

AFS RESPONSE TO NORTH AYRSHIRE LICENSING BOARD POLICY CONSULTATION (OCTOBER 2018)

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

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 policy which we believe may warrant particular scrutiny. Our response largely follows the order of the sections of the statement of licensing policy. We have provided comment only on selected sections.

As a general point, AFS would recommend that the Board includes details of the evidence considered by it in developing the policy. Boards should be explicit and demonstrate within their policy how it has been informed, with the material considered being published and links to this material being included in the policy itself. Stating this in the policy helps demonstrate the reasoning for the Board's agreed position and its responsive approach to consultation. The Board's current policy (2013-18) details information in appendices on submissions received on the SLP generally, and also evidence relating to overprovision. While we would suggest this approach be retained in the new policy, the Board should also consider bringing some of this evidence within the main body of the policy, to provide useful contextual information.

Section A (Not Overprovision)

- 1. To what extent do you believe that the current LPS promotes the Licensing Objectives detailed in section 2 above?**

Licensing objectives

As s.6 of the Licensing Scotland Act (2005) makes clear, policy statements 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.

Section 2 of the policy statement usefully sets out each of the licensing objectives in turn. For each one the Board has stated its intention, or intended outcomes and what it would like to achieve. However, within this section there is limited information about how the Board itself will seek to promote the licensing objectives or what measures that it expects applicants and existing licensees to take in relation to each objective; this is instead included within section 3 (management of premises).

AFS is of the opinion that the policy would be strengthened by providing more specific information about local concerns relating to each licensing 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 the Board area. There should then be a clear line of reasoning from the evidence to the conclusions in the policy. This would serve to explain to any reader of the policy the reasoning behind the actions and conditions that the Board may be likely to require or impose, leaving less room for challenge.

AFS has produced a Licensing Resource Pack¹ that provides resources to support the collection of evidence on local alcohol-related harm, and provides examples of research which demonstrates the impact of particular licensing conditions on harms. This may particularly useful to the Boards when developing their new policy: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

AFS would also suggest that the policy could be enhanced by setting 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 Protecting and Improving Public Health, AFS welcomes the statement in this section that if an applicant is requesting increases in capacity of licensed hours that the Board is likely to question whether or not the application is consistent with the objective. In line with our comments above, the Board may wish to consider outlining what steps it would like applicants to take to promote the licensing objective. It is common practice in many board areas, for example, to suggest licensees promote awareness of units and drinking guidelines. AFS suggests that any such information should be based on the Chief Medical Officer's (CMO) low risk guidelines, and where reference is made to sources of information and advice on alcohol, that this should be independent and impartial. NHS Inform is the best website in Scotland for impartial health advice: <https://www.nhsinform.scot/healthy-living/alcohol>

¹ Alcohol Focus Scotland (2017). *Licensing Resource Pack*. Glasgow: Alcohol Focus Scotland: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

In relation to the objective to protect children and young people from harm, the policy states that the Board wishes to see family friendly premises thriving in North Ayrshire. 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 policies address 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 and young people from harm, and AFS would recommend that the Boards require applicants in these circumstances to demonstrate how they will promote this objective, including by providing a written statement as suggested above.

AFS welcomes the current statement under the children and young people objective that the Board is unlikely to permit off-sales associated with prepared food sales where 'home delivery' is proposed. AFS would suggest that the section on home delivery 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. We provide more detailed comments on online sales below.

Links with other strategies

The Licensing Board's current strategy refers to North Ayrshire Single Outcome Agreement. It will be important that the new policy continues to recognise the value of linking with this strategy. AFS would suggest, however, that there are a broader range of national and local strategies that are relevant to the work of the Board and should be referenced within the policy. These include the European Convention on Human Rights, Scottish Government Alcohol Strategy and North Ayrshire Alcohol and Drug Partnership delivery plan.

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 North Ayrshire 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. (Note that Scottish Government are due to publish an updated alcohol strategy before the end of 2018).

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 welcomes the inclusion of a specific section on home deliveries in the Board's policy. The policy makes clear that the supplier should carry out age verification checks on arrival at the delivery address. However, we believe the policy could be strengthened by more explicitly stating that the Board expects licence holders should ensure an age verification policy is in place for delivery drivers if they believe the recipient is under 25. In addition, the policies 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.

Licensed hours

We are not in a position to comment on local experiences, but can offer comment on the impact of licensed hours more generally and the evidence available to support this.

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.²

AFS welcomes the Board's stated approach to hours of trading which appears to take account of the potential impact of licensed hours on the promotion of licensing objectives, and gives the Board flexibility to respond to local concerns in this regard.

AFS also welcomes the Board's policy that early opening of on-sales (before 11am) will be permitted only in exceptional circumstances, on the grounds that early opening is likely to be inconsistent with the public health objective. It is also helpful that the policy outlines the types of occasions that the board considers appropriate, or inappropriate, for the grant of extended hours.

When the board is minded to allow additional hours, the operation of the premises should be closely monitored to ensure that alcohol-related public nuisance is minimised and conditions attached to the licence if necessary. It may be beneficial to include more detail about the types of control measures and conditions that could be put in place to prevent/limit potential problems related to extended hours more generally.

Occasional Licences

AFS has identified that occasional licences are causing concern in some areas of the country, with licensing stakeholders reporting that this as an area where 'loopholes' in the legislation are being regularly exploited. People have reported to us that occasional licences are significantly increasing alcohol access and availability (although they were not being taken into account in overprovision assessments) and in some cases are being used to circumvent the requirement to have a premises licence to sell alcohol. In addition, although members clubs are premises that are not generally open to the public, occasional licenses can be obtained by members clubs in order to sell alcohol to the general public.

AFS welcomes the Board's approach of outlining the types of events it considers suitable, or unsuitable, for the grant of an occasional licence. AFS would suggest that the Board give consideration to whether events predominantly involving children should be considered unsuitable for an occasional licence. During the series of regional events hosted by AFS in 2016, concerns were 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 policies contain a presumption against granting occasional licences in such circumstances. The Board would still maintain their full discretion and flexibility to grant a licence in these circumstances, if minded to do so based on the merits of a particular application.

An additional concern raised with AFS has been applicants repeatedly applying for occasional licences to enable a business to be run in the absence of a premises licence. While the policy outlines the view that occasional licences should be used only for genuine 'occasions' and should not be used for the operation of commercial premises, AFS would recommend that the Board requires a hearing where it identifies that an applicant has made repeated occasional licence applications. The Board could also adopt a policy whereby a certain number of back-to-back occasional applications (exceeding a set threshold) be automatically referred to the Board for a decision. We are aware of

² 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.

this approach being taken or considered in other licensing board areas. Licensing boards may wish to choose their own thresholds for referring decisions to the Board, based on local circumstances.

In addition, in order to ensure that the sale of alcohol under occasional licences is appropriately conditioned to uphold the licensing objectives, the Board could also request that applicants complete an Occasional Licence Supplementary Information Form. This approach is already adopted in some other board areas, where occasional licence holders are asked to demonstrate how they will promote the five licensing objectives, and provide practical examples of how they plan to comply with each objective, with some also providing a pro forma for submission alongside the application.

2. Do any of the following sections of the current LPS 2013-2018 require change? If so, why? It would be helpful to receive factual or statistical information which is relevant.

Board Business

AFS welcomes the inclusion of an appendix detailing how Board business will be dealt with. It is helpful that the policy provides information on how applicants and members of the public can access sources of information and advice on the licensing process. However, we have concerns that the placement of this information, at the end of a lengthy document containing a lot of technical detail, may make it difficult for members of the public to find, and therefore use. The Board should consider bringing forward in the policy the elements of this section signposting the general public to where they can find guidance to support them to get involved. The Board could also consider including the [Alcohol Licensing in Your Community Toolkit](#).³ as an appendix. This was developed by AFS in collaboration with community members in Edinburgh who had raised concern about the lack of accessible information on processes for involvement in licensing.

More generally, we would recommend that the policy be reviewed to make its language more user-friendly and accessible for members of the public. At eighty-one pages long (including annexes), the policy is among the longest that AFS has reviewed and responded to in consultation. While the information contained is all of relevance, it is very detailed in sections and could be shortened or summarised to aid reading. 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.

Further details about accessibility and participation in licensing can be found in AFS's 2017 report *Taking Stock*.⁴ 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.

³ 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>

⁴ 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>

Section B (Overprovision)

As a national organisation, we do not have sufficient local knowledge of North Ayrshire 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 Board will find useful.

AFS welcomes the information provided in Annex E sections 1 and 2 which sets out the legal requirements in relation to an overprovision assessment and the Board's approach. Section 1 will be required to be updated in line with new overprovision definitions in the Air Weapons and Licensing (Scotland) Act 2015, particularly the potential to include licensed hours in the overprovision assessment and the clarification that the whole Board area can be determined a locality for the purposes of the overprovision assessment.

The inclusion of detailed information on the localities determined by the Board and the correlation with 'Neighbourhood Areas' is particularly useful for the purposes of evidence gathering and presentation on the part of statutory consultees and others inputting to the overprovision assessment. Also to be welcomed is the detail provided on the Board's categorisation of licensed premises which is useful and helps understanding.

At section 2.5 the policy includes detail of Strathclyde Police's involvement in the consultation on overprovision and focuses on crime and disorder, before moving on to section 3 'Description of Documents' which provides detail of the evidence considered from a range of different sources. This layout is slightly confusing as it would appear on initial reading that crime and disorder have been prioritised above other considerations. It becomes clear with further reading that this is not the case, and rather, evidence from a range of sources has been received and carefully considered. AFS would suggest reviewing the format of this section on overprovision to provide clarity to the reader.

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 Board area 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 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 North Ayrshire profile to accompany this response.

The CRESH data shows that North Ayrshire is ranked 19th out of 30 local authority areas for alcohol outlet availability in Scotland (18th for on-sales and 17th for off-sales outlets). North Ayrshire has an alcohol outlet density lower than Scotland as a whole; neighbourhoods had an average of 10.1 alcohol outlets within 800m of the population centre, compared to the Scottish average of 16.8 outlets.

However, the data shows that while North Ayrshire on the whole has a relatively low overall level of alcohol availability, there are pockets of high availability in the local authority. A significant 17% of neighbourhoods in North Ayrshire have total outlet availability higher than the Scottish average. Perhaps of most interest to the Board are the figures relating to areas of deprivation in the local authority. The most deprived neighbourhoods in North Ayrshire have almost four times the number of alcohol outlets than the least deprived. This information may add a new dimension to the

Board's existing evidence on outlet density and the Board may wish to review the density information contained in the [CRESH alcohol outlet density map](#).

The inclusion of the evidence which the Board has considered in the formulation of its overprovision policy under section 3 is very helpful. This should be replicated in the new policy. It is clear that detailed consideration of the evidence has occurred and the summary information provided in the body of the document demonstrates the reasoning for the policy. It is also useful to include the information under section 4 which makes clear to applicants what they may expect when applying for a new premises licence in North Ayrshire. Section 4.2 onwards provide clear rationale for the Board's policy on overprovision including detail on that approach the Board will take to assessing applications in this context. This is particularly helpful to the reader. A clear line of reasoning can be followed from evidence, to policy, to application.

We hope that the information provided in the CRESH profile and associated data will be of use to the Board as an additional source of evidence. In our view, taken alongside the other evidence presented in the policy, it justifies the overprovision policy already in place and we would suggest retaining this policy.