

**AFS RESPONSE TO EAST DUNBARTONSHIRE LICENSING BOARD POLICY CONSULTATION  
(NOVEMBER 2018)**

Alcohol Focus Scotland (AFS) welcomes the opportunity to comment on East Dunbartonshire Licensing Board's draft 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 Board will find useful. We have also provided suggestions regarding the aspects of the draft policy which we believe may warrant particular scrutiny.

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. At present, the draft policy makes reference to the Board having consulted widely and giving due consideration to the views given (with a list of the parties to be consulted contained in Appendix 2). AFS would recommend that the final policy includes information about any sources of data and evidence, and the respondents to the consultation and the views provided. This would support the reader to understand the reasons or justification for key aspects of the policy.

**Links with other strategies**

AFS welcomes that the existing policy includes a commitment that the Board will work towards ensuring the integration of the policy with local strategies relevant to issues such as community safety, health and planning. The particular strategies detailed in the draft policy, including the Local Police Plan 2017-20, the Joint Health Improvement Plan and the Health and Social Care Partnership Strategic Plan 2018, are amongst those that we believe to be the most appropriate. However, the Board should also take into account the views of local partners, the Forum, communities, and other strategies and plans which have relevance to alcohol when developing and implementing their new policy.

As 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, 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. For example, the East Dunbartonshire Local Outcomes Improvement Plan (LOIP) 2017-2027 identifies alcohol misuse prevention and control as a priority, and includes indicators related to the percentage of people drinking more than the recommended units of alcohol.

It also identifies that there has been around a 40% increase in referrals to the social work duty service, with parental alcohol misuse being one of the most common areas of concern for referral. As such, AFS would suggest that the LOIP is specifically referenced within the new policy.

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 relevant plans and initiatives of the ADP.

Scotland's alcohol strategy 'Changing Scotland's relationship with Alcohol a Framework for Action' remains of key relevance to the policy and should continue to be included. 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 existing policy recognises that licensing boards have legal obligations under equalities legislation. AFS would recommend that the new policy also recognises that boards are 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.

### **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.

The existing policy includes a commitment that the Board will conduct its business in an open and transparent way. 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. Although the draft policy states that information and assistance will be made available to people engaging in licensing proceedings, it does not provide any further information. 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 therefore 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](#).<sup>1</sup> The current section of the policy outlining the role of the Licensing Standards Officer could also be expanded to include more detail about the assistance they are able to offer to the public.

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

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.

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, many of which may be of interest to the Board.

### **Promotion of the licensing objectives**

AFS agrees with the approach to the five licensing objectives taken by the Board. 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 has been suggesting the following format to boards:

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.

This is broadly in line with the approach taken by East Dunbartonshire Licensing Board. However, in addition to listing the factors which have an impact on the achievement of each objective, the Board may wish to provide more of the East Dunbartonshire context e.g. relevant statistics or evidence of the current situation, identification of any issues that are a particular concern, measures that have

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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>

<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>

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

For all the licensing objectives, the Board has usefully listed factors the Board will consider in relation to each objective to ensure consistency with the objective. The policy also outlines control measures that the Board commends to applicants and licence holders as worthy of consideration in seeking to secure consistency with the objectives. While the policy identifies that applicants will know their own premises best and will be expected to address all aspects relevant to the individual style and characteristics of their premises, it could be beneficial for the Board to give more of an indication of the additional steps it expects applicants to demonstrate in specific circumstances. This section could also be strengthened by providing more detail about the conditions the Board can/will apply in relation to each of the objectives, and under what circumstances.

AFS has produced a Licensing Resource 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 Board when developing its new policy: <http://www.alcohol-focus-scotland.org.uk/media/291077/afs-licensing-resource-pack.pdf>

At present, the Board encourages applicants and licence holders to carry out a risk assessment taking into account the licensing objectives. AFS would recommend that the policy sets out a clear expectation that applicants address all 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.

### **Draft text in relation to the licensing objectives**

#### *Preventing Crime and Disorder*

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 policy to reference the importance of licensing for preventing crime and disorder in private spheres as well as the public.

#### *Protecting and Improving Public Health*

AFS welcomes the statement in this section that a thriving licensed trade in East Dunbartonshire cannot be at the expense of patrons' health and wellbeing. As detailed in our general comments on

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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

approach to the licensing objectives, we would suggest this section could be strengthened by including contextual information on the levels of alcohol-related harm in East Dunbartonshire.

AFS also welcomes that the draft policy suggests licence holders make available information promoting moderate drinking along with awareness of units of alcohol and recommended guidelines. The policy should make explicit that any information provided should be based on the Chief Medical Officer's (CMO) low risk guidelines. The Board might also wish to consider providing materials to licensees which is independently produced. The World Health Organisation has stated categorically that the alcohol industry should not be involved in health promotion, and the Government has a duty to ensure access to information and advice on alcohol is based on the best available scientific evidence and is impartial. NHS Inform is the best website in Scotland for impartial health advice: <https://www.nhsinform.scot/healthy-living/alcohol>

### *Protecting Children and Young People from Harm*

The policy states that the Board wishes to see family friendly premises thriving in East Dunbartonshire. 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 usefully gives examples of control measures that could be put in place to protect children and young people from harm. However, the policy could set out in much greater detail the conditions that the Board may impose relative to children and young people, and under what circumstances. The new policy could also set out the general expectations of the Board with regards to factors like when children be allowed entry, including the ages of children to be allowed entry, and types, times and parts of the premises to which children will have access. In general, AFS would expect that premises that do not offer food of any description are highly unlikely to be a suitable environment for children. The Board may also 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.

During the series of regional events hosted by AFS in 2016, concerns were also expressed across Scotland regarding occasional licences being granted for events mainly or exclusively targeted at families where children would be present. As such, AFS would recommend that the policy contains a presumption against granting occasional licences where the event predominantly involves children. The Board would still maintain its full discretion and flexibility to grant a licence in these circumstances, if minded to do so based on the merits of a particular application.

### **Overprovision**

As a national organisation, we do not have sufficient local knowledge of the East Dunbartonshire area to enable us to comment about current rates of provision, or overprovision, of licensed premises in the area. We believe such discussions are best left to local stakeholders, including the

police, health authorities and communities. However, we offer our opinion on the general approach and policy direction, and information based on the analysis of the relationship between outlet availability and certain harm statistics, which we hope the Board will find useful.

There is no simple numerical formula for pinpointing the threshold between provision and overprovision. Determining overprovision involves the application of reason and judgement in the interests of the community. Alcohol harm statistics for East Dunbartonshire 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. The CRESH data shows that although East Dunbartonshire has an alcohol outlet density lower than Scotland as a whole, 15% of neighbourhoods have a total outlet density higher than the Scottish average.

Decisions on overprovision should also be informed by evidence from the police, health authorities and other agencies. AFS notes the range and quality of information in the report on overprovision provided to Board by the East Dunbartonshire ADP. This report provides evidence of alcohol related harm in East Dunbartonshire, and also incorporates data from the CRESH outlet density map mentioned above. Based on an analysis of data regarding the number and capacity of alcohol outlets, alcohol related health indicators, alcohol related crime and incidents and deprivation, the report concludes there is evidence of overprovision and potential areas of concern in localities within East Dunbartonshire. AFS would agree that aggregated statistics such as these point compellingly to the conclusion that there exists a state of overprovision in at least some areas of East Dunbartonshire.

### **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 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.

With regards to on-sales hours, AFS notes that the Board has amended its policy in response to a representation from the trade requesting an increase to the opening hours on Saturday and Sunday, and in order to safeguard and promote the local economy. The policy also states that the Board does not wish to inhibit the development of evening and night time local economies which are important for investment and employment. AFS believes that the focus of the Board when

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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.

determining policy in this area should be firmly on the promotion of the five licensing objectives and the public interest. While a local authority may have a function to promote employment (even assuming this to be true) this is not a licensing function, and therefore it is not a function or factor that AFS believes should be included in a licensing policy.

However, if having considered all the evidence, the Board is minded to allow additional on-sales hours, the operation of the premises should be closely monitored to ensure that alcohol-related public nuisance or harm is minimised and conditions attached to licences if necessary. It would also be beneficial to include more detail about the types of control measures and conditions that could be put in place to prevent/limit potential problems related to extended hours more generally.

### **Occasional Licences**

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

The purpose of occasional licences is to allow for the sale of alcohol at events that do not occur on a regular basis. One 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 states that the Board has delegated the authority to grant straightforward licensing applications, 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 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 objectives and provide examples of how they plan to comply with each, with some boards also providing a pro forma for submission alongside the application.

As outlined above, concerns were expressed across Scotland during our 2016 regional events regarding occasional licences being granted for events mainly or exclusively targeted at families where children would be present. As such, AFS recommends the policy contain a presumption against granting occasional licences where the event predominantly involves children.

### **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 therefore urge all boards to set out their approach to online retailers and deliveries 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. AFS is aware that these measures are being adopted in other board areas. 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.