

## **AFS RESPONSE TO STIRLING LICENSING BOARD POLICY CONSULTATION (SEPTEMBER 2018)**

Alcohol Focus Scotland (AFS) welcomes the opportunity to comment on Stirling Licensing Board's Statement of Licensing Policy (SLP). 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 related problems.

As a national organisation, we offer our opinion on the general approach, policy direction, and emerging issues relevant to alcohol licensing, which we hope the Licensing Board will find useful. We have also provided suggestions regarding the sections of the policy which we believe may warrant particular scrutiny. Our response largely follows the order of the sections of the statement of licensing policy. We have provided comment only on selected sections.

As a general point, AFS would recommend that the Board includes details of the evidence considered by it in developing the policy. Boards should be explicit and demonstrate within their policy how it has been informed, with the material considered being published and links to this material being included in the policy itself. Stating this in the policy helps demonstrate the reasoning for the Board's agreed position and its responsive approach to consultation. This will be particularly important in the section relating to overprovision. We would recommend information be provided on sources of information, data and evidence in order for the reader to understand the reasons or justification for aspects of the policy.

We would also suggest that contextual information on consumption and harm could usefully be included in the introduction section, alongside the helpful information currently provided on Stirling's population centres and number of licensed premises.

### **Do you have any comments on the overprovision area shown on the map?**

The consultation questionnaire seeks views on whether the area of Stirling City Centre, as detailed in an accompanying map, should be considered overprovided. As a national organisation, we do not have sufficient local knowledge of the Stirling area to enable us to comment about current rates of provision, or overprovision, of licensed premises in the area. We believe such discussions are best left to local stakeholders, including the police, health authorities and communities. However, we offer our opinion on the general approach and policy direction, which we hope the Licensing Board will find useful.

The current consultation does not provide any evidence for why the proposed locality has been selected as a locality for the purposes of determining whether there is overprovision of licensed premises. 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).

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. Evidence of alcohol-related harm should be sought from the police, health authorities and other local agencies such as the Alcohol and Drug Partnership. Alcohol harm statistics for the Board area should be considered in conjunction with density information, such as from the [CRESH alcohol outlet density map](#), to make an informed assessment of overprovision. AFS has published profiles containing information about the levels of alcohol availability and related harm (at both a national level and for each local authority). These can be accessed via our website: [www.alcohol-focus-scotland.org.uk/campaigns-policy/availability-and-licensing/alcohol-outlet-availability](http://www.alcohol-focus-scotland.org.uk/campaigns-policy/availability-and-licensing/alcohol-outlet-availability). For ease, we have sent a copy of the Stirling profile to accompany this response.

The CRESH data shows that Stirling is ranked 9th out of 30 local authority areas for alcohol outlet availability in Scotland (10th for on-sales and 14th for off-sales outlets). Stirling has an alcohol outlet density lower than Scotland as a whole; neighbourhoods had an average of 12.5 alcohol outlets within 800m of the population centre, compared to the Scottish average of 16.8 outlets.

However, the data shows that while Stirling on the whole has a relatively low overall level of alcohol availability, there are pockets of high availability in the local authority. A significant 17% of neighbourhoods in Stirling have total outlet availability higher than the Scottish average, rising to 21% for off-sales outlets; some neighbourhoods had five times the number of outlets than the average for neighbourhoods across Scotland as whole. Similarly a number of neighbourhoods experience high levels of alcohol-related problems. For example, although Stirling has lower than Scottish average rate of alcohol-related deaths, around a third of neighbourhoods have alcohol-related death rates higher than the Scottish average.

When considering links to harm, a statistically significant relationship was found in Stirling between alcohol outlet density and crime rates. Crime rates in the neighbourhoods with the most alcohol outlets were 4.9 times higher than in neighbourhoods with the least. The links between alcohol outlet density and harm were found even when other possible explanatory factors, such as age, sex, urban/rural status and levels of income deprivation, had been taken into account.

An initial analysis using the webmap shows that there are neighbourhoods in Stirling that have both higher outlet density than the Scottish average and very high levels of alcohol related harm. This includes the neighbourhoods within Stirling City Centre identified by the Board as being a potential area of overprovision, but also includes Forth, Broomridge, Braehead, Hillpark and Raploch. Many of these areas are also income deprived.

AFS would recommend the Board draw upon the evidence submitted by local partners and use the CRESH webmap to indicate areas where levels of availability and/or harm are sufficiently high to cause concern, and which may indicate that overprovision might be an appropriate response. It is important to note that areas with the highest outlet density may not be those experiencing the highest levels of harm, and that different communities can be affected differently by alcohol, with some communities experiencing disproportionate levels of harm. The Board may wish to consider tailoring approaches based on the evidence received and the harms it is trying to address.

We hope that the information provided in the CRESH profile and associated data will be of use to the Board as an additional source of evidence.

**Do you have any other comments on the revised statement?**

**Other Policies**

We welcome the statement in the policy that the Board does not operate in isolation and that due regard will be had to Stirling Council policies and strategies, particularly The Stirling Plan, where appropriate. However, licensing activities should be aligned to the work of a much broader range of local partners to bring about improvements for individuals and communities. In particular, it will be important that the new policy recognises the value of linkages with other bodies interested in alcohol regulation, and specifically references the policies and strategies that are most relevant to the work of the Board.

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 (CPPs), 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 Stirling ADP Delivery Plan. AFS would also recommend that the new policy references relevant strategies of the Health and Social Care Partnership (HSCP).

The Board should also take into account the views of local partners, the Forum, communities, and other strategies and plans that have relevance to alcohol when developing and implementing their new policy. The Licensing (Scotland) Act 2005 and accompanying guidance should inform the Board's approach to how this can best be achieved, for example by responding to the recommendations of the Forum.

Scotland's alcohol strategy 'Changing Scotland's relationship with Alcohol a Framework for Action' is of key relevance to the policy and should be referenced. 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.

We welcome the policy's commitment to its equality duties, both in terms of how the Board operates itself, and also its expectations on licence holders. We would note that the Board also has legal obligations under the Human Rights Act 1998 and we would suggest that these be referenced within the policy. 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.

### **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 has been suggesting the following format to Boards:

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.

Section 3 of the policy statement usefully sets out each of the licensing objectives in turn. For each one the Board has stated its intention, or intended outcomes and what it would like to achieve. The Board has helpfully listed measures applicants have considered to promote each objective, together with suggested control measures. However, AFS is of the opinion that this section of the policy could be strengthened by providing more specific information about local concerns relating to each licensing objective, e.g. relevant statistics or evidence of the current situation, identification of any issues that are a particular concern, measures that have had an impact etc. We would suggest including both statistical and expert opinion, as well as any available local data, on what the issues are in the Board area. There should then be a clear line of reasoning from the evidence to the conclusions in the policy. This would serve to explain to any reader of the policy the reasoning behind the actions and conditions that the Board may be likely to require or impose, leaving less room for challenge.

AFS has produced a Licensing Resource Pack<sup>1</sup> that provides resources to support the collection of evidence on local alcohol-related harm, and provides examples of research which demonstrates the impact of particular licensing conditions on harms. This may particularly useful to the Boards when developing their new policy: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

AFS welcomes the clear expectation within the policy that applicants address the objectives in their operating plan. The Board may wish to consider requiring applicants to supply a written statement detailing how they will promote the objectives. This approach is already adopted in other board areas, with several providing a ‘Supplementary Information’ document for applicants to submit alongside their application - asking them to set out exactly how they will comply with the objectives. 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.

#### *Preventing Crime and Disorder*

Specific to the objective of Preventing Crime and Disorder, the proportion of alcohol now bought to consume at home or in other private dwellings (73% of all alcohol sold being purchased in off-sales<sup>2</sup>) 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.

#### *Protecting and Improving Public Health*

---

<sup>1</sup> Alcohol Focus Scotland (2017). *Licensing Resource Pack*. Glasgow: Alcohol Focus Scotland: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

<sup>2</sup> Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland

AFS welcomes the recognition within the policy of the awareness between consumption of alcohol and public health, and that the success of the licensed trade in Stirling cannot be at the expense of the health and wellbeing of patrons or the wider community. AFS notes that the current policy suggests licence holders promote awareness of units of alcohol and make available information which promotes moderate drinking and the recommended guidelines for consumption by men and women. We would suggest that the policy should make explicit that any information provided should be based on the Chief Medical Officer's (CMO) low risk drinking 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>. In addition, as noted in the policy, Stirling Alcohol and Drug Partnership is a useful source of information for licensees and it may also be able to provide suitable materials or advice.

#### *Protecting Children and Young People from Harm*

The policy states that the Board wishes to see family friendly premises thriving in Stirling, but AFS agrees with the Board that it is wholly appropriate that any licensed premises to which children or young people have access give careful consideration of their responsibilities to protect children and young people from harm.

AFS welcomes the recognition within the policy that 'protecting children and young people from harm' relates not only to their own consumption, but also to harm caused by other people's drinking. 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 draft policy helpfully gives examples of control measures that could be put in place to protect children and young people from harm, with a particular requirement for applicants wishing children to be present after 8pm to demonstrate how they will protect children from harm. As a general comment, AFS would expect that premises that do not offer food of any description are highly unlikely to be a suitable environment for children.

During the series of Regional events hosted by AFS in 2016, concerns were also expressed across Scotland regarding occasional licences being granted for events mainly or exclusively targeted at families where children would be present. As such, AFS would recommend that the policy contains 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.

#### **Board business**

AFS welcomes the commitments made throughout the policy to ensuring the licensing system in Stirling is accessible to all interested parties, including by ensuring its policy is clear and concise, that it operates in transparent manner, and that information and assistance will be made available both to applicants and to people wishing to make representations or lodge objections. Such steps are important in ensuring public engagement in the licensing system.

A lack of effective public engagement in licensing can prevent proper transparency and accountability. During a series of regional licensing events, 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. Participants at the 2016 regional licensing seminars recommended that Boards require to have:

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

AFS also welcomes the commitments made within the current policy to make appropriate information and assistance available to all stakeholders. The new policy could more clearly signpost the general public to where they can find guidance to support them to get involved, including by making objections and representations, or this could be included as an Appendix e.g. the [Alcohol Licensing in Your Community Toolkit](#).<sup>3</sup>

Further details about accessibility and participation in licensing can be found in AFS's 2017 report *Taking Stock*.<sup>4</sup> This report analyses experiences of progress within the alcohol licensing system in Scotland since the Licensing (Scotland) Act 2005 was implemented in 2009. Informed by the views of over 170 licensing stakeholders, it also identifies learning and challenges, and makes recommendations for improvement and reform, many of which may be of interest to the Board.

### **Applications for licences**

As mentioned above, in order to assist applicants address the licensing objectives within their application, the Board may wish to consider requiring applicants to supply a written statement detailing how they will promote the objectives, as is required in some other board areas.

### **Licensing Standards Officers (LSOs)**

As part of the Board's commitment to make appropriate information and assistance available to all stakeholders, this section of the policy could be expanded to include more detail about the assistance LSOs are able to offer to the public as well as to applicants.

### **Home deliveries**

AFS welcomes the inclusion of a section on home deliveries. 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 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

---

<sup>3</sup> Alcohol Focus Scotland (2015). *Alcohol Licensing in Your Community How You Can Get Involved*. Glasgow: Alcohol Focus Scotland: <https://www.alcohol-focus-scotland.org.uk/media/133477/Community-licensing-toolkit.pdf>

<sup>4</sup> Alcohol Focus Scotland (2017). *Taking Stock: Views and experiences of alcohol licensing in Scotland in 2016/17*. Glasgow: Alcohol Focus Scotland: <http://www.alcohol-focus-scotland.org.uk/media/287043/Taking-Stock-Report.pdf>

from large online retailers represent what AFS considers to be a considerable advancement of the online market for alcohol.

AFS welcomes the statement in the policy encouraging submission of details of how deliveries will operate. 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 more difficult to make informed decisions about alcohol licensing or create robust alcohol policies, relevant to the needs of local communities. The Board may wish to consider encouraging applicants to provide details of sales and distribution areas, as well figures on delivery refusal rates.

A further concern relates the potential impact of on-line sales to children and young people. Home deliveries, if not undertaken appropriately, have the potential to make alcohol much more readily accessible to young people, and could undermine progress made in meeting the licensing objective to protect children and young people from harm. AFS therefore supports the inclusion within the policy of local conditions requiring deliveries to be made to a bona fide residential or business address, and that home deliveries of alcohol must operate a challenge 25 or similar age verification scheme. We would suggest these local conditions should be applied as standard when home deliveries are included within applicants' operating plans.

In addition, AFS would suggest further measures the Board may wish to consider including within this section of the policy. This includes requiring delivery staff to be trained to the same level as staff who sell or supply alcohol in licensed premises, and that alcohol delivery orders cannot be left be left in nominated safe places.

### **Opening times**

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>5</sup>

With regards to off-sales hours, we note that where there is an application for the maximum 10am-10pm hours, that applicants will require to satisfy the Board as to why granting the licence is consistent with the licensing objectives. AFS agrees with the Board's approach. AFS believes that the maximum permitted off-sales hours should be the exception and not the norm, particularly in areas of high-rates of alcohol harm.

---

<sup>5</sup> Sanchez-Ramirez DC, Voaklander D (2018). 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 regards to on-sales hours, the policy states that only in occasional circumstances will the Board allow premises to sell alcohol for more than 16 hours at a time. We note that the guidance accompanying the 2005 Act specifies 14 hours as reasonable and that any application for licensed hours for longer than this should require further consideration. The Board may therefore wish to review this section of the policy and consider whether 14 hours may be more appropriate.

### **Special events – extended hours**

Extended hours increase availability of alcohol, which in turn is linked to increased consumption and increased harm. AFS therefore welcomes the Board's policy always to consider applications in light of the licensing objectives, with applications unlikely to be granted where the applicant fails to satisfy the Board that a genuine special event is taking place and if the application merely relates to an extra hour's drinking time. AFS believes that, in many cases, events and festivals can be appropriately accommodated within normal licensing hours and should not serve as automatic justification for extended licensed hours.

The Board helpfully provides examples of special events of local or national significance for the purposes of extended hours. To aid applicants, the Board may also wish to provide examples of the types of events that would and would not fall within the definition of a 'special event or occasion.'

AFS notes the statement in the policy about repeated use of extended hours applications, and that the Board may refuse a licence if it considers the licence holder should apply to vary their premises licence. The Board may wish to consider adopting a policy whereby a certain number of applications for extended hours (exceeding a set threshold) be automatically referred to the Board for a decision.

When the board is minded to allow additional hours, the operation of the premises should be closely monitored to ensure that alcohol-related public nuisance is minimised and conditions attached to the licence if necessary. It may be beneficial to include more detail about the types of control measures and conditions that could be put in place to prevent/limit potential problems related to extended hours more generally.

### **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.

The Board's policy makes reference to steps it is taking to guard against occasional licences being used to circumvent the full licensing process. AFS would recommend that the policy could be strengthened by requiring a hearing where the Board identifies that an applicant has made repeated occasional licence applications. As with our comments on extended hours applications above, 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. We are aware of this approach being taken or considered in other licensing board areas. Licensing boards may wish to choose their own thresholds for referring decisions to the Board, based on local circumstances.



In addition, in order to ensure that the sale of alcohol under occasional licences is appropriately conditioned to uphold the licensing objectives, the Board could also request that applicants complete an Occasional Licence Supplementary Information Form. 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, with some also providing a pro forma for submission alongside the application.

As outlined above, concerns were expressed across Scotland during our 2016 regional regarding occasional licences being granted for events mainly or exclusively targeted at families where children would be present. As such, AFS recommends the policy contain a presumption against granting occasional licences where the event predominantly involves children. Such an approach would still provide the Board with flexibility to grant an occasional licence if the Board was content this would not be contrary to the licensing objectives.