

FALKIRK COUNCIL

**Subject: CIVIC GOVERNMENT (SCOTLAND) ACT 1982, NEW
RESOLUTION; LATE HOURS CATERING POLICY AND
CONDITIONS; STREET TRADERS POLICY AND
CONDITIONS**
Meeting: POLICY AND RESOURCES COMMITTEE
Date: 12 June 2007
Author: DIRECTOR OF DEVELOPMENT SERVICES

1. INTRODUCTION

- 1.1 The Civic Government (Scotland) Act 1982 (the Act) sets out the framework within which Local Authorities in Scotland license the carrying out of various specified activities within their administrative areas. Certain activities specified in the Act are mandatory in that Local Authorities (Licensing Authorities) are required to operate licensing schemes in respect of these. Other activities are optional and each Authority can determine whether or not to operate a licensing scheme for any, or all, of these, having regard to local circumstances.
- 1.2 Where an Authority determines to license a specific optional activity, it must make a formal resolution to do so in terms of Section 9 of the Act. The resolution must specify a date from which the activity or activities, which the licensing authority has chosen to license, shall require to be licensed in accordance with the provisions of the Act. This date must not be before the expiry of nine months beginning with the day on which the resolution was made.
- 1.3 Before a resolution can be made, the terms of the proposed resolution, together with a notice stating that the Licensing Authority intend to make the resolution and that representations about the resolution can be made in writing to the authority within 28 days of the first date of publication of the notice, must be published in a newspaper or newspapers circulating within the licensing authority area. The licensing authority shall consider any representations made and make any alterations to the proposed resolution in light of these representations, if appropriate.
- 1.4 As soon as the resolution is made, the Licensing Authority shall publish, in a newspaper or newspapers circulating in its area, the terms of the resolution, together with a notice stating that, from the date specified in the resolution, it will be an offence under the Act to do without a licence whatever the resolution specifies as requiring to be licensed, and, further, that the licensing authority will consider applications for licences after the expiry of one month from the date of making the resolution.

- 1.5 In September and November 1983, the former Falkirk District Council made resolutions to license various optional activities and extracts of the minute of the appropriate meetings of the Council are attached as Appendices 1 and 2.
- 1.6 It is considered that the passage of time, changes in society, the increase in the numbers and variety of premises offering, for example, late hours catering, and the growth and change in the economy have all contributed to the circumstances where a review of the Council's policy and licensing requirements in relation to civic licensing issues is now necessary to ensure that they are relevant and appropriate to meet the needs and aspirations of the economy, community and environment. To respond to this, it is suggested that a new resolution requires to be promoted and certain policies and conditions require to be revised.

2. PROPOSED NEW RESOLUTION

- 2.1 Sections 10 to 23 of the Act deal with taxi and private hire car licences and this optional licensing activity was included in the resolution made in September 1983. Since that time, the hire of stretch limousines and special event vehicles e.g. fire engines has become very popular and a number of operators now trade in the Falkirk area. It is consequently recommended that these types of activity be specified as included as part of the above activity and included in the new resolution.
- 2.2 Sections 24 to 27 of the Act deal with second hand dealers licences and this optional licensing activity was included in the resolution made in September 1983. In relation to second hand dealers, the licensing authority requires to specify the class or classes of that activity which they will license and regulate. Over the last twenty years there have been significant changes in the availability and ownership of items such as mobile telephones, personal computers, music compact discs, DVDs etc which has led to the creation of a second hand market for these types of item. Additionally, second hand sellers of motor cycles, caravans, spare parts, tyres and musical instruments have been identified in the Falkirk Council area. It is consequently recommended that this activity be included in the new resolution with the following additional classes being included:
- Mobile Telephone Equipment
 - Motor Cycles and caravans including spare parts and tyres
 - Sport and recreational effects including personal computers, computer peripherals and discs
 - Musical Instruments
- 2.3 Section 38 of the Act deals with boat-hire licences and this optional licensing activity was not included in either of the 1983 resolutions. In light of the Millennium Canal Project, including the opening of the iconic Falkirk Wheel in May 2002, and the associated and continual development of the canals and waterways in the area, it is recommended that this type of activity be specified in the new resolution.

- 2.4 Section 39 of the Act deals with street traders' licences and this optional licensing activity was included in the September 1983 resolution. It is recommended that this type of activity continues to be specified in the new resolution.
- 2.5 Section 40 of the Act deals with market operators' licences and this optional licensing activity was included in the September 1983 resolution. It is recommended that this type of activity continues to be specified in the new resolution.
- 2.6 Section 41 of the Act deals with public entertainment licences and this optional licensing activity was included in the resolution made in September 1983. In relation to public entertainment, the licensing authority must specify the class or classes of that activity and the place or places where the activity may be carried on which they will license and regulate. Since the resolution was passed in 1983, other classes and places of public entertainment have been established in the Falkirk area and it is therefore recommended that the places and classes of public entertainment specified in the 1983 resolution are augmented by the following in the new resolution:
- Stadia or open spaces when used for open air concerts, shows, displays or events
Go-kart tracks, mulator rides, bungee jumping, trampolines, quad bikes, motor stunt displays
- 2.7 Section 42 of the Act deals with late hours catering and this optional licensing activity was included in the September 1983 resolution. The Act specifies in this section that a licence shall be required for the use of premises between the hours of eleven o'clock in the evening and five o'clock the following morning for the sale to or consumption by the public of meals or refreshment on or off the premises. The resolution passed by Falkirk District Council in September 1983, specified that the commencement hour for such licences was 12.00 midnight. It is therefore recommended that this type of activity be specified in the new resolution and that the commencement hour for such a licence be 11pm to conform with the provisions of the Act.
- 2.8 Section 43 of the Act deals with window cleaners' licences and this optional licensing activity was the subject of the November 1983 resolution. It is therefore recommended that this type of activity continues to be specified in the new resolution.
- 2.9 It is recommended that the two previous resolutions which were made on 1983 be rescinded and replaced with a new resolution which more accurately reflects social, economic, environmental and regulatory needs in the Falkirk Council area. The proposed new resolution is attached as appendix 3

3. PROPOSED AMENDMENTS TO EXISTING POLICY

- 3.1 **Late Hours Catering licences** are personal to the holder thereof and are not transferable. The Licensing Authority currently licenses approximately 70 persons to operate Late Hours Catering premises.

- 3.2 The Licensing Authority has not developed any specific policy on the matter of Late Hours Catering licences other than setting a terminal hour for such licences at 1:30am at the meeting of the Performance, Policy and Resources Committee held on 16 November 1993 (Committee Reference Number: 665). It is therefore recommended that a policy is approved in relation to this activity. The proposed new policy is attached as appendix 4.
- 3.3 The current late hours catering licence is renewed every three years and difficulties have been experienced by officers of the Licensing Section in maintaining accurate records and exercising regulatory control as ownership of this type of business changes on a frequent basis without the licensing authority being notified. It is therefore recommended that the duration of a late hours catering licence be changed from three years to one year, which will effectively increase the frequency of regulatory checks by officers to ensure accurate records are maintained.
- 3.4 As stated in paragraph 3.1, the general terminal hour granted for licences is 1:30am. This policy was approved in 1993 and it is proposed to review this policy with a view to introducing different terminal hours for take away premises operating in residential and non-residential areas. The Falkirk Council Local Plan (finalised draft) deposit version states that pubs, restaurants, hot food takeaways and other similar types of businesses have formed a significant growth area in the local economy and provide an important facility to both local people and visitors to this area. However, it is recognised that this type of premise can create amenity problems when located adjacent to residential properties. It is recommended that in relation to Falkirk, Denny, Bo'ness, Grangemouth and Stenhousemuir, the areas contained within the designated Town or District boundaries detailed in the Falkirk Council Local Plan (finalised draft) deposit version are classed as non residential and would generally have a terminal hour granted for licences of 1.30am. All other areas are classed as residential and, as such, in general have a terminal hour granted for licences of 12.30am. Maps outlining the Falkirk, Grangemouth, Stenhousemuir, Bo'ness and Denny, and designated Town or District boundaries are attached as appendices 5a, b, c, d and e respectively. Nothing in the policy would preclude the Licensing Authority from granting a licence subject to an earlier terminal hour if this was considered appropriate in the particular circumstances.
- 3.5 There has been an increase in the number of premises that operate on a 24 hour a day basis, namely supermarkets and petrol retailers, and these can be easily distinguished from take away premises as in the case of the former, the sale of take away food and drinks for immediate consumption is ancillary to the main function of these premises. It is therefore recommended that the licences for 24 hour supermarkets and 24 hour petrol retailers be generally granted until 5am.
- 3.6 **Street traders' licences** are personal to the holder thereof and are not transferable. The Licensing Authority currently licenses approximately 60 persons to carry out street trading activities with products supplied including fresh fish, confectionery, hot food, meat, hardware and textiles. Wheelie bin cleaning services and mobile valet services are also licensed.

- 3.7 The Licensing Authority has not developed any specific policy on the matter of street traders' licences other than setting a terminal hour for such licences at 1:30am. It is therefore recommended that a policy is approved in relation to this activity. The proposed new policy is attached as appendix 6.
- 3.8 The Scottish Executive has recently introduced the Schools (Health Promotion and Nutrition) (Scotland) Bill to Parliament which, if passed, will place health promotion at the heart of the schools' activities and ensure that food and drink served in schools meet high nutritional standards. Imposing an outright ban on street trading in the vicinity of schools is not within the scope of the Bill. Consultation with the Head of Educational Resources in Falkirk Council in relation to street trading near schools has revealed concerns about the availability of fast/junk food at a time when schools are trying to improve the quality and nutrition of food in schools and promoting a healthy eating agenda and culture. There is also a clear link between pupils' nutritional needs and their achievement in schools. It is therefore recommended that there is a 500 metre exclusion zone around schools in which street traders are not allowed to trade. However, these restrictions only apply during term time and then between the hours of 12 noon to 2pm and 3pm to 5pm on school days regardless of whom the traders are targeting.
- 3.9 It should, however, be noted that each licensing application must be considered on its merits. If it is contrary to policy, consideration must be given as to whether sufficient grounds have been put forward to justify a departure from policy. Even if a licensing application conforms with the policy, there can be circumstances when a license might not be given the full benefit of the policy position.

4. PROPOSED AMENDMENTS TO EXISTING CONDITIONS

- 4.1 Concerns have been expressed by Falkirk Council's Corporate and Commercial Services Estates Management Service about the problem of litter, particularly in the vicinity of take away food premises (both mobile and static). They also have concerns about the disposal of trade waste from these types of businesses.
- 4.2 Falkirk Council's current conditions for both late hours catering and street traders do not contain any conditions relating to trade waste. Although they both have a condition relating to litter neither condition is sufficient to address the problems currently being experienced. The current conditions for late hours catering and street traders are attached as appendices 7 and 8, with the conditions relating to litter and trade waste being condition 4 and condition 9 respectively.
- 4.3 A comparison process was carried out with 12 other local authorities in relation to both street traders' conditions and late hours catering conditions in respect of litter and trade waste. Consultation then took place with Corporate and Commercial Services Estates Management Service and the Environmental Protection Unit of Development Services.

- 4.4 The Environmental Protection Act 1990 prohibits the unauthorised deposit of waste and puts a duty of care on businesses to prevent escape of waste, to pass waste only to an authorised person and to produce appropriate paperwork in respect thereof. To comply, all businesses must have documentation to show who their trade waste has been passed to, the nature of the waste and when it was collected. The onus is on the business to ensure that their trade waste is only passed to a registered waste carrier. Section 47(2) of this Act makes a requirement for the provision by the occupier of the premise of suitable waste receptacles and the method of presentation to facilitate emptying, i.e. where the waste is to be stored for collection, when it is to be ready for collection and in what type of container.
- 4.5 To deal with the problem of licenceholders not accepting responsibility for, and therefore not removing litter outside their premises, it is proposed that in respect of applications for both late hours catering and street traders' licences a plan will be produced which will detail in respect of litter an area to be maintained. The licenceholder shall, during business and at the end of each day, ensure the collection and removal of any paper, food wrapping, food, litter or refuse, containers and drinks containers within the area specified on their plan. If required, the holder of a late hours catering licence shall provide and service litter receptacles within the areas to be maintained. Where the holder of a street traders' licence trades at a particular location for a period exceeding 5 minutes, there will be a requirement that a litter receptacle shall be provided at the trading site for the use of customers and removed by the trader thereafter..
- 4.6 To address the issue of adequate trade waste practices, it is proposed that holders of street trader licences shall make provision for emptying of the litter receptacle and ensure that all waste collected is removed along with all other commercial waste produced by the business. Additionally it is proposed that there should be a requirement for the applicant to submit appropriate "Duty of Care" documentation, an annual contract with a registered trade waste carrier for example, with the licence application.
- 4.7 In relation to late hours catering premises, it is proposed that the Licenceholder shall ensure that adequate and suitable provision is made for the presentation, storage and removal of refuse and other waste from the premises in accordance with the provisions of the Environmental Protection Act 1990. It is therefore proposed that a form detailing arrangements for disposal and presentation of waste and a copy of a current waste transfer agreement be submitted with the licence application. These arrangements will require to be considered satisfactory before a licence will be granted. A copy of the form detailing arrangements for disposal and presentation of waste is attached as appendix 9.
- 4.8 For the reasons outlined in paragraphs 4.1 to 4.5 above, it is therefore recommended that new conditions are approved in relation to litter and trade waste for both street traders and late hours catering. The proposed new conditions are attached as appendices 10 and 11 respectively.

- 4.9 In relation to street traders' licence conditions, a review of the conditions relating to food hygiene issues was carried out by the Food and Safety Manager, Development Services. It is recommended that conditions 6, 7 and 8 in the existing conditions, attached as appendix 8, be removed as the issues covered by these conditions are already covered by statute. Additionally, condition 10 has been removed as Scottish Executive Circular 6/1983 states that conditions must not be imposed so as to restrict/distort competition.
- 4.10 It is recommended that the new conditions, both late hours catering and street traders, apply to new and existing licences. In relation to existing licences, the procedures contained in Section 10 of the Civic Government (Scotland) Act Licensing Provisions to vary the terms of a licence will be commenced.

5. MANDATORY LICENSING ACTIVITIES

- 5.1 As stated in paragraph 1.1 of this report, certain activities specified in the Civic Government (Scotland) Act 1982 are mandatory in that licensing authorities are required to operate licensing schemes in regard to these. Mandatory activities specified in the Act are metal dealers, itinerant metal dealers and indoor sports entertainment. Section 44 of the Act makes provision for new activities to be brought within the scope of the Act. New activities can be either optional, and therefore have to be covered by a section 9 resolution, or mandatory. The Licensing of Houses in Multiple Occupation Order 2000 requires mandatory licensing of houses in multiple occupation.
- 5.2 The Licensing of Skin Piercing and Tattooing Order 2006 was made on 1st of February 2006 and came into force on 1st of April 2006. Licensing of these activities is mandatory. The purpose of the order is to provide a mechanism to increase hygiene and reduce levels of infection in relation to skin piercing and tattooing, utilising inspection and licensing. The conditions that the licensing authority must impose are outlined in Schedule 1 to the Order.
- 5.3 A report was made to the Civic Licensing Committee by the Director of Development Services on 5th of April 2006 detailing the Order. A copy of this report is attached as appendix 12.
- 5.4 On 12th of December 2006, an amendment Order came into force which made a number of significant alterations to the principal Order. The amendment Order amends the conditions that must be imposed by a licensing authority when granting or renewing a licence for the carrying on of a business which provides skin piercing or tattooing, including in particular amending the conditions imposed on premises which carry out ear piercing but no other skin piercing or tattooing activities. The principal Order created an exemption for registered medical practitioners within a hospital or independent clinic. The amendment Order has now extended this exclusion to include any member of a profession regulated by a body specified in Section 25(3) of the National Health Service and Health Care Professions Act 2002.

- 5.5 It is, therefore, recommended that the conditions, which are attached as appendix 13, are approved. These conditions have been drafted in accordance with the amendment order.
- 5.6 A comparison process was carried out with 9 other local authorities in relation to the duration of skin piercing and tattooing licences and the fees charged. Some authorities issue licences for a period of three years, others for one year. It is recommended that Falkirk Council charge an annual fee of £200. Annual renewal would ensure an appropriately frequent inspection regime is applied.

6 RESOURCE IMPLICATIONS

- 6.1 The net effect of the application of the recommendations in this report will have no significant resource implications.

7. CONSULTATION

- 7.1 A total of 12 other local authorities were consulted in relation to litter, trade waste and skin piercing and tattooing issues.
- 7.2 Corporate and Commercial Services Estates Management section were consulted in relation to litter and trade waste issues.
- 7.3 Central Scotland Police were asked to comment on the matter and have made no objections thereto.
- 7.4 The Council's Food and Safety Regulation Manager was asked to comment on the matter and has made no objections thereto.
- 7.5 The Council's Environmental Protection Manager was asked to comment on the matter and has made no objections thereto.
- 7.6 The Council's Development Control Manager was asked to comment on the matter and has made no objections thereto.
- 7.7 The Council's Head of Education Services was asked to comment on the matter and has made no objections thereto.

8. RECOMMENDATIONS

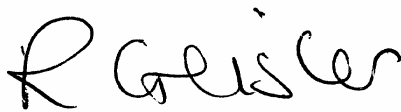
That Members recommend to Council the following:

- 8.1 that Council promote the proposed resolution attached as appendix 3 to this report and authorise officers to undertake the prescribed procedures to advertise the intention to make the Resolution and ingather any representation as detailed in this report;

- 8.2 that officers report back on the outcome of these procedures with further recommendations;

In relation to licences granted in terms of the existing Resolutions, Members recommend to Council the following:

- 8.3 that the late hours catering policy, attached to this report as appendix 4, is approved;
- 8.4 that the street trading policy, attached to this report as appendix 6, is approved
- 8.5 that the new street traders' conditions attached to this report as appendix 10 are approved and will apply to existing, renewed and new licences. Officers are instructed to undertake the process referred to in paragraph 4.10 of this report;
- 8.6 that the new late hours catering conditions attached to this report as appendix 11 are approved and will apply to existing, renewed and new licences. Officers are instructed to undertake the process referred to in paragraph 4.10 of this report;
- 8.7 that the mandatory licences in respect of skin piercing and tattooing continue to be for a one year duration with a fee of £200;
- 8.8 that the skin piercing and tattooing conditions, attached to this report as appendix 13, are approved.



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Director of Development Services
5th June 2007

Contact Officer: Alison Cairns, Consumer Protection Manager (telephone 501005)