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**REPORT TO: MORAY LICENSING BOARD 6 SEPTEMBER 2023**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF STATEMENT OF POLICY**

**BY: CLERK TO THE BOARD**

**1. REASON FOR REPORT**

- 1.1 To advise the Board with regard to the statutory obligation to develop, consult on and publish a policy statement setting out the principles they propose to apply to the exercise of their functions under the Licensing (Scotland) Act 2005.
- 1.2 Every Licensing Board must, before the beginning of each relevant period, publish a statement of their policy.
- 1.3 The current period started on the 30 November 2018 and is due to expire on the 29 November 2023. A revised policy statement must be in place and publicised by then.

**2. RECOMMENDATION**

**2.1 It is recommended that the Board:-**

**(i) Note the statutory obligation to develop, consult upon and publish a statement of licensing policy and note that a revised policy must be in place by 29 November 2023;**

**(ii) Note the progress to date in developing a draft revised policy;**

**(iii) Note the terms of the draft revised policy as reviewed and developed by the Board following full research and informal consultation produced at Appendix 1;**

**(iv) Note the draft policy has been the subject of formal consultation for the period of 23 June 2023 to 14 August 2023 and review the responses to that consultation at Appendix 2;**

**(v) Make any changes to the draft policy that the Board deems fit following receipt of the consultation responses; and**

**(vi) Approve a final policy statement for publication.**

### **3. BACKGROUND**

- 3.1 The Licensing (Scotland) Act 2005 (“the Act”) requires the Board to publish a Statement of Policy as to how it proposes to exercise its powers under the Act.
- 3.2 The Statement of Policy must be revised in line with the 5 year cycle of local government elections. A revised statement must be in place and publicised within 18 months of each local government election period. The last revised statement was published in November 2018 and a new revised statement is due to be published before the 29 November 2023. The Board may also review the policy at any time within the 5 year period.
- 3.3 The Board is required to consult certain persons/bodies as part of the process of preparing or revising the policy statement. Those 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, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative; and
  - such other persons as the Board thinks appropriate.
- 3.4 Unfortunately despite the best efforts of the licensing service it has not yet been possible to re-establish a Local Licensing Forum. Efforts will continue and in the meantime the Board must rely on the public consultation as well as individual responses from partner services to represent the view of the wider public, normally represented by the Forum.
- 3.5 Informal Consultation and Drafting

In order to inform the policy drafting a large volume of data from numerous sources has been collected and analysed as follows:

- 3.5.1 Research and Information Officer Christopher Dewhurst has analysed data from a great many sources including: the Police; NHS; Moray Alcohol and Drug Partnership; Census; SALSUS Scottish Schools Adolescent Substance use Survey; and other online sources. The resultant report went into some detail to inform and support policy matters, in particular an overprovision assessment. A copy of the report is reproduced within the overprovision assessment.
- 3.5.2 A wide ranging community engagement exercise was carried out through an online survey. The survey was established to ask questions

relating to policy and was distributed through a QR code link to a wide audience across Moray. Assistance was sought from the Council's Community Support Service. The response results were again analysed by Research & Information Officer Suzanne Wilson. The results were reviewed by the Board's Policy Sub Group and taken into account in developing the draft policy for formal consultation.

3.6 The Board's Policy Sub Group met to discuss revision of the policy on 22 May 2023. The key areas for discussion were:

3.6.1 Overprovision. As part of the statement of policy the Board has a duty to publish a determination as to whether it considers that there is an overprovision of licensed premises in its area. Pursuant to that duty the assessment of overprovision has been updated and this is one of the most significant areas within the policy document. The Board's Sub Group concluded from the report that there was no evidence to support a finding of overprovision within Moray.

3.6.2 Children in licensed premises. The public opinion survey asked about children in licensed premises and the majority of respondents who gave an answer indicated approval for current policies.

3.6.3 Hours in general. The Board's Sub Group did not identify any areas for change within the current policy. The public opinion survey asked about licensing hours. The majority of respondents who gave an answer indicated that licensing hours are acceptable as they are, indicating that no change in policy is required. The police had made a suggestion regarding setting a terminal hour of 02:00 for new licence applications to accord with police shifts and resources. The Board's Sub Group noted that it may affect very few applications and commented that rather than making a general policy in this regard it would be appropriate to consider individual applications on their merits.

3.6.4 Social responsibility. The police had made a suggestion for continued emphasis on social responsibility related condition(s) which the Board Sub Group agreed with and resolved to include within the policy.

3.6.5 The Board Sub Group maintained the general position that each application should be judged on its own merits and policy matters should assist and guide in that process rather than policy dictating decision making.

3.6.6 Other areas of guidance within the overall policy have also been updated including the police CCTV guidance and the Board's Scheme of Delegation.

3.7 Following on from the above, the Statement of Policy was revised and the Board considered the revised draft during the meeting of 21 June 2023. Agreeing with the conclusions of the Board's Sub Group the Board agreed

the revised Statement of Policy as drafted should proceed to formal consultation.

- 3.8 It should be noted the Scottish Government has also recently produced updated guidance to Licensing Boards under s.142 of the Licensing (Scotland) Act 2005. The guidance has previously been circulated to members and the Board is under a duty to take the guidance into account when formulating a Statement of Policy. Where the Board chooses to not follow statutory guidance for any reason the Board is obliged to notify the Scottish Government. It is considered that the draft policy complies with guidance except in so far as the number of licensing hours considered reasonable in any 24 hour period. The Board's policy has been 16 hours (instead of 15) since the first policy was created so does not require notification now.

#### **4. FORMAL CONSULTATION**

- 4.1 The draft revised Statement of Policy was subjected to a formal consultation period of approximately 7 weeks from the 23 June 2023 to 14 August 2023. Consultation with as wide an audience as possible took place by circulating a relevant link in emails to known contacts and in social media. Assistance was sought from the Council's Community Engagement Service. Paper copies of the draft revised policy statement were available on request and located at certain Council premises for inspection.
- 4.2 The results of the formal consultation are produced at **Appendix 2**. The Board is requested to consider the same and make any final adjustments to the draft revised Statement of Policy as the Board considers necessary or appropriate before proceeding to final approval.
- 4.3 After consideration of the consultation responses received no further changes have been made to the draft Statement of Policy by Licensing Officers. In light of this and the low volume of responses, a further meeting of the Board's Sub Group scheduled in the timetable for production of the policy approved by the Board (per Minute of the Board Meeting held 8 February 2023) was not arranged.
- 4.4 Once approved, the final Statement of Policy will ultimately be published on both the Council's website and at certain Council premises for example, Access Points where the document may be inspected. The publication must be available for inspection by the public free of charge.

#### **5. SUMMARY OF IMPLICATIONS**

- (a) **Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Local Outcomes Improvement Plan (LOIP)) in relation to changing our relationship with alcohol where people are healthier and experience fewer harms as a result of alcohol use, a growing, diverse and sustainable economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

**(b) Policy and Legal**

Legal implications are detailed in the report.

**(c) Financial Implications**

None.

**(d) Risk Implications**

None.

**(e) Staffing Implications**

Consultation and preparation of revised documents has involved a considerable amount of staff time across several services however it is anticipated that no additional resources are required.

**(f) Property**

None.

**(g) Equalities/Socio Economic Impact**

As part of the ongoing consultation process this report and the draft policy will be referred to the Council's Equal Opportunities Officer for comment. Previous policies have been assessed for equalities impact and given that there has not been any major changes to policy matters there is not a need for a new assessment simply a review of existing.

**(h) Climate Change and Biodiversity Impacts**

None.

**(i) Consultations**

Extensive consultation has taken place before the final policy is presented to the Board for approval.

**6. CONCLUSION**

- 6.1 It is proposed that the Board note the requirement to develop, consult upon and publish a Statement of Policy as to how it will exercise its functions under the Licensing (Scotland) Act 2005, note the results of the formal consultation, amend the policy as the Board deems necessary or appropriate and instruct the Clerk to proceed to publish the final approved policy.**

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board  
Background Papers: There are no background papers.  
Ref: SAH