

WEST DUNBARTONSHIRE LICENSING BOARD

Report by Clerk to the Licensing Board

9 May 2023

Subject: Development of the Statement of Licensing Policy

1. Purpose

1.1 The purpose of this report is to consider proposed changes to the Licensing Board's Statement of Licensing Policy, other than those that relate to the Overprovision Assessment. All proposed changes will be subject to consultation.

2. Recommendations

2.1 It is recommended that the Licensing Board:-

- a) considers and notes the Licensing Forum recommendations as well as responses to its pre-consultation exercise;
- b) agrees to authorise the Clerk to prepare a new Statement of Licensing Policy with the suggested amendments at paragraphs 4.16 to 4.21 for approval by the Licensing Board; and
- c) considers whether there are any other matters relating to the Statement of Licensing Policy that it might wish to consult on.

3. Background

3.1 Section 6 of the Licensing (Scotland) Act 2005 ("the 2005 Act") narrates that:-

"Every Licensing Board must, before the beginning of each licensing policy period a statement of their policy with respect to the exercise of their functions under this Act during that period (referred to in this Act as a "Licensing Policy Statement")."

3.2 This Statement of Licensing Policy must promote the licensing objectives of:-

- preventing crime and disorder;
- securing public safety;
- preventing public nuisance;
- protecting and improving public health; and
- protecting children and young persons from harm.

3.3 Section 6 of the 2005 Act requires that the Licensing Board consult:-

- the Licensing Forum;
- if the membership of the Forum is not representative of the interests of relevant groups, such persons as appear to the Board to represent such groups;
- the relevant health board; and
- such other persons as the Board thinks appropriate.”

3.4 The Licensing Board must agree a new Statement of Licensing Policy by 5 November 2023.

3.5 The Statement of Licensing Policy must also include an Assessment of Overprovision. This is the subject of a separate report to the Licensing Board.

4. Main issues

4.1 The Licensing Board’s current Statement of Licensing Policy must be considered in light of the now updated Guidance, views expressed by respondents to the pre-consultation exercise, the changing licensing landscape, and Licensing Board members’ views. When considering matters for inclusion in the Statement of Licensing Policy the Licensing Board’s essential function is to regulate the sale of alcohol as well as promote the licensing objectives. It can neither trespass on matters that are regulated or supervised by another statutory regime nor regulate matters outwith its essential function.

Guidance issued by Scottish Ministers under section 142 of the 2005 Act (“the Guidance”)

4.2 In January 2023, the Scottish Ministers issued updated statutory guidance to licensing boards. Section 142 of the 2005 Act requires that the Licensing Board must have regard to the Guidance when exercising its functions. The statement of licensing policy requires to be reviewed to make sure that it complies with the terms of the Guidance. Any departure from the Guidance must be notified to the Scottish Ministers.

Licensing Forum recommendations

4.3 At its meeting of 1 November 2022, the Licensing Board asked the Licensing Forum to provide to it recommendations around the development of its policy and overprovision assessment.

4.4 The Licensing Forum at its meeting of 29 November 2022 delegated the task to a working group including representatives from Health, Police, the local community, and the licensed trade. The working group’s response is at Appendix 1. Members will note that the group makes various recommendations at paragraph 6 of its report.

4.5 The Licensing Forum report's general position is that the current Statement of Licensing Policy remains fit for purpose. The report recommendations include:-

- the development of a pool of licence conditions that can be attached to the occasional licence depending on its purpose. This is help make sure that: (1) applicants have an awareness of what conditions to expect; and (2) that the licensing objectives are complied with;
- Children and Young Persons' access terms should be reviewed to make sure that they are suitably robust and is regulated by conditions as required; and
- with the emergence of home deliveries of alcohol, the development of a suitably robust policy regulating the home delivery of alcohol.

Pre-consultation exercise

4.6 At its meeting of 1 November 2022, the Licensing Board instructed officers to commence a pre-consultation exercise. Information was requested from Police and Health partners. Invites to respond to a consultation were issued to a broad range of stakeholders. Several responses were received. These responses can be found at Appendix 2. It should be noted that a number of these responses focused on overprovision only. This responses are summarised as follows:-

A joint response from West Dunbartonshire Alcohol and Drug Partnership, West Dunbartonshire Health and Social Care Partnership, and NHS Greater Glasgow and Clyde

4.7 The response was detailed and posited the following in relation to the current policy:-

- it is worded and implemented in a way that is pro-alcohol related tourism and requires to rebalanced so that it takes into account the needs of local residents;
- significantly promotes the licensing objectives albeit it queries whether the policy is implemented in practice;
- further consideration is required of the promotion of the public health licensing objective;
- review what can be done to promote the licensing objective of protecting children and young persons from harm with a number of suggestions being made; and
- closer regulation of home deliveries of alcohol and occasional licences.

Alcohol Focus Scotland

4.8 The respondent provided a note outlining their views on the general policy and areas that require particular attention.

4.9 These areas are:-

- how does the Licensing Board promote the licensing objectives;
- licensed hours;
- children and Young Persons access;
- occasional licences; and
- how the Licensing Board interacts with its partners.

Unite Union

4.10 Unite responded to suggest that their Get Me Home Safely campaign should be considered. This campaign focuses on ensuring hospitality staff can get home safely. It is the Clerk's legal view that imposing any such requirement on licence holders is outwith the competency of the 2005 Act.

Dunbartonshire Chamber of Commerce

4.11 The respondent highlights the importance of the tourist industry around Loch Lomond and the need to support the regeneration of *"the corridor towns such as Clydebank"*. It is suggested that the Licensing Board look to introduce more flexibility to encourage operators to come to the area.

Dumbarton East & Central Community Council

4.12 The Community Council is largely supportive of the Licensing Board's current Statement of Licensing Policy.

Summary

Licensed hours

4.13 The Licensing Board recently departed from its policy in relation to licensed hours at a meeting of the Licensing Board on 1 September 2021 in relation to a premises in Dumbarton. The Licensing Board granted the premises to operate until 2am on Friday and Saturday in the Lounge area of the venue.

4.14 There was no particular view expressed through the pre-consultation exercise that a review of licensed hours was required.

Licensing Board Members

4.15 When proposing any matters to be considered as part of the Statement on Licensing Policy, it is important that the matter is one that is within the competency of the Licensing Board to regulate.

Matters for consideration

- 4.16 It is proposed that officers will prepare a draft policy for Members to consider at the meeting of 27 June that will maintain the framework of the existing policy retained with revisions in relation to:-
- 4.17 Chapter One: Update the introduction to policy and in particular refresh the strategies that the Licensing Board may consider in the exercise of its functions.
- 4.18 Chapter Two: Review measures that the Licensing Board utilises to promote the licensing objectives and consider best practice.
- 4.19 Chapter Three: Review the terms of Children and Young Persons' access, propose a home deliveries policy framework, review the outdoor drinking policy in light of the pursuit to covid-19 and the growth of outdoor drinking, occasional licences and the development of a pool of conditions regulating their operation, and the appropriateness of the outdoor drinking policy in light of the growth of outdoor drinking.
- 4.20 Chapter Six: Set out the Licensing Board's procedure when processing applications including how it deals with objections and to provide further details around the operation of its Licensing Standards Officers.

In general

- 4.21 The Clerk will revise the Statement of Licensing Policy to note that the Licensing Board will look to the Licensing Forum to keep it updated with developments from primarily a health, police, and trade perspective so to allow it to consider supplementary policy statements, to simplify the terms of the Policy where possible, address any technical matters arising as well as updating the draft to reflect good practice, and to reflect the terms of the Guidance.

5. **People Implications**

- 5.1 The work involved in gathering evidence and preparing the Statement of Licensing Policy has workload implications for the Board during 2023 but this can be accommodated within existing staffing resources.

6. **Financial and Procurement Implications**

- 6.1 The Statement of Licensing Policy will allow applicants to assess whether there are sufficient prospects of success should they proceed with an application. Therefore a clear policy will assist applicants in avoiding unnecessary expenditure on lodging and legal fees.
- 6.2 A Policy that is legally unsound or based on erroneous material is more likely to be legally challenged. Such a challenge, should it be successful, will leave the Board liable to possibly substantial legal fees. A well-evidenced Policy will diminish the chances of a successful legal challenge.

7. Risk analysis

- 7.1** It is a legal requirement to adopt a new Policy. This requires to be done by November 2023. Failure to do so would result in reputational loss for the Board. Furthermore, the lack of a Policy could undermine the Board's ability to scrutinise applications.

8. Equalities Impact Assessment (EIA)

- 8.1** An EIA will be produced along with the draft Statement of Licensing Policy.

9. Environmental Sustainability

- 9.1** The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 9.2** Under the provisions of the Local Government in Scotland Act 2003, the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.
- 9.3** The information contained within this report has been considered under the Act. However, no action is required as the Act does not apply to the matters presented in this report.

10. Consultation

- 10.1** As outlined at paragraph 3.3, the 2005 Act defines the persons that the Licensing Board must consult with as part of this exercise. The Clerk will also take steps to consult with a wider audience by way of a public consultation and engagement with stakeholders.

11. Strategic Assessment

- 11.1** In terms of the Council's Strategic Priorities, the purpose of licensing is to make sure our communities are resilient and thriving.

Alan Douglas

Clerk to the Licensing Board

18 April 2023

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Appendices:

Appendix 1: Licensing Forum report
Appendix 2: Pre-consultation responses

Background Papers:

Section 142 Guidance
Existing Statement of Licensing Policy
Reports concerning Police and NHS data

Wards Affected:

All