

City Chambers
DUNDEE
DD1 3BY

12th January 2024

Dear Colleague

LICENSING BOARD – 18TH JANUARY 2024

I refer to the agenda which was issued previously and now attach Item 3 which was marked to follow.

Yours faithfully

ROGER MENNIE

Clerk to the Licensing Board

AGENDA OF BUSINESS

**3 STATEMENT OF LICENSING POLICY 2024-2028 UNDER LICENSING SCOTLAND
ACT 2005 – RESULTS OF CONSULTATION**

(Report No 30-2024 by the Clerk to the Licensing Board, copy enclosed).

BAILIES

Christina ROBERTS

COUNCILLORS

Stewart HUNTER
Heather ANDERSON
Ken LYNN

Roisin SMITH
Georgina CRUICKSHANK

George MCIRVINE
Pete SHEARS
Daniel COLEMAN

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.
 - 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.
 - 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

DUNDEE CITY LICENSING BOARD
STATEMENT OF LICENSING POLICY 2023-2028
CONSULTATION DOCUMENT

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 current policy was adopted in November 2018 to cover the period from 2018-2022. The next policy period will run from 2023 until 2028.

There are a number of provisions of the statement which will require to be updated to reflect legislative changes and other legal developments since the 2018-2022 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 are to be consulted for the purposes of the policy statement under Section 6 of the 2005 Act 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 persons to be consulted for the purposes of the overprovision assessment under Section 7 of the 2005 Act 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.

The period for consultation will run up to and including 31st December 2023. The following specific matters are being put forward by the Board for consideration as to inclusion in the policy statement. However, the Board would welcome any views which respondents to this consultation may wish to submit to the Board on any aspect of its policy or the administration of its licensing functions whether or not specifically mentioned in this document. **Responses should be submitted either by e-mail to licensing.board@dundeeccity.gov.uk or by writing to the Licensing Office, 21 City Square, Dundee DD1 3BY.**

Overprovision of licensed premises

The Board previously decided (January 2018) that there was an overprovision of premises licensed for off-sales within the whole of the Board's area. That policy is no longer applicable following the decision of the sheriff in the case of Aldi Stores Ltd. v. Dundee City Licensing Board issued on 30th March 2022.

The Board is obliged as part of the process of developing a Statement of Licensing Policy to consider to what extent there may be overprovision of licensed premises (either generally or of a particular description) within any locality in the Board's area. For this purpose, it is open to a licensing board to designate the whole of its area as a locality.

The Board considered the question of overprovision at its meeting on 21st September 2023. During the meeting, the Board was presented with a submission on behalf of the Dundee Alcohol and Drug Partnership (ADP). A copy of the submission can be found at https://www.dundee.gov.uk/sites/default/files/23_08_28_alcohol_availability_in_dundee_adp.pdf.

Consultees are asked to consider that submission when giving their response to this consultation. The Board was grateful to the ADP for this information. The Board noted that the ADP submission considered that there was overprovision of off sales only premises throughout the city as a locality and went on to recommend the adoption of an overprovision policy for the whole city as regards such off sales premises.

The submission, along with the information provided as a result of this consultation process, will be given further consideration by the Board on conclusion of this process and so it is important for the Board to know the views of those consulted on the information supplied by the ADP.

At the meeting on 21 September 2023 the Board decided that the appropriate locality for the purposes of an overprovision assessment and possible statement as to the extent which there may be overprovision in a locality under Section 7 of the 2005 Act was its whole area. This is a provisional view for the purpose of consultation. One purpose of this consultation is to assess what respondents to the consultation think of the choice of the whole area of the Board as a locality. The Board is open to departing from this view of locality in light of this consultation process. It could, for example consider that after consultation it may be appropriate to adopt smaller localities for the purpose of any policy on overprovision.

The reasons why this was adopted were that the Board members are familiar with their area and felt that this was the locality which should be chosen. The Board's area is one of the smallest (if not the smallest) in Scotland. It has excellent public transport links meaning that travel across the city is relatively easy even for persons without access to their own transport. The Board was of the opinion that it made little sense to look at smaller localities as potentially being overprovided for when people could simply access another locality with only a short walk, car or bus journey. The Board members were also mindful that their overall experience as a Board and the local experience of Members, when considered individually and collectively, suggested that material alcohol related issues in terms of health harms and crime and disorder and other negative consequences of the misuse of alcohol appear to be experienced throughout the city. For example, the Board was aware from its own knowledge, that alcohol purchased in one area of the city may well be consumed elsewhere which reflects the mobile nature of many in the Dundee population. Given the size of the city and ease of

travel through it, at this time the Board considered, as a provisional view, that for the purposes of identification of a locality in terms of probable links to relevant harms, that the whole area of the city was the appropriate locality.

Although the Board adopted the locality because of its own experience and knowledge, it also noted, that the ADP had, for the reasons given by it, also reached the same view on locality. It also noted the small size of the city and the issues of mobility within it. Given that the ADP submission may be a factor that the Board has regard to in making a final determination as to whether and to what extent there needs to be a policy on overprovision in the proposed locality or indeed in an alternative locality or localities, the Board is interested to know whether and to what extent those consulted agree with or differ from the provisional view of the Board on locality or on the independent views expressed by the ADP.

Having determined the locality, the Board was advised that within the whole Board area there are 135 off-sales only premises with a total capacity of 6 846.765 sq. m. and 306 on-sales premises with a total capacity of 87 368 persons. The identity, location and individual capacities of licensed premises can be viewed here - <http://glamis-online-register.dundee.gov.uk/LicensingRegister/>. This also provides information on the Operating Plans of each premises. This is helpful in understanding the different types or styles of operation throughout Dundee and their licensed hours. Again, the Board would invite those consulted to consider this information and explain how it might be relevant to an assessment of overprovision by the Board.

Currently and provisionally, taking account of the numbers and capacity of licensed premises in the suggested locality, and given the current view of the Board as to the prevalence of relevant alcohol related harms, the Board agreed to propose that the whole of its area is potentially overprovided for in respect of premises licensed for off-sales only. The information contained in the ADP submission indicates a significant level of alcohol-related harm within the Board's area and suggests that this is likely to be due to the density of off-sales outlets in the proposed locality, particularly given that alcohol sales through off-sales premises account for around three-quarters of all alcohol sales in Scotland (ADP report at p.22). In that regard Dundee's outlet density for off-sales premises exceeds the Scottish average.

The Board did not consider that on sales premises (including on sales with an off sales element, such as public houses) were overprovided in the proposed locality. There was no material before it which suggested that any alcohol-related problems were linked in particular to on-sales premises. However, if consultees wish to bring any such material to the Board's attention then this will, of course, be considered.

The Board are entitled to consider licensed hours as part of a consideration of overprovision. The Board, in determining the proposed locality and having had regard to numbers and capacity in that proposed locality, did not consider that the current hours used by off-sales only premises required to be given separate consideration, especially as virtually all such premises trade for the maximum period set out in the 2005 Act, i.e., 10 am to 10 pm. The Board considered that numbers and capacity when linked to the locality chosen and the harms experienced therein, in themselves, gave rise to the provisional view that the locality was overprovided. The Board though does welcome views on whether and to what extent the licensed hours for off-sales only premises might be relevant to the question of a possible state of overprovision in the proposed locality. The Board also welcomes views on the relevance of licensed hours more generally, if for example consultees consider that a different locality or localities should be considered or where consultees consider that on sales only premises should be included for overprovision purposes.

There was nothing in the ADP submission to suggest that any particular mode of operation of off-sales outlets (for example as between supermarkets, convenience stores and specialist off-sales) was more or less likely to contribute to alcohol-related harm, although the Board would, of course, be open to considering any material which consultees may wish to submit which might suggest otherwise.

The Board is mindful of the operation of Minimum Unit Pricing (MUP) since May 2018 and of the fact that the Scottish Government is proposing to retain this beyond the expiry date of the current legislation and also to increase the unit price from 50p to 65p. It is aware that some may consider that MUP, or indeed price more generally, has a role to play in considering matters such as overprovision.

When developing this consultation proposal, the Board took into account the latest material available on the operation of MUP and, in particular, the reports produced on behalf of Public Health Scotland up to June 2023 which suggest that there have been some reductions in the levels of alcohol-related harms which can be attributed to MUP. This material can be accessed via www.publichealthscotland.scot. Those responding to this consultation may wish to consider this material. Nevertheless, it is the view of the Board that there is still a role for overprovision to play in seeking to tackle these issues. As is stated in the ADP report, there are a number of strategies and policies which can be explored to address the levels of alcohol-related harm and no one policy or legislative measure by itself will be a solution in this regard.

Again, the Board would be interested in views on whether and to what extent MUP or wider price issues should be considered by the Board in settling on an overprovision policy. At this stage, the Board is open to views but is equally mindful that the role, if any, of MUP or price, will need to be given careful consideration in settling a policy. For example, it is to be noted that the Board has no legal ability to set the price for the sale of alcohol.

In informing the initial stage of the consultation process the Board took into account the “Guidance on section 142 of the Licensing (Scotland) Act 2005 for Licensing Boards and local authorities” issued by the Scottish Ministers on 13 January 2023. This Guidance will inform the Board in the development of the Statement of Licensing Policy in a number of respects and not just as regards overprovision. The Guidance discusses overprovision at Part 5 of the Guidance.

This Guidance can be found at <https://www.gov.scot/publications/licensing-scotland-act-2005-section-142-guidance-licensing-boards/pages/2/>. The Board is interested to know whether and to what extent consultees consider in what respects that the Guidance may assist the Board in considering a policy or in what ways the Guidance is relevant to the views of consultees.

- 1. Do you agree with the choice of the proposed locality as being the whole of the Board’s area and with the reasons for the Board coming to this proposed locality for the purposes of a policy statement on overprovision? (Please give your reasons for your views).**
- 2. Do you agree with the proposal that off-sales only premises should be considered for the purposes of the overprovision proposal for the proposed locality? (Please give your reasons)**
- 3. If you think a different locality or localities should be considered, what should that/those be and why? (Please give reasons for this)**

4. If you consider that a different locality or localities should be adopted, should an overprovision policy only apply to dedicated off sales premises? (Please give your reasons)
5. Should the Board give particular consideration to any specific modes or types or styles of operation or size or capacity of off-sales only premises in the proposed locality? (Please give reasons for this and, as noted above, any material which may be of assistance to the Board in this respect would be welcome). Please answer the same question if you consider that another locality or localities should be adopted.
5. Do you consider that the Board should consider other types of licensed premises (for example restaurants, pubs, night clubs or entertainment venues or combined on- and off-sales premises) (if any) for the purposes of deciding if there is potential or actual overprovision in the proposed locality or other locality or localities that you might suggest? (Please give reasons)
6. Do you agree that the Board should be proposing that there is overprovision notwithstanding the operation (and so far as is known continuation by Scottish Government) of Minimum Unit Pricing (MUP) which is also directed towards tackling alcohol-related harm? (Please give reasons). Do you have any comments generally concerning the relevance, if any, of the price of alcohol in this context?
7. Do you have any views to express in relation to whether the Board ought to consider licensed hours for licensed premises in the proposed locality or in any other locality or localities you believe the Board should consider? Again, please give the Board reasons for those views.
8. Given that the Board may have regard to the ADP submission in finalising a policy on overprovision do you have any comments to make on that report? Please try to give reasons for your views.
9. As regards the Guidance, are there areas in the Guidance that you consider that the Board ought to give particular consideration to? Please try to give reasons for your views?

Grant of occasional licences

In terms of Section 56 of the 2005 Act, the Board may grant occasional licences to premises which are not subject to a premises licence. Application must be made by a premises licence holder, personal licence holder or a voluntary organisation. Occasional licences can run for up to 14 days. Unlike under the Licensing (Scotland) Act 1976, there is no requirement for an applicant for an occasional licence to specify any particular event which the licence is intended to cover, so premises can in theory operate continuously on the basis of occasional licences. This was undesirable for a number of reasons, e.g., the fee for an occasional licence is only £10 making it a cheaper alternative to applying for a full premises licence which has a substantially higher fee and also would be subject to the annual fee in addition; there is no requirement to provide detailed operating or layout plans, planning or building control certificates, etc. There is a power given to Scottish Ministers under Section 56 (6A), (6B) and (6C) to, amongst other things, prescribe a limit on the number of occasional licences which any one premises may apply for. This power has not yet been used.

At the moment, occasional licences are dealt with under delegated powers, unless there are any objections. If there are objections, the applications are referred to the Licensing Board, although this is not always possible in the event that there is no Licensing Board meeting prior to the licence dates

applied for. In that event, the 2005 Act requires that the applicant submits written representations to the Clerk and the application is then determined without a hearing.

As noted above, there have been concerns about some premises virtually operating on a permanent basis on the grant of occasional licences. It was decided in the last policy review in 2018 that applicants for such occasional licences should have to provide some justification for the licence being sought. This applied to (i) applications which did not specify particular events in the form and (ii) any premises where there have been 4 or more applications over the preceding 3 months period. However, as the result of a recent court appeal in which it was decided it was not for the licensing boards to impose any limit on the number of occasional licences whilst the above power of the Scottish Ministers remains unexercised, it is recommended that this part of the existing policy statement be deleted.

Insofar as occasional licences are concerned, it is suggested that the following be included in the policy statement –

Applications should be submitted to the Licensing Office no later than 28 days prior to the event. However, for large type events, or complex events, the application should be submitted as soon as possible in advance of the proposed event, thus giving officers time to discuss and request further information. Also, with an event of over 500 patrons an alcohol management plan (AMP) will be required and also a layout plan depending on the location. If there is to be entertainment at the event then a Public Entertainment Licence may also be required.

7. Do you agree with this proposed addition to the Board’s policy? If not, why not? Either way please give the Board reasons for your views.

8. Are there any other aspects of applications for occasional licences which you think the Board should consider including in the policy statement?

Music noise from licensed premises

Currently, the Board generally attaches a condition to licences where live music is to be provided which requires all amplified music to be inaudible in the nearest residential accommodation. The Board wishes to explore whether this is an appropriate condition to maintain and the following approach is suggested for consultation.

The relevant licensing objective is the prevention of *public* nuisance (emphasis added). A question arises as to whether noise caused by music within licensed premises can be regarded as “public” in that sense. Case law from England would suggest that to be a “public nuisance”, the effect of the noise should be “sufficiently widespread and sufficiently indiscriminate to amount to something more than private nuisance”. Scots Law does not recognize the same distinction between public and private nuisance but in the context of that particular licensing objective especially when taken in conjunction with the references in the statutory 2005 Act Guidance to the effect upon “local residents” and “communities”, this tends to support an argument that the objective will only be engaged when the noise has that wider level of impact and where that public character of the nuisance is lacking, then an individual complainer would have to seek a remedy either via the statutory nuisance route (by complaining to the local authority noise control section) or a private action for nuisance. However, there is a qualification to this approach where the nature of the noise nuisance (such as the duration, frequency, quality, time of day, etc.) would support a conclusion that the nuisance has gone beyond the mere discomfort of one person and has reached a level such that it can be considered to be likely to be a public nuisance in the sense above referred to.

In terms of Board policy, the Board is considering having a statement which indicates that the Board is concerned with nuisance which has a reasonable link to the provision of alcohol on the premises. In such a statement, the Board may generally consider that such a nuisance might exist where there is evidence that what is complained of impacted on a sufficiently large number of members of the public by reference to one act or a series of acts, or, where the effect was sufficiently widespread or indiscriminate. It might stress that it would generally need evidence from more than one source to support the matter being a public nuisance, but that in cases where even one source of evidence existed, that might, if the evidence was sufficiently strong, allow the Board to draw the inference that the nuisance was likely to be a public one. It might also add in considering whether there is a nuisance that this would involve, amongst other considerations, a consideration of the nature of the matter complained of, duration, frequency, quality (shrillness, grating, impulsivity, sporadic, repeated) and the hour of it. As part of any such statement, the Board might stress that it can only consider public nuisance and that may mean that in many cases involving noise complaints affecting adjacent property, that the appropriate recourse might be through the environmental health department or through the common law of nuisance.

9. Do you think that the inaudibility condition should be retained? (Please give reasons) If not, why not? Either way please give the Board reasons for your views.

10. Would you support the alternative approach as outlined above? (Please give reasons)

11. Do you have any additional observations/comments on how the Board should deal with the issue of music noise from licensed premises?

Licensed Premises – Music Outside

In general, licensed premises are not permitted music outside the venue on a permanent basis. If music is desired for a special event (such as Dundee Dance Event or Almost Blue), the applicant may need to seek planning permission prior to a major variation being applied for. Any music outside the venue should not cause a nuisance. The Board would propose that permission would generally only be granted for music outside until 7pm.

12. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

Occasional Licence – External Music Events

An applicant requesting the grant of an occasional licence involving music (live performances/DJs loud amplified music) should demonstrate to the Board that this will not cause a nuisance. If the event is granted, then a 7pm music cut off point will generally be applied as a local condition. Areas that will not be covered by this timing restrictions are Slessor Gardens, Apex car park, City Square, Magdalen Green, Camperdown Park. The 7pm restriction may be revised by the Board if the applicant wishes to extend this timing, but other mitigating measures may be required such as a Noise Impact Assessment, staff monitoring local residential areas for music outbreak, etc. Due to the potential of objections by local residents or council officers, it is advised that the application is submitted as soon as possible in advance of the event as it may have to be presented to the board for a decision.

13. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

14. Are there any other comments or observations you wish to make concerning the playing of music within licensed premises or externally?

Home deliveries of alcohol

Premises have been making an increasing use of home deliveries, especially as a result of the recent coronavirus pandemic. It is the view amongst licensing boards that having an off-sales facility on a premises licence does not automatically allow the premises to carry out home deliveries of alcohol unless this is specified in the operating plan for the premises and that appropriate procedures be in place on the part of the licence holders concerned. Whilst the Board does not share the view that such a variation would be required, it would be prepared to consider applications to add home deliveries to the terms of a premises licence for off-sales and it is considering the following wording for inclusion in the policy statement in this regard –

“Deliveries of alcohol

Where premises licence holders with an off sales facility apply for a variation to operate a delivery service, policies and procedures should be in place and implemented by staff including in relation to the process of taking and recording of orders, training for delivery drivers, recording of items despatched, age verification policy and recording deliveries made. Those policies and procedures should be aimed at preventing alcohol being delivered to and consumed by persons under 18 or drunk persons.

Applicants seeking the addition of a delivery service should expect the requirement for policies and procedures to be in place to be imposed as a local condition on the premises licence.

Premises licence holders are reminded that if they use a courier or the sale and delivery are carried out through a third party organisation, it is the responsibility of the premises licence holder to make sure the courier/third party has appropriate policies and procedures in place.”

15. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

16. Do you have any other observations or comments on the issue of home deliveries of alcohol?

Late night workers

A number of licensing boards have provisions in the policy statement to encourage licence holders to take account of the interests of their staff and, in particular, arranging transport home for them at the end of their shifts which can often be in the early hours of the morning. It is not open to a licensing board to attach conditions to licences in this regard.

The suggested wording for inclusion in the policy is as follows –

“Safety of Workers and Employees within Licensed Premises

The Licensing Board acknowledges that it has no specific remit in relation to health and safety issues involving staff working within licensed premises. It does however recognise that there will be occasions where the safety of staff may be compromised by customers who are intoxicated, particularly where they have been refused service or access to the premises. It also recognises that staff travelling home alone at night, particularly women, are at a heightened risk of violent crime. The Board therefore believes that licence holders have an added responsibility towards their staff flowing from issues directly relating to the sale of alcohol and the specific provisions of their licence.

The Board believes that all licence holders, and particularly those operating or applying for later licensed hours, should consider what arrangements are in place for staff getting home safely after the premises have closed when public transportation options may be more limited or non-existent. The Licensing Board is greatly encouraged by the “Safe Home” initiatives adopted by some licence holders for their staff and would strongly encourage others to take a similarly responsible approach to the safety of staff working within their premises later at night. The Board also welcomes the growing number of campaigns and initiatives aimed at improving pay and conditions for staff working within the hospitality sector and expects that licence holders will lead the way in helping to eliminate unfair working practices within the licensed trade.”

17. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

The following miscellaneous matters are also highlighted for amendment in the new policy statement : -

Irresponsible alcohol promotions

The current policy sets out the legislative provisions on this aspect of the sale of alcohol and also provides examples of each which the Board itself is suggesting. It is recommended that these examples be removed from the policy statement and the legislative provisions be left in the statement. Ultimately, it will be a matter for the courts to decide what is allowed and what is against the terms of the legislation.

Children & Young Persons in licensed premises

The policy statement says that Children & Young Persons are only permitted in licensed premises until 10pm whilst having a meal accompanied by an adult. This should be amended to clarify it does not apply if premises are a restaurant or function suite putting on a private function

Bottle Marking Scheme

This should be removed as it was never implemented to any great extent.

Section 33 transfers

If the outgoing licence holder allows the incoming to trade on their licence during the transfer process, then a letter/email authorising this activity must be sent to the Licensing Board.

18. Do you have any comments or observations on these additional miscellaneous matters?

19. Do you have any other comments to submit for the Board's consideration at its review of licensing policy?

DUNDEE CITY LICENSING BOARD
STATEMENT OF LICENSING POLICY 2023-2028
CONSULTATION DOCUMENT

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 current policy was adopted in November 2018 to cover the period from 2018-2022. The next policy period will run from 2023 until 2028.

There are a number of provisions of the statement which will require to be updated to reflect legislative changes and other legal developments since the 2018-2022 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 are to be consulted for the purposes of the policy statement under Section 6 of the 2005 Act 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 persons to be consulted for the purposes of the overprovision assessment under Section 7 of the 2005 Act 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.

The period for consultation will run up to and including 30th November 2023. The following specific matters are being put forward by the Board for consideration as to inclusion in the policy statement. However, the Board would welcome any views which respondents to this consultation may wish to submit to the Board on any aspect of its policy or the administration of its licensing functions whether or not specifically mentioned in this document. **Responses should be submitted either by e-mail to licensing.board@dundeecity.gov.uk or by writing to the Licensing Office, 21 City Square, Dundee DD1 3BY.**

Overprovision of licensed premises

The Board previously decided (January 2018) that there was an overprovision of premises licensed for off-sales within the whole of the Board's area. That policy is no longer applicable following the decision of the sheriff in the case of Aldi Stores Ltd. v. Dundee City Licensing Board issued on 30th March 2022.

The Board is obliged as part of the process of developing a Statement of Licensing Policy to consider to what extent there may be overprovision of licensed premises (either generally or of a particular description) within any locality in the Board's area. For this purpose, it is open to a licensing board to designate the whole of its area as a locality.

The Board considered the question of overprovision at its meeting on 21st September 2023. During the meeting, the Board was presented with a submission on behalf of the Dundee Alcohol and Drug Partnership (ADP). A copy of the submission can be found at https://www.dundee.gov.uk/sites/default/files/23_08_28_alcohol_availability_in_dundee_adp.pdf.

Consultees are asked to consider that submission when giving their response to this consultation. The Board was grateful to the ADP for this information. The Board noted that the ADP submission considered that there was overprovision of off sales only premises throughout the city as a locality and went on to recommend the adoption of an overprovision policy for the whole city as regards such off sales premises.

The submission, along with the information provided as a result of this consultation process, will be given further consideration by the Board on conclusion of this process and so it is important for the Board to know the views of those consulted on the information supplied by the ADP.

At the meeting on 21 September 2023 the Board decided that the appropriate locality for the purposes of an overprovision assessment and possible statement as to the extent which there may be overprovision in a locality under Section 7 of the 2005 Act was its whole area. This is a provisional view for the purpose of consultation. One purpose of this consultation is to assess what respondents to the consultation think of the choice of the whole area of the Board as a locality. The Board is open to departing from this view of locality in light of this consultation process. It could, for example consider that after consultation it may be appropriate to adopt smaller localities for the purpose of any policy on overprovision.

The reasons why this was adopted were that the Board members are familiar with their area and felt that this was the locality which should be chosen. The Board's area is one of the smallest (if not the smallest) in Scotland. It has excellent public transport links meaning that travel across the city is relatively easy even for persons without access to their own transport. The Board was of the opinion that it made little sense to look at smaller localities as potentially being overprovided for when people could simply access another locality with only a short walk, car or bus journey. The Board members were also mindful that their overall experience as a Board and the local experience of Members, when considered individually and collectively, suggested that material alcohol related issues in terms of health harms and crime and disorder and other negative consequences of the misuse of alcohol appear to be experienced throughout the city. For example, the Board was aware from its own knowledge, that alcohol purchased in one area of the city may well be consumed elsewhere which reflects the mobile nature of many in the Dundee population. Given the size of the city and ease of

travel through it, at this time the Board considered, as a provisional view, that for the purposes of identification of a locality in terms of probable links to relevant harms, that the whole area of the city was the appropriate locality.

Although the Board adopted the locality because of its own experience and knowledge, it also noted, that the ADP had, for the reasons given by it, also reached the same view on locality. It also noted the small size of the city and the issues of mobility within it. Given that the ADP submission may be a factor that the Board has regard to in making a final determination as to whether and to what extent there needs to be a policy on overprovision in the proposed locality or indeed in an alternative locality or localities, the Board is interested to know whether and to what extent those consulted agree with or differ from the provisional view of the Board on locality or on the independent views expressed by the ADP.

Having determined the locality, the Board was advised that within the whole Board area there are 135 off-sales only premises with a total capacity of 6 846.765 sq. m. and 306 on-sales premises with a total capacity of 87 368 persons. The identity, location and individual capacities of licensed premises can be viewed here - <http://glamis-online-register.dundee.gov.uk/LicensingRegister/>. This also provides information on the Operating Plans of each premises. This is helpful in understanding the different types or styles of operation throughout Dundee and their licensed hours. Again, the Board would invite those consulted to consider this information and explain how it might be relevant to an assessment of overprovision by the Board.

Currently and provisionally, taking account of the numbers and capacity of licensed premises in the suggested locality, and given the current view of the Board as to the prevalence of relevant alcohol related harms, the Board agreed to propose that the whole of its area is potentially overprovided for in respect of premises licensed for off-sales only. The information contained in the ADP submission indicates a significant level of alcohol-related harm within the Board's area and suggests that this is likely to be due to the density of off-sales outlets in the proposed locality, particularly given that alcohol sales through off-sales premises account for around three-quarters of all alcohol sales in Scotland (ADP report at p.22). In that regard Dundee's outlet density for off-sales premises exceeds the Scottish average.

The Board did not consider that on sales premises (including on sales with an off sales element, such as public houses) were overprovided in the proposed locality. There was no material before it which suggested that any alcohol-related problems were linked in particular to on-sales premises. However, if consultees wish to bring any such material to the Board's attention then this will, of course, be considered.

The Board are entitled to consider licensed hours as part of a consideration of overprovision. The Board, in determining the proposed locality and having had regard to numbers and capacity in that proposed locality, did not consider that the current hours used by off-sales only premises required to be given separate consideration, especially as virtually all such premises trade for the maximum period set out in the 2005 Act, i.e., 10 am to 10 pm. The Board considered that numbers and capacity when linked to the locality chosen and the harms experienced therein, in themselves, gave rise to the provisional view that the locality was overprovided. The Board though does welcome views on whether and to what extent the licensed hours for off-sales only premises might be relevant to the question of a possible state of overprovision in the proposed locality. The Board also welcomes views on the relevance of licensed hours more generally, if for example consultees consider that a different locality or localities should be considered or where consultees consider that on sales only premises should be included for overprovision purposes.

There was nothing in the ADP submission to suggest that any particular mode of operation of off-sales outlets (for example as between supermarkets, convenience stores and specialist off-sales) was more or less likely to contribute to alcohol-related harm, although the Board would, of course, be open to considering any material which consultees may wish to submit which might suggest otherwise.

The Board is mindful of the operation of Minimum Unit Pricing (MUP) since May 2018 and of the fact that the Scottish Government is proposing to retain this beyond the expiry date of the current legislation and also to increase the unit price from 50p to 65p. It is aware that some may consider that MUP, or indeed price more generally, has a role to play in considering matters such as overprovision.

When developing this consultation proposal, the Board took into account the latest material available on the operation of MUP and, in particular, the reports produced on behalf of Public Health Scotland up to June 2023 which suggest that there have been some reductions in the levels of alcohol-related harms which can be attributed to MUP. This material can be accessed via www.publichealthscotland.scot. Those responding to this consultation may wish to consider this material. Nevertheless, it is the view of the Board that there is still a role for overprovision to play in seeking to tackle these issues. As is stated in the ADP report, there are a number of strategies and policies which can be explored to address the levels of alcohol-related harm and no one policy or legislative measure by itself will be a solution in this regard.

Again, the Board would be interested in views on whether and to what extent MUP or wider price issues should be considered by the Board in settling on an overprovision policy. At this stage, the Board is open to views but is equally mindful that the role, if any, of MUP or price, will need to be given careful consideration in settling a policy. For example, it is to be noted that the Board has no legal ability to set the price for the sale of alcohol.

In informing the initial stage of the consultation process the Board took into account the "Guidance on section 142 of the Licensing (Scotland) Act 2005 for Licensing Boards and local authorities" issued by the Scottish Ministers on 13 January 2023. This Guidance will inform the Board in the development of the Statement of Licensing Policy in a number of respects and not just as regards overprovision. The Guidance discusses overprovision at Part 5 of the Guidance.

This Guidance can be found at <https://www.gov.scot/publications/licensing-scotland-act-2005-section-142-guidance-licensing-boards/pages/2/>. The Board is interested to know whether and to what extent consultees consider in what respects that the Guidance may assist the Board in considering a policy or in what ways the Guidance is relevant to the views of consultees.

- 1. Do you agree with the choice of the proposed locality as being the whole of the Board's area and with the reasons for the Board coming to this proposed locality for the purposes of a policy statement on overprovision? (Please give your reasons for your views).**

The Scottish Grocers' Federation (SGF) is the trade association for the Scottish Convenience Store Sector. There are 5,171 convenience stores in Scotland, which includes all the major symbol groups, co-op and convenience multiples in Scotland. SGF promotes responsible community retailing and works with key stakeholders to encourage a greater understanding of the contribution convenience retailers make to Scotland's communities. In total, convenience stores provide over 49,000 jobs in Scotland.

SGF has concerns about this position on overprovision.

We respectfully suggest that overprovision is a blunt instrument and does little to reduce alcohol related harm. If the licensing board decided to develop an overprovision policy, SGF would strongly urge that this is based on a locality as opposed to whole area approach.

There is no simple cause-and-effect relationship between the number of premises and alcohol-related problems and overall, it is becoming increasingly difficult to make a link between individual premises and problems in a specific locality. Inequality continues to be the main determining factor: alcohol-related harm in Scotland is still disproportionately experienced by those from more deprived areas.

Rather than taking a 'blanket' approach to overprovision regarding off-sales and public house type premises, the Board should continue to take into account the specific activities and mode of operation of the applicant. It is important to note that arguably the number or capacity of premises in a locality is unlikely to be the key factor in deciding whether there is overprovision. Instead, the determining factor is the extent to which there are alcohol-related, health, and crime problems in the area. In addition, the case law has shown that a licensing board must base any decision around overprovision in a targeted, evidence-led basis. Decisions from Aberdeen and Dundee have shown that selecting an arbitrary location which is not based on probative evidence would be unlawful. In addition, boards must consider the positive benefits that a thriving local convenience sector can bring to communities, and that evidence should be weighed up as part of the exercise. Our members are responsible retailers and they put considerable effort into ensuring that alcohol is sold in a responsible way.

2. Do you agree with the proposal that off-sales only premises should be considered for the purposes of the overprovision proposal for the proposed locality? (Please give your reasons)

SGF has concerns about proposals that potentially create barriers to the off-sale trade given that off-sales are a substantial part of the full basket that many of our retailers offer.

Convenience stores provide a range of key services for their customers, and this includes that ability to be able to offer their customers a full range of products, i.e., giving the customer the chance purchase an alcoholic beverage as an accompaniment with home dining. Therefore, a consequence of overprovision is that new entrants to the market are unable to obtain premises licences to authorise the sale of alcohol and are therefore, disadvantaged. The availability of alcohol in a pre-existing competitor store gives the prospective customer a reason to choose to shop there. The convenience element of being able to get their "full basket" from the competitor provides an unfair commercial advantage.

SGF does not agree that off-sales premises should only be considered for the purposes of the overprovision proposal as this will unfairly affect the convenience sector. However, SGF does not have a view on the overprovision proposals for on-sales.

3. If you think a different locality or localities should be considered, what should that/those be and why? (Please give reasons for this)

It is SGF's view that a licensing board must base any decision around overprovision in a targeted, evidence-led basis. Decisions from Aberdeen and Dundee have shown that selecting an arbitrary location which is not based on probative evidence would be unlawful. In addition, boards must consider the positive benefits that a thriving local convenience sector can bring to communities, and

that evidence should be weighed up as part of the exercise. Our members are responsible retailers and they put considerable effort into ensuring that alcohol is sold in a responsible way.

- 4. If you consider that a different locality or localities should be adopted, should an overprovision policy only apply to dedicated off sales premises? (Please give your reasons)**

SGF agrees with this on the basis that it could allow for more evidence-based decisions to be made on overprovision.

- 5. Should the Board give particular consideration to any specific modes or types or styles of operation or size or capacity of off-sales only premises in the proposed locality? (Please give reasons for this and, as noted above, any material which may be of assistance to the Board in this respect would be welcome). Please answer the same question if you consider that another locality or localities should be adopted.**

Capacity is an important issue in determining overprovision. If the entire Board area was regarded as being overprovided for it would prevent retailers from ever increasing the capacity of their alcohol sales area. However, in practice such increases would not dramatically increase the amount of alcohol being sold. It would be a paradox if a 20m² increase in selling area of a convenience store was counted as just as big a threat to an overprovision assessment as a new out-of-town hypermarket. Retailers frequently remerchandise and refit stores to best meet consumer needs. Most of the time these will just involve 'micro-space': keeping the existing shelving and general space splits but moving products around on the shelves. Sometimes, however, to meet consumer demand, to fit in with new brand ideas or to roll out improved formats 'macro-space' revisions are necessary. These may involve changing old shelves for new, increasing or decreasing the splits in store space between different categories, or gutting and refitting the store entirely. Extensions to the selling area might be necessary under macro-space refits. It should be noted that, of course, retailers are charged a fee for any major or minor variation to their licences.

Creating a general presumption that no increase in alcohol capacity would be approved in the entire Board area would almost certainly mean that existing retailers would not invest in modernising and refitting stores.

- 6. Do you consider that the Board should consider other types of licensed premises (for example restaurants, pubs, night clubs or entertainment venues or combined on- and off-sales premises) (if any) for the purposes of deciding if there is potential or actual overprovision in the proposed locality or other locality or localities that you might suggest? (Please give reasons)**

SGF does not have a view here.

- 7. Do you agree that the Board should be proposing that there is overprovision notwithstanding the operation (and so far as is known continuation by Scottish Government) of Minimum Unit Pricing (MUP) which is also directed towards tackling alcohol-related harm? (Please give reasons). Do you have any comments generally concerning the relevance, if any, of the price of alcohol in this context?**

MUP has been an important issue for the SGF and one that we follow developments on closely. SGF works with its membership and the convenience sector as a whole to ensure that they are fully compliant with licensing legislation and are selling alcohol responsibly both in terms of pricing and promotions.

Legislation such as MUP already creates barriers for retailers and producers to sell products at a price which they choose. By implementing overprovision proposals only adds to the legislative burden that retailers are already facing.

- 8. Do you have any views to express in relation to whether the Board ought to consider licensed hours for licensed premises in the proposed locality or in any other locality or localities you believe the Board should consider? Again, please give the Board reasons for those views.**

The Licensing (Scotland) Act 2005 sets out the maximum permitted hours for off sales type premises are 10am to 10pm, each day of the week. SGF supports this policy on licensed hours.

Retailers are used to the current licensed hours and so SGF would not want to see them changed. Also, SGF would not support any reduction to the available licensed hours as we believe there would be no evidential basis for such a decision and would also leave applicants for new stores at a disadvantage. There is not, in the SGF's view, any evidence to suggest that alcohol purchased later in the day is more harmful than purchased earlier or vice versa.

SGF would not support any reduction to the available licensed hours. Convenience stores are community assets which offer key services to local communities. Our members are responsible retailers and they put considerable effort into ensuring that alcohol is sold in a responsible way.

- 9. Given that the Board may have regard to the ADP submission in finalising a policy on overprovision do you have any comments to make on that report? Please try to give reasons for your views.**

We reiterate the views presented above on overprovision in response to the ADP submission.

- 10. As regards the Guidance, are there areas in the Guidance that you consider that the Board ought to give particular consideration to? Please try to give reasons for your views?**

We recognise the Board's duty to assess overprovision under Section 7 of the Licensing (Scotland) Act 2005 in respect of licensed premises or licensed premises of a particular description in any locality within the Board's area.

Grant of occasional licences

In terms of Section 56 of the 2005 Act, the Board may grant occasional licences to premises which are not subject to a premises licence. Application must be made by a premises licence holder, personal licence holder or a voluntary organisation. Occasional licences can run for up to 14 days. Unlike under the Licensing (Scotland) Act 1976, there is no requirement for an applicant for an occasional licence to specify any event which the licence is intended to cover, so premises can in theory operate continuously on the basis of occasional licences. This was undesirable for a number of reasons, e.g., the fee for an occasional licence is only £10 making it a cheaper alternative to applying for a full premises licence which has a substantially higher fee and also would be subject to the annual fee in

addition; there is no requirement to provide detailed operating or layout plans, planning or building control certificates, etc. There is a power given to Scottish Ministers under Section 56 (6A), (6B) and (6C) to, amongst other things, prescribe a limit on the number of occasional licences which any one premises may apply for. This power has not yet been used.

At the moment, occasional licences are dealt with under delegated powers, unless there are any objections. If there are objections, the applications are referred to the Licensing Board, although this is not always possible in the event that there is no Licensing Board meeting prior to the licence dates applied for. In that event, the 2005 Act requires that the applicant submits written representations to the Clerk and the application is then determined without a hearing.

As noted above, there have been concerns about some premises virtually operating on a permanent basis on the grant of occasional licences. It was decided in the last policy review in 2018 that applicants for such occasional licences should have to provide some justification for the licence being sought. This applied to (i) applications which did not specify particular events in the form and (ii) any premises where there have been 4 or more applications over the preceding 3 months period. However, as the result of a recent court appeal in which it was decided it was not for the licensing boards to impose any limit on the number of occasional licences whilst the above power of the Scottish Ministers remains unexercised, it is recommended that this part of the existing policy statement be deleted.

Insofar as occasional licences are concerned, it is suggested that the following be included in the policy statement –

Applications should be submitted to the Licensing Office no later than 28 days prior to the event. However, for large type events, or complex events, the application should be submitted as soon as possible in advance of the proposed event, thus giving officers time to discuss and request further information. Also, with an event of over 500 patrons an alcohol management plan (AMP) will be required and also a layout plan depending on the location. If there is to be entertainment at the event then a Public Entertainment Licence may also be required.

7. Do you agree with this proposed addition to the Board's policy? If not, why not? Either way please give the Board reasons for your views.

8. Are there any other aspects of applications for occasional licences which you think the Board should consider including in the policy statement?

Music noise from licensed premises

Currently, the Board generally attaches a condition to licences where live music is to be provided which requires all amplified music to be inaudible in the nearest residential accommodation. The Board wishes to explore whether this is an appropriate condition to maintain and the following approach is suggested for consultation.

The relevant licensing objective is the prevention of *public* nuisance (emphasis added). A question arises as to whether noise caused by music within licensed premises can be regarded as "public" in that sense. Case law from England would suggest that to be a "public nuisance", the effect of the noise should be "sufficiently widespread and sufficiently indiscriminate to amount to something more than private nuisance". Scots Law does not recognize the same distinction between public and private nuisance but in the context of that particular licensing objective especially when taken in conjunction

with the references in the statutory 2005 Act Guidance to the effect upon “local residents” and “communities”, this tends to support an argument that the objective will only be engaged when the noise has that wider level of impact and where that public character of the nuisance is lacking, then an individual complainant would have to seek a remedy either via the statutory nuisance route (by complaining to the local authority noise control section) or a private action for nuisance. However, there is a qualification to this approach where the nature of the noise nuisance (such as the duration, frequency, quality, time of day, etc.) would support a conclusion that the nuisance has gone beyond the mere discomfort of one person and has reached a level such that it can be considered to be likely to be a public nuisance in the sense above referred to.

In terms of Board policy, the Board is considering having a statement which indicates that the Board is concerned with nuisance which has a reasonable link to the provision of alcohol on the premises. In such a statement, the Board may generally consider that such a nuisance might exist where there is evidence that what is complained of impacted on a sufficiently large number of members of the public by reference to one act or a series of acts, or, where the effect was sufficiently widespread or indiscriminate. It might stress that it would generally need evidence from more than one source to support the matter being a public nuisance, but that in cases where even one source of evidence existed, that might, if the evidence was sufficiently strong, allow the Board to draw the inference that the nuisance was likely to be a public one. It might also add in considering whether there is a nuisance that this would involve, amongst other considerations, a consideration of the nature of the matter complained of, duration, frequency, quality (shrillness, grating, impulsivity, sporadic, repeated) and the hour of it. As part of any such statement, the Board might stress that it can only consider public nuisance and that may mean that in many cases involving noise complaints affecting adjacent property, that the appropriate recourse might be through the environmental health department or through the common law of nuisance.

9. Do you think that the inaudibility condition should be retained? (Please give reasons) If not, why not? Either way please give the Board reasons for your views.

10. Would you support the alternative approach as outlined above? (Please give reasons)

11. Do you have any additional observations/comments on how the Board should deal with the issue of music noise from licensed premises?

SGF does not take a view on this section.

Licensed Premises – Music Outside

In general, licensed premises are not permitted music outside the venue on a permanent basis. If music is desired for a special event (such as Dundee Dance Event or Almost Blue), the applicant may need to seek planning permission prior to a major variation being applied for. Any music outside the venue should not cause a nuisance. The Board would propose that permission would generally only be granted for music outside until 7pm.

12. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

Occasional Licence – External Music Events

An applicant requesting the grant of an occasional licence involving music (live performances/DJs loud amplified music) should demonstrate to the Board that this will not cause a nuisance. If the event is granted, then a 7pm music cut off point will generally be applied as a local condition. Areas that will not be covered by this timing restrictions are Slessor Gardens, Apex car park, City Square, Magdalen Green, Camperdown Park. The 7pm restriction may be revised by the Board if the applicant wishes to extend this timing, but other mitigating measures may be required such as a Noise Impact Assessment, staff monitoring local residential areas for music outbreak, etc. Due to the potential of objections by local residents or council officers, it is advised that the application is submitted as soon as possible in advance of the event as it may have to be presented to the board for a decision.

13. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

14. Are there any other comments or observations you wish to make concerning the playing of music within licensed premises or externally?

Home deliveries of alcohol

Premises have been making an increasing use of home deliveries, especially as a result of the recent coronavirus pandemic. It is the view amongst licensing boards that having an off-sales facility on a premises licence does not automatically allow the premises to carry out home deliveries of alcohol unless this is specified in the operating plan for the premises and that appropriate procedures be in place on the part of the licence holders concerned. Whilst the Board does not share the view that such a variation would be required, it would be prepared to consider applications to add home deliveries to the terms of a premises licence for off-sales and it is considering the following wording for inclusion in the policy statement in this regard –

“Deliveries of alcohol

Where premises licence holders with an off sales facility apply for a variation to operate a delivery service, policies and procedures should be in place and implemented by staff including in relation to the process of taking and recording of orders, training for delivery drivers, recording of items despatched, age verification policy and recording deliveries made. Those policies and procedures should be aimed at preventing alcohol being delivered to and consumed by persons under 18 or drunk persons.

Applicants seeking the addition of a delivery service should expect the requirement for policies and procedures to be in place to be imposed as a local condition on the premises licence.

Premises licence holders are reminded that if they use a courier or the sale and delivery are carried out through a third-party organisation, it is the responsibility of the premises licence holder to make sure the courier/third party has appropriate policies and procedures in place.”

15. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

SGF is content if the board were to add home deliveries to the terms of a premises licence for off-sales. We also agree with the wording of the policy statement. However, it is necessary to acknowledge that delivery agents allows convenience stores to offer another important and valued facility for customers. The SGF Local Shop Report highlights that 26% of convenience stores offer some form of grocery delivery, providing an important service to their communities.

SGF members use these facilities responsibly and have strict measures, such as record keeping and age verification in place, to ensure the rules around delivery are observed.

Drivers are trained to -

- 1. Always hand over alcohol to an adult.*
- 2. If no adult able to accept deliver then return all goods back to shop.*
- 3. Never leave items on the door step.*

SGF members have reported that they ban any household where they suspect underage sales maybe taking place, and go out of the way to ensure they abide by the regulation.

SGF promotes responsible retailing, including the sale of alcohol and any of the other 222 products restricted under legislation.

16. Do you have any other observations or comments on the issue of home deliveries of alcohol?

Late night workers

A number of licensing boards have provisions in the policy statement to encourage licence holders to take account of the interests of their staff and, in particular, arranging transport home for them at the end of their shifts which can often be in the early hours of the morning. It is not open to a licensing board to attach conditions to licences in this regard.

The suggested wording for inclusion in the policy is as follows –

“Safety of Workers and Employees within Licensed Premises

The Licensing Board acknowledges that it has no specific remit in relation to health and safety issues involving staff working within licensed premises. It does however recognise that there will be occasions where the safety of staff may be compromised by customers who are intoxicated, particularly where they have been refused service or access to the premises. It also recognises that staff travelling home alone at night, particularly women, are at a heightened risk of violent crime. The Board therefore believes that licence holders have an added responsibility towards their staff flowing from issues directly relating to the sale of alcohol and the specific provisions of their licence.

The Board believes that all licence holders, and particularly those operating or applying for later licensed hours, should consider what arrangements are in place for staff getting home safely after the premises have closed when public transportation options may be more limited or non-existent. The Licensing Board is greatly encouraged by the “Safe Home” initiatives adopted by some licence holders for their staff and would strongly encourage others to take a similarly responsible approach to the

safety of staff working within their premises later at night. The Board also welcomes the growing number of campaigns and initiatives aimed at improving pay and conditions for staff working within the hospitality sector and expects that licence holders will lead the way in helping to eliminate unfair working practices within the licensed trade.”

17. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

The following miscellaneous matters are also highlighted for amendment in the new policy statement :-

Irresponsible alcohol promotions

The current policy sets out the legislative provisions on this aspect of the sale of alcohol and provides examples of each which the Board itself is suggesting. It is recommended that these examples be removed from the policy statement and the legislative provisions be left in the statement. Ultimately, it will be a matter for the courts to decide what is allowed and what is against the terms of the legislation.

Children & Young Persons in licensed premises

The policy statement says that Children & Young Persons are only permitted in licensed premises until 10pm whilst having a meal accompanied by an adult. This should be amended to clarify it does not apply if premises are a restaurant or function suite putting on a private function

Bottle Marking Scheme

This should be removed as it was never implemented to any great extent.

Section 33 transfers

If the outgoing licence holder allows the incoming to trade on their licence during the transfer process, then a letter/email authorising this activity must be sent to the Licensing Board.

18. Do you have any comments or observations on these additional miscellaneous matters?

On irresponsible alcohol promotions, SGF works with its membership and the convenience sector as a whole to ensure that they are fully compliant with licensing legislation and are selling alcohol responsibly both in terms of pricing and promotions.

19. Do you have any other comments to submit for the Board's consideration at its review of licensing policy?

SGF also notes a concern raised by our members regarding the timeframe for processing off-license applications in some locations. While the experience of applicants can vary greatly across Scotland,

and we recognise that the resources available to Licensing Boards are limited, it is vital for small and retail businesses that applications are processed within a reasonable period. A delay of just a few weeks or months could have a significant impact on the viability of a new store or business. For example, uncertainty regarding the processing of an off-license application in some Local Authority areas could prevent multiple or symbol group operators from exploring the options for a new outlet. Potentially depriving the community of the benefits and services available through the opening of a new convenience store.

Licensing Board Policy

Thursday, October 12, 2023 to Thursday, November 30, 2023

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 current policy was adopted in November 2018 to cover the period from 2018-2022. The next policy period will run from 2023 until 2028.

There are a number of provisions of the statement which will require to be updated to reflect legislative changes and other legal developments since the 2018-2022 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 are to be consulted for the purposes of the policy statement under Section 6 of the 2005 Act 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 persons to be consulted for the purposes of the overprovision assessment under Section 7 of the 2005 Act 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.

The period for consultation will run up to and including 30th November 2023. The following specific matters are being put forward by the Board for consideration as to inclusion in the policy statement. However, the Board would welcome any views which respondents to this consultation may wish to submit to the Board on any aspect of its policy or the administration of its licensing functions whether or not specifically mentioned in this document. Responses should be submitted either by e-mail to licensing.board@dundeecity.gov.uk(link sends e-mail) or by writing to the Licensing Office, 21 City Square, Dundee DD1 3BY.

Overprovision of licensed premises

The Board previously decided (January 2018) that there was an overprovision of premises licensed for off-sales within the whole of the Board's area. That policy is no longer applicable following the decision of the sheriff in the case of Aldi Stores Ltd. v. Dundee City Licensing Board issued on 30th March 2022.

The Board is obliged as part of the process of developing a Statement of Licensing Policy to consider to what extent there may be overprovision of licensed premises (either generally or of a particular description) within any locality in the Board's area. For this purpose, it is open to a licensing board to designate the whole of its area as a locality.

The Board considered the question of overprovision at its meeting on 21st September 2023. During the meeting, the Board was presented with a submission on behalf of the Dundee Alcohol and Drug Partnership (ADP). A copy of the submission can be found at https://www.dundee.gov.uk/sites/default/files/23_08_28_alcohol_availability_in_dundee_adp.pdf.

Consultees are asked to consider that submission when giving their response to this consultation. The Board was grateful to the ADP for this information. The Board noted that the ADP submission considered that there was overprovision of off sales only premises throughout the city as a locality and went on to recommend the adoption of an overprovision policy for the whole city as regards such off sales premises.

The submission, along with the information provided as a result of this consultation process, will be given further consideration by the Board on conclusion of this process and so it is important for the Board to know the views of those consulted on the information supplied by the ADP.

At the meeting on 21 September 2023 the Board decided that the appropriate locality for the purposes of an overprovision assessment and possible statement as to the extent which there may be overprovision in a locality under Section 7 of the 2005 Act was its whole area. This is a provisional view for the purpose of consultation. One purpose of this consultation is to assess what respondents to the consultation think of the choice of the whole area of the Board as a locality. The Board is open to departing from this view of locality in light of this consultation process. It could, for example consider that after consultation it may be appropriate to adopt smaller localities for the purpose of any policy on overprovision.

The reasons why this was adopted were that the Board members are familiar with their area and felt that this was the locality which should be chosen. The Board's area is one of the smallest (if not the smallest) in Scotland. It has excellent public transport links meaning that travel across the city is relatively easy even for persons without access to their own transport. The Board was of the opinion that it made little sense to look at smaller localities as potentially being overprovided for when people could simply access another locality with only a short walk, car or bus journey. The Board members were also mindful that their overall experience as a Board and the local experience of Members, when considered individually and collectively, suggested that material alcohol related issues in terms of health harms and crime and disorder and other negative consequences of the misuse of alcohol appear to be experienced throughout the city. For example, the Board was aware from its own knowledge, that alcohol purchased in one area of the city may well be consumed elsewhere which reflects the mobile nature of many in the Dundee population. Given the size of the city and ease of travel through it, at this time the Board considered, as a provisional view, that for the purposes of identification of a locality in terms of probable links to relevant harms, that the whole area of the city was the appropriate locality.

Although the Board adopted the locality because of its own experience and knowledge, it also noted, that the ADP had, for the reasons given by it, also reached the same view on locality. It also noted the small size of the city and the issues of mobility within it. Given that the ADP submission may be a factor that the Board has regard to in making a final determination as to whether and to

what extent there needs to be a policy on overprovision in the proposed locality or indeed in an alternative locality or localities, the Board is interested to know whether and to what extent those consulted agree with or differ from the provisional view of the Board on locality or on the independent views expressed by the ADP.

Having determined the locality, the Board was advised that within the whole Board area there are 135 off-sales only premises with a total capacity of 6 846.765 sq. m. and 306 on-sales premises with a total capacity of 87 368 persons. The identity, location and individual capacities of licensed premises can be viewed here - <http://glamis-online-register.dundee.gov.uk/LicensingRegister/>. This also provides information on the Operating Plans of each premises. This is helpful in understanding the different types or styles of operation throughout Dundee and their licensed hours. Again, the Board would invite those consulted to consider this information and explain how it might be relevant to an assessment of overprovision by the Board.

Currently and provisionally, taking account of the numbers and capacity of licensed premises in the suggested locality, and given the current view of the Board as to the prevalence of relevant alcohol related harms, the Board agreed to propose that the whole of its area is potentially overprovided for in respect of premises licensed for off-sales only. The information contained in the ADP submission indicates a significant level of alcohol-related harm within the Board's area and suggests that this is likely to be due to the density of off-sales outlets in the proposed locality, particularly given that alcohol sales through off-sales premises account for around three-quarters of all alcohol sales in Scotland (ADP report at p.22). In that regard Dundee's outlet density for off-sales premises exceeds the Scottish average.

The Board did not consider that on sales premises (including on sales with an off sales element, such as public houses) were overprovided in the proposed locality. There was no material before it which suggested that any alcohol-related problems were linked in particular to on-sales premises. However, if consultees wish to bring any such material to the Board's attention then this will, of course, be considered.

The Board are entitled to consider licensed hours as part of a consideration of overprovision. The Board, in determining the proposed locality and having had regard to numbers and capacity in that proposed locality, did not consider that the current hours used by off-sales only premises required to be given separate consideration, especially as virtually all such premises trade for the maximum period set out in the 2005 Act, i.e., 10 am to 10 pm. The Board considered that numbers and capacity when linked to the locality chosen and the harms experienced therein, in themselves, gave rise to the provisional view that the locality was overprovided. The Board though does welcome views on whether and to what extent the licensed hours for off-sales only premises might be relevant to the question of a possible state of overprovision in the proposed locality. The Board also welcomes views on the relevance of licensed hours more generally, if for example consultees consider that a different locality or localities should be considered or where consultees consider that on sales only premises should be included for overprovision purposes.

There was nothing in the ADP submission to suggest that any particular mode of operation of off-sales outlets (for example as between supermarkets, convenience stores and specialist off-sales) was more or less likely to contribute to alcohol-related harm, although the Board would, of course, be open to considering any material which consultees may wish to submit which might suggest otherwise.

The Board is mindful of the operation of Minimum Unit Pricing (MUP) since May 2018 and of the fact that the Scottish Government is proposing to retain this beyond the expiry date of the current legislation and also to increase the unit price from 50p to 65p. It is aware that some may consider that MUP, or indeed price more generally, has a role to play in considering matters such as overprovision.

When developing this consultation proposal, the Board took into account the latest material available on the operation of MUP and, in particular, the reports produced on behalf of Public Health Scotland up to June 2023 which suggest that there have been some reductions in the levels of alcohol-related harms which can be attributed to MUP. This material can be accessed via www.publichealthscotland.scot (link is external). Those responding to this consultation may wish to consider this material. Nevertheless, it is the view of the Board that there is still a role for overprovision to play in seeking to tackle these issues. As is stated in the ADP report, there are a number of strategies and policies which can be explored to address the levels of alcohol-related harm and no one policy or legislative measure by itself will be a solution in this regard.

Again, the Board would be interested in views on whether and to what extent MUP or wider price issues should be considered by the Board in settling on an overprovision policy. At this stage, the Board is open to views but is equally mindful that the role, if any, of MUP or price, will need to be given careful consideration in settling a policy. For example, it is to be noted that the Board has no legal ability to set the price for the sale of alcohol.

In informing the initial stage of the consultation process the Board took into account the "Guidance on section 142 of the Licensing (Scotland) Act 2005 for Licensing Boards and local authorities" issued by the Scottish Ministers on 13 January 2023. This Guidance will inform the Board in the development of the Statement of Licensing Policy in a number of respects and not just as regards overprovision. The Guidance discusses overprovision at Part 5 of the Guidance.

This Guidance can be found at <https://www.gov.scot/publications/licensing-scotland-act-2005-section-142-guidance-licensing-boards/pages/2/> (link is external). The Board is interested to know whether and to what extent consultees consider in what respects that the Guidance may assist the Board in considering a policy or in what ways the Guidance is relevant to the views of consultees.

1. Do you agree with the choice of the proposed locality as being the whole of the Board's area and with the reasons for the Board coming to this proposed locality for the purposes of a policy statement on overprovision? (Please give your reasons for your views).

We recognise the Board's duty to assess overprovision under Section 7 of the Licensing (Scotland) Act 2005 in respect of licensed premises or licensed premises of a particular description in any locality within the Board's area.

We also recognise that, in determining if there is overprovision, the Board must have regard to the number and capacity of licensed premises in the locality together with any other matter the Board sees fit.

We respectfully suggest that overprovision is a blunt instrument and does little to reduce alcohol related harm. If the licensing board decided to develop an overprovision policy, SGF would strongly urge that this is based on a locality as opposed to whole area approach.

There is no simple cause-and-effect relationship between the number of premises and alcohol-related problems and overall, it is becoming increasingly difficult to make a link

between individual premises and problems in a specific locality. Inequality continues to be the main determining factor: alcohol-related harm in Scotland is still disproportionately experienced by those from more deprived areas.

Rather than taking a 'blanket' approach to overprovision regarding off-sales and public house type premises, the Board should continue to take into account the specific activities and mode of operation of the applicant. It is important to note that arguably the number or capacity of premises in a locality is unlikely to be the key factor in deciding whether there is overprovision. Instead, the determining factor is the extent to which there are alcohol-related, health, and crime problems in the area. In addition, the case law has shown that a licensing board must base any decision around overprovision in a targeted, evidence-led basis. In addition, boards must consider the positive benefits that a thriving local convenience sector can bring to communities, and that evidence should be weighed up as part of the exercise. Our members are responsible retailers and they put considerable effort into ensuring that alcohol is sold in a responsible way.

SGF believe that the entire concept of overprovision should be reviewed to consider whether it remains fit for purpose. We live in an age where customers can order alcohol online as part of their shop from a supermarket and have it delivered to their home. This order can be made from anywhere given the prevalence of smartphones. Given this, what does declaring a geographical area as being overprovided for achieve? It would seem, arguable, that overprovision has not kept up the development of modern technology and consumer shopping habits. For example, a resident may order an online grocery shop, and this could quite legitimately be dispatched from many miles away.

2. Do you agree with the proposal that off-sales only premises should be considered for the purposes of the overprovision proposal for the proposed locality? (Please give your reasons)

SGF believes that there is no evidence to suggest that off-sales should be singled out for the purposes of an over-provision policy. We do not take a view on the potential over-provision proposals when it comes to on-sales, however, our sector is unfairly disadvantaged when only off-sales are considered for overprovision proposals.

SGF recognise the associated benefits that come from a convenience store opening in a local area. A store opening will create jobs and offer access to fruit and vegetables to the local community.

Convenience stores provide a range of key services for their customers, and this includes that ability to be able to offer their customers a full range of products, i.e. giving the customer the chance purchase an alcoholic beverage as an accompaniment with home dining. Therefore, a consequence of overprovision is that new entrants to the market are unable to obtain premises licences to authorise the sale of alcohol and are therefore, disadvantaged. The availability of alcohol in a pre-existing competitor store gives the prospective customer a reason to choose to shop there. The convenience element of being able to get their "full basket" from the competitor provides an unfair commercial advantage.

2. If you think a different locality or localities should be considered, what should that/those be and why? (Please give reasons for this).

The case law has shown that a licensing board must base any decision around overprovision in a targeted, evidence-led basis. However, SGF has concerns over the overall concept of overprovision and feel it does not tackle the harms that come from alcohol.

- 3. If you consider that a different locality or localities should be adopted, should an overprovision policy only apply to dedicated off sales premises? (Please give your reasons)**

If overprovision proposals should exist, SGF believes it is unfair on our members that they only exist for off-sales.

- 4. Should the Board give particular consideration to any specific modes or types or styles of operation or size or capacity of off-sales only premises in the proposed locality? (Please give reasons for this and as noted above, any material which may be of assistance to the Board in this respect would be welcome). Please answer the same question if you consider that another locality or localities should be adopted.**

Capacity is an important issue in determining overprovision. If the entire Board area was regarded as being overprovided for it would prevent retailers from ever increasing the capacity of their alcohol sales area. However, in practice such increases would not dramatically increase the amount of alcohol being sold. It would be a paradox if a 20m² increase in selling area of a convenience store was counted as just as big a threat to an overprovision assessment as a new out-of-town hypermarket. Retailers frequently rem merchandise and refit stores to best meet consumer needs. Most of the time these will just involve 'micro-space': keeping the existing shelving and general space splits but moving products around on the shelves. Sometimes, however, to meet consumer demand, to fit in with new brand ideas or to roll out improved formats 'macro-space' revisions are necessary. These may involve changing old shelves for new, increasing or decreasing the splits in store space between different categories, or gutting and refitting the store entirely. Extensions to the selling area might be necessary under macro-space refits. It should be noted that, of course, retailers are charged a fee for any major or minor variation to their licences.

Creating a general presumption that no increase in alcohol capacity would be approved in the entire Board area would almost certainly mean that existing retailers would not invest in modernising and refitting stores.

- 5. Do you consider that the Board should consider other types of licensed premises (for example restaurants, pubs, night clubs or entertainment venues or combined on- and off-sales premises) (if any) for the purposes of deciding if there is potential or actual overprovision in the proposed locality or other locality or localities that you might suggest? (Please give reasons).**

SGF believes that this would be a more sensible approach to deciding on overprovision.

- 6. Do you agree that the Board should be proposing that there is overprovision notwithstanding the operation (and so far as is known continuation by Scottish Government) of Minimum Unit Pricing (MUP) which is also directed towards tackling alcohol-related harm? (Please give reasons). Do you have any comments generally concerning the relevance, if any, of the price of alcohol in this context?**

MUP has been an issue of considerable importance to our members. We support MUP as it is currently but do not support an increase to the price per unit. Similarly, to overprovision, it is not yet clear that Minimum Unit Price (MUP) has had any beneficial impact on those it is intended to target. We are concerned about consistent regulations that the sale of alcohol. The cumulative cost burden of legislation, on top of the pressure of these other factors, is

significantly adding to vulnerability of many businesses. That means fewer jobs in the community, a decreased tax take, and fewer choices for customers.

- 7. Do you have any views to express in relation to whether the Board ought to consider licensed hours for licensed premises in the proposed locality or in any other locality or localities you believe the Board should consider? Again, please give the Board reasons for those views.**

The Licensing (Scotland) Act 2005 sets out the maximum permitted hours for off sales type premises are 10am to 10pm, each day of the week. SGF supports this policy on licensed hours.

Retailers are used to the current licensed hours and so SGF would not want to see them changed. Also, SGF would not support any reduction to the available licensed hours as we believe there would be no evidential basis for such a decision and would also leave applicants for new stores at a disadvantage. There is not, in the SGF's view, any evidence to suggest that alcohol purchased later in the day is more harmful than purchased earlier or vice versa.

SGF would not support any reduction to the available licensed hours. Convenience stores are community assets which offer key services to local communities. Our members are responsible retailers and they put considerable effort into ensuring that alcohol is sold in a responsible way.

- 8. Given that the Board may have regard to the ADP submission in finalising a policy on overprovision do you have any comments to make on that report? Please try to give reasons for your views.**

SGF Promotes responsible community retailing. Like the ADP, we understand the need to tackle death and harms related to alcohol, especially in Dundee when alcohol harms are so high. However, as the ADP states, Dundee has a lower than national number of licences. This suggests that overprovision proposal are not deterring the harms associated with alcohol.

As previously stated, Inequality continues to be the main determining factor: alcohol-related harm in Scotland is still disproportionately experienced by those from more deprived areas. We believe education over regulation is the best tool.

- 9. As regards to the Guidance, are there areas in the Guidance that you consider that the Board ought to give particular consideration to? Please try to give reasons for your views.**

SGF does not take a view here.

Grant of occasional licences

In terms of Section 56 of the 2005 Act, the Board may grant occasional licences to premises which are not subject to a premises licence. Application must be made by a premises licence holder, personal licence holder or a voluntary organisation. Occasional licences can run for up to 14 days. Unlike under the Licensing (Scotland) Act 1976, there is no requirement for an applicant for an occasional licence to specify any particular event which the licence is intended to cover, so premises can in theory operate continuously on the basis of occasional licences. This was undesirable for a number of reasons, e.g., the fee for an occasional licence is only £10 making it a

cheaper alternative to applying for a full premises licence which has a substantially higher fee and also would be subject to the annual fee in addition; there is no requirement to provide detailed operating or layout plans, planning or building control certificates, etc. There is a power given to Scottish Ministers under Section 56 (6A), (6B) and (6C) to, amongst other things, prescribe a limit on the number of occasional licences which any one premises may apply for. This power has not yet been used.

At the moment, occasional licences are dealt with under delegated powers, unless there are any objections. If there are objections, the applications are referred to the Licensing Board, although this is not always possible in the event that there is no Licensing Board meeting prior to the licence dates applied for. In that event, the 2005 Act requires that the applicant submits written representations to the Clerk and the application is then determined without a hearing.

As noted above, there have been concerns about some premises virtually operating on a permanent basis on the grant of occasional licences. It was decided in the last policy review in 2018 that applicants for such occasional licences should have to provide some justification for the licence being sought. This applied to (i) applications which did not specify particular events in the form and (ii) any premises where there have been 4 or more applications over the preceding 3 months period. However, as the result of a recent court appeal in which it was decided it was not for the licensing boards to impose any limit on the number of occasional licences whilst the above power of the Scottish Ministers remains unexercised, it is recommended that this part of the existing policy statement be deleted.

Insofar as occasional licences are concerned, it is suggested that the following be included in the policy statement –

Applications should be submitted to the Licensing Office no later than 28 days prior to the event. However, for large type events, or complex events, the application should be submitted as soon as possible in advance of the proposed event, thus giving officers time to discuss and request further information. Also, with an event of over 500 patrons an alcohol management plan (AMP) will be required and also a layout plan depending on the location. If there is to be entertainment at the event then a Public Entertainment Licence may also be required.

7. Do you agree with this proposed addition to the Board's policy? If not, why not? Either way please give the Board reasons for your views.

SGF does not take a view [here](#).

8. Are there any other aspects of applications for occasional licences which you think the Board should consider including in the policy statement?

SGF does not take a view [here](#).

Music noise from licensed premises

Currently, the Board generally attaches a condition to licences where live music is to be provided which requires all amplified music to be inaudible in the nearest residential accommodation. The Board wishes to explore whether this is an appropriate condition to maintain and the following approach is suggested for consultation.

The relevant licensing objective is the prevention of public nuisance (emphasis added). A question arises as to whether noise caused by music within licensed premises can be regarded as "public" in that sense. Case law from England would suggest that to be a "public nuisance", the effect of the

noise should be “sufficiently widespread and sufficiently indiscriminate to amount to something more than private nuisance”. Scots Law does not recognize the same distinction between public and private nuisance but in the context of that particular licensing objective especially when taken in conjunction with the references in the statutory 2005 Act Guidance to the effect upon “local residents” and “communities”, this tends to support an argument that the objective will only be engaged when the noise has that wider level of impact and where that public character of the nuisance is lacking, then an individual complainer would have to seek a remedy either via the statutory nuisance route (by complaining to the local authority noise control section) or a private action for nuisance. However, there is a qualification to this approach where the nature of the noise nuisance (such as the duration, frequency, quality, time of day, etc.) would support a conclusion that the nuisance has gone beyond the mere discomfort of one person and has reached a level such that it can be considered to be likely to be a public nuisance in the sense above referred to.

In terms of Board policy, the Board is considering having a statement which indicates that the Board is concerned with nuisance which has a reasonable link to the provision of alcohol on the premises. In such a statement, the Board may generally consider that such a nuisance might exist where there is evidence that what is complained of impacted on a sufficiently large number of members of the public by reference to one act or a series of acts, or, where the effect was sufficiently widespread or indiscriminate. It might stress that it would generally need evidence from more than one source to support the matter being a public nuisance, but that in cases where even one source of evidence existed, that might, if the evidence was sufficiently strong, allow the Board to draw the inference that the nuisance was likely to be a public one. It might also add in considering whether there is a nuisance that this would involve, amongst other considerations, a consideration of the nature of the matter complained of, duration, frequency, quality (shrillness, grating, impulsivity, sporadic, repeated) and the hour of it. As part of any such statement, the Board might stress that it can only consider public nuisance and that may mean that in many cases involving noise complaints affecting adjacent property, that the appropriate recourse might be through the environmental health department or through the common law of nuisance.

10. Do you think that the inaudibility condition should be retained? (Please give reasons) If not, why not? Either way please give the Board reasons for your views.

SGF does not take a view [here](#).

11. Would you support the alternative approach as outlined above? (Please give reasons)

SGF does not take a view [here](#).

11. Do you have any additional observations/comments on how the Board should deal with the issue of music noise from licensed premises?

Licensed Premises – Music Outside

In general, licensed premises are not permitted music outside the venue on a permanent basis. If music is desired for a special event (such as Dundee Dance Event or Almost Blue), the applicant may need to seek planning permission prior to a major variation being applied for. Any music

outside the venue should not cause a nuisance. The Board would propose that permission would generally only be granted for music outside until 7pm.

12. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

Occasional Licence – External Music Events

An applicant requesting the grant of an occasional licence involving music (live performances/DJs loud amplified music) should demonstrate to the Board that this will not cause a nuisance. If the event is granted, then a 7pm music cut off point will generally be applied as a local condition. Areas that will not be covered by this timing restrictions are Slessor Gardens, Apex car park, City Square, Magdalen Green, Camperdown Park. The 7pm restriction may be revised by the Board if the applicant wishes to extend this timing, but other mitigating measures may be required such as a Noise Impact Assessment, staff monitoring local residential areas for music outbreak, etc. Due to the potential of objections by local residents or council officers, it is advised that the application is submitted as soon as possible in advance of the event as it may have to be presented to the board for a decision.

13. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

14. Are there any other comments or observations you wish to make concerning the playing of music within licensed premises or externally?

Home deliveries of alcohol

Premises have been making an increasing use of home deliveries, especially as a result of the recent coronavirus pandemic. It is the view amongst licensing boards that having an off-sales facility on a premises licence does not automatically allow the premises to carry out home deliveries of alcohol unless this is specified in the operating plan for the premises and that appropriate procedures be in place on the part of the licence holders concerned. Whilst the Board does not share the view that such a variation would be required, it would be prepared to consider applications to add home deliveries to the terms of a premises licence for off-sales and it is considering the following wording for inclusion in the policy statement in this regard –

Deliveries of alcohol

Where premises licence holders with an off sales facility apply for a variation to operate a delivery service, policies and procedures should be in place and implemented by staff including in relation to the process of taking and recording of orders, training for delivery drivers, recording of items despatched, age verification policy and recording deliveries made. Those policies and procedures should be aimed at preventing alcohol being delivered to and consumed by persons under 18 or drunk persons.

Applicants seeking the addition of a delivery service should expect the requirement for policies and procedures to be in place to be imposed as a local condition on the premises licence.

Premises licence holders are reminded that if they use a courier or the sale and delivery are carried out through a third party organisation, it is the responsibility of the premises licence holder to make sure the courier/third party has appropriate policies and procedures in place."

15. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

SGF generally agrees with this proposal.

SGF members use these facilities responsibly and have strict measures, such as record keeping and age verification in place, to ensure the rules around delivery are observed.

Drivers are trained to -

1. Always hand over alcohol to an adult.
2. If no adult able to accept deliver then return all goods back to shop.
3. Never leave items on the doorstep.

SGF members have reported that they ban any household where they suspect underage sales maybe taking place and go out of the way to ensure they abide by the regulation.

SGF promotes responsible retailing, including the sale of alcohol and any of the other 222 products restricted under legislation.

16. Do you have any other observations or comments on the issue of home deliveries of alcohol?

It is important to recognise that delivery agents allow convenience stores to offer another important and valued facility for customers. The SGF Local Shop Report highlights that 26% of convenience stores offer some form of grocery delivery, providing an important service to their communities.

Late night workers

A number of licensing boards have provisions in the policy statement to encourage licence holders to take account of the interests of their staff and, in particular, arranging transport home for them at the end of their shifts which can often be in the early hours of the morning. It is not open to a licensing board to attach conditions to licences in this regard.

The suggested wording for inclusion in the policy is as follows –

“Safety of Workers and Employees within Licensed Premises

The Licensing Board acknowledges that it has no specific remit in relation to health and safety issues involving staff working within licensed premises. It does however recognise that there will be occasions where the safety of staff may be compromised by customers who are intoxicated, particularly where they have been refused service or access to the premises. It also recognises that staff travelling home alone at night, particularly women, are at a heightened risk of violent crime. The Board therefore believes that licence holders have an added responsibility towards their staff flowing from issues directly relating to the sale of alcohol and the specific provisions of their licence.

The Board believes that all licence holders, and particularly those operating or applying for later licensed hours, should consider what arrangements are in place for staff getting home safely after the premises have closed when public transportation options may be more limited or non-existent. The Licensing Board is greatly encouraged by the “Safe Home” initiatives adopted by some licence

holders for their staff and would strongly encourage others to take a similarly responsible approach to the safety of staff working within their premises later at night. The Board also welcomes the growing number of campaigns and initiatives aimed at improving pay and conditions for staff working within the hospitality sector and expects that licence holders will lead the way in helping to eliminate unfair working practices within the licensed trade."

17. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

SGF agrees with this proposal.

The following miscellaneous matters are also highlighted for amendment in the new policy statement :-

Irresponsible alcohol promotions

The current policy sets out the legislative provisions on this aspect of the sale of alcohol and also provides examples of each which the Board itself is suggesting. It is recommended that these examples be removed from the policy statement and the legislative provisions be left in the statement. Ultimately, it will be a matter for the courts to decide what is allowed and what is against the terms of the legislation.

Children & Young Persons in licensed premises

The policy statement says that Children & Young Persons are only permitted in licensed premises until 10pm whilst having a meal accompanied by an adult. This should be amended to clarify it does not apply if premises are a restaurant or function suite putting on a private function

Bottle Marking Scheme

This should be removed as it was never implemented to any great extent.

Section 33 transfers

If the outgoing licence holder allows the incoming to trade on their licence during the transfer process, then a letter/email authorising this activity must be sent to the Licensing Board.

18. Do you have any comments or observations on these additional miscellaneous matters?

SGF works with its membership and the convenience sector as a whole to ensure that they are fully compliant with licensing legislation and are selling alcohol responsibly both in terms of pricing and promotions.

19. Do you have any other comments to submit for the Board's consideration at its review of licensing policy?

CCTV

SGF do not believe that it should be a requirement for all staff to be trained in the use of CCTV (or for a CCTV trained member of staff to always be present during licensed trading hours). SGF would see such a condition as an additional burden on convenience sector retailers who often have to operate with the minimum amount of staff due to cumulated cost pressures. On top of this, retailers are having to do more hours themselves with 11% of shop owners in Scotland working more than 70 hours a week. It is already the case that all off-sales premises must have a compliant CCTV system in place.

Proof of Age

SGF promote responsible community retailing and recognise the importance of selling alcohol in a responsible way.

This happens through the following key areas:

- Full compliance with the Challenge 25 regulations (an initiative developed in partnership with SGF)
- Staff training
- Appropriate signage
- In-house test purchasing
- Refusal books
- Use of CCTV
- Full compliance with the stores operating plan
- Age restricted till prompts, upon customer checkout

Conclusion

Many convenience retail businesses are operating in an extremely challenging trading environment, however, and the Scottish Government has acknowledged that continuing to add to the legislative burden could put businesses at risk. In addition to meeting the requirements of new regulations, such as Minimum Unit Pricing; potential restrictions to the promotion of alcohol products and foods high in fat, sugar & salt; and Scotland's Deposit Return Scheme, the sector as a whole is among the hardest hit by issues such as food inflation, cost-of-living and rising energy costs. The cumulative cost burden of legislation on top of the pressure of these other factors are significantly adding to vulnerability of many businesses.

Being able to offer a diverse range is of paramount importance. Modern convenience stores now offer a wide range of products and services, from deli counters and coffee to collection lockers. A more restrictive range simply provides the potential customer with a reason to shop at a competitor. Whilst it is ancillary to wider ranges of grocery and retail, alcohol is an important sales category for our member's stores. A typical convenience store offers a range of at least 17 kinds of different product categories. Alcohol accounts for 18.1 % of total sales turnover. 76% of convenience stores have an alcohol licence.

While we welcome this consultation exercise the SGF believe the licensing system should not be onerous on retailers. We hope that you find these comments helpful.

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Ms Lisa Archibald
Senior Electoral Services and Licensing
Officer
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Date	28 November 2023
Your Ref	
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Issued via email to: licensing.board@dundeecity.gov.uk

Dear Ms Archibald

Licensing Board Statement of Licensing Policy 2023-2028: Consultation

Thank you for your letter of 14 October 2023, advising of the above consultation under sections 6 and 7 of the 2025 Act.

With regards to the questions posed:

1. Do you agree with the choice of the proposed locality as being the whole of the Board's area and with the reasons for the Board coming to this proposed locality for the purposes of a policy statement on overprovision? (Please give your reasons)

Yes, Tayside NHS Board agrees that the proposed locality should be the whole of the Licensing Board area and with the reasons for the Board coming to this proposed locality for the purposes of a policy statement on overprovision. As outlined in the Consultation document, the Board's area is one of the smallest by geographical area and one of the most densely populated. Travel across the city is relatively easy and hazardous/harmful alcohol consumption and alcohol-related harm is experienced throughout all areas of the city.

2. Do you agree with the proposal that off-sales only premises should be considered for the purposes of the overprovision proposal for the proposed locality? (Please give your reasons)

Yes, Tayside NHS Board agrees with the proposal that off-sales only premises should be considered for the purposes of the overprovision proposal. As described in 'The Public Health and Social Impact of Alcohol Availability in Dundee' report, a number of factors will increase the risk of population health harm that results from alcohol sold through off-sales sector as opposed to the on-sales sector.



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Chair, Lorna Birse-Stewart
Chief Executive, Professor Grant R Archibald



These include:

- Approximately three-quarter of all alcohol sold in Scotland is through the off-sales sector
- The average purchase price (per unit) of alcohol, even taking into account the impact of Minimum Unit Pricing at the current or proposed level, is cheaper in off-sales than on-sales
- Larger volumes of alcohol can be obtained from off-sales outlets within a short period of time
- There can be a lack of supervised consumption that follows the purchase of alcoholic drinks from an off-sale outlet

3. If you think a different locality or localities should be considered, what should that/those be and why? (Please give reasons for this)

No, Tayside NHS Board is in agreement with the choice of proposed locality by the Licensing Board.

4. If you consider that a different locality or localities should be adopted, should an overprovision policy only apply to dedicated off sales premises? (Please give your reasons)

No, for the reasons outlined in the answer to Question 1, Tayside NHS Board agrees that an overprovision policy should apply to the whole of the Licensing Board.

5. Should the Board give particular consideration to any specific modes or types or styles of operation or size or capacity of off-sales only premises in the proposed locality? (Please give reasons for this and as noted above, any material which may be of assistance to the Board in this respect would be welcome). Please answer the same question if you consider that another locality or localities should be adopted.

No. One of the key drivers of increased alcohol consumption (which in turns leads to increased alcohol related harm), is the availability of alcohol.

As described in 'The Public Health and Social Impact of Alcohol Availability in Dundee' report, Dundee has the fourth highest alcohol outlet availability in Scotland, in terms of the average number of premises licensed to sell alcohol that are located within an 800m radius (approximately a ten minute walk) of each neighbourhood population centre. Latest available data shows that in Dundee in 2016, the average number of total alcohol outlets located within an 800m radius of a neighbourhood population centre was 21.1.

Therefore, any increase in availability of alcohol through off-sales will further increase accessibility to alcohol and lead to increased alcohol-related harm.

Tayside NHS Board would be fully supportive of a presumption of overprovision that applies to all types and sizes of off sales premises.

5. Do you consider that the Board should consider other types of licensed premises (for example restaurants, pubs, night clubs or entertainment venues or combined on- and off-sales premises) (if any) for the purposes of deciding if there is potential or actual overprovision in the proposed locality or other locality or localities that you might suggest? (Please give reasons)

Whilst the availability of all alcohol will be contributing to health harm, as outlined in the answer to question 2, the impact from off-sales provision will be far greater than that from the on-sales sector (given the increased controls that are present when alcohol is purchased from on-sales premises and that only a quarter of Scotland's alcohol is purchased through on-sales). Therefore, whilst Tayside NHS Board would welcome decreased availability of alcohol provision across all sectors, the priority area of focus for an overprovision policy should be off-sales.

6. Do you agree that the Board should be proposing that there is overprovision notwithstanding the operation (and so far as is known continuation by Scottish Government) of Minimum Unit Pricing (MUP) which is also directed towards tackling alcohol-related harm? (Please give reasons). Do you have any comments generally concerning the relevance, if any, of the price of alcohol in this context?

Yes, absolutely. Tayside NHS Board agrees that the overprovision policy should be established regardless of the continuation or any changes to Minimum Unit Pricing in future.

Alcohol continues to be one of the largest drivers for A&E attendances and subsequent hospital admissions in Dundee and alcohol mortality remains a significant public health concern.

Alcohol-related health harm is currently increasing in Dundee and alcohol-related hospital admissions are 30% higher in Dundee than the national average.

As a country, current mortality rates due to alcohol-specific harm are approximately two and a half times higher than the levels observed in the early 1980s. (And to note, these figures do not take into account the wider impacts of alcohol on a range of physical and mental health conditions such as heart disease, stroke, cancer and depression).

In order for us to successfully support the health of people in Dundee City to improve, a range of actions need to be progressed, with policy measures to reduce alcohol related harm covering interventions that address availability, affordability and attractiveness as three distinct and evidence-based areas for intervention.

For greatest benefit to be achieved, the application of any one measure should not preclude or influence the application of any other measure. The population level of alcohol related harm across Dundee and Scotland as a whole required a comprehensive package of policy interventions that cover all three areas of affordability, availability and attractiveness.

7. Do you have any views to express in relation to whether the Board ought to consider licensed hours for licensed premises in the proposed locality or in any other locality or localities you believe the Board should consider? Again, please give the Board reasons for those views.

As per the answer to question 5, Tayside NHS Board would welcome any interventions to reduce alcohol availability in the city.

- 4 -

8. Given that the Board may have regard to the ADP submission in finalising a policy on overprovision do you have any comments to make on that report? Please try to give reasons for your views.

The report provides a transparent, robust and balanced assessment of available evidence to draw its conclusions. Therefore, Tayside NHS Board would be supportive of the Licensing Board's full consideration of the report when determining its overprovision policy statement.

9. As regards the Guidance, are there areas in the Guidance that you consider that the Board ought to give particular consideration to? Please try to give reasons for your views.

Covered by the above responses.

Thank you for the opportunity to respond to this consultation and please let me know if you should require any further information with regards to the responses provided above.

Yours faithfully



**Dr Emma Fletcher
MBBS FRCP (Edin) FFPH MPH PhD
Director of Public Health**

Copied to: Chief Executive, NHS Tayside (*via email*)

DUNDEE CITY LICENSING BOARD
STATEMENT OF LICENSING POLICY 2023-2028
CONSULTATION DOCUMENT

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 current policy was adopted in November 2018 to cover the period from 2018-2022. The next policy period will run from 2023 until 2028.

There are a number of provisions of the statement which will require to be updated to reflect legislative changes and other legal developments since the 2018-2022 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 are to be consulted for the purposes of the policy statement under Section 6 of the 2005 Act 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 persons to be consulted for the purposes of the overprovision assessment under Section 7 of the 2005 Act 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.

The period for consultation will run up to and including 30th November 2023. The following specific matters are being put forward by the Board for consideration as to inclusion in the policy statement. However, the Board would welcome any views which respondents to this consultation may wish to submit to the Board on any aspect of its policy or the administration of its licensing functions whether or not specifically mentioned in this document. **Responses should be submitted either by e-mail to licensing.board@dundeecity.gov.uk or by writing to the Licensing Office, 21 City Square, Dundee DD1 3BY.**

Overprovision of licensed premises

The Board previously decided (January 2018) that there was an overprovision of premises licensed for off-sales within the whole of the Board's area. That policy is no longer applicable following the decision of the sheriff in the case of Aldi Stores Ltd. v. Dundee City Licensing Board issued on 30th March 2022.

The Board is obliged as part of the process of developing a Statement of Licensing Policy to consider to what extent there may be overprovision of licensed premises (either generally or of a particular description) within any locality in the Board's area. For this purpose, it is open to a licensing board to designate the whole of its area as a locality.

The Board considered the question of overprovision at its meeting on 21st September 2023. During the meeting, the Board was presented with a submission on behalf of the Dundee Alcohol and Drug Partnership (ADP). A copy of the submission can be found at https://www.dundee.gov.uk/sites/default/files/23_08_28_alcohol_availability_in_dundee_adp.pdf.

Consultees are asked to consider that submission when giving their response to this consultation. The Board was grateful to the ADP for this information. The Board noted that the ADP submission considered that there was overprovision of off sales only premises throughout the city as a locality and went on to recommend the adoption of an overprovision policy for the whole city as regards such off sales premises.

The submission, along with the information provided as a result of this consultation process, will be given further consideration by the Board on conclusion of this process and so it is important for the Board to know the views of those consulted on the information supplied by the ADP.

At the meeting on 21 September 2023 the Board decided that the appropriate locality for the purposes of an overprovision assessment and possible statement as to the extent which there may be overprovision in a locality under Section 7 of the 2005 Act was its whole area. This is a provisional view for the purpose of consultation. One purpose of this consultation is to assess what respondents to the consultation think of the choice of the whole area of the Board as a locality. The Board is open to departing from this view of locality in light of this consultation process. It could, for example consider that after consultation it may be appropriate to adopt smaller localities for the purpose of any policy on overprovision.

The reasons why this was adopted were that the Board members are familiar with their area and felt that this was the locality which should be chosen. The Board's area is one of the smallest (if not the smallest) in Scotland. It has excellent public transport links meaning that travel across the city is relatively easy even for persons without access to their own transport. The Board was of the opinion that it made little sense to look at smaller localities as potentially being overprovided for when people could simply access another locality with only a short walk, car or bus journey. The Board members were also mindful that their overall experience as a Board and the local experience of Members, when considered individually and collectively, suggested that material alcohol related issues in terms of health harms and crime and disorder and other negative consequences of the misuse of alcohol appear to be experienced throughout the city. For example, the Board was aware from its own knowledge, that alcohol purchased in one area of the city may well be consumed elsewhere which reflects the mobile nature of many in the Dundee population. Given the size of the city and ease of

travel through it, at this time the Board considered, as a provisional view, that for the purposes of identification of a locality in terms of probable links to relevant harms, that the whole area of the city was the appropriate locality.

Although the Board adopted the locality because of its own experience and knowledge, it also noted, that the ADP had, for the reasons given by it, also reached the same view on locality. It also noted the small size of the city and the issues of mobility within it. Given that the ADP submission may be a factor that the Board has regard to in making a final determination as to whether and to what extent there needs to be a policy on overprovision in the proposed locality or indeed in an alternative locality or localities, the Board is interested to know whether and to what extent those consulted agree with or differ from the provisional view of the Board on locality or on the independent views expressed by the ADP.

Having determined the locality, the Board was advised that within the whole Board area there are 135 off-sales only premises with a total capacity of 6 846.765 sq. m. and 306 on-sales premises with a total capacity of 87 368 persons. The identity, location and individual capacities of licensed premises can be viewed here - <http://glamis-online-register.dundee.gov.uk/LicensingRegister/>. This also provides information on the Operating Plans of each premises. This is helpful in understanding the different types or styles of operation throughout Dundee and their licensed hours. Again, the Board would invite those consulted to consider this information and explain how it might be relevant to an assessment of overprovision by the Board.

Currently and provisionally, taking account of the numbers and capacity of licensed premises in the suggested locality, and given the current view of the Board as to the prevalence of relevant alcohol related harms, the Board agreed to propose that the whole of its area is potentially overprovided for in respect of premises licensed for off-sales only. The information contained in the ADP submission indicates a significant level of alcohol-related harm within the Board's area and suggests that this is likely to be due to the density of off-sales outlets in the proposed locality, particularly given that alcohol sales through off-sales premises account for around three-quarters of all alcohol sales in Scotland (ADP report at p.22). In that regard Dundee's outlet density for off-sales premises exceeds the Scottish average.

The Board did not consider that on sales premises (including on sales with an off sales element, such as public houses) were overprovided in the proposed locality. There was no material before it which suggested that any alcohol-related problems were linked in particular to on-sales premises. However, if consultees wish to bring any such material to the Board's attention then this will, of course, be considered.

The Board are entitled to consider licensed hours as part of a consideration of overprovision. The Board, in determining the proposed locality and having had regard to numbers and capacity in that proposed locality, did not consider that the current hours used by off-sales only premises required to be given separate consideration, especially as virtually all such premises trade for the maximum period set out in the 2005 Act, i.e., 10 am to 10 pm. The Board considered that numbers and capacity when linked to the locality chosen and the harms experienced therein, in themselves, gave rise to the provisional view that the locality was overprovided. The Board though does welcome views on whether and to what extent the licensed hours for off-sales only premises might be relevant to the question of a possible state of overprovision in the proposed locality. The Board also welcomes views on the relevance of licensed hours more generally, if for example consultees consider that a different locality or localities should be considered or where consultees consider that on sales only premises should be included for overprovision purposes.

There was nothing in the ADP submission to suggest that any particular mode of operation of off-sales outlets (for example as between supermarkets, convenience stores and specialist off-sales) was more or less likely to contribute to alcohol-related harm, although the Board would, of course, be open to considering any material which consultees may wish to submit which might suggest otherwise.

The Board is mindful of the operation of Minimum Unit Pricing (MUP) since May 2018 and of the fact that the Scottish Government is proposing to retain this beyond the expiry date of the current legislation and also to increase the unit price from 50p to 65p. It is aware that some may consider that MUP, or indeed price more generally, has a role to play in considering matters such as overprovision.

When developing this consultation proposal, the Board took into account the latest material available on the operation of MUP and, in particular, the reports produced on behalf of Public Health Scotland up to June 2023 which suggest that there have been some reductions in the levels of alcohol-related harms which can be attributed to MUP. This material can be accessed via www.publichealthscotland.scot. Those responding to this consultation may wish to consider this material. Nevertheless, it is the view of the Board that there is still a role for overprovision to play in seeking to tackle these issues. As is stated in the ADP report, there are a number of strategies and policies which can be explored to address the levels of alcohol-related harm and no one policy or legislative measure by itself will be a solution in this regard.

Again, the Board would be interested in views on whether and to what extent MUP or wider price issues should be considered by the Board in settling on an overprovision policy. At this stage, the Board is open to views but is equally mindful that the role, if any, of MUP or price, will need to be given careful consideration in settling a policy. For example, it is to be noted that the Board has no legal ability to set the price for the sale of alcohol.

In informing the initial stage of the consultation process the Board took into account the "Guidance on section 142 of the Licensing (Scotland) Act 2005 for Licensing Boards and local authorities" issued by the Scottish Ministers on 13 January 2023. This Guidance will inform the Board in the development of the Statement of Licensing Policy in a number of respects and not just as regards overprovision. The Guidance discusses overprovision at Part 5 of the Guidance.

This Guidance can be found at <https://www.gov.scot/publications/licensing-scotland-act-2005-section-142-guidance-licensing-boards/pages/2/>. The Board is interested to know whether and to what extent consultees consider in what respects that the Guidance may assist the Board in considering a policy or in what ways the Guidance is relevant to the views of consultees.

- 1. Do you agree with the choice of the proposed locality as being the whole of the Board's area and with the reasons for the Board coming to this proposed locality for the purposes of a policy statement on overprovision? (Please give your reasons for your views).**
- 2. Do you agree with the proposal that off-sales only premises should be considered for the purposes of the overprovision proposal for the proposed locality? (Please give your reasons)**
- 3. If you think a different locality or localities should be considered, what should that/those be and why? (Please give reasons for this)**

4. If you consider that a different locality or localities should be adopted, should an overprovision policy only apply to dedicated off sales premises? (Please give your reasons)
5. Should the Board give particular consideration to any specific modes or types or styles of operation or size or capacity of off-sales only premises in the proposed locality? (Please give reasons for this and, as noted above, any material which may be of assistance to the Board in this respect would be welcome). Please answer the same question if you consider that another locality or localities should be adopted.
5. Do you consider that the Board should consider other types of licensed premises (for example restaurants, pubs, night clubs or entertainment venues or combined on- and off-sales premises) (if any) for the purposes of deciding if there is potential or actual overprovision in the proposed locality or other locality or localities that you might suggest? (Please give reasons)
6. Do you agree that the Board should be proposing that there is overprovision notwithstanding the operation (and so far as is known continuation by Scottish Government) of Minimum Unit Pricing (MUP) which is also directed towards tackling alcohol-related harm? (Please give reasons). Do you have any comments generally concerning the relevance, if any, of the price of alcohol in this context?
7. Do you have any views to express in relation to whether the Board ought to consider licensed hours for licensed premises in the proposed locality or in any other locality or localities you believe the Board should consider? Again, please give the Board reasons for those views.
8. Given that the Board may have regard to the ADP submission in finalising a policy on overprovision do you have any comments to make on that report? Please try to give reasons for your views.
9. As regards the Guidance, are there areas in the Guidance that you consider that the Board ought to give particular consideration to? Please try to give reasons for your views?

Grant of occasional licences

In terms of Section 56 of the 2005 Act, the Board may grant occasional licences to premises which are not subject to a premises licence. Application must be made by a premises licence holder, personal licence holder or a voluntary organisation. Occasional licences can run for up to 14 days. Unlike under the Licensing (Scotland) Act 1976, there is no requirement for an applicant for an occasional licence to specify any particular event which the licence is intended to cover, so premises can in theory operate continuously on the basis of occasional licences. This was undesirable for a number of reasons, e.g., the fee for an occasional licence is only £10 making it a cheaper alternative to applying for a full premises licence which has a substantially higher fee and also would be subject to the annual fee in addition; there is no requirement to provide detailed operating or layout plans, planning or building control certificates, etc. There is a power given to Scottish Ministers under Section 56 (6A), (6B) and (6C) to, amongst other things, prescribe a limit on the number of occasional licences which any one premises may apply for. This power has not yet been used.

At the moment, occasional licences are dealt with under delegated powers, unless there are any objections. If there are objections, the applications are referred to the Licensing Board, although this is not always possible in the event that there is no Licensing Board meeting prior to the licence dates

applied for. In that event, the 2005 Act requires that the applicant submits written representations to the Clerk and the application is then determined without a hearing.

As noted above, there have been concerns about some premises virtually operating on a permanent basis on the grant of occasional licences. It was decided in the last policy review in 2018 that applicants for such occasional licences should have to provide some justification for the licence being sought. This applied to (i) applications which did not specify particular events in the form and (ii) any premises where there have been 4 or more applications over the preceding 3 months period. However, as the result of a recent court appeal in which it was decided it was not for the licensing boards to impose any limit on the number of occasional licences whilst the above power of the Scottish Ministers remains unexercised, it is recommended that this part of the existing policy statement be deleted.

Insofar as occasional licences are concerned, it is suggested that the following be included in the policy statement –

Applications should be submitted to the Licensing Office no later than 28 days prior to the event. However, for large type events, or complex events, the application should be submitted as soon as possible in advance of the proposed event, thus giving officers time to discuss and request further information. Also, with an event of over 500 patrons an alcohol management plan (AMP) will be required and also a layout plan depending on the location. If there is to be entertainment at the event then a Public Entertainment Licence may also be required.

7. Do you agree with this proposed addition to the Board's policy? If not, why not? Either way please give the Board reasons for your views. Yes – as this will allow Police Scotland to assess each application on its merits, ensuring that all licensing objectives are adhered to

8. Are there any other aspects of applications for occasional licences which you think the Board should consider including in the policy statement? Yes – The number of patrons expected on all applications. As this will allow Police Scotland to assess and if deemed appropriate share details of numbers expected to Local Policing Teams

Music noise from licensed premises

Currently, the Board generally attaches a condition to licences where live music is to be provided which requires all amplified music to be inaudible in the nearest residential accommodation. The Board wishes to explore whether this is an appropriate condition to maintain and the following approach is suggested for consultation.

The relevant licensing objective is the prevention of *public* nuisance (emphasis added). A question arises as to whether noise caused by music within licensed premises can be regarded as “public” in that sense. Case law from England would suggest that to be a “public nuisance”, the effect of the noise should be “sufficiently widespread and sufficiently indiscriminate to amount to something more than private nuisance”. Scots Law does not recognize the same distinction between public and private nuisance but in the context of that particular licensing objective especially when taken in conjunction with the references in the statutory 2005 Act Guidance to the effect upon “local residents” and “communities”, this tends to support an argument that the objective will only be engaged when the noise has that wider level of impact and where that public character of the nuisance is lacking, then an individual complainant would have to seek a remedy either via the statutory nuisance route (by complaining to the local authority noise control section) or a private action for nuisance. However, there is a qualification to this approach where the nature of the noise nuisance (such as the duration,

frequency, quality, time of day, etc.) would support a conclusion that the nuisance has gone beyond the mere discomfort of one person and has reached a level such that it can be considered to be likely to be a public nuisance in the sense above referred to.

In terms of Board policy, the Board is considering having a statement which indicates that the Board is concerned with nuisance which has a reasonable link to the provision of alcohol on the premises. In such a statement, the Board may generally consider that such a nuisance might exist where there is evidence that what is complained of impacted on a sufficiently large number of members of the public by reference to one act or a series of acts, or, where the effect was sufficiently widespread or indiscriminate. It might stress that it would generally need evidence from more than one source to support the matter being a public nuisance, but that in cases where even one source of evidence existed, that might, if the evidence was sufficiently strong, allow the Board to draw the inference that the nuisance was likely to be a public one. It might also add in considering whether there is a nuisance that this would involve, amongst other considerations, a consideration of the nature of the matter complained of, duration, frequency, quality (shrillness, grating, impulsivity, sporadic, repeated) and the hour of it. As part of any such statement, the Board might stress that it can only consider public nuisance and that may mean that in many cases involving noise complaints affecting adjacent property, that the appropriate recourse might be through the environmental health department or through the common law of nuisance.

9. Do you think that the inaudibility condition should be retained? (Please give reasons) If not, why not? Either way please give the Board reasons for your views. Yes – as the condition upholds the objective of preventing public nuisance

10. Would you support the alternative approach as outlined above? (Please give reasons)

11. Do you have any additional observations/comments on how the Board should deal with the issue of music noise from licensed premises? Can the board consider a condition that imposes a maximum decibel – there are several apps available for smartphones that offer functionality to measure decibel levels therefore a cost effective way to control

Licensed Premises – Music Outside

In general, licensed premises are not permitted music outside the venue on a permanent basis. If music is desired for a special event (such as Dundee Dance Event or Almost Blue), the applicant may need to seek planning permission prior to a major variation being applied for. Any music outside the venue should not cause a nuisance. The Board would propose that permission would generally only be granted for music outside until 7pm.

12. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views. Yes – to prevent the music causing a nuisance to others

Occasional Licence – External Music Events

An applicant requesting the grant of an occasional licence involving music (live performances/DJs loud amplified music) should demonstrate to the Board that this will not cause a nuisance. If the event is granted, then a 7pm music cut off point will generally be applied as a local condition. Areas that will not be covered by this timing restrictions are Slessor Gardens, Apex car park, City Square, Magdalen

Green, Camperdown Park. The 7pm restriction may be revised by the Board if the applicant wishes to extend this timing, but other mitigating measures may be required such as a Noise Impact Assessment, staff monitoring local residential areas for music outbreak, etc. Due to the potential of objections by local residents or council officers, it is advised that the application is submitted as soon as possible in advance of the event as it may have to be presented to the board for a decision.

13. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views. YES – to prevent a nuisance to others

14. Are there any other comments or observations you wish to make concerning the playing of music within licensed premises or externally?

Home deliveries of alcohol

Premises have been making an increasing use of home deliveries, especially as a result of the recent coronavirus pandemic. It is the view amongst licensing boards that having an off-sales facility on a premises licence does not automatically allow the premises to carry out home deliveries of alcohol unless this is specified in the operating plan for the premises and that appropriate procedures be in place on the part of the licence holders concerned. Whilst the Board does not share the view that such a variation would be required, it would be prepared to consider applications to add home deliveries to the terms of a premises licence for off-sales and it is considering the following wording for inclusion in the policy statement in this regard –

“Deliveries of alcohol

Where premises licence holders with an off sales facility apply for a variation to operate a delivery service, policies and procedures should be in place and implemented by staff including in relation to the process of taking and recording of orders, training for delivery drivers, recording of items despatched, age verification policy and recording deliveries made. Those policies and procedures should be aimed at preventing alcohol being delivered to and consumed by persons under 18 or drunk persons.

Applicants seeking the addition of a delivery service should expect the requirement for policies and procedures to be in place to be imposed as a local condition on the premises licence.

Premises licence holders are reminded that if they use a courier or the sale and delivery are carried out through a third party organisation, it is the responsibility of the premises licence holder to make sure the courier/third party has appropriate policies and procedures in place.”

15. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views. Yes – as this ensures any home deliveries made are in line with Licensing Objectives

16. Do you have any other observations or comments on the issue of home deliveries of alcohol?

Late night workers

A number of licensing boards have provisions in the policy statement to encourage licence holders to take account of the interests of their staff and, in particular, arranging transport home for them at the end of their shifts which can often be in the early hours of the morning. It is not open to a licensing board to attach conditions to licences in this regard.

The suggested wording for inclusion in the policy is as follows –

“Safety of Workers and Employees within Licensed Premises

The Licensing Board acknowledges that it has no specific remit in relation to health and safety issues involving staff working within licensed premises. It does however recognise that there will be occasions where the safety of staff may be compromised by customers who are intoxicated, particularly where they have been refused service or access to the premises. It also recognises that staff travelling home alone at night, particularly women, are at a heightened risk of violent crime. The Board therefore believes that licence holders have an added responsibility towards their staff flowing from issues directly relating to the sale of alcohol and the specific provisions of their licence.

The Board believes that all licence holders, and particularly those operating or applying for later licensed hours, should consider what arrangements are in place for staff getting home safely after the premises have closed when public transportation options may be more limited or non-existent. The Licensing Board is greatly encouraged by the “Safe Home” initiatives adopted by some licence holders for their staff and would strongly encourage others to take a similarly responsible approach to the safety of staff working within their premises later at night. The Board also welcomes the growing number of campaigns and initiatives aimed at improving pay and conditions for staff working within the hospitality sector and expects that licence holders will lead the way in helping to eliminate unfair working practices within the licensed trade.”

17. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views. Yes – this would be reasonable approach whilst demonstrating the welfare of staff working at Licensed Premises is important

The following miscellaneous matters are also highlighted for amendment in the new policy statement :-

Irresponsible alcohol promotions

The current policy sets out the legislative provisions on this aspect of the sale of alcohol and also provides examples of each which the Board itself is suggesting. It is recommended that these examples be removed from the policy statement and the legislative provisions be left in the statement.

Ultimately, it will be a matter for the courts to decide what is allowed and what is against the terms of the legislation.

Children & Young Persons in licensed premises

The policy statement says that Children & Young Persons are only permitted in licensed premises until 10pm whilst having a meal accompanied by an adult. This should be amended to clarify it does not apply if premises are a restaurant or function suite putting on a private function

Bottle Marking Scheme

This should be removed as it was never implemented to any great extent.

Section 33 transfers

If the outgoing licence holder allows the incoming to trade on their licence during the transfer process, then a letter/email authorising this activity must be sent to the Licensing Board.

18. Do you have any comments or observations on these additional miscellaneous matters? Agree with the above suggestions

19. Do you have any other comments to submit for the Board's consideration at its review of licensing policy?



CHANGING FOR THE FUTURE

Memorandum

To	Clerk to the Licensing Board
From	Environment / Public Health Manager, Neighbourhood Services
Our Ref	SR100530
Your Ref	
Date	30th November 2023

Subject **Dundee City Licensing Board Statement of Licensing Policy 2023-2028
Consultation Document**

I refer to the above mentioned consultation document circulated on 3 November 2023 and the 19 questions contained for discussion. Within the document there are sections titled the 'Grant of occasional licences', 'Music noise from licensed premises', 'Licensed Premises – Music Outside' and 'Occasional Licence – External Music Events' with questions 7 through to 14 being relevant to these. I have provided a response to these sections of the consultation document only, with responses provided to questions 8 through to 14.

Grant of occasional licences

In terms of Section 56 of the 2005 Act, the Board may grant occasional licences to premises which are not subject to a premises licence. Application must be made by a premises licence holder, personal licence holder or a voluntary organisation. Occasional licences can run for up to 14 days. Unlike under the Licensing (Scotland) Act 1976, there is no requirement for an applicant for an occasional licence to specify any particular event which the licence is intended to cover, so premises can in theory operate continuously on the basis of occasional licences. This was undesirable for a number of reasons, e.g., the fee for an occasional licence is only £10 making it a cheaper alternative to applying for a full premises licence which has a substantially higher fee and also would be subject to the annual fee in addition; there is no requirement to provide detailed operating or layout plans, planning or building control certificates, etc. There is a power given to Scottish Ministers under Section 56 (6A), (6B) and (6C) to, amongst other things, prescribe a limit on the number of occasional licences which any one premises may apply for. This power has not yet been used.

At the moment, occasional licences are dealt with under delegated powers, unless there are any objections. If there are objections, the applications are referred to the Licensing Board, although this is not always possible in the event that there is no Licensing Board meeting prior to the licence dates applied for. In that event, the 2005 Act requires that the applicant submits written representations to the Clerk and the application is then determined without a hearing.

As noted above, there have been concerns about some premises virtually operating on a permanent basis on the grant of occasional licences. It was decided in the last policy review in 2018 that applicants for such occasional licences should have to provide some justification for the licence being sought. This applied to

Cont/..

(i) applications which did not specify particular events in the form and (ii) any premises where there have been 4 or more applications over the preceding 3 months period. However, as the result of a recent court appeal in which it was decided it was not for the licensing boards to impose any limit on the number of occasional licences whilst the above power of the Scottish Ministers remains unexercised, it is recommended that this part of the existing policy statement be deleted.

Insofar as occasional licences are concerned, it is suggested that the following be included in the policy statement –

Applications should be submitted to the Licensing Office no later than 28 days prior to the event. However, for large type events, or complex events, the application should be submitted as soon as possible in advance of the proposed event, thus giving officers time to discuss and request further information. Also, with an event of over 500 patrons an alcohol management plan (AMP) will be required and also a layout plan depending on the location. If there is to be entertainment at the event then a Public Entertainment Licence may also be required.

7. Do you agree with this proposed addition to the Board's policy? If not, why not? Either way please give the Board reasons for your views.

8. Are there any other aspects of applications for occasional licences which you think the Board should consider including in the policy statement?

Occasional licenses granted for internal events should have the inaudibility Condition applied as standard – “All amplified music and vocals shall be so controlled as to be inaudible within the nearest residential accommodation.”

For those premises with external areas, a standard condition should be applied:

“With regard to the external table/seating area:

- a) Restriction of hours: September to June - open 11:00 hours Monday to Saturday and 12:30 hours on Sundays: closing at 21:00 hours

July and August - open 11:00 hours Monday to Saturday and 12:30 on Sundays: closing at 22:00 hours.

- b) At no time shall amplified music or vocals be provided/performed.”

Music noise from licensed premises

Currently, the Board generally attaches a condition to licences where live music is to be provided which requires all amplified music to be inaudible in the nearest residential accommodation. The Board wishes to explore whether this is an appropriate condition to maintain and the following approach is suggested for consultation.

The relevant licensing objective is the prevention of *public* nuisance (emphasis added). A question arises as to whether noise caused by music within licensed premises can be regarded as “public” in that sense. Case law from England would suggest that to be a “public nuisance”, the effect of the noise should be “sufficiently widespread and sufficiently indiscriminate to amount to something more than private nuisance”. Scots Law does not recognize the same distinction between public and private nuisance but in the context of that particular licensing objective especially when taken in conjunction with the references in the statutory 2005 Act Guidance to the effect upon “local residents” and “communities”, this tends to support an argument that the objective will only be engaged when the noise has that wider level of impact and where that public character of the nuisance is lacking, then an individual complainer would have to

seek a remedy either via the statutory nuisance route (by complaining to the local authority noise control section) or a private action for nuisance. However, there is a qualification to this approach where the nature of the noise nuisance (such as the duration, frequency, quality, time of day, etc.) would support a conclusion that the nuisance has gone beyond the mere discomfort of one person and has reached a level such that it can be considered to be likely to be a public nuisance in the sense above referred to.

In terms of Board policy, the Board is considering having a statement which indicates that the Board is concerned with nuisance which has a reasonable link to the provision of alcohol on the premises. In such a statement, the Board may generally consider that such a nuisance might exist where there is evidence that what is complained of impacted on a sufficiently large number of members of the public by reference to one act or a series of acts, or, where the effect was sufficiently widespread or indiscriminate. It might stress that it would generally need evidence from more than one source to support the matter being a public nuisance, but that in cases where even one source of evidence existed, that might, if the evidence was sufficiently strong, allow the Board to draw the inference that the nuisance was likely to be a public one. It might also add in considering whether there is a nuisance that this would involve, amongst other considerations, a consideration of the nature of the matter complained of, duration, frequency, quality (shrillness, grating, impulsivity, sporadic, repeated) and the hour of it. As part of any such statement, the Board might stress that it can only consider public nuisance and that may mean that in many cases involving noise complaints affecting adjacent property, that the appropriate recourse might be through the environmental health department or through the common law of nuisance.

9. Do you think that the inaudibility condition should be retained? (Please give reasons) If not, why not? Either way please give the Board reasons for your views.

Yes - the inaudibility condition should be retained.

Firstly, it should be stated that, from the Committee Report dated 21st September, 2023, music noise from licensed premises was included in the preliminary consultation carried out at the end of 2022. Environmental Health – Noise Section – was not included in the preliminary consultation. The Committee Report states that no detailed responses were received on the question of music noise and it is therefore proposed that a different approach is explored for consultation. On subsequent sighting of the preliminary consultation there was no suggestion of removing inaudibility and it is not clear why a different approach is needed.

Requiring amplified music from licensed premises to be inaudible in neighbouring residential premises has been a long-established position accepted in many Board areas in Scotland.

The definition of inaudible means “unable to be heard”. In other words, someone with a normal hearing range can hear or “detect” the music that is “audible”. Adopting a literal understanding of the word not only provides clarity but also enables any person to assess this.

Music noise does not fit neatly into the type of noise that lends itself to being monitored using a sound level meter. Music can be very disturbing even at levels which could never be considered to be a statutory nuisance. A noise meter would be of no use in these circumstances as it would measure the prevalent sound. Generally, if music can be heard it has the potential to be annoying and disturbing.

In deriving appropriate criteria noise levels, consideration should be given to the avoidance of the adverse effect of noise including non-auditory effects such as annoyance, sleep disturbance and possible health effects and context is important.

The recognised guidance decibel levels (WHO/REHIS) are better suited to assessing disturbance e.g. due to transportation or mechanical services noise – not to music noise which can annoy people more than at the same decibel levels as these other services.

There is no established single method or agreed criteria for assessing entertainment/music noise – hence the use of inaudibility.

The bass beat from music cannot be described as steady noise and at levels of e.g. 30dB (A) the lyrics may be clearly discernible to the affected party. Indeed, because music contains coherent information in the beat, the melody and the words, it may be impossible to ignore intrusive music even at very low levels.

It is not appropriate to set a decibel level, as this would be the total measurable noise level at a particular location. The background environment could change. Also, generally, a quantitative assessment, based on the simple change in noise level is not adequate in addressing the noise impact on all the amenities associated with a noise sensitive receptor (e.g. the ability to relax, ability to concentrate i.e. reading, listening to radio/TV, ability to converse etc). While an actual decibel level may appear more precise, this is not the case.

Individual sensitivity to noise is highly subjective and is affected by a range of factors. As these can include non-acoustic matters, such as attitude to the noise source, sensitivity may not always relate directly to the level of noise.

In setting an absolute level there will be situations where the applicant will comply with the Condition but the Condition will not be effective.

While it is accepted that “inaudibility” is a subjective criterion, a set dB(A) or Noise Rating (NR) level will not adequately reflect annoyance – the term used in the Civic Government (Scotland) Act, 1982 (and still subjective). The problem stems from the dB(A) descriptor and NR curves in that they are designed to take less account of the low frequency sound. Since the frequency spectrum of the background noise and the music will be different, and as the music has high tonal content and a strong rhythmic structure, music is easily discernible even when it is played at a level below the background noise.

Inaudibility is the only criteria which takes full account of the subjective human response to noise and the perception of annoyance and hence nuisance. It has been proven to be a positive proactive approach.

It is not known what the issues are that have prompted the decision to consult on the removal of the inaudibility but if it is an issue of the differences in hearing “sensitivities”, a statement in the Licensing Policy could be included to advise that a particularly sensitive auditory response is not considered.

10. Would you support the alternative approach as outlined above? (Please give reasons)

No.

The distinction recognised in England between public and private nuisance is not a classification used in Scots Law so therefore not sure of the relevance of this. Public nuisance does not apply in Scotland and therefore the case law on it may not apply. As details have not been provided on the case law referred to, no further comment can be made on this but it should be noted that between England/Wales and Scotland, there are slightly different provisions, there is a different historical background and there are slightly different interpretations of nuisance and therefore this changes what weight is given to case law decisions, other powers also differ such that care is needed when applying case law principles, the standards of proof may differ and what evidence to gather may differ. There is also separate legislation relating to noise.

(There is also case law stating that where an individual is directly and seriously affected by noise or other pollution an issue may arise under Article 8 of the Human Rights Act, 1998 i.e. everyone has the right to respect for his private and family life and his home).

By changing the interpretation of the word “public” the Board will introduce a Policy that puts an added burden on the Police (see below) or puts the onus – and cost – on to a member of the public to take legal action, when the licensing regime should be sufficient for this. Licensing policy should make clear that licensing is about regulating the sale of alcohol **and the premises** on which the alcohol is sold. In the licensing guidance it is recognised that the licensing regime is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are no longer on licensed premises and beyond the direct control of the licence holder. Music/entertainment noise and break-out from the premises is within the direct control of the licence holder and therefore the licensing regime is most suited to deal with this rather than leaving it an individual neighbour or the Police.

Part of the consultation states “references in the statutory 2005 Act Guidance to the effect upon “local residents” and “communities”, this tends to support an argument that the objective will only be engaged when the noise has that wider level of impact”

From that Guidance, for the Licensing Objective on Securing Public Safety

“2.12 The public in this context relates to a wide definition which includes customers on the premises, the premises' staff and passers-by or **persons in the vicinity** of a licensed premises.”

There is no definition on how many people have to be affected for this objective and therefore it is unclear why a difference should be made for the Licensing Objective of Securing Public Health.

Public Health means the health of all people – this does not mean that all people have to be affected – it can mean anyone.

The proposed approach would mean, for example, a flat above licensed premises that was the only one affected would not be considered by the Board.

Nuisance is not defined in the Environmental Protection Act, 1990 but guidance on statutory nuisance states that this “can be regarded as interference that ordinary decent people would consider unreasonable with the personal comfort or enjoyment or amenity of neighbours or the community”. Therefore, this is no different to the proposed change in interpretation of the word “public”, however, a single person is able to complain about statutory nuisance.

The statement within Dundee’s current Licensing Policy Statement is that “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 and working in the local area”. This statement is still included in the newly published Licensing Policies (2023-2028) of other Local Authorities and it is not clear why this has to be changed.

It is not only music noise that will be affected by the change in interpretation of “public nuisance”.

“The Board may generally consider that such a nuisance might exist where there is evidence that what is complained of impacted on a sufficiently large number of members of the public by reference to one act or a series of acts, or, where the effect was sufficiently widespread or indiscriminate.”

This is open to interpretation – how many is a sufficiently large number? How is “sufficiently widespread” to be defined?

Environmental Health enforces the Statutory Nuisance provisions of the Environmental Protection Act, 1990, as amended (EPA). There are eight key issues to consider when evaluating whether a nuisance exists:

1. Impact
2. Locality

3. Time
4. Frequency
5. Duration
6. Convention
7. Importance, and
8. Avoidability.

This means that whilst noise arising from licensed premises may on occasion be intense enough to cause interference with enjoyment of domestic property, if it were happening on a relatively infrequent basis, it could not be considered a Statutory Nuisance.

The statement made in the consultation "there is a qualification to this approach where the nature of the noise nuisance (such as the duration, frequency, quality, time of day, etc.) would support a conclusion that the nuisance has gone beyond the mere discomfort of one person and has reached a level such that it can be considered to be likely to be a public nuisance in the sense above referred to."

As can be seen, when considering statutory nuisance, these aspects have to be taken into consideration so therefore if the Board can do this under the Licensing regime then this should continue.

The Environmental Protection Act, 1990, as amended, does not provide Local Authorities with adequate powers to protect people from music noise. As stated previously, music can be very disturbing at levels that could never be considered to be a statutory nuisance.

The test of statutory nuisance under the EPA is often unlikely to be met in the circumstances given, as it is often the case that bass in amplified music can be heard, and be disturbing to residents, particularly late at night, but the noise measured by a sound level meter would not show a significant difference above the background level.

The EPA does not define a set decibel level which would constitute a Statutory Nuisance and a such other legislation and guidance has to be referred to when carrying out investigations.

The statutory nuisance regime deals with the unreasonable interference with the ability of someone to enjoy their property. The assessment for statutory nuisance can be very subjective and comes down to officer opinion (although subjectivity is the domain of the Court). Investigations can take a considerable length of time and resources. Statutory Nuisance can be notoriously difficult to prove as it has to take into account the other factors – locality, frequency, sensitivity etc - as well as proving that the nuisance is not transient. This can be difficult for complaints which are worse some weekends than others.

There is also the defence of "best practicable means" in nuisance cases which can prevent satisfactory resolution for complainants. Should a statutory nuisance be determined arising from a licensed premises, they will have the defence in court of "Best practicable Means", which means if the offender has taken all measures which are "reasonably practicable having regard to local conditions and circumstances, the current state of technical knowledge and to the financial implications" then they have a defence against Statutory Nuisance in court. This can curtail nuisance proceedings by Environmental Health. Statutory Nuisance does not address short duration/infrequent noise nuisance.

Statutory nuisance cannot deal with lower level annoyance, frustration or inconvenience. It cannot take account of the needs or wishes of a particularly sensitive person, instead looking at how it would affect any normal person.

For the Civil Action described in the proposal, the burden of proof is "on the balance of probability" rather than the higher criminal standard of "beyond all reasonable doubt" which the Local Authority must meet. This is most useful when the LA does not consider the matter to be a statutory nuisance or is unable to get

sufficient evidence that a statutory nuisance exists (This could include where incidents are sporadic or unpredictable).

However, more importantly, it should be the most relevant legislation that is used and, for music noise, this is the Civic Government (Scotland) Act, 1982. Under this Act there is a statutory duty upon the Police to act where there is “reasonable cause for annoyance” associated with playing a musical instrument/singing to performing/operation of radios and TVs/amplified music. “Annoyance” is a lesser standard than demonstrating statutory nuisance.

Therefore, in the absence of other controls e.g. licensing regimes, any issues would be dealt with by the Police and not the Environmental Health noise section. This would put an unnecessary burden on the Police. The use of the inaudibility licensing condition allows the LSOs to pro-actively deal with complaints about music noise and should limit the need for Police involvement.

11. Do you have any additional observations/comments on how the Board should deal with the issue of music noise from licensed premises?

The LSO has an in-depth knowledge of the licensed premises and can also highlight other issues ensuring a more holistic approach to enforcement.

The LSO can mediate between a complainer and the premises licence holder in an effort to reach a satisfactory level without formal measurements having to be taken. However, where the music from a particular premises is causing a problem then there is recourse for the LSO to issue a written warning and, if not satisfied with the action taken, they can refer this Board for review of the premises licence.

In our experience licensees have considerably more respect for the Licensing regime rather than the Statutory Nuisance regime as it could directly affect their business operations.

Where extended hours are granted – particularly for those being granted extensions to 3am and having to provide “significant” entertainment - the suitability of the premises should be considered but the below applies to all licensed premises providing entertainment/music.

- Installation of double doors at the entrance(s)/exits(s) in use to create acoustic lobbies. Fire- exit doors should remain closed.
- Entrance doors being manned to prevent unnecessary amplified entertainment breakout noise.
- Installation of sound proofing.
- Alternative means of ventilation should be installed to prevent the need for windows/doors to be left open for ventilation. Windows should be kept closed to contain the noise – not only from music but also from patrons but, at the very least, windows should be closed when amplified entertainment noise is being generated within the premises.
- Provision of noise management plans – this should cover not only music but how noise generated within the premises as a result of the activities listed in the operating plan can be managed so as to prevent nuisance to neighbours. It should cover more than music but e.g. patrons leaving.

Licensed Premises – Music Outside

In general, licensed premises are not permitted music outside the venue on a permanent basis. If music is desired for a special event (such as Dundee Dance Event or Almost Blue), the applicant may need to seek planning permission prior to a major variation being applied for. Any music outside the venue should not

cause a nuisance. The Board would propose that permission would generally only be granted for music outside until 7pm.

12. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

For those premises with external areas, a standard condition should be applied:

"With regard to the external table/seating area:

- c) Restriction of hours: September to June - open 11:00 hours Monday to Saturday and 12:30 hours on Sundays: closing at 21:00 hours

July and August - open 11:00 hours Monday to Saturday and 12:30 on Sundays: closing at 22:00 hours.

- d) At no time shall amplified music or vocals be provided/performed."

For "special events"/"one-offs", agree that 7pm should be applied. Neighbours may tolerate a single event but if music is provided e.g. every weekend or a series of weekends or days then it may cause an issue. However, music can be annoying at any time of day and neighbours are entitled to complain about this to the Police. To limit that happening, there should still be the general presumption against external music, as inaudibility (in the main) would not be achieved for external amplified music but the curtailing of the hours for the permitted events is a means of control.

Occasional Licence – External Music Events

An applicant requesting the grant of an occasional licence involving music (live performances/DJs loud amplified music) should demonstrate to the Board that this will not cause a nuisance. If the event is granted, then a 7pm music cut off point will generally be applied as a local condition. Areas that will not be covered by this timing restrictions are Slessor Gardens, Apex car park, City Square, Magdalen Green, Camperdown Park. The 7pm restriction may be revised by the Board if the applicant wishes to extend this timing, but other mitigating measures may be required such as a Noise Impact Assessment, staff monitoring local residential areas for music outbreak, etc. Due to the potential of objections by local residents or council officers, it is advised that the application is submitted as soon as possible in advance of the event as it may have to be presented to the board for a decision.

13. Do you agree with this proposal? If not, why not? Either way please give the Board reasons for your views.

Yes, but as above.

14. Are there any other comments or observations you wish to make concerning the playing of music within licensed premises or externally?

As previously stated, occasional licenses granted for internal events should have the inaudibility Condition applied as standard.



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Get ME home safely campaign

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Women workers do not feel safe going to and from work



"Last year I was assaulted after my employer refused to provide me with a taxi after transport times. This happens all too often to workers." -Carrie

"I've worked in the hospitality industry now for just short of a decade. Nearly every single late-night shift begins with worrying about making arrangements at home. Will I make enough in tips to afford a taxi? Will I have to walk home alone

in the dark? If I walk home will that guy that threatened me for cutting him off still be hanging around?" - Angela

Join the campaign for change

Get ME Home Safely is Unite's campaign to make our communities and workplaces safer places for our members. Employers and governments across the UK must play their part too. **Get involved to make this change.** Our calls include:

Extend employers' duty of care to embed safe transport home policies for all workers; we are calling on employers to adopt risk assessments that include an individual's journey times and potential hazards once they've left the workplace

Lobby bus operators for mandatory training for transport workers on gender based violence to include practical guidance on reporting sexual harassment and assault on public transport

Legislative change to address the weakness in enforcement of the law against sexual assault and harassment on

Make free transport home for staff a prerequisite for all new liquor licenses

Campaign for clear and operational CCTV on all forms of public transport

Lobby the government for municipal ownership of buses as a way to tackle the chronic shortage of night services;

public transport

Lobby for national minimum

standards and for taxi and

private hire vehicles and an

end cross border hiring to

improve safety for women

using private hire vehicles and

taxis.

Reverse the cuts to funding for public

toilets, every bus worker must have

access to clean and accessible toilets

Join this campaign to make a real difference

Our members from across the hospitality and passenger transport sectors, working with our equalities sector, are calling for immediate changes to protect women workers. They've come up with a plan to deliver real change. You can read more detail about these plans [here](#) - download the toolkit files below.

Download the organising toolkit

Get ME home safely survey

Part 1 of your Get ME Home Safely toolkit

(https://www.unitetheunion.org/media/4490/getmehomesafely_a4_1-survey-online2x.pdf)

Get ME home safely guidance

Part 2 of your Get ME Home Safely toolkit

(https://www.unitetheunion.org/media/4489/getmehomesafely_guidance.pdf)

Take action today

Help Unite deliver Get ME home safely for women (and all workers). Please take a moment to do some, or all, of the following.

- Fill out the survey - either use the [online survey \(/campaigns/get-me-home-safely-campaign/get-me-home-safely-survey\)](/campaigns/get-me-home-safely-campaign/get-me-home-safely-survey) or download the [PDF form \(/media/4490/getmehomesafely_a4_1-survey-online2x.pdf\)](/media/4490/getmehomesafely_a4_1-survey-online2x.pdf) and take to your workplace.
- Use the [Unite form \(/campaigns/get-me-home-safely-campaign/sign-the-edm\)](/campaigns/get-me-home-safely-campaign/sign-the-edm) to email your MP and ask that they back EDM 909 - see the [EDM signatures \(https://edm.parliament.uk/early-day-motion/59410/get-me-home-safely-campaign\)](https://edm.parliament.uk/early-day-motion/59410/get-me-home-safely-campaign).
- Tell us what you are doing in your workplace - email the Unite [Get ME home safely campaign \(mailto:getmehomesafely@unitetheunion.org\)](mailto:getmehomesafely@unitetheunion.org) team.

Taking action in your community



Where are all the buses?

Since 2009, well over 3,000 local authority supported bus services have been cut or reduced. Take action today.

[\(/campaigns/get-me-home-safely-campaign/get-me-home-safely-take-action-on-buses\)](/campaigns/get-me-home-safely-campaign/get-me-home-safely-take-action-on-buses)

Take the survey

Please take our survey

[\(/campaigns/get-me-home-safely-campaign/get-me-home-safely-survey\)](/campaigns/get-me-home-safely-campaign/get-me-home-safely-survey)

We want to hear from you - click to view

Share these images - click to view

Please bookmark this page

The *Get ME home safe campaign* will be rolling out across Unite in the coming weeks and months. Whether it is at Westminster, Stormont, the Senedd or Holyrood, we are determined that you are safe at work and going to and from work. Please bookmark this

page so that you can stay across all developments in the *Get ME home safely* campaign.

Downloads

(Selecting a download below will open up a PDF in a new browser tab)

Get ME home safely - campaign briefing

263.87 KB (/media/4561/getmehomesafely_briefing.pdf)

Get me home safely - campaign video

30.55 MB

(/media/4562/unite_safe_home_short_campaigndraft_030322v1mp4-original.mp4)

Get ME home safely - poster

1.48 MB (/media/4728/getmehomesafely_a4_poster_d-mik-5-digital.pdf)

Get ME home safely - Commonwealth Games poster

1.48 MB (/media/4729/getmehomesafely_a4_poster_d-mik-commonwealth-digital.pdf)

(/)

(https://www.safelondon.com/unite-the-union/)user/UniteTheUnior

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Holborn
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WC1X 8TN

Useful Links

About us (/who-we-are)
Member services (/why-join/member-services)
Current vacancies (/current-vacancies)
Contact us (/contact-us)
Outlook webmail
(<https://mail.unitetheunion.org>)

Legal Info

Branch portal login
(<https://branch.unitetheunion.org>)
Member complaints (/member-complaints)

2023 Gender Pay Gap Report
(<https://www.unitetheunion.org/media/5514/gender-pay-gap-report-2023.pdf>)

2019 statement to members (/who-we-are/a-message-from-the-general-secretary/unite-annual-statement-to-members-august-2019)

South Wales Police update on police attendance at Unite's Holborn HQ in April 2022
(<https://www.unitetheunion.org/media/5241/swp-investigation-bulletin-january-2023-unite-affiliated-services.pdf>)

Terms of use (/legal-information/terms-of-use)
Disclaimers (/legal-information/disclaimers)
Privacy policy (/legal-information/privacypolicy)

Independent Blacklisting Collusion Investigation - Data Sharing Agreement & Privacy Notice
(<https://www.unitetheunion.org/media/5724/ibci-data-sharing-agreement-privacy-notice.pdf>)

Cookie statement (/legal-information/cookie-statement)

Accessibility (/legal-information/accessibility)

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Integrated Impact Assessment

Committee Report Number: 30-24

Document Title: Statement of Licensing Policy 2024-2028 Under Licensing (Scotland) Act 2005 - Results of Consultation

Document Type: Policy

Description:

A report to the Licensing Board detailing the results of the consultation process for a new statement of licensing policy and asking the board to determine the contents of the said policy in light thereof

Intended Outcome:

To publish a statement of licensing policy to cover the period from 2024-2028

Period Covered: 18/01/2024 to 31/12/2028

Monitoring:

By the implementation and application of the new policy

Lead Author:

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Director Responsible:

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Equality, Diversity and Human Rights

Impacts & Implications

Age: No Impact

Disability: No Impact

Gender Reassignment: No Impact

Marriage & Civil Partnership: No Impact

Pregnancy & Maternity: No Impact

Race / Ethnicity: No Impact

Religion or Belief: No Impact

Sex: No Impact

Sexual Orientation: No Impact

Are any Human Rights not covered by the Equalities questions above impacted by this report?

No

Fairness & Poverty

Geographic Impacts & Implications

Strathmartine:	Not Known
Lochee:	Not Known
Coldside:	Not Known
Maryfield:	Not Known
North East:	Not Known
East End:	Not Known
The Ferry:	Not Known
West End:	Not Known

Household Group Impacts and Implications

Looked After Children & Care Leavers: No Impact

Carers: No Impact

Lone Parent Families: No Impact

Household Group Impacts and Implications

Single Female Households with Children: No Impact

Greater number of children and/or young children: No Impact

Pensioners - single / couple: No Impact

Unskilled workers or unemployed: No Impact

Serious & enduring mental health problems: Not Known

The policy requires to promote the licensing objective of protecting public health and some mental health issues may be related to alcohol-induced harm.

Homeless: Not Known

Some people may be homeless due to alcohol-related harm.

Drug and/or alcohol problems: Positive

It is hoped that a policy aiming to tackle alcohol-related harm will have a positive effect on this group of persons

Offenders & Ex-offenders: Not Known

there may be instances where offending is caused by harmful consumption of alcohol

Socio Economic Disadvantage Impacts & Implications

Employment Status: No Impact

Education & Skills: No Impact

Income: Not Known

An overprovision policy (if adopted) may reduce the amount of money people spend on alcohol

Caring Responsibilities (including Childcare): No Impact

Affordability and accessibility of services: No Impact

Fuel Poverty: No Impact

Cost of Living / Poverty Premium: Not Known

Reference is made to the comments on Income in the previous section above

Connectivity / Internet Access: No Impact

Income / Benefit Advice / Income Maximisation Not Known

Reference is made to the comments on Income in the previous section above

Employment Opportunities: No Impact

Education: No Impact

Health: Positive

The policy requires to promote the protection of public health

Life Expectancy: Positive

See immediately preceding comments above

Mental Health: Positive

Same as Health above

Overweight / Obesity: No Impact

Child Health: No Impact

Neighbourhood Satisfaction: Positive

Any policy should help to contribute to dealing with any alcohol-related problems in neighbourhoods (e.g., antisocial behaviour)

Transport: No Impact

Environment

Climate Change Impacts

Mitigating Greenhouse Gases: No Impact

Adapting to the effects of climate change: No Impact

Resource Use Impacts

Energy efficiency & consumption: No Impact

Prevention, reduction, re-use, recovery or recycling of waste: No Impact

Sustainable Procurement: No Impact

Transport Impacts

Accessible transport provision: No Impact

Sustainable modes of transport: No Impact

Natural Environment Impacts

Air, land & water quality: No Impact

Biodiversity: No Impact

Open & green spaces: No Impact

Built Environment Impacts

Built Heritage: No Impact

Housing: No Impact

Is the proposal subject to a Strategic Environmental Assessment (SEA)?

No further action is required as it does not qualify as a Plan, Programme or Strategy as defined by the Environment Assessment (Scotland) Act 2005.

Corporate Risk

Corporate Risk Impacts

Political Reputational Risk: No Impact

Economic/Financial Sustainability / Security & Equipment: No Impact

Social Impact / Safety of Staff & Clients: No Impact

Technological / Business or Service Interruption: No Impact

Environmental: No Impact

Legal / Statutory Obligations: Positive

This is a statutory function under the Licensing (Scotland) Act 2005

Organisational / Staffing & Competence: No Impact

Corporate Risk Implications & Mitigation:

The risk implications associated with the subject matter of this report are "business as normal" risks and any increase to the level of risk to the Council is minimal. This is due either to the risk being inherently low or as a result of the risk being transferred in full or in part to another party on a fair and equitable basis. The subject matter is routine and has happened many times before without significant impact.