

AFS RESPONSE TO ORKNEY ISLANDS AREA LICENSING BOARD'S LICENSING POLICY STATEMENT CONSULTATION (AUGUST 2018)

Alcohol Focus Scotland (AFS) welcomes the opportunity to comment on Orkney Islands Area Licensing Board's Statement of Licensing Policy (SLP). This response builds upon our previous submission to the Board's consultation on overprovision - submitted in March 2018. It provides an update on recent developments and suggestions regarding the sections of the draft policy that we believe may warrant particular scrutiny.

Links with other strategies

AFS welcomes that the Board believes that it is important that it does not operate in isolation, and commits to give due regard to the policies and decisions of the Council. However, 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.

As such, AFS is particularly pleased that the policy makes clear that the Board will maintain effective communication with the Orkney Alcohol and Drugs Partnership, and highlights the importance of such cooperation as part of the wider alcohol agenda. The work undertaken by the Orkney Alcohol and Drug Partnership will continue to be of particular significance, and the new policy could signpost people to where they can access a copy of the ADP's Strategy and Delivery Plan. AFS would also recommend that the new policy references relevant strategies of the Health and Social Care Partnership (HSCP).

The alcohol licensing regime provides a locally led system for regulating the sale of alcohol and is one of the key mechanisms by which availability can be controlled at a local level. As alcohol licensing is the responsibility of licensing boards, it will be essential that boards can identify where they share similar objectives to Community Planning Partners, and understand how they can best support each other towards these ends. In many respects, licensing boards and CPPs are already working towards shared goals and stand to benefit from more collaborative approaches. It will therefore be important that the new policy aligns with community planning Local Outcome Improvement Plans (LOIPs).

The policy currently highlights that the Board 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 policy 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 policy also recognises that the Board has responsibilities under the Equality Act 2010 and the Human Rights Act 1998, and it is helpful that links to the Board's equality data and outcomes have been included. 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.

The Board should continue to 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 Boards approach to how this can best be achieved, for example by responding to the recommendations of the Local Licensing Forum. In this regard, it is useful that policy currently outlines the role of the Local Licensing Forum and includes links to where information about the Forum is published.

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 is therefore pleased that the policy includes a commitment that the Board will conduct its business in an open and transparent manner. It is also greatly welcomed that the policy includes information about the Board's various reporting functions, publication scheme, membership and diary of meetings, and includes links to where the information available to the public can be accessed. However, the new policy could provide more detail about the means by which the Board's processes and procedures will provide for increased accessibility, transparency and accountability for communities, for example by requiring:

- a set of published standing orders;
- board papers and minutes being published on time;
- board minutes recording the names of board members voting for/against a decision; and
- details 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. The current policy states that guidance will be made available to those persons who wish to apply for a licence, to make representations or to lodge objections. However, 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

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>

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. 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, and that people should feel comfortable to ask for additional information, guidance and support if needed.

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.

It is helpful that the policy includes a list of consultees. However, the new policy could include more detail and explanation of the evidence considered by the Board in developing the policy. The Board 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 further demonstrates 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, 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 defined its intended outcomes, the influencing factors on the achievement of the objectives, and the control measures that applicants and licence holders can put in place. However, this could be strengthened by providing more detail about - and

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>

building upon - the measures and conditions the Board can/will apply in relation to each of the objectives, or signposting to where within the policy this information can be found.

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 be 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 Orkney Islands 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 the Orkney Islands. There should then be a clear line of reasoning from the evidence to the conclusions in the policy.

AFS would recommend that the policy sets out a clear expectation that applicants address the five 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 policy suggests 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 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 that 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>

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>

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

AFS is pleased that the Board will have particular regard to the views of the relevant bodies responsible for, and interested in, the protection and improvement of public health in the Islands Area. We believe that such an approach is essential to enable the meaningful consideration of the impact of alcohol, and the measures required locally to ensure the protection of public health.

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 the Islands 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 policy addresses the broader impact of alcohol on children and young people, including the impact of parental drinking.

It is wholly appropriate that any on-licensed premises to which families with children have access give careful consideration of their responsibilities to protect children from harm, and AFS would recommend that the Board requires applicants in these circumstances to demonstrate how they will promote this objective, including by providing a written statement as suggested above.

The draft policy gives examples of control measures that could be put in place to protect children and young people from harm, however it 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

AFS notes that - following consultation - the Board has concluded that there is no overprovision within the locality of Orkney as defined by the Board. However, as the Board is still seeking views on overprovision, we would refer to the points raised in our response to the Board's consultation on overprovision (submitted in March 2018); in particular, that alcohol-related harm is not evenly distributed across the Orkney Islands and there is scope to adopt a different overprovision stance in relation to areas with higher levels of harm, such as Kirkwall.

Subsequently to responding to the Board's overprovision consultation, AFS worked with the Centre for Research on Environment, Society and Health (CRESH) at the Universities of Edinburgh and Glasgow to publish further evidence of the links between alcohol availability and harm in Scotland.

Detailed local information on alcohol availability and harm at neighbourhood level can be found using the [CRESH WebMap](#). In addition, profiles containing information about the levels of alcohol availability and related harm (at both a national and local level) can now be accessed via our website: www.alcohol-focus-scotland.org.uk/campaigns-policy/availability-and-licensing/alcohol-outlet-availability. We have also sent a copy of the Islands profile (comprising of the Shetland, Western and Orkney Islands) to accompany this response.

Perhaps unsurprisingly, given the geography and demographics involved, the CRESH data shows that the Islands are ranked 30th out of 30 local authority areas for alcohol outlet availability in Scotland. The Islands have an alcohol outlet availability lower than Scotland as a whole; neighbourhoods have an average of 4.8 alcohol outlets within 800m of the population centre, compared to the Scottish average of 16.8 outlets. However, a significant 12% of neighbourhoods in the Islands do have a total outlet availability higher than the Scottish average.

When considering links to harm, a statistically significant relationship was found in the Islands between alcohol outlet availability crime rates. Specifically, crime rates in the neighbourhoods with the most alcohol outlets were 6.9 times higher than in neighbourhoods with the least. This link 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.

In addition, the Islands were shown to have an annual average of 17.7 alcohol-related deaths for those aged 20 and over (from 2011-2016). This is equivalent to 24.5 deaths per 100,000 adults, which is 12% higher than the Scottish rate of 21.8 deaths per 100,000 adults. The local authority areas have an average hospitalisation rate ratio for neighbourhoods of 142.5, which is 42% higher than the ratio for Scotland of 100.

AFS would 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).

As a national organisation, we do not have sufficient local knowledge of the Orkney Islands area to enable us to comment in detail on some of the specific localities and premises concerned. However, an initial analysis using the CRESH webmap indicates that there are a number of neighbourhoods in the Orkney Islands that have higher availability than the Scottish average and high levels of alcohol-related harm. This includes neighbourhoods within West Kirkwall, East Kirkwall, Stromness, Sandwick and Stenness.

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 shares the Boards belief 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 Board may wish to further clarify within the policy what would and would not fall within the definition of a 'special event or occasion' for the purposes of extended hours. AFS would also recommend that should the Board decide to allow additional hours, 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, as the updated policy identifies, 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 would therefore recommend that the Board require 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. 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*

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.

further occasional licence applications being submitted to the Board for consideration rather than being dealt with under delegated powers.”

AFS commends the Board for requiring that all applications for occasional licences be accompanied by an assessment of how the application complies with the licensing objectives, and for including a Licensing Objectives Risk Assessment as an Appendix. We are aware that other Boards have adopted a similar approach, with several requiring applicants to complete an ‘Occasional Licence Supplementary Information Form’ to demonstrate how they will promote the objectives, and provide practical examples of how they plan to comply with each.

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 is therefore urging 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.