

## **Item: 5**

**Orkney Islands Area Licensing Board: 3 May 2018.**

**Licensing (Scotland) Act 2005.**

**Review of Statement of Alcohol Licensing Policy – Overprovision.**

**Report by Clerk to the Board.**

### **1. Purpose of Report**

To consider a statement on overprovision of alcohol licensed premises to be incorporated within the Board's draft Statement of Alcohol Licensing Policy 2018.

### **2. Recommendations**

The Board is invited to note:

#### **2.1.**

That, on 25 January 2018, the Board resolved that the Clerk to the Board should undertake statutory consultation on whether or not there was overprovision of alcohol licensed premises within the locality determined by the Board, namely Orkney as a whole.

#### **2.2.**

That the statutory consultation process was undertaken during the period 30 January to 27 March 2018, with the outcome detailed in section 10 of this report.

**It is recommended:**

#### **2.3.**

That the Board determines whether the consultation responses, detailed in section 10 of this report, meet the terms of the legislation and guidance issued by the Scottish Government.

#### **2.4.**

That the Board determines whether the results of the consultation on overprovision of licensed premises or licensed premises of a particular description have produced "robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality".

## **2.5.**

That, should the Board make a determination that no evidence of overprovision of licensed premises or licensed premises of a particular description exists in the locality of Orkney, the statement on overprovision of alcohol licensed premises, attached as Appendix 8 to this report, be incorporated within the Board's draft Statement of Alcohol Licensing Policy 2018.

## **3. Policy Aspects**

### **3.1.**

In accordance with the Licensing (Scotland) Act 2005, the Board publishes a Statement of Alcohol Licensing Policy, the current version of which is available from the Related Downloads section of the following Council webpage:

<http://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>.

### **3.2.**

The Board is under a duty to publish in its Policy a statement on the extent to which it considers there to be overprovision of licensed premises or licensed premises of a particular description in any locality or localities within the area of the Board. The locality can be the whole Board area.

### **3.3.**

The Board's current Statement of Alcohol Licensing Policy contains the following statement in relation to overprovision:

“On 14 March 2013, the Board determined:

- that there are no specific localities within the Board's area which should be assessed in relation to overprovision and that Orkney should be treated as a whole; and
- that there is no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.

The Board concluded that there was not a dependable causal link between the evidence provided to the Board and the operation of licensed premises, to suggest that a saturation point had been reached, or was close to being reached, within the locality of Orkney defined by the Board.”

## **4. Introduction**

### **4.1.**

At its meeting held on 25 January 2018, the Licensing Board noted:

#### **4.1.1.**

That the Board's current Statement of Alcohol Licensing Policy, adopted on 5 December 2013, required review during 2018.

#### **4.1.2.**

That the Statement of Alcohol Licensing Policy must, in particular, include a statement as to the extent to which the Board considered there to be overprovision of licensed premises or licensed premises of a particular description in any locality within the Board's area.

#### **4.1.3.**

That the first stage of the process in updating the Statement of Alcohol Licensing Policy was for the Board to determine the locality or localities for the purpose of consultation on the assessment of overprovision.

#### **4.1.4.**

That the locality for the purpose of assessing overprovision could be the whole Board area.

### **4.2.**

The Board resolved:

#### **4.2.1.**

That, for the purposes of consultation on the assessment of overprovision of alcohol licensed premises, the locality should be Orkney as a whole.

#### **4.2.2.**

That the Clerk to the Board should undertake statutory consultation on whether or not there was overprovision of alcohol licensed premises within the locality determined by the Board, namely Orkney as a whole.

#### **4.2.3.**

That the Clerk to the Board should submit a report, to the meeting of the Board to be held on 3 May 2018, on the outcome of the consultation, referred to at paragraph 4.2.2 above.

## **5. Background**

### **5.1.**

In terms of section 6 of the Licensing (Scotland) Act 2005 (the Act), as amended by the Air Weapons and Licensing (Scotland) Act 2015 (the 2015 Act), the Orkney Islands Area Licensing Board (the Board), must publish an updated Statement of Alcohol Licensing Policy by November 2018.

### **5.2.**

When preparing its Policy, the Board is required to indicate how it will carry out its licensing functions so as to promote the five licensing objectives, which, following amendment in terms of the 2015 Act, are:

- Preventing crime and disorder.
- Securing public safety.
- Preventing public nuisance.
- Protecting and improving public health.
- Protecting children and young persons from harm.

### **5.3.**

The Statement of Alcohol Licensing Policy requires to set out the policies to be applied by the Board to promote the licensing objectives when determining applications. In addition, regard must be had to Guidance issued by the Scottish Government.

### **5.4.**

Section 7 of the Act requires that each licensing policy statement published by a licensing board must, in particular, include a statement as to the extent to which the board considers there to be overprovision of licensed premises or licensed premises of a particular description in any locality within the board's area. Following amendments in terms of the 2015 Act, the Board may determine that the whole of the Board's area is a locality.

### **5.5.**

In considering whether there is overprovision in any locality, following amendments in terms of the 2015 Act, the Board:

- Must have regard to the number and capacity of licensed premises in the locality.
- May have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality.
- Must consult the persons specified at section 5.6 below.

## **5.6.**

The consultees are:

- The appropriate chief constable.
- The relevant health board.
- Such persons who appear to be representative of the interests of:
  - Holders of premises licences for premises within the locality.
  - Persons resident in the locality.
- Such other persons as the board thinks fit.

## **5.7.**

Overprovision is one of five possible grounds for refusal of a premises licence application and would be relevant if the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises, in the locality.

# **6. Scottish Government Guidance on Overprovision**

## **6.1.**

The Scottish Government has provided Guidance to assist boards in formulating their assessments. The Guidance is under review, but currently the Board is:

- Required to take a proactive 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 their styles of operation, when assessing overprovision.
- Directed to have regard to the number and the capacity of licensed premises in localities.

## **6.2.**

The Guidance provides that “the results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality”.

### **6.3.**

The Guidance provides that, where a board's policy statement has concluded that, in a particular locality, there is an overprovision of licensed premises or premises of a particular description, an application for a new premises licence or for the variation of an existing licence in that locality should normally be refused on the ground of overprovision. It would simply add to the number of licensed premises or it would increase the number of premises of the relevant description, depending on the approach which the board has taken in the policy statement.

### **6.4.**

However, each application requires to be determined on its own merits. There may be cases where the applicant can demonstrate that grant of the application would not undermine the licensing objectives or those objectives would not be undermined if the applicant's operating plan or layout plan was modified or the grant of the licence made subject to appropriate conditions.

### **6.5.**

Accordingly, there must be room for exceptions and the Guidance states that a numerical quota of licensed premises or premises of a particular description in a locality should not be set.

### **6.6.**

The Guidance provides that members' clubs should be discounted for the purposes of overprovision assessments carried out by licensing boards provided they meet the criteria for such clubs specified in terms of regulations made under the Act. There are nine members' clubs in Orkney which all meet the relevant criteria.

### **6.7.**

Statistics relating to the geographical distribution of licensed premises in Orkney, including their capacities and operating hours, with the exception of members' clubs, are attached as Appendix 1 to this report.

### **6.8.**

The statistical information referred to above gives a broad indication of the "type" of premises, that is their styles of operation. However, named types of premises licences ceased when the Act came into effect and premises can only correctly be identified as providing on-sales facilities; off-sales facilities; or both.

### **6.9.**

In Orkney, there are currently:

- 16 on-sales premises with total capacity of 4,597 persons.
- 39 off-sale premises with total alcohol display capacity of 668.5 square metres.
- 46 premises licensed for both on and off-sales with total capacity of 7,159 persons and total alcohol display capacity of 357.12 square metres.

## **6.10.**

The Guidance states that licensing boards should not take into account the need or demand for licensed premises in the locality, as commercial considerations are irrelevant to boards' policies.

## **7. Determining Localities: Preliminary Statistical Data Collection**

### **7.1.**

In determining the "localities" within the Board's area for the purposes of the Act, the Board may determine that the whole of the Board's area is a locality. Selection of locality is a matter for the Board and will involve the use of its own local knowledge.

### **7.2.**

On 11 October 2017, the Clerk to the Board issued emails to the organisations specified in section 7.3 below, as a preliminary step to the policy review process. The purpose of the emails was to request statistical data to assist the Board in identifying localities where there is overprovision of licensed premises, or premises of a particular description, within its area. The organisations were provided with the statistical information attached as Appendix 1 to this report and responses were requested by 1 December 2017.

### **7.3.**

The emails were issued to the following organisations:

#### **7.3.1.**

NHS Orkney, regarding:

- Alcohol related hospital admissions.
- Alcohol related deaths.
- Chronic liver disease deaths and hospital admissions.
- Alcohol related brain damage.
- Proportion of individuals who were alcohol dependent.
- Alcohol related Accident and Emergency attendances.
- Alcohol brief interventions.

#### **7.3.2.**

Orkney Alcohol and Drugs Partnership, regarding:

- Alcohol specific offences.
- Alcohol attributable offences.
- Perceptions of prevalence of neighbourhood problems where alcohol was believed to be a factor.

### **7.3.3.**

Orkney Community Safety Partnership and Orkney Healthy and Sustainable Communities Delivery Group, regarding:

- Incidents of anti-social behaviour and other types of public disorder linked to alcohol use.
- Alcohol related ambulance call outs.
- Noise complaints relating to licensed premises.

### **7.3.4.**

Orkney Health and Care, regarding:

- Caseload in which problem alcohol use had been identified.
- Alcohol addiction problems in Children and Families Team cases.
- Alcohol addiction problems in Criminal Justice Team cases.
- Alcohol addiction problems in accommodated children and young people cases.

### **7.3.5.**

Orkney Local Licensing Forum, regarding any data which it considered relevant.

### **7.3.6.**

Police Scotland, regarding:

- Alcohol specific offences.
- Alcohol attributable offences.
- Reports by victims of violent crime that offender was under influence of alcohol.
- Offences in which alcohol was known to be an aggravating factor.
- Alcohol related domestic abuse.

### **7.3.7.**

Scottish Fire and Rescue Service, regarding numbers of fires where impairment due to suspected alcohol use was a contributory factor.

## **7.4.**

One response to the request for statistical data was received from the Orkney Alcohol and Drugs Partnership and is attached as Appendix 2 to this report. The response states that their initial response was that the organisation “was in agreement with that of the Licensing Board’s decision in 2013 that Orkney was not overprovided as a whole locality. Evidence to supplement this decision has been included within this letter:

- An extract from the recent Community Justice Partnership Needs Assessment.
- Health data pulled together from Public Health, NHS Orkney.”



## **8. Determining Localities: Identification**

### **8.1.**

The Board's approach to determining "localities" must be evidence-led. The Board must identify the proposed locality before an assessment of overprovision can be carried out.

### **8.2.**

To conduct an assessment of overprovision, the Board must:

- Have regard to the issue of capacity and numbers of licensed premises in the identified locality.
- Be able to show that it has identified a dependable causal link between the operation of licensed premises in the identified locality and relevant harms.

To allow the Board to lawfully and rationally conclude that a state of overprovision does or does not arise in that chosen locality.

### **8.3.**

The Clerk to the Board conducted a preliminary statistical data collection exercise from 11 October to 1 December 2017, detailed in section 7 above. Only one response was received, from the Orkney Alcohol and Drugs Partnership, which concluded that "Orkney was not overprovided as a whole locality".

### **8.4.**

Given the sole response to the preliminary statistical data collection exercise and the absence of alternative evidential information, the Board took the view that the locality, for the purpose of consultation on the assessment of overprovision, should be the whole of Orkney.

### **8.5.**

The approach set out in section 8.4 above does not preclude subsequent alternative findings by the Board. For example, after consideration of evidence received as a result of the consultation on the assessment of overprovision, the Board could determine that a different locality or localities should apply.

## **9. Assessment of Overprovision: Consultation**

### **9.1.**

When conducting an assessment of overprovision, the Board should:

- Assess the evidence presented and then consult upon what the information may show.
- Consider the responses to the consultation before determining the overprovision position.

## **9.2.**

The Clerk to the Board undertook the statutory consultation process on assessment of overprovision of alcohol licensed premises in Orkney during the period 30 January to 27 March 2018. The wording of the consultation notification is attached as Appendix 3 to this report.

## **9.3.**

The following stakeholders were consulted:

- Citizens Advice Bureau (Orkney).
- Community councils.
- Holders of premises licences throughout Orkney.
- Local firms of solicitors.
- Local Licensing Forum.
- NHS Orkney.
- Orkney Alcohol and Drugs Partnership.
- Orkney Community Planning Partnership.
- Orkney Health and Care.
- Police Scotland.
- Residents via a public notice on [www.orkney.gov.uk](http://www.orkney.gov.uk).
- Scottish Fire and Rescue Service.
- Voluntary Action Orkney.

## **10. Responses to Consultation**

### **10.1.**

A response to the consultation was received from the Orkney Alcohol Counselling and Advisory Service (OACAS) and is attached as Appendix 4 to this report.

#### **10.1.1.**

The submission of a response from OACAS is acceptable given that the consultation was public, including for residents in Orkney.

#### **10.1.2.**

The response states “Alcohol is a serious problem in Scotland and Orkney” and refers to areas outwith Orkney, such as other parts of Scotland, and Russia. When referring to Orkney, no evidence to support the consultee’s view, in particular statistics from the local health board, has been provided.

#### **10.1.3.**

The Board requires to determine whether the response from OACAS meets the terms of the legislation and guidance detailed in section 6.2 above.

## **10.2.**

Responses to the consultation were received from a number of community councils in summary form as submitted by the Community Council Liaison Office and Clerk to the Shapinsay Community Council. These are attached as Appendix 5 to this report.

### **10.2.1.**

The responses from the community councils do not suggest that there is overprovision of alcohol licensed premises in Orkney.

## **10.3.**

A response to the consultation was received from Alcohol Focus Scotland (AFS) and is attached as Appendix 6 to this report.

### **10.3.1.**

The response states “As a national organisation, we do not have sufficient local knowledge of the Orkney Islands area to enable us to comment in detail on some of the specific localities and premises concerned. However, we offer our opinion on the general approach and policy direction, which we hope the Licensing Board will find useful.”

### **10.3.2.**

The response acknowledges the terms of the legislation and guidance detailed in section 6.2 above, as narrated within the Board’s consultation. AFS then suggest matters which they consider to be “implicit” in the duty to assess overprovision. The Board must, however, have regard to Guidance issued by the Scottish Government.

### **10.3.3.**

Reference by AFS to the Board’s determination being informed by evidence from the police, health authorities and other agencies is noted and agreed. Evidence is essential in terms of the Guidance issued by the Scottish Government.

### **10.3.4.**

AFS refer to some detail contained within the earlier submission received from the Orkney Alcohol and Drugs Partnership (OADP) detailed in section 7.4 above and argue that the information points “compellingly to the conclusion that there exists a state of overprovision, in at least some parts, of the Board’s area.” The OADP, however, concluded in their initial response that the organisation “was in agreement with that of the Licensing Board’s decision in 2013 that Orkney was not overprovided as a whole locality.”

### **10.3.5.**

The Council's Strategy Manager, Policy and Community Planning, has provided information comparing statistical data for Scotland and Orkney with regard to alcohol-related hospital stays and patients, as published by the Information Services Division (ISD) of NHS Scotland. The information is attached as Appendix 7 to this report.

### **10.3.6.**

It should be noted that neither Police Scotland nor NHS Orkney responded to the consultation on overprovision, although the earlier submission received from the OADP included some health and crime data.

### **10.3.7.**

The Board requires to determine whether the response from AFS meets the standard required in terms of the legislation and guidance detailed in section 6.2 above.

## **11. Draft Statement on Overprovision**

### **11.1.**

The Board requires to determine whether the results of the consultation on overprovision of licensed premises or licensed premises of a particular description have produced “robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality”.

### **11.2.**

It would not be advisable for the Board to make a finding of overprovision of licensed premises or licensed premises of a particular description unless it is confident that evidence to the standard required in terms of the legislation and guidance has been provided, as the risk of successful challenge to the Board’s Statement of Alcohol Licensing Policy would be greater.

### **11.3.**

Should the Board make a determination that no evidence of overprovision of licensed premises or licensed premises of a particular description exists in the locality of Orkney, it is recommended that the statement on overprovision of alcohol licensed premises, attached as Appendix 8 to this report, should be incorporated within the Board’s draft Statement of Alcohol Licensing Policy 2018.

## **12. Later Stages in Policy Review**

### **12.1.**

During 2018, the Board will require to:

- Consider a draft revised Statement of Alcohol Licensing Policy (June 2018).
- Consult upon the draft revised Policy with those consultees detailed below.
- Assimilate all responses received in response to the consultation on the draft revised Policy and take them account before adopting a revised Policy (October 2018).

## **12.2.**

When consulting upon its draft revised Statement of Alcohol Licensing Policy, the Board must consult with the Local Licensing Forum, the relevant health board and the following, in so far as they are not represented in membership of the Local Licensing Forum:

- Holders of premises licences and personal licences.
- The Chief Constable.
- Persons having functions relating to health, education or social work.
- Young people.
- Persons resident within the Forum's area.
- Such other persons as the Board thinks appropriate.

## **13. Financial Implications**

There are no direct financial implications to the Board arising from the recommendations of this report

## **14. Legal Aspects**

The legal aspects are contained within the body of this report.

## **15. Contact Officers**

Gavin Mitchell, Clerk to the Board, extension 2233, email [gavin.mitchell@orkney.gov.uk](mailto:gavin.mitchell@orkney.gov.uk).

Elaine Sinclair, Legal Clerk, extension 2232, email [elaine.sinclair-hill@orkney.gov.uk](mailto:elaine.sinclair-hill@orkney.gov.uk).

## **16. Appendices**

Appendix 1: Statistics relating to geographical distribution, capacities and operating hours of licensed premises in Orkney, with the exception of members' clubs.

Appendix 2: Orkney Alcohol and Drugs Partnership response to statistical data request.

Appendix 3: Wording of notification of consultation on overprovision of alcohol licensed premises in Orkney.

Appendix 4: Consultation response from the Orkney Alcohol Counselling and Advisory Service.

Appendix 5: Consultation responses from community councils.

Appendix 6: Consultation response from Alcohol Focus Scotland.

Appendix 7: Statistical trends in alcohol-related hospital admissions with detail regarding Orkney statistics.

Appendix 8: Possible statement on overprovision to be incorporated within the Board's draft Statement of Alcohol Licensing Policy 2018.