**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@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.dundeecity.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.dundeecity.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](http://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 measureby 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 asufficiently 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 begin 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 it its review of licensing policy?**