

AFS RESPONSE TO CLACKMANNANSHIRE LICENSING BOARD POLICY CONSULTATION (SEPTEMBER 2018)

Alcohol Focus Scotland (AFS) welcomes the opportunity to comment on Clackmannanshire 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 note the consultation version of the draft SLP only covers certain sections of the overall policy. We have therefore provided comments on the specific sections circulated for consultation, in the format of the online questionnaire, before highlighting some additional issues the Licensing Board may wish to consider.

Licensed Premises in Clackmannanshire

As a national organisation, we do not have sufficient local knowledge of the Clackmannanshire 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 consultation questionnaire seeks views on whether the provision of licensed premises (both on and off) is about right, too few or too many. This should provide the Licensing Board with helpful information to inform their deliberations on 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. We note the Licensing Board asks about provision within Clackmannanshire as a whole; it would be beneficial for the Board also to consider provision within smaller communities. To help with this, the Licensing Board may wish to review the density information contained in the [CRESH alcohol outlet density map](#).

In addition, information about numbers of premises should be considered in conjunction with alcohol harm statistics for Clackmannanshire to make an informed assessment of overprovision. Evidence of alcohol-related harm should be sought from the police, health authorities and other local agencies such as the Alcohol and Drug Partnership. 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. For ease, we have sent a copy of the Clackmannanshire profile to accompany this response.

The CRESH data shows Clackmannanshire is ranked 17th out of 30 local authority areas for alcohol outlet density in Scotland (24th for on-sales and 7th for off-sales outlets). Clackmannanshire has an alcohol outlet density lower than Scotland as a whole; neighbourhoods had an average of 10.7

alcohol outlets within 800m of the population centre, compared to the Scottish average of 16.8 outlets. However, 11% of neighbourhoods have a total outlet density higher than the Scottish average. This rises to nearly a third (31%) of neighbourhoods, when looking only at off-sales availability.

When considering links to harm, a statistically significant relationship was found in Clackmannanshire between alcohol outlet density and alcohol-related death rates and crime rates. Specifically, alcohol-related death rates in the neighbourhoods with the most alcohol outlets were double those in neighbourhoods with the least, and crime rates 3.6 times higher. 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.

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. The webmap can be used to compare areas against the Scottish average for outlet density, 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). However, 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.

An initial analysis using the webmap shows that there are neighbourhoods in Clackmannanshire that have higher outlet density than the Scottish average and very high levels of alcohol related harm. This includes neighbourhoods within Alloa South and East.

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

Approach

We agree with the approach to the five licensing objectives taken by the Licensing Board. 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.

This is broadly in line with the approach by Clackmannanshire Licensing Board. In addition to outlining a summary of key concerns under each objective, the Board may wish to provide more of the Clackmannanshire 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 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 Clackmannanshire. There should then be a clear line of reasoning from the evidence to the conclusions in the policy.

For all the licensing objectives, the Board has usefully listed factors the Board will consider in relation to each objective to ensure consistency with the objective. It also outlines specific requirements under the preventing crime and disorder, preventing public nuisance and protecting children and young people from harm objectives of additional steps it expects applicants to demonstrate in specific circumstances. The Board may wish to consider strengthening this section by providing more detail about the conditions the Board can/will apply in relation to each of the objectives, and under what circumstances.

AFS has produced a Licensing Resource Pack¹ 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 Board when developing its new policy: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

AFS would recommend that the policy sets out a clear expectation that applicants address the objectives in their operating plan, and also 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.

Draft text in relation to the licensing objectives

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-sales²) 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.

Preventing Public Nuisance

We note the Board outlines that in considering whether granting an application would be inconsistent with any of the licensing objectives, it will consider whether the proposed off-sales hours will have any effect on the occurrence of anti-social behaviour, and in such circumstances may apply local conditions or reduced hours. AFS welcomes the recognition of the effect that licensed hours have on the licensing objectives. 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

¹ 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>

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

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.³

Extended hours increase availability of alcohol, which in turn is linked to increased consumption and increased harm. With regards to off-sales hours, the current approach of the Board is to generally permit off sales hours from 10am until 10pm - the maximum allowed by law. 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.

AFS would suggest that the approach to licensed hours detailed in this section of the Board's policy also be reflected in the specific section on licensed hours.

Protecting and Improving Public Health

AFS welcomes the statement in this section that the success of the licensed trade in Clackmannanshire cannot be at the expense of the health and wellbeing of all customers and staff. As detailed in our general comments on approach to the licensing objectives, we would suggest this section could be strengthened by including contextual information on the levels of alcohol-related harm in Clackmannanshire.

AFS welcomes that the current policy suggests licence holders promote awareness of units of alcohol and the recommended guidelines for consumption by men and women. The intention behind this is admirable and this approach should continue. We note references made within the policy to 'moderate and responsible' drinking and to 'sensible drinking limits.' AFS would suggest that the Board avoid using terms like responsible or 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/healthy-living/alcohol>

Protecting Children and Young People from Harm

The policy states that the Board wishes to welcome and encourage well thought out applications for premises and occasional licences that will accommodate children, but that the risk of harm will be a paramount consideration for the Board. AFS fully appreciates that some Boards wish to encourage applications for licensed events and venues which are family friendly and safe for children. However, 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. The summary of key concerns in this section says very little about the exposure to excessive alcohol consumption, for example. It will also be important that the new policy addresses

³ 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.

the broader impact of alcohol on children and young people, including the impact of parental drinking.

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. AFS would recommend that in order to meet the Board's requirements to demonstrate how they will promote this objective, the Board could request a written statement as suggested above.

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.

General comments

While the full draft policy has not been provided for comment, in addition to the specific consultation questions, AFS would offer the following general comments in relation to SLP approach.

Licensed hours

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.

As outlined above, there is evidence that policies regulating times of alcohol trading can contribute to reductions in some alcohol-related harms. AFS welcomes the recognition within the policy of the impact that licensed hours can have on public health. The Board has outlined its willingness to consider reduced hours in order to ensure promotion of the licensing objectives, and for clarity it is suggested that this be restated in the specific section on licensed hours.

AFS also welcomes the Board's policy to not grant extended hours where the applicant fails to satisfy the Board that a genuine special event is taking place and 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 may also wish to further clarify what would and would not fall within the definition of a 'special event or occasion' for the purposes of extended hours.

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.

One concern raised with AFS has been applicants repeatedly applying for occasional licences to enable a business to be run in the absence of a premises licence. While the policy states that the Board has delegated the authority to grant straightforward licensing applications to council officers acting on behalf of the Clerk of the Board, AFS would recommend that the 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. 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.

Links with other strategies

The Licensing Board's current strategy refers to several strategies and policies including the European Convention on Human Rights, Public Sector Equality Duty, Scottish Government strategies and Clackmannanshire Alcohol and Drug Partnership delivery plan. It will be important that the new policy continues to recognise 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 Clackmannanshire 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.

Transparency, accessibility and participation

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.

AFS hopes that the Board's commitment to carry out its business in an open and transparent manner, as contained in its current policy, is retained. The policy could be strengthened in this regard by providing 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, 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 and to provide efficient customer friendly service. The new policy should retain these commitments. 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](#).⁴ In addition, the section of the policy outlining the role of the Licensing Standards Officer could also be expanded to include more detail about the assistance they are able to offer to the public as well as to applicants.

⁴ 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>

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.

AFS would also recommend that the Board includes details of the evidence considered by the Board in developing the policy. Boards should be explicit and demonstrate within the policy how it has been informed through consultation, with the material considered by the Board being published and links to this material being included in the policy itself. Stating this in the policy statement helps demonstrate the Board's responsive approach to consultation.

Further details about accessibility and participation in licensing can be found in AFS's 2017 report *Taking Stock*.⁵ 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.

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 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. 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.

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, and could undermine progress made in meeting the licensing objective to protect children from harm.

AFS would urge all boards to set out their approach to online retailers and deliveries within their new policies. The draft policy does well in making clear that licence holders should ensure an age verification policy is in place for delivery drivers if they believe the recipient is under 25, that the Board recommends delivery drivers receive training, and that the Board may add a condition requiring the customer to sign on receipt of delivery of alcohol. This could help to address many of the concerns highlighted above. However, the policy could be strengthened by requiring a 'challenge 25' policy to be in operation, that orders cannot be left in nominated safe places,

⁵ 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>

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.