

**REPORT – 30th JULY 2018
UPDATE ON INITIAL CONSULTATION – STATEMENT OF LICENSING POLICY
(ASSESSMENT OF OVERPROVISION)**

1. Purpose

- 1.1 To advise the Board of further steps to be carried out in connection with the review of the Board's Statement of Licensing Policy ("the policy") specifically in relation to the Board's assessment of overprovision required in terms of section 7 of the Licensing (Scotland) Act 2005 (" the Act ") to be included within the policy statement.
- 1.2 To submit information to the Board to assist with the identification of possible localities for the purposes of formal consultation on its required assessment of overprovision in terms of the Act and in order to enable the Board to seek the views of consultees as to whether there may be overprovision, in such localities, of all licensed premises or premises of a particular description.
- 1.3 To request that the Board have regard to the information set out within this report and appendices, and having taken into account such available information, form a preliminary view as to the identification of possible localities.
- 1.4 To request that the Board continue consideration to allow further information as set out in this report to be provided to the Board at its meeting proposed for 13th August 2018.

2. Statement of Licensing Policy

- 2.1 The Board is required by section 6 of the Act to publish a Statement of Licensing Policy setting out how it will exercise its functions. The Board must ensure that its policy promotes the licensing objectives set out in the Act.
- 2.2 The existing policy was agreed in November 2013 and was due to expire on 30th November 2016. The Board's current policy can be viewed at the following link- http://www.edinburgh.gov.uk/downloads/file/3083/licensing_board_policy_november_2013. 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 4th November 2018.

3. Overprovision – Legislative background

- 3.1 The Act sets out at section 7 that the Board's policy statement shall include a statement as to the extent to which the Board considers there to be overprovision of (a) licensed premises, or (b) licensed premises of a particular description, in any locality within the Board's area. This locality may now include the whole of the Board's area.
- 3.2 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 The number of premises licences in force in Edinburgh as at 31st March 2018 was 1917 made up of: - 965 premises with on and off sales: 439 with on sales only: and 513 off sales only. Work is currently being undertaken to prepare information for the Board on current figures for licensed premises in Edinburgh relevant to the Board's assessment of overprovision.

3.4 At this time information on the licensed hours of individual premises has not been provided. This may be collated at a later stage if the Board were to consider that the provision of such information would assist with its consideration of overprovision, bearing in mind that there is no requirement upon premises to be open for all of the licensed hours and it is discretionary rather than mandatory for Boards to take such information into account.

3.5 Before the Board designates any particular locality as being an overprovision locality, it will first have to obtain the specific information as set out above at Paragraph 3.2 and also consult with:-

- the Chief Constable
- the Health Board
- such persons as considered to be representative of:-
 - premises licence holders in the locality
 - residents in the locality
- such other persons as the Board thinks fit

4. Overprovision - Statutory Guidance

4.1 Under section 142 of the Act, Scottish Ministers may issue guidance to Licensing Boards. The current Guidance which includes reference to preparation of Statements of Licensing Policy was issued in April 2007 and has not been revised since its introduction despite several legislative changes and updated case law. The current Statutory Guidance can be viewed at the following link: - <http://www.gov.scot/Publications/2007/04/13093458/0>

4.2 The Scottish Government are currently reviewing the terms of the statutory guidance and meantime have issued draft revised Chapters in relation to licensing policy statements and overprovision assessments to Licensing Boards in February 2018. It is important to note that these draft revised Chapters have not yet received the Parliamentary approval required for guidance referred to in section 142 and are therefore not provided on a statutory basis. However it is recommended that the draft revised guidance be considered at this time in conjunction with the statutory guidance given it reflects the current legislative position. Copies of both these chapters are attached at Appendix One.

4.3 In particular the Board is asked to note the following points from Chapter Three of the 2007 Guidance in relation to determining localities :-

"..... The process by which the selection exercise is carried out is largely a matter for the Licensing Board and will no doubt involve the use of its own local knowledge. A locality could, for example, consist of a particular town, a city centre area, a street, a collection of streets or a council ward.

The identification of localities could be approached in a number of ways. The Licensing Board may consider that information which the chief constable is capable of providing is a reasonable starting point. The chief constable will be able to:

- *identify "hotspot" areas within the Licensing Board's area where it can demonstrate that crime, disorder and nuisance are caused by customers of a concentrated number of licensed premises;*
- *suggest other areas in which the number of licensed premises or premises of a particular description is moving closely towards overprovision; and*
- *provide the Licensing Board with the geographical boundaries of those areas.*

Once the Board has made this initial assessment and decided localities upon which to focus, it should identify the number of licensed premises, or premises of a particular description, in those localities; determine their capacities; and fulfil its consultation obligation....."

In relation to the overall consultation process the Guidance emphasises that:-

".....The results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality. ..."

4.4 The Guidance also makes reference to Boards giving proper regard as part of the consultation process to contrasting styles of operation in different licensed premises in order to decide whether there is overprovision of all licensed premises or only of licensed premises of a particular description.

4.5 As indicated above at paragraph 4.2, the draft revised chapters of the Guidance are intended to take account of the more up to date position taking account of legislative changes and case law. The Board are also asked to note that the draft revised guidance highlights the following:-

"..... It is for the Licensing Board to determine the "localities" within the Licensing Board's area for the purposes of this Act....."

The process by which the selection exercise to determine the "localities" is carried out is largely a matter for the Licensing Board. The selection of appropriate localities is based on having a broad understanding of provision across the Board's area. Licensing Boards may wish to make use of their own local knowledge and understanding of areas. They may wish to carry out informal consultation with interested parties and/or make use of their existing policy statement in order to assist them to come to a view as to which localities may be appropriate to include

Information may be obtained from a number of stakeholder, such as the relevant health/ and or social care body who may be able to provide, amongst other things data on alcohol related morbidity and hospital admissions. The chief constable may be able to identify problematic areas where it can be demonstrated that crime disorder and nuisance are caused by customers of a particular concentration of licensed premises and / or suggest areas in which the number of licensed premises or premises of a particular description are potentially approaching overprovision.....

The Licensing Board may wish to consider making an initial assessment by closely scrutinising the premises across the whole of their area, then proceed to determine those localities it proposes to examine. After carrying out the initial assessment, the number of premises, or premises of a particular description in those localities should be identified, then the board should determine the capacities and have regard to other matters as it thinks fit and fulfil its duty to consult “

5. Overprovision - the Board's current policy

5.1 The Board's current policy (Pages 20-22) currently declares the Grassmarket/Cowgate locality to be an area of overprovision in respect of premises of a particular type of description , namely :-

“.....facilities of traditional pubs where consumption of alcohol is the principal attraction and premises offering off sales.....”

5.2 The policy also refers to a number of localities of “serious special concern” regarding provision of licensed premises, namely: - Tollcross; Dalry and Fountainbridge; Southside and Canongate; Old Town and Leith Street; South Leith; Leith Docks; and Portobello.

5.3 The section of the policy which relates to overprovision has not been updated in the draft, revised Statement of Licensing Policy which is the subject of a separate report to Board. At this time it is proposed that this may be subject to possible draft revision and updated, following the formal consultation required by the Act on the Board's assessment of overprovision which will be incorporated into the final version of the Statement of Licensing Policy as approved by the Board.

6. Statement of Licensing Policy - the Board's Informal Consultation

6.1 The Board agreed on 25th September 2017 to carry out an initial consultation, encouraging participation from as wide a range of consultees as possible. The Board asked for responses on the terms of its existing policy, and any other relevant matters. The Board highlighted the following as topics it had a particular interest in, but encouraged consultees not to be restricted by those topics in providing their responses:-

- 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

6.2 The Board agreed to consider the terms of its current policy in light of the representations received, with a view to preparing an updated draft policy for a period of further, formal consultation later in 2018. The initial consultation started on 30th October 2017 and closed on 22nd December 2017. Details of the consultation were published on the Council's Consultation Hub, were sent out to a wide range of consultees and were set out in all communications sent from the Council's Licensing Service. The Board held its annual joint meeting with the Licensing Forum on 7th December 2017. The Board encouraged the Forum to respond to the initial consultation. Whilst responses were received from Forum members in an individual or organisational capacity, no response was submitted on behalf

of the Forum itself. Copies of all responses received including a late response from Council officers (Place) were provided to the Board at its meeting on 29th January 2018 and are also attached as Appendix Two.

- 6.3 The Board agreed there would be merit in holding hearings once the initial consultation period concluded. The Board were also of the view that an informal workshop on the topic of Overprovision to allow for information sharing and discussion between interested parties including community, trade, police and health representatives and Board members would be useful as part of the Board's overall engagement during the informal consultation period. The workshop was held on 2nd May 2018 in the early evening to allow as many interested parties as possible to attend. Details of the workshop and a summary of discussion is attached at Appendix Three.
- 6.4 The Board held hearings over two separate days to allow for further oral evidence to be provided. These took place on 4th and 10th May 2018 and proceeded on the basis of hearing from those who had responded to the initial consultation. The Board also invited the Convener of the Licensing Forum to attend and speak on behalf of the Forum. A summary providing detail of matters raised by those parties and discussed with the Board during the hearings is attached at Appendix Four.
- 6.5 Following the hearings, two further responses were received, the first being from the Green Party Group Conveners and the second from GRASS (Grassmarket Residents Association) These are attached at Appendix Five. The GRASS response attached a copy of a report prepared in 2010 "Here Comes the Night". Copies of this document can be made available to Board members if required.

7. Identification of localities for the Overprovision assessment

- 7.1 As set out at Paragraph Five above the Board has declared an area of overprovision in respect of the Grassmarket / Cowgate and detailed a number of areas of serious special concern in the current policy.
- 7.2 Consultation responses gathered during the Board's informal consultation can generally be divided into three categories:-
- 1) Licence holders and trade representatives including licensing solicitors
 - 2) Community representatives and individual citizens
 - 3) Police/ NHS Lothian , Edinburgh Alcohol and Drug Partnership (EADP) , Council officers, and other organisations including Alcohol Focus
- 7.3 A number of the responses have referred to overprovision, both for and against the designation of overprovision localities.
- 7.4 Whilst contrary positions have been expressed as regards overprovision, generally where submissions have included reference to areas of serious special concern, most responses express concern regarding the status of these areas. It has also been suggested that given their lack of legal status in terms of the Act, then they should be deleted from the policy.
- 7.5 Responses from trade representatives and licence holders generally suggest that there should be no change to the current policy or that the Board reconsiders the position in the Grassmarket as regards overprovision. Reference has also been to the positive benefits which the city and its population can derive from the continued growth of different types of premises. This includes benefits both from the creation of employment opportunities and environmental improvements through regeneration in

different areas of Edinburgh. Reference is also made in some responses to the health benefits of providing fresh fruit and vegetables at competitive prices. Some responses endorse the approach which the Board has taken to overprovision hitherto which has encouraged development within the city and also existing operators to upgrade their premises. Some responses suggest that if the Board were to extend overprovision within all or parts of the city then this could be viewed as a material factor when deciding whether or not to invest in the city. Detailed information has also been provided both by licence holders and trade representatives regarding the continued efforts made by the trade to promote the five licensing objectives within their licensed premises. Some differing views are expressed by trade organisations in relation to whether identified problems with the sale and consumption of alcohol can be more closely associated with on or off sales premise types.

7.2 Responses from citizens and community groups have offered some general views on overprovision with suggestions being made that the previously identified areas of serious special concern now be identified by the Board as areas of overprovision. Some responses refer to views on different types of premises causing difficulties in relation to noise and antisocial behaviour and generally offer the view that there are too many premises within their own particular area.

7.3 Some consultees have made specific locality suggestions for the Board on the basis of assessment of existing statistical information. In this regard the Board have received statistical information from the Edinburgh Alcohol and Drug Partnership (EADP), NHS Lothian and Police Scotland with statistics also provided by Alcohol Focus contrasting the Board's position with figures nationally.

7.4 A number of points are highlighted below in relation to the statistical information relating to health and crime which has been provided to the Board :-

EADP submission includes references to:

2556 alcohol related hospital stays and 75 alcohol related deaths in Edinburgh in 2015

References to Police Scotland data for persons arrested during the Night Time Economy (NTE) Hours (8pm – 6am) showing over 70% of those persons arrested on a Friday and Saturday night had consumed alcohol

Alcohol or drugs consumption related to at least 76 fires in Edinburgh in 2015-16 (14% of total incidents)

Results of research by a local community group "People know how" regarding the views and experiences of Edinburgh residents about alcohol

Reference to the CRESH Report of 2015 which found Edinburgh had over 2000 alcohol outlets with the highest outlet availability in Scotland approaching three times the national average

Data has been ingathered by EADP and its partnership organisations and analysed in relation to health and criminal justice harm. The analysis also suggest that health harm and criminal justice harm correlate strongly with each other, and other than in the City centre, with areas of deprivation.

23 areas have been identified by use of reference to intermediate data zones where each area was above the Edinburgh average (by 50%) or more) for both health harm (the number of alcohol related hospital stays per year) and for recorded crime/antisocial behaviour associated with the NTE.

These are the intermediate data zones of:-

Hyvots and Gilmerton
Murrayburn and Wester Hailes North
South Leith
Niddrie
Moredundun and Craignur
The Calders
Leith (Albert Street)
Restalrig and Lochend
North Leith and Newhaven
Granton South and Wardieburn
Clovenstone and Wester Hailes
Muirhouse
Bingham, Magdalene and the Christians
Great Junction Street
West Pilton
The Shore and Constitution Street
Dalry and Fountainbridge
Restalrig (Loganlea) and Craigentenny West
Easter Road and Hawkhill Avenue
Gracemount, Southhouse and Burdiehouse
Tollcross
Old Town, Princes Street and Leith Street
Deans Village

A map of the City is included within the EADP submission showing all of these areas identified

The EADP submission includes a recommendation that the Board expresses a clear intention to declare areas of high alcohol related harm to be overprovided

Police Scotland:-

Their submission refers to the above work led by EADP to gather and analyse data regarding alcohol related harm (health and criminal justice) in Edinburgh at an Intermediate zone level and states that the data was obtained from :-

Alcohol related hospital stays 2016/17 –Scottish Public Health Observatory

Alcohol related crimes during the NTE – Police Scotland

As with EADP, Police Scotland state that a breakdown of the intermediate zone datasets identified a number of intermediate zones where both high levels of hospital related admissions and high levels of NTE crime were recorded. A breakdown of these datasets was provided by Police Scotland as an appendix to their submission.

Police Scotland also provide the same map as EADP as an appendix.

Police Scotland recommend that the Board consider this analysis and progress a detailed consultation and analysis in respect of the Intermediate Zones identified as having alcohol related harm of 50 % or more above the Edinburgh average to establish if this is driven by overprovision

NHS Lothian

In relation to alcohol related harm NHS Lothian's submission refers to the following:-

Scottish Health Survey (2016) findings that 30% of adults self-reported drinking more than the weekly guideline in Edinburgh and the Lothians, significantly higher than across Scotland as a whole

Statistics for Hospital admissions (for conditions wholly caused by alcohol) with a chart showing trends since 2007 to 2016.

Statistics for Trauma admissions at A&E (2016) (including where person has been attacked) which show most admissions to be at the weekend and during the hours of 1-3am.

A number of recommendations by NHS Lothian include the Board to:-

Look closely at off sales in the city in particular;

Possibly consider wider areas other than intermediate datazones as part of their ongoing analysis;

Consider involving local academic experts such as CRESH to help develop a more nuanced approach to overprovision; and

That in addition to the 23 intermediate datazones suggested by the EADP and Police Scotland, the Board should also look at a further 15 intermediate datazone areas which are more than 20% above the city rate for hospital stays. (These areas are listed at page 8 of NHS Lothian's submission).

8. Proposed Localities – Next steps

8.1 It is emphasised that it is for the Board to decide on a specific locality/localities, for the purpose of formal consultation as to whether overprovision exists in any or all of them, either in respect of all licensed premises or certain types of licensed premises. The Board is now able to choose its entire area as a locality. It is not however required to identify localities throughout its entire area. As indicated previously, with reference to the statutory guidance and draft revised guidance, the choice of localities must, however it is done, be rational and capable of justification in the case of legal challenge.

8.2 It is suggested that the Board form a preliminary view in relation to the identification of possible proposed localities using the information available. Individual plans can then be provided showing the possible localities. These could include the twenty three intermediate data zones as suggested by EADP, Police Scotland and NHS Lothian which the Board may subsequently agree to identify for the purposes of formal consultation.

8.3 The plans provided could also include the current area of overprovision identified in the Grassmarket / Cowgate area in order that the Board may consider if this area is to remain a locality where overprovision has been declared and consult formally thereon.

8.4 Details of the numbers and capacities of licensed premises including a breakdown of on sales and off sale premises for the Grassmarket /Cowgate locality and other possible proposed localities will also be provided to assist the Board's consideration and have regard to statutory requirements.

8.5 The Board may also wish to request information from relevant officers of the Council as regards any noise nuisance issues in any of the twenty three localities suggested by the EADP, Police Scotland and NHS Lothian.

8.6 If the Board is minded to proceed as outlined above, and requests that further information be provided, then this will be made available to the Board for its next meeting to assist with the Board's determination of proposed localities for the purpose of statutory consultation. This further report will also set out the next steps required by the Board to commence formal consultation.

9. Recommendations

The Board is asked to:-

- (a) consider the written responses received to the informal consultation on the Board's Statement of Licensing Policy detailed at Appendix Two and Five where those responses specifically relate to overprovision ;
- (b) consider the summary of the Board's workshop on overprovision detailed at Appendix Three;
- (c) consider the summary detailing oral evidence provided to the Board during hearings held detailed at Appendix Four;
- (d) having considered the information provided by consultees and in particular, the statistical information from EADP, NHS Lothian and Police Scotland, agree a preliminary view on possible proposed localities;
- (e) instruct the Clerk and his deposes to provide further statistical information on the current area of overprovision and possible proposed localities as suggested by the EADP, Police Scotland and NHS Lothian to include numbers and capacities of licensed premises in those localities together with plans thereof.
- (f) instruct the Clerk and his deposes to obtain information from the Council on possible noise nuisance in the above mentioned localities
- (g) agree a further report will be provided to the Board at its next meeting to assist with the Board's determination of the localities to be formally consulted upon.

10. List of Appendices

Appendix One – Scottish Government Draft revised Guidance – Chapters Two and Three

Appendix Two -Written responses to the Board’s informal consultation (available at -

[http://www.edinburgh.gov.uk/download/meetings/id/55996/item_81_%E2%80%93_initial_consultation - statement of licensing policy - responses and next steps](http://www.edinburgh.gov.uk/download/meetings/id/55996/item_81_%E2%80%93_initial_consultation_-_statement_of_licensing_policy_-_responses_and_next_steps)

Appendix Three – Summary of Workshop event held on 2nd May 2018 on Overprovision

Appendix Four– Summary of oral evidence from Board Hearings on 4th and 10th May 2018

Appendix Five – Late responses received to the informal consultation

Background

- 6.1 Report to Licensing Board – 25th September 2017
- 6.2 Report to the Licensing Board – 29th January 2018
- 6.3 Licensing (Scotland) Act 2005 sections 6 and 7 (as amended)

Morag A Leck

Depute Clerk of the Licensing Board

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Our ref:
22nd February 2018

Dear Licensing Board,

Under the terms of the Licensing (Scotland) Act 2005 Ministers may issue guidance to Licensing Boards as to the exercise of their functions under the Act. I am issuing two updated chapters for the guidance. As a temporary measure these are being issued on a non-statutory basis.

You may be aware that Scottish Government officials have been working on updating the current liquor licensing guidance, assisted by stakeholders. As Boards will already be working on updating licensing policy statements, work on the parts of the guidance relating to licensing policy statements, and overprovision assessments has been prioritised.

We considered that it would be of assistance to issue drafts of the chapters that we have updated so far, as emerging guidance at this stage. i.e. the original chapters 2 and 3, which relate to licensing policy statements and overprovision assessments respectively. These have been amended to take into consideration the further Acts that have impacted upon the licensing regime since the original guidance was issued. The intention has been to work with the grain of the existing guidance, so that updated guidance does not undermine work that is already in progress.

I would like to stress that a non-prescriptive approach has been taken to drafting the revised guidance, which affords Boards the flexibility to operate and take decisions in light of their particular circumstances. The guidance does not seek to instruct boards exactly how to make the Act work. It is simply intended to assist boards as they carry out their responsibilities under the Act. Ministers wish boards and their clerks to be creative and innovative and to implement the Act in a way that best meets local needs and circumstances.

Ongoing work will continue on the remainder of the guidance, so over the next few months, we would hope to complete an update of the overall guidance, and then move to issue it on a statutory basis.

Yours sincerely

Alex Kelly, Alcohol Licensing Policy Project Manager

Statements of Licensing Policy Background

6.1 This chapter provides guidance on the development and preparation of statements of licensing policy (referred to as a ‘licensing policy statement’), which Section 6 of this Act requires every Licensing Board to publish, before the beginning of each ‘licensing policy period’.

6.2 A licensing policy statement should provide the policy on which Licensing Boards would base their decisions in implementing their functions under this Act. It may set out a general approach to the making of licensing decisions, but must not ignore, or be inconsistent with, provisions in the Act.

6.3 The ‘licensing policy period’ is the period between each relevant date.

6.4 The ‘relevant date’ means the date occurring 18 months after an ordinary election of councillors for local government areas takes place under Section 5 of the Local Government etc. (Scotland) Act 1994.

6.5 A licensing policy statement will generally have effect from 18 months after a local government election until 18 months after the next local government election. For example, in the case of a local government election in May 2017, followed by the next election scheduled for May 2022, the licensing policy statement would, in the usual case, last from November 2018 until November 2023.

Licensing Boards may decide that the licensing policy period to which the statement relates is to begin on an earlier date than it normally would. If they do so, they must publicise the date on which they have decided the licensing policy period is to begin.

6.6 Newly appointed Licensing Boards can use the policy inherited from their previous Licensing Board during the interim period. The alignment of licensing policy statements to local elections allows the Licensing Board to take stock, take the views of others into consideration, gather evidence and set policy statements that reflect their views and aspirations.

6.7 In exercising their functions under this Act a Licensing Board must have regard to the current licensing policy statement and any relevant supplementary licensing policy statement, published by the Licensing Board. Licensing Boards may wish to consider keeping the effectiveness and rationale of the licensing policy statement under review and to make revisions as and when appropriate.

6.8 A Licensing Board may also issue supplementary licensing policy statements. This may be due to unanticipated or emerging issues. If it decides to do so, it must publish the statement (referred to under this Act as a ‘supplementary licensing policy statement’).

6.9 The supplementary licensing policy statement will be with respect to the exercise of their functions during the remainder of that licensing policy period or until it is superseded by another supplementary licensing policy statement or licensing policy statement i.e. until 18 months after the next local government election.

6.10 There is no limit to the number of supplementary licensing statements which can be published during the licensing policy period.

6.11 Licensing Boards cannot delegate responsibility for determining their licensing policy statement or supplementary licensing policy statements.

Licensing Objectives

6.12 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must ensure that the policy stated seeks to promote the 5 licensing objectives set out in this Act, which for the purposes of this Act are:

- 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 must also have regard to these 5 objectives when carrying out their functions under this Act. The 5 objectives carry equal weight and importance.

Inconsistency with one or more of the objectives could provide a basis for refusal of an application.

A policy must also be consistent with the principles of what constitutes a lawful policy in general administrative law terms. In particular –

“...such a declared policy may be objectionable if certain conditions are not fulfilled. A policy must be based on grounds which relate to and are not inconsistent with or destructive of the purposes of the statutory provisions under which the discretion is operated. Moreover, the policy must not be so rigidly formulated so that, if applied, the statutory body is thereby disabled from exercising the discretion entrusted to it. Finally, the individual circumstances of each application must be considered in each case whatever the policy may be. It is not permissible for a body exercising a statutory discretion to refuse to apply its mind to that application on account of an apparent conflict with policy.”

See **Calderwood v Renfrewshire Council**, 2004 SC 691

To have a licensing policy statement is a statutory requirement. It is bolstered by statutory consultation procedure. It has weight in 2 ways when a Licensing Board carries out its functions under the Act. First, a Licensing Board must ensure that it seeks to promote the licensing objectives in making policy. Second, the Licensing Board must have regard to the Policy in the exercise of their functions.

As the licensing policy must seek to promote the licensing objectives, it must not be inconsistent with the licensing objectives. If the licensing objectives pull in one direction and policy in the opposite, then the objectives rule. If both tend to the same view then policy simply reflects the licensing objectives.

Where an application comes before a Licensing Board which is contrary to the licensing policy, this does not necessarily mean that the application should be refused. It would only be to refuse the application if it was inconsistent with the licensing objectives. Policy is an expression of how those objectives can be met. Inconsistency with policy can therefore be an important factor in deciding whether there is an inconsistency with the licensing objectives.

Licensing policy is an important part of an assessment of the wider considerations at play within the Licensing Board area. **As licensing policy has a substantial role to play in promoting how the licensing objectives might be met, inconsistency with policy may be an indicator that the refusal of the application should follow. Equally, consistency with policy maybe an indicator that an application is consistent with objectives.** The licensing policy is entitled to be given considerable weight. It is not merely a guideline. The Licensing Board is entitled to expect conformity unless there is a positive or specific reason to justify departure from it. It is for the Licensing Board to determine whether what is proposed is inconsistent with the policy and whether the grant of the application would impact upon the rationale for the policy.

Preparation of policy statements

6.13 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must consult on the proposed policy statement(s) with:-

- the Local Licensing Forum for the Licensing Board's area;
- if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2 of this Act. (i.e. holders of premises licences and personal licences, the Chief Constable, persons having functions relating to health, education or social work, young people, person's resident within the Forum's area); then the Licensing Board must consult such person or persons as appear to it to be representative of those interests of which the membership is not representative;
- the relevant health board; and
- such other persons as the Licensing Board thinks appropriate.

6.14 Licensing Boards must make reasonable efforts to identify and engage with the persons or bodies concerned and have regard to their views. The terms of the Act do not prevent them from consulting other bodies or persons before determining their policies. The Licensing Board may wish to consider consulting widely on their proposed policies. There are a variety of methods of seeking views and gathering evidence to enable Licensing Boards to develop a formal consultation document, such as pre-consultation exercises, evidence sessions and making use of the existing policy as a basis for review. It is important that Licensing Boards consider

and evaluate any evidence gathered to ensure there is a reliable and credible basis on which to develop their policies. Licensing Boards should give appropriate weight to the views and responses obtained.

6.15 After the initial evidence gathering process Licensing Boards may wish to consider publishing their draft policy for comment and take cognisance of responses.

6.16 Licensing Boards may wish to consider clarifying the reasons for their decision making in arriving at their licensing policy statement.

6.17 The licensing policy statement must be published before the beginning of the licensing policy period. Once published the Licensing Boards must make copies of a licensing policy statement or a supplementary licensing policy statement available for public inspection free of charge. Licensing Boards must also publish the fact that the statement has been published and publicise details of the arrangements for making copies available for public inspection.

What the Licensing Board may require:

6.18 For the purpose of preparing a licensing policy statement or supplementary licensing policy statement, the Licensing Board may require statistical or other information from:-

- the chief constable;
- the relevant health board, or
- the relevant council

This must be provided to the Licensing Board on request, provided it is a reasonable request for the purposes of preparing such a statement.

What must be included:

6.19 Having carried out their duty to assess overprovision under Section 7 of this Act, Licensing Boards must, in particular, include a statement in their licensing policy statement as to the extent to which the Board considers there to be overprovision of licensed premises, or licensed premises of a particular description, in any locality within the Licensing Board's area. If a Licensing Board decides that there is no overprovision, they must include a statement to this effect. (see Chapter 7 for further information).

Contents which Licensing Boards may consider:

6.20 Considerations may include:-

- providing a clear indication of the Licensing Board’s policy and may set out a general approach to the licensing process and the making of licensing decisions.
- stating clearly that licensing is about regulating the sale of alcohol and premises on which alcohol is sold, and for connected purposes within the terms of the Act.
- bearing in mind that no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence where such provision has been made in the Act.
- including a general statement on the role and remit of Licensing Standards Officers.
- Including, in accordance with section 46(6) and (7) of the Act, a note which states that where an application is made for the confirmation of a provisional premises licence, that the Licensing Board may make a variation to the conditions for the purposes of “ensuring consistency with any licensing policy statement since the licence was issued”. This may be relevant if a supplementary licensing policy statement is subsequently issued after a provisional licence was issued.

Licensed Hours

- state that Licensed hours will be those agreed following the Licensing Board’s consideration of the operating plan and any mandatory and local licence conditions applied. Particular attention should be drawn to those premises wishing to open after 0100 hours since mandatory licence conditions will apply. (The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007). In developing its policy on licensed hours the Licensing Board may wish to take account of the views of those represented by the Local Licensing Forum.
- provide a clear indication of the Board’s policy in relation to licensed hours in general and outline any specific areas of the policy which may differ from that general policy e.g. where different policies may apply in different localities according to local circumstances, if appropriate. Evidence for the policy approach should be included.
- state that each application will be considered on its individual merits, but the licensing policy statement should provide information on the Licensing Board’s policy on licensed hours. Licensing policy statements should recognise that licensed hours are important not only to individual licensed premises but can have a wider impact for an area. For example, consideration should be given as to ways in which large numbers of customers leaving premises simultaneously can be appropriately managed. This might be necessary to reduce friction outside establishments, at taxi ranks and other transport sources, which can lead to disorder and

disturbance. Licensing hours should not unnecessarily inhibit the development of local licensing economies.

- observe the requirement set out in section 64 of the Act which provides a presumption against routine 24 hour opening of licensed premises. In terms of Section 64 (2) of the Act, the Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.
- Licensing Boards should be willing to consider “exceptional circumstances” for a special event or occasion to be catered for on the premises or a special event of local or national significance.

In such circumstances, the Licensing Board may extend the licensed hours in respect of the premises by such period as is specified in the extended hours application or such other period as the Licensing Board consider appropriate. Such an extension of licensed hours has effect for such period as is specified in the application or such other period as the Licensing Board consider appropriate; but in either case the period must not exceed one month.

It is unlikely that “exceptional circumstances” would be justified in the case of premises where there were routine requests to sell alcohol for 24 hour periods. In considering applications for licensed hours Licensing Boards may wish to consider applications for up to 14 hours as being reasonable but local circumstances and views of those represented by Local Licensing Forums should always be considered. Any application for licensed hours for more than 14 hours should require further consideration of the effect of granting extra operating hours.

Relationship with other strategies

- Provide clear indications of how the Licensing Boards will take into account other matters or strategies relating to alcohol when developing policy statements.

Transport

- describe any arrangements agreed between the police and Licensing Standards Officers for reporting views or concerns to the local authority transport committee (or other bodies with responsibility for transport in their area).
- The police are best placed to advise on the need to disperse people from town and city centres quickly and safely to avoid high concentrations of people in particular vicinities which may lead to disorder, disturbance and pressures on public transport facilities.

Tourism, planning and building control

- indicate that arrangements have been made for Licensing Boards to receive, when appropriate, reports on the local tourist economy for the area to ensure that these are reflected in their considerations.
- indicate that planning, building control and licensing regimes have separate processes and applications which have to be considered on their merits under the relevant regime. Licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee, nor should they seek to challenge decisions taken by that committee. Similarly, the granting by the Licensing Board of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building warrants /completion certificates where appropriate. Licensing Boards may wish to give consideration to relevant processes and communication arrangements between the regimes to avoid duplication and inefficiency'

Duplication

- include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation covering health and safety at work and fire safety will place a range of duties on the self-employed, employers and operators of venues. Such obligations should not be repeated in the licensing regime.

What should not be included:

6.21 Licensing Boards may not, in their licensing policy statement, or supplementary policy statement, indicate an intention to introduce a restriction on the sale of alcohol for consumption off the premises to those over 18 but under 21, whether in relation to some or all premises in its area. However, this does not prevent them from imposing licence conditions restricting off-sales of alcohol to people under 21 on a case by case basis.

The Overprovision Assessment

Approach to licensing and overprovision

7.1 This chapter provides guidance to assist Licensing Boards to discharge their duty to assess overprovision of licensed premises in their area, which Section 7 of this Act requires every Licensing Board to include in their Licensing Policy Statement, a statement as to the extent to which the Licensing Board considers there to be an overprovision of:

- licensed premises, or
- licensed premises of a particular description, in any locality within the Board's area.

Licensing Boards may reach the conclusion that there is no overprovision. If so, they must include a statement to this effect in their Licensing Policy Statement.

A statement regarding overprovision within a licensing policy statement has an important role. Inconsistency with policy is a powerful indicator that the refusal of the application should follow.

7.2 In Section 7 of this Act, references to “licensed premises” do not include references to any premises in respect of which an occasional licence has effect, therefore these should be left out of the assessment of overprovision.

7.3 Members' clubs should also be discounted for the purposes of overprovision assessments carried out by Licensing Boards provided they meet the criteria in terms of regulations made under Section 125 of this Act.

7.4 Consultation is required to be carried out by the Licensing Board. This may disclose that communities are placed under stress only by licensed premises sharing certain characteristics: for example, a concentration of off-sales in a residential area. Therefore proper regard should be given to the contrasting styles of operation of different licensed operations and the differing impact they are likely to have on the promotion of the licensing objectives.

7.5 Licensed premises of a particular description may be determined in terms of their styles of operation. Information may be gleaned from operating plans for this purpose. The Licensing Board should decide how it wishes to categorise premises by description. For example: they may consider utilising the definition of categories contained in the Town and Country Planning (Use Classes) (Scotland) Order 1997 or other types of classification.

7.6 The overprovision assessment should be evidence based, with the Licensing Boards having the flexibility to decide whether there was overprovision generally in relation to licensed premises, only overprovision in relation to a particular identifiable sector or that there was no overprovision, in any locality.

7.7 It is for the Licensing Board to determine what the overprovision policy will be and how the evidence will be interpreted and weighted. When doing so, they must seek to promote the licensing objectives.

7.8 This approach:

- allows Licensing Boards to take account of changes since the last licensing policy statement;
- improves public and licensed trade confidence in a system by setting out clearly the grounds on which overprovision should be determined;
- recognises 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 resulting from growing outlet density.
- provides 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 the Licensing Board has declared to have reached overprovision.

Determining Localities

7.9 It is for the Licensing Board to determine the “localities” within the Licensing Board’s area for the purposes of this Act. Licensing Boards can determine that the whole of the Licensing Board’s area is a single locality. The choice of locality is flexible to reflect the different circumstances in different geographical areas throughout the country.

The choice of locality must, however it is done, be rational and capable of justification in the event of a legal challenge.

7.10 The process by which the selection exercise to determine the “localities” is carried out is largely a matter for the Licensing Board. The selection of appropriate localities is based on having a broad understanding of provision across the Board’s area. Licensing Boards may wish to make use of their own local knowledge/understanding of areas. They may wish to carry out informal consultation with interested parties and/or make use of their existing licensing policy statement in order to assist them to come to a view as to which localities may be appropriate to include in their licensing policy statement.

Information may be obtained from a number of stakeholders, such as the relevant health and/or social care body who may be able to provide, amongst other things, data on alcohol related mortality and hospital admissions. The chief constable may be able to identify problematic areas where it can be demonstrated that crime, disorder and nuisance are caused by customers of a particular concentration of licensed premises and/or suggest areas in which the number of licensed premises or premises of a particular description are potentially approaching overprovision.

7.11 It is not necessary to divide the whole of the Licensing Board's area into separate localities. A locality could, for example, consist of a particular town, a city centre, a street, a collection of streets, a council ward, datazone(s) – (Scottish Index of Multiple Deprivation) or the whole of the Licensing Board's area.

The Licensing Board may wish to consider making an initial assessment by closely scrutinising the premises across the whole of their area, then proceed to determine those localities it proposes to examine. After carrying out the initial assessment, the number of premises, or premises of a particular description in those localities should be identified, then the Licensing Board should determine the capacities and have regard to other matters it thinks fit and fulfil its duty to consult.

Matters for the Licensing Board to have regard to

7.12 In considering their policy on overprovision and whether there is overprovision in any locality, the Licensing Board –

- must have regard to the number and capacity of licensed premises in the locality/localities;
- may have regard to such other matters as the Licensing Board thinks fit including, in particular, the licensed hours of licensed premises in the locality/localities; and
- must consult the persons specified in Section 7(4) of this Act. Those persons are: the chief constable, the relevant health board, such persons as appear to the Licensing 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.

Capacity of licensed premises

For the purposes of the overprovision assessment, the operating capacity of premises licensed to sell for on-sale consumption should be taken from the operating plan. The definition of capacity for on-sales and off - sales is set out in section 147 of the Act.

“Capacity”, in relation to licensed premises, means –

(a) 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

(b) 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.

Based on these definitions the proposed methodology for calculating capacity for on-sales and off-sales is set out below:

On-sales

The Buildings (Scotland) Regulations 2004 assessment methods set out in the Technical Handbooks issued in support of these regulations.

Off-sales

The maximum linear measurement, in metres, of the frontage used to display alcohol, including the areas utilised for off-shelf seasonal or any other promotional displays.

Licensing Boards should be consistent when using terminology for measurement.

Other matters as the Licensing Board thinks fit

- Licensing Boards may have regard to such matters as they think fit including, in particular, the licensed hours of licensed premises in a locality. Other considerations may include the relevant circumstances in the area or the proximity of specific types of premises, such as facilities for vulnerable adults with alcohol addiction issues.

The Licensing Board may not delegate certain functions

7.13 Although Licensing Boards may authorise certain others to exercise some of their functions on their behalf . In accordance with Schedule 1 paragraph 10(2) , they may not delegate, amongst other things, the following functions:

- determining the Board’s policy for the purposes of a licensing policy statement or supplementary licensing policy statement.
- determining for the purposes of any such statement, whether there is overprovision of licensed premises, or premises of any particular description, in any locality.

Duty to consult and gather evidence

Licensing Policy Statement

7.14 In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must consult -

- the Local Licensing Forum for the Licensing Board’s area;
- if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2 of this Act. (i.e. holders of premises licences and personal licences, the chief constable, persons having functions relating to health, education or social work, young people, person’s resident within the Forum’s area); then the Licensing Board must

consult such person or persons as appear to it to be representative of those interests of which the membership is not representative;

- the relevant health board; and
- such other persons as the Licensing Board thinks appropriate.

Overprovision Assessment

In considering whether there is overprovision in any locality, for the purpose of the statement, the Licensing Board must consult -

- the chief constable,
- the relevant health board,
- such persons as appear to the Licensing Board to be representative of the interests of –
 - holders of premises licenses in respect of premises within the locality,
 - persons resident in the locality, and
- such other persons as the Licensing Board thinks fit.

7.15 The duty of the Licensing Board to consult prior to the formulation of overprovision assessments illustrates the importance of partnership working in the achievement of the licensing objectives.

7.16 As well as consultation with representative bodies and organisations, Boards may wish to hold well-publicised ‘open meetings’ in particular localities, at which members of the community can be afforded an opportunity to express their views on the formulation of policy.

7.17 The results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality.

Factors which the Licensing Board may take into account include:

- the information provided by the chief constable;
- subject to the constraints of data protection legislation, CCTV footage supplied by the chief constable or another source which illustrates disorder associated with the dispersal of customers in any locations;
- evidence gathered from local residents of anti-social behaviour associated with licensed premises;
- information from the local authority’s Environmental Health Department about noise complaints which can be attributed to the operation of licensed premises in a locality;
- data supplied by the relevant health and/or social care body, for example, alcohol related mortality or morbidity.

It has long been Scots licensing law that for a Licensing Board to make a finding that a harm will arise because of or in consequence of the sale of alcohol, there must exist a causal link between the alleged cause and the alleged harm.

The dependability of the 'causal link' is based on the quality and nature of the evidence used.

Causation must be per caselaw on a more than "but for" basis as licensing is a civil law matter, the proof of the link must be on a balance of probabilities, that is "more likely than not". Once you show that link and develop the licensing policy statement (and overprovision assessment) based on it, these documents will inform the future consideration of licence applications, and will carry considerable weight.

The onus then falls on the applicant to show that their application should still be an exception.

7.18 The overprovision assessment must be based on credible evidence of a causal link between the engagement of one or more of the licensing objectives and a concentration of licensed premises or of licensed premises of a particular description in a locality.

7.19 Licensing Boards, on gathering information and evidence, must consider the fine detail and the local issues, applying appropriate weight to their findings during their decision-making process.

7.20 Consideration should be given as to whether aggregated information and evidence from a number of sources points towards a particular conclusion.

7.21 In considering their policy on overprovision and whether there is overprovision in any locality, the Licensing Board should not take into account:

- the manner in which individual premises in a locality are managed, since it is possible that well-managed premises may act as a magnet for anti-social behaviour, or may eject a substantial number of customers who collectively produce disorder and nuisance to a degree which is unacceptable;
- any concerns as to the quality of management of individual premises, which should be addressed separately through other statutory mechanisms.
- The need or demand for licensed premises in a locality. Commercial considerations are irrelevant.

7.22 If a Licensing Board comes to a conclusion that there is a causal link between the alleged cause and the alleged alcohol related harm in a locality to such an extent that it would be clearly inconsistent with any of the licensing objectives, the Licensing Board should include details of this in their licensing policy statement, which incorporates the overprovision assessment. A Licensing Board may wish to express this in such a way that interested parties are left in no doubt as to the reasons for

adoption of the policy, specifying the relevant locality, and including information on the evidence upon which the Licensing Board relied and the material considerations which were taken into account.

7.23 The licensing policy statement or supplementary licensing policy statement (see Chapter 6 for an explanation of these terms) should identify the factors taken into account in the overprovision assessment and it should make it clear however that each application will be decided on its merits.

The effect of the overprovision assessment

7.24 When determining premises licence applications and applications for major variations, Licensing Boards should amongst other things, take into consideration the provisions under Section 23(5)(e) and 30(5)(d) of this Act respectively. These specifically relate to grounds for refusal, in the context of overprovision. Licensing Boards can refuse an application if they consider that there would be overprovision in the locality as a result of the application being granted.

7.25 The application need not be the subject of an objection for the application to be refused.

7.26 The effect of an overprovision policy, included in a licensing policy statement, is to create a rebuttable presumption against a grant of an application.

There may be exceptional cases in which an applicant is able to demonstrate that the grant of the application would not undermine the licensing objectives, or the objectives would not be undermined if the applicant's operating plan were to be modified or the grant of the licence was made subject to appropriate conditions.

If overprovision is established, Licensing Boards may (but are not obliged to) identify the matters that they consider specific and relevant to rebutting the presumption against grant. Licensing Boards may expect that applicants seeking a licence in such circumstances should provide robust and reliable evidence as to why the benefit to the licensing objectives, through the grant of their application, outweighs any detriment to the licensing objectives and the overprovision policy. In such circumstances, Licensing Boards may have grounds not to follow their own policy.

It is important to note that upholding the objectives is not something which, in itself, rebuts the presumption against grant created by overprovision. Every application granted by the Licensing Board is tested against the licensing objectives. If the Licensing Board considers that any application is inconsistent with one or more of the licensing objectives (regardless of overprovision) it is a ground for refusal and the application would fail.

7.27 As the application of the policy must leave room for exceptions, the policy statement should not set a numerical quota of licensed premises or premises of a particular description for any locality.

7.28 If a Licensing Board has determined that there is no overprovision in any locality, it is still entitled to refuse an application based on overprovision.

Summary

7.29 The formulation of the statement on overprovision required by section 7 of the Act involves the following process:

- the selection of appropriate localities based on a broad understanding of provision across the Board's area;
- the identification of the number of licensed premises or premises of a particular description in those localities, including their capacities and may have regard to any such matters the Board thinks fit, including, in particular, licensed hours;
- consultation with the relevant persons;
- an assessment of the information gathered from those persons, taking into account only relevant considerations and material which has a proper evidential base to consider if there is a dependable causal link between the operation of licensed premises in a locality or localities and relevant harms; and
- reaching a decision as to whether it can be demonstrated that, having regard to the number and capacity of licensed premises or licensed premises of a particular description in a locality and other matters, it is undesirable to grant further licences or further licences for premises of a particular description, in any locality within the Licensing Board's area.
- including a statement on overprovision in the Licensing Board's published licensing policy statement.

It is important to identify and agree the proposed locality or localities before lawfully and rationally carrying out a consultation to allow consideration to be given to issues/concerns that may be raised and any assessment of overprovision.

Licensing Boards may review an overprovision statement at any time. For example, when new developments or new evidence comes to their attention. If they decide to amend it, they should publish a supplementary licensing policy statement and publicise the date on which it is to begin.

When Licensing Boards subsequently consider applications, they must consider the most recent licensing policy statement and act lawfully with regard to the legal principles underpinning the right to appeal and observe the correct legal tests in their decision making. Each application is to be considered on its own merits.

Licensing Boards, in the context of carrying out an overprovision assessment, should therefore be mindful of the five grounds of appeal under this Act:

- that the Licensing Board erred in law;
- that the Licensing Board based its decision on an incorrect material fact;
- that the Licensing Board acted contrary to natural justice;
- that the Licensing Board exercised its discretion in an unreasonable manner; and
- in the case of review hearing, that the decision was disproportionate.

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WORKSHOP – OVERPROVISION

On 2 May 2018 the Board hosted a workshop session on the topic of overprovision. The purposes of the workshop was to encourage discussion among a range of interested groups, including community representatives, police, health, Alcohol Focus Scotland, licensed trade representatives and others. Board members attended and took part in discussions.

The session opened with short presentations on overprovision, from the different perspectives of those involved:-

Morag Leck – Depute Clerk
Gillian Geany – Police Scotland
Jim Sherval – NHS Lothian
Rosaleen Harley – Edinburgh Licensing Forum Convener
Niall Hassard – TLT Solicitors
Laura Mahon – Alcohol Focus Scotland

The aim of the presentations was to provide workshop participants with a general view of overprovision, to assist in the group discussions that followed.

Group Discussions

Participants were split into four groups, with as mixed a representation as possible in each, to encourage discussion on the different views expressed by those attending. Each of the four groups considered the four set questions in turn, with a facilitator for each question to assist the group discussions.

- Question 1 – What information should a Licensing Board take into account if deciding upon possible localities?
- Question 2 – How should possible localities be geographically identified?
- Question 3 – In addition to number and capacity of premises in localities, what “other matters” should a Board consider?
- Question 4 – Is overprovision the only answer? Are there other options a Board could consider?

During the course of the workshop there was wide-ranging discussion of alcohol licensing, as it was recognised that the topic of overprovision was connected with a number of aspects, including:

- the Licensing Board’s preparation of licensing policy;
- notification and advertising of application details
- involvement of local communities in the decision-making process
- particular details of the existing Licensing Board policy

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In considering the four questions above, there was a degree of crossover amongst the discussions that followed: some questions triggered consideration of matters which linked in with other topics.

There was discussion about the sort of information to be gathered to assist in assessing overprovision, such as from police and health sources, and the different categories of health data available. Consideration was given to how to obtain information from community representatives. The groups discussed how information gathered could be linked with particular localities, and whether and how this could be made relevant for consideration of overprovision in particular localities.

Groups discussed how to go about identifying a particular locality and what boundaries to use, to be most relevant for the purposes of gathering data for consideration of overprovision, ranging from community council areas, to ward boundaries, to Intermediate Data Zones.

Participants also discussed different categories of premises, the potential need for different approaches in considering overprovision of on-sales and off-sales premises. In considering overprovision as an overall topic, there was also discussion about the commercial impact of declaring a locality as overprovided. Groups commented upon the Board's current overprovision assessment, including the areas identified as being of serious, special concern, and whether such a designation had a relevance to consideration of new applications.

The links between Planning applications and Licensing were discussed, with consideration in particular about the likelihood of more favourable consideration of a licensing application where Planning had been obtained, and whether overprovision could still realistically be considered in such circumstances.

There was considerable discussion about other matters not directly linked with overprovision, including the proliferation of occasional licences, the notification procedures for applications, and the information available from the Board's public register.

The Workshop ended with a feedback session, during which some of the recurring themes discussed by the groups were reported back to the wider group.

APPENDIX FOUR

LICENSING BOARD HEARINGS – CONSULTATION RESPONSES

SESSION 1 – 4th May 2018 (Cllrs Norman Work; Joanna Mowat; David Key; Cammy Day; Gillian Gloyer)

The Convener introduced the session, welcoming everyone in attendance. The Depute Clerk, Morag Leck, explained the process to be followed during the sessions: the Board would hear from those who had contributed to the initial consultation on the Board's Statement of Licensing Policy, regarding the terms of the written representations made by them. Board members would then have the opportunity to ask questions of those in attendance, to clarify any of the points made.

The Depute Clerk confirmed that the Edinburgh Licensing Forum had not submitted a formal contribution to the consultation process at this stage, but Rosaleen Harley was present in her capacity as Convener of the Licensing Forum to provide an update on the Forum's consideration of the Board's policy and consultation.

Rosaleen Harley explained that the mix of representatives at the Forum meant that it took time to reach consensus among Forum members and that the timings of Forum meetings added to the difficulty. The Forum had received presentations on a number of topics, including from Police Scotland and the Edinburgh Alcohol and Drugs Partnership. The Forum had had detailed discussions about matters such as:-

- Policy on the use of Occasional Licences
- Pop-up bars and venues
- Organised pub-crawls and tours
- Bring Your Own Bottle (BYOB) establishments

She confirmed the Forum was meeting later in the day and that the Forum's views would be gathered for future communication to the Board.

Councillor Key asked Ms Harley for clarification about the Forum's concerns regarding BYOB premises. She explained that whilst the Forum was aware this was not an area of responsibility for

the Board, the Forum was still interested in the way these premises operated, particularly regarding responsible consumption of alcohol on the premises. She confirmed this had been raised by one of the trade representatives on the Forum.

The Convener noted that with regard to temporary licensing of premises and the use of occasional licences for that purpose, the Board encouraged applications to be made for full licences rather than operating by means of occasionals. He suggested that with a BYOB operation he was not so sure this was something the Board could deal with.

Councillor Mowat asked if there were specific concerns from the Forum about outside drinking areas, noting the reference to pop-up bars, etc. Rosaleen Harley explained that the Forum had concerns that when assessing localities for possible overprovision, were the capacities of outside areas being taken account of by the Board?

Roger Colkett was present for the Tollcross Community Council. He referred to the terms of the community council's representation. With regard to amplified music and vocals, he suggested that what seemed to be happening was that whenever a licence holder applied for variation of their licence they were applying for a change of the licensing condition as a matter of course, as if it were obligatory to do so. He advised that when the change to policy had been considered by the Board, community councils had been assured that the change of condition would only happen in particular cases.

Councillor Day asked Mr Colkett whether the community council had a view on the areas of serious special concern as referred to in the Board's policy. Did he agree with extending these areas to make them overprovision localities? Mr Colkett advised that the community council had a concern that there were so many off sales licences for shops that sold food across the city. This had the effect of normalising the sale of alcohol and it also potentially prompted impulse buying.

Tracey Stewart of Rowan Alba advised that she was not just speaking for that organisation, but also on behalf of Leith In Action Group. She referred to a consultation which had been carried out in the Leith area which had included input from licensees. It had been intended to put forward the details

of that consultation as a representation to the Board at the time, but a Council reorganisation had prevented that from happening. There had been a keenness to ensure that the work carried out as part of that consultation exercise was not lost, which was why a representation was now being made to the Board.

Councillor Day advised that he recalled the previous Board membership had received the report. He noted the conclusions of the report. In particular with regard to pre-loading, where alcohol was being bought in supermarkets and consumed at home before people went out, how would the Board deal with that? Did Ms Stewart think the simple answer was to declare the Leith area as being an overprovision locality? Ms Stewart advised she didn't really think she was equipped to comment upon overprovision. Councillor Day asked, in terms of her role, whether an increase in licensed premises would help or hinder that role. Ms Stewart gave the example of a small off sales premises building up a local relationship with alcohol-dependent customers, looking out for them and encouraging them to stick with lower strength alcohol. They provided a helpful link in the community. She noted in the particular example that the shop had now closed. Customers would therefore go elsewhere including to supermarkets where there might not be the same local concern for customers.

Councillor Mowat noted one of the report's recommendations referred to preventing sale of alcohol in community centres and schools. She asked whether this had been in response to specific concerns about situations where events were organised in these venues where children were present or whether it was a more general concern than that. Tracey Stewart advised she thought this had referred to events where children were present in particular, but could check that further.

Fran Wasoff was present for the New Town and Broughton Community Council. She made the general point that the community council felt there should be a fairer balance between the community and licence holders. She referred to the way in which variation applications were dealt with by the Board, specifically regarding amplified music and vocals in premises. It was the NTBCC's view that they didn't see why the old condition was changed, and in their view it should revert to the previous form of wording. This was on the basis that whoever was responsible for noise should be the ones who should have to deal with the noise. She made the point that residents did not know where to go, if they had to make a noise complaint and how to make a complaint.

With regard to overprovision, she advised the NTBCC considered parts of the New Town to be overprovided – including George Street, Rose Street and some of the cross streets between.

She advised that it was not always easy to get information about licensing applications due to be considered by the Board. Application details were set out in a column to the right-hand side of the application lists made available online, but gave no indication about the location of premises in relation to neighbouring properties. For anyone wanting to see full application details, they had to make an appointment to come in to the Council offices to view them. This was a disincentive for being involved in the process. She advised the community council felt that there should be better availability of application details.

Regarding premises terminal hours both inside and outside premises, the Board should bear in mind that where premises operated until 1am, this was extended until 3am during the festivals. This had an impact upon residents living in the vicinity of premises, where there was potential at the festivals time of year for people to be still congregating outside premises until around 4am.

Councillor Day agreed that noise coming from pubs should be the responsibility of the pub proprietor, but asked about the situation where someone moved in beside a pub which had been operating for a considerable period of time and it would perhaps be expected they would know they were moving in beside premises that would likely be noisy. Fran Wasoff suggested that it was difficult to find out about such other things as people hanging around outside premises late at night, etc. She suggested one of the nice things about Edinburgh was that there were residential properties in the city centre and this was something that should be kept. Councillor Day noted the comment about being able to make noise complaints, but suggested the information for how to do so was easily available on the Council website. Fran Wasoff advised the concern was about the implications of the change of policy on amplified music and vocals: there had been a shift in the burden of responsibility about how this should be dealt with. Councillor Day noted the community council written representation had referred to smokers outside pubs, etc. and asked how the Board could deal with that. Fran Wasoff advised this had been included to highlight it as an issue. Perhaps something could be included in a premises' operating plan as to how a licence holder would control the area outside their premises. She agreed this was a tricky area.

The Convener agreed with the comments made about information being made available on applications, suggesting there were some times when the Board only got the detail about how premises would operate when actually hearing from agents presenting behalf of applicants.

Marie McArthur was present for the Old Town Community Council. She advised that the CC area was still a residential area. She questioned whether the Grassmarket was still an overprovision area. Residents were awaiting word on two hotel premises proposed for either end of the Grassmarket area. The Depute Clerk was asked to confirm the current status of the Grassmarket as an overprovision locality. Mrs Leck confirmed that the area was designated in the Board's policy statement as being overprovided for in terms of traditional pubs and off-sales premises. Councillor Day advised that there still had to be a balance struck with the economic needs of the city. If the area was to remain an overprovision locality, should the Board have a tougher line on that?

He asked for the OTCC view on pop-up bars and why these were considered by the CC to cause problems. Marie McArthur advised they would want to see the Board have a more robust policy in place for these. She gave the example of the former Khushis premises in Victoria Street, which had been licensed by means of occasionals during festival periods.

Councillor Mowat advised she was aware the OTCC had concerns about unregulated drinking in the area, with persons sitting drinking in the vicinity of the Grassmarket. She asked Marie McArthur for her top three priority matters she would want to see the Board changing. Ms McArthur referred to the earlier comments about amplified music and vocals, noting that this was a work in progress. She then highlighted the amount of tables and chairs located in the Grassmarket area and that some of the areas occupied by tables and chairs were very large, almost doubling the size of restaurant premises, etc. She noted that almost every one of the premises in the Grassmarket had two outdoor seating areas. Finally with regard to licensed hours, she suggested there was no need for late terminal hours of 3, 4 or 5am.

Penny Richardson was present for the Stockbridge and Inverleith Community Council. She referred to the terms of the SICC representation and confirmed that a more detailed response would follow

on from any further consultation carried out by the Board. Councillor Mowat advised that the SICC response was helpful as it set out their comments according to the chapter headings of the policy statement. She asked whether there was anything about the licensing impact on the SICC area which the community council would particularly want the Board to take account of. Penny Richardson advised that she thought community voices would be better heard by the Board. It was considered that there was overprovision in the SICC area and she suggested that NHS Lothian keep an eye on the health statistics for the area. She suggested the SICC would welcome the Board controlling licensed hours in the area, restricting terminal hour to 11pm. She referred to the future opening of licensed premises in the locality which would result in large increases in visitors to those premises, particularly the new rugby venue in Raeburn Place. She also commented about the Board giving consideration to different licensing hours depending on nature of properties adjacent to licensed premises. She confirmed SICC was about to reply to the Scottish Government consultation on the Procedure Regulations. Anything that helped people to know how to be informed about applications, etc. was preferable.

The Convener noted that the Board had previously granted licences for the premises in Raeburn Place – stand and retail units - which were referred to by Penny Richardson.

Councillor Day asked for clarification about the Stockbridge area being an overprovision locality. Nick Fraser confirmed that it may have been recommended to the Board as being an area considered to have overprovision characteristics, but the Board had not designated it as such in its previous Policy Statement.

Councillor Day asked Penny Richardson if there were one or two things the Board could do in the SICC area to improve licensing, what those would be. She asked that the Board keep listening to the concerns of local residents regarding suggested changes to licences and licensing hours, and that it would be preferable to have better information available about the location of applicant's premises at the Board. Councillor Day noted comments made about outside areas in particular and agreed that maybe the Board needed to look at the operation of these and consider their proximity to residential properties.

Penny Richardson concluded by asking that the Board put in place an improved system for easier access to licence application details, rather than having to call in to view applications under council officer observation.

SESSION 2

4th May 2018 (Cllrs Norman Work; Joanna Mowat; Cammy Day; Gillian Gloyer)

Aidan Collins and Sean McCollum were in attendance for Alcohol Focus Scotland and referred to the terms of the AFS representation made to the consultation. Reference was made to Edinburgh having the highest alcohol premises licence outlet density in Scotland. Since 2012 there had been a 22% increase in off-sales premises in the Edinburgh area, amounting to an additional 101 off-sales premises. Aidan Collins referred to the statistics on harms connected with alcohol, comparing the areas with highest statistics for alcohol harms with those with the highest number of licensed premises, suggesting a link between the two. He referred to the seven areas of “serious, special concern” as referred to in the Board’s Statement of Licensing Policy. He suggested to the Board the Board should consider whether the situation in each area was better or worse than before. If the situation was worse, the Board should consider designating these as overprovision localities.

He went on to refer to community involvement in the licensing process, which was something that AFS were looking to encourage. He suggested the Board try to ensure accessibility of Board policies, etc. so that communities were able to become better involved.

Councillor Work referred to the number of off-sales premises, such as supermarkets, being built in the Edinburgh area and asked whether it was AFS’s position that there was a link between overprovision and accessibility to premises, and levels of crime. Aidan Collins referred to the data gathered by CRESH and suggested this was a robust source of data, which showed statistically significant links between outlet density and crime levels. (*Copies of the CRESH report were circulated to Board members for consideration*) Councillor Work went on to refer to the recent introduction of Minimum Unit Pricing as a means of addressing problems. Aidan Collins advised that price of alcohol was just one of the possible influences on those problems.

Councillor Gloyer asked AFS to comment on on-line sales of alcohol and how the Licensing Board might deal with that. Aidan Collins confirmed this was a difficult issue and AFS had highlighted this to Scottish Government, whose response had been that AFS should raise this with Licensing Boards. It had been suggested Boards could try to build in licensing conditions when considering the grant of premises licences, but the overall issue was accepted as being a difficult one for Boards.

Councillor Day noted AFS comments about the financial cost deriving from alcohol consumption, but invited AFS comments on the economic benefits of licences for the city, arising from hotels and bars and tourism connected with those. Aidan Collins referred to the financial pressures on the NHS and policing, connected with impacts arising from alcohol consumption. There was a cost arising from lost working days where employee productivity was affected by alcohol consumption. He accepted that there was a tourism benefit from licensed premises, but referred to the need to reduce alcohol-related harms which, in Scotland, were significant anyway. Whilst there were some valid arguments around benefits to the night-time economy, he questioned what was going to be prioritised; the alleged financial gain or the health and wellbeing of people in communities affected by licensed premises. He gave the example of a new supermarket potentially creating jobs, but there was a potential for closure of businesses in local communities.

Councillor Day expressed concerns about the existing policy and the reference to areas of serious, special concern. He asked AFS what they recommended the policy should state in this regard. Aidan Collins advised that AFS were not so much concerned about what was stated in the policy, as they were about what procedure should be followed. He advised it had been his understanding that these areas would require further consultation. There should be more transparency about the evidence submitted to the Board and the policy created from that. The Board should assess the areas of serious, special concern and whether these had been effective. By not declaring these as overprovision localities this had disempowered the Board. He advised he didn't have enough knowledge to go into the specifics beyond that. The Board should look at outlet density, health and crime statistics and community intelligence.

Councillor Day referred to the responsibility for the city, to ensure it remained a vibrant and viable location to visit. There needed to be a balance with the well-being of the city. He then went on to ask for AFS views about occasional licences and whether there was a concern about these being used as a way of getting around having to obtain a premises licence. Aidan Collins advised AFS had hosted workshops around the country and one of the issues highlighted at these had been occasional licences being exploited. He advised the workshops had also highlighted children and young persons' access to licensed premises, and particularly family-oriented events, where alcohol was being sold. There appeared to be an emerging trend for occasionals to be applied for in these

cases, and he suggested this was something the Board should have regard to, including requiring applicants to set out how they anticipated children being at events, etc. With regard to the issue of numerous applications being made for occasional licences by an applicant in lieu of an application for premises licence, he suggested the Board should have a trigger point set out in the policy, that would allow for someone to be automatically called to appear before the Board after a certain number of applications had been made.

Councillor Mowat referred to the CRESH map identification of areas of overprovision. She highlighted the problem of statistical information about health harms and the difficulty of being able to link these with overprovision. Aidan Collins suggested the CRESH map provided the Board with a good starting point, but that the Board should then go to local communities and others to get more information about their experience of alcohol-related impacts. Councillor Mowat suggested it all came back to evidence when trying to identify overprovision areas; everything else was, to an extent, anecdotal. The Board should have a policy in place which was meaningful for those affected by alcohol-related harms. Aidan Collins suggested it was reasonable to say the CRESH report provided strong evidence. He highlighted that it would be a legitimate policy for areas with lower outlet densities but with higher harm statistics still to be considered, even compared with places with higher outlet densities: it wasn't just a numbers game. The Board should work with the EADP, Community Planning partners and others to obtain evidence. When looking at communities with problems the question should be asked, why is that happening?

Councillor Work referred to mental health and the impact alcohol had upon that, with alcohol effectively acting as a depressive drug. AFS acknowledged this was a complex area and encouraged the Board to speak with those affected and who were seeking treatment, and with mental health professionals.

The Board then heard from **David Williams**, attending on behalf of the Edinburgh Alcohol and Drugs Partnership. He referred to the representation made by the EADP, which he explained consisted of representatives from health, police and alcohol and drug treatment services. The EADP supported steps taken to deal with the affordability, accessibility and availability of alcohol. The thrust of the EADP's strategy was preventative, but also involved consideration of treatment and recovery for those affected by the availability of cheap alcohol. The EADP recognised the limits of Board powers

but was keen to encourage their use. He advised there was detailed evidence available about alcohol's impact upon young people, upon those with incipient problems and those with low level mental health issues. For people in the throes of dependency it could be difficult to find the motivation to stop drinking.

He highlighted that there were around 449 licensed premises within a 10 minute walk of the Grassmarket, providing a continuous pressure for those trying to deal with alcohol problems and alcohol dependency. He suggested it was almost getting to the stage of not being possible to buy food without the possibility of buying alcohol also being available. Councillor Work noted the comments made about acceptability of alcohol and asked what the Board could do about that. David Williams suggested that consideration of children and young persons' access to premises could be looked at. He referred to the number of licensed premises where alcohol is available and seen as normal. There could possibly be more information on health impacts, and the advertising and marketing of alcohol.

Councillor Day asked about opening hours of premises and whether there was any evidence available of considerable adverse effects in the city connected with festival times of year, etc. David Williams suggested that it may be possible to gather such evidence, for example looking at A&E admissions figures for alcohol-related incidents. Councillor Day then went on to ask about underage drinking and the impact of deprivation upon alcohol consumption, inviting David Williams to comment. He confirmed that alcohol addiction was much more common in areas of deprivation and that alcohol-related health harms associated strongly with these areas. Referring to earlier discussions he highlighted the possibility with fewer premises but more health harms still providing a basis for overprovision.

Councillor Day advised the report was helpful in terms of the statistical information and detail of alcohol-related impacts. He asked what in particular the EADP would want to see in the new policy statement. David Williams highlighted the problem of off-sales, referring to there being a high level of off-sales premises. The EADP would want overprovision to be considered in areas where there were high levels of alcohol-related hospital admissions.

Councillor Mowat asked whether it was the EADP view that the problems with alcohol were connected more with off-sales rather than on-sales? David Williams suggested that people being treated for alcohol dependency were more likely to be using off-sales premises. He noted that around 70% of all alcohol sales in Scotland were made by off-sales premises. Many people would pre-load with alcohol purchased from off-sales, then turn up later at the pub and get into fights, etc. The police can provide evidence of the impacts upon the night-time economy. He suggested that another issue was that for some consumption of alcohol was at such a level that they could not physiologically and emotionally cope with the impacts it was having on them.

Councillor Mowat referred to the example of off-sales premises providing alcohol to those with problems, but doing so with an awareness of those problems and trying to be supportive of their needs. David Williams advised that he accepted that there were responsible retailers, but ultimately they were providing alcohol to individuals.

The Board heard next from **Niall Hassard** from TLT Solicitors. He advised that in preparing for the meeting he had looked at the Scottish Government annual licensing statistics. At 31 December 2007 there were 1929 premises licences. As at August 2017 there were 1979. He suggested the breakdown of figures was quite interesting, noting in 2007 this consisted of 629 off-sales and 1300 on-sales and combined other categories and in 2017, 544 off-sales and 1435 on-sales and combined. He felt this was useful plotting trends. *(Mr Hassard advised that he was happy to forward a copy of these statistics to the Board after the hearing – see <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubLiquor> for these statistics)* He advised it was not his place to suggest what constituted overprovision, being something for the Board to decide. What he was trying to do was provide an insight on overprovision from a trade perspective. He explained that clients would assess the viability of a site having regard to Planning, Licensing and all other costs. In his experience he had seen instances where applications did not come forward because of overprovision localities, etc. Most licensing boards used Intermediate Data Zones as a means of gathering statistical information on health harms, etc. and then using that to inform their decisions. He suggested there was perhaps too much reliance placed upon IDZs as the appropriate means for designating overprovision localities.

The Convener asked Niall Hassard for his views about the signing arrangements for occasional licences and the suggestion from TLT that there was a lack of consistency in decision-making. He advised that it seemed to TLT that following the restructuring of the Licensing Service in the Council and arrangements with the Licensing Board signing rota, some difficulties had arisen with the overall context of applications. He referred to the example of a first application for occasional licence being put forward for consideration, which attracted comments and for which a response was provided on behalf of clients. The application was then granted. A second application was then made, with no intervening change of circumstances, for new dates. That application was refused. A statement of reasons could then be requested, which may set out the concerns of the individual Board member. However he pointed out that every decision was being made by “the Board” rather than by individuals. He advised the same concerns arose with regard to applications for Extended Hours.

Councillor Gloyer asked what Niall Hassard suggested the Board should do? He advised that he would be asking for more narrative from the Board in its policy. Each Board member was signing as “the Board” and it would be preferable that they were aware of the context of previous applications, etc. in making a particular decision.

Councillor Mowat referred to overprovision and the requirement for the Board to agree a policy. She referred to the way licensed premises in Edinburgh were policed in the city centre area and the city centre’s relatively low permanent residential population. She pointed out that there were over 400 residents in the Grassmarket area and over 400 licensed premises within walking distance of the Grassmarket: a ratio of almost 1:1. As an established residential population, was it being suggested that for licensing purposes their concerns should be set aside? Niall Hassard replied not at all – he suggested however that it might be easier for the police to deal with policing an area with a density of premises rather than being more spread out. There were some benefits to having an identifiable night-time area. Regarding the point about the number of residents and number of venues, he pointed out Edinburgh is a European capital city, and a huge draw for people to come and visit. The premises in the vicinity of the Grassmarket were not sustained by the small number of residents in that area, rather the vast numbers of tourists who come in to the city. He compared Edinburgh with Aberdeen city centre which had a similar concentration of premises, with police, street pastors and taxi marshalls in the area. He understood that there was some benefit to these organisations from operating in a more concentrated area.

Councillor Day referred to the use of occasional licences for events and suggested that a number of applications were irrelevant, and he asked whether they were worth TLT and their client's time? He referred to overprovision and the representation made by TLT on behalf of Greene King. He asked whether it was accepted the Board had to strike a balance between Edinburgh being a leading capital city for licensing purposes, against the estimated £200 million cost impact upon police and health arising from alcohol. Niall Hassard accepted there was a balance to be struck. Councillor Day noted a comment in the representation suggesting that in considering overprovision the Board should not have regard to licensed hours. Niall Hassard referred to the recent change to the law. With regard to licensed hours there was no duty to trade and it may be the case with premises that they did not actually use their existing hours to the full extent. As an example he referred to nightclub premises with unused daytime hours. The ability for Boards to make use of information regarding licensed hours in their overprovision assessments was permissive rather than obligatory. He went on to refer to licence "types" where some Boards have used 1976 Act terms to try and identify licence categories, which he suggested was not always a useful comparison for the way that modern premises trade. He suggested it was still open to the Board, for example, to limit the number of premises operating until 3am, as a particular aspect of an overprovision locality.

Councillor Day referred to comments about children and young persons' access to premises and the suggestion of not imposing unduly restrictive terminal hours on premises in this regard. He suggested that it was still reasonable for the Board to use this option, referring to site visits, members' local knowledge, etc. Niall Hassard advised he could think of premises where there was children and young persons' access, but which was not used by the premises during particularly busy periods, e.g. rugby internationals. He advised that this topic had been highlighted just to ensure the Board wasn't unduly restrictive about this area of licensing.

Councillor Day referred again to occasional licences and extended hours applications and asked whether it would be more straightforward if the policy statement simply said that the Board was taking a blanket approach with applications by saying we were not going to grant them, and applicants shouldn't try asking for them. Niall Hassard advised that might be easier for the Board, but not necessarily a positive step. Some Boards have policies to limit numbers of applications, etc. – but there was a danger that this might stifle innovation. To limit the use of occasional licences in a

city like Edinburgh where there was perhaps one month in the year when there wasn't a recognised festival of some sort going on could be problematic.

Councillor Gloyer referred to there being a problem with the way in which occasional licence applications are notified, where there was a very limited opportunity for residents to comment on them. This was in contrast to the requirements when an application for premises licence was being made, and Councillor Gloyer suggested this might partially explain the difference in approach taken by Board members when considering occasional licence applications. Niall Hassard referred to two distinct modes of operation for occasional licences: occasionals used for a particular event, and occasionals used to effectively allow premises to operate as a permanently licensed venue. The latter was something that lots of boards were looking at, and certain boards had "trigger points" beyond which applications would be called in for consideration at a Board meeting.

He advised that in some cases applicants would be looking to start up their business by obtaining a provisional premises licence. They would obtain Planning permission, seek to get the business up and running and obtain a provisional premises licence, then apply for occasionals to allow the premises to operate having already received Board scrutiny of the provisional premises licence application. Councillor Mowat noted this method, but advised she was not entirely comfortable with premises seeking to operate with only a provisional premises licence in place and occasionals on top of that, rather than having a full premises licence in place. She appreciated there could be difficulties with obtaining a section 50 Building Standards certificate, but this was something that was being looked at within the Council.

SESSION 3

10 May 2018 (Cllrs Norman Work; Mary Campbell; Joanna Mowat; Cammy Day; Lezley Marion Cameron; Callum Laidlaw)

Jo Scott was present on behalf of both the Southside Association and Southside Community Council. She advised of the concern, for a number of years, of the proliferation of licensed premises in the area, particularly pubs, off-sales premises and food outlets. She referred to the problem of noise from pub premises in streets with tenement properties, where the noise echoed across the streets. She suggested that the Southside area should be considered to be a sensitive area because of this. She understood that businesses with premises licences brought in money to the area, but suggested that there should be balance struck. She highlighted the huge numbers of students and young people who came into the area every year.

Councillor Campbell asked whether Jo Scott considered anything specific needed to be added to the Board's policy. She replied that she thought very late licences were not a good idea in a tenemented area where people needed to be able to get to sleep. She advised that residents could understand, and just about tolerate, busier and later operating of premises during the festivals period of the year. At other times of year though, there should be earlier closing. She also highlighted problems with noisy premises, where licensees should be keeping doors closed to prevent noise escaping.

Councillor Mowat asked if there were any particular premises types that caused problems in the area? Jo Scott replied that there weren't particular premises types as such that caused problems, although residents would not want to see very large premises being opened up in the area. She suggested that the new arrangements for music in premises had caused some problems.

Councillor Day referred to the policy on amplified music and vocals and highlighted the Agent of Change principle, where someone moved into a property above long-established licensed premises where music, etc. was played and noise might be expected. Jo Scott advised that whilst that was accepted, there were a lot of long-term residents in the area, some of whom considered moving because of noise. She didn't think that was fair. The busy nature of the centre of Edinburgh was having the effect of pushing residents out of the centre. She referred to the 24 hour economy and advised that it needed to be controlled. Councillor Day asked if there was one thing that she

thought the Board could do that would help. She replied that fewer licences of all sorts would be a good thing. There should also be better arrangements for clearing up the streets, involving Environmental Health and licence holders.

Councillor Laidlaw referred to outside drinking areas and people smoking outside premises and asked what the community view was on that. Jo Scott advised that where there were groups of people smoking outside premises this blocked pavements and created a lot of noise. Patrons often left glasses outside. There was also trouble with youths in the vicinity. Overall she suggested it was a bad idea.

Councillor Work asked whether it would help if residents knew who they could contact to deal with problems. Jo Scott advised that it could be a considerable amount of time before anyone arrived to deal with a complaint, which then involved inviting council officers into the home. There could be a long time spent waiting around for action to be taken.

Jill Powlett-Brown was attending for Morningside Community Council. She advised that she supported the comments which had been made by Jo Scott. She highlighted the terms of the Morningside CC letter, and particularly the point about “delivery only”, which was connected with Late Hours Catering premises. MCC was concerned about the spread of licensed premises in a residential area. Councillor Day asked whether there were specific issues affecting the MCC area in particular? Jill Powlett-Brown advised there wasn't a huge amount of issues with alcohol per se, but that there was a proliferation of fast-food outlets which was a concern, and the littering arising from those. Smoking outside premises was less of a concern. The main issue was levels of noise, in what was otherwise a residential area.

Councillor Cameron noted there had been reference to concerns about a “party city culture” spreading and asked for clarification about what was meant by that. Jill Powlett-Brown advised that MCC would not want to see the party city culture driven out of the city centre and into residential areas. She referred to the way in which the Board's amplified music policy had been reworded. Councillor Cameron asked if a distinction was being made by the MCC between residents' parties in their own gardens, and hen and stag parties. Jill Powlett-Brown advised that residents were more

likely to be sensitive to neighbours' concerns. There was not a large population of "weekenders" in the MCC area, but it was better that their activities took place in the city centre area. Councillor Cameron asked if MCC had a concern that premises in the area were taking bookings for parties in function rooms, etc. Jill Powlett-Brown replied that the MCC would be if they were out of control, but this didn't seem to be the case at present.

Councillor Campbell asked whether the MCC were concerned about particular types of premises in their area? Jill Powlett-Brown advised there was a concern about the possibility of overprovision. There was also a concern about the number of fast-food outlets in the area, particularly those springing up below residential properties.

Councillor Mowat clarified if it was the view there was presently a good balance of premises for the population in the area, but that there was a possible concern if the number of premises increased and Morningside became a destination for licensed premises in its own right? Jill Powlett-Brown agreed with that and suggested the area was possibly reaching a point of overprovision now.

The Board heard next from **John Lee**, Scottish Grocers' Federation, a trade association representing around 5,300 stores, representing around 41,000 jobs in Scotland. He advised the retail market in Scotland is hyper-competitive and referred to the moves by the larger companies into the convenience store range. More and more small stores had to offer a wider range of products, and alcohol was an important part of the mix. Alcohol sales amounted to an average of around 14% of stores' turnover. About 80% of all convenience stores were licensed. The main aim of SGF was to ensure responsible retailing and that members comply with licensing requirements. They had issued guidance to members following the introduction of Minimum Unit Pricing. He referred to the introduction of a Community Alcohol Partnership in the Portobello area of Edinburgh. The SGF had conducted a campaign to highlight the problem of proxy purchasing. The SGF provided a considerable resource for members, to ensure compliance and the sale of alcohol, responsibly.

Councillor Campbell asked about shelving in convenience stores, and whether SGF were seeing any particular significant trends in that area. John Lee advised that where stores were considering alterations or refits, this could affect their alcohol display areas, which potentially brought them into

major variation territory. If a store had one eye on overprovision because there was an overprovision policy in place, that might have the effect of preventing them making the application and therefore restricting opportunities for refits and refurbishments. If stores were unable to modernise that might affect profitability and sustainability.

Councillor Day advised that it was appreciated the work that SGF did. He noted that SGF disagreed with Alcohol Focus Scotland regarding the link between alcohol-related problems and availability. John Lee advised that they were not convinced by the density argument. It was difficult to be able to point to particular premises when considering issues of health. He suggested that inequality was more of an issue in connection with health, rather than the number of licensed premises in an area. He appreciated the Edinburgh Licensing Board having historically taken a pragmatic approach in that regard. He referred to online shopping being something that was on the increase, and something that convenience stores didn't really provide. He referred to evidence suggesting around 29% of the population did online shopping, with around 22% doing so frequently or extensively. Orders could be placed with a range of up to 150 miles

Councillor Day noted that deprivation could be an issue with regard to alcohol-related health issues, but suggested that availability of alcohol didn't help that and could have an impact. He referred to his ward where nearly every shop was selling alcohol. The more accessible alcohol was for sale, the more likely it was people would make use of it. John Lee advised that alcohol was a highly controlled substance. It was licensed for sale, not restricted, with licensed hours, licensed premises managers, mandatory staff training and that sale of alcohol was more controlled than some of the media might lead us to believe. He suggested that density of premises was not shown to have an impact on price. Whether alcohol in general was too cheap remained to be seen, depending on how Minimum Unit Pricing played out. Convenience stores could not sell alcohol as cheaply as the large supermarket stores could.

Councillor Laidlaw referred to the possibility of restrictions on the sale of certain high strength beers, etc. and what the SGF view was on the imposition of a condition on smaller retailers. John Lee advised that MUP would result in certain product ranges disappearing altogether, such as high strength ciders. What consumers would then switch to instead was unknown. He suggested that MUP was likely to have a big impact here.

Councillor Laidlaw asked whether it was SGF view that the Board should wait and see what the impact of MUP was. John Lee referred to the Scottish Government having put in place an evaluation body, with NHS leading. He advised SGF were part of that exercise. There was a five year sunset clause on the MUP provisions, allowing Scottish Government to go back and assess evidence as to the success of MUP.

Councillor Work was concerned about MUP delaying the Board taking its own action with these matters. The Board had put restrictions in place in the past. The Board had to put a policy in place for five years, and he asked what the SGF views were on the principle of the Board putting its own restrictions in place. John Lee advised that he felt that the impact the Board was seeking would be met by MUP anyway.

Councillor Cameron asked what impact MUP was having on SGF members' stock and was this something that was being tracked? John Lee confirmed SGF were trying to track this and were happy to share this information with the Board. It seemed to be the case that it was having an impact on high strength ciders.

Councillor Mowat asked whether it was difficult to obtain sales data from members. She suggested it would be better for SGF members' interests if they were provided, if they didn't want to see further restrictions imposed. There were two options – overprovision or price. It would be better for SGF members to respond assiduously to MUP evidence gathering, to be able to make their arguments regarding overprovision. John Lee encouraged the Board to link up directly with Scottish Government, in terms of the working group set up. The evaluation process would be much more robust, taking in Scotland-wide data. The Scottish Government data would be robust and all stakeholders would be comfortable with it. Some SGF members didn't have electronic systems and it would be difficult trying to get individualised data from around 5000 convenience stores.

Councillor Mowat asked if it was being suggested that SGF were not going to be involved in providing the data on MUP and that they were going to be relying on the Scottish Government? Was SGF representing a different outlet to supermarkets, and if so were they going to be able to bring in evidence on the segment of the market they represented? John Lee advised that SGF had never been asked before. The Scottish Government was looking across the retail sector.

Paul Togneri was in attendance for the Scottish Beer and Pub Association, representing brewers and pub associations across Scotland. The SBPA covered a range of large and small businesses. They represented around £120 million in wages and around 8,000 employees. This represented a substantial economic contribution. Over the past few years there had been a number of impacts upon pubs, including the smoking ban, changes to the drink-driving limit, pension auto enrolment, the increase in the minimum wage and the revaluation of premises business rates. Overprovision was a key concern of the SBPA, and their feeling was it sent out a message to businesses that an area was closed for business. There had been a move away from vertical drinking establishments in the pub trade. To do that required investment. Members had concerns that with overprovision in place, investments would not come down the line. The association was grateful the Board takes applications on their merits. An overprovision policy might prevent applications coming in the first place which might otherwise have benefits.

Councillor Day advised he was not convinced that by the Board changing its overprovision policy, this would change investment. He highlighted the impact of alcohol on health costing the public pursue around £200 million per year. He referred to extended hours and the SBPA's comments on that, and the Police Scotland position. He accepted there was an economic contribution to the city, but there had to be a balance between that and the impact on health.

Councillor Campbell referred to premises located on the ground floor of tenements and community council concerns about the impacts of amplified music, etc. Paul Togneri advised he understood those concerns, but one of the positive steps the Board took was in connection with the Music Is Audible group, amending its policy on amplified music in licensed premises. The SBPA encouraged good communications between premises and their neighbours and to be mindful of neighbouring residents. There was no place for irresponsible licence holders, failing in connection with the licensing objectives. Bad premises were bad for the industry as a whole. Where genuine complaints were made, he hoped these could be satisfactorily concluded. SBPA provided support to members to ensure they were compliant with legislation, in the same way as the SGF. With regard to terminal hours, Edinburgh has had a pragmatic and well-suited policy for the city with 1am for pubs and 3am for nightclubs. The Edinburgh policy on operating hours has attracted investment by SBPA

members. If there was an issue with particular problem premises, their operating hours could be looked at. Every application should be considered on its merits.

Councillor Laidlaw suggested that Edinburgh has very generous hours. The Board had to have regard to residential areas in the city. He asked whether the SBPA would want the Board to look at particular parts of its policy. Paul Togneri asked the Board to consider its policy on earlier opening hours and on outdoor drinking. For the former, pubs were looking to provide breakfasts, brunches, etc. and wanted to have the potential to change licensed hours.

Councillor Mowat expressed concerns about this, since pubs were already looking to change hours to have families coming in later. The principle of families in pubs where appropriate was fine, but it seemed the Board was in the position of being expected to give more and more hours. There was a possible tension with earlier opening of premises – while it was possible to consider doing so, could premises not do so without selling alcohol? Paul Togneri advised this was possible in some circumstances, but some premises wanted to be able to, for example, offer Bucks Fizz with breakfasts. It was increasingly difficult for premises to be able to operate profitably.

Councillor Work referred to the availability of stronger beers and wondered whether extra training should be provided to staff to address this. Paul Togneri confirmed all members received rigorous training. He suggested it would be interesting to see how MUP worked out and the impact it had. For the on-trade in general there was good training in place to ensure the consumption of alcohol in a controlled environment, with staff having a duty of care to those in premises. All members were encouraged to have good working relations with LSOs and police. There had been a huge shift of sales from on-sales to off-sales.

Jim Sherval and Elisabeth Oldcorn were in attendance for NHS Lothian. Jim Sherval advised that it seemed there had been something of a loss of control of the off-sales trade in Edinburgh. There had been an increase in the Edinburgh population, but not by as much as predicted. Meanwhile there had been a huge increase in provision of licensed premises. He felt that some of the areas of serious, special concern should have been declared as overprovision localities. There were concerns about provision levels in the city centre, Leith and Gorgie/Dalry and Fountainbridge. He suggested

IDZs were a reasonably acceptable way of setting boundaries for overprovision localities. He accepted that when considering the public health licensing objective it was difficult to link with specific premises. Overprovision was the more effective preventative measure for dealing with alcohol-related impacts. There was only currently a small area of overprovision. Alcohol as a substance was a major contributor to some of the challenges we currently have. Edinburgh as a whole was drinking much more than the rest of the country.

Councillor Day referred to the NHS Lothian representation and the reference to links between alcohol availability and health. Jim Sherval referred to the CRESH report. Alcohol-related deaths were higher in higher outlet density areas. There was a general relationship between the two, though he accepted there were some anomalies.

Councillor Day referred to the NHS Lothian comment about application details sometimes being too brief and was more information needed? Jim Sherval advised that more information about applications would help, to know what premises were for and he was sure that community councils would welcome that too. Councillor Day asked about MUP and the five year assessment of its effectiveness – should the Board await the outcome of that, or take action now? Jim Sherval advised MUP was not a magic bullet, being part of a complex issue. He didn't think the Board should just sit back. He hoped that it would help, but it wasn't possible to know for certain. There was some baseline information available about heavy drinkers and what they were actually drinking.

Councillor Day advised that Board members had all gone through training and knew the significance of the public health licensing objective. Maybe it was time the Board was bold and started making some different decisions on applications? Jim Sherval explained his comment about the public health licensing objective had been to highlight that it was difficult to link the objective to individual harms that might arise from premises which didn't even exist, for which applications were being made. Refusal of an application in an overprovision area was much more difficult to appeal against.

Councillor Campbell noted the terms of the EADP representation and the 21 areas identified in it and invited Jim Sherval to provide more comment on that. He confirmed that they had been chosen because of high health harms in these areas arising from alcohol. He advised that around 6 years

ago he had thought the entire city should be an overprovision locality. He confirmed the EADP report was a partnership report, looking at crime and health statistics to arrive at these areas.

Councillor Mowat noted that more data was required at local level and asked whether it was just not possible to obtain this in some areas? Jim Sherval advised alcohol-related hospital admissions data was something that could be obtained reasonably well. This was data which could be linked to a particular postcode. NHS was not so good at asking people who presented in hospital with alcohol-related injuries, what premises they were drinking in. Data gathering was reliant on clinicians “ticking the box” when preparing reports. Councillor Mowat asked about looking at hospital admissions data, where more deprived areas seem to have a correlation with alcohol-related admissions. Jim Sherval advised deprivation can have an impact. Income levels tended to be a marker of life course in general. He suggested however that even though the wealthier parts of the city are healthier, they still did not necessarily compare well with the rest of the UK.

Councillor Laidlaw noted the terms of the recent statistics. He suggested that one of the problems with overprovision was that it could be a blunt instrument – one of the problems is in drilling down where there might be specific wards with problems, but it was then necessary to try and understand the issues where they are. He thought the Board would benefit from more information from NHS Lothian. He referred to the example of an application for a new restaurant and the possible implications of an overprovision policy being in place. Whether the new restaurant would have adverse health impacts, seemed less clear. He noted there seemed to be an assumption that there were more problems with people consuming alcohol at home. Jim Sherval referred to off-sales and advised there had been an enormous increase in the past 20 years. He thought the Licensing system dealt fairly well with on-sales. He suggested it was better for the Board to have an overprovision policy in place, rather than carrying out individual overprovision assessments.

Councillor Campbell noted the statistical information used by the Glasgow Licensing Board for its overprovision assessment, including statistics available on incidents of alcohol-related disorder and health statistics and asked Jim Sherval whether he considered these provided a valid basis for making an assessment. He advised that he considered the statistics used together provided a robust basis. He suggested it was also possible to use local knowledge.

Chief Inspector Gillian Geany and Sergeant John Young were in attendance from Police Scotland. Gillian Geany referred to the police recommendations listed at the end of their representation. She highlighted occasional licences, noting that there had been 2568 granted in the year, 88% more than Aberdeen and 69% more than Dundee. There was a large volume of applications for licences for pop-up bars in Edinburgh. Some of these could stay in operation by means of occasionals for a long time. This caused a lot of administrative work, where it was often necessary to ask applicants to provide more detail about their applications. She referred to the possibility of the Board agreeing on local conditions to attach to licences, applicants could then agree these. It was otherwise inefficient to provide police responses to the same thing time and time again, and local conditions would help this. She referred to the problem of applications coming in well below the 28 day period for making an application, and suggested the Board should look at what it considered to be exceptional circumstances for shortening notice periods.

Councillor Laidlaw referred to applications for Extended Hours and asked for police comment on these. Gillian Geany advised a reduction in extended hours would be welcomed. She suggested perhaps the Board consider approving a list of specific events in its policy for which extended hours would be considered. Otherwise there was potential for a domino effect of premises applying for extended hours that other premises get. The policy referred to the possibility of operating up to 16 hours and in some cases up to 18 hours. She questioned why there was a need for more hours. She suggested premises should be able to operate events, etc. within existing licensed hours. She suggested it should be for premises to show a need for the extra hours being granted by the Board. She asked the Board to consider greater consistency in its decision-making.

Councillor Work advised the Board had been looking at extended hours in more detail and querying why late hours were needed for events which were taking place during the day. There were some late night events which could be justified, for example the Superbowl, and where there were ticketed events. Gillian Geany agreed it was for the Board to decide on these matters, but there were some occasions where applications were being made for things like holiday weekends, where there was no particular event taking place. With regard to the Superbowl, being on a Sunday night, there was a requirement to deploy a sergeant and eight officers. These officers were being taken into the city centre, from other areas in Edinburgh.

Councillor Mowat asked about police resourcing for the city centre for the weekend, noting that there would normally be an inspector, two sergeants and 30 officers on duty for the weekend. She considered those were significant numbers. The city paid for these, to some extent. She asked whether the police had a capacity to be able to deal with additional events. Gillian Geany advised that at night times, officers from outlying areas required to come in to the city centre during extra busy times, potentially leaving fewer officers available in outlying areas. Councillor Mowat asked, if the Board was granting more occasional licences for events, etc. would that potentially have the effect of reducing the service available to outlying areas and Gillian Geany confirmed that was the case.

Councillor Campbell noted that with regard to Scottish Government Guidance, Edinburgh Licensing hours were long and she asked whether these hours compounded problems in the city centre. Should the Edinburgh Board be pulling back its licensing hours? Gillian Geany advised that the longer hours compounding problems could be demonstrated by referring to the alcohol-related crime statistics. John Young referred to extended hours applications, advising the Edinburgh has more generous licensing hours than anywhere else in Scotland. He advised he had seen a trend of applications for extended hours being made for all sorts of sporting events, public holidays, and sometimes for longer than one day, such as over the Halloween weekend.

Gillian Geany referred to the Board's policy on a 2200 cut-off for outside drinking. She suggested this worked well. She suggested the same approach should be taken with occasional licences, where in some instances later hours were permitted. Regarding children and young persons' access, Police Scotland supported the use of site visits by the Board to assess suitability of premises. She suggested that a 2200 terminal hour for children's access going towards 2300, with 0100 for young persons' access, should be written into the policy.

The police were supportive of the use of toughened glass in premises in certain circumstances. With regard to overprovision, Gillian Geany advised that Police Scotland felt the Board should remove the special, serious concern areas from the Board's policy statement.

Councillor Mowat asked whether it would be easier for the policing of outside drinking areas if these were included within premises licence areas, rather than only subject to the Council's Tables and Chairs Policy. John Young advised that licensing these would require the applicants to demonstrate consideration of the licensing objectives. He suggested it would be better if the Board's policy was more specific on what the Board would expect of applicants.

Andrew Mitchell, Regulatory Services Manager was present from the Council's Place Directorate and referred to the police and health comments, and advised that Licensing Place was supportive of the view that applicants should provide more information in support of their applications. Applicants should ensure that their applications are submitted in good time. He referred to the use of occasional licences and advised there were examples of premises using hundreds of occasionals to operate, placing pressures on council staff as well as on the police. He encouraged the Board to emphasise the importance of statutory timelines for applications. He suggested that for the use of extended hours applications it would be beneficial if the Board policy contained better guidelines for these. With large numbers of applications for occasional licences being made, this took up a lot of council officer and police time and it would be beneficial if the Board would consider this in the policy, including potential for limiting numbers of applications.

With regard to the Board's policy on amplified music in premises following the Music is Audible presentation to the Board, and the Board's decision to change its policy, he advised that Licensing Place was still supportive of that change to policy. It had been anticipated around 30-40 premises would apply for the change of licensing condition. In fact it had become something that agents routinely asked for, for their clients. Around 166 premises had the new condition attached, where their operation was not relevant to live music. He suggested it might be useful for the Board to go back to the public on this and assess the effects of the change to policy.

Councillor Campbell noted some elements of the licensed trade considered that applications took too long to be processed. Andrew Mitchell referred to comparison with the situation in Glasgow, where applications could take longer. Edinburgh operated an informal rule of having last lodging dates for applications, where if they were received by a certain date they would be added to the list for consideration by the Board on a certain date. He suggested there were pressures on Council

officers arising from this, and the volume of liquor licensing applications had a distorting effect on other licensing service provision.

Councillor Campbell asked, with regard to excessive use of occasional licences, if Licensing Place had a number in mind. Andrew Mitchell suggested twelve might be a reasonable cap, but varying this depending on individual premises. There was a difference between occasionals being used for one off events, and ones being used for continuous periods. There were some commercial business where their premises were running continually on occasional licences.

John McNeill, Public Safety, advised that Planning Change of Use was required for situations where structures were erected for events, etc. where they were in place for more than 28 days in a calendar year. He referred also to the Building Standards legislation as having a relevance in this regard. Mrs Leck advised the Board that if limits were to be considered for the use of occasional licences, legal advice would be provided to the Board about that, and how that may be achieved having regard to the legislation. John McNeill referred to the Council's Public Spaces Protocol, going through the Transport and Environment Committee, where the Council would be looking for support from the Board regarding the use of public spaces and the licensing of these areas by means of occasional licences.

Councillor Mowat asked about the licensing of outdoor drinking areas and whether it was preferable for these to be within premises licence areas, or subject only to the Council's Tables and Chairs regime.

Tom Veitch, Licensing Standards Officers Team Leader advised there should be a match-up between the two. There have been occasions in the past where there has been a mismatch between licensed areas and the corresponding Tables and Chairs permit. Licence holders should be required to have both in place and have them matched up. Councillor Mowat asked if there was a way of making the process easier in the Council and Tom Veitch advised LSOs were consulted on Tables and Chairs permits and these were carefully checked to ensure that they matched up, so far as possible.

Catherine Scanlin, Licensing Manager pointed out that as licensing and Tables and Chairs permits were dealt with by two different departments in the Council, this caused some difficulties. She

advised applicants received a lot of support from the Licensing Team. She referred to the forthcoming Festivals period, which would be an extremely busy time for the Licensing Team. There were occasions when applicants might have been dealing with other parts of the Council for months in connection with organising their events or premises, but then coming to Licensing at the last minute and expecting their licence application to be dealt with in a very short space of time.

John McNeil advised that it didn't tend to be the small application volume, big events that caused problems, but instead the big application volume, small event premises that did. Big events tended to be better planned out and organised.

Andrew Mitchell advised that Licensing Place was under pressure from applicants to push their applications through. It would be beneficial for the Board to put into its policy statement that it was the responsibility of applicants to get their applications in timeously. He was aware that there were agents who would ask about the signing rota for applications to find out which Board member was on duty for a particular week, which he felt was not helpful.

**Edinburgh Licensing Board - consultation on Statement of Licensing Policy
Response from Edinburgh Green Group of Councillors**

31 October 2017

1. Introduction

- 1.1. The Green Group of Councillors welcome the opportunity to comment on this initial informal consultation on the Edinburgh Licensing Board's statement of policy, and will also aim to provide responses to later stages in the consultation process.
- 1.2. The Green Group of Councillors has had a presence on Edinburgh Licensing Board since 2012, and we take our responsibilities as a member of that board extremely seriously. In addition, the Scottish Green Party agreed a new policy on Action on Alcohol in 2016, which is attached as an appendix to this response.

2. Process

- 2.1. We support the proposal of the Board holding evidence sessions on specific policy topics in 2018, before consulting on the terms of a new draft policy in mid-2018. Allowing key stakeholders to give oral evidence on issues of policy will allow better scrutiny of specific proposals, and is likely to lead to a more robust policy.
- 2.2. In addition, the board should work to become more accessible to the Edinburgh public. Some measures that would help in this regard include:
 - 2.2.1. ensuring that the actual content of liquor licence applications is published online (with personal information redacted) to allow residents and community councils to comment;
 - 2.2.2. introducing the webcasting of Board meetings;
 - 2.2.3. accurate recording of the names of Board members voting for and against each proposal in the minutes of meetings, and
 - 2.2.4. working to improve the neighbour notification process, including facilitating online notifications.

3. Overprovision

- 3.1. The Board should strengthen its policy on overprovision, and that policy should be explicitly evidence-based. Specifically we would support:
 - 3.1.1. Requesting licensed premises to provide the board with data on the volume of alcohol sold. While the board does not currently have the power to require this information, it would be a good first step to ask for it. This could then be provided to key stakeholders such as NHS Lothian, the police and the licensing forum.;
 - 3.1.2. Reports prepared on outlet density for the board have traditionally included a map with a radius of XXXXX around the application site. This is not the same distance used in standard statistical analysis by NHS Lothian and others, and the board should standardise their approach to the intermediate zone data used by NHS Lothian and others. The discrepancy between the two approaches could be used in an appeal against refusal on the grounds of overprovision;
 - 3.1.3. The board should take advice from the Edinburgh Licensing Forum and the Edinburgh Drug and Alcohol Forum on which areas should be designated as overprovided for, and in these areas there should be a presumption against new licences for off-sales, or for vertical drinking establishments;
 - 3.1.4. The board should also consider listing some areas as chronically overprovided for, and in these areas there should be a presumption against new licences for off-sales or

VDEs, and in addition there should be a presumption against the renewal of licences of certain types that are likely to contribute to overprovision;

- 3.1.5. The board should consider developing a city-wide policy, in collaboration with the Edinburgh Alcohol and Drug Partnership, on reducing the availability of alcohol, in order to reduce the harm caused by the over-consumption of alcohol;
- 3.1.6. The board should also consult on reducing the maximum number of hours a licenced premises can remain open from 16 hours out of any 24, as at present, to 14 hours, which is the recommendation of Alcohol Focus Scotland and others;
- 3.1.7. The board should consider listing the categories of 'licensed premises of a particular description (under section 7 of the Act) which they consider to contribute to overprovision. We would suggest that off-sales (including supermarkets, but excluding specialist shops such as delicatessens) and vertical drinking establishments should be included in this category;
- 3.1.8. The board should move into line with other Licencing Boards across Scotland and receive display information in metres squared;

4. Protecting children from harm

- 4.1. The board should have a policy of requiring a site visit for all premises that are requesting children's access for the first time, in order to determine the suitability of the premises for children.
- 4.2. The board should set a policy that the normal terminal hour for children in licenced establishments is 8pm. For restaurants and food led establishments this may be extended to 11pm where they are accompanied by an adult and consuming a meal. For young people, the normal terminal hour should be 1am when accompanied by an adult and consuming a meal;
- 4.3. The board should ensure that policy hours for children are set as times, rather than until terminal hour, to ensure that for occasional licenses and seasonal variations, the access for children remains constant unless an except is granted;

5. Duty to trade

- 5.1. The board should require licenced premises that have not been trading for longer than six months to require a fresh license application to be made;

6. Delegated powers / consistency of approach

- 6.1. The board should take steps to try to develop a more consistent approach to the consideration of applications dealt with on a delegated basis. This may be through the development of more detailed policy or guidelines regarding the consideration of occasional licences and extended hours applications.
- 6.2. The policy should reflect that occasional licenses for consecutive periods of 14 days should not be granted en bloc, but rather should be determined one by one, to allow the police to object to the grant of any subsequent license should a problem arise in the initial 14-day period.
- 6.3. Extended hours applications should not normally be granted if they would mean that the premises were open for more hours in one day than is determined in policy. A premises could, should they so wish, delay their opening time in order to ensure that the total number of hours they were open in any one day remained within policy.

7. Antisocial behaviour

- 7.1. In relation to smoking and nuisance, we suggest that the board adopt a policy that where licenses premises are the subject of numerous complaints from neighbours in this regard, and a premises license review application is sought, the board will consider imposing an

earlier terminal hour. We understand this sometimes happens, but writing this into the board's statement of policy may help to underline the unacceptability of licensed premises causing excessive noise and antisocial behaviour.

We trust you are able to take these comments into account. For further information please contact:

Melanie Main and Steve Burgess
Co-conveners, Green Group of Councillors on Edinburgh Council

Appendix one – Scottish Green Party policy on alcohol

7.2.14 Action on Alcohol

7.2.14.1 The Scottish Green Party recognises the serious impact of the overconsumption of alcohol on public health; crime; community safety and our economy and its disproportionate effect on the most disadvantaged areas. We recognise the need to rebalance Scotland's relationship with alcohol;

7.2.14.2 Our rebalancing of this relationship and our approach to alcohol policy will be explicitly evidence-based, with a focus on the approaches that have most potential to prevent and reduce harm to individuals and communities. To this end, we will focus on addressing the three issues which the World Health Organisation regards as the most effective factors in reducing alcohol-related harm, namely: price, availability and marketing;

7.2.14.3 We support the introduction of a minimum price per unit of alcohol. That price should be set at a level that takes into account the health and social costs of alcohol-related harm and the impact that price has on alcohol consumption. Initially we support a minimum price of at least 50p per unit, but this should be regularly reviewed in light of evidence of its effectiveness in reducing consumption and harm, and to ensure alcohol does not become more affordable over time;

7.2.14.4 We support the introduction of a social responsibility levy, set in relation to the additional revenue raised by a minimum unit price, so that alcohol producers and retailers contribute to the wider cost of their activities on the community;

7.2.14.5 We believe that alcohol duties should be reviewed as part of a pan-EU agreement linking alcohol duty to the strength of each product. The review should examine, inter alia, whether duties, particularly on high strength cider and spirits, are too low and whether the evidence supports the reintroduction of the duty escalator, which raised alcohol duties above inflation each year.

7.2.14.6 The licensing system has a key role in reducing the availability of alcohol. Licensing Boards will be required to make decisions based on the evidence of availability and alcohol-related harm to health, community safety and crime. We will also develop a national policy on reducing the

availability of alcohol.

7.2.14.7 We will make the licensing system more transparent, accessible and accountable to local people, with Community Councils having statutory rights of consultation. As part of that we will require licensed premises to provide details of the quantity of alcohol sold;

7.2.14.8 We believe alcohol marketing has no place in childhood. All children should play, learn and socialise in places that are healthy and safe, protected from exposure to alcohol advertising and sponsorship;

7.2.14.9 We will establish an independent body to regulate alcohol marketing;

7.2.14.10 We support the removal of alcohol advertising from cinema screenings where non-18 certificate films are showing, and before 9pm on television;

7.2.14.11 We support the removal of alcohol advertising from public places including billboards and public transport;

7.2.14.12 We support the phased removal of alcohol sponsorship of sports, music and artistic events;

*7.2.14.13 We support mandatory unit, calorie and ingredient labeling and prominent health warnings on all alcohol products. Pg. 77 of 93 DRAFT Version 0.5b
Compiled by James Thornbury for the Standing Orders Committee*

7.2.14.14 We recognise the valuable role that pubs can play in the life of a community. We believe that this is particularly important in the case of smaller communities, and that it is best provided for by independent pubs rather than those controlled by large chains. We recognise the positive benefit to a community which well run pubs and other licensed venues can provide.

7.2.14.15 We support the right of communities to be consulted before existing pubs are subject to a change of use, closure or demolition. We would seek to ensure that communities are able to exercise the option to take over a pub and operate it as a community owned enterprise rather than see it closed.

7.2.14.16 We support reform for tied pubs to ensure that licensees have a fair deal from suppliers.

7.2.14.17 We believe that the dominance of a small number of multinationals over the alcohol industry, both in production and in sales, has exacerbated the harmful effects of alcohol. We celebrate the resurgence of small independent brewers in Scotland. We wish to encourage businesses that are based on quality rather than volume sales.

Mr Nick Fraser
Clerk to the Licensing Board
City of Edinburgh Council
Waverley Court
4 East Market Street
Edinburgh EH8 8BG

GRASS (Grassmarket Residents Association)

Dear Mr Fraser

We are writing as the community group representing the Grassmarket area of the city centre to comment on our experience of the operation of the 2013 alcohol licensing policy locally.

After years of campaigning including the publication of the 'Here Comes the Night' report describing the experience of local people of living within a late night economy, the Grassmarket community very much welcomed the Board's decision to include it as an area of over-provision in its 2013 statement of policy. Since then a number of new licensed premises have appeared. We note that the policy at present presumes against the grant of further licences although 'all applications continue to be considered on their merits especially if they either fill gaps in existing service provision or significantly enhance the quality of life for residents and visitors alike.' We find it difficult to understand how premises such as 88 Grassmarket which involve the loss of a retail outlet and are yet another example of standard tourist fare fulfil these conditions.

The situation will be exacerbated shortly with the development of two large hotels in King's Stables Road and in Victoria Street. It is our understanding that if planning permission is granted for a hotel' being given an alcohol licence is an almost foregone conclusion. Virgin Hotels, the prospective operators of the 225 bed hotel planned for India Buildings, are promising several, live music and bar venues as part of the complex.

This raises another issue which we and the Old Town Community Council have identified – the difficulty of identifying licensing applications in advance of a hearing. Unlike the planning portal which is excellent, there is no way of tracking applications other than spotting the notification form in windows etc which are often awkwardly placed for the passer-by to read.

In our experience operating the licensing system effectively is as much about enforcement as devising new policies. There has been an increase in pop-up bars and restaurants especially during the Festival. Some operators with external table licences increasingly encroach on public space even moving street furniture to allow room for more tables. There are regular applications for ever later catering licences by newsagents which appear to be granted as a matter of course. All of this affects local residents adversely especially at night.

At a time when there are signs that the Council is starting to place more weight on residential amenity, a review of the licensing system is more than welcome and GRASS should like to be consulted formally about the proposals coming out of the review.

Yours sincerely

Elsbeth M Wills

On behalf of GRASS