

## REPORT – ARRANGEMENTS FOR PREPARATION OF STATEMENT OF LICENSING POLICY 2017/18

### 1. Purpose

- 1.1 To advise the Board of the requirement to prepare a Statement of Licensing Policy and the sources of information available to do so;
- 1.2 To advise of the need to consult upon the Statement of Licensing Policy and provide details of suggested timescales;
- 1.3 To highlight the requirement for the Board to carry out an assessment of overprovision in the Board's area as part of the overall review of the Statement of Licensing Policy;
- 1.4 To advise of the consultation requirements in connection with assessment of overprovision

### 2. Preparation of Statement of Licensing Policy

- 2.1. The Board is required by section 6 of the Licensing (Scotland) Act 2005 ("the Act") to publish a Statement of Licensing Policy ("the policy") setting out how it will exercise its functions. The Board must ensure that its policy promotes the licensing objectives.
- 2.2. The Board's current policy was agreed in November 2013 and was due to expire on 30<sup>th</sup> November 2016. The Air Weapons and Licensing (Scotland) Act 2015 amended the frequency by which policy statements must be published. Boards are now required to ensure publication within 18 months of local authority elections – in this instance, by 4<sup>th</sup> November 2018.
- 2.3. The Board is entitled to ask for statistical information to be provided by the following:-
  - Chief Constable
  - Health Board
  - The Council

to assist it in its preparation of the new policy. Such information should assist the Board in ensuring that the policy is based on evidence that is connected with the licensing objectives.

### Consultation

- 2.4. The Board must ensure that when preparing its policy it consults at minimum with the following:-
  - The Licensing Forum
  - The Health Board
  - Such other persons as the Board thinks appropriate

## REPORT – ARRANGEMENTS FOR PREPARATION OF STATEMENT OF LICENSING POLICY 2017/18

- 2.5. The content of the policy is a matter for the Board having regard to the terms of statutory guidance. It must not be inconsistent with the terms of the Act and it must promote the licensing objectives. Further responsibilities upon the Board in relation to the promotion of the licensing objectives will arise in future years, when the requirement to publish an Annual Functions report is introduced (expected in 2018).
- 2.6. In order to afford the Board an opportunity to ascertain views from as many interested parties as possible, it is suggested that the Board initially carries out an informal consultation, seeking comments from consultees on the existing policy both in its general terms and specific areas which consultees propose should be included within the Board's updated policy. Thereafter a more detailed consideration of the draft, revised policy and formal consultation can follow thereon.
- 2.7. It is open to the Board to give an indication as part of the initial, informal consultation as to the topics it is interested in obtaining responses upon to inform the policy review. It is noted the Board has already expressed views on:-
- Children and young persons' access to licensed premises
  - Use of outdoor drinking areas
  - Licensing of "pop-up" bars
  - Extended use of occasional licences
  - Overprovision
  - Extended Hours for events, etc.
- 2.8. Following on from the informal consultation, the current policy can be revised to take account of any comments received and an updated draft policy prepared for consideration by the Board before the formal consultation is undertaken. It is also proposed that the two stage consultation process would be an appropriate means of encouraging participation by interested parties in the overall consultation process, given the timescale available before the new policy must be published. The Board can instruct the Depute Clerks to publish the details of the initial, informal consultation, including details of any specific topics that the Board wanted to invite comments upon, circulating details to consultees and on the Council's online Consultation Hub.
- 2.9. As outlined above, it is suggested that an extensive consultation with a broad range of consultees can be effectively carried out, all to the benefit of the final version of the policy. In addition to inviting responses from consultees on the policy, there would be sufficient time available if the Board wished to do so, for the Board to hold hearings on policy topics that attracted sufficient responses.
- 2.10. The Board will be required to hold its annual joint meeting with the Licensing Forum. Whilst a date is yet to be agreed, it is suggested that holding the meeting in November will allow the Board and Forum sufficient time to work on the policy process.

## REPORT – ARRANGEMENTS FOR PREPARATION OF STATEMENT OF LICENSING POLICY 2017/18

2.11. A possible timescale for the review of the policy to be undertaken is set out below:-

- informal consultation – October-December 2017
- report to Board – December 2017
- evidence sessions on specific topics – early 2018
- formal consultation on new draft policy – mid 2018
- final draft of the revised policy to Board for approval – by October 2018

### **3. Assessment of overprovision**

3.1. The Statement of Licensing Policy must include a statement by the Board as to the extent to which there is considered to be overprovision of (a) licensed premises, or (b) licensed premises of a particular description, in any locality within the Board's area, in terms of section 7 of the Act. The existing policy declares the Grassmarket/Cowgate locality to be an area of overprovision. The Board has also referred to a number of areas of "serious special concern" in the existing policy, namely: - Tollcross; Dalry and Fountainbridge; Southside and Canongate; Old Town and Leith Street; South Leith; Leith Docks; Portobello.

3.2. It is for the Board to decide on the locality/localities, and it may treat its entire area as a locality, or to declare there is no overprovision in any locality. In considering whether there is overprovision in a locality the Board:-

- (a) must have regard to the number and capacity of licensed premises in the locality
- (b) may have regard to such other matters as it thinks fit, including the licensed hours of premises in the locality

3.3. In considering overprovision the Board must consult:-

- The Chief Constable
- The Health Board
- Such persons as the Board considers representative of:-
  - Holders of premises licences in the locality
  - Persons resident in the locality
- Such other persons as the Board thinks fit

3.4. In parallel with the initial, informal consultation on policy, the Board can request information on licensed premises to assist in identifying localities which the Board considers may present characteristics of overprovision, and then consult formally on any such localities.

3.5. The Board, as with the policy in general, must have regard to the terms of statutory guidance when considering its policy on

## REPORT – ARRANGEMENTS FOR PREPARATION OF STATEMENT OF LICENSING POLICY 2017/18

overprovision. The guidance has not been revised since its introduction in 2007 despite several legislative changes to the 2005 Act and updated case law. It is understood that Scottish Government are now considering the statutory guidance with a view to updating the document in order to assist Boards with the preparation of their next policy statements. A further report will be provided to the Board as and when such updated guidance becomes available.

### 4. Recommendation

4.1 It is recommended that the Board:-

- (a) requests provision of statistical information from Police, Health Board and the City of Edinburgh Council relevant to the licensing objectives, to assist preparation of the new policy;
- (b) carries out an initial, informal consultation on the terms of the existing policy and instructs the Depute Clerks to publish details on the Consultation Hub;
- (c) meets with the Licensing Forum to commence consultation with the Forum on policy and overprovision;
- (d) requests information from the City of Edinburgh Council about the extent of licensed premises and relevant information about those premises, to assist in any assessment of overprovision.

### 5. Background

5.1 [Statement of Licensing Policy](#) (25<sup>th</sup> November 2013)

5.2 Licensing (Scotland) Act 2005 sections 6 and 7 (as amended)

5.3 [Scottish Government Guidance](#) – Licensing (Scotland) Act 2005

**Depute Clerk of the Licensing Board**