until 3.00 a.m.**

<b>Premises Licences</b>	<b>Applicants should refer to Appendix 2 Local Conditions 38 to 42.</b>
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<b>Occasional Extensions</b>
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- 4.17 An Occasional Extension of permitted hours can be granted to a Licence Holder to extend the operating hours for a specific premises licence but only where the Board considers it appropriate to do so in connection with –
- (a) A special event or occasion to be catered for on the premises, or
  - (b) A special event of local or national significance.

Whether an event meets the criteria set out at (a) and (b) above will be a matter for the Board to determine on a case-by-case basis.

<b>Extended hours have effect for the period specified in the application or other such period as the Board consider appropriate, but must not exceed the period of one month.</b>
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- 4.18 The Board will not normally grant extended hours in relation to requests for the types of entertainment provided for within the operating plan of the premises. For example, if the operating plan specifies live bands as a normal activity, extended hours for a specific band playing at the premises will be rejected as not being a special event to

be catered for on the premises, or being an event of local significance.

- 4.19 Occasional extensions should be a rare occurrence, most types of entertainment and the hours relating thereto being capable of being catered for within the operating plan attached to the premises licence.
- 4.20 Licence Holders seeking licensed hours for times outwith the Board's policy, will require to demonstrate to the Board that the additional requested hours are appropriate in the circumstances and will align with the five licensing objectives.
- 4.21 Licence Holders **shall** provide the Board with sufficient information to enable a decision to be made. This will include:

The hours sought.
The description of the special event or occasion.
What activities are proposed to take place during those hours.
When each activity will take place.
How the request complies with the Licensing Objectives

- 4.22 The Board has complete discretion as to whether to grant the application taking into account any objections and representations. The Board may hold a hearing for the purpose of determining any application, but this is not mandatory. Where the Board does not hold a Hearing, the Board will ensure that, before determining the application, the applicant is given an opportunity to comment on any objections or representations.
- 4.23 On occasions of national, local or possibly international significance the Board has the authority to apply a general extension of licensing hours. The Board will notify those affected of the granting of any general extension of hours. Such grants will always be posted on the [Licensing Section of Aberdeenshire Council's Website](#)<sup>100</sup>.
- 4.24 In respect of either sector or local specific grants, the Board will notify premises individually. The Board may also publish details in local newspapers as it sees fit.
- 4.25 For further detailed information on Occasional Extensions, please see the [Board's Guidance](#)<sup>101</sup>.

#### Occasional Licences

- 4.26 It is possible to make an application for an occasional licence authorising the sale of alcohol on premises which are not licensed premises.
- 4.27 The Board recognises the particular impact of alcohol misuse on children and young persons and will assist in changing detrimental attitudes and behaviours. Accordingly, there will be a presumption against granting occasional licences for

<sup>100</sup> <https://www.aberdeenshire.gov.uk/licensing/>

<sup>101</sup> <https://www.aberdeenshire.gov.uk/licensing/occasionalextensions.asp>

events that are aimed primarily at children or young persons, such as but not limited to, school sports days or children's parties.

4.28 The application may be made by –

The holder of a premises licence or
The holder of a personal licence or
A representative of any voluntary organisation (includes members clubs)

4.29 An occasional licence can last up to a **maximum of 14 days**.

4.30 The holders of a premises licence or a personal licence may make unlimited applications.

4.31 The Licensing (Scotland) Act 2005 places restrictions on the number of applications a voluntary organisation or members club can make, in any period of 12 months:

Not more than 4 occasional licences each having effect for a period of 4 days or more; and
Not more than 12 occasional licences each having effect for a period of less than 4 days.

4.32 The combined duration of all occasional licences in any 12-month period **must not exceed 56 days**.

<b>The Board has no legal authority to grant more occasional licences to voluntary organisations or members clubs than the provisions set out at sections 4.30 – 4.31 above.</b>
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4.33 A valid application requires the completion in full of the application form and all appendices. Please note failure to provide a current e-mail address may result in your application being delayed.

4.34 To allow time to consult the Police and the LSO and for objections/comments to be made, applications should be submitted as far in advance of the event as possible but **not later than 6 weeks before the event is due to take place**. If an application is received less than 6 weeks in advance of the date of the event, Officers will process the application, but applicants should be aware that the licence may not be granted if consultees do not have adequate time to respond or if there are any adverse representations or objections. To allow for adequate consultation with the public, any application received less than 7 days before the event is due to take place will be rejected by the Board, with the exception of applications related to the provision of funeral teas or in exceptional circumstances.

4.35 The Board considers that activities such as dances, discos, dinner dances, wedding-receptions, parties where a disco or band is provided are generally acceptable for granting an occasional licence. This list is not exhaustive.

- 4.36 If the Board sees a pattern of applications for occasional licences or extensions developing for functions or days or hours that could otherwise be accommodated within the operating plan for the premises, the Board may decline to deal with such applications and instead advise that the applicant apply for a major variation of their premises licence to accommodate such events.
- 4.37 Where it is evident from an application due to the type of event, capacity, age demographic and location of an event, the Board may require a personal licence holder to be in charge of the bar at the event as recommended by the Licensing Standards Officers or Police Scotland. All staff training must be delivered by a personal licence holder.
- 4.38 In all other circumstances, where a voluntary organisation applies for numerous occasional licences in any calendar year, the Board expects there to be a personal licence holder to be in charge of the bar at the event as recommended by the Licensing Standards Officers or Police Scotland. All staff training must be delivered by a personal licence holder.
- 4.39 Members clubs **shall** ensure that occasional licences applied for in respect of their premises are for events for the benefit of the club or their members, to which members of the public are admitted or for which there are insufficient numbers of members attending the event to sign in the required number of guests (also see **Supplementary Policy 7** in this regard).
- 4.40 Licence Holders should also be aware that they may also require a public entertainment licence and/or a late hours catering licence issued by Aberdeenshire Council in terms of the Civic Government (Scotland) Act 1982.

#### Occasional Licence Hours

- 4.41 Licence Holders seeking licensed hours for times outwith the Board's policy, will require to demonstrate to the Board that the additional requested hours are appropriate in the circumstances and align with the five licensing objectives.

The Board considers the commencement of the sale of alcohol shall not be earlier than **10.00 a.m.** (On-Sales or Off-Sales).

For the terminal hour beyond which alcohol must not be sold on the premises, the Board considers **1.00 a.m. for On-Sales** or **10.00 p.m. for Off-Sales** to be appropriate.

Members Clubs must apply for one Occasional Licence per each separate event during the Festive Season, including festive lunches and dinners.

#### Occasional Licence Conditions

- 4.42 The Board is aware of the mandatory conditions which are set out both in Schedule

3 to the 2005 Act and in Regulations. In addition, the Board will consider on an individual basis whether it is necessary or expedient to impose local conditions, to promote one or more of the licensing objectives or otherwise to give effect to the provisions of this Policy Statement or to the provisions of the 2005 Act.

- 4.43 The decision whether to impose a condition will be made on an objective basis, any representations made, recommendations made by Police Scotland and the LSO, and any other relevant information available to the Board when considering the application. The Board will seek to avoid the imposition of disproportionate conditions.
- 4.44 The Board has agreed a pool of local conditions that may be attached to occasional licences granted by the Board. These are as set out at **Appendix 3** to the main Policy Statement.

<b>Occasional Licences</b>	<b>Applicants should refer to Appendix 3 - Local Conditions 1 to 43.</b>
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#### Repeated Occasional Licence Applications


- 4.45 Repeated applications for Occasional licences for the same unlicensed premises, and which are:-

Not for detailed specific events; and/or
For activities that have been occurring (either in identical or largely similar terms) on the premises regularly over a period of at least 3 months.

Will not generally be considered to be suitable for the grant of an Occasional Licence and will not be granted by the Board under delegated authority but will require a hearing before the Board.

The Board **may** consider the grant of such Occasional Licences to be appropriate where there is sufficient evidence that there is movement towards an application for a Premises Licence or a major variation of a premises licence being progressed or under adequate explanation as to why a Premises Licence or a major variation of a premises licence is not being applied for. This will be considered on a case-by-case basis. The Board expects such premises to be operating under a Premises Licence and Occasional Licences should not be used as an alternative.

- 4.46 Section 59(6) of the Act specifies the grounds for refusal of an application for an Occasional Licence. These grounds include “that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives”. These licensing objectives include:-

	<b>Securing public safety.</b>
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## Protecting and improving public health.

The degree of scrutiny afforded by an application for a Premises Licence is not present where premises operate under a series of consecutive Occasional Licences. Accordingly, in the interests of better securing public safety and/or for better protecting and improving public health, the Board considers that it is not generally appropriate for a premises to operate on a series of consecutive Occasional Licences rather than apply for a Premises Licence and, in these circumstances, the Board will require an applicant to explain why an application for a Premises Licence is not being made.

### Lack of Demand and Flexible Trading Hours

- 4.47 Licence Holders should be aware that premises should routinely remain open for the licensed hours they apply for, and which are granted by the Board.
- 4.48 The Board recognises that there will always be circumstances that will reasonably cause a temporary deviation from the licensed hours given in the operating plan. The Board has a flexible view on this, and such circumstances will not ordinarily be considered a breach of the operating plan. The Board will consider circumstances on a case-by-case basis.
- 4.49 The Board also recognises the need for businesses, especially in a rural environment, to remain economically viable when faced with a lack of demand. Licensed premises may wish to close early owing to a lack of customers and, therefore, not trade for their full complement of licensed hours. Again, the Board has a flexible view on this, and this will not ordinarily be treated as breach of the operating plan. The Board will consider circumstances on a case-by-case basis.
- 4.50 The Board expects Licence Holders to apply for the hours they normally or usually trade in their operating plan. Provision can be built into operating plans for longer or shorter opening at certain times of the year.
- 4.51 However, in considering such issues, the Board will give particular attention to whether any “unused” hours are preventing new entrants to the market or premises are closing early on a regular basis. If so, it may be appropriate to vary the operating plan of the premises concerned.

### Drinking Up Time

- 4.52 Drinking up time is 15 minutes normally and 30 minutes where alcohol is being consumed with a meal. The Board requires Licence Holders to give customers plenty of notice about last orders and time.

### British Summer Time and Winter Time

- 4.53 On such date as is prescribed as the date in Spring when the clocks go forward to mark the changeover to British Summertime, Licence Holders who enjoy licensed hours beyond 1.00 a.m. (the official time for clock changes) will be judged by reference to the number of hours after midnight which their operating plan authorises them to be open, rather than by the actual time shown on the clock.
- 4.54 On such date as is prescribed as the date in Autumn when the clocks go back to mark the changeover from British Summertime to British Wintertime, Licence Holders who enjoy licensed hours beyond 1.00 a.m. will similarly close according to the number of hours after midnight which their operating plan authorises them to be open, rather than by the actual time shown on the clock.
- 4.55 Any Licence Holder who enjoys hours up to 1.00 a.m. is unaffected by the change of the clocks. The Board does not accept that those licensed until 1.00 a.m. gain an additional hour on the changeover to British Wintertime.

#### **Additional Considerations**

- 4.56 In determining applications where different parts of the premises have different uses, or where parts of premises fall under different categories for operating hours, as specified in this Supplementary Policy Statement, the Board will have regard to when the activities take place and the principal activity taking place. The Board may impose further conditions to ensure other activities do not take place or remain ancillary to the principal activity for those licensed hours.

<b>Premises Licences</b>	<b>Applicants should refer to Appendix 2 - Local Condition 37.</b>
<b>Occasional Licences</b>	<b>Applicants should refer to Appendix 3 - Local Condition 27.</b>

- 4.57 Premises where more than one of the categories applies in different parts of the same premises will be given careful consideration. The Board may impose conditions and/or different licensed hours to those parts of premises to ensure the activities remain separate. In some circumstances, the Board may attach different operating plans to cover different floors, or sections of premises, depending on the nature of the activities taking place within the premises.