

ITEM No ...3.....

REPORT TO: DUNDEE CITY LICENSING BOARD – 21ST SEPTEMBER 2023

REPORT ON: STATEMENT OF LICENSING POLICY 2023-2028

REPORT BY: CLERK TO THE LICENSING BOARD

REPORT NO: 274-2023

1.0 PURPOSE OF REPORT

1.1 To advise the Board of options for the Statement of Licensing Policy for the period 2023-2028 under the Licensing (Scotland) Act 2005, including a statement as to any overprovision of licences within the Board's area.

2.0 RECOMMENDATIONS

2.1 That the Board considers the options set out in this report for possible inclusion in the Statement of Licensing Policy for the period 2023-2028 and then to authorize the Clerk to carry out a consultation under the 2005 Act with a further report being submitted to the Board in November 2023 when a final decision will be made as to the contents of the 2023-2028 policy statement.

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 current policy was adopted in November 2018 to cover the period from 2018-2022. The next policy period will run from 2023 until 2028. Section 7 of the 2005 Act further requires every Licensing Board to consider to what extent (if any) there is overprovision of licensed premises (either generally or of a particular description) in any locality within their area. This is referred to as "the overprovision assessment" and is to be included in the Board's Statement of Licensing Policy.

4.2 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 should consider 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;
- 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.
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- 4.3 The Board carried out a preliminary consultation on miscellaneous matters at the end of 2022. Only one response was received. A copy of the consultation document is attached at APPENDIX 1. It is recommended that this is reissued as part of the proposed consultation covered by this report, subject to section 6 of this report concerning music noise from licensed premises for which an alternative approach is suggested.

5.0 OVERPROVISION ASSESSMENT

- 5.1 Section 7 of the 2005 Act requires every Licensing Board to consider to what extent (if any) there is overprovision of licensed premises (either generally or of a particular description) in any locality within their area. This is referred to as "the overprovision assessment" and is to be included in the Board's Statement of Licensing Policy.
- 5.2 The Board previously decided (January 2018) that there was an overprovision of premises licensed only 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.
- 5.3 The Board had before it in January 2018 a detailed report from the Dundee Alcohol and Drug Partnership (ADP). This was also before the Board in June 2017 when it decided to consult on the whole-area locality for the purposes of overprovision. The Board has the power under Section 6(5) of the 2005 Act to request the Chief Constable and the relevant health board for such statistical or other information as it may reasonably require for the purpose of preparing a policy statement. The ADP has submitted a fresh report to the Board which they will formally present as a separate item at the meeting on 21st September 2023.
- 5.4 The Board has the following options:-
- 5.4.1 make a statement that there may be overprovision of licensed premises generally, or licensed premises of a particular description
- throughout the whole of the Board's area; or
 - in specified localities within the Board's area; or,
- 5.4.2 make a declaration that there is no overprovision either of licensed premises generally, or licensed premises of a particular description, in any locality within the Board's area;
- 5.5 The Board is legally obliged in terms of Section 142 of the 2005 Act to have regard to the ministerial guidance to licensing boards published by the Scottish Government. Part 5 of the Guidance deals specifically with the conduct of an overprovision assessment and is attached at APPENDIX 2. As a starting point, the Board requires to determine which locality or localities it proposes to examine and also which types of licences should be considered.
- 5.6 Taking all of the above into account, it is for the Board (in the event that it considers that there may be overprovision) to decide whether to go with a city-wide whole Board area definition as in the previous policy or to base its assessment of whether there is overprovision on smaller localities. Paragraphs 5.11 to 5.13 of the Guidance deal with the choice of locality. If the option chosen is to examine localities which are smaller than the whole Board area and this were to be adopted as part of the policy statement, this would be without prejudice to the Board's right to look at overprovision in the context of individual applications outwith these localities on a case-by-case basis in much the same way as is done at the moment. (Indeed, even within any localities declared to be over-provided for, the Board would have to hear any applications for licences and decide whether the policy should apply to these.) The choice of locality should be "rational [and] capable of justification" – Paragraph 5.12 of the Guidance.
- 5.7 **Choice of locality:-** The Board should make this decision before going out to consultation. The previous policy was based upon the whole Board area. Reasons for this were primarily the fact the Dundee City Licensing Board area is the smallest geographically in Scotland with excellent transport links within the City meaning that people can move relatively easily from

one part of the area to another and that it made no sense to declare one part of the area overprovided when people can easily access other areas nearby where there may be no finding of overprovision. However, as already noted, the Board is free to choose any localities it wishes, provided there is a rational, justifiable reason for doing so. Examples are the Council wards/LCPP areas, identifiable neighbourhoods or even individual streets, or possibly the Intermediate Data Zones (IDZ's) used for the purposes of Scottish Neighbourhood Statistics such as the Scottish Index of Multiple Deprivation (SIMD).

- 5.9 **Types of licences to include:-** The Board having determined the appropriate locality/localities then requires to consider which types of licences should be included in the overprovision assessment. In terms of Section 7 of the 2005 Act (referred to above), it is entitled to look at all licences within any proposed locality or only licences of a particular description. What are premises of a particular description may be determined by how they operate (Paragraph 5.10 of the Guidance) such as nightclubs, restaurants, public houses, etc. or perhaps the scale of the operation (e.g., supermarket as opposed to corner shop in the context of off-sales premises as suggested in Paragraph 5.15 of the Guidance). In making this determination, the Board should look at any evidence available to it which may suggest that particular types of licences are the cause of any issues or if it is all licences within any proposed locality which are the issue.
- 5.10 **Relevant considerations for the Board to have regard to:-** Section 7 of the 2005 Act obliges the Board, when determining whether or not overprovision exists in any particular locality, to have regard to (i) the number and capacity of licensed premises in the locality and (ii) such other matters (and in particular the licensed hours of licensed premises in the locality) as the Board thinks fit.
- 5.11 Another consideration to which the Board should have regard following the recent appeal by Aldi is the price of alcohol and, in particular, the effects of the introduction of Minimum Unit Pricing (MUP) in 2018. This only came into force after the initial adoption of the Board's previous policy. Whilst the Scottish Parliament has yet to decide whether MUP is to be retained after the expiry of the first 5-year period of operation, this may continue and, in any event, is currently in force. However, MUP and overprovision have never by themselves been presented as instant solutions to the problems they are intended to address and, notwithstanding the effect of MUP, the Board may conclude that there is still a role for overprovision to be used to attempt to tackle these issues. The most recent evaluation by Public Health Scotland found that there had been reductions in deaths (13.4%) and hospital admissions (4.1%) caused by alcohol consumption, and a 3% reduction in sales of alcohol due to MUP. The report found no substantial negative impacts on the alcoholic drinks business or wider social harms, albeit there was some evidence of negative consequences for those persons on low incomes with an alcohol dependence. The full evaluation report and accompanying study reports can be found on the Public Health Scotland website – www.publichealthscotland.scot.

6.0 MUSIC NOISE FROM LICENSED PREMISES

- 6.1 This was included in the preliminary consultation referred to in Paragraph 4.3 above. However, no detailed responses were received on this question. It is therefore proposed that a different approach is explored for consultation.
- 6.2 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.
- 6.3 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.

- 6.4 In terms of Board policy, the Board may consider 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. It may wish to consider a statement that by public nuisance the Board will 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 this will 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. It might wish to stress that the Board 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.

7.0 POLICY IMPLICATIONS

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

8.0 CONSULTATIONS

- 8.1 The Chief Executive, Executive Director of Corporate Services and Head of Community Safety and Protection have been consulted in the preparation of this report.

ROGER MENNIE
CLERK TO THE LICENSING BOARD

DATE: 19th September, 2023

APPENDIX 1

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

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 must be consulted are-

- The Local Licensing Forum;
- 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.

The period for consultation will run up to and including 31st January 2023. The following specific matters are being put forward by the Board for consideration as to inclusion in the policy consultation. 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 General Services 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 had before it in January 2018 a detailed report from the Dundee Alcohol and Drug Partnership (ADP). This was also before the Board in June 2017 when it decided to consult on the whole-area locality for the purposes of overprovision. The Board has the power under Section 6(5) of the 2005 Act to request the Chief Constable and the relevant health board for such statistical or other information as it may reasonably require for the purpose of preparing a policy statement.

Due to the current pressures on the NHS, the ADP is not yet in a position to provide a detailed report to enable a full consultation to take place at this stage as to whether there is any overprovision of licensed premises in the Board's area. It is therefore proposed that this be the subject of a separate consultation process when the report is available from the ADP. However, in the meantime, the Board would welcome any initial views from respondents as to whether they think there is any overprovision of licensed premises in the City of Dundee area; if so, of what types of licences; and in which parts of the Board's area (i.e., the whole Board area or localities within that whole area). The Board would also be interested to know why respondents feel there is (or is not) any overprovision.

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.

Do you agree with this proposed addition to the Board’s policy?

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

The current condition attached to premises licences is to the effect that music shall not be audible in the nearest residential premises (“the inaudibility condition”). The following additional measures are proposed for inclusion in the policy statement.

If new licensed premises are to be built or refurbishment is to take place, then consideration should be made in relation to a Noise Impact Assessment to prevent music noise becoming a problem in residential accommodation. Any new residential construction close to a licensed premises should consider carrying out a Noise Impact Assessment based upon the “agent of change” principle but this would be a matter for the Council as the planning authority to request. Likewise, in relation to a licensed premises changing the way it operates, e.g., the premises used to play background music only and now wishes to provide live performances, DJs and/or karaoke, this could be seen as an agent of change and the licence holder would need to carry out a NIA and any works recommended to prevent the music noise escaping.

Do you have any comments on these proposed measures?

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.

Do you agree with this proposal?

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.

Do you agree with this proposal?

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 generally held 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. It is recommended that this be included in the policy. The following wording is suggested in this regard –

“Deliveries of alcohol

Where premises licence holders with an off sales facility 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.”

Do you agree with this proposal?

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.”

Do you agree 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.

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

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5. Overprovision

Introduction

5.1 This chapter provides information to assist Licensing Boards to make a pro-active assessment of the overprovision of licenced premises in their licensing authority area.

5.2 Licensing Boards have two separate but directly linked responsibilities in relation to overprovision. Each Licensing Board is required to include a statement as to overprovision in its authority area within the Board's statement of licensing policy (section 7 of the 2005 Act refers) and each Board also needs to consider overprovision when determining a premises licence or premises licence variation application (see chapter 8 Premises Licences).

5.3 There have been a number of amendments made to section 7 since its commencement. The Alcohol etc. (Scotland) Act 2010 and the Police and Fire Reform (Scotland) Act 2012 made changes to the to the list of persons a Licensing Board must consult when considering whether there is overprovision (as set out at section 7(1)) in any locality). The "relevant Health Board" was added to the list of consultees and a textual amendment was made to the reference to Chief constable.

5.4 The Air Weapons and Licensing (Scotland) Act 2015 made a number of amendments to section 7. Some were technical whilst others were more substantive. To assist Boards in considering the wider scope of the protecting and improving health licensing objective, section 7 was amended to enable Boards to consider the availability of alcohol across their whole geographic area. Further amendments clarified that increased capacity can be considered separately from an increase in the number of licensed premises in terms of overprovision and that opening hours should also be considered.

5.5 Currently, section 7 of the 2005 Act requires a Licensing Board to include in its statement of licensing policy, a statement as to the extent to which the Board considers there to be an overprovision of (a) licensed premises, or (b) licensed premises of a particular description, in any locality within the Board's area, and in doing so, the Board may determine that the whole of the Board's area is a locality.

5.6 An overprovision assessment must be evidenced base. 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 weighted. 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 Licensing Board 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 (LPS) is clearly set out.

5.7 It is also important that Licensing Boards consult widely on a draft overprovision assessment and carefully consider the views expressed by consultees prior to finalising an overprovision assessment for the Licensing Board area.

Purpose of overprovision

5.8 The requirement to produce an overprovision assessment, and note this in the statement of licensing policy, is designed to:

- enable Licensing Boards to take account of changes since the publication of their previous statement of licensing policy and any subsequent supplementary statement of licensing policies which may have been issued.
- improve public and trade confidence in the licensing system by setting out clearly the grounds on which overprovision should be determined.
- recognise that halting the growth of licensed premises in localities is not intended to restrict trade but may be required to preserve public order, protect the amenity of local communities and mitigate the adverse health effects of increased alcohol consumption.
- provide potential entrants to the market with a clear signal that they may incur abortive costs if they intend to apply for a licence in a locality which a Licensing Board has declared to have reached overprovision.

Which licensed premises are to be included?

5.9 Section 7 provides that premises which have only an occasional licence are to be left out of the assessment of overprovision. Additionally, section 125 of the 2005 Act provides that section 7 does not apply "in relation to premises which are used wholly or mainly for the purposes of any club of such description as may be prescribed". Members clubs are a category of club which falls within Regulation 2 of the Licensing (Clubs) Scotland Regulations 2007 (2007/76). All other licensed premises should be included when considering whether there is overprovision of licensed premises generally or licensed premises of a particular description.

5.10 Licensed premises of a particular description may be determined in terms of their style of operation. For example Scottish Borders Licensing Board states in the overprovision section of its statement of licensing policy that:

- "The number of late night hour entertainment premises (after 1am) within Scottish Borders is currently four. The Board is of the view that any increase beyond that number could be overprovision"

Determining Localities

5.11 It is for each Licensing Board to determine the localities within the Licensing Board's area for the purposes of the 2005 Act. This flexibility allows Licensing Boards to reflect the different circumstances in different geographical areas throughout the country, for example, a locality in a rural area might be larger than a locality in an urban area. As mentioned above, Licensing Boards can determine that the whole of the Licensing Board's area is a single locality.

5.12 The choice of locality must, however it is done, be rational, capable of justification and be consistent across the Licensing Board area. It is expected that, in the interests of openness and transparency, Licensing Boards set out the reasons for their decision making in arriving at their

locality choices (e.g. as part of the consultation on a Licensing Board's draft overprovision assessment) . For example,

- North Ayrshire Licensing Board's statement of licensing policy states: "The Board's Overprovision Policy covers its whole area, although the Board has determined that there are 6 'Localities' in its area (coinciding with the 6 'Localities' used by the North Ayrshire Community Planning Partnership (CPP)).

"These areas contain a total of 38 Intermediate Zones ("IZs"). IZs are the areas commonly used to gather a wide range of government statistics."

- West Dunbartonshire's statement of licensing policy states:"In its assessment of overprovision, the West Dunbartonshire Licensing Board has continued its established approach of utilising the Scottish Neighbourhood Statistics intermediate data zone (IDZ) geographies as the localities for this purpose. "The West Dunbartonshire area can be broken up in to 18 distinct IDZ localities."

5.13 City of Glasgow Licensing Board demonstrated best practice in relation to gathering local views when consulting on proposed localities in relation to its overprovision assessment. The Licensing Board indicated, through its website, that it intended to undertake visits to the proposed overprovision localities to speak directly to local residents and owners and staff of licensed premises in these areas to hear views on the impact of higher concentrations of licensed premises and to gauge whether there is support at a local level for including the area as an overprovision locality in the finalised LPS.

Matters to be considered in determining if there is overprovision

5.14 In determining whether or not overprovision exists, section 7 provides for the matters a Licensing Board needs to consider:

- must have regard to the number and capacity of licensed premises in the locality
- must consult
 - the chief constable
 - the relevant health board
 - such persons as appear to the Board to be representative of the interests of (i) holders of premises licences in respect of premises within the locality, (ii) persons resident in the locality, and- such other persons as the Board thinks fit.
- may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality.

Number and capacity of licensed premises

Number of licensed premises

5.15 The number of licensed premises impacts on the availability of alcohol and as many Licensing Boards recognise, the type of licensed premises is also of relevance. For example, a large supermarket and a small corner shop will each count as one licensed premises. The amount of alcohol sold by each premise will be different and the potential harms associated with the amount of alcohol sold will also be substantially different. A locality with only licensed restaurants is likely to sell less alcohol than a locality with only vertical drinking establishments. The harms associated with licensed restaurants will be less than the harms associated with vertical drinking establishments.

5.16 As discussed at Chapter 3 the 2005 Act places a duty on Licensing Boards to keep a licensing register and this can be used by Licensing Boards to determine the number of premises licensed for:

- the sale of alcohol for consumption on the premises;
- the sale of alcohol for consumption off the premises; and
- the sale of alcohol both on and off the premises.

Capacity of licensed premises

5.17 In the context of the 2005 Act and as set out at section 147, capacity –

- in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption on the premises (or, as the case may be, that part), the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time, and
- in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption off the premises (or, as the case may be, that part), the amount of space in the premises (or, as the case may be, that part) given over to the display of alcohol for sale.

On-sales

5.18 Many Licensing Boards comment in their overprovision assessments that they seek input from their local authority Building Standards Officers regarding capacity matters. For calculating the capacity for on-sales, Licensing Boards may wish to have regard to the parts of the Technical Handbook issued in support of the Buildings (Scotland) Regulations 2004 which relate to occupancy capacity and the number of licensed hours the premises is open. The Building Standards pages on the Scottish Government website [Building standards - gov.scot](https://www.gov.scot/publications/building-standards-2004-technical-handbook/pages/6/) (www.gov.scot) provides information on buildings regulations and the associated technical guidance.

Off-sales

5.19 For calculating the capacity for off-sales, Licensing Boards should have regard to the Premises License (Scotland) Regulations 2007 (SSI 2007 No. 252) and regulation 5 which makes provision as to the layout plan.

5.20 In its statement of licensing policy, Stirling Licensing Board states:

- "Assessing the capacity of licensed premises is important under the Act. This is, in part, due to the fact that capacity of premises will be taken into account in assessing overprovision.

- "On sales

The Board considers that it is very important for licence holders to have a sound knowledge of the safe capacity of their premises. Capacity for on sales premises should be presented to the Board in patron numbers. The capacity should be worked out using the formula used by Building Standards, this formula does not take into account the fixtures and fitting of the premises.

"This is particularly so where the premises are large, or where they include entertainment such as live music, dances and discos. The Board expects, in respect of these types of premises, that there should be suitable capacity control measures in place. These may include stewarding, door number clickers or issuing of tickets.

- "Off sales

Again, the Board considers that it is very important for licence holders to have a sound knowledge of the capacity of their premises. Capacity for off sales premises should be presented to the Board in meters squared".

Consultation

5.21 As set out at Chapter 4 statements of licensing policy, Licensing Boards are encouraged to consult widely within their respective areas on both their statement of licensing policy and it is equally important for Licensing Boards to consult widely on their overprovision assessment. Licensing Boards may wish to consider carrying out these two consultations simultaneously. For example, Edinburgh Licensing Board published 2 consultations and commented on their web page:

- "The Edinburgh Licensing Board is consulting on the terms of its draft statement of licensing policy, having carried out an informal consultation earlier in the year. As part of this process, the Board is also consulting on its assessment of localities in the Board's area which show characteristics of overprovision of licensed premises. These two consultations are being carried out in tandem.
- "Details of the individual localities, and the basis upon which they've been considered, is set out in the supporting documentation provided with this consultation".

5.22 Chapter 6 Local Licensing Forums (LLFs) sets out the important role a LLF has to play in the alcohol licensing regime. In terms of other persons a Licensing Board may wish to consult, it is encouraging to note that LLFs and third sector organisations providing treatment services for alcohol harm within their locality, are as a matter of course being invited by many Licensing Boards to offer their views. This is an approach the Scottish Government strongly supports.

5.23 For example in its statement of licensing policy under the heading of "Development of the Pro-Active Assessment of Overprovision", Glasgow City Licensing Board comment:

- "In particular, the Licensing Board had regard to a report from the Local Licensing Forum with evidence and recommendations as to localities where the Forum considered there to be overprovision of licensed premises or licensed premises of a particular description. A copy of the report approved by the Local Licensing Forum, together with the supporting evidence gathered, is available at:

<https://www.glasgow.gov.uk/councillorsandcommittees/viewDoc.asp?c=P62AFQDN2U2UDNZ3DN>

5.24 As regards consultation on localities in relation to its overprovision assessment, Inverclyde Licensing Board commented in its statement of licensing policy:

- "As the determination of "localities" is largely a matter for the Board, local knowledge plays a significant part in such determinations. The Board has had extensive consultations with Inverclyde Licensing Forum, who have in turn consulted with Community Councils, premises licence holders, the Inverclyde Alcohol and Drug Partnership, the NHS, Police Scotland, Inverclyde Community Health and Care Partnership and local residents".

5.25 In preparing their statement of licensing policy and overprovision assessment, Dumfries and Galloway Licensing Boards had 2 periods of consultation which included 2 public meetings and a Working Group was also set up to discuss Overprovision. This Group met several times and comprised of the following members: Scottish Fire and Rescue Service; Police Scotland; Alcohol and Drug Partnership (NHS) and Dumfries and Galloway Council.

Other matters

5.26 A Licensing Board's consideration of overprovision need not be confined to only considering numbers and capacity but could take account of other factors too. Licensing Boards have considerable discretion in this area.

5.27 In considering the statutory definition of 'capacity', it is accepted that there are other ways of considering in a wider sense what the capacity of a premises is. While the 2005 Act does not permit any alternative definition of capacity to be used, Licensing Boards are encouraged to consider under other matters whether, for example, a relevant factor to be considered alongside capacity of premises would be the ability for stock to be resupplied quickly. In other words, a premises which was able to maintain large stock levels but only had a relatively small area for displaying stock may then suggest a small capacity while actually they are capable of significant sales volumes.

5.28 Other matters could be such things as inequalities; the proximity of specific types of premises such as facilities for vulnerable adults with problematic alcohol use; mental health services; hospitals; schools/nurseries; sports facilities; gambling facilities. Other considerations could also include concerns regarding people visiting the locality from other areas.

5.29 In particular, inequalities is an important consideration for Licensing Boards in relation to overprovision. There is a stark inequalities gradient to alcohol harm and a growing awareness that the impact of harmful drinking and alcohol dependence is much greater for those experiencing high levels of deprivation. For example, people living in our most deprived communities are over seven times more likely to die or are more than eight times more likely to be admitted to hospital due to alcohol use than those in our least deprived communities (Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2019: NHS Health Scotland; 2019). Similarly, areas of high deprivation can have extremely high rates of alcohol-related fires and crime rates, and it can often be individuals other than the drinker who feel the effects of alcohol use, including children, family, friends, colleagues and those working in frontline services such as the Police and Health Service.

5.30 Research examining the association between the density of alcohol outlets and neighbourhood-level income deprivation in Scotland has also found that there are 40% more licensed premises in the most deprived areas of Scotland than in the least deprived (BMC Public Health 2015 Research article "A cross-sectional analysis of the relationship between tobacco and alcohol outlet density and neighbourhood deprivation" N.K. Shortt et al). By taking account of evidence on inequalities, Licensing Boards can meaningfully consider how different communities are impacted differently by alcohol, and use this to formulate their policy.

Assessing overprovision

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:

- 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.
- 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.

**PREVIOUS**[4. Statements Of Licensing Policy](#)**NEXT**[6. Local Licensing Forums](#)

Contact

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Integrated Impact Assessment

Committee Report Number: 274-2023

Document Title: Statement of Licensing Policy 2023-2028 : Report to the Licensing Board

Document Type: Policy

Description:

A report seeking the Board's instructions as to matters for potential inclusion in the Board's licensing policy statement for 2023-2028 and to consult thereafter with interested parties

Intended Outcome:

To obtain the Board's instructions as to such matters as referred to in the preceding paragraph

Period Covered: 21/09/2023 to 14/12/2023

Monitoring:

By collation and distillation of consultation responses

Lead Author:

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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:	No Impact
Lochee:	No Impact
Coldside:	No Impact
Maryfield:	No Impact
North East:	No Impact
East End:	No Impact
The Ferry:	No Impact
West End:	No Impact

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

There may be implications in that 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 for reasons connected with alcohol-related harm

Drug and/or alcohol problems: Positive

The requirement to promote the aforementioned licensing objective should impact positively on this group of persons

Offenders & Ex-offenders: Not Known

Again there may be instances where offending is connected with harmful consumption of alcohol

Socio Economic Disadvantage Impacts & Implications

Employment Status: No Impact

Education & Skills: No Impact

Income: Not Known

The policy may contribute to reduced alcohol consumption and the money outlaid by persons buying alcohol at the moment

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 preceding answer on Income in the previous section

Connectivity / Internet Access: No Impact

Income / Benefit Advice / Income Maximisation: Not Known

Reference is made to the preceding answer on Income in the previous section

Employment Opportunities: No Impact

Education: No Impact

Health: Positive

The policy requires to promote the protection of public health

Life Expectancy: Positive

Same as Health above

Mental Health: Positive

Same as Health above

Overweight / Obesity: No Impact

Child Health: No Impact

Neighbourhood Satisfaction: Positive

The Board's policy is required to address problems in its area related to alcohol consumption

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

The policy is in fulfilment of legal obligations 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.