

AFS RESPONSE TO FORMAL CONSULTATION ON WEST DUNBARTONSHIRE LICENSING BOARD'S STATEMENT OF LICENSING POLICY (AUGUST 2018)

Alcohol Focus Scotland (AFS) welcomes the opportunity to comment on West Dunbartonshire 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 Board will find useful. We have provided comment in relation to the issues the Board wishes to address as part of its review, and also on the sections of the policy which we believe may warrant particular scrutiny.

Part 1 - General Parts of the Licensing Policy Statement

3. Licensed Hours: Restaurant Premises

Should the Board's current policy on allowing applicants to apply for Restaurant Licensed Hours until 2:00 am, from Monday to Sunday, be changed so that the terminal hour that an applicant can apply for is 1:00 a.m. from Monday to Sunday?

Yes. AFS notes the Clerk's report to the Licensing Board, dated 20th March 2018, which identifies that no restaurants currently trade to the full terms of the Board's licensed hours policy, and highlights that it is unusual to have a policy offering licensed hours that are unlikely ever to be used or applied for. AFS would agree that there is no logical reason for the policy to allow for a 2.00am terminal hour, and would fully support a reduction in the hours available to restaurants within the new policy.

While this consultation is seeking views specifically about licensed hours for restaurants, AFS notes that none of the pre-consultation responses commented on licensed hours, although this was an issue of particular interest to the Board. As a national organisation, we are not in a position to provide input about local experiences, but can offer comment on the impact of licensed hours on alcohol harm and the evidence available to support this, which will hopefully be helpful to the Board when determining its policy in this 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 other crimes.¹

Extended hours increase the availability of alcohol, which in turn is linked to increased consumption and increased harm. As such, AFS welcomes that the Board does not generally allow the sale of alcohol for consumption on the premises before 11.00am. AFS also commends the Board for adopting its current policy of restricting off-sales hours to 10am-8pm, unless enhanced control measures have been put in place to promote the licensing objectives. The off-sales hours of 10am until 10pm are the maximum allowed by law and AFS believes that, particularly in areas of high-rates of alcohol harm, the maximum permitted hours should be the exception and not the norm.

4. Access to Restaurant Premises by Children and Young Persons

Should the Board's current policy on access to restaurant premises by children and young persons be changed to allow children and young person's later access to specific restaurant premises for the purposes of a meal?

No: AFS appreciates that the rationale behind this proposal is that there may be occasions where families are going out later for a meal, and acknowledges that the Licensing Forum (at a meeting on 20 February 2018) was broadly supportive of this measure. However, the 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. Should the Board maintain the existing policy there would, of course, be nothing to prevent a family wishing to have a later meal from doing so without the need for alcohol.

However, if the Board is minded to alter its policy to enable children and/or young persons later access to restaurants, AFS would recommend that the Board carefully set out the conditions it will apply in such circumstances and the additional responsibilities placed on licence holders. Similarly, if the Board continues to be of the view that it is generally permissible for children and/or young persons to remain on licensed premises for the duration of functions, 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.

5. Extended Hours

Is the Board's current policy on extended hours applications at Part 21 of its Statement of Licensing Policy sufficiently clear for applicants and members of the public alike? Are there any other matters that are not covered in the sections for special events and national and international events and festivals that the Board should consider?

Part 21 of the policy, overall, appears to be reasonably clear. However, it could be beneficial to provide further detail about what would and would not fall within the description of a 'special event' for the purposes of granting any extended hours applications. For example, would having a dance

¹ 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.

floor available to guests attending a private party be considered sufficient to meet the definition of a 'disco', or would the presence of a DJ/performer be required?

AFS welcomes the Board's position that, in many cases, events and festivals can be appropriately accommodated within normal licensing hours and should not routinely be regarded as a need for extended licensing hours. Should the Board decide 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. Again, it could 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.

6. Miscellaneous

A number of miscellaneous changes which do not change the substance of the Board's Policy are made in the referred to reports (linked in the introduction) to the Licensing Board on 23 January 2018 and also 20 March 2018. Where relevant, please make reference in your response to the report.

The March report makes reference to licensed hours for nightclub premises and considers whether there should be extension to these hours by an hour on Fridays and Saturdays. AFS would again highlight that extended hours increase the availability of alcohol, which in turn is linked to increased consumption and increased harm. We would therefore recommend that nightclub hours are not extended.

The January and March reports also set out the rationale for the Board's policy that the health benefits of employment can be a factor that applicants can present to support their application, and can be a factor that may rebut the presumption against granting applications in overprovision areas. AFS has carefully considered the case of *Martin McColl Limited v West Dunbartonshire Licensing Board*, where the Judge found that "*the potential health benefits to employees for whom jobs were to be created does... accord with the licensing object of protecting and improving public health*".

AFS continues to find this policy position questionable and problematic for a number of reasons. Firstly, the courts have made clear that the objectives are licensing objectives and therefore the licensing objectives are closely connected to the sale of alcohol on the premises.² AFS believes it is highly questionable to restrict the effect of a policy by reference to the promotion of a function that is not a licensing function. A local authority may have a function to promote employment or to promote public health through employment, but (even assuming this to be true) that is not a licensing function and therefore it is not a function or factor that AFS believes should be included in a licensing policy.

Secondly, the method of assessing whether or not there is overprovision is set out in section 7 of the Licensing (Scotland) Act 2005. In considering overprovision, the board must have regard to "the number and capacity of licensed premises in the locality" and must consult the specified persons in reaching that conclusion. If the board finds that there is overprovision then the board is bound to refuse the application. There is nothing in section 7 to suggest that a determination of overprovision can be modified by a non-licensing objective; namely, "the positive health benefits associated with increased employment opportunities".

² E.g. as was said in *Brightcrew Ltd v City of Glasgow Licensing Board* 2012

There may be exceptional cases in which an applicant in an overprovision area is able to demonstrate that the grant of an application would not undermine the licensing objectives, but the Board should take care not to imply in the policy that (should an applicant be able to demonstrate that the licensing objectives would not be undermined) this would somehow reverse the rebuttable presumption. Overprovision is a grounds for refusal in its own right (as borne out in case law) i.e. in an overprovision case where there is no inconsistency with the objectives does not mean there is no overprovision as it is a separate issue.

AFS fully appreciates that this is a particularly contentious and contested issue. In addition, we acknowledge that the dated guidance to the Licensing (Scotland) Act 2005 makes deliberations relating to overprovision even more challenging for all involved. However, we would nonetheless urge the Board to consider the points we have raised above.

7. Other matters

Whilst intending to focus on the issues described above, the Board welcomes all comments and proposals in relation to its Licensing Policy Statement and will give these due consideration.

There are a number of strengths and examples of good practice to be found within the West Dunbartonshire Licensing Policy, and AFS is keen that these aspects are replicated and built upon within the new policy.

Links with other strategies

AFS welcomes that the existing policy includes a commitment that the Board will have regard to and work in partnership with national strategies and local policies. The various strategies detailed in the current policy are those that we believe to be the most appropriate e.g. Changing Scotland's Relationship with Alcohol, local community planning strategies, and the action plans of local partnerships.

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 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 new strategic plan of the Health and Social Care Partnership (HSCP).

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

The existing policy also does well in recognising the links between equality, human rights and fairness. 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.

Promotion of the licensing objectives

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 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.

The new policy could 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. We 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 is set out well within the reports to the Licensing Board on 23 January 2018 and also 20 March 2018. Aspects of these reports could be included within the policy, even as an appendix, with a clear line of reasoning from that evidence to the conclusions in the Statement of Licensing Policy. Ultimately, 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.

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 Boards when developing the new Licensing Policy Statement, and can be downloaded from our website: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

The current policy sets out a clear expectation that individual applicants address the five licensing objectives in their operating plan. However, this could be strengthened further by also setting out an expectation that applicants 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 detail 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.

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-sales³) 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.

Specific to the objective of Protecting and Improving Public Health, AFS welcomes that the Board considers that applicants should make available information which promotes moderate drinking along with awareness of units of alcohol and recommended guidelines. The new policy should 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 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.

The section relating to the objective of protecting children from harm will require to be updated to reflect legislative changes, such as extending the objective to protect children and 'young people' from harm. The Board should give consideration as to whether it will apply the same policy to young persons or should have a different policy from that applied to children. AFS would be interested to hear the views of children and young person's and their representative organisations on this issue.

The current policy states that the Board welcomes applications from licensed premises which will accommodate children and young people. AFS fully appreciates that some Boards wish to encourage applications for licensed events and venues which are family friendly and safe for children. However, as commented earlier in our response, evidence shows that children and young people are influenced by the behaviour of adults they observe. 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.

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. The current section of the policy detailing the Board's policy with regards to access to premises by children and young persons is particularly useful in setting out the Board's expectations. It could be beneficial to set out greater detail in the new policy the conditions the Board may impose relative to children and young people, and under what circumstances.

³ Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland

Accessibility, participation and transparency

A lack of effective public engagement in licensing can prevent proper transparency and accountability. During 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 section of the current policy outlining the Board procedure is welcomed, in particular the commitment that the Board will follow the principles of openness and transparency when carrying out its functions. The new policy could provide 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 also welcomes that the Board commits to provide all reasonable assistance and information to those wishing to apply for a licence, to make representations or to object to an application. The new policy could include an additional 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 further support public participation by reassuring communities that the Board will endeavour to make proceedings as user-friendly as possible, and setting out the procedure to be followed at hearings (this could be included as an appendix).

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.

Alcohol deliveries and internet sales

The current policy usefully includes a section on home deliveries. We commend the Board for requiring premises which intend to provide alcohol home deliveries to provide details about the hours of delivery, and the steps taken to identify the age of the person ordering in terms of "Challenge 25".

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. However, 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 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.

The Board's policy in this area helps to address some of these concerns, and we hope that other areas will adopt a similar approach. 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 as figures on delivery refusal rates.

Occasional licences

AFS has identified that occasional licences are causing concern in some areas of the country, with licensing stakeholders reporting that this is 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 licences can be obtained by members clubs in order to sell alcohol to the general public.

The current policy expresses the Board's concern that some premises may seek to avoid the requirements of the Act by applying for repeated applications. Accordingly, the Board may require to be addressed by the applicant as to why an application for an occasional licence is appropriate rather than an application for a premises licence. AFS would recommend that the Board strengthen this aspect of the policy by requiring 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.

Part 2 - Consultation on overprovision of licensed premises

8. The Board is keen to get views on whether there is overprovision of premises within West Dunbartonshire licensed to sell alcohol. If there is overprovision, in which area(s) is there overprovision?

As a national organisation, we do not have sufficient local knowledge of the West Dunbartonshire 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.

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 West Dunbartonshire 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.

AFS is pleased the January report to the Board makes reference to the CRESH report *Alcohol-related illness and death in Scottish neighbourhoods*; presented to the Board on the 16th December 2014. As the 19 June 2018 report by the Clerk to the Board highlights, this data has recently been updated. AFS has now published new 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

The updated CRESH data shows that West Dunbartonshire is ranked 11th out of 30 local authority areas for alcohol outlet availability in Scotland (17th for on-sales and 6th for off-sales outlets). A statistically significant relationship was also found in West Dunbartonshire between alcohol outlet availability and crime rates; crime rates in the neighbourhoods with the most alcohol outlets were 90% higher than in neighbourhoods with the least. The link between alcohol outlet availability and crime was found even when other possible explanatory factors, such as age, sex, urban/rural status and levels of income deprivation, had been taken into account.

Decisions on overprovision should also be informed by evidence from the police, health authorities and other agencies. AFS notes the range and quality of information provided to Board by West Dunbartonshire Alcohol and Drugs Partnership, NHS Greater Glasgow and Clyde, West Dunbartonshire Environmental Health Services, Police Scotland and the Fire Service of Scotland. This evidence shows that West Dunbartonshire fares poorly against both the Scottish standard and the GGC Health Board area in relation to a significant number of alcohol-related harms.

Aggregated statistics such as these point compellingly to the conclusion that there exists a state of overprovision in West Dunbartonshire. AFS would recommend that the policy outlines the evidence considered by the Board to help inform the overprovision assessment, to help people to understand the rationale for the boards approach and aid transparency.

9. If there is overprovision, in which area(s) is there overprovision?

AFS would recommend that 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 would be an appropriate response.

The webmap 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). However, it is important to note that areas with the highest numbers of outlets may not be those experiencing the highest levels of harm, as different communities can be affected differently by alcohol, with some experiencing disproportionate levels of harm.

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.

10. If there is overprovision, in what categories or types of premises is there overprovision?

No comments

11. If there is overprovision, why is there such overprovision?

As noted above, the aggregated statistics and information submitted to the Board by local partners points compellingly to the conclusion that there exists a state of overprovision in West Dunbartonshire.

12. Do you agree, in reference to the Boards overprovision policy, that it is desirable for the licensing board should to ask any party to provide evidence in support of, or in objection to, any application for any licence?

Yes: It is appropriate that the Board should look to the evidence in respect of each application, and it is therefore reasonable to ask that parties provide evidence to substantiate their support or objection to a licence. However, it will be important that the Board is clear about what counts as evidence, and the tests and standards that will be applied.