

# Institute of Licensing – Scottish Branch

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## Minute of Meeting 25 October 2017 at TLT Offices Glasgow.

In attendance:

Council Members: Stephen McGowan (TLT Solicitors - Chair), Gordon Hunter (Edinburgh Council - Treasurer), Peter Clyde (West Dunbartonshire Council - Secretary), Scott Blair (Advocate Terra Firma Chambers - attended later in the meeting), Janet Hood (Licensing Consultant), Sarah Graham (NHS), Caroline Loudon (TLT Solicitors), Inspector Susan Gillon, (Police Scotland), Douglas Campbell (Renfrewshire Council – Clerk), Morag Leck (Edinburgh Council – Clerk).

Also in attendance: Alex Kelly (Scottish Government), Denise Borrer (Scottish Government), Jim Sherval (NHS) and via conference call, Fiona Stewart (Aberdeenshire Council Clerk & SOLAR Chair) Laura Mahon (AFS) Aidan Collins (AFS), .

Apologies: Mairi Millar, Neil Miller.

### Welcome

Stephen welcomed everyone to the meeting and outlined the order of business. It was noted that the main aim of the meeting was to discuss the individual members of this groups comments on the updated sections of the S142 guidance, as drafted by Alex Kelly of the Scottish Government, in order that a list of final comments on behalf of the IOL working group could be submitted.

Furthermore the group would be seeking to confirm the final lists of persons to be included in the sub groups to be tasked with reviewing individual sections of the guidance.

It was noted that the group as a whole would get an opportunity to have oversight and make comments of the work being done within the individual subgroups, and as such all persons will be able to have their say on the outcome of this project. Furthermore the members of the group and the individual subgroups are encouraged to seek and consider the views of any person or persons who may contribute or wish to contribute to this process.

### Subgroups

Stephen proposed that the group should consider each section of the existing guidance and consider whether they wish to be involved in the working group. Stephen also proposed that the group should consider an additional section to the guidance to cover the licensing objectives.

Following a debate, it was agreed that an attempt should be made to draft a new section which advises on the licensing objectives. Stephen acknowledged comments as to whom the guidance should be aimed at and the need for this guidance to not be prescriptive. In response to these points, Stephen reminded the group that any new sections of guidance which are drafted by this group will ultimately require to be agreed to by the Scottish Ministers.

Janet Hood then raised a point that it was her belief that there should be additional sections to cover how to make an objection and also a chapter advising Licensing Boards on how to appropriately draft licence conditions. Following a vote, this motion was not carried, however it was proposed that the Subgroup which is dealing with Premises Licences considers making comment on licence conditions, and that there be a suggestion in the section on Licensing Policy Statements that advises Boards to consider a section of their policy which offers basic and generic guidance to objectors.

Fiona Stewart raised the point that there should be subsections within the Premises Licence guidance section to consider Temporary Premises Licences and the Licensing of Vehicles. The group agreed with these conclusions.

Thereafter the discussion on the population of the subgroups was undertaken, with Stephen McGowan stating that he would contact all persons listed to confirm their involvement in the subgroups.

#### Subgroup A – The Licensing Objectives

The following persons agreed to be involved in this group:-

Janet Hood

Laura Mahon

Stephen McGowan

Jim Sherval

Douglas Campbell

#### Subgroup B – The Premises Licence

Morag Leck

Fiona Stewart

Aidan Collins

Janet Hood

Jim Sherval

Scott Blair

Douglas Campbell

Sarah Graham

Caroline Loudon

#### Subgroup C – Occasional Licences

The following persons were included in this working group:-

Caroline Loudon

Gordon Hunter

Douglas Campbell

Laura Mahon

Neil Miller

Susan Gillon

Both Morag Leck and Fiona Stewart expressed an interest in having ad hoc involvement in this group.

#### Subgroup D – Personal Licences

The following were co-opted onto this group:-

Fiona Stewart

Susan Gillon

Gordon Hunter

Stephen McGowan

#### Subgroup E – Control of Order

Will include:-

Susan Gillon

Peter Clyde

Morag Leck

Janet Hood

#### Subgroup F – Excluded/Exempt Premises

Scott Blair

Caroline Loudon

Sarah Graham

And Douglas Campbell intimated that he would be willing to get involved in this group in an ad hoc manner.

#### Subgroup G – Sale and Supply of Alcohol to Children

Aidan Collins/Laura Mahon

Sarah Graham/Jim Sherval

It was suggested that Audrey Watson, Clerk to the West Lothian Board be approached to be asked to join this group. **Action Fiona Stewart or Morag Leck.**

#### Subgroup H – LSOs

Neil Miller

Peter Clyde

Stephen McGowan

A Clerk

It was suggested that the National LSO Liaison Group Chair (Douglas Frood) and Depute Chair (Keith Simpson) be approached to join this group. **Action Peter Clyde.**

#### Subgroup I – Other Offences

Susan Gillon

Stephen McGowan

Peter Clyde

And Sarah Graham expressed an interest in this group also.

#### Subgroup J – Licensing Forum

Laura Mahon

Jim Sherval

A Forum chair – possibly the chair from East Ayrshire – **Action Peter Clyde.**

#### Discussion on Draft Chapter 6 – Licensing Policy Statements

Stephen outlined how he proposed that the group considers its response to this consultation. It was understood that the members of the group might not all agree on the final submission to the Scottish Government and, in the case that there is a divergence of opinion, all opinions will be included in the final response.

Stephen further stated that he had read all of the individual submissions made, and that there had been quite a lot of consensus within the responses submitted. It was then agreed that the group

would go through the responses and then decide which comments are included in the final submission.

Gordon Hunter stated that it is important to ensure that adequate controls are put in place to ensure that version control is optimised in order to ensure, so far as reasonably practicable, that all persons are working from the same version of a document.

Thereafter, the group debated individual sections of the draft guidance and also the comments made, as follows:

*Note that references to section numbers relate to the draft guidance section 6 as circulated, unless stated otherwise.*

**S6.1, 6.2**– no comments discussed, other than a general point that the entirety of section 6 was too wordy and difficult to understand, with Audrey Watson's comment capturing the feeling of the group:

*"Is it the purpose of the policy statement to provide guidance and clarity on the policy itself? Wording seems unusual"*

**S6.3** – discussion on Audrey Watson's response, where she stated re the general background referred to

*– "Is this background necessary? Keep this guidance simple and state the current position, not how we reached this position"*

This comment was agreed by several persons around the table, with the references to the historical background regarding the length of time that a Policy Statement was previously active for to be removed, and a simple reference to the new Licensing Policy Period with a simple definition of this period is suggested.

**S6.4** - discussion on Fiona Stewart's submission:

*in relation to revisions following feedback from Forums, the following comment is made: "This is far too simple a statement and does not reflect the amount of work that has to be done in preparing and reviewing a policy station, nor does it reflect the need for extensive consultation and evidence gathering that is required."*

Following a discussion the group agreed to suggest that the sentence in S6.4 that reads "For example, such revisions may be made in response to feedback from the Local Licensing forum."

**Should be deleted.**

**S6.5**– reference to "**Local Authority Licensing boards...**" Local Authority should be removed, due to the status of a licensing board being entirely separate from the local authority.

**S6.6** in response to Aidan's point below, there was a discussion on the necessity of having to state why a supplementary policy might be necessary. Members of the group pointed out that generally, the need or reason for a supplementary policy statement would be communicated in the report

seeking authority from the Board to produce a supplementary policy statement. Finally it was noted that the need for consultation on such a supplementary policy is a matter that Clerks are aware of.

"It is good that this has been added as there appeared to be nothing about consulting on supplementary policies in the previous guidance. There could, however, be more explanation of why this might be done e.g. if objectives are not being achieved, circumstances change, or new evidence emerges".

Also, following a discussion on the inclusion of the words "best Value" the group suggests that this sentence is superfluous and as such suggests its deletion.

Finally, the group recommends the removal of the sentence which starts "*indeed it would be good practice .....*" In order to remove the prescriptive direction to Boards to consult, as a matter of good practice, with Building Standards and also to remove the reference to "best value".

**S6.7** There was a discussion on relation to Aidan's comment on this section, where he is supporting the inclusion of a direction for Boards to keep their Policy under review. Having heard from Scott Blair and also Stephen McGowan it was noted that there is no legal duty under the act for a Board to keep its policy under review, however it could be viewed as best practice. It was also noted that a Licensing Board is now required to make comment on its Policy via the Annual Report requirement as inserted by the Air Weapons and Licensing Act.

**S6.9** Fiona Stewart's comment below was agreed:

At Para 6.9 in respect of the statement " Licensing Boards have a duty to make a pro-active assessment of overprovision of licensed premises" the following comment is made: "There may be no overprovision, or an assessment may fall just short of indicating that there is overprovision"

**S6.10** In relation to the reference at the end of para 3 of S6.10, concern was given to the reference to "*wider public interest*" and it is therefore advised that this be changed to refer to "*any other person*"

In relation to para 7 of S6.10, Fiona Stewart's comment below are agreed:

*In Para 6.10 at the last sentence the following comment is made: " The wording in the existing Guidance is clearer than the revised wording: 13. Licensing Boards' statements of policy may set out a general approach to the making of licensing decisions, but must not ignore, or be inconsistent with, provisions in the Act."*

There then followed a discussion on the point raised by Aidan in relation to the suggestion that there should be a step by step guide on policy development. Following a robust debate, Stephen McGowan declared this matter to be a divergence of views as to whether a step by step guide to policy development should be included within this guidance and asked for this to be noted.

Finally, it was discussed that this section felt quite muddled, and that this section is possibly out of sequence somewhat with the content of section 6.6. Therefore the group feedback is that Alex and his team should reflect on this.

**S6.11** This section, entitled “Preparation of policy statements – what the board can require:” was seen by some as being unnecessary, whilst others viewed this as a useful aide memoir in the production of a policy, therefore the group recommends that this section remain.

**S6.13** Aidan’s point below was discussed and noted.

*Under Para 6.13 and the early reference to local communities, the following comment is made: "This was originally the opening sentence to the content section in the guidance, with a number of bullet points then following on from it. The critical point about the policy providing a clear indication to local communities appears to have been weakened/lost somewhat in this updated format".*

Thereafter, Sarah’s point below regarding licensed hours was discussed:

*At Para 6.13 concerning "Licensed Hours", the following comment is made: "Not sure I’m if being pedantic here but we speak about ‘evidence’ for overprovision but ‘reasons’ for licensed hours? I’m not sure if it’s language or semantics but ‘reasons’ feels like a lesser measure??"*

The inclusion of references to “national festivals” in para 4 under Licensed Hours in S6.13 was discussed, with it being noted that the reference to national festivals does not appear under the relevant section in the Act (S68). Following this discussion the direction from the group is to recommend that this paragraph be amended to mirror the references to S 68 1 (b) (i) and (ii).

Also, in relation to the section of 6.13 under Licensed Hours, there was a discussion on the provenance of the reference to “14 hours” as being a reasonable maximum period for a venue to be licensed in any one day.

Finally, under S6.13 there was a discussion on the part of this section entitled “Relationship with other Strategies” and the extent to which this might apply in a licensing setting. Some members of the group felt that this section, which has been carried forward from the original guidance, possibly distracts Boards from their main aim of regulating the sale of alcohol. Peter gave a practical example of how the West Dunbartonshire Board has used this section of the guidance to introduce a relaxation of their policy on licensed hours and children’s access in tourist areas within that Boards jurisdiction.

Following a discussion on this point, it was suggested that the word “needs” be removed from the section on Tourism, planning and building control.

