

AGENDA ITEM NO 4

REPORT NO LB 37/23

SPECIAL ANGUS LICENSING BOARD – 20 JUNE 2023

STATEMENT OF LICENSING BOARD POLICY

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to provide the Board with information on the outcome of the initial consultation on the review of the Board's Statement of Licensing Policy and determine further procedure.

1. RECOMMENDATIONS

It is recommended that the Board: -

- (i) Considers the responses and comments received in relation to the initial consultation on the Board's Statement of Policy, Overprovision Assessment and Localities review including comments received from the Angus Local Licensing Forum (**Appendix 1**);
- (ii) Considers the information received from the Chief Constable, Police Scotland (**Appendix 2**);
- (iii) Considers the information about the licensed premises in the Board's area received from Angus Council (**Appendix 3**);
- (iv) Notes that information is awaited from NHS Tayside;
- (v) Considers whether further information is required to enable the localities for assessment of overprovision to be confirmed; and if not confirms the localities;
- (vi) Considers whether further information is required to enable the draft Overprovision Assessment to be readied for formal consultation; and if not determines the draft Overprovision Assessment for consultation;
- (vii) Considers whether further information is required to enable the draft Statement of Policy to be readied for formal consultation; and if not determines the draft Statement of Policy for consultation;
- (viii) Identifies any persons in addition to those already listed in **Appendix 1** who should be formally consulted upon regarding the Overprovision Assessment and/or Statement of Policy; and
- (ix) Where the draft/s Statement of Policy and/or Overprovision assessment are determined, directs the Clerk to formally consult upon it/them; simultaneously where both are determined as ready for consultation.

2. CURRENT POSITION

- 2.1 When the Board met on 19 January 2023 it approved the process for carrying out the Statement of Policy review and identifying any particular aspect of the Board's current Statement of Licensing Policy that it would, in particular, wish to be considered as part of the review (in addition to the Ask Angela Initiative which had already been identified).
- 2.2 The Clerk consequently received suggestions. The Statement of Policy was also discussed at the joint meeting of the Angus Local Licensing Forum and the Board convened on 21 February 2023 where a number of suggestions were put forward. Responses were also

received following the initial consultation on the Statement of Licensing Policy review (including localities and overprovision) which was also published on Have Your Say. One response was also received outwith the stated time limit. The responses are listed at **Appendix 1**.

3. LOCALITIES

- 3.1 The Licensing (Scotland) Act 2005 (“the Act”) provides that each Statement of Licensing Policy must include a statement as to the extent to which the Board considers there to be overprovision of licensed premises, or premises or a particular description in any locality within the Board’s area.
- 3.2 The Board is required to determine localities in order to assess overprovision and this should factor information of alcohol harm or potential alcohol harm. The choice of locality or localities must be rational, capable of justification and be consistent across the Licensing Board area.
- 3.3 The Board has consistently determined that the localities identified for this purpose are the burghs of Arbroath, Brechin, Carnoustie, Forfar, Kirriemuir, Monifieth and Montrose. The Board is therefore invited to consider the information provided within the attached appendices 1 - 4 and decide whether additional information is required to enable them to confirm their localities and if not, to confirm their localities.

4. OVERPROVISION

- 4.1 In terms of section 7 of the Act the Board is required to assess overprovision. The current licensing policy (which expires on 4 November 2023) includes a Statement to the effect that, based on the evidence, none of the locality burghs of Arbroath, Brechin, Carnoustie, Forfar, Kirriemuir, Monifieth and Montrose had reached or were close to reaching overprovision.
- 4.2 The Statutory Guidance in relation to the Licensing (Scotland) Act 2025 (January 2023) sets out that the requirement to produce an overprovision statement within the Board’s Statement of Policy is to enable Licensing Boards to take account of changes since the publication of their previous statement/supplementary statement of licensing policy. Since the Board’s previous Statement and overprovision assessment there have been changes such as those resulting from the pandemic and the introduction of minimum pricing legislation in May 2018. The Statutory Guidance also reflects: -

“It is much more likely that individuals purchase alcohol in off sales premises to consume at home rather than purchase and drink in on sales premises”. According to Monitoring and Evaluating Scotland’s Alcohol Strategy (MESAS) monitoring report 2019, of the total alcohol sold in Scotland, 73% is now sold in the off sales trade. Drinking at home means less control over how much is consumed and some harms are harder to detect e.g., domestic violence.

- 4.3 The statutory guidance further explains that taking account of such changes in the Overprovision assessment is to improve public and trade confidence in the licensing system by setting out clearly the grounds on which overprovision should be determined.
 - recognise 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.
 - provide 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 a Licensing Board has declared to have reached overprovision.
- 4.4 Considering whether there is overprovision in any locality, the Board must have regard to the number and capacity of licensed premises in the locality and may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality. Premises subject to occasional licences and club premises in terms of section

125 of the Act are excluded from overprovision assessment. Lists of on-sales premises, off-sale premises (excluding section 125 club premises) and their respective capacities are provided at **Appendix 3**.

- 4.5 The Statutory Guidance provides at paragraph 5.6 “An overprovision assessment must be evidenced base. It is a matter for each Licensing Board to determine what their overprovision policy will be and how the evidence it has ingathered will be interpreted and weighted. When undertaking this work Licensing Boards should be mindful of the five licensing objectives: 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 should ensure the approach to ingathering, weighing and interpreting evidence, and consultation responses is robust, all of the relevant evidence before them is taken into account, and the rationale for regarding/disregarding that evidence in developing Licensing Policy Statements (LPS) is clearly set out.” Information is available at Appendix 2 from Police Scotland. Information is awaited from NHS Scotland.
- 4.6 In determining whether or not overprovision exists the Board must consult the chief constable - the relevant health board - such persons as appear to the 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.
- 4.7 Representatives of the Chief Constable and NHS Tayside have been invited to attend and are proposed to be among those listed as consultees with respect to the draft Overprovision Statement once it is ready for consultation. The Board is invited to consider whether additional parties should be consulted upon, in advance of finalising the draft Overprovision statement for consultation.
- 4.8 The aforesaid Statutory Guidance encourages Licensing Boards to consult widely within their respective areas on both their statement of licensing policy and on their overprovision assessment. Information has been provided to the Board to assist in the review process. The Board is therefore invited to consider the information provided (**Appendices 1 to 4**) and decide whether additional information is required to enable the draft overprovision policy to be readied for formal consultation to meet this objective. It is expected that further information, such as in relation to health and inequalities, will become available following formal consultation to assist the Board in crystallising its final overprovision assessment and statement of policy.

5. STATEMENT OF POLICY

- 5.1 In its licensing policy statement a Board may not indicate an intention to introduce (by means of the imposition of conditions on the granting of premises licences or the variation of conditions in premises licences) a prohibition on the sale of alcohol for consumption off licensed premises to persons aged 18 or over but under 21 which applies to:-
- (a) all premises in its area which are licensed to sell alcohol for consumption off the premises; or
 - (b) premises licensed as mentioned in paragraph (a): -
 - (i) in a particular part of its area, or
 - (ii) of a particular description.
- 5.2 An initial draft Statement of Policy is provided at **Appendix 4**. Tracks changes have been made to the previous Statement of Policy. The tracking reflects some suggestions and comments received as part of the initial consultation. It also reflects some changes to the Statutory Guidance since the Board’s last Statement of Policy was prepared. The Board is invited to consider the draft and identify the changes the Board wishes to be made to it in order to ready the draft for formal consultation.

5.3 After formal consultation a further report will be brought before the Board to enable the Board to consider responses received to the consultation and thereafter determine its Statement of Policy and Overprovision Assessment so that these may be published in advance of coming into effect on 5 November 2023 or such earlier date as the Board may determine.

6. FINANCIAL IMPLICATIONS

6.1 There are no significant financial implications arising from this Report. Any costs incurred will be met from existing revenue budgets

7. HUMAN RIGHTS IMPLICATIONS

7.1 There are no human rights implications arising directly from this report.

REPORT AUTHOR: Jennifer Burns, Solicitor
E-MAIL LEGDEM@angus.gov.uk