

**AFS RESPONSE TO THE SOUTH LANARKSHIRE LICENSING DIVISIONS LICENSING POLICY CONSULTATION (AUGUST 2018)**

Alcohol Focus Scotland (AFS) welcomes the opportunity to comment on the South Lanarkshire Licensing Divisions Statements 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 policies which we believe may warrant particular scrutiny. As the individual policies of the four Licensing Divisions are largely identical, we have amalgamated our comments on each into one response and indicated where any comments relate only to a specific division or policy.

**Links with other strategies**

The current policies state that - in developing the policies - the Boards will consult with those responsible for local strategies on crime prevention, planning, transport, culture tourism and economic development. However, they do not then go on to reference any of the strategies to which the Boards will have regard when carrying out their functions. It will be critical that the work of the Boards/Licensing Divisions is aligned to a broad range of local partners to bring about improvements for individuals and communities. In particular, it will be important that the new policies recognise the value of linkages with other bodies interested in alcohol regulation, and specifically reference the policies and strategies that are most relevant to the work of the Boards.

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 policies align with community planning Local Outcome Improvement Plans (LOIPs). In addition, the work undertaken by the Lanarkshire Alcohol and Drug Partnership (ADP) will be of particular significance, and the new policies could signpost people to where they can access a copy of the Lanarkshire ADP Delivery Plan. AFS would also recommend that the new policies reference relevant strategies of the Health and Social Care Partnership (HSCP).

The Boards/Licensing Divisions 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 policies. The Licensing Scotland Act (2005) and accompanying guidance should inform the Boards approach to how this can best be achieved, for example by responding to the recommendations of relevant Forums.

The policies currently highlight that the Boards will have regard to any strategy of the Scottish Government designed to address the social, health and crime and disorder issues raised by the misuse of alcohol. Scotland's alcohol strategy 'Changing Scotland's relationship with Alcohol a Framework for Action' is of key relevance to the policies and should be specifically 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 current policies also recognise that licensing boards have legal obligations under the Equality Act 2010, and highlight that Equality and Human Rights Impact Assessments were completed as part of the policy review. AFS would recommend that similar assessments be conducted as part of the review of the new policies, and that reference to human rights legislation is included within the policies. 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 current policies include a commitment that the Boards will deal with all of their business in an open and transparent manner. However, the policies could be greatly strengthened by providing much more detail about the means by which the Boards/Licensing Divisions' 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 to be made available of what people can expect when attending meetings and the supports available to them.

The new policies 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 policies should 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](#).<sup>1</sup> The current section of the policies

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<sup>1</sup> 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>

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.

The policies should also include 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. The new policies could help further support public participation by reassuring communities that the Boards will endeavour to make any proceedings as user-friendly as possible, and outlining the procedure to be followed at hearings (this could be added 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 policies are written in plain, accessible language could help facilitate the involvement of a wide range of stakeholders.

AFS would also recommend that each Licensing Division 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 through consultation, with the material considered 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*.<sup>2</sup> 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.

### **Promotion of the 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.

For all the licensing objectives, the Boards have usefully defined their intended outcomes, influencing factors and 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 Boards can/will apply in relation to each of the objectives. AFS welcomes that the policies are clear that the Boards may impose local conditions if expedient to promote the objectives, however the new policies should provide much more detail

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<sup>2</sup> 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>

about the conditions the Licensing Divisions can/will apply in relation to each of the objectives, and under what circumstances.

AFS has produced a Licensing Resource Pack<sup>3</sup> 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>

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

The policies states that applicants will be expected to address the objectives when applying for a premises licence. AFS would recommend that the policies set 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 Boards should go further and look to the evidence in respect of each of the five licensing objectives, and the expectation that applicants 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-sales<sup>4</sup>) underlines the need for the new policies 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 policies suggest licence holders make available information with regard to sensible drinking. The intention behind this is admirable and this approach should continue. However, AFS would recommend that the Boards avoid using terms like 'sensible' drinking in the new policies, and instead make clear that any information provided should be based on the Chief Medical Officer's (CMO) low risk guidelines. The Boards 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>

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<sup>3</sup> 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>

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

In relation to the objective to protect children and young people from harm, the Boards may wish to give consideration as to whether they 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 policies state that the Boards wish to see family friendly premises thriving within their area. 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 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.

The policies usefully give examples of control measures that could be put in place to protect children and young people from harm. However, they could set out in much greater detail the conditions that the Licensing Divisions may impose relative to children and young people, and the general expectations of the Boards 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. AFS also notes that Licensing Divisions No 1 and No 4 list a number of conditions that they will consider applying in respect of premises to which children have access, whereas Licensing Divisions No 2 and No 3 require that these conditions be met as a matter of standard policy. As such, AFS would suggest that Licensing Divisions No 1 and No 4 review the extent to which these conditions are being applied in practice, and whether it would be beneficial to adopt the same approach as Licensing Divisions No 2 and No 3.

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 policies contain a presumption against granting occasional licences where the event predominantly involves children. The Boards 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.

### **Overprovision**

As a national organisation, we do not have sufficient local knowledge of the South Lanarkshire and Licensing Division areas 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 Boards 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 the Licensing Divisions 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](http://www.alcohol-focus-scotland.org.uk/campaigns-policy/availability-and-licensing/alcohol-outlet-availability). For ease, we have sent a copy of the South Lanarkshire profile to accompany this response.

The CRESH data shows that South Lanarkshire is ranked 12th out of 30 local authority areas for alcohol outlet availability in Scotland (14th for on-sales and 13th for off-sales outlets). South Lanarkshire has an alcohol outlet density lower than Scotland as a whole; neighbourhoods had an average of 11.2 alcohol outlets within 800m of the population centre, compared to the Scottish average of 16.8 outlets. However, a significant 23% of neighbourhoods have total outlet availability higher than the Scottish average, and the most deprived neighbourhoods in South Lanarkshire have double the number of alcohol outlets than the least deprived.

When considering links to harm, a statistically significant relationship was found in South Lanarkshire between alcohol outlet availability and alcohol-related death rates, alcohol-related hospitalisation rates and crime rates. Specifically, alcohol-related death rates in the neighbourhoods with the most alcohol outlets were 1.8 times higher than in neighbourhoods with the least, hospitalisation rates 2 times higher, and crime rates 3.3 times higher. The links between alcohol outlet availability and harm 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. The current policies state that, in preparing the overprovision statement, the Boards took note of the statistical information supplied by Police Scotland, Scottish Fire and Rescue and the NHS. However, the policies do not actually describe what that data revealed or signpost people to where it can be accessed. It is therefore difficult to discern how decisions on overprovision were reached. AFS would therefore recommend that the new policies provide more detail about the evidence received by the Boards to inform the overprovision assessment, and the rationale behind the policy approach adopted. This should include evidence as to how the overprovision policies were decided and what factors were considered or discounted.

AFS would recommend the Boards 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:

In relation to **Licensing Division No 1**, there are neighbourhoods in the Clydesdale area that have higher outlet density than the Scottish average and very high levels of alcohol related harm. This includes neighbourhoods within Lanark and Carluke.

In relation to **Licensing Division No 2**, there are neighbourhoods in the East Kilbride area that have higher outlet density than the Scottish average and very high levels of alcohol related harm. This includes neighbourhoods within East mains, West Mains and The Murray.

In relation to **Licensing Division No 3**, there are neighbourhoods in the Hamilton area that have higher outlet density than the Scottish average and very high levels of alcohol related harm. This includes Hamilton Centre and Low Parks, Lighthstonehall, Whitehill, Blantyre (particularly Blantyre South and Wheatlands), and Uddingston.

In relation to **Licensing Division No 4**, there are neighbourhoods in the Rutherglen and Cambuslang area that have higher outlet density than the Scottish average and very high levels of alcohol related harm. This includes Shawfield, Clincarthill, Burnhill and Bankhead within Rutherglen, and Westburn and Newton within Cambuslang.

AFS notes that **Licensing Division No 4**, in its current policy, expressed great concern regarding the numbers and types of on-sales premises in a number of localities, including within Rutherglen and Cambuslang, although it did not consider that there was overprovision when taking each locality individually. As such, AFS would recommend that the Board give particular consideration to these areas when conducting its overprovision assessment, in order to ascertain whether the situation has worsened or improved and whether declaring overprovision would now be appropriate. Although in some circumstances it may be helpful to designate 'areas of concern' and set out an expectation that applicants in those areas address the question of overprovision, it should be noted that this term does not appear in the legislation and is therefore not defined, and that doing so does not create a presumption against the grant of applications as is the case with overprovision.

When considering off-sales in particular, however, the Boards 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 Boards 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.<sup>5</sup>

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 Boards 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.

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<sup>5</sup> 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.

AFS welcomes that the current policies do not allow the sale of alcohol in general on-sales premises (for consumption on the premises) before 11.00am Monday-Sunday, and this approach should continue. With regard to extended hours applications, AFS believes that in many cases events and festivals can be appropriately accommodated within normal licensing hours and should not be regarded as routinely in need of extended licensed. The Boards may wish to further clarify within the policies what would and would not fall within the definition of a 'special event or occasion' for the purposes of extended hours. Extended hours increase availability of alcohol, which in turn is linked to increased consumption and increased harm, therefore AFS would recommend that longer hours are not generally granted. Should the Boards decide to allow additional hours then this should be on limited days only and for not more than one extra hour. The operation of the premises should also be closely monitored to ensure that alcohol-related public nuisance and harm is minimised and conditions attached to licences if necessary

### **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.

Occasional licences are intended to allow for the sale of alcohol at events that do not occur on a regular basis. AFS would therefore recommend that the Boards require a hearing where they identify that an applicant has made repeated occasional licence applications. The Boards could also adopt a policy whereby a certain number of back-to-back occasional applications (exceeding a set threshold) be automatically referred to the Boards for a decision. The Licensing Divisions may wish to choose their own thresholds for referring decisions to the Boards, 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. 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 Boards 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.

### **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.

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, including by requiring that when making an alcohol delivery certain checks should be carried out such as Challenge 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 Boards 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.