

2. Statements of Licensing Policy

Background

9. Section 6 of the Act requires a Licensing Board to prepare and publish a statement of its licensing policy every three years. Licensing policies must be published before the Board carries out any function in respect of individual applications made under the terms of the Act. During each three year period, the policy must be kept under review and the Licensing Board may make to it such revisions as it considers appropriate. For example, such revisions may be made in response to feedback from the Local Licensing Forum.

10. Before determining its policy for any three year period, the Licensing Board must consult the persons listed in section 6(3) of the Act. These are:

- the Local Licensing Forum for the 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 the Act - that is: holders of premises licences and personal licences; the chief constable for the police area in which the Forum's area is situated; persons having functions relating to health, education or social work; young people; and persons resident within the Forum's area, then the board must consult such person or persons as appear to the Boards to be representative of those interests of which the membership is not representative, and
- such other persons as the Board thinks appropriate.

11. Boards should have regard to the views of all those listed and the views should be given appropriate weight when the policy is determined. In some areas, it may be difficult to identify persons or bodies representative of all parts of the industry affected by the provisions of the Act. In such circumstances Licensing Boards must make reasonable efforts to identify and engage with the persons or bodies concerned. Licensing Boards should note that the terms of the Act do not prevent them consulting other bodies or persons before determining their policies. Indeed, it would be good practice to consult bodies with a particular role in licensing, for example, Building Standards Officers when considering overprovision of licensed premises. Boards should keep in mind Best Value when considering the resource implications of consulting large groups of people.

Licensing Objectives

12. All statements of licensing policy should seek to promote the 5 licensing objectives set out in the Act. In setting its policy, a Licensing Board must have regard to this Guidance and give appropriate weight to the views of those consulted.

13. Licensing Boards' statements of policy may set out a general approach to the making of licensing decisions, but must not ignore, or be inconsistent with, provisions in the Act.

14. Similarly, 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.

15. Statements of policies should make clear 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.

16. A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are no longer on the licensed premises and beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned.

Overprovision of licensed premises

17. Guidance for Boards on the issue of overprovision of licensed premises is provided at section 3 of this guidance.

18. Boards should note that the duty under section 7 to assess overprovision will not be brought into force until the main provisions of the Act are brought into force in 2009. This approach recognises that the task of assessing the capacity of licensed premises in Boards' areas, as required by section 7, is significant. The decision not to bring this section into force until 2009 is a pragmatic approach which gives Boards time to assess the number and capacity of licensed premises. Ultimately this will enable a more accurate assessment of overprovision to be made. By autumn 2009 the transition period will have been completed and all the new licence applications will have been processed. At that point Boards will have an accurate baseline of information, including capacity of premises, which can be used to inform their overprovision policy.

Licensing hours

19. Each application will be considered on its individual merits, but the statement of licensing policy should provide information on the Board's policy on licensing hours. Statements of policy should recognise that licensing hours are important not only to individual licensed premises but can have a wider impact for an area. For example, considerations 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 however unnecessarily inhibit the development of thriving and safe evening and night-time local economies which are important for investment, employment, and tourism.

20. Licensing Boards must observe the requirement set out in section 64 of the Act which provides an assumption against routine 24 hour opening of licensed premises. Any application received by a Licensing Board from a premises wishing to open for 24 hours must only be granted in limited exceptional circumstances.

21. Ministers are of the view that Licensing Boards should consider "exceptional circumstances" to cover special events such as one-off local or national festivals. It is unlikely that "exceptional circumstances" would be constituted in the case of premises where there were routine requests to sell alcohol for 24 hours. In considering applications for licensed hours Boards may wish to consider applications

for up to 14 hours as being reasonable but local circumstances and views of Local Licensing Forums should always be considered. Any application for licensed hours for more than 14 hours should require further consideration to the effect of granting extra operating hours.

22. Licensed hours will be those agreed following the Board's consideration of the, operating plan and any national and local licence conditions applied. Particular attention should be drawn to those premises wishing to open after 1.00am since mandatory licence conditions will apply. Boards should also be reminded that when considering licensed hours for premises, anyone can make representations to the Board. As such they may request a review of the licence. It is important that in developing its policy on licensed hours the Board must take account of the views of the Local Licensing Forum so that any policy published has the backing and confidence of the local community. Further to this, following a review, reducing licensed hours can be one of the sanctions applicable against a license holder.

Relationship with other strategies

23. Ministers recommend that statements of policy should provide clear indications of how the Licensing Boards will take into account other matters relating to alcohol, for example: local crime prevention; community safety strategies; health, particularly in relation to the Scottish Executive Action Plan on Alcohol Problems; planning; transport; tourism; race equality schemes; cultural strategies; and any other plans introduced for the management of town centres and the night-time economy when developing policy statements. Some of these issues may not directly relate to the promotion of the five licensing objectives, but may indirectly impact upon them.

Transport

24. A statement should 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). It is recognised that this may not be feature in the first policy statements prepared during transition, but Boards may wish to include such a statement in subsequent reviews of their policy statements. 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. Boards may wish to be aware that some trade associations (for example, the British Entertainment and Dance Association) have developed comprehensive dispersal policies which offer practical guidance and advice.

Tourism, planning and building control

25. Policy statements should also indicate:

- that arrangements have been made for Licensing Boards to receive, when appropriate, reports on the needs of the local tourist economy for the area to ensure that these are reflected in their considerations;
- that planning, building control and licensing regimes will be properly managed to avoid duplication and inefficiency. An application for a premises licence

must be from a business with planning consent for the property concerned. 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 control ⁴ where appropriate. Proper liaison and communications should be assured between Licensing Boards and the planning committee on the situation of licensed premises in the area. For example, in relation to new premises or a significant extension of existing premises. This might include the general impact of alcohol related crime and disorder.

Duplication

26. Statements of licensing policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation governing health and safety at work and fire safety will place a range of duties on the self-employed, employers and operators of venues. These may be in respect of employees and customers on the premises. Similarly, many aspects of fire safety will be covered by existing and future legislation and should not be duplicated through the licensing regime.

Discretionary conditions

27. Boards have the discretion to apply licence conditions, but must recognise how these relate to the mandatory licence conditions set out in regulations, orders, or any other instruments made under the Act.

Content of policy statements

28. Policy Statements should provide local communities with a clear indication of the Licensing Board's policy and must be consistent with the licensing objectives set out in the Act. In particular the policy statement should include: -

- A clear indication of the Board's policy on the granting of licensed hours generally and where different policies may apply in different localities according to local circumstances;
- A statement of their policy on overprovision of licensed premises or particular types of premises (as required by section 7 of the Act once that is brought into force) and which localities (if appropriate) have (1) been determined to be overprovided for by the Board, or (2) are approaching overprovision;
- A general statement on how many Licensing Standards Officers the authority intends to employ, their role and remit, and how they can be contacted; and
- A statement of the agreed procedures the Board has developed for handling applications, objections, representations, delegation of functions and review hearings etc. for premises and personal licences.