

# **MEETING OF RENFREWSHIRE LICENSING BOARD**

**MONDAY 18 DECEMBER 2017**

**HELD IN THE COUNCIL CHAMBERS, 2<sup>ND</sup> FLOOR, RENFREWSHIRE HOUSE, COTTON  
STREET, PAISLEY  
AT 10.00AM**

## **AGENDA**

**Councillors Andy Steel, Bill Brown, Jane Strang, Jennifer Adam-McGregor, John Hood, Kevin Montgomery, Marie McGurk, Michelle Campbell, Natalie Don and Scott Kerr**

**Convener – Cllr Andy Steel**

- 1. APOLOGIES**
- 2. DECLARATIONS OF INTEREST**
- 3. ADMINISTRATIVE ITEMS**
  - a) Report by Clerk to the Licensing Board - Arrangements for Preparation of Statement of Licensing Policy 2017/2018**
  - b) Report by Clerk to the Licensing Board – Supreme Court Decision on Minimum Pricing of Alcohol**

**To: Renfrewshire Licensing Board**

**On: 18<sup>th</sup> December 2017**

**Report by Clerk to the Licensing Board**

**Arrangements for Preparation of Statement of Licensing Policy 2017/2018**

## **1. Introduction**

- 1.1 The purpose of this report is to advise the Board of the need to prepare a Statement of Licensing Policy and provide details of suggested timescales. The Board also requires to carry out an assessment of overprovision in the Board's area as part of the overall review of the Statement of Licensing Policy.
- 1.2 The Board is required by section 6 of the Licensing (Scotland) Act 2005 ("the Act") to publish a Statement of Licensing Policy ("the policy") setting out how it will exercise its functions. The Board must ensure that the policy seeks to promote the licensing objectives.
- 1.3 The Board's current policy was agreed in November 2013 and was due to expire on 30<sup>th</sup> November 2016. The Air Weapons and Licensing (Scotland) Act 2015 amended the frequency by which policy statements must be published. Boards are now required to ensure publication within 18 months of local authority elections. The Board's next policy requires to be published by 3<sup>rd</sup> November 2018.

## **2. Background**

- 2.1 The Board must ensure that when preparing the policy it consults at least with the Licensing Forum, the Health Board and such other persons as it thinks appropriate. The Board had initial informal discussions with the Licensing Forum at their joint meeting in November 2017 in relation to the procedure for review of the policy.
- 2.2 The content of the policy is a matter for the Board, having regard to the terms of statutory guidance. It must not be inconsistent with the terms of the Act and it must seek to promote the licensing objectives.
- 2.3 In order to afford the Board an opportunity to ascertain views from as many interested parties as possible, it is suggested that the Board initially carries out an informal consultation, seeking comments from consultees on the existing policy, both in its general terms and in respect of specific areas of the policy which consultees may wish the Board to address in its updated policy. This initial, informal consultation will also enable the Board to obtain information to allow it to identify localities which may be overprovided, as relevant to the requirement to include an assessment of overprovision, as further detailed at Paragraphs 2.8 to 2.11. Thereafter, more detailed

consideration of a draft, revised policy and formal consultation can follow thereon. The Board's existing Statement of Licensing Policy can be viewed at <http://www.renfrewshire.gov.uk/media/1623/Licensing-Policy-Statement-2013---2016/pdf/cs-ac-StatementofLicensingPolicy2013-2016amendedaug15.pdf>

- 2.4 It is open to the Board to give an indication as part of the initial, informal consultation as to the topics it is interested in obtaining responses upon to inform the policy review. The Board encourages responses on all parts of the policy, however topics which may be of particular interest are:
- licensing hours
  - children and young persons access to licensed premises
  - Extended use of occasional licences
  - extended hours
  - overprovision
- 2.5 Following on from the informal consultation, the current policy can be revised to take account of any comments received and an updated draft policy, reflecting also recent legislative changes, prepared for consideration by the Board before the formal consultation is undertaken. It is also proposed that the two stage consultation process would be an appropriate means of encouraging participation by interested parties in the overall consultation process, given the timescale available before the new policy must be published. The Board can instruct the Clerk to the Licensing Board to publish the details of the initial, informal consultation, including details of any specific topics upon which the Board seeks comments, on the Council's online consultation hub.
- 2.6 It is intended that an extensive consultation with a broad range of consultees be carried out, all to the benefit of the final version of the policy.
- 2.7 A possible timescale for the review of the policy to be undertaken is set out below:-
- Initial, informal consultation- December 2017 to Early February 2018
  - Report to Board- March 2018
  - Formal Consultation- Spring 2018
  - Final draft of the revised policy to Board for approval- by October 2018
- 2.8 The Statement of Licensing Policy must include a statement by the Board as to the extent to which there is considered to be overprovision of (a) licensed premises, or (b) licensed premises of a particular description, in any locality within the Board's area, in terms of section 7 of the Act. The existing policy declares a locality in Paisley Town Centre to be overprovided, in respect of pub type premises used exclusively or predominantly for the sale of alcohol.
- 2.9 It is for the Board to decide on the locality/ localities, and it may now treat its entire area as a locality, or declare there is no overprovision in any locality. In considering whether there is overprovision in a locality the Board:-

- (a) Must have regard to the number and capacity of licensed premises in the locality
- (b) May have regard to such other matters as it thinks fit, including the licensed hours of premises in the locality.

2.10 In considering overprovision, the Board must consult:-

- The Chief Constable
- The Health Board
- Such persons as the Board considers representative of holders of premises licences in the locality and persons resident in the locality
- Such other persons as the Board thinks fit

The Board is entitled to ask for statistical information to be provided by the Chief Constable, the Health Board and the Council to assist in its preparation of the new policy. Such information should assist the Board in ensuring that the policy is based on evidence that it is connected with the licensing objectives.

2.11 The Board can also request information on the numbers and capacities of licensed premises, and relevant information about those premises, to assist in identifying localities which the Board considers may present characteristics of overprovision. Following upon an initial assessment of localities, the Board will need to consult formally in relation to those localities. Following formal consultation, the Board, in assessing overprovision in any locality, must have regard to the number and capacities of licensed premises and may have regard to other matters, including the licensed hours of licensed premises in those localities.

2.12 The Board, as with the policy in general, must have regard to the terms of statutory guidance when considering its policy on overprovision. The current statutory guidance can be accessed at

<http://www.gov.scot/Resource/Doc/175487/0049459.pdf>

The guidance has not been revised since its introduction in 2007 despite several legislative changes to the 2005 Act and updated case law. The Scottish Government are now considering the statutory guidance with a view to updating the document in order to assist Boards with the preparation of their policy statements.

### **3. Recommendations**

3.1 It is recommended that the Board:-

3.1.1 Carries out an initial, informal consultation on the terms of the existing policy, and instructs the Clerk to the Board to publish details on the consultation hub;

3.1.2 Requests provision of statistical information from Police, Health Board and the Council relevant to the licensing objectives, to assist preparation of the new policy;

3.1.3 Requests information from the Council, about the extent of licensed premises and relevant information about those premises, to assist in any assessment of overprovision.



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Kenneth Graham  
Clerk to the Licensing Board

**To: Renfrewshire Licensing Board**

**On: 18<sup>th</sup> December 2017**

**Report by Clerk to the Licensing Board**

**Supreme Court Decision on Minimum Pricing of Alcohol**

## **1. Introduction**

1.1 On 15 November 2017, the Supreme Court dismissed the appeal of the Scotch Whisky Association and two Belgian Organisations against the decision by the Scottish Ministers to introduce legislation which allows a minimum price of alcohol to be fixed.

1.2 It was argued by the Petitioners that the Scottish Ministers' decision was disproportionate (and therefore unlawful) under EU law. The Supreme Court has held that the decision of the Scottish Ministers did not breach EU law and that the fixing of a minimum price for alcohol is a proportionate means of achieving a legitimate aim.

## **2. Summary of the Decision**

2.1 The Scottish Parliament decided to address the health and social consequences arising from the consumption of cheap alcohol by introducing a minimum pricing regime with The Alcohol (Minimum Pricing) (Scotland) Act 2012. The 2012 Act has not yet been brought into force and the minimum price will also be fixed by secondary legislation.

2.2 It was accepted that the minimum price measure may restrict trade between member states. Therefore, it would only be lawful under EU law if the measure was deemed a proportionate means to achieve a legitimate aim. It was accepted that the legitimate aim is protecting health and human life. So the argument before the Court was whether the measure was disproportionate.

2.3 The Whisky Association argued two reasons why minimum pricing was disproportionate:

- a) An increase of excise or VAT would be less restrictive and would achieve the same aim.
- b) An adequate impact assessment on the market had not been carried out. This was necessary to establish whether the measure properly balances the competing interests of protecting health against the economic interest of producers and retailers of alcohol.

2.4 In relation to the first point, the Supreme Court concluded that minimum pricing targets the health hazards of cheap alcohol and the groups most affected. An increase of excise or VAT would not do this. Rather it would impact all customers and products. This would unnecessarily affect groups which are not the focus of the minimum pricing. Minimum pricing, in the view of the Supreme Court, is easier to understand and simpler to enforce.

2.5 In relation to the second argument, the Supreme Court stated that the value on public health and the economic interests of producers and retailers are essentially incomparable. The courts should not second-guess the value which parliament puts on health. So there was no need to balance the interest of the producers and retailers against the potential health benefits. Accordingly, the Supreme Court did not accept the criticism made by the Whisky Association about the lack of evidence on the impact on the market. Moreover, the impact on the market is unpredictable so the inclusion of a sunset clause in the legislation (which would allow minimum pricing to be abolished if deemed ineffective) is an appropriate means to assess impact.

### **3. Impact on the Licensing Board**

3.1 The Scottish Government plans to introduce minimum pricing by 1 May 2018. The expectation is that the minimum price will be set at 50p per unit but this will be subject to consultation. Minimum pricing will be introduced by creating a mandatory condition for Licensed Premises. Accordingly, as with other conditions, minimum pricing would fall within the remit of the Licensing Standards Officers and the Police. Should a premise be found to be in breach of the minimum pricing condition then the matter may be referred to Board for a review hearing. At the same time, the role of the Licensing Standards Officers requires providing guidance to Licence Holders which will include making Licence Holders aware of their responsibilities and the impact minimum pricing may have.

### **4. Recommendation**

4.1 For members to note the content of the report.

  
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Ken Graham  
Clerk to the Licensing Board