



## **AFS RESPONSE TO INITIAL CONSULTATION EXERCISE ON THE EDINBURGH LICENSING POLICY STATEMENT – NOVEMBER 2017**

### **GENERAL COMMENT**

Alcohol Focus Scotland (AFS) welcomes the opportunity to participate in Edinburgh Licensing Board's initial consultation exercise. The licensing system plays a key role in minimising the risks of harm to individuals and society from the sale and consumption of alcohol. AFS is therefore keen to support the development of licensing policy and practice in Scotland that works most effectively to prevent and reduce alcohol problems.

A range of factors will affect levels of alcohol consumption and harm, but the evidence consistently indicates that ease of access to alcohol is a contributory element. The relationship between alcohol availability, consumption and harm means that licensing policy can make a positive contribution to alleviating and preventing alcohol problems, or it can exacerbate them.

AFS commends Edinburgh Licensing Board for undertaking this initial, informal, consultation exercise. Licensing law prescribes that a licensing board should consult on its draft policy statement and we consider this an important mechanism for enabling representatives of the local area to have their say on the proposed approach to alcohol licensing in their community. However, seeking views prior to the statement being drafted affords stakeholders a greater opportunity to contribute to the shaping of licensing policy. We hope that other boards will adopt the same approach.

As a national organisation, we do not have sufficient local knowledge of the Edinburgh area to enable us to comment in detail on some of the specific policy content. However, we offer our opinion on the general approach and policy direction, which we hope the Licensing Board will find useful. As such, we have only commented on those aspects of the policy where we felt it most appropriate, and have structured our response using sections that correspond to those contained in the current Policy Statement.

### **SPECIFIC COMMENT**

#### **SECTION A - GENERAL**

##### **Introduction and definitions**

The introduction to the current Licensing Policy sets out the context in which the Edinburgh Board operates. It describes Scotland's capital as dramatic and historic and identifies the

successful tourist industry as a vital part of its economy. It also highlights that the city accommodates a wide variety of licensed establishments that contribute to the leisure and employment opportunities in the area - stating that (to that date) the Board had issued 2155 premises licences. There are now 2,000 premises licences in force in Edinburgh.<sup>1</sup> In fact, Edinburgh currently has the highest alcohol outlet availability in Scotland, approaching three times higher than the national average.<sup>2</sup>

However, it is also appropriate to consider policy formulation in the context of the nature and scale of problems related to alcohol use in Edinburgh. That way the most suitable, proportionate and effective policy measures can be identified and adopted to achieve the licensing objectives. In Scotland, 1 in 4 people drink above the low-risk drinking guidelines.<sup>3</sup> In Lothian, more than 1 in 3 men (40%) and 1 in 5 women (19%) are drinking at hazardous/harmful levels.<sup>4</sup> There were 2,556 alcohol-related hospital stays<sup>5</sup> and 76 alcohol-related deaths<sup>6</sup> in Edinburgh last year. The £221.3m annual cost of alcohol harm to Edinburgh is also significant (health, social care, crime and productive capacity) – equating to £455 per person.<sup>7</sup>

The preamble comments that the interests of the public, residents, businesses and patrons of licensed premises require to be balanced. Including more detail in the introduction, like that above, about the scale and nature of alcohol related problems in Edinburgh, could support stakeholders/communities to better understand the factors that Boards must take into account, both when making decisions and determining policy.

The introduction also refers to views expressed during the consultation process, concerning greater transparency in the Board's operations and budgetary processes. As such, the Board agreed to publish an annual report on the Board's activities which would include detail of finance and functions. It would be beneficial in time to review how these reports have been accessed and whether they have helped address the issues/concerns expressed to the Board. The Scottish Government has now amended legislation to include a requirement for boards to publish an annual functions report on how they have promoted the licensing objectives and served the interests of local communities. This may go some way to improving transparency and accountability but it will be essential that the reports are made widely available and contain the types of information which are most useful to stakeholders.

### **Consultation and Links to Other Policies, Strategies and Legislation**

The Board should take into account the views of local partners, communities, and other strategies and plans which have relevance to alcohol when developing and implementing their policy. The Licensing Scotland Act (2005) and accompanying guidance should inform

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<sup>1</sup> Scottish liquor licensing statistics 2015/16, Scottish Government, 2016

<sup>2</sup> Alcohol outlets and health in Scotland, CRESH, 2014

<sup>3</sup> Scottish Health Survey 2015, Scottish Government, 2016

<sup>4</sup> Scottish Health Survey 2015 Health Board Results, Scottish Government, 2016

<sup>5</sup> Alcohol-related hospital statistics Scotland 2015/16, NHS National Services Scotland, 2016

<sup>6</sup> Alcohol-related deaths 2015, National Records of Scotland, 2016

<sup>7</sup> Local cost of alcohol profile, Alcohol Focus Scotland, 2012

the Boards approach to how this can best be achieved, for example by responding to the recommendations of relevant Forums.

The Licensing Policy states that the Board believes that it is important that it does not operate in isolation, and that due regard will be given to the policies and decisions of the Council and of neighbouring local authorities. This approach is welcomed but licensing activities should also be aligned to the work of a broader range of local partners to bring about improvements for individuals and communities.

The alcohol licensing regime provides a locally led system for regulating the sale of alcohol and is one of the key mechanisms by which availability can be limited at a local level. As alcohol licensing is the responsibility of licensing boards, it will be essential that boards can identify where they share similar objectives to Community Planning Partners, and that they understand how they can best support each other towards these ends. In many respects, licensing boards and CPPs are already working towards shared goals and stand to benefit from more collaborative approaches. It will therefore be important that the new Licensing Policy aligns with community planning Local Outcome Improvement Plans (LOIPs).

AFS welcomes that the Board is explicit in its current policy that it works closely with the Edinburgh Alcohol and Drug Partnership (EADP). This approach should continue. AFS would also recommend that the new policy references relevant locality plans, the ADP strategic plan, and the strategic plan of the Health and Social Care Partnership (HSCP).

The Board commits to have regard to any strategy of the Scottish Government designed to address the social, health and crime and disorder issues raised by the misuse of alcohol. Scotland's alcohol strategy '*Changing Scotland's relationship with Alcohol a Framework for Action*' is of key relevance to the policy and should be included. This established a whole population approach to reducing alcohol harm and identified action on availability as one of three key mechanisms - alongside price and marketing - to achieve this. The Scottish Government's consultation on the strategy, published in 2008 recognised that the main mechanism for controlling alcohol availability was licensing legislation. The alcohol strategy is due to be refreshed and published in spring 2018. There are also number of national strategies in development which will have relevance to the policy such as the Child and Adolescent Health and Wellbeing Action Plan, the Suicide Prevention Strategy (expected to be updated in 2018), and the Social Isolation Strategy.

The Licensing Policy also recognises that boards are bound by human rights legislation. Action on human rights in Scotland is currently being driven through Scotland's National Action Plan for Human Rights (SNAP) and there a range of links between alcohol related harm and the realisation of human rights in Scotland. As a general comment, the policy currently states that '*the Board will have particular regard to the following relevant provisions of the European Convention on Human Rights in respect of its licensing responsibilities*', but it does not go on to state any provisions.

### **Applications for Licences and Disposal of Business**

AFS welcomes the approach set out in the current policy whereby there is an expectation that individual applicants will address the five licensing objectives in their operating plan, and supply a written statement detailing how they applicant will promote the objectives. Having a statement of licensing objectives attached to their licence could help to focus applicant's attention on the objectives and ensure that they are afforded proper consideration in any proceedings. In addition, it is appropriate that the Board should go further and look to the evidence in respect of each of the five licensing objectives, also expecting applicants to provide evidence that suitable measures will be implemented and maintained.

It is stated in the current policy that the Board intended eventually to hold plans of premises electronically, and will expect all applications to be accompanied by an electronic copy of any plans. It would be beneficial to review whether or not this has transpired and any benefits this requirement has brought.

AFS also particularly welcomes the commitment in Licensing Policy that the Board will dispose of its business in an open, fair and transparent manner, and that hearings will be conducted in as informal a manner as possible. It is stated that guidance will be made available to people who wish to apply for a licence, make representations or lodge objections. Again, it would be beneficial to review the extent to which this has transpired, and the extent to which any guidance provided has supported people to participate.

During a series of regional licensing seminars, hosted by AFS in 2016, a lack of public participation in the licensing process was reported across the country. Barriers to participation can relate to poor accessibility of licensing processes, but inconsistencies in policy and practice can also prevent meaningful engagement. Licensing boards should ensure that their administrative processes provide transparency and accountability, for example by: having a set of published standing orders; board papers and minutes being published on time; board minutes recording the names of board members voting for/against a decision; and holding hearings on statements of licensing policy.

### **Delegation of Licensing Functions**

For transparency, the new policy should replicate the current policy by including a table setting out how the Board intends to delegate its various licensing functions.

### **Notification of Application, Objections and Representations**

The current policy explicitly recognises the benefit of antisocial behaviour reports in connection with the consideration of applications, and the Chief Constable's entitlement to provide such reports. It would be beneficial to ensure that the contribution of all partners is better reflected and recognised within the new policy. This section could also have a much greater focus on community members, and provide more detail on the ways that people can get involved, as well as the supports available to them to do so.

### **Conditions Attaching to Licences**

This section does not currently contain any information about what local conditions the Board may consider attaching to a licence. The new policy should set out examples of the different types of conditions that could be applied relevant to each of the objectives. It could also be helpful to include a list of the mandatory conditions within the policy, even if included as an appendix.

### **Need For Licensed Premises**

AFS welcomes that the Board explicitly acknowledges that need (in the sense of the commercial demand for further licensed premises) is not a licensing policy matter, and that licensing decisions will not be based upon this issue.

AFS believes that the focus of licensing should be firmly on the promotion of the five licensing objectives and the public interest. It is right that the Board should not take into account factors such as the need or demand for licensed premises in the locality when making decisions. Commercial considerations are irrelevant to a policy which is designed to protect the wider public interest.

It is noted that the current policy makes reference to the Council's cultural strategies, and that diverse provision is welcomed for the benefit of the local communities. As such, the Board commits to seek to ensure that cultural events are not discouraged through the imposition of unreasonable restrictions. However, it is also stated that a balance will be struck between the desirability for such entertainment against the need to protect children and prevent public nuisance and disturbance. While it is acknowledged that the council as a whole has an interest in promoting economic development, tourism and revitalising deprived areas, this is not the specific function of a licensing board. The purpose of alcohol licensing is to regulate the sale of alcohol and licensed premises according to the terms laid out in licensing legislation and with regard to the promotion the licensing objectives.

### **Consideration of Applications by the Board**

The policy currently makes clear that when considering whether any licence should be granted, the Board will assess the likelihood of the grant having an adverse impact. It also provides some examples of relevant matters that the board will take into account when determining this. This is helpful in providing clarity to stakeholders and communities about the factors relevant to Boards decision making. The new policy could expand on this by providing more detail about the reasons why an application may be refused e.g. overprovision, applicant not a fit and proper person etc.

### **Overprovision**

There is no simple numerical formula for pinpointing the threshold between provision and overprovision. Determining overprovision involves the application of reason and judgement in the interests of the community.

AFS is not in a position to comment on which streets or areas in Edinburgh should be declared overprovided. In terms of the general approach to assessing overprovision, we would recommend that alcohol harm statistics be considered in conjunction with density

information, as such from the CRESH alcohol outlet density map (available [here](#) but due to be updated before the end of 2017 with 2016 data). At present, the Board has determined that the locality comprising the Grassmarket, Cowgate and other streets leading into these thoroughfares is overprovided with premises offering the facilities of traditional pubs. However, it is clear that there are more areas than this suffering significant levels of alcohol related harm in Edinburgh.

AFS has previously raised concerns about how Edinburgh City Licensing Board developed its Licensing Policy in 2013; these related to the assessment of overprovision and the consultation process itself.

At that time, EADP produced a report on overprovision. Option 3 of their report proposed seven areas of the city be declared areas of overprovision. This option was supported by the City of Edinburgh Licensing Forum. The Board stated that it gave careful consideration to the adoption of Option 3, but that the legal advice it obtained confirmed that if it wished to adopt an overprovision policy based on localities such as those proposed by the EADP, which would be sufficiently robust to withstand legal challenge, the board would have to carry out a further consultation on the specific localities. However, no further consultation took place and these areas were instead designated as 'areas of special concern.'

This is a term that does not appear in the legislation and is therefore not defined. Furthermore, it remains unclear why there was not further consultation on the proposed overprovision localities.

AFS therefore welcomes that Edinburgh City Licensing Board is undertaking this pre-consultation exercise and has already committed to undertake a more detailed, formal consultation process in early 2018. We are hopeful that this will help ensure the development of a robust overprovision assessment, relevant to the needs of local communities. We would also stress the importance that all boards follow the process set out in the guidance to the Licensing Act (Scotland) 2005 when assessing overprovision. Taking a systematic approach to the preparation of an overprovision statement will help to ensure well-reasoned and robust licensing decision-making.

As a final point, the current policy identifies large drinking establishments, which are used primarily for the sale and consumption of alcohol and provide little or no seating, as an area of particular concern. We now know that 73%<sup>8</sup> of alcohol is purchased in off-licenses and it will be important that the new policy reflects and responds to these circumstances.

### **Occupancy Capacity**

AFS fully supports the Boards view that the occupancy capacity of premises is an important factor in assessing overprovision, and in the achievement of the five licensing objectives. As such, the Board may wish to consider carrying out an additional assessment of capacity as

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<sup>8</sup> Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland

part of the overprovision assessment e.g. by having LSOs visit premises and conducting an assessment of the proportion at capacity.

### **Occasional Licences**

AFS notes that the Board is concerned to ensure that the availability of occasional licences is not abused. This is a concern which is reflected across the country. We have identified that occasional licences are causing issues in many areas, with people reporting that this as an area where loopholes in the legislation are being regularly exploited. People have also reported to us that occasional licences are significantly increasing alcohol access and availability (although they were not being taken into account in overprovision assessments) and are being granted on a seemingly unlimited basis. As such the board should give careful consideration to this issue and what may be the most appropriate response in an Edinburgh context.

### **Licensing Standards Officers**

AFS welcomes the Board's commitment to ensuring that the LSOs are enabled to carry out their functions efficiently, and recommend that this continues. During the 2016 regional licensing events, LSOs themselves highlighted that they had achieved various successes, and that their roles had continued to evolve/develop in recent years. This was reflected in the views of other stakeholders, who greatly valued the support they had received from LSOs. LSOs were seen to have a vital role in both establishing links with and supporting the community. It was also felt by some that, due to the efforts of LSOs, fewer licensing reviews were reaching board level, as there were fewer breaches of conditions/legislation and improved relationships. As such, the new policy should make clear the support that LSOs can provide to communities and stakeholders, as well as details of how to contact the relevant persons or departments.

However, it should also be recognised that there are decreasing resources available to support LSOs in their roles. Scottish Government data shows that the number of LSO posts has decreased every year since 2011 (a total decrease of 10% from 2011 – 2017).<sup>9</sup> The number of licences has increased by 2% over the same time period.<sup>10</sup> In some areas the LSO's role has also been extended to cover other licensing considerations, such as civic licensing, reducing the time they can devote to alcohol licensing issues.

### **Personal Licences**

This section will require to be updated in light of legislative changes, such as the introduction of the fit and proper test.

### **Sale for Consumption off the Premises**

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<sup>9</sup> Scottish Government, Statistical Bulletin Crime and Justice Series: Scottish Liquor Licensing Statistics, 2011-2016 <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubLiquor>

<sup>10</sup> Ibid

As stated above, 73%<sup>11</sup> of alcohol is purchased in off-licenses and it will be important that the new policy responds to this trend. AFS would recommend that the Board gives particular consideration to the high number of off-sales licensed premises, particularly in residential areas, and the amount of area given over to the display of alcohol in terms of the total capacity figures for such premises.

The hours of 10am to 10pm are the maximum allowed for off-sales by law, and AFS believes that in areas of high-rates of alcohol harm the maximum permitted hours should be the exception and not the norm. The Board should also continue to ensure that the regulations concerning display of alcohol for consumption off the premises are observed in the layout of premises, and monitor developments in test purchasing.

### **Hours of Trading**

The Board does well to recognise in its current policy the risk that granting extended hours in recognition of a particular style of trading merely leads to trade competitors adopting the same arguments in seeking similar hours, and a process will ensue which leads to the extended hours becoming the norm. This remains a valid concern and should remain explicit in the policy.

The Board comments that the general outcome of consultation on this aspect of Board policy is public satisfaction with the current hours and trade dissatisfaction. While AFS can appreciate that there are difficult balances to be struck, we would again stress that the focus must be the promotion the licensing objectives and that commercial considerations are irrelevant to a policy which is designed to protect the wider public interest.

## **SECTION B - LICENSING OBJECTIVES**

As a general comment, the current policy does very well in setting out the factors which applications should consider in relation to each objective, and the control measures that they can put in place to address any concerns. However, this could be strengthened further by providing more detail about the conditions the Board can/will apply in relation to each of the objectives. It would also be good to provide more of the Edinburgh context in relation to each objective e.g. relevant statistics or evidence of the current situation, identification of any issues that are a particular concern, measures which have had an impact etc. Comments more specific to particular objectives are provided below.

### **Licensing Objective - Preventing Crime and Disorder**

The current policy has a particular focus on reducing/preventing crime and disorder on, and in the vicinity of, licensed premises. While this remains important, the proportion of alcohol now bought to consume at home or in other private dwellings underlines the need for the new policy to reference the importance of licensing for preventing crime and disorder in private spheres as well as the public.

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<sup>11</sup> Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland



## **Licensing Objective – Protecting And Improving Public Health**

The Board should continue its representation on the Edinburgh Alcohol and Drugs Partnership and take advice from appropriate bodies, including those represented on the Forum. Such close liaison remains just as critically important now as it was in 2013.

AFS welcomes that the Board explicitly states in the policy that the main strategic aim of the Scottish Government’s Alcohol Strategy is to reduce per capita consumption of alcohol. This remains the case and, as previously stated, reference to the Alcohol Strategy should be included within the new policy.

AFS also welcomes that applicants are expected to demonstrate in their operating plan that sufficient measures will be implemented and maintained to protect patrons’ health. In the currently policy it is stated that this will include such measures such as making available information with regard to sensible drinking, the effects of excessive alcohol consumption and contact points where assistance is available to address problem drinking. If necessary, such a requirement may be imposed by way of a condition on a premises licence.

The intention behind this is admirable and this approach should continue. However, AFS would recommend that the Board avoid using terms like “sensible drinking” in its new policy, and instead make clear that any information provided should be based on the Chief Medical Officer’s (CMO) low risk guidelines. The Board might also wish to consider providing materials to licensees which is independently produced. The World Health Organisation has stated categorically that the alcohol industry should not be involved in health promotion, and the Government has a duty to ensure access to information and advice on alcohol is based on the best available scientific evidence and is impartial. NHS Inform is the best website in Scotland for impartial health advice: <https://www.nhsinform.scot/>

## **Licensing Objective – Protecting Children from Harm**

The current policy states that the Board wishes to see family friendly premises thriving in the city; it will welcome applications from those who wish to operate a licensed premises which accommodates children. In determining any such application the risk of harm to children will be a paramount consideration for the Board.

Evidence shows that children and young people are influenced by the behaviour of adults they observe and this should be taken into account when considering the appropriateness of licensing applications. It is wholly appropriate that any on-licensed premises to which families with children have access give careful consideration of their responsibilities to protect children from harm and AFS supports the board’s position that applicants must demonstrate how they will promote this objective. In addition, there were 95<sup>12</sup> child protection cases in Edinburgh where parental alcohol or drug misuse was involved. Figures such as this highlight the importance that the new policy addresses the broader impact of alcohol on children and young people, including alcohol that is purchased for consumption at home.

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<sup>12</sup> Children’s Social Work Statistics, ScotPHO Alcohol Profile, 2015

AFS is also aware that there is concern across Scotland regarding occasional licenses being granted for events mainly or exclusively targeted at families where children would be present. As such, we would suggest that the board should give careful consideration to this issue and set out its approach to considering the appropriateness of occasional licence applications within the policy.

This section will also require to be updated to reflect legislative changes, such as extending the objective to protect children and 'young people' from harm. The Board should give consideration as to whether it will apply the same policy to young persons or should have a different policy from that applied to children. AFS would be interested to hear the views of children and young person's and their representative organisations on this issue; however, it would seem sensible to apply the same policy for the purposes of alcohol licensing.

## **OTHER ISSUES**

AFS would recommend that the new policy is explicit that the board will keep the policy under review and make revisions as necessary, as well as consulting before publishing a Supplementary Licensing Policy Statement. It could be beneficial if the policy gave an indication of the reasons why such a supplementary statement might be issued e.g. if the Board identifies that the objectives are not being achieved, circumstances change, or new evidence emerges.

In addition, alcohol deliveries and internet sales are an emerging area of concern and should be considered as part of the policy development process. Remote alcohol sales and distribution across wide geographic areas have the potential to undermine efforts to control the availability of alcohol and reduce alcohol-related harm. Online sales are not a new issue but are a continuously evolving and expanding area of retail. Applications from large online retailers represent what we consider to be a considerable advancement of the online market for alcohol.

There is a distinct lack of information available about the business operations of online retailers, or the extent to which they contribute to alcohol sales and availability. For example, there is no data available pertaining to their distribution areas, or the volumes and types of alcohol they sell. Without this information, it is impossible to make informed decisions about alcohol licensing or create robust alcohol policies, relevant to the needs of local communities.

A further concern relates the potential impact of on-line sales to children and young people. It is unclear how age verification can and will be effectively implemented when alcohol is being purchased on-line, or delivered to people's homes. Unlike supermarkets, which employ their own delivery staff, on-line alcohol retailers may rely on various contract carriers, who may not receive any instruction in this regard. This has the potential to make alcohol much more readily accessible to young people, at precisely the time when rates of youth drinking have begun to decline, and could undermine progress made in meeting the licensing objective to protect children from harm. Recent media coverage has also

demonstrated the pressure that delivery drivers are under to deliver quickly and how this may compromise adherence to regulations.

AFS would therefore urge boards to set out their approach to online retailers in their policies, and to place conditions on online retailers to request details of sales and distribution areas, as well figures on delivery refusal rates.