

**AFS COMMENT ON SOUTH AYRSHIRE LICENSING BOARD'S STATEMENT OF LICENSING POLICY
(AUGUST 2018)**

Alcohol Focus Scotland (AFS) welcomes the opportunity to comment on South Ayrshire 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.

AFS commends the Board for hosting a pre-consultation event to help inform the creation of the new policy. Seeking views in this way - prior to the new statement being drafted - affords local communities and stakeholders an important opportunity to contribute to the shaping of licensing policy at an early stage. 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

The draft policy does not currently appear to reference any of strategies or plans to which the Board will have regard when carrying its duties (other than making reference in the Foreword to South Ayrshire Council's objective of making the most of the local economy). It will be important that the new policy explicitly 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 in order to prevent and reduce harm. 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 strategic plan of the Health and Social Care Partnership (HSCP).

Scotland's alcohol strategy '*Changing Scotland's relationship with Alcohol a Framework for Action*' is also 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.

Licensing boards are also bound by human rights legislation. 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.

Accessibility and participation

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.

The existing policy includes a commitment that the Board will conduct its business in an open and transparent manner. This is welcomed but the new policy could provide 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. For example, it could provide more detail about the ways in which people can get involved and the types of information/support that can or will be made available to enable them to participate. The policy could also include a commitment that the Board will attempt to make the experience of attending a hearing as informal and friendly as possible. This can be a particularly important commitment for many community members, who may feel intimidated by overly formal processes and environments.

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*.¹ 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

¹ 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>

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.

AFS welcomes that the policy identifies the pursuit of the objectives as being a principal feature of the Board’s policy, and explains that conditions may be attached licenses based on any of the objectives. Although the policy provides an outline of general measures to promote the objectives, it could explain in much greater detail the control measures that licensees could put in place relative to each objective (this has been done to a greater extent in part 6.4 of the policy; specific to children and young persons access to licensed premises). In addition, the policy does not set out the actions the Board intends to take in pursuance of the objectives, for example by describing the conditions it may consider applying in pursuance of each objective and why.

AFS has produced a Licensing Resource Pack² 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>

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

In addition to setting out a clear expectation that applicants address the five licensing objectives in their operating plan, the new policy could include 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 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

² 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>

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 licence holders should consider making available information regarding sensible drinking. The intention behind this is admirable and this approach should continue. However, AFS would recommend that the Board avoid using terms like '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>

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 South Ayrshire, and AFS 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.

The policy sets out an expectation that applicants will provide sufficient assurances that children and young persons will not be placed at risk, however it could set out much more detail about the general expectations of the Board with regards to factors like when children normally be allowed entry, including the ages of children to be allowed entry, and the times and parts of the premises to which children should have access.

AFS agrees that premises which do not offer food of any description are less likely to be a suitable environment for children. There is also concern across Scotland regarding occasional licenses being granted for events mainly or exclusively targeted at families where children would be present. We are therefore pleased that the new policy has been updated to make clear that if there are no other activities available other than the sale of alcohol, or an event is aimed primarily at children and young persons, it is unlikely that a licence will be granted.

³ 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 to 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.

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. Alcohol harm statistics for South Ayrshire should therefore be considered in conjunction with density information, such as from the [CRESH alcohol outlet density map](#),⁴ 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 is therefore pleased that Appendix 2 of the SLP summarises the evidence/views considered by the Board when conducting its overprovision assessment. This helps support people to understand the rationale for the boards approach and greatly aids transparency. However, AFS would recommend that the Board also publish any evidence considered and provide links or signpost people to where this evidence can be accessed.

The most recent CRESH data, published in April 2018, shows that South Ayrshire is ranked 6th out of 30 local authority areas for alcohol outlet availability in Scotland (5th for on-sales and 11th for off-sales outlets). It is of particular note that only the large city areas (City of Edinburgh, Glasgow City, Aberdeen City, and Dundee City) have a higher level of on-sales availability. In addition, 41% of neighbourhoods in South Ayrshire have off-sales outlet availability higher than the Scottish average. It is also the most deprived neighbourhoods that have the highest outlet availability in South Ayrshire - with 3.8 times more alcohol outlets in the most deprived neighbourhoods compared with the least.

When considering links to harm, a statistically significant relationship was found in South Ayrshire between alcohol outlet availability and alcohol-related deaths, alcohol-related hospitalisations, and crime rates. Specifically, alcohol-related deaths in neighbourhoods with the most outlets were 2.1 times higher than in neighbourhoods with the least, hospitalisations 3.9 times higher, and crime rates 7.8 times higher.

AFS is unclear as to what information led the majority attending the pre-consultation event to conclude that overprovision was not the cause of South Ayrshire's problem with alcohol, or that restricting the number of outlets would not help to mitigate that problem. However, AFS would maintain that aggregated statistics such as those outlined above, especially when considered alongside evidence such as the Health Harm maps provided by Public Health, would appear to point compellingly to the conclusion that there exists a state of overprovision in at least some areas South Ayrshire.

AFS would therefore recommend that the Board 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).

⁴ Available at <https://creshmap.com/shiny/alcoholtobacco/>

The CRESH webmap can also be used to separate out data specific to on- and off-sales outlets. Although AFS would encourage the Board to consider overall outlet availability in South Ayrshire when conducting its overprovision assessment, we can also appreciate the stated preference of the Board (and local stakeholders) that consumption takes place in on-sales premises, in a regulated environment.

Specific to off-sales, the Board has identified that local residents travel to other communities both within and outwith South Ayrshire to purchase alcohol for a variety of reasons. As such, if the Board were to impose an overprovision policy, it has determined this would apply South Ayrshire wide rather than within specific localities. AFS would agree that an off-sales overprovision policy over a wider area might be more effective in helping to reduce levels of alcohol consumption and harm in the circumstances cited. Should the Board declare the whole of South Ayrshire as overprovided for off-sales, each application would still be determined on its own merits and the Board would maintain its discretion to grant applications if minded to do so based on the facts of the case at hand. However, AFS would stress that it would be more beneficial to identify off-sales overprovision within specific localities, rather than to declare no off-sales overprovision over the entire board whole area.

As a national organisation, we do not have sufficient local knowledge of South Ayrshire to enable us to comment in detail on the localities and premises concerned. However, an initial analysis using the CRESH webmap shows that there are neighbourhoods within South Ayrshire that have much higher outlet availability than the Scottish average and high levels of alcohol related harm. This includes neighbourhoods within Ayr (which has particularly high levels of availability and harm), Troon and Prestwick.

Licensed hours

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.

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.

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.

AFS would therefore recommend that Board requires a hearing where it identifies that an applicant has made repeated occasional licence applications. The Board could also adopt a policy whereby any more than six back-to-back occasional applications 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 would ask occasional licence holders to demonstrate how they will promote the 5 licensing objectives, and provide practical examples of how they plan to comply with each objective.

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 within their new policies. For example, it could be specified that when making an alcohol delivery certain checks should be carried out such as Challenge 25. 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 figures on delivery refusal rates.