

REPORT TO: DUNDEE CITY LICENSING BOARD – 18TH JANUARY 2024

REPORT ON: STATEMENT OF LICENSING POLICY 2024-2028 UNDER LICENSING (SCOTLAND) ACT 2005 – RESULTS OF CONSULTATION

REPORT BY: CLERK TO THE LICENSING BOARD

REPORT NO: 30-2024

1.0 PURPOSE OF REPORT

1.1 To advise the Board of the outcome of the public consultation on the proposed Statement of Licensing Policy 2018-2022 under Section 6 of the Licensing (Scotland) Act 2005.

2.0 RECOMMENDATIONS

2.1 That the Board decides whether to adopt any revisions to the current Policy Statement in light of the contents of the responses to the consultation set out in Section 5.0 below;

2.2 That the Clerk be instructed to publicise the Policy Statement in terms of the Licensing (Scotland) Act 2005.

3.0 FINANCIAL IMPLICATIONS

3.1 In terms of Regulation 13 of the Licensing (Fees) (Scotland) Regulations 2007 [SSI 2007/553], the total fees payable for licences are to be broadly equivalent to the expenses incurred by the Board and Council in administering the 2005 Act in their area, therefore there should be no financial implications arising from the contents of this report.

4.0 BACKGROUND

4.1 The Licensing Board is periodically obliged to publish a Statement of Licensing Policy in terms of Section 6 of the Licensing (Scotland) Act 2005 (“the 2005 Act”). The previous policy covered the period from 2018-2023. The next policy period will therefore run from 2024 until 2028.

4.2 There are a number of provisions of the statement which will require to be updated to reflect legislative changes which have been introduced since the policy was adopted. However, there are also a number of specific proposals which the Board are considering for inclusion in the new policy statement and these are discussed below. The Board is obliged to consult with a number of categories of persons before making a final decision on the contents of its new Policy Statement. The persons who must be consulted are:

- The Local Licensing Forum;
- Representatives of persons listed in Paragraph 2 (6) of Schedule 2 to the 2005 Act whose interests the Board considers are not represented on the Local Licensing Forum;
- The Local Health Board;
- Such other persons as the Board thinks appropriate.

The Board is also obliged to include in its statement of licensing policy an assessment of overprovision in its area in terms of Section 7 of the said 2005 Act. The persons who must be consulted for this purpose are:

- The Chief Constable;
- The Local Health Board;
- Such persons as appear to the Board to be representative of (i) premises licence holders and (ii) residents within any locality where the Board considers there may be overprovision of licensed premises.
- Such other persons as the Board thinks fit.

4.3 In terms of Section 142 of the 2005 Act, the Board is legally obliged to have regard to the guidance issued by Scottish Ministers as to the exercise of its functions under the Act. The most recent guidance in this respect was published on 13th January 2023. Relevant sections of the guidance will be referred to at appropriate parts of this report. Those functions include the determination of the terms of the policy statement and the consultation exercise preceding it.

5.0 PUBLIC CONSULTATION

5.1 The consultation ran from 23rd October, 2023 until 31st December, 2023. Copies of a questionnaire (APPENDIX 1) were mailed to interested persons and organisations and also displayed on the Dundee City Council website. There were 6 written responses. These are shown at APPENDIX 2 hereto. The consultation period was originally due to conclude on 30th November 2023 but this was extended to 31st December 2023 following the cancellation of the Licensing Board meeting in December 2023. All of the responses referred to were received prior to 30th November 2023 and no further responses came in during the extension to 31st December 2023.

5.2 **Dealing with the first specific issue in the consultation, namely overprovision of licensed premises, as noted in the consultation document the Board proposed that the whole of the Board's area is overprovided in respect of off-sales only premises for the reasons narrated therein.** Only 2 respondents made any detailed reference to this issue, namely, the Scottish Grocers Federation (SGF) and NHS Tayside. The SGF are not in favour of the Board's proposal. They oppose the inclusion of only off-sales premises within any such policy and also suggest that an area-wide approach is too blunt an option. They considered that if the Board wishes to consider overprovision in any particular application, it should adopt a locality-based approach and also look at the specific mode of operation of the proposed premises, including capacity. The NHS, on the other hand, are fully supportive of the Board's provisional proposal that there might be a state of overprovision in off-sales premises as across the whole Board area. They agree that the policy should cover the whole of the Board area and that it should be limited to off-sales only premises. This is based upon the small size of the Board area and its dense population where travel across the city is relatively easy and there is evidence of alcohol-related harm throughout the whole Board area. The NHS also point to information contained in a report to the Board (The Public Health and Social Impact of Alcohol Availability in Dundee) which was considered at the Board meeting in October 2023 which details the reasons why it is felt that more alcohol-related harm is likely attributable to off-sales as opposed to on-sales of alcohol.

5.3 **The Board will require to decide whether to implement its original provisional proposal of an overprovision policy applying to off-sales premises within the whole of the Board's area.** Although the SGF are opposed to this proposal, they have not provided any empirical evidence to suggest why other types of premises should be included within any overprovision policy or if different modes of operation of off-sales premises should be considered. The NHS response refers to the material which was before the Board when it made the original proposal. In light of this, the Board may consider that the proposal should be adopted.

5.4 As to the possible impact of price on the level of alcohol-related harm in the Board's area or of the effect of Minimum Unit Pricing (MUP) on any decision as to proceed with an overprovision policy, the NHS response states that whilst affordability is a key factor in the level of alcohol-related harm, availability and attractiveness are equally important and should be addressed by policy interventions other than MUP. The SGF set out in their response that they are supportive of MUP (albeit not of the proposed increase in the unit price) but did not provide any more detailed comments as to what impact MUP should have when deciding whether to introduce any policy on overprovision of licensed premises. The Board will no doubt recall that there was material supplied with the report number 274-2023 at the meeting on 21st September 2023 which suggested that the introduction of MUP had had a limited effect on tackling alcohol-related harm which would tend to indicate that no one tool is sufficient by itself to deal with the concerning levels of such harm in Scotland. There was also no particular evidence put forward by consultees to support any reduction in the hours of licensed premises or what impact these may have on matters relevant to overprovision.

- 5.5 **As noted above, the Board requires to have regard to the statutory guidance issued under Section 142 of the 2005 Act.** None of the responses received made any detailed comment on any aspects of the guidance. The guidance states (at paragraph 5.6) that an overprovision assessment must be evidence-based. It is a matter for each Licensing Board to determine what their overprovision policy will be and how the evidence it has ingathered will be interpreted and weighed. When undertaking this work Licensing Boards should be mindful of the five licensing objectives: preventing crime and disorder; securing public safety; preventing public nuisance; protecting and improving public health; and protecting children and young persons from harm. Licensing Boards should ensure the approach to ingathering, weighing and interpreting evidence, and consultation responses is robust, all of the relevant evidence before them is taken into account and the rationale for regarding/disregarding that evidence in developing Licensing Policy Statements is clearly set out.
- 5.6 **The Board is entitled to consider applying a policy to all premises or only those of a particular description. It has a wide discretion in the choice of locality, although there must be a rational justification for the locality which is chosen for this purpose. The Board must have regard in terms of the 2005 Act to the number and capacity of licensed premises in the proposed locality. There are currently 135 off-sales only premises with a total capacity of 6 846.765 square metres. The Board is not limited to looking only at numbers and capacity and may take other factors into account as well.** As noted above, in the consultation document, the Board specifically raised the issues of price/MUP and licensed hours and also made reference to the submission presented to it by the Dundee Alcohol and Drug Partnership (ADP) in October 2023 which set out detailed information concerning the effect of alcohol-related harm in the Board's area and the links between the levels of harm and neighbourhood deprivation.
- 5.7 As set out in the Guidance at paragraph 5.31, there are a number of underlying principles that the Licensing Board should take into account as they approach the development of their statement of overprovision and which will inform whether the provisional proposal should be adopted or a variant or alternative :
- Licensing Boards should use alcohol-harm information (or potential alcohol-harm information) to identify localities and then proceed to consider the number, type and capacity of premises in those areas.
 - It is the potential for undesirable consequences which is intended to be addressed through overprovision assessments as a requirement within the 2005 Act. This can be thought of as the cumulative effect of more and more licences being granted in a locality and what this means in respect of the effect on life in that area. It is the cumulative effect rather than the actions of any single operator that is key.
 - If a Licensing Board considers there is at least potential for, or a reasonable basis for, concluding that there will be a risk of adverse impact on the objectives (should more premises licences be granted), it is entitled to come to the view that there is a state of overprovision.
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 - Consideration should be given as to whether aggregate information and evidence from a number of sources demonstrates a link between the availability of alcohol in an area and alcohol-related harm.
 - To demonstrate a "dependable causal link", the proof of the link must be on a balance of probabilities. What this means in practice is that based on the evidence of harm in a locality, it is more likely than not that alcohol availability is a cause, or that increasing the availability of alcohol in that area will increase that harm.
 - There is no simple numerical formula for pinpointing the threshold between provision and overprovision. Determining overprovision involves the application of reason and judgement in the interests of the community.

- 5.8 **The next part of the consultation relates to the condition directed towards controlling music noise from licensed premises which currently provides that any music shall not be audible in the nearest residential premise (“the inaudibility condition”).** 2 of the responses (from Dundee City Council Environment Services and Police Scotland) made specific comments in relation to this issue and both support the retention of the condition. It is suggested that the Board maintains the inaudibility condition in the meantime and instructs the Clerk to carry out a separate investigation into possible replacements. The reason for this suggestion is that there is a legal challenge to the inaudibility condition in another board area, the outcome of which would likely have a major impact upon whether or not the condition should be retained in the longer term. The Sheriff Principal’s judgment is not yet available and the Board should wait to see what the implications of that case may have for its own situation. This could then be the subject of a supplement to the Policy Statement.
- 5.9 **The proposals regarding the processing of occasional licences attracted 2 responses in favour. None of the other respondents made any comments on this issue.** The proposal is that applications should be submitted no later than 28 days before the event and that an Alcohol Management Plan (AMP) be required for large events attended by more than 500 people. It is also proposed that the previous policy provisions seeking to apply greater scrutiny to successive applications for occasional licences for the same premises be deleted following a recent court judgment.
- 5.10 **The Board proposed to limit external music performances on licensed premises or on occasional licences to a cut-off time of 7.00 p.m. except for larger scale events such as those at Slessor Gardens.** Of the 6 respondents, 2 supported this proposal and the others made no comments.
- 5.11 **Given the increasing use of home deliveries of alcohol, it was suggested in the consultation document that certain expectations be included in the Board’s policy that applicants for a variation to their licence to include home deliveries be asked to meet.** 3 of the 6 responses (including significantly that from the Scottish Grocer’s Federation) support this proposal with the others making no comment.
- 5.12 **In order to encourage premises licence holders to make provision for transport home for the staff at the close of business in the early hours of the morning, the Board proposed to include in the policy statement a recommendation to licence holders to take steps to address this and related issues.** 3 of the 6 respondents expressed an opinion on this matter and all 3 (SGF, Police Scotland and Unite the Union) supported its inclusion in the policy statement.
- 5.13 **The remainder of the consultation related to miscellaneous points in the previous policy which it is proposed to update.** None of the respondents expressed any views on these matters.
- 5.14 **The remainder of the policy statement from 2018-2023 would be readopted subject to any revisions agreed as set out in the preceding paragraphs of this section of the report.**

6.0 POLICY IMPLICATIONS

- 6.1 An Integrated Impact Assessment has been carried out. This is attached at APPENDIX 3.

7.0 CONSULTATIONS

- 7.1 The Chief Executive, Executive Director of Corporate Services, Executive Director of City Development, Executive Director of Neighbourhood Services, Chief Officer of Dundee Health and Social Care Partnership and the Director of Leisure and Culture have been consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

- 8.1 Licensing (Scotland) Act 2005 - Section 142 - Guidance for Licensing Boards.

SIGNED *Roger Mennie*

ROGER MENNIE
CLERK TO THE LICENSING BOARD

DATE: 12 January 2024

