

EAST AYRSHIRE LICENSING BOARD

Minute of the joint meeting of East Ayrshire Licensing Board and East Ayrshire Local Licensing Forum held on Tuesday 22 October 2019 at 10.30am

SEDERUNT Councillor T Cook (Chair), Councillor W Crawford, Councillor L Jones, Councillor C Leitch, Councillor G Mair, Sergeant D Dougan and Ms C Eaglesham (Police Scotland), Mr S Wilson (Chair of East Ayrshire Local Licensing Forum), Mr D Little (Licence Holder), Mr G Piggott (Resident), Miss A Stewart (NHS Representative), Mr L Wells, (ADP Coordinator), Mr N Dunipace (Resident), Mr J Wilson (Personal Licence Holder).

ATTENDING: Mr S McCall (Depute Clerk to the Licensing Board), Mrs C McEwan (Licensing Standards Officer), Mrs P Duncan and Ms S Duncan (Licensing Board Administrators).

APOLOGIES: Councillor Fiona Campbell, Councillor John Campbell, Councillor Drew Filson, Councillor Ian Grant and Councillor Jacqui Todd.

1. SEDERUNT

Noted.

2. INTRODUCTIONS

Introductions were made.

3. EAST AYRSHIRE LICENSING BOARD : ANNUAL FINANCIAL REPORT

The Depute Clerk reminded of the Licensing Board's statutory obligation to prepare and publish an Annual Financial Report, not later than three months after the end of each financial year.

He expressed concern that the Scottish Government had not provided Licensing Boards with the specification to be included in the annual financial report or annual function report, which had resulted in Licensing Boards producing completely different reports. He also questioned the purpose of these reports.

The Depute Clerk outlined the annual financial report, pointing out that there was a deficit of £2,234.00. He explained that the Licensing Board's new policy in relation to the over provision of off-sales premises within East Ayrshire had impacted on the Licensing Board's income.

4. EAST AYRSHIRE LICENSING BOARD : ANNUAL FUNCTION REPORT

The Depute Clerk reminded of the Licensing Board's statutory obligation to prepare and publish an Annual Function Report, not later than three months after the end of each financial year.

The Depute Clerk outlined the work carried out by the Licensing Board during the year 2018/19.

Mr Wilson asked if there had been any issues over the renewal of Personal Licences.

Mrs McEwan advised that East Ayrshire Licensing Board had no issues with the renewal of Personal Licences and that there would now be an ongoing process of issuing reminder letters in respect of Personal Licence refresher training as well as Personal Licence renewal applications.

5. THE ALCOHOL (MINIMUM PRICING) (SCOTLAND) ACT 2012

Carolyn McEwan, LSO, updated Members on the reported impact of the Minimum Unit Pricing (MUP) legislation which commenced on 1 May 2018 and introduced a minimum unit price of 50p per unit of alcohol. Mrs McEwan reported that Scotland was the first country in the world to introduce MUP following a ten year campaign. Scottish Ministers perceived that the introduction of a minimum unit price would reduce the consumption of alcohol by harmful drinkers and thereby reduce alcohol related harm and introduced the Alcohol (Minimum Pricing) (Scotland) Act 2012. This legislation was aimed at targeting price increases on high strength low cost alcohol which tended to be bought more by harmful drinkers and it was anticipated that this would potentially target the drinkers causing most harm to themselves and society.

A legal challenge to the minimum pricing legislation failed at The Court of Session and The Scotch Whisky Associated (SWA) appealed the judgement. The act was delayed with the legal challenge by the SWA being referred to the Court of Session. The decision of the court was that such legislation would only be lawful if alternative policies such as higher taxes would not be effective in protecting public health. On 15 November 2017 the Supreme Court unanimously rejected the SWA's case, ending the legal battle, arguing that minimum pricing was a proportionate means of achieving a legitimate aim and the MUP legislation became effective from 1 May 2018.

A 'sunset clause' included means that MUP will expire after 6 years unless the Scottish Parliament pass an order to extend it. To inform this decision there is a review clause which requires Ministers to present a review report to Parliament on the impact of MUP after 5 years of operation.

Following implementation it was soon realised that a legislative change would be required to take account of Wholesalers applying "dual-pricing" which could potentially put retailers at risk of prosecution. Wholesalers who sell directly to persons for the purpose of their trade only do not require a Premises Licence, however wholesalers who sell to both trade and public do require a licence and as such sales to

the public must comply with MUP. As yet no changes have been made to the legislation to take account of wholesalers who operate dual pricing.

Mrs McEwan advised that, prior to the implementation of MUP, East Ayrshire Licensing Standards Officers provided guidance to all 127 off-sale premises. This guidance provided details of how MUP should be calculated and how to prepare for the implementation of MUP on 1 May 2018. Inspections were carried out in all off-sale premises to ensure compliance and to provide further guidance to Licence Holders and their staff if required. With the exception of a few premises most were found to be MUP compliant.

During inspections it was noted by Officers that certain low cost, high alcohol strength products were no longer available for sale, this being due to the vast increase in price.

Visits to off-sale premises continue to be undertaken at routine intervals with random alcoholic products being checked to ensure compliance. The legislation appears to have bedded in well with no Licence Holders having been reported to the Licensing Board for persistent non-compliance of the MUP legislation.

Mrs McEwan continued that Nielsen, a market research company, reported on changes in alcohol purchases in the three month period following the implementation of MUP compared to the same period last year. Nielsen reported a 14% increase in total value purchases across all alcohol in Scotland, partly due to a 10% increase in average prices. They also reported that volume purchases increased by 4% in Scotland. It was reported that this increase could have been as a result of the particularly good weather that summer, the Royal Wedding and the Football World Cup, all of which would have had an impact on alcohol sales/purchases.

Six months on from the implementation of MUP, NHS Scotland reported that it was too early to assess the impact of MUP on alcohol consumption. NHS Scotland are conducting a comprehensive evaluation to assess the impact of MUP on a range of outcomes, using retail sales data to assess the impact of MUP on alcohol consumption in Scotland and will focus on the volume of pure alcohol sold per adult in Scotland as a primary outcome measure.

The evaluation will also take account of the impact MUP has had on health outcomes such as alcohol related hospital admissions and deaths, as well as wider factors such as crime.

The evaluation will look at off-trade sales over a 3-year post MUP period in order to assess the impact of MUP, the findings of this evaluation being reported in 2023.

It has been reported that the implementation of MUP has had little effect on retailers. While there would appear to have been a small decrease in the volume of alcohol sold, the overall effects on revenue would appear to have been small as increased prices have compensated for the lower volume of sales.

Research involving eight organisations representing different parts of the industry, including a supermarket, convenience and specialist off-trade retailers, on-trade retailers, spirits producers and two brewers, has revealed that the introduction of MUP

has not resulted in closure of premises, a reduction in staff numbers or a reduction in investment.

The British Medical Journal (BMJ) has reported that in terms of immediate impact, the introduction of the MUP appears to have been successful in reducing the amount of alcohol purchased by households in Scotland by 7.6%, which equates to 1.2 units per week per household, the equivalent of around half a pint of beer. It noted that reduction in alcohol purchases was greater in lower income households and was especially evident in the top 20% of households surveyed that purchased the most alcohol. In such households, the amount of alcohol purchased reduced by around 1.9 units per week.

Mrs McEwan concluded that studies have been undertaken on a national level and as such it is difficult to say if the implementation of MUP has made an impact locally, in terms of volume sales, hospital admissions etc. However, it is worth noting that the implementation of MUP has resulted in certain high strength low cost products being removed from sale locally.

Nationally it would appear that demand for certain alcoholic products has changed following implementation of MUP with sales of products which were previously retailing below MUP decreasing the most.

NHS Scotland has reported that it is yet too early to assess the impact of MUP on alcohol consumption and are undertaking an evaluation, the findings of which will be reported in 2023. For most other measures of MUP success, only anecdotal information is available so far as it is too soon to know the impacts on measures like hospital admissions and mortality rates and the study should provide a clearer understanding of whether MUP has been successful.

Miss Stewart advised that new data on the impact of MUP should be release within the next few months. She hoped that it could be agreed locally to carry out assessments on the impact with ADP and undertook to keep Members updated.

Mr Wells stated that it was still too early to make a robust judgement as MUP does not stand alone but should be taken in conjunction with other public health promotions, Health & Wellbeing in Schools, etc.

6. IMPACT OF OCCASIONAL LICENCES WITHIN EAST AYRSHIRE

Following a request from the Chair of the East Ayrshire Local Licensing Forum, Mrs McEwan updated Members on the impact of Occasional Licences within East Ayrshire.

She reminded that the purpose of the occasional licence is to cater for the multitude of events which take place on premises which are not 'fully' licensed but feature the sale of alcohol, for example fetes, wedding receptions and arts events. When used in their envisaged role, occasional licences offer a flexible regime for the hospitality and entertainment sector to provide alcohol at events outside licensed premises.

The procedures for handling occasional licences are set out in sections 56 to 61 of the 2005 Act. Those persons eligible to apply for an occasional licence are:

- The holder of a premises licence;
- The holder of a personal licence; and
- A representative of any voluntary organisation.

Voluntary organisations may apply for an occasional licence authorising the sale of alcohol at an event connected with the organisation's activities. A single voluntary organisation may hold over a 12 month period:

Not more than 4 occasional licences of 4 days or more in duration;
Not more than 12 occasional licences of less than 4 days in duration

However the total number of days on which an occasional licence has effect must not exceed 56 during any 12 month period.

Occasional licences may be granted in respect of a premises licence covering a members' club. This means, for example that a members' club which under its licence is normally only permitted to supply alcohol to its members and their guests may during the period covered by an occasional licence admit members of the public and sell alcohol to them.

The maximum duration of each occasional licence is 14 days.

Under the 2005 Act and The Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007/453), applications for occasional licences are subject to a statutory procedure for notification, publication and determination. This is intended to ensure there is appropriate notification of applications and the ability to object and make representations.

Any application for an occasional licence is notified to the Chief Constable and Licensing Standards Officer, and anyone can lodge an objection.

The current cost for an Occasional Licence for any duration is currently set at £10.

Mrs McEwan reported that since 2015, the number of Occasional Licences granted by East Ayrshire Licensing Board are as follows :

2015 – 896
2016 – 889
2017 – 896
2018 – 900
2019 – 731 (As of the 14th October)

Mrs McEwan pointed out that, as can be seen from the above figures, the amount of Occasional Licences granted has maintained a steady similar level the last five years with 2019 probably being less than in previous years.

Taking 2018 as the most recent year to assess, the 900 Occasional Licences were granted to a variety of organisations and individuals. These include:

- 41 out of the 53 Registered Clubs who hold a Premises Licence with East Ayrshire
- Several clubs who do not hold a Premises Licence to sell alcohol including bowling clubs, Masonic Clubs, football clubs.
- Several Personal Licence Holders who hold a licence to provide bar facilities at private functions.
- Numerous voluntary organisations such as parish councils, community organisations.

One category which has seen an increase in the granting of Occasional Licences in recent years are wedding venues, whereupon a Personal Licence Holder will apply for the Occasional Licence to cater for the event.

There have been no applications received from organisations intending to trade for a period of time avoiding having to submit a Premises Licence application.

Mrs McEwan reminded Members that on the 23 April 2019, the Scottish Government set up a consultation in respect of Occasional Licences asking views as to whether the £10 fee currently charged should be increased and if so, to what level. The consultation also asked views on prescribing a limit on the number and duration of occasional licences for premises licence holders and personal licence holder. This consultation concluded on the 16 July 2019 and the publication of the results are still awaited.

Mrs McEwan reported that from a local perspective, the Occasional Licences that have been granted over recent years have not caused any concern to the Licensing Board or been subject to any complaints that the licensing objectives have not been upheld.

Mrs McEwan stated that further concerns in relation to Occasional Licences were that the 2 hour minimum training requirement for staff did not apply and the advertising of the Occasional Licence application. She explained applications for Occasional Licence required to be advertised within 7 days of receipt of the application. Accordingly, applications lodged early may be advertised well in advance of the event and potential objectors may not have seen the advert. She suggested that a notice displayed at the venue may be better way to advertise a proposed event.

Mr Dunipace asked if events where Occasional Licences were granted were policed. Mrs McEwan advised that both Police Scotland and the LSO's checked Occasional Licences and dealt with any complaints received.

Mr Piggott stated that it would be a shame to increase the fee for Occasional Licences lodged by voluntary organisations as these were for good causes.

Mr Wilson asked if East Ayrshire Licensing Board had responded to the consultation on Occasional Licences. Mrs McEwan advised that a response had been lodged

proposing a fee of £50 and addressing matters such as staff training and voluntary organisations.

7. LICENSING PROVISIONS FOR SEXUAL ENTERTAINMENT VENUES

The Depute Clerk updated Members on the new requirement for Sexual Entertainment Venues (SEVs) to be licensed under the Civic Government (Scotland) Act 1982 and explained that currently there is no legal requirement for SEVs to be licensed under the 1982 Act in Scotland. However, if the premises in which the sexual entertainment is taking place sells alcohol, then the premises at present would only require a Premises Licence under the Licensing (Scotland) Act 2005 ('2005 Act') which would include 'adult entertainment' as an activity on the approved operating plan. Case law however, has ruled that the licensing regime in the 2005 Act is limited to the regulation of the sale of alcohol only and cannot extend to matters not linked to the sale of alcohol. There is currently no direct licensing or regulation of this particular type of activity in Scotland.

The Depute Clerk advised that The Air Weapons and Licensing (Scotland) Act 2015 ('2015 Act') which came into effect on the 5 August 2015 provided for changes to the Civic Government (Scotland) Act 1982 ('1982 Act'). Not all of the provisions detailed in the 2015 Act were brought into force immediately.

On 26 April 2019, section 76 of the 2015 Act added new sections 45A to 45C to the 1982 Act in order to introduce a discretionary licensing regime for SEVs and also amended section 41 of the 1982 Act to specifically exclude SEVs from the definition of places of public entertainment so that a public entertainment licence cannot also be required for those venues.

Where a local authority resolves to licence SEVs, the provisions at section 45A of the 1982 Act require a licence for premises operated as an SEV where the sexual entertainment is performed live, is for the direct or indirect financial benefit of the organiser and is for the sole or principal purpose of sexual stimulation of members of the audience. However, premises where sexual entertainment is provided on no more than three occasions in a twelve month period are not to be treated as SEVs.

A Sexual Entertainment Venue licence will only be required where a local authority makes a resolution under new section 45B of the 1982 Act. In the event that a local authority does not adopt a resolution to licence SEVs, venues would operate without any direct regulation from the local authority.

The purpose of regulating this type of activity is the preservation of public safety and order and the prevention of crime. In making a resolution to licence SEVs, local authorities will have to consider local circumstances in setting the number of venues able to operate within their area and to exercise appropriate control and regulation of these venues.

In order to consider adopting a resolution to licence SEVs under the 1982 Act, a statutory process requires to be undertaken which will involve a two-part consultation exercise. Initially, it is intended to carry out a full public consultation, where views would be invited from various interested parties including Elected Members, Community Councils, Health and Social Care Partnership, Child Protection

Committees, Police Scotland, Scottish Fire and Rescue Service, NHS, SEV operators, employees in SEVs and Violence against Women groups.

Through the proposed consultation process, evidence would be gathered on a wide range of issues relating to the licensing and regulation of SEVs in line with Scottish Government Guidance. The main questions to the formal consultation being:

- (i) Whether Sexual Entertainment Venues in East Ayrshire should be licensed;
- (ii) If licensed, what the appropriate number of Sexual Entertainment Venues for East Ayrshire should be; and
- (iii) If licensed, what should be included in a Sexual Entertainment Venue policy statement.

Evidence gathered through this process will then be reported to the Licensing Panel for consideration and formulation of a draft Policy Statement which would be consulted upon with the same group of consultees as previously mentioned in paragraph 10.

In adopting a resolution, a local authority must determine the appropriate number of SEVs for their area and for each relevant locality. In addition, prepare an SEV Policy Statement in respect of its functions in relation to the licensing of SEVs, taking in to account the licensing objectives of public nuisance, crime and disorder, public safety, protecting children and young persons from harm and violence against women.

There would also be grounds for the refusal of an SEV licence where the number of SEVs in the local authority area or the relevant locality at the time the application is made, is equal to or exceeds the number which the local authority consider is appropriate for that locality.

A resolution must not come in to force any earlier than one year from the date the resolution is made by the local authority, and that the Policy Statement must be published 28 days prior to the resolution coming into effect.

Mr Wells asked if venues that catered for events such as 'hen parties' which included strippers would require a SEV licence.

The Depute Clerk advised that 3 events per annum were permitted without the requirement for a licence, however in terms of the Licensing Board's Policy Statement, East Ayrshire does not permit adult entertainment involving male strippers, female strippers and/or erotic dancers within any licensed premises.

The Depute Clerk advised that the consultation document would be issued soon and invited responses.

Mr Wilson thanked staff for supporting the Licensing Forum throughout the year.

For information, Mr Little advised that he was currently involved in Pubwatch and Best Bar None schemes and now intended to receive training, in conjunction with the

ADP, in administering Naloxone. This would be taken forward once he had received full training.

As there was no further business, the meeting ended at 12.35pm.