

## **Item: 8**

### **Joint Meeting of Orkney Local Licensing Forum and Orkney Islands Area Licensing Board: 16 January 2019.**

### **Submissions from Police Scotland in relation to Drugs and Duty of Care on Alcohol Licensed Premises.**

#### **Report by Clerk to the Board.**

## **1. Purpose of Report**

To consider submissions from Police Scotland in relation to Drugs and Duty of Care on alcohol licensed premises.

## **2. Recommendations**

The Board and Forum are invited to note:

### **2.1.**

Submissions from Police Scotland in relation to Drugs and Duty of Care on alcohol licensed premises, attached as Appendix 2 to this report.

#### **It is recommended:**

### **2.2.**

That consideration be given to the submissions from Police Scotland in relation to Drugs and Duty of Care on alcohol licensed premises.

## **3. Introduction**

### **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's Statement of Alcohol Licensing Policy required review during 2018.

### **3.3.**

In response to the consultation on the review of the Board's Statement of Alcohol Licensing Policy, Police Scotland made submissions, attached as Appendix 2 to this report, in relation to Drugs and Duty of Care on alcohol licensed premises.

### **3.4.**

On 6 December 2018, the Board discussed that the submissions from Police Scotland may more appropriately be considered at a Joint Meeting of the Board and the Forum and in the meantime made no amendment to the revised draft of the Board's Statement of Alcohol Licensing Policy to require a Duty of Care Policy or Drug Policy to be adopted in relation to alcohol licensed premises.

## **4. Submissions**

### **4.1.**

The report considered by the Board on 6 December 2018 advised that the submissions from Police Scotland referred to a proposed Drug Policy to be required in both licensed premises and premises subject to occasional licences.

### **4.2.**

Police Scotland used the analogy of the provisions of the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. These are detailed in Appendix 1 to this report and are published at [http://www.legislation.gov.uk/ssi/2007/336/pdfs/ssi\\_20070336\\_en.pdf](http://www.legislation.gov.uk/ssi/2007/336/pdfs/ssi_20070336_en.pdf).

### **4.3.**

The Regulations only cover late opening premises, which are defined as premises open beyond 01:00 on any day. The additional mandatory conditions are further dependent upon the capacity of the premises (aimed at larger premises) and the type of operation. Late hours mandatory conditions specifically apply to premises licences issued in terms of section 27(4) of the Act (licensed premises with operating hours ending after 01:00 any day) and do not apply to premises subject to occasional licences. Regulation 3(b) provides that there must be a written policy in existence concerning the prevention of the misuse of drugs on the premises.

### **4.4.**

Police Scotland submitted that "Late hours premises tend to be attended by patrons who have also visited licensed premises with standard hours, as such there is no reason why all premises should not have a drug policy in place; furthermore it is almost inconceivable to think that drugs are only prevalent in late hour's premises yet not in a licensed premise with standard hours".

### **4.5.**

Police Scotland referred to results of inspections within 3 premises which indicated potential drug use.

### **4.6.**

The submissions from Police Scotland also referred to a proposed Duty of Care Policy to be required in both licensed premises and premises subject to occasional licences.

#### **4.7.**

Police Scotland referred to an incident which resulted in a Formal Intervention Plan with a premises licence holder. They also referred to “a further 12 recorded issues regarding the duty of care shown by licensing staff towards those who utilise their premises over the last two years within licensed premises in the Orkney Isles which fell below what should be expected”.

#### **4.8.**

At the meeting of the Local Licensing Forum on 29 August 2018, Chief Inspector Matthew Webb stated that the proposed policies on Drugs and Duty of Care were intended to attach to on-sale premises which were identified as “problem” premises.

#### **4.9.**

There have been no previous reports to the Board by the Police on the matters referred to in sections 4.5 or 4.7 above.

#### **4.10.**

Options available to the Board include:

##### **4.10.1.**

Do nothing.

##### **4.10.2.**

Require a Drug Policy and/or a Duty of Care Policy to be adopted in all licensed premises and premises subject to occasional licences. If this is the preferred Option, a further report to a meeting of the Board will be required.

##### **4.10.3.**

Address instances of potential drug use and issues relating to duty of care by means of formal reporting to the Board with accompanying premises licence review applications. One of the courses of action available to the Board would be to vary the premises licences by means of attaching specific conditions in order to deal with identified issues at particular premises. Such conditions might include a requirement to adopt Police Scotland’s suggested policies on Drugs and Duty of Care in cases where considered appropriate.

## **5. Financial Implications**

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

## **6. Legal Aspects**

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

## **7. 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).

## **8. Appendices**

Appendix 1: Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007.

Appendix 2: Submissions from Police Scotland.

## Appendix 1

### Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007

<a href="http://www.legislation.gov.uk/ssi/2007/336/pdfs/ssi_20070336_en.pdf">[http://www.legislation.gov.uk/ssi/2007/336/pdfs/ssi_20070336_en.pdf]</a>	
Condition 1 applies to all premises licences where the operating plan indicates opening beyond 1 a.m. on any day.	
1.	A person trained to the satisfaction of the licensing board in administering First Aid must be present on the premises from 1 a.m. (on any day when the premises are open at that time) until whichever is the earlier of:
(a)	the time at which the premises next close; and
(b)	5 a.m.
The following conditions 2 to 6 apply to premises where it appears to the Board, based on the operating plan, that the premises have a capacity of at least 250 people and:	
(a)	will regularly provide at any time in the period between 1 a.m. and 5 a.m.:
(i)	live or recorded music with a decibel level exceeding 85dB;
(ii)	facilities for dancing; or
(iii)	adult entertainment; or
(b)	when fully occupied, are likely to have more customers standing than seated.
The following types of premises are exempt from conditions 2 to 6:	
(i)	premises whose primary function is the provision of food;
(ii)	premises which include, or are part of larger premises which include, at least 6 letting bedrooms;
(iii)	premises which are the subject of a theatre or cinema licence;
(iv)	premises which are, or are part of, an art gallery.
2.	A designated person who is the holder of a personal licence must be present on the premises from 1 a.m. (on any day when the premises are open at that time) until whichever is the earlier of:
(a)	the time at which the premises next close; and
(b)	5 a.m. or such other time as the licensing board may specify.
3.	There must be written policies in existence concerning:
(a)	the evacuation of the premises; and
(b)	the prevention of the misuse of drugs on the premises.
4.	A CCTV system must be installed on the premises to the satisfaction of the appropriate chief constable and must be kept in good working order.

5.	There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.
6.	A person who holds a licence granted under section 8 of the Private Security Industry Act 2001 must be positioned at every entrance to the premises from 1 a.m. (on any day when the premises are open at that time) until whichever is the earlier of:
(a)	the time at which the premises next close; and
(b)	5 a.m. or such other time as the licensing board may specify.

## Appendix 2.

Police Scotland Orkney Area Command are fully supportive of Draft Statement of Alcohol Licensing Policy, November 2018.

In addition to the details contained within the aforementioned document, Orkney Police wish to propose that local conditions be included in the Alcohol Licensing Policy requiring licensed premises to put the following in place:-

- Drug Policy
- Duty of care policy

This should include Occasional Licences.

The rational and proportionality behind this request is as follows:-

### **Drug Policy**

Appendix 4, Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007, as attached to the 2018 OIC Alcohol Licensing Policy Consultation document details at part 3. (b) "There must be written policies in existence concerning: the prevention of the misuse of drugs on the premises." Late hour's premises tend to be attended by patrons who have also visited licensed premises with standard hours, as such there is no reason why all premises should not have a drug policy in place; furthermore it is almost inconceivable to think that drugs are only prevalent in late hour's premises yet not in a licensed premise with standard hours.

For a premise not to have a Drug Policy puts staff members in a difficult position should they require to deal with an incident involving drugs in that they will have had no training, nor have a policy or direction as to how to deal with such a situation.

During November 2017 two members of N Divisions licensing team attended Orkney where they performed a number of full inspections on licensed premises. During the said inspections they carried out inspections within the toilets of 3 premises utilising drug wipes which indicate if there is a trace of cocaine on surfaces. Of the three premises which had drug wipes utilises all three gave a positive indication. This adds further weight to the fact that drugs are prevalent in both standard premises and late hour premises.

Sec 4 Licensing (Scotland) Act 2005 details the five licensing objective which must be linked to the sale of alcohol. Of those five objectives three are particularly relevant in relation to putting measures in place to combat the illegal use of drugs within a licenced premise

1. Preventing Crime and Disorder.
2. Securing Public Safety.
4. Protecting and Improving Public Health.

### **Duty of Care**

During the early hours of the morning in the winter of 2016 witnesses within a dwelling heard sounds of what they believed to be a person grunting. On going outside they discovered a person in their late 20's lying on a public footpath in Orkney. The person was found to be extremely cold to the touch, groaning and unresponsive, as such an ambulance was called which conveyed them to hospital where they were placed in an induced coma, concern was raised due to their low core temperature amongst other serious medical concerns. They were subsequently transferred to hospital in Aberdeen where fortunately, following medical treatment, they suffered no long term health issues. It was subsequently established that they had been drinking within a local licensed premise, had become

extremely intoxicated, were spoken to by a staff member near to the exit during which time they fell over due to intoxication and were unable to stand up without assistance yet they were simply allowed to leave on their own. Of further concern was the fact they were so intoxicated they had been unable to retrieve their jacket and left without it. It was thereafter over three hours before they were found on the aforementioned public footpath, it is suspected they had lain there for most, if not all, of that time. It is further believed, given the extremely low temperature at the time, had they not been found by the witnesses the circumstances may have had a far more tragic ending. As a result of the incident the licensed premise in question was placed on a Formal Intervention Plan with processes in place to ensure the safety of patrons both within and leaving the premise.

Over and above the aforementioned serious incident of note, and obvious failing by staff to ensure the safety of their patrons, there have been a further 12 recorded issues regarding the duty of care shown by licensing staff towards those who utilise their premises over the last two years within licensed premises in the Orkney Isles which fell below what should be expected.

Sec 4 Licensing (Scotland) Act 2005 details the five licensing objective which must be linked to the sale of alcohol. Of those five objectives two are particularly relevant in relation to ensuring the safety and wellbeing of patrons using

2. Securing Public Safety.
4. Protecting and Improving Public Health.

With the above in mind it is the opinion of Police Scotland, N Division, Orkney Area Command that a Duty of Care policy would assist in ensuring the safety and wellbeing of patrons attending licensed premises in Orkney.

Appendix 6 to the Draft Statement of Alcohol Licensing Policy, November 2018, Guidance to Risk Assessments for applications for Occasional Licences and Occasional Extensions, which provides advice and assistance to applicants for such licences with regards to carrying out a risk assessment exercise in terms of the 5 Licensing Objectives details, in relation to "Crime and disorder", that a risk factor is customers getting hold of drugs, and in relation to "Protecting and improving public health", that a risk factor is excessive drinking. This further evidences that there is a need to have local conditions to make a requirement to have in place Drug and Duty of Care policies.

It is understood that such local conditions will not be added retrospectively, however they can be added to new licences, minor & major variations and occasional licences.

# **DUTY OF CARE POLICY**

"The licence holder must have in place a duty of care policy to ensure a standard approach is taken when any patron appears to be displaying signs of excessive intoxication. The purpose of this policy is to reduce vulnerability through intoxication, however attained.

All staff must have additional training in identifying signs of excessive intoxication and an enhanced awareness of vulnerability through intoxication. This should include use of material such as the 'Who are You' video ([whoareyou.nz](http://whoareyou.nz)) or similar.

All related training should be recorded and such records available for inspection by Police and Licensing Standards Officers."

## **DRUGS POLICY FOR LICENSED PREMISES WITHIN HIGHLAND AREA**

These premises operate a zero tolerance approach to drugs.

Everyone in every community has a part to play in tackling drug misuse. It is important to tackle the 'drug problem' and to ensure that licensed premises within the Highland Area remain 'drug free'. Illegal substance must not be allowed to be supplied or consumed within licensed premises.

The contents of this Drug Policy should allow all staff employed in licensed premises to have a better understanding of the law in relation to drugs and drug related incidents. It will provide systems and procedures to ensure that all drugs related incidents are dealt with consistently and safely.

We will work towards achieving this through:

- communication with our customers;
- providing our employees with guidance, information, training and procedures to assist them in identifying drugs, the effects of taking them and appropriate action;
- complying with our legal responsibilities;
- working closely with local authorities and Police Scotland.

### **Classes of Drugs**

The Misuse of Drugs Act 1971, classifies drugs as follows:

#### **Class 'A'**

Includes Cocaine, Crack Cocaine, Heroin, Ecstasy (powdered and crystal MDMA), Cannabis Oil (Class B) and LSD

#### **Class 'B'**

Includes Cannabis, Cannabis resin, Cannabis Shatter (Honey Butane Oil), Amphetamine, M-Kat and Ketamine.

#### **Class 'C'**

Generally tend to be prescribed drugs which are abused, the most popular include Temazepam, Diazepam, Steroids, Etizolam, Alprazolam (Xanax).

### **The Law**

The Misuse of Drugs Act 1971 creates a number of offences to control the misuse of illegal drugs. It is not an offence to possess Steroids, Dihydrocodeine or NPS.

### **Common Offences Possession**

It is an offence for a person to have a controlled drug in his/her possession.

### **Possession with Intent to Supply**

It is an offence for a person to have a controlled drug in his/her possession whether lawfully or not with intent to supply it to another.

### **Supply**

It is an offence for a person to supply or offer to supply a controlled drug to another person.

### **Concerned in the Supply**

It is an offence for a person to be concerned in the supply of a controlled drug to another person.

### **Section 8 of the Misuse of Drugs Act 1971**

It is the responsibility of the licensee and staff of licensed premises to prevent drug dealing and the use of controlled drugs within licensed premises.

To knowingly permit or suffer any drug related activity on the premises is an offence.

### **Searching**

All licensees should introduce the use of searches as a condition of entry to their premises.

Signs required to be clearly displayed regarding this and a 'Zero Tolerance' Policy in relation to drugs within licensed premises.

### **Power of Search**

Only the Police have power to search people without their consent.

Can a customer wishing to enter the premises be searched?

Yes, if it is clearly advertised as a condition of entry that customers are required to allow a search of their person.

Searches can only take place with the permission of the person concerned. A witness should always be present during any search to provide corroboration and prevent any allegations. If they decline to be searched, entry can be refused.

Always remember your rights to refuse entry or to ask someone to leave your licensed premises. If an individual refuses, the Police should be contacted for assistance.

### **What can be searched?**

The search should be restricted to outer clothing or pockets and should include bags etc. Great care must be taken whenever you are searching a person in relation to drugs. Never put your hand straight into someone's pocket without first asking the person if they have any sharp objects and patting the outside of the pocket. It may be preferable to ask the person to empty their own pockets and show you the contents. You should then ask if the pocket is empty and pat it from the outside. This may be sufficient to establish if there is anything in the pocket. Great care must be taken so that an exposed

needle for example, does not cause injury. You should also ask the individual to empty any bags and watch carefully whilst this is done. Again this may be sufficient to establish whether any drugs are present. Obviously if the premises in which you are, are particularly busy, you do not want to take too long to carry out your search. Thoroughness should not however be sacrificed for speed. You should attempt to put your customer at ease and make them as comfortable as possible in these circumstances.

#### **Can a customer within the premises be searched?**

Yes, however, it is not recommended. If a customer is searched prior to entry, there should be no need to do a further search. However, if it is still felt necessary to carry out a further search once on your premises, a sign should be clearly displayed setting out the Search Policy. It is of vital importance that licensees and staff are aware of the limitations on their power of search. Searches can only take place with the permission of the person concerned to be searched. The search should not take place in a public area of the premises. Again, corroboration during searches is essential.

If the individual does not agree to a search, you have no legal powers to do it. If a subject withdraws consent during a search, you have no legal powers to continue, you must stop immediately and consider contacting the Police. Again you also have the right to require someone to leave your licensed premises.

#### **Can a male search a female?**

No. A male should only search a male and a female should only search a female to prevent allegations of indecency/sexual assault. A witness should always be present to provide corroboration and help to prevent any allegations. The witness can be either male or female. If possible, carry out the search within the range of CCTV cameras if you have them.

#### **What to do if drugs are found whilst searching a customer?**

The person who has agreed to being searched and who has agreed to remain with you must be handed over to the Police as soon as possible. However, you have no power to force them to remain with you. If you find something which you think is a controlled substance, you should keep this safe and contact the Police immediately.

#### **Can force be used to search a customer?**

No. The customer must always grant permission to be searched. There are no circumstances in which force may be used to carry out the search.

#### **Power of Detention**

You have no power to detain a person for offences under the Misuse of Drugs Act 1971. The person(s) must agree to remain with you and must be handed over to the Police as soon as possible. If a person commits a Common Law offence such as an assault on a customer or member of staff, or is committing a Breach of the Peace on the premises, then he/she can be detained but only for the Common Law offence. Again the Police should be notified as soon as possible.

#### **Drugs Seized or Found on the Premises**

**If you find anything that appears to be an illegal drug, put it in a plastic bag or envelope and seal it: This must be signed by the finder and witnessed by another member of staff; Enter the details of the drugs found in the appropriate drugs register; If any member of staff or management finds drugs on the premises, they must immediately inform the most Senior Manager on duty. The Police must be advised at the earliest opportunity (be cognisant of the statutory defence under MDA 1971 and the requirements to comply).**

### **Drugs Information**

**Do not automatically think that because you know, the Police will know too. The Police can only act if they have information/intelligence to act upon. YOUR information may be the key to success. If you have any information about drug activities you should notify the Police immediately.**

**Be aware of NPS legislation (not an offence to possess). Persons might use NPS packaging to hold controlled drugs therefore any such item recovered/seized should be treated as if it were a controlled substance.**