

## **AFS RESPONSE TO THE SHETLAND ISLANDS AREA OVERPROVISION CONSULTATION – MAY 2018**

### **INTRODUCTION**

Alcohol Focus Scotland (AFS) welcomes the opportunity to participate in the Shetland Islands Area Licensing Board’s consultation on overprovision. 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. 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 localities and premises concerned. However, we offer our opinion on the general approach and policy direction, which we hope the Licensing Board will find useful.

### **COMMENTS**

#### **Determining overprovision**

AFS would highlight that the existence of a relationship between the total number of licensed premises and alcohol-related harm is well recognised in Scottish licensing law. Implicit in the duty to assess overprovision and the inclusion of overprovision as a ground for refusal, is an acceptance that licensed premises exert an aggregate effect. In addition, it is the potential for undesirable consequences which has to be tackled via overprovision, and the test applied to the standard of evidence on which licensing decisions have been based is one of likelihood and probability.<sup>1</sup>

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.

AFS recommends that this consultation on overprovision within the Shetland Islands is published and promoted separately to the draft policy statement in order to maximise participation, including of the public, in responding to this call for views. 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](#)).

The Board should be explicit within the policy that the overprovision assessment was informed through consultation, and that the material considered by the Board was published with links to this material being included in the policy itself. Stating this in the policy statement demonstrates the board's responsive approach to consultation. More information and guidance on the process for consultation and developing an overprovision policy is available in the AFS [Licensing Resource Pack](#).

It should also be noted that factors other than numbers and capacity can now be considered, including licensed hours. Indeed, AFS believes that temporal availability is an important factor to be taken into account when considering the overall availability of alcohol in an area. 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.

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 would recommend that the Board gives careful consideration to levels of alcohol-related harm by drawing upon a broad range of sources (e.g. pertaining to health, crime, antisocial behaviour etc.), and then uses that assessment to help identify areas of concern. This can be done by looking at areas that have higher than average levels of alcohol harm and outlet availability (alcohol availability data is available from Centre for Research on Environment, Society and Health web map, [here](#)). The average used for comparison will depend on the local

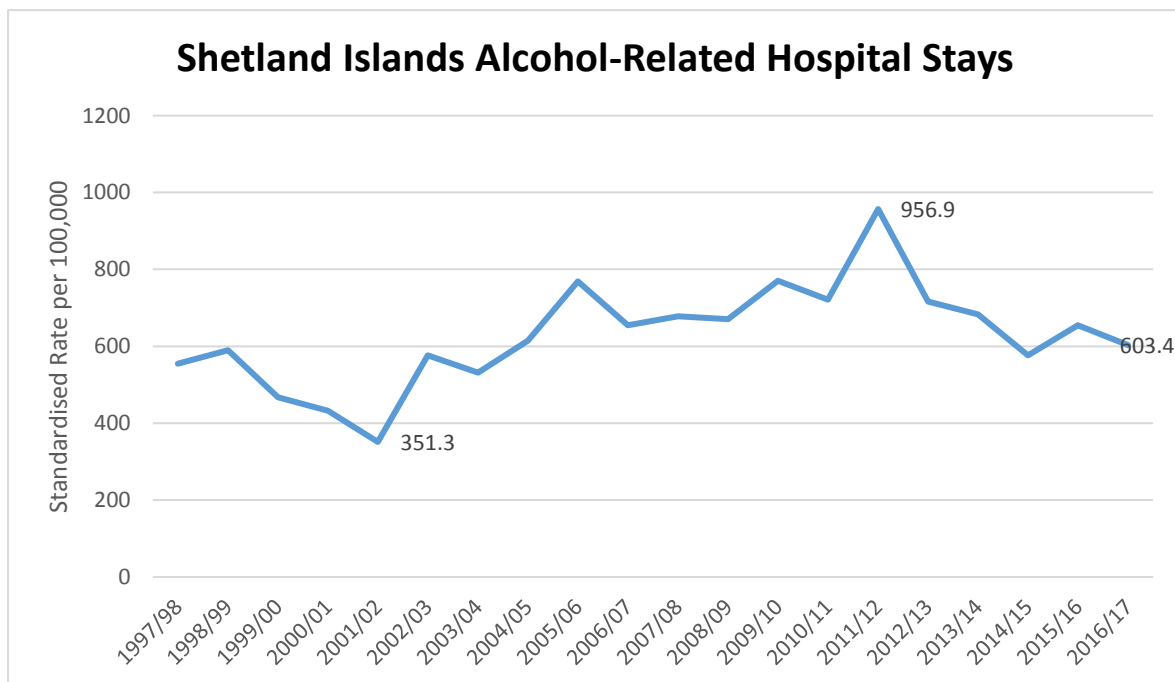
area; as Shetland Islands is a rural area, we would recommend using the local authority average for comparison.

AFS believes that the alcohol harm statistics and the alcohol availability information for the Shetland Islands (outlined below) suggests that there exists a state of overprovision in some parts of the Board's area.

### Alcohol harm statistics

In Shetland Health Board area, more than 1 in 3 men (33%) and 17% of women are drinking at hazardous/harmful levels.<sup>2</sup> The £8.84m annual cost of alcohol harm to the Shetland Islands (health, social care, crime and productive capacity) is also significant, equating to £395 per person.<sup>3</sup>

There were 4 alcohol-related deaths in 2016 (an increase of 2 from 2 deaths in 2015) in Shetland; this is the highest annual number of deaths of the last 6 years.<sup>4</sup> The most recent data available shows that in Orkney there were 140 alcohol-related hospital stays in 2015/16; the alcohol-related hospital stay rate has decreased since around 2012/13, although it is still higher than the lowest rate seen in 2001/02 (see graph below).<sup>5</sup>



The Scottish liquor licensing statistics 2016/17 show that there are 151 premises licences in force in Shetland.<sup>6</sup> Although alcohol outlet availability is lower in the Islands than the national average, there are pockets of high availability; 12% of neighbourhoods have outlet availability greater than the Scottish average.<sup>7</sup> Data from the CRESH web map indicates that the intermediate zone area of Lerwick North has the highest number of alcohol outlets, much higher than the local authority average. This area also experiences higher than average levels of harm, such as alcohol-related hospitalisations and crime. We recommend that the Board uses the

data available from the web map and other locally available data to identify areas that are higher than average for alcohol availability (for on-sales and off-sales outlets separately) and harm.

Analysis conducted by Alcohol Focus Scotland and the Centre for Research on Environment, Society and Health, published in April 2018, reveals that there is a relationship between alcohol outlet availability and health and social harms across Scotland.<sup>8</sup> Neighbourhoods with the most alcohol outlets have double the alcohol-related death rate, almost double the alcohol-related hospitalisation rate, and around 4 times the crime rate in neighbourhoods than neighbourhoods with the least. This relationship has been found for the Islands for crime (it is particularly difficult to find a statistically significant relationship for very rural areas, where there is a low number of neighbourhoods).

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<sup>1</sup> E.g. *Tesco Stores Ltd v City of Glasgow Licensing Board, 2012*

<sup>2</sup> Scottish Government (2016). *Scottish Health Survey 2015 Health Board Results*. Edinburgh: Scottish Government.

<sup>3</sup> Alcohol Focus Scotland (2012). *The Cost of Alcohol in Shetland Islands 2010/11*. Glasgow: Alcohol Focus Scotland

<sup>4</sup> National Records of Scotland (2017). *Alcohol-Related Deaths in Scotland, 1970-2016*. Edinburgh: National Records of Scotland.

<sup>5</sup> Information Services Division (2017). *Alcohol-Related Hospital Statistics Scotland 2016/17*. NHS National Services Scotland.

<sup>6</sup> Information Services Division (2017). *Alcohol-Related Hospital Statistics Scotland 2016/17*. NHS National Services Scotland.

<sup>7</sup> Alcohol Focus Scotland and Centre for Research on Environment, Society and Health (2018). *Alcohol Outlet Availability and Harm in the Islands*. Glasgow: Alcohol Focus Scotland

<sup>8</sup> Alcohol Focus Scotland and Centre for Research on Environment, Society and Health (2018). *Alcohol Outlet Availability and Harm in Scotland*. Glasgow: Alcohol Focus Scotland