

**REPORT TO:** LICENSING BOARD - 19TH JANUARY 2006

**REPORT ON:** PROHIBITION OF SMOKING IN CERTAIN PREMISES (SCOTLAND) REGULATIONS 2006

**REPORT BY:** THE CLERK TO THE LICENSING BOARD

**REPORT NO:** 86-2006

## **1.0 PURPOSE OF REPORT**

- 1.1 To formulate the policy on external drinking/smoking areas following the introduction of the above regulations on 26th March 2006.

## **2.0 RECOMMENDATIONS**

- 2.1 It is recommended that Option 1, as outlined in Section 8, be approved.

## **3.0 BACKGROUND**

- 3.1 The above regulations come into force at 6 am on 26th March 2006 and will result in a ban on smoking in public places and workplaces. The ban applies to wholly enclosed or substantially enclosed premises. A public place or workplace is wholly or substantially enclosed, whether permanently or temporarily, if it has an opening which is less than half the area of its walls. Certain vehicles such as taxis are also affected by this legislation.
- 3.2 The legislation was introduced as part of the Government's strategy to improve public health in Scotland and as such is fully supported by Tayside Health Board. The rationale behind this health measure is outlined in the attached paper by Paul Ballard, Consultant in Health Promotion, Tayside Health Board. (APPENDIX 1)
- 3.3 One of the joint health improvement objectives contained in the Dundee Joint Health Improvement Plan 2005/08 is reducing smoking and tobacco related harm.
- 3.4 There will be no smoking allowed inside licensed premises. This applies at all times and not just when the premises are open to the public. So for instance a Licensee working in the premises prior to them opening or after them closing would still not be allowed to smoke. This would also apply to cleaners and other staff.
- 3.5 Employers managers and those in control of no-smoking premises will be required to take measures to ensure that staff and customers are aware of the new law and that they do not smoke in those premises. No-smoking notices in the format laid down by the regulations (copy attached - APPENDIX 2) will have to be displayed in the premises. Those in control of no-smoking premises are liable to a fixed penalty notice of £200 if they do not take steps to prevent someone smoking on the premises or if they do not provide adequate and appropriate no-smoking signage. Individuals who smoke in no-smoking premises will be liable to a fixed penalty fine of £50.
- 3.6 Environmental Health Officers will have responsibility for enforcing the new law.
- 3.7 It is acknowledged that patrons in premises, especially public houses are likely to want to exit the premises and stand outside to smoke and that it will be difficult for Licensees to exercise any control over those patrons especially if the patrons are simply standing in the street and not in, say, an external drinking or smoking area which is under the direct management and control of the Licensee.
- 3.8 Licensees however will still require to adopt a responsible attitude towards those patrons as any noise or public order issues arising from them, which can be directly attributed to the premises could lead to complaints being made to the Board.
- 3.9 Interest has been shown by Licensees regarding the creation of outdoor facilities to accommodate customers wishing to smoke and/or consume alcohol in outdoor areas in the

immediate vicinity of the premises for example to the front, rear or side of their premises either on their own land or on Council owned pavements.

- 3.10 It is necessary to consider setting a policy so that Licensees can plan ahead and decide how they want to proceed.
- 3.11 The view of the Liquor Licensing Forum was sought and the general consensus was that applications for external drinking/smoking areas should be generally supported it being noted that each application should also be considered on its own merits.

#### **4.0 ISSUES RELEVANT TO EXTERNAL AREAS**

4.1 It is envisaged that Licensees are likely to request permission for the installation of canopies or awnings and/or the creation of outdoor drinking/seating areas with possibly large umbrellas at tables for protection against inclement weather. Some form of external heating for the canopies or umbrellas may also be planned.

4.2 All of these proposals have issues surrounding them:-

1. Increase in noise related problems - patrons outside will undoubtedly lead to a greater degree of noise generally. Depending on the area this could lead to noise complaints being lodged with the police. Some publicans may simply wedge open fire doors which are not normally open to allow patrons to congregate outside to smoke which again could lead to an increase in the noise from premises especially if any musical entertainment is ongoing in the premises.
2. Public Order Issues - There could be public order issues arising from premises which have outdoor drinking/smoking areas operating during all the permitted hours all year especially later in the evening which would place a greater strain on police resources. In this regard the views of Tayside Police were sought and these are attached (APPENDIX 3).
3. Increase in Litter - there is likely to be an increase in discarded cigarette ends at the door of no-smoking premises or external drinking areas. This problem could be reduced by the installation of cigarette bins. These are however expensive. The total cost for all Public Houses only could be in excess of £39,000. There is also likely to be other litter associated with these areas such as crisp packets, bottles, cans and as most public houses do not have litter receptacles fitted in the immediate vicinity of the premises additional bins may have to be placed. The question of who would purchase these bins would also have to be addressed.

4.3 Pavements are owned by the Council and it is not envisaged that ownership will be ceded to Licensees on a permanent basis.

4.4 Permanent structures on the pavement such as railings or grilles could cause an obstruction and lead to street sweeping problems.

#### **5.0 EXTERNAL SMOKING AREAS**

5.1 The issues outlined in Section 4 above are also relevant to outdoor areas (which are situated on land owned or leased by licensees) where alcohol is not intended to be consumed.

5.2 No specific consent from the Board would be required for such an area providing the external appearance of the building is not altered in a material way - such as by the erection of an awning or canopy.

5.3 Licensees however would still be responsible for the area and would need to ensure that there were sufficient receptacles for litter/cigarette ends and that these were regularly emptied and for the general supervision of the area especially to ensure that there was no consumption of alcohol there.

5.4 They should also be aware of the possibility of increased noise in the area and if that was directly attributable to their premises it could lead to complaints to the Board.

## **6.0 PAVEMENT CAFES**

- 6.1 Some licensed premises currently enjoy the benefit of pavement cafes which operate from April to September.
- 6.2 These are currently controlled by granting occasional licences for two week periods.
- 6.3 Conditions are attached, most notably that the permission ceases at 8 pm. The criteria for the grant and conditions for the operation of the pavement cafes are attached.
- 6.4 It is envisaged that pavement cafe permissions will continue to be granted on the same terms and conditions as currently in force, since with good management and enforcement of the conditions, problems associated with their use can in the main be overcome.

## **7.0 BEER GARDENS**

- 7.1 Several public houses/hotels have beer gardens which are included as part of their licence.
- 7.2 These are generally only used in good weather over the summer months. A number of these consents are also limited by the imposition of a planning condition restricting their use as Beer Gardens to 9pm or earlier.
- 7.3 It is expected that the number of applications for beer gardens will increase. It is intended that these will be assessed against the current criteria for beer gardens and as such will require the grant of a new licence.
- 7.4 If existing beer gardens are used more frequently than at present then their continued suitability will be looked at in light of any complaints received.

## **8.0 OPTIONS**

- 8.1 There are four options for consideration namely:-

Option 1 - Such applications will generally not be supported.

Option 2 - Applications for External Drinking/Smoking Areas should be generally supported;

Option 3 - To have a policy which would generally support external smoking/drinking areas in certain areas of the city but not in others.

Option 4 - Have no policy and consider each application on its merits.

## **9.0 OPTION APPRAISAL**

### Option 1

- 9.1 Advantages of not supporting are that the issues outlined in Section 4 such as external noise issues, breakout noise from any musical entertainment, increased litter, possible rowdiness and other public order issues would all be lessened.
- 9.2 Whilst it is not a matter for consideration by the Board a disadvantage for licensees is a possible reduction in trade by patrons leaving premises to smoke and moving on to other premises rather than returning.

### Option 2

- 9.3 Supporting such initiatives would increase the possibility of the issues in Section 4 and 9.1 above becoming problematic.
- 9.4 Whilst it is not a consideration for the Board it should be noted that supporting such initiatives could have an adverse impact on the number of people attempting to reduce their tobacco

intake. This could also expose customers seeking to enter premises to having to walk through clouds of smoke.

### Option 3

- 9.5 The same comments as at paragraphs 9.3 and 9.4 would be applicable but a further disadvantage would be the boundary issues surrounding the creation of zones. This could lead to complaints of unfair competition and of there not being a level playing field. Although the Board is not allowed to take into account any commercial disadvantage which may be suffered by individual licensees, it must be borne in mind that this would be a major concern amongst the licensed trade.

### Option 4

- 9.6 This could lead to licensees incurring expense but not succeeding with an application. It could also mean that due to some variant in the premises (location, width of pavement, proximity to residential property etc) some applications will be refused and others granted which again could lead to complaints of unfair competition.

## **10 CONCLUSIONS**

- 10.1 Having external areas whether for smoking and drinking or only smoking is likely to lead to all or some of the issues outlined in Section 4 becoming problematic.

## **11.0 CONSULTATIONS**

- 11.1 The Chief Executive, Dundee Licensed Trade Association, Liquor Licensing Forum, Tayside Police and Tayside Health Board have been consulted.

## **12.0 Name Patricia McIlquham**

**Clerk to the Licensing Board**

**Date: 13th January, 2006**