

REPORT TO: DUNDEE CITY LICENSING BOARD – 22ND NOVEMBER 2018

REPORT ON: STATEMENT OF LICENSING POLICY 2018-2022 UNDER LICENSING (SCOTLAND) ACT 2005 – RESULTS OF CONSULTATION

REPORT BY: CLERK TO THE LICENSING BOARD

REPORT NO: 368-2018

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 adopts the revisions to the current Policy Statement set out in Paragraph 5.2 to 5.6 below;

2.2 That the Clerk be instructed to publicise the Policy 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 obliged to publish a Statement of Licensing Policy every three years in terms of Section 6 of the Licensing (Scotland) Act 2005 ("the 2005 Act"). The current policy was adopted to cover the period from 2013-2016 but due to recent legislative changes, this was extended to November 2018. In future, policy statements will cover periods which run in tandem with local government elections. The next policy period will therefore run until 2022.

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;
- The Chief Constable;
- The Local Health Board;
- Such persons as the Board thinks appropriate, including (i) premises licence holders and (ii) residents within any locality where the Board considers there may be overprovision of licensed premises.

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.

5.0 PUBLIC CONSULTATION

- 5.1 The consultation ran from 14th September to 2nd November 2018. Copies of a questionnaire were mailed to interested persons and organisations and also displayed on the Dundee City Council website. There were six written responses. The results are shown at APPENDIX 1 hereto.
- 5.2 Dealing with the first specific issue in the consultation, namely overprovision of licensed premises, as noted in the consultation document the current Board policy that the whole of the Board's area is overprovided with off-sales was only adopted as recently as 18th January, 2018. Apart from the Scottish Grocer's Federation, there was no opposition from any of the respondents to an over provision policy as such and, of those who expressed a view on the matter, there was general agreement with the whole Board area being the locality for the purposes of any overprovision assessment. Dundee City Licensing Forum had suggested that the Board go back to its old policy excluding the Waterfront Development but, following the appeals in 2016 by Aldi and BP, this would not be an appropriate course of action. Accordingly, it is recommended that the Board decide to retain the existing locality of the whole of its area for the purposes of overprovision. As for the types of licences, there was again general agreement (with the exception of the Scottish Grocer's Federation) that any policy should apply to off-licence sales only. The recommendation would therefore be that the Board maintains the previous policy. (Requests have been made to Police Scotland and NHS Tayside for any more up-to-date data since the introduction of the policy in January 2018 to see if there was any indication how it is working in practice. This data is not yet to hand but will be provided to the Board as soon as it is received.)
- 5.3 Of those who responded to the consultation, all who expressed a view on the subject of the grant of occasional licences agreed with the proposed greater scrutiny for premises where there have been a number of recent applications and/or applications which do not specify particular events in the application form. There is also a suggestion from Licensing Standards that, in respect of larger events (capacity of 500 or greater) a condition should be attached requiring the completion by the applicant of an alcohol management plan (example at APPENDIX 2). It is, therefore, recommended that the Board introduce the new greater scrutiny document for such occasional licence applications and include the suggested additional condition amongst the standard conditions which may be applied to larger events operated under occasional licences.
- 5.4 On the subject of the minimum charge, only two of the six respondents answered this question and both supported retention of the minimum charge. There was, therefore, no support from the consultation for its abolition and it is therefore recommended that the minimum charge be retained in the Statement of Policy. As for off-sales from restaurant/café/refreshment type premises, all three respondents who answered this question supported the introduction of the following condition – "Any sales of alcohol for consumption off the premises must only be to patrons who have consumed a meal (or refreshments as applicable) on the premises or as part of a combined sale of food and drink order delivered from the premises". Accordingly, it is recommended that this condition be included in the Policy Statement.
- 5.5 Where there appeared to be the most divergence of opinion related 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"). There appears to be support for consideration of an alternative condition but no unanimity as to what that condition should be, e.g. should it be enforcement under the Environmental Protection Act, or, alternatively, by means of setting specific noise levels? The Environment/Public Health Manager, Neighbourhood Services, who is responsible for noise issues within the Council has asked that more time should be taken to produce an enforceable condition and it is suggested that the Board maintains the inaudibility condition in the meantime and instructs the Clerk to carry out a separate consultation relating to a specific enforceable noise condition as a possible replacement. This could then be the subject of a supplement to the Policy Statement.

5.6 Although not included in the consultation, an issue has arisen since the last Board meeting on 25th October, 2018 relating to the grant of occasional licences for pavement cafes. The Board's current policy allows these between March and September. However, applications have been received from some premises seeking occasional licences for pavement cafes out with these months. The Board requested that a note be included in the policy report on this matter. Discussions have taken place with colleagues in the City Council's Planning Service with regard to any possible impact of all-year-round occasional licences for pavement cafes on their area of responsibility. These discussions have confirmed that there should be no difficulty in the Board being prepared to consider applications for any period in the calendar year. It is, therefore, recommended that the new Policy Statement reflect this.

6.0 POLICY IMPLICATIONS

6.1 This report has been screened for any policy implications in respect of Sustainable Development, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management.

7.0 CONSULTATIONS

7.1 The Chief Executive, Executive Director of Corporate Services, Executive director of city Development, Executive Director of Children and Families Service, 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.

ROGER MENNIE
CLERK TO THE LICENSING BOARD

DATE: 15 November 2018

APPENDIX I

DUNDEE CITY LICENSING BOARD

STATEMENT OF LICENSING POLICY 2018-2022 UNDER LICENSING (SCOTLAND) ACT 2005

PUBLIC CONSULTATION QUESTIONNAIRE

(A) Overprovision of licensed premises

The Board recently adopted a supplement to the 2013-2016 policy statement regarding the overprovision of licensed premises within its area. On 18th January 2018, the Board decided that there is an overprovision of premises licensed for off-sales within the whole of the Board's area and this has applied to all applications received after that date.

This part of the policy is still new. At the time of adoption of the overprovision policy, there were 143 on-sales only premises (total person capacity 47,715); 129 off-sales only premises (6 498.488 sq. m. capacity); and 166 premises for both on- and off-sales (total person capacity 45,406). There are now – 146 (48,690); 131 (6 571.396 sq. m.); and 174 (47,893) respectively. These new figures are the result of applications for new licences and variations considered by the Board in the interim period.

1. Do you agree with the Board's choice of the existing locality (the whole Board area) for the purposes of overprovision?

The Scottish Grocers Federation (the only external respondent) is opposed to an overprovision policy in principle. Dundee City Licensing Forum agree with the whole area approach, but have requested that the Waterfront Development be exempted as under the Board's previous policy. NHS Tayside/Dundee City Alcohol and Drugs Partnership support the adoption of the whole city as being the appropriate locality. The only other respondent to offer a view was Dundee City Council's City Development Department who also agreed with the whole city approach but that the policy should be open to relaxation within the City Centre for tourist/related purchases such as some Visitors' Centres.

2. If not, what locality should be considered?

The only alternative locality suggested was that referred to by the Dundee City Licensing Forum, who wished the Waterfront to be exempted from any overprovision policy.

3. Do you agree with the Board's suggestion that there is an overprovision of off-sales premises in the city?

SGF, as noted above do not agree that there is an overprovision of off-licence sales premises in the city. Dundee City Licensing Forum and NHS Tayside/Dundee City Alcohol and Drugs Partnership agree that there is such overprovision. None of the other respondents expressed a view on this question.

4. If not, do you consider there is an overprovision of any other types of licences and why?

The only respondent to express a view on this point was NHS Tayside/Dundee City Alcohol and Drugs Partnership who are of the opinion that Dundee is overprovided in terms of all types of licences. However, the contribution to harm from the off-sales trade is greatest and should therefore be a priority at the moment.

5. Do you have any other comments on overprovision?

SGF believe that the entire concept of overprovision should be reviewed to consider whether it remains fit for purpose and argue strongly that a blanket overprovision policy is not appropriate. NHS Tayside/Dundee City Alcohol and Drugs Partnership state that an effective overprovision policy statement is vital to managing alcohol provision in the Dundee City area, to improve public health and well-being for children, families and local communities in Dundee. Dundee City Council's City Development Department ask the Board to draw a balance between addressing health issues associated with alcohol and allowing the city's economy to prosper and grow. In seeking to grow the attraction of the city to both residents and tourists there needs to be scope to allow new businesses to grow including restaurants, cafes and bars in and around the City Centre.

(B) 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. Applications must be made by a premises licence holder, personal licence holder or a voluntary organisation. Occasional licences run for up to 14 days. Unlike under the Licensing (Scotland) Act 1976, there is no requirement for an application 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 is 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 6(C) 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 is suggested that, if any such premises are able to be identified, applicants for occasional licences should have to provide some justification for the licence being sought. Having looked at the practice in other board areas, there are two possible ways of dealing with this. The first is to delegate the decision to require three Board members to consider the applications (where there is no scheduled Board meeting by the time of the period applied for). The other way would be for these to be referred to the Board (where this is practicable), even if there are no objections. This could apply to (i) applications which do not specify particular events in the form and (ii) any premises where there have been four or more applications over the preceding three months' period. When considering an occasional licence application, the Board must have regard to the licensing objectives, including securing public safety and protecting and improving public health. It could be argued that in the interests of promoting these particular licensing objectives, it is not generally appropriate for premises to operate on a series of occasional licences rather than under a full premises licence. In these circumstances, the Board would require the applicants to provide justification why no premises licence is being applied for.

6. Should the Board adopt a system as proposed above for occasional licence applications where there are repeated applications in respect of the same premises?

Four of the six respondents expressed a view on this matter and all supported the proposed greater scrutiny for occasional licence applications where they are repeated applications in respect of the same premises. In addition, Licensing Standards have suggested that for occasional licences in respect of events with a capacity of 500 or more, a condition should be attached requiring the completion of an Alcohol Management Plan which would be submitted to the Licensing Standards Officers and shared with the Licensing Office, and the Events and Licensing Officers at Police Scotland. An example of an Alcohol Management Plan for this purpose is shown at APPENDIX 2 to this report.

(C) Minimum entry charge

This has been part of Board policy for a number of years and is designed to deter patrons going into more than one nightclub or other late opening premises (not public house type premises) after midnight. The minimum charge is currently £3.50 and does not apply to entry before midnight.

Over the years, there have been complaints from premises subject to the minimum charge about others also subject to the charge who have allegedly been allowing patrons entry without payment. These have been difficult to investigate and substantiate and have been time consuming to deal with, more often than not to no avail. Also, it is clear that, at least on some nights, premises charge substantially more than the minimum charge to gain entry, something they can continue to do even without this condition being attached. Consideration is being given as to whether this condition continues to serve any practical purpose.

7. Should the minimum charge be retained?

Only two respondents answered this particular question (Dundee City Licensing Forum and NHS Tayside/Dundee City Alcohol and Drugs Partnership) and both supported retention of the minimum charge.

(D) Off-sales from restaurant/café/refreshment-type premises

There have been a number of applications recently from premises proposing to operate as restaurants/cafes/refreshment-type premises for an off-sales facility. In most, if not all, of these cases, the Board has imposed a condition on the premises licence to the effect that alcohol can only be purchased for off-sales consumption by patrons already on the premises and having partaken of a meal on the premises, e.g., taking home a partially finished bottle of wine, or as part of combined food and drink orders for delivery from the premises. This has only developed as a practice since the adoption of the previous policy. It is suggested that the Board state in the reviewed policy that the following condition will be considered in such applications –

“Any sales of alcohol for consumption off the premises must only be to patrons who have consumed a meal (or refreshments as applicable) on the premises or as part of a combined sale of food and drink order delivered from the premises.”

8. Should such a condition be included in the Policy Statement?

Three respondents answered this question, all supporting the introduction of such a condition within the policy.

(E) 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”). As an alternative, the Board may consider adopting the following condition – “No noise must emanate by way of music whether amplified or not from within licensed premises which may be a statutory nuisance under the Environmental Protection Act 1990”. If that alternative condition is attached to licences, this would mean that in the first instance complaints would be investigated by Environmental Health Officers who would use their powers to issue statutory compliance notices under the 1990 Act if a nuisance is established. If the person upon whom the notice is served fails to comply with the terms of the notice, the matter could then be reported to the Board for a possible review of the premises licence. This would have the advantage of trying to resolve complaints by using noise pollution legislation before being referred to the Board. Existing premises licence holders who wished to take advantage of the alternative condition would require to apply to the Board for a variation of their premises licence to have the existing condition removed and the alternative condition substituted for it.

9. Should the Board introduce an alternative noise condition for premises licences?

Four respondents answered this question, three supporting an alternative condition being introduced and one asking for the existing condition to be retained but the wording to be clarified.

10. If so, should the Board look at the type of condition outlined above for dealing with this under the Environmental Protection Act?

Only one respondent supported introducing a condition based upon the Environmental Protection Act.

11. Alternatively, should the Board consider setting noise level limits for licensed premises and including a condition to that effect instead?

Three respondents answered this question. One supported introducing a noise-level condition, one was opposed to it and one said consideration should be given to it.

12. If you think a noise level condition is a better alternative, what level should the limits be and what times of day should they apply?

If the Board wishes to look at sound levels, this should be a matter for further consideration before deciding which is appropriate. Dundee City Licensing Forum stated that a noise level reading of a determined dB above the ambient noise level of the complainer's location would be more enforceable and allow for specific conditions relating to the location and surrounding environment to be taken into account. The Forum also suggested that such a condition should apply from 22:00 hours onwards. Dundee City Council's City Development Department suggested that any noise limits should be similar to those which are currently imposed on planning applications. The Environment/Public Health Manager, Neighbourhood Services, has asked that more time should be taken to produce an enforceable condition, to identify the circumstances in which it would be applied, how investigations should be undertaken and how/when any referrals to the Board should occur. Consideration would also have to be given to the underlying sound levels at the location.

APPENDIX 2

Dundee City Licensing Board

Large Events & Alcohol Licensing

Guidance on Alcohol Management Plans (AMP) and Layout Plans for Large Events with a licenced capacity 500 or more patrons

Dundee Licensing Board will require a detailed Alcohol Management Plan (AMP) for all large scale and one off events with a capacity of 500 or more patrons that will include the sale of alcohol by way of an occasional licence. The AMP must be to the satisfaction of Licensing Standards Officers and Police Scotland. This plan must be submitted at the earliest opportunity and may be required to be submitted with a Public Entertainment Licence (PEL) application.

The AMP will consist of but will not be limited to the following:

The Licensing Objectives are listed below, with example of controls that may be applied to prevent possible breaches of the objectives.

Preventing Crime and Disorder

Examples:

SIA licensed staff will be controlling access to the event, any person deemed to be under the influence of alcohol will not be permitted

Bag searches will be carried out by SIA staff to prevent any alcohol being brought into the event.

SIA staff will search all persons deemed over 12 years of age using a metal detector wand to search for hidden metal objects.

Securing Public Safety

Examples:

Policy for dealing with individuals that have consumed too much alcohol or may be in a distressed vulnerable state.

Number of SIA door supervisors, their roles throughout the event and static locations.

Smoking Policy.

Preventing a Public Nuisance

Examples:

What roles will SIA door supervisors have with the end/closure of the event and persons leaving the area?

Dealing with complaints with regards to loud music

Preventing alcohol from being removed from the event unless an off sales licence has been granted

Protecting Children and Young Persons from Harm

Examples:

Policy for distressed or lost children and young persons

Policy for identifying young person in possession of alcohol

Challenge 25 at all bars

Wristbands for person 18 and over

Protecting and Improving Public Health

Example:

A policy in place for dealing with persons who have consumed too much alcohol

Weights and Measures

What type of drinking vessels will be used and that they are compliant with weights and measures legislation?

<https://www.businesscompanion.info/en/quick-guides/weights-and-measures/the-sale-of-alcohol-in-licensed-premises#Stampedmeasuringequipmentglasses>

General Information

Layout plan of the event to include but not limited to locations of: bars, water points, stage, speakers (including direction), toilets, bar queuing locations, fire escape areas, first aid area, smoking areas and waste locations

Sizes of bars including the amount of staff on each bar

A list of all drinks being sold at the event and the cost of those alcoholic drinks

Age verification policies and identification checks by bar staff using 'challenge 25' as a benchmark

A list of signage that will be displayed at each bar e.g. Section 110 notice, weights and measures signage, age verification policy, challenge 25 posters and price lists, statutory no smoking signs

What time the event is to finish and what time last orders will be called at the bars and how drinking up time (15mins) will be monitored?

Will there be a queuing system in place? And if so, what kind, layout and will it be monitored? If there is no queuing system will there be equipment stored in case one has to be implemented during the course of the event?

Will there be security/radios at the bar areas? If so how many and where?

Drugs Policy

What is the event organisers policy on dealing with person who have taken or are seen to be taking drugs? What is the event organisers policy on persons dealing drugs at the event? What is the policy for staff members who find drugs in the venue?

Staff Training

All staff that do not hold a personal licence will be required to be trained in line with the Staff Training Regulation 2007. How will this be carried out?

Where will all required documents be held? These should include staff training records, personal licenses, occasional licence and drugs policy. All documents should be made accessible to the LSO and or police

Refusal Logs – should be retained at each bar and be made accessible to the police

Large notice informing patrons of the bar closing times.

Will persons 18 and over be issued with wrist bands for age restriction purposes?

Single use plastic policy. Dundee City Council are aware of the damage that single use plastic causes to the environment. We expect event organisers to adopt a policy that restricts the use of this type of product at the event e.g. use paper cups instead of single use plastic, don't offer straws, use paper straws instead of plastic, ask people to bring their own non single use plastic water bottle, sell cans of soft drinks instead of single use plastic soft drinks, do not give out or use plastic stirrers.

Waste Disposal Policy, who will be cleaning the area during and after the event? Waste contract?