**THE HIGHLAND LICENSING BOARD**

**CONSULTATION DRAFT POLICY STATEMENT 2018-23**

**CONSULTATION RESPONSE FORM**

The Highland Licensing Board is required under the Licensing (Scotland) Act 2005 to publish a statement of their policy with respect to the exercise of their functions under the Act. The Board’s policy statement for the period 2018 to 2023 requires to be published by 4 November 2018. In preparing its new policy statement, the Board must consult the Highland Licensing Forum, NHS Scotland and such other persons as the Board thinks appropriate. The Board is also undertaking a full public consultation on this and invites anyone wishing to express views to complete and submit this consultation response form.

**The Consultation Draft Policy Statement 2018-23** proposed by the Board on 26 June 2018 can be accessed [here](https://www.highland.gov.uk/downloads/file/19453/consultation_draft_policy_statement_2018-23).

Should you wish to compare the terms of the Consultation Draft Policy Statement 2018-23 with the Board’s existing **Policy Statement 2013-18**, including the Board’s current supplementary policy statement on extended hours, this can be accessed [here](https://www.highland.gov.uk/downloads/file/3743/highland_licensing_board_policy_statement_2013_to_2016)**.**

**You are invited to submit your views and comments on the Board’s Consultation Draft Policy Statement 2018-23 by no later than 31 August 2018.**

**Responses should be addressed to:**

**Susan Blease,**

**Principal Solicitor – Regulatory Services,**

**Council Offices,**

**High Street,**

**Dingwall, IV15 9QN.**

**Tel. 01349 868 538 email: susan.blease@highland.gov.uk**

While you are free to comment on any aspect of the document, it would assist the Board if you would respond to the specific questions listed below.

Respondents are also reminded that, in terms of the Act, the policies which the Board ultimately adopts must seek to promote the licensing objectives, namely: preventing crime and disorder, securing public safety, preventing public nuisance, protecting and improving public health and protecting children from harm

Consultation responses should therefore relate to these objectives. Proposals which seek to achieve outcomes which are not relevant to any of the licensing objectives cannot be considered by the Board.

**QUESTIONS:**

**Sections 2.1 to 2.10 – proposed policies**

1. **What are your views on the premises licence core hours proposed at section 2.1? Please explain any changes you think should be made and the reasons for your views.**

**2. (a) What are your views on the policies proposed at section 2.2 on extended hours in licensed premises (for special events or occasions to be catered for on the premises, or for special events of local or national significance)? Please explain any changes you think should be made and the reasons for your views.**

**(b)** **Please list any other events which you consider should be identified in section 2.2 as “special events of local or national significance”.**

**3. What are your views on the festive period hours proposed at section 2.3? Please explain any changes you think should be made and the reasons for your views.**

**4. What are your views on the policies and core hours for occasional licences (at unlicensed premises) proposed at section 2.4? Please explain any changes you think should be made and the reasons for your views.**

**5. What are your views on the policies in relation to access to premises by children (i.e. persons under the age of 16) and young persons (16 and 17 year olds) proposed at section 2.5? Please explain any changes you think should be made and the reasons for your views.**

**6. What are your views on the policies in relation to adult entertainment proposed at section 2.6? Please explain any changes you think should be made and the reasons for your views?**

**7. In relation to home deliveries (section 2.7), what, if any, additional policies you would wish to see in place and why?**

**8. Section 2.8 relating to clubs sets out reminders as to statutory requirements applicable to the sale of alcohol in clubs. Are there any additional requirements which you consider the Board should impose on clubs as a matter of policy? If so, why?**

**9. What are your views on the policy proposed at section 2.9 as to circumstances in which the Board may impose a requirement that alcohol may be served only in cans or in plastic or polycarbonate containers? Please explain any changes you think should be made and the reasons for your views?**

**10. What are your views on the policies in relation to outdoor drinking areas proposed at section 2.10? Please explain any changes you think should be made and the reasons for your views?**

**Section 2.13 – overprovision statement**

The Board’s policy statement has to 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. The Board can treat the whole of its area as a “locality” for this purpose. The inclusion of an overprovision statement in the policy statement is mandatory. Nevertheless, the statement may be to the effect that the Board does not consider there to be any overprovision in its area or in any part of it. Before reaching such a conclusion, however, the Board must still have undertaken an overprovision assessment, having regard, amongst other things, to the number and capacity of licensed premises in particular localities or the whole area and the views of consultees.

Section 2.13 of the Consultation Draft Policy Statement 2018-23 sets out the background to the Board’s existing overprovision statement which was based on an overprovision assessment carried out in 2013.

The existing overprovision statement creates a presumption against the grant of applications for new premises licences or variations of premises licences where (a) the grant would result in the premises having an off sales display capacity in excess of 40 m2, or (b) in the case of licensed premises with existing off sales capacity of more than 40 m2, the grant of the variation sought would result in an increase in that capacity.

Section 2.13 also summarises the reassessment carried out in 2018, and includes a link to the assessment carried out by the Directorate of Public Health and Health Policy, NHS Highland in May 2018 which can be viewed [here](https://www.highland.gov.uk/downloads/file/19444/nhs_highland_overprovision_assessment_may_2018). Specific details of current numbers and capacities of both on sales and off sales premises can be viewed below:

1. [2017-18 On Sales Capacities](http://www.highland.gov.uk/downloads/file/19446/2018-23_ps_-_on-sales)
2. [2017-18 Off-Sales Capacities](http://www.highland.gov.uk/downloads/file/19445/2018-23_ps_-_off-sales_capacities)

At its meeting on 26 June 2018, the Board agreed:

**(A) To seek views on the question of whether there is overprovision of**

**(a) licensed premises, or**

**(b) licensed premises of a particular description**

**in any particular locality in the Highland area or in the whole of the Highland area, and to ask respondents to give reasons in support of their response to this question.**

**(B) In the case of respondents who consider there to be an overprovision of licensed premises in any locality or in the whole area, to invite them to put forward their own proposals as to how this can best be addressed.**

**(C) The Board also agreed that views be sought on the 4 options for tackling overprovision proposed by the Directorate of Public Health and Health Policy, NHS Highland, in their May 2018 assessment of the overprovision of licensed premises in the Highland area. These four options are as follows.**

* **NHS Option 1 (retain the Board’s current overprovision policy)**

The Board should retain its current policy presumption against the grant of applications for premises licences, provisional premises licences or variations of premises licences where (a) the grant of the application would result in the premises having an off sales display capacity in excess of 40 square metres, or (b) in the case of licensed premises with existing off sales capacity in excess of 40 square metres, the grant of any variation sought would result in an increase in that off sales capacity. This policy should continue to apply for the whole of the Board’s area, which the Board should agree should be treated as one “locality” for the purposes of the overprovision assessment.

* **NHS Option 2**

The Board should change its current policy presumption in respect of off sales (see Option 1) by introducing a presumption against the grant of applications which would result in the premises having an off sales display capacity which exceeds 30 square metres anywhere in the Highland area.

* **NHS Option 3**

The Board should retain its current policy presumption in respect of off sales anywhere in the Highland area (see Option 1) but also introduce an additional policy presumption against the grant of further on sales premises licences in the Caithness and Inverness Highland Community Partnership areas which have higher than average alcohol-related hospital admission rates.

* **NHS Option 4**

The Board should change its current policy presumption (see Option 1) by introducing a presumption against the grant of applications which would result in the premises having an off sales display capacity which exceeds 30 square metres anywhere in Highland and also introduce an additional policy presumption against the grant of further on sales premises licences in the Caithness and Inverness Highland Community Partnership areas which have higher than average alcohol-related hospital admission rates.

**(D) Separately, the Board further agreed to seek views on the option of introducing a similar overprovision policy to that currently adopted by the Scottish Borders Licensing Board. This policy reads as follows:**

“*4.6* *The Board strongly considers well run on sales premises are a preferred and safer environment for alcohol consumption and should be encouraged over drinking in the home or any other unlicensed environment. On sales premises which provide a full range of services, for example food and quality accommodation, will be encouraged in most areas.*

*4.7 The proliferation of larger type supermarkets outwith town centres has continued, the Board recognises that this type of operation serves a larger area than the immediate area in which they are situated. It also acknowledges that small convenience type shops offering a full range of goods are a vital part of the many small rural communities in the area and that it is essential for the viability of such businesses that they are able to provide a full range of goods and services.*

*4.8 Where any application for an off sales Premises Licence, with no on sales provision, does not fall into the categories referred to at 4.7 or it replicates a similar off sales business in a particular area then the Board is likely to take the view that this would be overprovision, and applicants will be asked to clearly show how their individual proposal differs from what already exists and how it is likely to benefit the area as a whole.*

*4.9 With further regard to off sales premises, the Board is conscious of the fact that the capacity required to be shown within the premises can sometimes be confusing and even seem somewhat irrelevant, in as much as large shops can have a small display area with a large storage area which replenishes the display area frequently or vice versa. However, the Board does acknowledge that display areas can be a factor in encouraging purchase and ultimately consumption and as such will look for detailed justification for any application to have a display area in excess of 10% of the overall sales area of premises, other than dedicated wine and spirit merchants. While Regulations dictate the requirement for display areas to be shown as height and width of display with a linear measurements of displays outwith that on a layout plan, the Board will further require layout plans to clearly show the area, lined and shaded, as a square metres of floor area given over to alcohol display when any application or a variation application is submitted*”

**This policy therefore creates a presumption against the grant of an off sales licence for the following types of premises:**

(a) off sales premises which are neither “*larger type supermarkets outwith town centres*” nor “*small convenience type shops offering a full range of goods*” and which are a vital part of a small rural community, or

(b) off sales premises which “*replicate a similar off sales business in a particular area*”

unless, in either case, the applicant can demonstrate “*how the proposal differs from what already exists in the area and how it likely to benefit the area as a whole*”, and

(c) off sales premises with a display area in excess of 10% of the overall sales area (calculated in m2) of the premises (other than dedicated wine and spirit merchants)

unless, in the case of (c), a “*detailed justification*” for exceeding this size of display area is provided.

**Put in context, parts (a) and (b) of this policy would presume against the grant of a licence for**

* larger type supermarkets in town centres
* larger type supermarkets outwith town centres but in the same area as another larger type supermarket
* small convenience type shops offering a full range of goods but which are not a vital part of a small rural community (eg, small convenience shops in towns or the city)
* small convenience shops offering a full range of goods but which “*replicate*” a similar shop in the same area
* shops dedicated purely to off sales of alcohol (including specialist whisky, wine, craft beer, etc. shops)
* distillery shops and visitor centres which do not also sell alcohol for consumption on the premises

The policy contains no obvious explanation (in terms of the licensing objectives) as to why there should be a presumption against the grant of a licence for these particular types of premises.

It should be noted also that the policy contains no definitions of the terms “larger type supermarkets” or “small convenience type shops”. Were the Board to adopt a similar policy these, and various other terms used within it, would require to be clearly defined so that the policy can achieve the Board’s stated aim which is “*to promote consistency of decision-making and to give advance notice to applicants of the Board’s likely approach to determining applications*”.

**In addition, part (c) of this policy (the 10% of total sales area restriction) would also have the effect that:**

* hypermarkets (defined by IGD[[1]](#footnote-1) as stores with sales areas typically over 5,600 m2) would be permitted an alcohol display area of 560 m2 or more depending on their size,
* supermarkets (defined by IGD as stores with sales areas typically between 280 m2 and 5,600 m2) would be permitted an alcohol display area between 28 m2 and 560 m2 depending on their size, and
* convenience stores (defined by IGD as stores with sales areas typically up to 280 m2) would be permitted an alcohol display area of up to 28 m2 depending on their size.

It should be noted, therefore, that to replace the Board’s current policy (which presumes against the grant of a licence for any off sales premises where the display capacity would exceed 40 m2) with this 10% policy would have the effect of restricting convenience stores to much smaller alcohol display areas than current policy would allow and allowing far larger display areas in supermarkets or hypermarkets.

**The Board has reached no view on these various options at present and wishes to consider the views of consultees and the public generally, including the licensed trade, before deciding (a) whether there is overprovision of any type of licensed premises in its area or in any part of it and, if so, (b) whether to retain or amend its current overprovision policy. Your views are therefore sought below.**

**11. Do you consider there to be overprovision of (a) licensed premises, or (b) licensed premises of a particular description in any locality in Highland or in the whole Highland area? Please give reasons for your answer.**

**12. If you consider there is overprovision of licensed premises, or of licensed premises of a particular description anywhere in Highland, what measures do you think the Board should put in place to address this?**

**13. Having regard to the four options (see section (C) above) for tackling overprovision proposed by the Directorate of Public Health and Health Policy, NHS Highland:**

* **What are your views on NHS Option 1? Please include your reasons.**

* **What are your views on NHS Option 2? Please include your reasons.**

* **What are your views on NHS Option 3? Please include your reasons.**

* **What are your views on NHS Option 4? Please include your reasons.**

**14. Having regard to the terms of the Scottish Borders overprovision policy (see section (D) above), do you consider that a similar policy should be introduced in Highland? Please include the reasons for your view.**

**Local conditions applicable to premises licences (Appendix 7), occasional licences (Appendix 8) and adult entertainment (Appendix 9)**

**15. Please describe any changes or additions to the local conditions listed at appendices 7, 8 and 9 which you consider should be made and why? (If you have already commented on any of these conditions in your answers to the previous questions, please simply refer to those answers.)**

**Other comments or proposals**

**16. If you wish to make any further comment on the Consultation Draft Policy Statement 2018-23, or put forward proposals for additional policies you would like the Board to consider, please add these below, giving your reasons.**

**Name: (please print)**

**Organisation details (if you are responding on behalf of your organisation):**

**Address:**

**Signature:**

**Date:**

1. See <https://www.igd.com/articles/article-viewer/t/uk-grocery-retailing/i/15513> [↑](#footnote-ref-1)