

AFS RESPONSE TO THE SHETLAND ISLANDS AREA DRAFT STATEMENT OF LICENSING POLICY– MAY 2018

GENERAL COMMENT

Alcohol Focus Scotland (AFS) welcomes the opportunity to respond to Shetland Islands Area Licensing Board’s consultation on the statement of licensing policy. 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.

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.

As a national organisation, we do not have sufficient local knowledge of the Shetland Islands 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 also on the topics identified by the Board as being of particular interest.

Having reviewed the draft, it is unclear how the redraft was informed and what evidence has underpinned the changes made. We hope that the Board will consider all evidence received at this stage and will draw a clear line of reasoning from the evidence received to the policy adopted.

COMMENT ON TOPICS IDENTIFIED AS OF PARTICULAR INTEREST

Consultation and links to other policies, strategies and legislation

It is critical that the licensing system does not operate in isolation, and we are pleased to see this noted within the draft statement. 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 the Boards approach to how this can best be achieved, for example by responding to the recommendations of relevant Forums.

We note that the draft policy references links to human rights legislation, equalities duties, Scottish Government strategies, and the local planning authority. The policy 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.

In place of the general reference 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.

In relation to planning, the Board states that there "may be a common approach in the reasoning behind planning and licensing decisions and conditions attached to planning permissions may relate to one or more of the five licensing objectives." We are pleased to see that the Board recognises the functions to be separate and that they will not be bound by decisions made by the Council.

We note that community planning strategy is referenced in relation to the preventing crime and disorder licensing objective. However, there is no reference within this section of the policy to other local strategic bodies and plans, such as community planning and the health and social care partnerships. 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). We note that community planning strategy is referenced in relation to the preventing crime and disorder licensing objective.

The Board should be explicit in its new policy that it will liaise closely with the Local Alcohol and Drugs Partnership. 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).

Licensing hours

We now know that 73%¹ of alcohol is purchased in off licenses and it will be important that the new policy reflects and responds to this situation. The current approach of the Board is to generally permit off sales hours from 10am until 10pm. These hours are the maximum allowed by law. AFS believes that in areas of high-rates of alcohol harm, the maximum permitted off-sales hours should be the exception and not the norm.

The policy states that, when determining licensed hours for off-sales premises, the Board will take into account the history of problems associated with the operation of off-sales premises in its area to date. In addition, it states that it is concerned to ensure that the licensing objectives relating to crime, children, public health and public nuisance in particular are promoted in this area and will consider very carefully whether earlier closing hours may be justified in any particular case. However, AFS would stress that the temporal availability of alcohol in off-sales premises has the potential to impact upon all of the objectives, not just those stated.

In relation to on-sales specifically, the policy acknowledges that the licensing objective of protecting and improving public health is relevant to licensed hours, and intends to keep the terminal hours of 1am for the generality of premises and 3am on weekend nights for nightclubs.

We welcome the Board's belief that in many cases, special events can be accommodated within normal licensed hours and should not be regarded in need of extended licensing hours.

In order to ensure that the licensing objectives are met and effectively promoted, (particularly public safety, preventing crime and disorder, securing public safety and preventing public nuisance), we would urge the licensing board to seek the views of the local community as well as police and health representatives on the impact of granting a general extension of licensed hours to licensed premises for the Fire Festival or Up Helly Aa celebrations. This is particularly the case for the Lerwick Up Helly Aa celebrations, for which the Board intends to allow licensed premises to stay open until 9am.

The policy should also state potential conditions that they may place on premises for which a general extension to licensed hours has been granted; these could include, for example, employment of door supervisors and the provision of CCTV. We would also welcome clarity in the policy around the meaning of 'other events associated with the Lerwick Up Helly Aa'.

¹ Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland

Children and young persons' access to licensed premises

AFS notes the policy's encouragement of applications from those who wish to operate a licensed premises which will accommodate children. 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. We support the Board's clarity in the policy that any applicants who wish to allow children and young people access to the premises will have additional responsibilities placed upon them. In such circumstances, it is wholly appropriate that applicants give careful consideration to their responsibilities to protect children from harm, and the Board should expect applicants to demonstrate how they will promote this objective as part of the application process.

The policy statement would benefit from setting out more clearly its general approach to issues relating to children's access to licensed premises. While each application will be considered on its merits, this could include indicating the hours during which children would normally be permitted entry to particular types of premises, based upon the views expressed during consultation.

The Board could also set out in the policy any conditions it may consider applying relating to access to licensed premises by children and young persons, in addition to the mandatory conditions. This could include, for example, requiring children in licensed premises to remain under the supervision of an adult, not allowing children in rooms where there is a bar counter, or not allowing children to sit at the bar counter.

The policy 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.

Occasional Licences

AFS has identified that occasional licences are causing concern in some areas of the country, with licensing stakeholders reporting that this as an area where 'loopholes' in the legislation are being regularly exploited. People have 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 in some cases are being used to circumvent the requirement to have a premises licence to sell alcohol. As such we would suggest that the board give careful consideration to this issue and what may be the most appropriate response in a Shetland Islands area context.

We agree that the Board should give careful consideration to ensuring the licensing objectives are being met when dealing with repeat occasional applications, but would suggest that the Board goes further by adopting a policy whereby any more than six (at the most) back-to-back occasional applications be automatically referred to the Board for a decision.

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 set out its approach to considering the appropriateness of occasional licence applications within the policy.

SPECIFIC COMMENT ON DEVELOPMENT OF NEW POLICY

Context

The current policy sets out the context in which the Shetland Islands Area Board operates. It identifies the Shetland Islands as a group of more than 100 islands of which 15 are inhabited, and provides information on the number of premises, personal and occasional licences issued in the area. However, it is also appropriate to consider policy formulation in the context of the nature and scale of problems related to alcohol use in Shetland Islands. That way the most suitable, proportionate and effective policy measures can be identified and adopted to achieve the licensing objectives. Including more detail in the context section about the scale and nature of alcohol related problems in Shetland Islands could also support stakeholders/communities to better understand the factors that the Board must take into account, both when making decisions and determining policy.

Although the Board recognises its duty to promote the five licensing objectives more generally within the preamble of the policy statement, it also suggests that the objectives “provide a starting point”. We would reiterate that the licensing objectives should be central to the Board’s work.

Accessibility and participation

The sections of the policy dealing with Board meetings and hearings outline that the Board will dispose of its business in an open and transparent manner, with board meetings taking place in public and information (including decisions made) being made available to the public on the Board’s website. 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.

AFS recommends that the policy also indicate that any meeting or hearings will be conducted in as informal a manner as possible, and detail the types of information and support that can or will be made available to enable people to participate.

In addition, policy statements should be easily understood by all licensing stakeholders, including by members of the public without technical expertise. Ensuring that the new

policy is written in plain, accessible language could help facilitate the involvement of a wide range of stakeholders.

Conditions attached to licences

AFS would recommend that the new policy sets out examples of the different types of conditions that could be applied, relevant to each of the objectives, and for a wide range of premises.

AFS has produced a Licensing Resource Pack which provides examples of licensing conditions relevant to each objective, and research which demonstrates the impact of particular licensing conditions on harms. This can be accessed via our website: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

Need for licensed premises

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. Commercial considerations are irrelevant to a policy which is designed to protect the wider public interest. AFS therefore welcomes this section of the policy which states that licensing decisions will not be based upon commercial demand.

Overprovision

AFS welcomes the specific consultation that is underway on overprovision, specified in the draft policy statement. We would suggest that this consultation on overprovision within the Shetland Islands is published and promoted separately in order to maximise participation, including of the public, in responding to this call for views.

Given recent legal challenges (E.g. Martin McColl Ltd v Aberdeen City Licensing Board, 2015), AFS would emphasise the importance of ensuring that overprovision assessments and decisions demonstrate a factual basis and can be deemed reasonable and proportionate to achieving the objectives of licensing (although a licensing board exercises discretion and judgement in the performance of its duties).

Although boards have flexibility in deciding how to address overprovision in their area, they must follow the process set out in the guidance to the Licensing (Scotland) Act 2005 when assessing overprovision, including with regards to consultation and the publication of policies. The formulation of the statement required by Section 7 of the Act involves the following process:

- the selection of appropriate localities based on a broad understanding of provision across the Board's area;
- the identification of the number of licensed premises or premises of a particular description in those localities and their capacities;
- consultation with the relevant persons;
- an assessment of the information gathered from those persons;

- reaching a decision as to whether it can be demonstrated that, having regard to the number and capacity of licensed premises or licensed premises of a particular description in a locality, it is undesirable to grant further licences or further licences for premises of a particular description on the ground of overprovision, and;
- producing a statement in its published policy.

It is unclear whether the Board intends to have further consultation on overprovision once appropriate localities have been selected, and the number of licensed premises in these areas have been identified. We recommend that the Board looks to evidence on alcohol outlet density, such as that published by AFS and the Centre for Research on Environment, Society and Health in April (available on [our website](#) and on the [CRESH Web Map](#)).

More information and guidance on the process for consultation and developing an overprovision policy is available in the AFS [Licensing Resource Pack](#).

Promotion of the licensing objectives

As s.6 of the Licensing Scotland Act (2005) makes clear, the policy statement must seek to promote the licensing objectives. For all objectives AFS would suggest the following format:

1. State the licensing objective.
2. Give a statement as to what the licensing board is trying to achieve with this objective (AFS is pleased to note that Shetland Islands Area Board has already attempted this for each objective).
3. List concerns in the area relating to this objective – identify what evidence was used to identify these concerns. (Evidence is probably best quoted in an appendix.)
4. List what the licensing board intends to do. Note that this could include declaring overprovision, controlling licensed hours, or applying certain conditions – referring to the relevant section/s in the policy.
5. List any suggested actions the licensing board would like to see the licensed trade in the area undertake to meet this objective.

The current policy does well in setting out the factors which applicants 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 Shetland Islands 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.

The existing policy states that applicants should be able to demonstrate that all those factors which impact on the objectives have been considered. AFS would recommend that the Board explicitly asks that applicants demonstrate how they have done this as part of the application process, rather than specifying that they ‘may be expected’ to do so. For example, the Board could ask that applicants supply a written statement detailing how they 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.

Specific to the objective of Preventing Crime and Disorder, 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.

Specific to the objective of Protecting and Improving Public Health, AFS welcomes that the Board encourages licensees to display materials which promote awareness of units of alcohol and the recommended guidelines for consumption, and suggests the potential for the use of a condition on a premises licence for this purpose. AFS would recommend that the Board makes 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/>

Alcohol deliveries and internet sales

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.

Enforcement and Licensing Standards Officers

The section dealing with enforcement makes particular mention of LSOs and how resources are to be targeted. 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 providing contact details for 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).² The number of licences has increased by 2% over the same time period.³ 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. AFS would therefore recommend that the Board commits to ensuring that the LSOs are enabled to carry out their functions efficiently.

Supplementary statement

The introduction to the policy states that the Board may publish a supplementary statement. AFS welcomes that the draft 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.

² Scottish Government, Statistical Bulletin Crime and Justice Series: Scottish Liquor Licensing Statistics, 2011-2016 <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubLiquor>

³ Ibid