

## HIGHLAND LICENSING FORUM AND HIGHLAND LICENSING BOARD

### ANNUAL JOINT MEETING – 4 DECEMBER 2018

#### AGENDA

1. Apologies for absence
2. Declarations of interest
3. Approval of minute of last joint meeting (**All**)
4. Matters arising from minute of last joint meeting (**All**)
5. Update on the content and Highland delivery of the new refresher training course (**Ramsay MacGhee and Gordon Clelland**)
6. Accredited qualifications for personal licence holders (**Ian Cox**)
7. Proof of age and due diligence issues associated with home deliveries of alcohol (**Dave Inglis**)
8. Response to consultation on proposed supplementary policy statement on extended hours during the festive period from 2019/20 (**Forum Members**)
9. AOB

#### Appendices:

- Item 3 Draft minute of joint meeting of 8 December 2017 (pp 1 - 4)
- Item 6 Accreditation document issued by Scottish Ministers 06.11.2018 and explanatory email from Scottish Government Licensing Unit (pp 5 – 6)
- Item 7 TLT article – “The rise of home deliveries and risks to premises licence holders (pp 7 – 8)
- Item 8 Consultation on proposed supplementary policy statement on extended hours during the festive period (9 – 12)

## **THE HIGHLAND LICENSING BOARD AND THE HIGHLAND LICENSING FORUM**

Minute of the joint meeting of the Highland Licensing Board and the Highland Licensing Forum held in Committee Room 3, Council Headquarters, Glenurquhart Road, Inverness, on Friday 8 December 2017 at 10.30am.

### **Members of the Highland Licensing Board present:**

Mr J Bruce  
Mr G Cruickshank  
Mr A Jarvie  
Ms E Knox  
Mr D Macpherson  
Mrs P Munro  
Mr C Smith

### **Members of the Highland Licensing Forum present:**

Mrs P Hayden  
Ms J Sutherland  
Mrs J Home  
Ms E Smart  
Ms C Hunter-Rowe  
Mr D McDiarmid, SFRS  
Mr I Cox, Licensing Standards Officer  
Mr D Inglis, Licensing Standards Officer

### **In attendance:**

Ms S Blease, Clerk to the Licensing Board  
Ms C McArthur, Depute Clerk to the Licensing Board  
Ms A Macrae, Committee Administrator

### **Also in attendance:**

Mrs J Barclay, Highland Council  
Mr A Collins, Alcohol Focus Scotland

### **Mrs P Hayden in the Chair**

#### **1. Apologies for absence**

Apologies for absence were intimated on behalf of Sergeant B Gray, Mr R Magee, Ms G Gunn, Dr I Cockburn and Mrs L Macdonald.

#### **2. Declarations of interest**

There were no declarations of interest.

Following on from this item, the Chair advised that due to the adverse weather conditions, Douglas Callander from the Security Industry Authority was not able to attend to give a presentation on stewarding requirements.

### 3. **Presentation by Alcohol Focus Scotland on developing effective policy statements**

Mr Aiden Collins, Alcohol Focus Scotland, gave a presentation on developing effective licensing policy statements. During discussion on the presentation, the following key issues were highlighted:-

- the challenges for the Board around the increased demand for later opening hours in response to changes in the night time economy and the trend for customers to go out to premises later in the evening;
- debate in relation to the likely impact of minimum pricing and the body of evidence that suggested it would result in a significant decrease in the number of alcohol related deaths and not impact on crime levels;
- concern at the ability of legislation to reduce alcohol consumption and tackle the culture of consumers drinking more at home;
- the need to consider how alcohol was marketed in retail stores and more widely in society;
- the need to consider also the positioning of alcohol within stores and the potential for there to be separate check out areas to minimise children's exposure to alcohol;
- a point that availability did not necessarily result in increased alcohol consumption by consumers;
- the relationship between availability in deprived areas and a range of alcohol-related harms;
- the need for more education and promotion of the new guidelines for recommended safe drinking limits;
- reference to the measures introduced in other countries to tackle the culture around alcohol misuse and in particular the model in Iceland which had a focus on young people;
- a key issue therefore was the education of young people at an early stage on alcohol-related harm and to encourage a sensible approach to drinking;
- whether there was a need to peg the number of licensed premises in Highland at a certain level;
- the fact that consumers had a finite amount of money and on sales premises were increasingly finding it difficult to generate profit from alcohol sales; from a public health perspective licensed premises could also offer a safer and more controlled environment to drinking at home and also address issues of isolation in communities;
- it was the totality of a range actions and measures that would help to reduce alcohol consumption in Highland as time progressed; and
- the seasonal impact of tourism in terms of alcohol purchasing and consumption on the statistics for Highland.

Thereafter, the Chair then thanked Mr Collins for his informative presentation.

### 4. **Approval of minute of last joint meeting**

There had been circulated for confirmation the minute of the joint meeting of the Board and the Forum held on 20 September 2016.

The minute was held as read and **APPROVED**.

## **5. Matters arising from minute of last joint meeting**

Arising from the minutes of 20 September 2016, the following matters were raised.

### Online Forms

The Clerk advised that the Corporate Improvement Team was being asked to resolve the ongoing problems before moving towards 'online only' forms, details of which were provided. Online forms were currently only available for personal licences, extended hours and refresher training notifications.

### Air Weapons and Licensing (Scotland) Act – Amendments to 2005 Act

The Clerk advised that since the last meeting a raft of additional provisions of the new legislation had been brought into effect. The main provisions which had not yet been brought into effect were those relating to determination and hearings procedures. It was anticipated these would provide for a more rigorous framework.

In the coming year, the Clerk reported that a "functions report" would have to be published within three months of the end of the financial year. Regulations were awaited from the Scottish Government on the reporting requirements and allow assessment of how onerous this would be in terms of staff resources.

In relation to the new transfer provisions (which were not yet in effect), the proposal was to remove the separate Section 33 and 34 application requirements and merge them into one and new provisions would be introduced to regulate this, although it was not yet known when this would come into effect.

The Board's comments had been submitted on the Scottish Government's consultation to amend section 20 of the 2005 Act to require applicants for premises licence to include a 'disabled access and facilities statement' with their licence application. The Board had commented on the fact that the quality of the guidance was poor and the legislation was disappointing on a number of fronts including that it did not give the Board the power to insist that premises have disabled access and facilities.

### Overprovision Statement Review

The Clerk advised that the proposal was to review the Board's overprovision statement in tandem with its policy statement review. She suggested this time round it would be helpful if a joint response could be submitted by NHS Highland, Police Scotland, Scottish Fire and Rescue Service and the Forum. A formal "call for evidence" on overprovision and the Board's current policy statement would be prepared for the Board's agreement on 6 February 2018, with a view to a "consultation draft" being agreed by the Board on 26 June 2018. Following formal consultation, it was intended that a final draft policy statement would be adopted in October 2018, entering into force from 4 November 2018.

## Gambling Policy Statement

Consultation on an updated policy statement had taken place earlier this year and the new Policy Statement 2017-2020 had come into effect in June 2017. For unknown historic reasons, the Highland Council's Gambling Policy Statement three year timeline was out of line with that of other local authorities. Therefore, the Board was required to have a further consultation, including with the Forum, on the statement in the course of 2018 to bring it back into line with the timeline of other local authorities.

## AOB

The joint meeting welcomed the confirmation received that Sergeant B Gray would be continuing to be at the helm of Police Scotland's licensing unit for the area.

### **6. Discussion on particular issues in existing Policy Statement that the Board and Forum Members wish highlighted during the review and consultation process**

The Chair invited the meeting to consider the issues they wished highlighted during the review and consultation on the Board's Policy Statement.

The Clerk advised that the joint meeting's input was being sought in relation to the current overprovision statement as to whether the status quo should be maintained or whether alternative options should be proposed.

Discussion followed on the evidence base and rationale for the Board's existing policy which focused on larger capacity off sales premises. There was considerable debate on the evidence on the relationship between larger display capacities and alcohol consumption which underpinned the policy and around the impact of the combination of affordability and availability. It was highlighted that trade competition was not a licensing objective. The role of regulation in changing the culture around alcohol was also discussed, including marketing and advertising.

Following further discussion, the joint meeting **AGREED** that the Board should consult on whether there should be any changes to its existing overprovision statement.

Thereafter, the joint meeting was advised if Board members had any proposed changes to the Board's general policy statement then they were welcome to discuss these with the Clerk directly, in advance of a draft policy statement being put forward by the Clerk to the Board for formal agreement as the consultation draft.

The meeting ended at 12.55pm.

## Licensing (Scotland) Act 2005 – Personal Licences

### **Accredited Qualifications for Personal Licence Applications**

#### Application under section 74 of the Licensing (Scotland) Act 2005

The following qualification, whenever obtained, continues to be accredited by the Scottish Ministers as a “licensing qualification” in terms of regulation 2 of the Licensing Qualification (Scotland) Regulations 2007 (SSI 2007/98), for the purpose of any application for a personal licence under section 74 of the Licensing (Scotland) Act 2005.

- The qualification, first introduced on 1 August 2013, and known as the Scottish Certificate for Personal Licence Holders.

#### Renewal Application under section 78 of the Licensing (Scotland) Act 2005

The following qualifications, whenever obtained, continue to be accredited by the Scottish Ministers as a “licensing qualification” in terms of regulation 2 of the Licensing Qualification (Scotland) Regulations 2007 (SSI 2007/98), for the purpose of any personal licence renewal application, in relation to all licensed premises<sup>1</sup>, under section 78 of the Licensing (Scotland) Act 2005.

- The Scottish Certificate for Personal Licence Holders.
- The qualification, first introduced as of 1 August 2013, and known as the Scottish Certificate for Personal Licence Holders.
- Scottish Certificate for Personal Licence Holders (On-Sales).
- Scottish Certificate for Personal Licence Holders (Off-Sales).

The following qualification, if obtained within the five year period prior to the expiry date of the personal licence to which it relates, is also accredited by the Scottish Ministers as a “licensing qualification” in terms of regulation 2 of the Licensing Qualification (Scotland) Regulations 2007 (SSI 2007/98), for the purpose of any personal licence renewal application under section 78 of the Licensing (Scotland) Act 2005.

- The Scottish Certificate for Personal Licence Holders (Refresher)

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<sup>1</sup> See regulation 3 of the Licensing Qualifications (Scotland) Regulations 2007 (SSI 2007/98) as relevantly amended by regulation 4 of the Licensing (Miscellaneous Amendments) (Scotland) Regulations 2007 (SSI 2007/313).

**Licensing (Scotland) Act 2005 – Personal Licences****Accredited course of training for the purposes of regulation 2 of the Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261)**

The following “course of training” continues to be accredited by the Scottish Ministers for the purposes of regulation 2 of the Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261).

- Scottish Certificate for Personal Licence Holders (Refresher)

06 November 2018

**Extract from TLT LLP's Licensing News England and Wales – September 2018****The rise of home delivery and risks to premises licence holders**

Home delivery is nothing new in itself. However, the rise in third party delivery services based around apps and the increased deliveries of alcohol, both with and without food orders, are the cause of increasing concern for licensing officers. Licensing authorities are slowly waking up to the implications of home deliveries of alcohol outside of the traditional delivery of cases of wine from specialist shops. In particular, they are turning their minds to where responsibility lies for the offence of selling alcohol to under 18's and how they are going to protect against under age sales via deliveries.

What we are looking at here applies whether you employ your own delivery drivers or engage a third party such as Deliveroo. In the case of 'dark kitchens', where different restaurant's menus are cooked under one roof by the delivery company themselves, the rules apply as if they are a single restaurant (and are licensed to sell alcohol) and have employed their own drivers. Finally, the rules apply as much to home delivery of groceries with a bottle of wine or beer, as it does take-away meals with an alcoholic drinks side-order.

**Who is liable for under-age sales?**

The first point to note is that it is the premises licence holder, not the driver or the third party delivery company, who makes the sale of alcohol. The reason for this is that the alcohol is deemed to be sold when it is taken from the general stock at the licensed premises and set aside for delivery to the customer- not when it is either ordered or delivered. Forgetting any legal niceties, the easiest way to think of this is that the customer is buying food and/ or drink from the restaurant or shop directly and therefore the sale occurs when you put aside the order for collection by the driver. This is the case even where the order comes from a third party delivery company. The premises licence holder will always be the seller.

That sale is subject to all the conditions on your premises licence, as it would if the person was physically in your restaurant or shop. As such, if you are required to carry out a challenge 25 check on the buyer when they come to you, you will still be liable to do so when you deliver to them. Remember: there is a mandatory condition requiring a premises licence holder to have a policy in place to prevent underage sales so even if you don't have a specific condition (such as challenge 21), you still have to have systems in place to prevent under age sales.

The question then arises: should the check be carried out before the sale (be it online or on the phone), or does a check need to be undertaken when the sale is delivered? The likely answer is both. There is a defence available to a seller where they can demonstrate that they did all they reasonably could to establish the



individual's age. There is nothing in law that specifically requires the checks to be carried out before the sale, so this in all probability means that to make use of this defence, as well as checking the purchaser is over 18 at the time of the order, the driver must carry out a check when the alcohol is delivered. Where drivers are employed directly by the seller, this is relatively straightforward- or at the very least, the seller does at least have control over the training given and what checks are expected to be made before the sale and on delivery.

It is not quite so simple where you engage a third party to take the order and deliver the alcohol, but it is still incumbent on the seller to ensure that the company engaged to take orders and deliver alcohol has decent systems in place. The seller should ensure that customers are having their age checked both at the time of ordering as well as when the alcohol is delivered. The company employed to make the delivery should also be able to demonstrate that they train their staff and have a system in place for refusing to deliver alcohol to persons under 18. However, the obligation goes further. Sellers will also need to make sure that the third party delivery company know of any specific conditions applying to your premises licence, such as challenge 25 policies. A seller should look to get all of this in writing in order to demonstrate that all reasonable steps to make sure under 18's do not buy alcohol have been taken.

This brings us back to the council's increasing scrutiny of licence applications for the sale of alcohol where there is likely to be an element of delivery. It is a rule in life that authorities being asked to grant licences to sell alcohol want to feel confident that the applicant knows what they are doing. Therefore, it is better to be able to demonstrate that all the above elements have been considered and the seller knows their responsibilities from the outset. If this is likely to be a significant part of the business, it is also better to propose conditions in advance to demonstrate this knowledge in action, rather than wait for officers or committee members to try to come up with something that might be overly restrictive or worse, prevent the delivery of alcohol altogether.

## THE HIGHLAND LICENSING BOARD

### CONSULTATION

#### ON PROPOSED SUPPLEMENTARY POLICY STATEMENT ON EXTENDED HOURS DURING THE FESTIVE PERIOD

##### Background

The Highland Licensing Board is required under the Licensing (Scotland) Act 2005 to publish a statement of its policy with respect to the exercise of its functions under the Act.

The Board's latest statement is the Policy Statement 2018-2023 which came into effect on 4 November 2018. You will find this at [https://www.highland.gov.uk/downloads/file/19898/highland\\_licensing\\_board\\_policy\\_statement\\_2018-21](https://www.highland.gov.uk/downloads/file/19898/highland_licensing_board_policy_statement_2018-21)

At the time of agreeing the terms of the Policy Statement 2018-2023, the Board agreed to leave the current policy on extended hours for the festive period unchanged for the festive period 2018/2019.

However, in response to a suggestion by Police Scotland, the Board also agreed to consider changing this policy for festive periods in future years, by means of a supplementary policy statement.

In summary, the policy change suggested would mean that instead of supporting festive period extended hours at on sales premises throughout the whole of the three-week festive period identified and publicised by the Board each year, the policy would only support extended hours on Thursdays, Fridays and Saturdays falling within that period. The policy would, however, also support extended hours on Christmas Eve, Christmas Day, Boxing Day, Hogmanay and New Year's day if these did not fall on a Thursday, Friday or Saturday.

The extended hours supported by the policy would themselves remain unchanged. These are:

- to 0400 hours for late opening premises on nights when they are offering significant entertainment from 2200 hours and are usually licensed to 0300 hours for that purpose, and
- to 0200 hours for all other premises

The proposed change would therefore simply restrict the days of the week during the festive period in which these extended hours will generally be granted.

This has come about because, in practice, there are few premises which open for the full extended festive hours from Sunday to Wednesday during the festive period. However, as a precaution, licence holders sometimes nonetheless either apply for

festive period extensions on these days of the week, or give advance notice under their “seasonal variation” entitlement that they intend to open for the extended festive hours on these days of the week.

The proposed change to the policy would give greater clarity as to precisely which nights, during the festive period, premises will be opening for the extended festive hours. This in turn would better support the licensing objectives of preventing crime and disorder, securing public safety and preventing public nuisance, as it would allow Police Scotland to better direct resources from Sunday to Wednesday during the festive period, rather than having to patrol town centres at 0200 hours and 0400 hours on those days of the week on the off chance that there may be people leaving premises at those hours.

### **Terms of the proposed supplementary policy**

As the dates for the festive period 2018/2019 have already been published by the Board and notified to licence holders, with the assumption that, under current policy, the festive extended hours will be available on all nights of the week throughout the published three-week period, it is proposed that the supplementary policy, if adopted, should have effect only from the 2019/2020 festive period onwards.

The terms of the proposed supplementary policy are as follows:

#### **1. Festive period hours**

In respect of grants of applications for extended hours over the festive period, and in respect of “seasonal variations” in premises licence operating plans which, subject to the requirement to notify the Board in advance, allow opening during the festive extended hours supported under the Board’s festive period hours policy, the Highland Licensing Board Policy Statement 2018-2023 is hereby amended as follows. **This amended policy will apply only to festive period extended hours applications and notifications for and after the festive period 2019/2020.**

##### **1.1 Late opening premises**

These are premises currently licensed for on sales on Sunday, Monday, Tuesday and Wednesday up to 0100 hours the following morning and on Thursday, Friday and Saturday up to 0300 hours the following morning.

These premises will generally be granted the following extended hours on the following days within the festive period dates identified annually by the Board, unless the Board considers that there are material reasons to refuse to grant these hours:

- **on Thursdays, Fridays and Saturdays, and on Christmas Eve, Christmas Day, Boxing Day, Hogmanay and New Year’s Day** (irrespective of which days of the week these fall on) -

- sale of alcohol for consumption on the premises may be permitted up to **0400 hours** the following morning if significant entertainment (as defined at section 2.1 of the Board's main Policy Statement) is being provided in the premises continuously from no later than 2200 hours on these days, and
- if no significant entertainment (as defined in section 2.1. of the Board's main Policy Statement) is being provided in the premises continuously from no later than 2200 hours on these days, sale of alcohol for consumption on the premises may be permitted up to **0200 hours** the following morning.

### **1.2 Other on sales premises**

These are premises currently licensed for on sales on Monday to Sunday to 0100 hours the following morning.

These premises will generally be granted the following extended hours on the following days within the festive period dates identified annually by the Board, unless the Board considers that there are material reasons to refuse to grant these hours:

- **on Thursdays, Fridays and Saturdays, and on Christmas Eve, Christmas Day, Boxing Day, Hogmanay and New Year's Day** (irrespective of which days of the week these fall on)
  - sale of alcohol for consumption on the premises may be permitted up to **0200 hours** the following morning.

### **1.3 All on sales premises**

**On Sundays, Mondays, Tuesdays and Wednesdays** falling within the festive period dates identified annually by the Board, and unless Christmas Eve, Christmas Day, Boxing Day, Hogmanay or New Year's Day fall on any of these days of the week, extended hours sought by reason only of it being the festive season will not generally be granted. Applicants seeking extended hours on any of those days of the week will require to show that the additional hours are required for some other special event or occasion to be catered for on the premises, or for a special event of local or national significance other than just the fact that it is the festive season.

## **2. Other policy terms**

In all other respects (apart from the above restrictions), the terms of the Board's current festive period policy, as set out in its full Policy Statement 2018-2023 will apply, with appropriate modifications to align with the above new restrictions. In summary, these terms are as follows:

- the Clerk to the Board, in consultation with the Convener of the Board, will fix annually the specific dates between which the festive period extended hours will generally be granted;
- additional conditions, such as conditions equivalent to the late opening mandatory conditions set out at Appendix 6 of the Board's full Policy Statement, may be imposed by the Board when granting applications to extend hours beyond 0100 hours if the Board considers this necessary or expedient for the purposes of any of the licensing objectives;
- licence holders who do not have, within the "seasonal variations" section of their policy statement, a statement to the effect that they will open for the festive extended hours on the dates supported by the Board's festive period policy, will continue to require to lodge applications under section 68 of the Licensing (Scotland) Act 2005 requesting these hours, but these applications should be restricted to the particular days identified in the proposed supplementary policy statement;
- licence holders who do have such a "seasonal variation" statement in their operating plan will still require only to give notice of their intention to open during the festive period dates for the hours agreed annually by the Board, but the days on which they may open for these hours will be restricted to those identified in the proposed supplementary policy statement;
- given the large number of extended hours applications received each year for the festive period, and the timescales for the Board's statutory consultations on these applications, licence holders should lodge their applications by no later than 1 December each year, and
- over the festive period, the Board's policy on festive extended hours will be treated also as the policy on hours for occasional license applications in respect of unlicensed premises, but only in accordance with the days identified within this proposed supplementary policy statement.

You are invited to submit your views and comments on the above proposals for the Board's supplementary policy statement on extended hours over the festive period **by no later than 15 December 2018.**

Responses can be submitted by letter or email and should be addressed to:

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