

AFS RESPONSE TO FIFE LICENSING BOARD POLICY CONSULTATION (AUGUST 2018)

Alcohol Focus Scotland (AFS) welcomes the opportunity to comment on Fife 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 draft policy which we believe may warrant particular scrutiny.

Links with other strategies

At present, the only local strategy referenced in the draft policy appears to be Fife's Community Plan 2011-2020, but 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 Fife 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.

The draft policy recognises that licensing boards have legal obligations under the Equality Act 2010 and Human Rights Act 1998. 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.

Transparency, accessibility and participation

A lack of effective public engagement in licensing can prevent proper transparency and accountability. During a series of 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.

AFS welcomes that the draft policy makes clear that - during hearings - any decisions and voting on motions will be conducted in public. The policy could be strengthened in this regard by including a commitment that the Board will conduct its business in an open and transparent way, and by providing much 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.

The new policy could also have an increased focus on supporting public engagement and participation. Communities may not currently be aware of the various ways in which they can get involved or the types of information/supports available to enable them to participate. The new policy should 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](#).¹ The current 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.

It is welcomed that the policy includes a commitment that hearings will be conducted in as informal a manner as possible. This can be particularly important for many community members, who may feel intimidated by overly formal processes and environments. It is also helpful that the policy outlines the procedure to be followed at hearings as an Appendix. The new policy could help further support public participation by reassuring communities that the Board will endeavour to make any proceedings as user-friendly as possible.

¹ 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*.² 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.

Promotion of 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 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.

For all the licensing objectives, the Board has usefully listed example control measures that applicants and licence holders can put in place to ensure consistency with the objective. However, this could be greatly strengthened by providing more detail about the conditions the Board can/will apply in relation to each of the objectives. AFS welcomes that the policy already sets out (as an appendix) the conditions the Board will apply in relation to late opening premises and marquees. However, the new policy should provide much 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 Pack³ 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 be useful to the Board when developing its new policy: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

² 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>

³ 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>

It would also be beneficial to provide more of the Fife 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 Fife. There should then be a clear line of reasoning from the evidence to the conclusions in the policy.

The draft policy states that applicants may be required to satisfy the Board that the matters contained in their operating plans are consistent with the licensing objectives. 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.

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-sales⁴) 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 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. The policy should make explicit 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>

In relation to the objective to protect children and young people from harm, the Board may wish to 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; however, it would seem sensible to apply the same policy for the purposes of alcohol licensing.

The policy states that the Board wishes to see family friendly premises thriving in Fife. 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. 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.

⁴ Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland

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 draft policy usefully gives examples of control measures that could be put in place to protect children and young people from harm. However, the policy could set out in much greater detail the conditions that the Board may impose relative to children and young people, and under what circumstances. The new policy could also set out the general expectations of the Board with regards to factors like when children be allowed entry, including the ages of children to be allowed entry, and types, times and parts of the premises to which children will have access. In general, 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.

Overprovision

As a national organisation, we do not have sufficient local knowledge of the Fife 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 Fife 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 has also 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 Fife profile to accompany this response.

The CRESH data shows that Fife is ranked 13th out of 30 local authority areas for alcohol outlet density in Scotland (16th for on-sales and 12th for off-sales outlets). Fife has an alcohol outlet density lower than Scotland as a whole; neighbourhoods had an average of 11.1 alcohol outlets within 800m of the population centre, compared to the Scottish average of 16.8 outlets. However, 18% of neighbourhoods have a total outlet density higher than the Scottish average, and the most deprived neighbourhoods in Fife have 1.6 times the number of alcohol outlets than the least deprived.

When considering links to harm, a statistically significant relationship was found in Fife between alcohol outlet density and alcohol-related hospitalisation rates and crime rates. Specifically, alcohol-related hospitalisation rates in the neighbourhoods with the most alcohol outlets were 2.2 times higher than in neighbourhoods with the least, and crime rates 3.5 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.

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 in the joint report from NHS Fife, Fife Council and Fife Alcohol and Drugs Partnership on the impact of alcohol in Fife. This correctly identifies that Fife has the fourth highest number of licensed premises in Scotland, and that there are areas in Fife that have much higher levels of alcohol provision than the Fife average. It also identifies that there are communities in Fife experiencing high levels of alcohol-related harm as measured by hospital admissions, mortality rates and alcohol-related anti-social behaviour incidents.

Aggregated statistics such as these point compellingly to the conclusion that there exists a state of overprovision in Fife. AFS notes that the Board considers the evidence to indicate that there may be overprovision of off sales premises in the Cowdenbeath, Kirkcaldy and Levenmouth areas, and is seeking views on overprovision in these areas and in any other part of Fife. 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 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 Fife that have higher outlet density than the Scottish average and very high levels of alcohol related harm. This includes neighbourhoods within Cowdenbeath, Kirkcaldy, Levenmouth and also within Glenrothes.

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.

Licensed hours

Again, 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.⁵

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 commends the Board for amending its policy relating to extended hours applications to make clear that extended hours must be in connection with a special event/occasion or an event of local/national significance. 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. AFS welcomes that the draft policy makes clear that the late night conditions set out in the Appendix may be applied (where alcohol is sold beyond 2:00am), however it would 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 draft policy states that the Board considers that the purpose of occasional licences is to allow for the sale of alcohol at events that do not occur on a regular basis, and the Board discourages applicants from repeatedly applying for occasional licences to enable a business to be run in the absence of a premises licence. AFS would therefore 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. Licensing boards may wish to choose their own thresholds for referring decisions to the Board, based on local circumstances. For example, the proposed approach in the Perth and Kinross Licensing Board draft policy is that *"the Board considers it reasonable for occasional licences covering up to 30 days (including into the following mornings) to be granted in any one calendar year for a single premise.*

⁵ 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.

Where more than 30 days are sought, the Board expects a premises licence application to be submitted. Failure to do so may result in all further occasional licence applications being submitted to the Board for consideration rather than being dealt with under delegated powers.”

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.

AFS is pleased that the policy has been updated to specify that occasional licences, enabling alcohol to be sold in a marquee, may be subject to the marquee conditions included in the Appendix.

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, 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.