

Review of Annual Functions Reports for 2018-2019



December 2019

This briefing outlines the findings of AFS's review of the 2018-19 annual functions reports. In November 2018, we [reviewed the first ever published annual functions reports](#) to assess whether they met legal requirements, and how likely they were to support communities to understand the work of their local licensing board. Now, exactly one year on, we have reviewed the second round of annual functions reports to identify whether there have been any changes to their content, or to licensing boards' approaches to their publication.

Background

To ensure that the licensing system serves the public interest, it needs to be accountable to local communities. It is therefore vital that people can understand what the licensing system is for and what their local licensing board actually does. To this end, the Scottish Government placed a new duty on licensing boards to produce an annual functions report, summarising their decisions, local licensing data, and how they have promoted the licensing objectives (to prevent crime and disorder, secure public safety, prevent public nuisance, protect and improve public health, protect children and young people from harm).

The first ever annual functions reports were required to be published by 30 June 2018. In November 2018, AFS reviewed the reports to assess the extent to which they met statutory requirements, and served to fulfil their intended purpose of ensuring increased transparency in the licensing system. AFS was able to locate 24 of the reports for the purposes of review, and found that the majority met minimum statutory requirements. Many boards had also applied additional good practice to support the public to see how they conducted their business. However, some contained only minimal information and clearly had not been written with the public in mind. The wide variation between the reports indicated that the boards had vastly differing interpretations of their legal reporting obligations.

Following the publication of the first reports, the Scottish Government expressed its hope that boards would see and pick up on examples of good practice from elsewhere, and reflect on what had worked well and not so well in their own reports.¹ It also explained that it did not intend to review the reports until after there had been several rounds of publication. As such, AFS has repeated our review of the reports, also seeking to identify how and whether boards have refined their contents.

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By November 2019 (five months after the deadline for publishing the second reports) AFS was only able to locate 24 reports for the purposes of review, covering 32 out of the 40 licensing boards in Scotland. This is identical to the number that had been published when AFS conducted the first review in 2018. Concerningly, however, five boards do not yet seem to have published any annual functions reports, despite it now being a legal requirement for over two years.



Promoting the objectives and implementing policy

The majority of the published reports include a statement to explain how the board paid regard to the licensing objectives. However, some simply include a generic statement reiterating the important role that the objectives play in the licensing system. Fewer demonstrate, on a more practical level, how the board actually promoted the objectives. In one example of a board highlighting their promotion of the objectives, the West Dunbartonshire report outlines licence conditions aimed at directly addressing the objectives. It explains that off-sales are only granted a licence until 10pm if the applicant can comply with extra “post-8 pm conditions,” which require, amongst other things, that the licence holder has CCTV. Other reports describe actions such as conducting site visits, partnership working, conducting reviews, declining and revoking licences, applying conditions, and supporting local initiatives, as being ways that the board had sought to promote one or all of the objectives.

The reports follow a similar pattern in relation to explaining how the board had regard to their licensing policy statement; some outline particulars of the procedural approach to applying their policies, while others provide more meaningful insight or examples of how policies are actually being applied in practice. The boards were required to consult on and publish their new licensing policies during the reporting period, and so unsurprisingly this is the key focus of many of the 2018-19 reports. For example, the Aberdeen City report comments that the decision was taken to completely revamp its policy, and that the result is a succinct document which has attracted praise for its clarity and plain language. A number of the reports also reflect on the consultation process and helpfully outline the resulting changes made to the board’s policy. The Falkirk report, for example, highlights that carrying out site visits is now a policy position for all applications where objections are received, and that applicants for occasional licences are now required to submit a form detailing how the licensing objectives will be promoted at the event.

Tracking change and progress

Few of the 2018-19 reports indicate how the current local situation compares to that of the previous reporting period e.g. by identifying any trends, persistent areas of concern, or issues that have been effectively resolved. Examples where boards have done so include the Falkirk report, which comments on there being an increase in site visits during the reporting period, and the Perth and Kinross report, which comments on their being an increase in the number of occasional applications received. The East Lothian report highlights a concern that people objecting to applications had no clear picture of what was being applied for, and that this situation was also identified as being problematic in its previous functions report. To address this the Board has included additional procedures in its policy to ensure that future applications are only accepted if they contain a full description of proposed activities. This type of information can be helpful in providing local stakeholders with a steer as to particular issues they may wish to keep under review.

The Aberdeenshire report includes specific sections outlining what the divisional boards in the area achieved in 2018-2019, and their goals for 2019-2020. This continues the approach set out in the first Aberdeenshire annual functions report, and is particularly useful as it enables the divisional boards to publicly set a benchmark against which they (and others) can assess progress the following year; the ongoing production of functions reports provides them with a mechanism to regularly monitor and report on their progress over time. One of the Boards’ goals for 2019-2020 is to create new performance indicators, which should further strengthen this approach. However, this type of good practice does not yet appear to have been adopted in other board areas.



Decision making and publication of data

Similarly to the first published reports, the majority of the 2018-19 reports allow for some scrutiny and analysis of the board's decision making (to varying degrees and with differing levels of ease), and include information about the number of licences held in the board area. Several of the reports include detailed appendices with data about the applications received and licences in force at an individual level, including information about the types of premises, locations, capacity and hours. For example, the Angus report includes detailed appendices that allow for a more in-depth analysis of alcohol provision (and decision making) in the board area. This includes information about all the applications received with a detailed breakdown of the type of application and the decision of the board. However, some of the reports include only a limited amount of high-level detail about the board's decision making, and instead include links to where agendas/minutes can be found on the board's website, placing responsibility on the reader to collate the information themselves. One report simply states that the board granted all of the applications received without providing any further information – falling far short of the legal reporting requirements.

Other matters

Other matters that are covered in the reports include the training and professional development of board members and licensing staff, such as participation at events/conferences, receiving presentations from local stakeholders, and undertaking visits to licensed premises. Several include information about the work of Licensing Standards Officers (LSOs), such as the Dumfries and Galloway report, which includes information about the enquiries and complaints dealt with by the LSO throughout the year, issues which repeatedly arise, and details of Minimum Unit Pricing (MUP) compliance visits. Many also include information about the local licensing forum, with some describing challenges such as achieving quorum or attracting young members, and others outlining activities of the forum and the types of issues it has brought to the board's attention.

During the reporting period, Personal Licence Holders who first obtained their licence at the introduction of the existing licensing regime in 2009 needed to renew their licence for the first time. Several of the reports therefore include information about the renewal process, such as the Fife report which explains that the Board sent out a reminder letter to 1093 Personal Licence Holders whose licence was due to expire, with a total of 592 renewal applications being received by the required deadline (only 54% of renewal applications were returned).

Presentation and readability

The published reports vary considerably in structure and length. The shortest two reports are just 4 pages long, while the longest is 205 pages (including appendices). The bulk of the longer reports are made up of information contained in appendices, principally relating to the applications received and licences in force in the board area. While a number of the reports are concise and fairly easy to read and navigate, a significant number contain legalistic language and appear to repeat in large sections what is already laid out in law, regulations, or guidance. It is also apparent that several of the reports have not been written with the public in mind. Some have been published in the format of a report by the Clerk to the board, inviting members to approve the annual report, with the actual report itself being attached as an appendix – this gives the impression that the report has been written solely for the attention of board members, as opposed to being accessible and relevant to local communities and other stakeholders.

The wide disparity in the amount of detail contained in the reports underlines the importance of boards consulting with local stakeholders about their contents in order to ensure that future reports strike an appropriate balance in the depth and breadth of data provided to meet their needs. However, it cannot be determined from reading the reports whether this has so far occurred in practice, or how useful the

reports have been to community members and other interested parties. The reports will be of particular relevance to forums given their statutory purpose of keeping under review the liquor licensing system and the functioning of the licensing board(s) in their area. Forums are well placed to make recommendations to licensing boards regarding the functions reports themselves, and any matters arising from them. The Aberdeenshire report highlights that the Local Licensing Forum will play a key role in shaping future reports through their statutory function of providing advice and guidance to the Aberdeenshire Divisional Licensing Boards.

Conclusion

As with the first published reports, the majority of the annual function reports for 2018-19 (published by November 2019) do appear to meet the minimum statutory requirements. However, the wide variation between the 2018-19 reports suggests that the boards have continued to interpret their legal reporting obligations differently. This is particularly so in relation to explaining how they have paid regard to the licensing objectives and their policies; in a number of cases, the reports appear to focus on the procedural approach to applying their policies rather than the practical application of these.

This indicates that licensing boards continue to require guidance from the Scottish Government, regarding how they should approach the production of reports and what types of information they should contain. The Scottish Government is currently in the process of updating the guidance to accompany the Licensing (Scotland) Act 2005, and Ash Denham MSP, Minister for Community Safety, has commented that she expects that the updated guidance will address issues around the functions reports.² AFS hopes that the updated guidance will be made available to support boards to produce and publish their third annual functions reports, which are required by June 2020. In addition, the Scottish Government has an important role to play in monitoring whether licensing boards are fulfilling their statutory obligations, including publishing their annual functions reports on time.

In addition, the level of detail provided in the reports, and the way in which this information is presented, is likely to affect the extent to which they are meaningful and useful to local stakeholders. Some approaches may be more appropriate to the needs of certain types of stakeholders than others, depending on their role, their reasons for accessing the reports, and their existing levels of knowledge. As such, it remains likely that there would be significant benefit from licensing boards consulting with local stakeholders about the form and content of the reports, in order to ensure that future reports are developed relevant to their needs.

¹ Local Government and Communities Committee, Official Report of meeting on 27 March 2019

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