

**REPORT TO: LICENSING BOARD AND LICENSING COMMITTEE –
19TH SEPTEMBER, 2013**

REPORT ON: CONSULTATION ON LATE OPENING LIQUOR AND CATERING PREMISES

REPORT BY: HEAD OF DEMOCRATIC AND LEGAL SERVICES

REPORT NO: 489-2013

1.0 PURPOSE OF REPORT

1.1 To report on the consultations carried out on behalf of the Board and Committee regarding opening hours for liquor licensed and late hours catering premises respectively.

2.0 RECOMMENDATIONS

2.1 It is recommended that the **Licensing Board** decides whether or not to amend its existing policy with regard to opening hours for on-sales premises licences;

2.2 In the event that the Board decides to amend its existing policy, the following proposals could be considered;

- Public house/bar type premises to be allowed to open until 0100 Friday and Saturday only;
- Premises with substantial entertainment (which shall not be constituted merely by the provision of karaoke and/or recorded music) to be allowed to open until 0200 Friday and Saturday only (with the minimum entry charge from 0000);
- Nightclubs and similar dedicated or purpose-built entertainment premises to be allowed to open until 0300 Friday and Saturday only (with the minimum entry charge from 0000).

2.3 It is recommended that the **Licensing Committee** decides whether or not to amend its existing policy on Late Hours Catering Licence closing times. If the Committee decides to amend its policy, the area(s) and terminal hour(s) applicable therein will require to be determined.

3.0 BACKGROUND

3.1 Reference is made to Article I of the minute of meeting of the Licensing Committee of 18th October, 2005, wherein it was agreed to introduce a policy on opening hours for premises with Late Hours Catering Licences following concerns raised by Tayside Police about public order offences in the early hours of the morning. It was the view of Tayside Police that allowing late hours catering establishments to remain open after the closure of the nightclubs merely encouraged people to hang around in the area longer than might otherwise be the case. Tayside Police therefore wished the Committee to consider the adoption of a policy which would result in the harmonisation of closing times for late hours catering outlets and nightclubs, or even to close the former before the latter.

3.2 Accordingly, the Licensing Committee decided that the terminal hour for late hours catering premises in the City Centre would be 2.30 am. The Committee also decided to allow late hours caterers to trade for an extra hour until 3.30 am if they were supplying food and refreshments to any patrons within the existing nightclubs permitted by the Licensing Board to remain open for that purpose, but it is understood that no-one has taken advantage of this facility. There are a small number of premises who were open beyond 0230 prior to 2005 who were allowed to continue with those hours following appeals to the Court.

- 3.3 The policy on late hours opening for liquor licensed premises is contained in the Licensing Board's Statement of Licensing Policy 2010/2013. In terms of that policy, any premises whose principal purpose is the provision of entertainment are generally allowed to open until 2.30 am and any other premises will be allowed to stay open until 12 midnight. The same policy applied in 2005.
- 3.4 Following a number of applications from liquor licensed premises and late hours catering premises for opening hours outwith the above policies, the members of the Board and Committee decided that it was appropriate to carry out a review of the policies to determine if they should continue to be applied in their current form. There have also been a number of changed circumstances since 2005 and, in particular, the increased number of liquor licensed premises in the City Centre which the Board have accepted as providing "substantial entertainment" which can open until 2.30 am and one venue (opened in 2009) with a licence until 6.00 am. There is also a night bus service (albeit on a limited route) which was not envisaged in 2005 and an increased number of taxis and private hire cars which are available to assist with dispersal of customers after premises close.
- 3.5 Given the close connection between the two policies, it was felt appropriate that the consultation processes for each should run in tandem and the results be the subject of a joint report to the Board and Committee.

4.0 SUMMARY OF CONSULTATION RESPONSES

Liquor Licence Opening Hours

- 4.1 The consultation period ran from Friday, 17th May, 2013 until Friday, 30th August, 2013. In total, 27 responses were received. In addition, on Monday, 17th June, 2013, a meeting was held to which all premises licence holders were invited to express their views on the policy proposals. 20 persons attended the meeting. These included representatives from nightclubs, bars and social clubs.
- 4.2 The consultation sought opinion on proposals to allow three potential categories of licensed premises and associated opening hours, as follows:-
- (a) dedicated nightclubs to open until 4.00 am;
 - (b) licensed premises with substantial entertainment to open until 2.30 am (so-called "hybrid" premises);
 - (c) "public house" type premises and bars to open until 1.00 am.

These proposed opening hours would only apply on Friday and Saturday, with premises keeping their existing hours on other nights of the week, ie 2.30 am for category (a) and 12 midnight for the other two categories.

- 4.3 As noted above, 27 responses were received. Of these responses, 7 were from health bodies, 1 from Police Scotland, 14 from licensed trade representatives and 5 others. In purely numerical terms, 10 (37%) were in favour of the Board's proposals and 14 (51.9%) were opposed. 2 respondents (7.4%) supported some of the proposals and the remaining one response (4.2%) did not express a view either way. All 7 of the health bodies, 3 trade representatives and Police Scotland are against any change to the current policy, whereas 10 of the trade representatives were in support of the proposed changes.
- 4.4 The most common reasons given in opposition to the proposals are a conflict with the licensing objectives (particularly the protection and improvement of public health), the increased opportunity which later opening would present to people "pre-loading" (i.e. drinking at home then coming out later) and the potential policing issues if more premises are open later. Concerns were also raised about what amounts to "substantial entertainment" for premises in the proposed category (b) in Paragraph 4.2 above. For those in favour of later opening, it is argued that this would offer more choice to customers, allow people to have a later drink without having to go to a nightclub and have a positive effect on the late night economy.

- 4.5 The policies in other areas have also been noted. For bars and "public house" - type premises, Edinburgh, Angus and Fife allow licensed hours until 0100 hours (Friday and Saturday). Glasgow is currently consulting on a proposal to extend their closing hours from midnight until 0100. In Perth, such premises are open until 0030 hours. As for entertainment premises, the policies in the areas mentioned vary from up to 0200 hours and 0300 hours. Glasgow is the only one of these areas which recognises the so called "hybrid" category, but the Board there are proposing to discontinue that practice. As can be seen, all of these areas allow or are proposing to allow bars and "public houses" to open later than is presently the case in Dundee, whereas the latest opening time for entertainment premises in any of these areas is 0300.
- 4.6 The views expressed at the meeting for premises licence holders on 17th June, 2013 very much mirrored those of the responses summarised above. All sectors of the licensed trade were represented. The most vociferous views against implementing the proposals came from existing nightclub operators who desire the Board to revert to the position before the various "hybrid" premises were allowed to open until 0230 (i.e. nightclubs to be open until 0230 and other licensed premises until 12 midnight only). The nightclub representatives highlighted the considerably greater running costs they incur compared to the "hybrid" premises, together with the increased levels of entertainment on offer in clubs. It was wrong to allow these other premises to open until 0230 and extending club hours until 0400 was not the solution. The representatives at the meeting on behalf of bars/public houses were generally in favour of 0100 opening for these types of premises. They felt it allowed more flexibility than midnight closing and would help to cater for customer demand. Those representing one of the "hybrid" premises indicated that, although they have a licence until 0230, opening until around 0100 would have been sufficient since many customers leave well before 0230. Nevertheless, there should be late night alternatives available without having to go to a nightclub. There were also social club officials at the meeting who said 0100 opening would benefit them. Many of the persons present expressed concern at there being one premises in the city centre which opens until 0600.

Late Hours Catering Licences

- 4.7 This consultation ran from Friday, 28th June, 2013 until Friday, 30th August, 2013. 11 responses were received, of which 4 are in the form of petitions. 8 responses were from trade representatives, 1 from Police Scotland and 2 others. The consultation contained three specific questions:-
- (a) should a policy continue to apply?
 - (b) if so, is 2.30 am still an appropriate closing time?
 - (c) what geographical area should the policy cover?
- 4.8 7 respondents (63.7%) say there should be a policy on opening hours for late hours caterers, with 4 (36.3%) opposed. 3 respondents (27.2%) support retention of the current policy. 8 respondents (72.8% and all trade representatives) say the hours should be extended. 3 suggested 0300, 1 said 0330 and 1 argues for 0400. As for the area covered by any such policy, only 4 respondents expressed a view. 3 say the area should be extended and the other one said it should be kept as at present. Only 1 of the 3 in favour of extending the area suggested anything specific and, even then, said the policy should apply citywide. The petitions in favour of extended hours contain 526 signatures. Police Scotland are opposed to any change to the current policy for much the same reasons as were given when the policy was first introduced.

5.0 CONCLUSIONS

- 5.1 Problems in the City Centre at night and in the early hours of the morning are to a large extent due to the consumption of too much alcohol, including patrons who consume large amounts of alcohol purchased in off-sales in their homes prior to going out to licensed premises.
- 5.2 Patrons leaving nightclubs at 2.30 am have been a focal point for public order issues, especially in North Lindsay Street. Late hours caterers, whilst not selling alcohol, are seen by

the Police to contribute to the problem due to the fact that they are open, which can act as an incentive to some who are hungry and others who simply want to loiter outside.

- 5.3 The Board has to have regard to the 5 licensing objectives when carrying out its functions, including setting licensing policy. The contention amongst those opposed to any extension of licensed hours is that such a move would be inconsistent with the objectives. In particular, it is contended that the increased availability of alcohol would run counter to the public health objective.

Although there are a number of hybrid premises already able to operate until 0230, anecdotal evidence suggests that they are not remaining open for their full allocation of hours each night. Also, there are some who did not apply to open until 0230, but rather an earlier time such as 0200. However, the minimum charge for entry should continue to apply from midnight for both hybrid and club premises.

- 5.4 Licensed premises themselves are also subject to the licensing objectives and the other requirements of the Licensing (Scotland) Act 2005. Accordingly, if evidence was received that any premises given extended hours were operating inconsistently with these requirements, their licences would be liable to be subject to review and these operating hours could be reduced if necessary or appropriate for the purposes of the licensing objectives. The Board may also give consideration to attaching conditions to any extensions to allow it to assess the situation over a trial period.

As for the concerns raised by some respondents regarding “substantial entertainment” and requests to define what this means, it is difficult to devise an all-inclusive definition. Instead, and in line with some other areas which use a similar concept, it is perhaps easier to say what is not. In this regard, it is suggested that the mere provision of karaoke or recorded music not be deemed to meet the required standard.

- 5.5 As for Late Hours Catering Licences, the practice in other areas varies from requiring those premises to close before liquor licensed premises to allowing opening until 1 hour thereafter. There are currently around 6 premises in the city centre which, due to appeals, are open beyond 0230 and no specific problems have been brought to the Committee's attention regarding their continued operation post-2005. There are very few late hours catering premises outwith the City Centre which are open beyond 0230 and most of them are 24-hour supermarkets as opposed to traditional hot food takeaway establishments.

Options available would be to continue with the current policy; amend the closing times and/or geographical extent of the current policy; or introduce different closing times for different parts of the city.

6.0 POLICY IMPLICATIONS

- 6.1 This report has been screened for any policy implications in respect of sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

7.0 CONSULTATION

The Chief Executive, the Director of Corporate Services, the Director of City Development and the Director of Environment have been consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

- 8.1 Statement of Licensing Board Policy 2010-2013;

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Date: 10th September, 2013