

LICENSING BOARD

REPORT NUMBER CG/17/079
DATE 9 June 2017
REPORT TITLE Interim Off-sales Overprovision Policy
CLERK TO THE LICENSING BOARD Fraser Bell
REPORT AUTHOR Sandy Munro

1. PURPOSE OF REPORT:-

1.1 To determine the extent of the locality or localities in respect of the interim overprovision policy for off-sales premises

2. RECOMMENDATION(S)

2.1. That the Board

- (1) identify the extent of the locality or localities;
- (2) instructs the Clerk to undertake a consultation exercise on whether or not there is overprovision of off-sales premises within the locality or localities; and
- (3) instructs the Clerk to report back to the Board with the results of the consultation exercise on 10 October 2017 Licensing Board Hearing.

3. BACKGROUND

3.1 Under the Licensing (Scotland) Act 2005 (“the 2005 Act”) Licensing Boards have a duty to assess if there is an overprovision of licensed premises within the Board’s jurisdiction. In particular, the assessment, which will form part of the Board’s Statement of Licensing Policy, must 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.

Members' clubs are discounted for the purpose of this overprovision

assessment, as are premises which are the subject of an occasional licence. In formulating the Statement the Board must first determine the localities (if any) within its area which might be overprovided for, and (a) have regard to the number and capacity of licensed premises in that locality, and (b) consult.

4. GUIDANCE

4.1. The Scottish Government has provided guidance to assist Licensing Boards in formulating their assessments. The Board is

- required to take a pro-active position on overprovision and identify those localities in which it would propose not to grant new licences or licences for premises of a particular description;
- allowed to take account of the "particular description" of premises (that is to say, their styles of operation) when assessing overprovision; and;
- directed to have regard to the number **and** the capacity of licensed premises in localities.

4.2. This approach:

- allows Licensing Boards to take account of changing market trends, such as the development of so-called "hybrid" premises;
- 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 be overprovided for;
- 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.

4.3. The policy statement must promote the licensing objectives which are:

- preventing crime and disorder;
- securing public safety;
- preventing public nuisance;
- protecting and improving public health; and

- protecting children from harm.

5. DETERMINING LOCALITIES

5.1 The first step is to determine the localities in the city where there may or may not be overprovision.

It is not necessary to divide the whole of the city into separate localities. A locality could be a particular area, a city centre, a street, a collection of streets or a council ward. Selection of locality is a matter for the Board and will involve the use of its own local knowledge.

Previously the Board had identified the whole of the city with the exception of two defined areas as a single locality in respect of overprovision of off-sales premises. Following a legal challenge this was declared invalid by the Court and the off-sales part of the Board's overprovision policy was set aside. The whole of the Board's Policy Statement will be under review in the next 18 months but it is considered appropriate to put in place an interim overprovision policy in respect of off-sales premises in the meantime. Failure to do so would deprive the Board of robust evidence on which to base any decision to refuse an application on the grounds of overprovision.

The legislation has since been amended by the Air Weapons and Licensing (Scotland) Act 2015 and it is now permissible for a Board to determine the whole of its area as one locality should it wish to do so. Given the particular difficulty in establishing a causal link between the sale of alcohol from off-sale premises and the statistics available from partner organisations such as Police Scotland and the NHS when localities are broken down to smaller areas it is suggested that the Board consider identifying the whole of the Board area as a single locality for the purposes of off-sales overprovision. It is considered a reasonable assumption that the majority of the alcohol sold from off-sales premises within the Board's area will be consumed within the Board's area, something that cannot be said for smaller areas such as wards or neighborhoods. By identifying the whole of the Board's area as a single locality for off-sales overprovision it would mean that the statistics provided by the partner agencies would be of greater relevance and ensure that the final decision on overprovision is reached with the best available evidence.

6. CONSULTATION

6.1 The duty to consult is statutory and set out in Section 6(3)(b) of the Act. The Licensing Board is required to consult the Local Licensing Forum, those who appear to be representative of the interests of the holders of personal licences, persons having functions relating to health, education, education or social work, young people, and persons resident in the Forum's area.

10. REPORT AUTHOR DETAILS

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