

## **Borders online response**

The Licensing Objectives

**2. The draft Policy gives examples of what applicants should think about when considering the preventing crime and disorder objective, and includes suggestions of measures they can put in place to demonstrate they can meet the objective.**

**Do you agree with this list?**

Yes

**Please tell us if there is anything that you think should be added to, or removed from, the list and give us reasons for your answer.**

For all the licensing objectives, the Board has usefully listed the control measures which applicants and licence holders can put in place to ensure consistency with the objectives. 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. 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.
3. List concerns in the area relating to this objective – identify what evidence was used to identify these concerns.
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.

AFS welcomes that the policy includes some example additional conditions the board may apply (as an appendix). This could be usefully expended upon and the conditions included within the policy itself, linked to the relevant objectives.

It is helpful that the policy includes a list of consultees and references some of the evidence considered by the Board in developing the policy – in particular, the Borders Alcohol Profile. Stating this in the policy statement further demonstrates the board's responsive approach to consultation and facilities transparency. It should be demonstrated within the policy itself, so far as possible, how it has been informed through consultation, with the material considered by the Board being published and links to this material being included.

It would also be beneficial to include more statistics and evidence of the current situation in relation to each objective, any issues that are a particular concern, and measures that have had an impact etc. AFS would suggest including both statistical and expert opinion, as well as any available local data, on what the issues are. This should cover the range of alcohol-related issues such as town centre disorder; domestic incidents; chronic and acute health harms; fire incidents; social work cases. Such evidence can be sought from local stakeholders. There should then be a clear line of reasoning from the evidence to the conclusions in the Statement of Licensing Policy.

AFS has produced a Licensing Resource Pack that provides resources to support the collection of evidence on local alcohol-related harm, and also provides examples of research which demonstrates

the impact of particular licensing conditions on harms. This may particularly useful to the Board when developing the new Licensing Policy Statement, and can be downloaded from our website here: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

The new policy could also set out a clear expectation that individual applicants address the five licensing objectives in their operating plan, and supply a written statement detailing how they will promote the objectives – an approach already adopted in some other Board areas. Having a statement of licensing objectives attached to their licence could help to focus applicants' 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.

### **Securing Public Safety**

**3. The draft Policy gives examples of what applicants should think about when considering the securing public safety objective, and includes suggestions of measures they can put in place to demonstrate they can meet the objective.**

**Do you agree with this list?**

Yes

**Please tell us if there is anything that you think should be added to, or removed from, the list and give us reasons for your answer.**

### **Protecting and Improving Public Health**

**4. The draft Policy gives examples of what applicants should think about when considering the protecting and improving public health objective, and includes suggestions of measures they can put in place to demonstrate they can meet the objective.**

**Do you agree with this list?**

Yes

**Please tell us if there is anything that you think should be added to, or removed from, the list and give us reasons for your answer.**

AFS welcomes that the Board considers that licence holders should promote responsible drinking - the intention behind this is admirable and this approach should continue. However, AFS would recommend that the Board avoid using terms like 'responsible' 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/healthy-living/alcohol>

AFS would also recommend that the Board has particular regard to the views of Alcohol and Drugs Partnership when considering the impact of alcohol and the measures required locally to ensure the protection of public health.

### **Preventing Public Nuisance**

**5. The draft Policy gives examples of what applicants should think about when considering the preventing public nuisance objective, and includes suggestions of measures they can put in place to demonstrate they can meet the objective.**

**Do you agree with this list?**

Yes

**Please tell us if there is anything that you think should be added to, or removed from, the list and give us reasons for your answer.**

**6. The draft Policy gives examples of what applicants should think about when considering the protecting children and young persons from harm objective, and includes suggestions of measures they can put in place to demonstrate they can meet the objective.**

**Do you agree with this list?**

Yes

**Please tell us if there is anything that you think should be added to, or removed from, the list and give us reasons for your answer.**

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 will also be important that the new policy addresses the broader impact of alcohol on children and young people, including the impact of parental drinking.

The current policy states that the Board wishes to encourage inclusive activities for children, and AFS appreciates that some Boards wish to encourage applications for licensed events and venues which are family friendly and safe for children. However, the policy could set out in greater detail the conditions the Board may impose relative to children and young people, and under what circumstances. It could also set out the general expectations of the Board with regards to factors like when children be allowed entry, including the ages of children to be allowed entry, and times and parts of the premises to which children will have access.

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 would recommend that the Board requires applicants in these circumstances to demonstrate how they will promote this objective, including by providing a written statement as suggested above.

If the Board is minded to allow children and/or young persons to attend functions within licensed premises, AFS would recommend that the Board applies conditions to the premises to help ensure that due regard is had to the licensing objective of protecting children and young people from harm. These conditions should be set out within the policy and could include measures such as, for the duration of any function held on the premises, a staff supervisor being appointed to act as

managerial liaison for the premises with the organiser of the function, and to monitor the function to ensure that its conduct is not inconsistent with the five licensing objectives.

The Board should also give consideration as to whether it will apply the same policy to children and to young persons or whether different approaches should be taken for these different age groups. AFS would be interested to hear the views of children and young persons and their representative organisations on this issue.

### **Period of Licensed Hours**

**Unless there is significant entertainment included, on sale hours should not extend beyond midnight Sunday to Wednesday and 1.00am Thursday to Saturday and not start earlier than 11.00am each day. Off sale hours are not affected because the legislation does not permit sales before 10.00am or after 10.00pm.**

### **7. Do you feel this should continue in the new Policy?**

Yes

### **Please give us reasons for your answer**

AFS would recommend that all licensing boards focus firmly on the licensing objectives when determining their policy on licensed hours. As a national organisation, we are not in a position to comment on local experiences, but can offer comment on the impact of licensed hours more generally and the evidence available to support this.

AFS has identified over 50 research studies published since 2000 that find an association between the total number of licensed premises and opening hours in a locality, and levels of alcohol harm. Localities examined include cities, states, provinces and countries and several studies have specifically investigated the links between temporal availability and alcohol harm. This includes a 2017 systematic review of literature (published between 2000-2016) studying the impact of policies regulating alcohol trading times on alcohol related harm, which found that policies regulating times of alcohol trading can contribute to reductions in injuries, alcohol-related hospitalisations/emergency department visits, homicides and crime.<sup>1</sup>

Extended hours increase availability of alcohol, which in turn is linked to increased consumption and increased harm. As such, AFS welcomes that the Board does not allow the sale of alcohol for consumption on the premises before 11.00am.

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

### **Events involving Children**

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<sup>1</sup> Sanchez-Ramirez DC, Voaklander D. [The impact of policies regulating alcohol trading hours and days on specific alcohol-related harms: a systematic review](#). Injury Prevention 2018;24:94-100.

With regard to the protecting children and young persons from harm objective, Section 12 of the current Policy states that it expects applicants for Occasional Licences to consider whether or not it is appropriate to have the sale of alcohol forming a normal part of any child centred event.

**8. Do you feel this should continue in the Board's new Policy?**

Yes

**Please give us reasons for your answer**

During a series of Regional events hosted by AFS in 2016, concerns were expressed across Scotland regarding occasional licences being granted for events mainly or exclusively targeted at families where children would be present,. While AFS welcomes that the policy encourages applicants to consider the appropriateness of alcohol at child-centred events, it could go further by including a presumption against granting occasional licences where the event predominantly involves children. The Board would still maintain its full discretion and flexibility to grant a licence in these circumstances, if minded to do so based on the merits of a particular application.

**Other comments or suggestions**

**The Board would welcome any other comments or suggestions you wish to make regarding matters which should or should not be included in its Policy Statement for 2018 - 2023.**

**9. Please provide any other views and comments below and give us reasons for your answer.**

**Accessibility, participation and transparency**

A lack of effective public engagement in licensing can prevent proper transparency and accountability. During the regional licensing seminars, hosted by AFS in 2016, a lack of public participation in licensing 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.

The inclusion of the procedure to be followed at hearing is welcomed, however the new policy could provide much more detail about the means by which the board's processes and procedures will provide for increased accessibility, transparency and accountability for communities, for example by requiring:

- 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
- details being made available of what people can expect when attending meetings and the supports available to them.

AFS welcomes that the Board commits to deal with all its business in an open, accessible and transparent way. The new policy should also include a commitment that the Board will attempt to make the experience of attending a hearing as informal as possible. This can be a particularly important commitment for many community members, who may feel intimidated by overly formal processes and environments. The new policy could help support public participation by reassuring communities that that the Board will endeavour to make proceedings as user-friendly as possible, and ensure that all participants receive appropriate information on procedures or requirements.

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.

### **Links with other strategies**

It will be important that the new policy explicitly recognises the value of linkages with other bodies interested in alcohol regulation, and specifically references the policies and strategies which are most relevant to the work of the Board. The Board should also take into account the views of local partners, the Forum, communities, and other strategies and plans which have relevance to alcohol when developing and implementing their new policy.

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 controlled 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 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). In addition, the work undertaken by the Alcohol and Drug Partnership will be of particular significance, and the new policy could signpost people to where they can access a copy of the ADP's Delivery Plan. AFS would also recommend that the new policy references relevant locality plans, and the strategic plan of the Health and Social Care Partnership (HSCP).

Scotland's alcohol strategy '*Changing Scotland's relationship with Alcohol a Framework for Action*' is also 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.

Licensing boards are also 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.

### **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. In addition, although members clubs are premises that are not generally open to the public, occasional licenses can be obtained by members clubs in order to sell alcohol to the general public.

AFS notes the Board is concerned to ensure that the availability of Occasional Licences as a short-term means of licensing premises is not abused. AFS would therefore recommend that Board requires a hearing where it identifies that an applicant has made repeated occasional licence applications. The Board could also adopt a policy whereby a certain number of back-to-back

occasional applications (exceeding a set threshold) be automatically referred to the Board for a decision.

In order to ensure that the sale of alcohol under occasional licences is appropriately conditioned to uphold the licensing objectives, the Board could also include an Occasional Licence Application and Supplementary Information Form as an appendix. This approach is already adopted in some other board areas, where occasional licence holders are asked to demonstrate how they will promote the five licensing objectives, and provide practical examples of how they plan to comply with each objective.

### **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. Alcohol harm statistics for Borders should therefore be considered in conjunction with density information, such as from the [CRESH alcohol outlet density map](#), to make an informed assessment of overprovision. Decisions on overprovision should also be informed by evidence from the police, health authorities and other agencies and AFS is pleased that the policy references the Borders Alcohol Profile. AFS recommends that all Boards outline the evidence considered to help inform the overprovision assessment, and include this within the policy to help people understand the rationale for the board's approach and aid transparency.

The CRESH data shows that Borders is ranked 15th out of 30 local authority areas for alcohol outlet availability in Scotland (11th for on-sales and 27th for off-sales outlets). A statistically significant relationship was found in Borders between alcohol outlet availability and crime rates. Specifically, crime rates in the neighbourhoods with the most alcohol outlets were 4.4 times higher than in neighbourhoods with the least. Also of particular note was the finding that the most deprived neighbourhoods in Borders had 2.5 times the number of alcohol outlets than the least deprived neighbourhoods.

AFS would recommend that the Board use the CRESH webmap to help identify areas of potential concern, where board might want to consider whether mitigating action needs to be taken, such as considering overprovision. This tool can be used to compare areas against the Scottish average for outlet availability, compare alcohol outlet availability between neighbourhoods *within* the local authority, and also identify corresponding rates of harm (e.g. alcohol-related hospitalisations, crime rates, and alcohol mortality).

An initial analysis shows that although Borders has lower alcohol outlet availability than Scotland as a whole, there are neighbourhoods that have higher availability than the Scottish average and high levels of alcohol-related harm. This includes neighbourhoods within Galashiels, Hawick and Peebles.

When considering off-sales in particular, however, the Board may also wish to consider that 73% of alcohol sold in Scotland is bought from off-sales premises, and people now travel further to buy alcohol. Should the Board be concerned about overprovision of off-sales in any particular locations, an off-sales overprovision policy over a wider area may therefore be more effective in helping to reduce and prevent levels of alcohol consumption and harm.

### **Online sales**

This is an emerging area of concern and should rightly be considered as part of the policy development process. Remote alcohol sales and distribution across wide geographical areas have

the potential to undermine local 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 AFS considers 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.

A further concern relates to 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 more readily accessible to young people, and could undermine progress made in meeting the licensing objective to protect children from harm.

As such, AFS would urge all boards to set out their approach to online retailers within their new policies. The Borders policy states that details relating to online sales should be specified in the operating plan, which is welcomed, but the policy could go further in this regard. For example, it could be specified that when making an alcohol delivery certain checks should be carried out such as Challenge 25. In addition, the policy could require that orders cannot be left in nominated safe places, and that staff delivering alcohol must be trained to the same level as staff who sell or supply alcohol in licensed premises. The Board could also explore the possibility of placing conditions on online retailers to request details of sales and distribution areas, as well figures on delivery refusal rates.