

REPORT TO: LICENSING BOARD - 9TH DECEMBER, 2010
REPORT ON: STATEMENT OF LICENSING POLICY 2011-2014
REPORT BY: CLERK TO THE LICENSING BOARD
REPORT NO: 717-2010

1.0 PURPOSE OF REPORT

1.1 To advise members of the results of the consultation procedure on the review of the Board's Statement of Licensing Policy under the Licensing (Scotland) Act 2005 and to recommend amendments to the existing policy in light thereof.

2.0 RECOMMENDATIONS

2.1 That the recommendations contained at Paragraphs 5.3.3, 5.4.3, 5.5.1, 5.5.2, 5.5.3, 5.5.4 and 5.5.5 below be adopted.

3.0 FINANCIAL IMPLICATIONS

3.1 In terms of Regulation 13 of the Licensing (Fees) (Scotland) Regulations 2007 [S.S.I. 2007/553], the Board has to have regard to ensuring that its expenses in administering the 2005 Act are recovered from the fees charged for applications. There should, therefore, be no financial implications arising from the contents of this report.

4.0 BACKGROUND

4.1 In November 2007, the Board adopted its first Statement of Licensing Policy under the 2005 Act. The statement is required to say how the Board intends to exercise its functions under the 2005 Act and the Board must ensure that the statement seeks to promote the five licensing objectives:-

- preventing crime and disorder;
- securing public safety;
- preventing public nuisance;
- protecting and improving public health; and
- protecting children from harm.

4.2 The Statement of Licensing Policy must be reviewed every three years.

5.0 SUMMARY OF RESPONSES, ISSUES RAISED AND SUGGESTED AMENDMENTS

5.1 In terms of Section 6(3)(b) of the Licensing (Scotland) Act 2005, the Board is obliged to consult - (i) the Licensing Forum for its area; (ii) such persons as it considers representative of - licenceholders in its area, the Chief Constable, persons having functions in relation to health, education or social work, young people and residents in the Board's area and (iii) such other persons as the Board thinks appropriate.

5.2 A total of 55 invitations for comments were issued and 18 replies were received. In addition, comments were received from persons not on the original list of consultees and the policy was also discussed at a community alcohol conference organised by The Dundee Partnership. The consultation document contained a copy of the Board's current policy and asked for comments on four specific issues although, obviously, comments on other issues will require to be considered. These are now dealt with in turn.

Licensed Hours

5.3.1 Consultees were asked if the policy hours should be retained or amended and also if provision should be made in the policy for opening times for licensed premises which are not included at the moment. In particular, there had been requests from some premises to open at 10.00 a.m. The only one of these requests to go before the Board for consideration was refused as

being inconsistent with the public health objective and was refused. This is currently under appeal.

5.3.2 Six respondents commented upon this issue. The Licensing Forum, Tayside Police and NHS Tayside support the retention of the existing policy of having a maximum period of 13 licensed hours, with the existing closing times of 12 midnight for non-entertainment premises and 2.30 a.m. for entertainment venues. Three trade responses advocate increasing the number of licensed hours to 14. Two of these trade responses also request that the Board considers allowing licensed premises to open at 10.00 a.m. whilst the other trade response says that there should be no recommended opening/closing times. Tayside Police have indicated that they would have no objection to 10.00 a.m. opening, provided the premises involved closed at 11.00 p.m., i.e. within the Board's policy of 13 licensed hours.

5.3.3 **Given the low number of responses on this issue, there is no majority opinion for changing the current policy of 13 licensed hours, with 12 midnight or 2.30 a.m. closing depending upon the provision of entertainment. The only suggested change which appears to have any wider support is to allow 10.00 a.m. opening within the current policy of 13 licensed hours and the Board will require to determine if this should be incorporated into the reviewed policy statement. It is recommended that, since this issue is currently under appeal, the Board awaits the outcome of that appeal before any change is considered.**

5.4 Minimum Charge for Entry to Nightclubs

5.4.1 The consultees were asked if this should be retained or increased/decreased from its present level of £3.50.

5.4.2 There were 4 responses received. 2 supported the retention of the minimum charge, 1 offered no comment and 1 asked that the Board either explain in the policy in more detail the reasons for having this requirement or allow licence holders a discretion as to whether to apply it at their premises.

5.4.3 **Again, the low number of responses would tend to suggest that there are no strong feelings on this issue. It is recommended that the charge be retained, but that there be included in the reviewed policy statement an explanation of the reasons why the charge was introduced, by reference to the licensing objectives.**

5.5 Overprovision

5.5.1 Under Section 7 of the 2005 Act, the Board is required to include in the reviewed policy statement the extent to which it considers there to be overprovision of licensed premises, or licensed premises of a particular description in any locality within its area. It is for the Board to determine the appropriate localities for this purpose. The Board is also obliged to consult with the same categories of persons mentioned at Paragraph 5.1 above. Regard is then had to the number and capacity of licensed premises in these localities.

5.5.2 There were 5 responses on the question of overprovision. A number of localities were identified in the responses to the consultation and an analysis of the capacities of the licensed premises and other relevant data will be required before the Board can make an informed assessment as to whether there is overprovision in these localities.

5.5.3 **It is suggested that there is, at present, insufficient evidence to allow the Board to conclude with any degree of certainty that there are any localities in its area which are overprovided for to the extent that this would support a basis for refusing future applications and that the policy should include a statement to that effect. However, further research can be undertaken by the Clerk with all relevant agencies (Police, Health Board, community groups, etc.) to obtain more detailed data for the localities identified, such as crime statistics, hospital admissions for alcohol-related reasons, &c. If any of this evidence supports a re-examination of the issue of overprovision in any particular locality, the Board is empowered to amend its policy. A statement to that effect can be included in the policy document following the present review.**

5.4 **Bottle Marking Scheme**

- 5.4.1 The Board agreed to seek views on the inclusion of a "Bottle Marking Scheme" into the policy statement. The responses on that issue are summarised in the following paragraph.
- 5.4.2 This attracted 9 responses. Only 3 expressed positive support for a scheme, whereas 2 were opposed. The remaining respondents expressed doubts about the likely effectiveness of a bottle marking scheme, e.g. would problem premises really take part? The responses did indicate, however, that, if introduced, it should be on a pilot basis and targeted at problem premises, and that major supermarkets and on-licensed premises with an off-sales facility should be exempted. One respondent from the alcohol industry advised that they are currently raising judicial review proceedings in another licensing board area following legal advice that such a scheme is unlawful and discriminatory.
- 5.4.3 **It is recommended that the Board includes the Bottle Marking Scheme in the policy statement as something which it is committed to introducing in principle. The details of the scheme will be finalised after discussions with appropriate agencies and included as a supplement to the policy after the necessary consultation. It is also suggested that the proposal for such a supplementary statement await the outcome of the legal challenge referred to in Paragraph 2 above in relation to the legality of such schemes in order to avoid the Board in any unnecessary litigation.**

5.5 **Other Issues**

- 5.5.1 Some respondents felt that the current policy statement is lacking in detail as to the sort of things which the Board feels licensed premises should be doing to promote the 5 licensing objectives. To this end, the Licensing Forum has suggested amendments to the policy and this is attached at APPENDIX 1. **As can be seen, this proposes a two-part approach to each of the licensing objectives, namely, a list of items for applicants to include in their operating plan to demonstrate how they intend to comply with the licensing objectives and some suggested measures for licence holders to adopt. There is a legal difficulty with this approach in that the contents of the operating plan are prescribed in regulations and the Board has no power to require additional information. However, there should be no difficulty in adopting the contents of the Forum's submission as indicative of the "good practice" the Board would like to see on the part of premises licence holders.**
- 5.5.2 NHS Tayside have asked that the Board considers issuing alongside the Statement of Licensing Policy (when reviewed) a "plain language summary" of the full document, including guidance as to how to object to an application for a licence. **This appears an eminently sensible proposal and it is recommended that the Board endorses this.**
- 5.5.3 The Scottish Beer and Pub Association (SBPA) have stated that the Board should include 11.00 a.m. opening on Sundays in its policy on licensing hours. **This would simply be confirmation of what the Board is already doing and should pose no difficulty.** The SBPA have also asked that occasional licences for pavement cafes be granted for longer than periods of 14 days and for up to 10.00 p.m. each day of operation. **The Board's current practice is to grant for 14 days at a time to allow greater flexibility in the event of any complaints (and in any event 14 days is the maximum period for which an occasional licence may be granted) and the hours of opening were only fairly recently extended to 10.00 p.m. in the summer months, so it is considered premature to amend the hours again. These proposals are not recommended for inclusion in the reviewed policy.**
- 5.5.4 Tayside Police have requested that occasional licences for outside areas be subject to a condition requiring the use of plastic or reinforced glass. **There is no convincing case made out for imposing such a condition on every licence. It is, therefore, suggested that the Board treat applications on a case-by-case basis. Conditions restricting the type of glassware can be attached in the light of any representations from the Police in relation to any individual applications.** Tayside Police also say that the policy should include a statement which makes it clear to applicants that applications for occasional licences will only be accepted less than 28 days before the event in question in exceptional circumstances. **Again, this is current practice and there should be no reason why this cannot be**

spelled out in the policy. The Police also make comments with regard to the grant of occasional extensions and say that these should only be granted to premises actually participating in the events concerned, e.g. Broughty Ferry Gala Week, Blues Festival, etc. **It has been the recent practice of the Board to grant such extensions to all premises who apply (whether or not they take part), so this would be a change to current practice. This was adopted to prevent people gravitating to those premises allowed to open and it was felt that all premises should at least be given the opportunity to apply for extended hours. There have been no major issues or concerns as a result of the current policy and it is recommended that this be left unchanged.** The Police have asked that consideration also be given to restricting the grant of occasional licences for pavement cafes to the City Centre, West End and Broughty Ferry. **Again this would be a departure from current practice. It is recommended that applications be considered on a case-by-case basis as at present, irrespective of the location of the premises. It is for the Board to determine if premises are suitable on that basis, rather than geographical restriction.**

- 5.5.5 The Licensing Forum has put forward suggested additions to the policy to give a fuller explanation of the role of the Forum. A copy of the suggested wording is attached hereto at APPENDIX 2. **It is recommended that this be included in the reviewed policy statement.**

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 CONSULTATIONS

- 7.1 The Chief Executive and the Director of Finance have been consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

- 8.1 None.

(Signed) Patricia McIlquham
Clerk to the Licensing Board

2nd December 2010

APPENDIX I

New Additional Section Proposed - Create Section 3

3 The Licensing Objectives

3.1 The 2005 Act sets out 5 high level licensing objectives. These represent the principles on which the new licensing system is based and provide Licensing Boards with a foundation on which to build local policies. The objectives are not ranked in order of importance. Each has an equal weighting and all must be given paramount consideration when Licensing Boards are carrying out their responsibilities. These 5 objectives are:-

- i) Preventing crime and disorder
- ii) Securing public safety
- iii) Preventing public nuisance
- iv) Protecting and improving public health, and
- v) Protecting children from harm

The following sections set out Dundee Licensing Board's intended outcomes in relation to each of the Licensing Objectives, and the main factors that the policy aims to influence in order to deliver these outcomes. A menu of possible control measures is then presented, which is neither prescriptive nor exhaustive in describing approaches that may be taken to meet the objective. Applicants will know their own premises best, and will be expected to address the Licensing Objectives through the means most relevant to the individual style and characteristics of their premises, and the licensed activities for which they are seeking authorisation. Many of the proposed control measures will impact on a number of objectives so may be mentioned more than once.

3.2 Preventing crime and disorder

3.2.1 In carrying out the functions under the Act the Board will have regard to the impact that licensed activities may have on crime and disorder in the area. In particular, the Board has, as one of its objectives, making the Board's area a safe environment for residents and visitors.

3.2.2 The Board encourages licence holders to demonstrate within their Operating Plan the measures which will be put in place to promote the prevention of crime and disorder. These include addressing problems associated with:-

- Underage drinking including agency purchases;
- Drunkenness on the premises
- Public disorder or violent behaviour;
- Drink driving;
- Anti-social behaviour including littering
- Illegal possession, supply and/or use of drugs; and
- The sale of illegal or stolen goods on the premises.

3.2.3 Suggested control measures might include:-

- Appropriate training of staff members, including conflict management;
- Installation of CCTV equipment;
- Effective and responsible management of the premises;
- Suitable lighting, internally and externally;
- Security policies and employment of appropriate door staff
- Maintenance of a clean, hygienic environment in good repair
- Employment of SIA licensed door supervisors;
- Membership of Pubwatch or another similar scheme where such a scheme is in operation;
- Display of prominent notices which set out the management's policy on illegal substances;
- Participation in responsible purchase schemes e.g. PASS (Proof of Age Standards Scheme);

- Ensuring displays of alcohol in off-sales premises are situated in areas which can be monitored by a member of staff;
- Justification of size of measures and choice of size of wine glass
- Display of anti-drink driving materials
- Availability of reasonably priced non-alcoholic drinks
- Participation in designated drivers scheme
- Displaying local transport information to facilitate safe journeys home for customers
- Promoting awareness of schemes such as the designated driver scheme; and
- Training staff members on the correct way to pour a measure by hand as required under the Weights and Measures Act 1985

3.3 Securing Public Safety

3.3.1 One of the Board's priorities is ensuring that the licensed premise is a safe environment for members of the public.

3.3.2 The Board encourages licence holders to demonstrate within their Operating Plan the measures which will be put in place to ensure public safety on the premises. Such measures should take account of the following:-

- the occupancy capacity of the premises;
- the design and layout of the premises, including means of escape
- The nature of the activities provided, such as music and dancing, and the provision of special effects;
- the hours of operation; and
- the profile of the customer at the premises.

3.3.3 Suggested control measures might include:-

- Carrying out risk assessments;
- Installation of CCTV equipment;
- Membership of Pubwatch or another similar scheme where such a scheme is in operation;
- Effective and responsible management of the premises
- Glass management policy
- First Aid facilities and suitably trained staff
- Having an accident reporting system
- Having a written policy, backed up by staff training and good management, on the approach to be taken with people on the premises who are incapacitated or vulnerable through use of alcohol
- Employment of adequate numbers of suitably trained staff; and
- Proof of regular testing of procedures or equipment which are in place.

3.4 Prevention of Public Nuisance

3.4.1 The Board recognises that licensed premises can have an impact on the amenity of the local area. The Board intends to protect local communities from any negative impact from the operation of licensed premises, whilst recognising the valuable cultural, social and business contribution of these premises. The Board will take a wide view of the phrase "public nuisance" to include noise, light, odour, litter and anti-social behaviour where they impact on the community living or working in the local area.

3.4.2 The Board encourages licence holders to demonstrate within their Operating Plan the measures which will be put in place to prevent public nuisance. Such measures should take account of the following:-

- Any proposed curfew times;
- The location of the premises;
- The type of neighbouring properties in the vicinity;
- The nature of the activity to be carried out on the premises;
- The licensed hours; and
- The occupancy capacity of the premises.

3.4.3 Suggested control measures include:-

- Sufficient management of people entering and leaving the premises;
- The installation of sound-proofing and sound-limiting devices;
- The control of operating hours for different parts of the premises;
- Restricting use of outside areas (e.g. beer gardens) at night, and ensuring day-time use (eg of pavement cafes) does not interfere with the amenity of local people;
- Membership of Pubwatch or another similar scheme where such a scheme is in operation;
- Supporting local schemes which encourage safe dispersal of patrons at closing time, for example, taxi marshalling;
- Liaising with the providers of public transport; and
- Appropriate training of staff members.

3.5 Protecting and Improving Public Health

3.5.1 The Board has, as a priority, the health and well-being of patrons of the licensed premises, and local people. The Board will have regard to the views of any other bodies responsible for or having an interest in public health.

3.5.2 The Board encourages licence holders to demonstrate within their Operating Plan the measures which will be put in place to protect public health. This includes addressing the following:

- Awareness amongst patrons of low risk alcohol consumption guidance
- Avoidance of over-consumption and drunkenness
- The risks to health of staff within the premises

3.5.3 Suggested measures might include:-

- Making available information which promotes moderate drinking along with awareness of units of alcohol in the products sold, and recommended low risk alcohol consumption guidelines;
- Providing information on contact details where assistance for alcohol related problems may be sought;
- Justification of size of measures and choice of size of wine glass
- Displaying anti drink driving materials and promoting awareness of campaigns such as designated driver schemes;
- Having in place a policy to deal with patrons who have consumed excessive alcohol;
- Providing tap water fit for drinking, free of charge, and a wide selection of non-alcoholic drinks at reasonable prices at all times whilst the licensed premises are open;
- Making it possible for women to comfortably breast feed their babies on the premises if they wish;
- Participating in schemes that recognise the availability of healthy food choices (such as Best Bar None); and
- Appropriate training of staff members.

3.5.4 There is evidence that those involved in the licensed trade are more likely to suffer from an alcohol related problem than those in other professions. Therefore the Board would like to see businesses in the licensed trade having in place a workplace alcohol policy in order to raise awareness, minimise harm and ensure that staff are able to access help (without fear of a job loss) when an alcohol related problem arises.

3.5.5 Licence holders especially are reminded of the offences relating to the sale of alcohol; especially the offences of sale of alcohol to an under-age person, sale of alcohol to a drunk person and allowing drunkenness to take place on the premises.

3.6 Protecting Children from Harm

3.6.1 The Board welcomes applications from licensed premises which will accommodate children and young people. However, the Board recognises the additional responsibilities placed upon such premises and the importance that such premises have in place appropriate measures to protect children and young people from harm. In pursuing this objective, the Board's aim is to achieve balance between the availability of licensed premises where families can enjoy leisure time together, and the need to prevent the exposure of young people to harmful influences, including excessive alcohol consumption, access to alcohol when under-age, bad language (including on TVs), gambling, violence, adult entertainment, or the association of alcohol with activities that appeal to young people. Then Board will also seek to protect young people who are on licensed premises from adults who may wish to exploit their vulnerability, including staff.

3.6.2 The Board encourages licence holders to demonstrate within their Operating Plan the measures which will be put in place to protect children and young people from harm. The Plan should also set out the terms under which children and young people are permitted access to the licensed premises.

3.6.3 Suggested control measures may include:-

- Appropriate measures to ensure children or young people do not purchase or consume alcohol on the premises (unless such consumption is permitted by a young person in terms of the restricted provisions of Section 105(5) of the Act);
- Appropriate checks for staff who will be working in premises where children or young people are present;
- Acceptance of accredited proof of age schemes;
- Means to ensure that children and young people are not exposed to strong language, adult entertainment, violence or disorder;
- Siting cigarette vending machines in locations where their use can be monitored by staff; and
- Appropriate training of staff members.

3.6.4 In addition the Board recommends the following:-

- (a) The part or parts of the licensed premises where children and young people are permitted should be free of gaming and/or amusements with prizes machines;
- (b) Gaming and amusements with prizes machines should not be located in walkway areas of the parts of the premises which children or young people will have access to;
- (c) No live entertainment or the use of karaoke machines should be permitted in the part or parts of the premises where children or young people are permitted;
- (d) Where televisions or video machines are intended to be used in areas where children are permitted, the programmes or video films must be of a type suitable for family and children's viewing;
- (e) Toilets will require to be of a suitable type and standard for children;
- (f) When meals are sold within licensed premises, a children's menu shall be necessary. This would not be satisfied by the provision of lemonade and crisps but would require to be of the plated food variety in addition to any form of sandwiches etc, which may be available;
- (g) Electrical sockets within the part or parts of the premises to which children have access should, when not in use, have plug caps thereon;
- (h) Availability of high chairs and suitable drinking vessels for children; and
- (i) Where open fires or electrical or gas fires or radiators are within part or parts of the premises to which children have access, it is expected that such fires and radiators etc. will be securely guarded.

- 3.6.5 As a general rule, children and young people under the age of 18 will only be permitted into licensed premises which are considered to be restaurants or into other licensed premises where the primary purpose of allowing them access is to consume a meal or to attend a pre-booked and ticketed function. Children and young people will not be permitted in the licensed premises after 10 pm (other than in exceptional circumstances, for example, a wedding or other pre-booked and ticketed function being held on a licensed premises where the presence of children and young people after 10 pm can be justified). A condition to this effect will be imposed by the Board on the licences of all premises where children are permitted access.
- 3.6.7 For the avoidance of doubt the foregoing paragraph does not apply to premises where no on-sales take place and the sale of alcohol is for consumption off the premises only. However, the Board would expect licence holders to have in place sufficient measures to ensure that children or young people do not access part or parts of premises where alcohol is displayed.
- 3.6.8 Applicants are reminded of the requirement under Section 110 of the Act to display a prominent notice in respect of the prohibition of the sale of alcohol to persons under the age of 18.

APPENDIX 2

REVIEW OF DUNDEE LICENSING BOARD POLICY, 2007 - 2010

New Additional Text Proposed - Within existing section 2

2 Dundee Local Licensing Forum

2.1 The 2005 Act introduced a statutory role for Local Licensing Forums and a lead-in time regarding the formation of these bodies. Within this context, the Dundee Local Licensing Forum was formed in 2007. The role of the Forum is to:-

- keep under review the operation of the new Licensing Act in the Forum area
- review the relevant Licensing Board functions
- give policy advice and make recommendations to the Board as appropriate

Dundee Licensing Board has a duty to "have regard" to the Forum's views and must offer reasons where it takes decisions against the advice of the Forum. The role of the Forum does not include reviewing or offering advice or recommendations in relation to any particular application or case before Dundee Licensing Board.

2.3 Membership of the Forum is required to consist of between 5 and 20 members, as determined by Dundee City Council. Members are representative of the required 5 key interest areas which are:-

- holders of premises licences and personal licences;
- the chief constable for the police area in which the Forum's area is situated;
- persons having functions relating to health, education or social work;
- young people; and
- persons resident within the Forum's area

The Dundee Local Licensing Forum meets with the Dundee Licensing Board once a year. The Forum meets four times a year.