

## **AFS RESPONSE TO ORKNEY ISLANDS AREA LICENSING BOARD CONSULTATION ON OVERPROVISION (MARCH 2018)**

### **INTRODUCTION**

Alcohol Focus Scotland (AFS) welcomes the opportunity to participate in the Orkney Islands Area Licensing Board 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 Orkney 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**

The consultation document states that any suggestion that overprovision exists must be supported by robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached. It also states that there must be a dependable causal link forged between that evidence and the operation of licensed premises in a locality.

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>

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 the Orkney Islands should therefore be considered in conjunction with density information, such as from the [CRESH alcohol outlet density map](https://creshmap.com/shiny/alcoholtobacco/),<sup>2</sup> to make an informed assessment of overprovision.

Decisions on overprovision should also be informed by evidence from the police, health authorities and other agencies. AFS notes the submission, relevant to overprovision, provided to the Board by the Orkney ADP on 16th November 2017. In this, the ADP supported the existing position that Orkney was not overprovided as a whole locality, however it also identified some areas where Orkney was worse than the rest of Scotland e.g. numbers of people exceeding daily recommended units. AFS believes that the alcohol harm statistics and the density information for the Orkney

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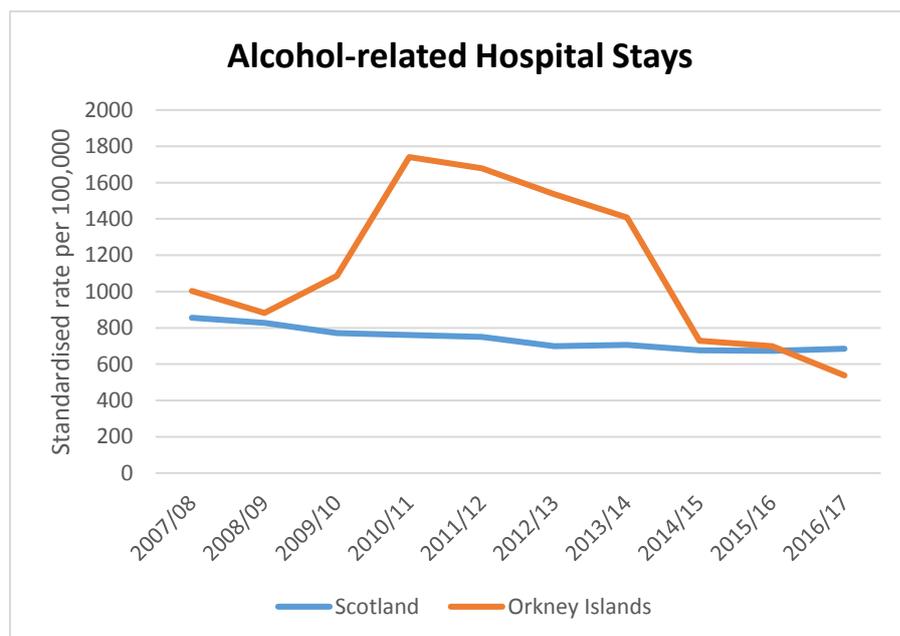
<sup>1</sup> E.g. *Tesco Stores Ltd v City of Glasgow Licensing Board*, 2012

<sup>2</sup> Available at <https://creshmap.com/shiny/alcoholtobacco/>

Islands (outlined below) point compellingly to the conclusion that there exists a state of overprovision, in at least some parts, of the Board's area.

### Alcohol harm statistics

In the Orkney Islands, 35% of men and 18% of women drink above the low-risk drinking guidelines; this is higher than Scotland as a whole.<sup>3</sup> The most recent data available shows that in Orkney there were 154 alcohol-related hospital stays in 2015/16<sup>4</sup>; the alcohol-related hospital stay rate has decreased over time, and now currently sits at just below the Scottish average (see graph below).



Despite this positive trend in alcohol-related hospitalisation stays, the Orkney Islands still has a higher rate of patients (number of people who have had at least one alcohol-related hospital admission in the year) and new patients (how many people each year have an alcohol-related admission who have not had one in the past 10 years): Orkney had a rate of 500.6 patients in 2015/16 compared to the Scottish rate of 478.7, and 254.3 new patients compared to 222.7 for Scotland.

Critically, it should also be noted that alcohol-related deaths have more than doubled from 4 in 2015 to 9 in 2016; the number of alcohol-related deaths in the Orkney Islands is the highest since 2001, when it reached 10 deaths.<sup>5</sup> The Scotpho health and wellbeing profile also shows that the Orkney Islands have an alcohol mortality rate of 24.3, which is higher than the Scottish rate of 22.0. Although the ADP submission (also using data from Scotpho) reports that alcohol related mortality is lower than the Scottish average, the ScotPHO profiles actually contain two differing rates for alcohol

<sup>3</sup> Bardsley, D. et al (2017). *The Scottish Health Survey 2016 Edition, Volume 1, Main Report*. Edinburgh: Scottish Government. The Scottish average is 25% of adults drinking above the guidelines, whereas in Orkney Islands, the proportion is 27%

<sup>4</sup> Information Services Division (2017). *Alcohol-Related Hospital Statistics Scotland 2016/17*. NHS National Services Scotland.

<sup>5</sup> National Records of Scotland (2017). *Alcohol-Related Deaths in Scotland, 1970-2016*. Edinburgh: National Records of Scotland.

mortality for Orkney (15.9 for the alcohol profile for 2015 and 24.3 for the health and wellbeing profile). Although both these figures are technically correct, the National Records of Scotland have confirmed to AFS that the figure from the health and wellbeing profile should be considered as the most accurate. This is because this rate is calculated using a 5 year average while the alcohol profile is based only on one year, which is likely to be unreliable considering the low numbers involved, especially for an area the size of Orkney.

The £6.3m annual cost of alcohol harm to Orkney Islands (health, social care, crime and productive capacity) is also significant, equating to £313 per person.<sup>6</sup>

The Scottish liquor licensing statistics 2016/17 show that there are 109 premises licences in force in Orkney.<sup>7</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>8</sup> The table below provides the ten neighbourhoods with the highest alcohol availability (being the mean number of total alcohol outlets within 800m of the population centre) in the Orkney Islands. Shaded areas indicate where the rate is higher than the local authority average (for total number of outlets, hospitalisation rate and crime rate).

<u>Datazone</u>	Total outlets within 800m of population centre	Crime rate (from SIMD 2016)	Hospitalisation Rate (from SIMD 2016)
West Kirkwall - 04	33	1014	400
West Kirkwall - 05	33	615	493
East Kirkwall - 03	31	234	153
East Kirkwall - 04	24	242	278
East Kirkwall - 01	17	171	189
West Kirkwall - 03	13	55	152
Stromness, <u>Sandwick</u> and <u>Stenness</u> - 02	10	448	150
West Kirkwall - 02	9	174	2351
Stromness, <u>Sandwick</u> and <u>Stenness</u> - 01	8	136	206
Isles - 02	6	0	67
<b>Average for Orkney Islands</b>	<b>7</b>	<b>205.3</b>	<b>141.5</b>
<b>Scottish average</b>	<b>16.8</b>		

Analysis conducted by Alcohol Focus Scotland and the Centre for Research on Environment, Society and Health, due to be published shortly, reveals that there is a relationship between alcohol outlet availability and health and social harms across Scotland. Initial analysis shows that there is double the alcohol-related death rate, almost double the alcohol-related hospitalisation rate, and around 4 times the crime rate in neighbourhoods with the most alcohol outlets as compared to neighbourhoods with the least. This relationship has been found for the Orkney 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).

<sup>6</sup> Alcohol Focus Scotland. *The Cost of Alcohol in Orkney Islands 2010/11*. Glasgow: Alcohol Focus Scotland-

<sup>7</sup> Information Services Division (2017). *Alcohol-Related Hospital Statistics Scotland 2016/17*. NHS National Services Scotland.

<sup>8</sup> Alcohol Focus Scotland (in press). *Alcohol Outlet Availability and Harm in the Islands*. Glasgow: Alcohol Focus Scotland. Please note that for this

## Identifying localities

AFS understands that the Board has determined the whole of Orkney as a locality for the purpose of consultation on the overprovision assessment. However, this decision appears to have been based on “the sole response to the preliminary statistical data collection exercise and the current absence of alternative evidential information”, which were highlighted in the Clerks report considered during the 25 January 2018 Board meeting. AFS is pleased that this does not preclude subsequent alternative findings by the Board, and would urge the Board to reconsider this decision.

The geography and demographics of the Orkney Islands Area are such that designating the whole of Orkney as a single locality may not be the most appropriate approach. Consideration of the health statistics, such as those included above, shows that alcohol-related harm is not evenly distributed across the Orkney Islands. This being the case, there is scope for the licensing board to adopt a different overprovision stance in relation to areas with higher levels of harm, such as Kirkwall.

Given recent legal challenges,<sup>9</sup> AFS would also emphasise the importance that all boards follow the process as set out in the guidance to the Licensing (Scotland) Act 2005 when identifying localities and assessing overprovision.

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<sup>9</sup> E.g. Aldi Stores Ltd v Dundee City Licensing Board, Dundee Sheriff Court, 12 August 2016, Sheriff Kevin Veal