

3 STATEMENT OF LICENSING POLICY 2011-2013 : MITCHELLS AND BUTLERS RETAIL LIMITED -V- DUNDEE CITY LICENSING BOARD (AN9-2011)

Members of the Board will be aware of the Sheriff Principal's judgement in the recent appeal by Mitchells & Butlers Retail Ltd. ("M & B Ltd") against the decision of the Licensing Board to prohibit the continuance of a discount card scheme at the premises operated by M & B Ltd at The Nether Inn. A further copy of the Sheriff's judgement is attached at Appendix 8.

The effect of the judgement, which is not to be appealed, is effectively to declare that the Board's policy on unlawful price variations is incompatible with the 2005 Act insofar as it seeks to prevent different prices for different categories of customers in the same licensed premises. Rather than embark at this stage upon a costly exercise to amend the policy statement, which would involve statutory consultations under Section 6 of the 2005 Act, it is recommended that the Board simply declares that this part of its policy is now inoperable and will not be enforced. It would be a superfluous exercise to go through a statutory consultation to amend the policy when the Board has no choice but to comply with the above judgement. In the event that any further amendments are proposed to the policy statement (e.g. on overprovision), then this matter could be included at that time for the sake of completeness.