

Statements of licensing policy

Key Points

- A policy is a principle or course of action designed to achieve an objective.
- Policy provides a framework for decisions, helping to ensure coherence and consistency in day-to-day decision-making.
- Licensing law requires licensing boards to publish a statement of their licensing policy within 18 months following local government elections.
- The policy statement must seek to promote the licensing objectives. It should describe the steps a licensing board will take to achieve the licensing objectives in its area.
- The use of policy allows licensing boards to address a range of issues, including problems relating to overprovision of licensed premises.
- Formulating licensing policy enables a licensing board to think ahead and take a more proactive approach to shaping the licensed environment in its area in a way that prevents harm.
- Consulting on a draft policy statement gives local residents a chance to have their say on the approach to alcohol licensing in their community.

What is a statement of licensing policy?

A statement of licensing policy is published by a licensing board. The statement describes the policy measures a licensing board will implement to promote the licensing objectives in its area.

Licensing law, statutory guidance and regulations set out the broad legal framework for alcohol licensing. Some rules and conditions, such as the legal alcohol purchase age, are mandatory. However, the law gives licensing boards considerable discretionary power on a range of actions to reduce the risk of harm to individuals and communities from the sale of alcohol. Policies can be formulated to restrict the overall supply of alcohol and to regulate the way individual licensed premises operate.

A licensing board must ensure that its policy seeks to promote the licensing objectives. Specific policy measures can work to promote one or more of the licensing objectives. Policy statements must also include a statement on overprovision of licensed premises within the board area. A licensing board must have regard to the content of its policy statement when making licensing decisions.

How can policy inform licensing decisions?

The legal requirement to publish a policy statement

The duty to publish a statement of licensing policy was introduced by the Licensing (Scotland) Act 2005. It is now a legal requirement that all licensing boards publish policy statements within 18 months following local government elections. Once published, policies should be kept under review and a supplementary statement can be issued at any time.

The law and the courts make it clear that a licensing board - as an administrative body - can adopt and apply policy to determine administrative decisions. The Licensing (Scotland) Act 2005 makes licensing a policy-based process. Licensing boards must have regard to their policy statement when exercising their functions under the Act. The policy statement, which is made publicly available, guides the licensing board's general approach to individual licence applications. The policy statement should therefore inform all day-to-day decision-making, including licence applications.

“Where a statutory body having discretionary power is required to consider numerous applications there is no objection to it announcing that it proposes to follow a certain general policy in examining such applications. Indeed, in certain circumstances it may be desirable to achieve a degree of consistency in dealing with applications of a similar character. Moreover, there is nothing wrong with policies being made public so that applicants may know what to expect.”

Elder v Ross & Cromarty DLB 1990 SLT 307

A licensing board has a regulatory function and is established to achieve specific outcomes. It is not a court of law where a judge decides between competing parties solely on the basis of the evidence presented; a licensing board must be active in the process of promoting the licensing objectives.

Although it makes decisions within a legislative framework, a licensing board has discretion as to how it exercises its duties. It can carry out its own investigations and gather its own evidence, and it can apply its own local knowledge when deciding on an application.

Each application has to be determined on the facts and issues before the licensing board and is considered in the context of the policy. At a hearing, unless the board decides that there is a convincing case for an application to be considered an exception, it should make its decision in line with its policy.

A licensing board can take into account a wide range of information when making its decisions on licence applications. However, the law states that it must not rely on any undisclosed material. The policy statement can help to make a licensing board's reasoning and decision-making more transparent and legally robust.

Applying policy in practice

The Act requires both the licensing board's policy statement and decision-making on licence applications to promote the licensing objectives. Being contrary to a board's policy is not an explicit ground for refusal for a new premises licence or major variation of an existing premises licence but inconsistency with one of the five licensing objectives is. As the policy statement must seek to promote the licensing objectives, an application found to be contrary to the licensing board's policy can accordingly be shown to be inconsistent with promotion of the licensing objectives.

For example, if a licensing board's policy statement has adopted a position on licensed hours and an applicant seeks an extension in licensed hours beyond what is indicated in the statement, the application can be refused by reference to the board's policy. The ground for refusal would be that the application is inconsistent with one or more of the licensing objectives.

What are the benefits of using policy in alcohol licensing?

A policy is a principle or course of action designed to achieve an objective. The use of policy in licensing enables licensing boards to more effectively promote the licensing objectives.

- **A more proactive licensing system**

Much of the day-to-day business of licensing boards consists of processing individual applications and reviewing licences. Preparing a statement of licensing policy provides licensing boards with the opportunity to stand back from routine administrative practice and consider the bigger picture in relation to licensing in their area. Patterns and trends in alcohol harm can be examined with remedial and preventative licensing action identified. The requirement to prepare, publish and use a policy statement shifts licensing from being a reactive, application-driven process, to one that is forward-looking and policy-led. This is important because the licensing system is primarily a mechanism to prevent harm. Licensing policy should be reviewed and updated regularly to ensure it remains relevant and achieves its purpose.

- **The ability to address a wider range of issues**

Many alcohol-related health, crime and social problems are influenced by the general availability of alcohol in society and how easy alcohol is to obtain. However, it is difficult to tackle issues associated with an increase in the overall availability of alcohol on an ad hoc, case-by-case basis. Imposing conditions on individual operators is not on its own a solution to problems arising from having too many licensed premises. The policy statement enables a licensing board to take a strategic approach to managing provision in its area. Policies can be adopted to restrict the number, type, capacity or trading hours of licensed premises for the purpose of reducing or preventing alcohol harm. As the policy statement informs individual decisions, it ensures that the licensing system can address the full spectrum of problems related to alcohol availability.

- **Greater transparency and improved standards of decision-making**

Using a published policy statement to guide licensing practice supports consistent and well-reasoned decision-making. It makes the licensing process more transparent. Decisions made in line with an evidence-based statement of licensing policy are more likely to withstand legal challenge.

- **Opportunity for wider community engagement**

Licensing practice impacts on everyday life. Preparing and consulting on a draft policy statement gives local people an opportunity to have their say in shaping the local licensing environment.

Alcohol Focus Scotland's Community Toolkit is designed to help anyone who would like to have a say on how alcohol impacts on their community and is available [here](#).

“I recognise that the scheme of the Licensing (Scotland) Act 2005 is quite different from the previous legislation. The focus on the licensing objectives and the formulation of a board’s policy is integral to the system.”

Buzzworks Leisure Ltd v South Ayrshire Licensing Board 2012 SLT 442

What is the process for developing a policy statement?

Developing a new statement of licensing policy is a substantial task. The licensing board has the responsibility to prepare the policy statement, but the local licensing forum and local agencies, such as the Alcohol and Drug Partnership (ADP), the local authority and local planning and safety partnerships, may be able to provide assistance. ADPs for example, bring together local police, health board and voluntary sector representatives. They are likely to have access to relevant data and know the local picture.

Statutory guidance also recommends that licensing boards provide a clear indication of how their policy statement relates to other local strategies, such as community safety and crime prevention, as well as the national alcohol strategy. A suggested process for developing a statement is set out below.

1. Gather and consider the evidence

Evidence gathering is the first step in the preparation of a new licensing policy statement. The licensing policy statement must seek to promote the licensing objectives and must include an assessment of overprovision of licensed premises in the local area. Without gathering sufficient information on each of the licensing objectives, it will be difficult for a licensing board to ensure that its licensing policy serves to promote them.

2. Undertake an assessment of overprovision

See Section 4 of this resource for information on how to do this.

3. Translate the evidence into policy action

Policy positions should be developed to promote the licensing objectives based on the evidence. If the evidence indicates high levels of alcohol harm compared to the past, or in comparison with other areas, the licensing board should consider what licensing measures can be introduced or modified to reduce and/or mitigate the risk of alcohol harm escalating in the future. Specific measures can be adopted as a general policy, or in relation to particular categories of decisions.

4. Consult on the draft statement of licensing policy

A licensing board is required by law to consult with the local licensing forum and health board when developing its statement of licensing policy. However, licensing boards are encouraged to consult more widely with people and agencies that could have relevant evidence. Local licensing policy shapes the environment in which people live so it is particularly important for local residents and the community to have the opportunity to contribute to the formulation of licensing policy. The views of stakeholders should be given appropriate weight when the policy is determined and it is good practice for boards to demonstrate how the feedback received informed the development of the policy statement.

5. Keep the policy under review and evaluate effectiveness

Indicators of success should be identified when formulating a new statement of licensing policy. The policy should be kept under review to assess effectiveness in meeting these targets and objectives. Evaluation of existing policy – identifying what action has worked well and areas for improvement – should form part of the process of formulating a new policy statement or supplementary policy statement. A supplementary policy statement can be produced if evaluation highlights issues with the current policy statement.

What should a licensing policy statement include?

Licensing legislation and the accompanying statutory guidance provide minimal direction on what a licensing policy statement should contain. The detail of what should be included is left to the licensing board to decide. The overarching legal requirement is that a licensing board must ensure its policy seeks to promote the licensing objectives.

There are a range of policy measures that can be implemented to achieve the licensing objectives. Licensing works to reduce alcohol harm by controlling the number, type, capacity and opening hours of licensed premises, and by imposing conditions on how individual licensed premises operate. Licensing boards have the power to apply both these types of intervention.

Measures to regulate the overall availability of alcohol are best addressed through the policy statement, where a robust and strategic approach to managing provision can be laid out. Measures to regulate the operating conditions of licensed premises can be implemented on a case-by-case basis. However, if a measure has wide applicability, then it can be adopted as a general policy.

- **Resource 4 in Section 5 provides a template policy statement.**

Licensing board policies must relate to the sale of alcohol

Licensing board policies must be connected to the sale of alcohol. The public health licensing objective does not give a licensing board the power to promote public health generally, but only in relation to the sale of alcohol.

For example, a licensing board cannot impose a rule preventing licensed premises from selling unhealthy food as this measure does not relate to the sale and consumption of alcohol. However, a requirement for licensed premises to serve alcohol only with food on pavement terraces can be demonstrated to be related to both the sale and consumption of alcohol and to the promotion of the licensing objectives.

Drinking alcohol on an empty stomach raises the risk of intoxication. Intoxication is related to a range of problems including alcohol poisoning, violence, public disorder and rowdiness. A full stomach slows down the rate of absorption of alcohol into the bloodstream and lowers the risk of intoxication, thus promoting the licensing objectives of preventing public nuisance and protecting health.

What happens if a policy statement needs updating?

A licensing board must keep its policy statement under review while it is in force. If it finds that the policy measures included in its statement are not achieving the licensing objectives, or circumstances change or new evidence emerges, then a licensing board can issue a supplementary policy statement. Supplementary statements enable a licensing board to modify licensing practice when necessary instead of waiting until the next round of local government elections. As with the full policy statement, boards must undertake consultation on any supplementary statements.