



**ALCOHOL**  
**FOCUS**  
**SCOTLAND**

**Review of statements  
of licensing policy  
2018 – 2023**

JUNE 2020



Alcohol Focus Scotland (AFS) is the national charity working to prevent and reduce alcohol harm. We want to see fewer people have their health damaged or lives cut short due to alcohol, fewer children and families suffering as a result of other people's drinking, and communities free from alcohol-related crime and violence.

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# 1. KEY IMPLICATIONS AND RECOMMENDATIONS

Alcohol Focus Scotland (AFS) reviewed the Statements of Licensing Policy for 2018-2023 to identify any emerging trends in licensing approaches, and the extent to which the documents meet legal requirements and go beyond them to incorporate good practice.

This exercise enabled AFS to identify examples of good practice, learning and innovation that may be particularly useful to boards and other stakeholders involved in the review and development of licensing policy. In addition, the review identified areas where boards appear to have differing interpretations of their legal obligations, and areas of ambiguity where clearer guidance from the Scottish Government could be particularly beneficial.

There are also a number of matters that fell outwith the scope of the review but which could impact on the extent to which the existing policies can be implemented effectively, or have implications for the development of future policies. As such, these matters will require further consideration by the Scottish Government in partnership with those involved in the licensing system.

## Good practice recommendations for boards

Many of the policies demonstrate to varying degrees the potential for these documents to support a more strategic approach to promoting the licensing objectives. Examples of good practice specific to particular aspects of licensing policy are contained throughout this report, however the review points to a number of overarching good practice recommendations for boards:

- **Invest in consultation and evidence gathering:** The strongest policies appear to have been developed by those boards which invested the greatest time and effort into consultation and evidence gathering. Some boards were particularly pro-active and targeted in their approach, and gave careful consideration as to how to best reach different types of stakeholder. Consultation methods used included issuing calls for written views, oral evidence sessions, conferences, workshops, drop-in sessions, public meetings, and surveys. Several policies also refer to the views of consultees throughout to demonstrate how they carried weight in the formulation of policy; not only demonstrating the board's responsive approach to consultation but also adding legitimacy and weight to the policy itself.

- Ensure that the policy is transparent and well evidenced:** The most robust policies clearly demonstrate and explain the evidence used to develop stated policy positions, including details about the current and local context in relation to specific objectives. This greatly helps to clarify the reasons for a particular policy position and aids transparency. Some boards have also committed to gather evidence relevant to their policies on an ongoing basis – recognising that evidence is not only vital for policy formation but also for keeping their policies under review.
- Focus on promoting the licensing objectives:** Many boards have clearly set out within their policies what they intend to do, and what they would like to see the licensed trade do, in order to meet each objective. New approaches to the objectives have been adopted in several areas, in response to changing patterns of alcohol sales and consumption, and an increased awareness of harms occurring in private spheres. Many of the policies place a greater onus on the objectives by setting out an expectation that applicants provide written statements/risk assessments relevant to the objectives along with their applications. Some boards are also taking a more directive approach towards licensees/applicants than others, for example by stipulating the local conditions that can and will be applied in the pursuance of each objective.
- Be alert to the wider context, and take a collaborative approach:** Reference to strategies and plans having relevance to alcohol, at both a national and local level, was fairly common across the policies. At the national level, some policies cite Scotland's alcohol strategy as being of particular relevance. At the local level, many boards reference local strategies and locality plans (e.g. Local Outcome Improvement Plans) as being of key relevance. It is apparent that many boards are seeking to adopt a collaborative approach, and have committed to work meaningfully with local partners where common objectives are identified. This demonstrates that, while boards are quasi-judicial and need to undertake their decision-making independently, they do not operate in a vacuum, isolated from the opinions, actions and priorities of local communities and stakeholders.
- Support public participation:** Many of the policies recognise that community members may feel intimidated by overly formal processes, and so include a commitment that hearings will be conducted in as informal a manner as possible. However, some boards go a little further by explaining that they will aim to make proceedings as friendly as possible. Several of the policies also signpost the general public to where they can find guidance and support to get involved, including by making objections and representations; for example, some boards provide a pro forma for members of the public making objections/representations, while others provide details about the support Licensing Standards Officers (LSOs) can provide.

## Matters requiring clarification by the Scottish Government

While many of the policies show notable progression and development, there are areas of ambiguity where clearer guidance from the Scottish Government could be particularly beneficial.

**Overprovision and causal link:** The policies indicate that boards have adopted differing approaches to how overprovision should be assessed, and seem to have different understandings of what is required in order to meet the legal tests that apply. The primary cause of this divergence appears to be the way in which boards have interpreted and understood the concept of 'causal link'. A number of questions arise from the approaches boards have taken, including:

- Between what, exactly, is it necessary to evidence a causal link (e.g. is it between identified harms and specific premises, a concentration of premises within a locality, the overall availability of alcohol, the sale of alcohol, or some combination of these factors etc.?)
- Are individual boards required to prove at population (or local level) that there is a link between alcohol availability and harm or is the evidence of a general link (accepted internationally by the World Health Organization and others and by the Scottish Government) sufficient?
- Does the requirement to demonstrate a causal link mean boards need to demonstrate a scientifically proven link between alcohol availability and harm, which excludes other potential causes?
- Is it sufficient for a board to make a value judgement when considering overprovision? If so, when might the

balance of probabilities tip in favour of something being considered 'causal' as opposed to 'correlational'?

- Can overprovision be applied where a community has unacceptably high levels of alcohol-related harms, but few or no licensed premises? If not, how else might boards respond to this type of situation?
- How might overprovision be applied where it is identified that people travel outwith their immediate locality to purchase alcohol, or purchase alcohol remotely such as online?
- In the absence of sales data, how best might boards make a determination of alcohol provision?

### **Partnership working and collaboration:**

Although boards are quasi-judicial and need to undertake their decision-making independently, they are increasingly considering the development of their policies in the broader context of identified local and national priorities. Many have adopted a collaborative approach and committed to work meaningfully with local partners towards the achievement of common goals. However, this raises questions as to how exactly boards can and should contribute to shared outcomes, and how conflicts or overlaps with other agencies should be managed:

- What types of national and local strategies/plans might it be most appropriate for boards to take into consideration when developing and implementing licensing policy?
- How might disconnects between the outcomes and priorities of boards, and those of local authorities and community planning partners, best be addressed should they occur?
- How might boards best manage conflicts with different regimes (such as planning)?

**Economic considerations:** A recurrent theme within the policies is the need for boards to strike an appropriate balance between supporting the local licensed economy, while also upholding the five licensing objectives. This consideration manifests in a number of important policy areas, such as overprovision, licensed hours and children and young persons' access. This raises questions regarding how boards should seek to manage competing priorities within their policies and decision-making:

- How should boards weight economic considerations against statutory obligations regarding the licensing objectives?
- How should boards seek to balance factors such as the promotion of tourism against the licensing objectives?

## Matters for further consideration

There are several issues that fall outwith the scope of the review but that could nonetheless have significant implications for licensing policy. These will require further consideration by the Scottish Government in consultation with the full range of stakeholders involved in the licensing system.

- **Litigation:** Policies, even those prepared after extensive consultation, can be overturned at any licensing appeal dealing with a specific application. This can result in policies having an impression of defensiveness i.e. of being written to demonstrate evidence to resist appeal and for a core audience

of licensing practitioners. This can, in turn, impact on the accessibility of the documents. Furthermore, it could be argued that efforts to create a policy-led system could be undermined if licensing policies are continuously under threat of legal challenge. As such, consideration should be given as to the appropriateness of introducing a statutory ouster clause – time limiting appeals against an adopted licensing policy statement to the first six months of its operation. The possibility of introducing an ouster clause into licensing legislation was consulted upon by the Scottish Government within the Further Options for Alcohol Licensing Consultation Paper in 2012.<sup>1</sup> The majority of those responding to the consultation were in support of the proposal but it was not taken forward in subsequent legislation.

- **Licensed hours:** Licensed hours should also be kept under review by licensing boards at a local level, and monitored by the Scottish Government at a national level, in order to identify if a 'creeping' extension to hours is occurring. Particular consideration should be given as to whether incremental increases to hours are, cumulatively, driving up overall levels of temporal availability. Off-sales hours of 10am-10pm are now seen as the norm and so are applied as standard, as opposed to being regarded as the maximum possible intended hours. As such, consideration should be given as to whether this remains the most appropriate approach.

<sup>1</sup> Scottish Government (2012). Further Options for Alcohol Licensing – Consultation Paper. Executive Summary. Edinburgh: Scottish Government

## 2. INTRODUCTION

The sale of alcohol in Scotland is regulated in order to tackle the harm associated with alcohol consumption. Alcohol licensing is the system for granting permission for the sale of alcohol, and it works to prevent and reduce alcohol harm in two main ways; it carefully controls the overall availability of alcohol through the number, type and opening hours of licensed premises, and it regulates the way individual premises do business.

Each council in Scotland is required to establish at least one licensing board for their area. Licensing boards decide on all applications to sell alcohol, and have five key objectives which are set out in legislation: to prevent crime and disorder; secure public safety; prevent public nuisance; protect and improve public health; and protect children and young persons from harm. Boards have wide discretion to determine licensing arrangements according to local circumstances and their own legal advice, but each board is required to publish a statement of licensing policy at least once every five years. This policy is intended to provide community members, licence applicants, and other stakeholders with an indication of how the board will manage

the licensed premises in its area; outlining its approach to matters such as opening hours and children's access. The policy also includes the board's pro-active assessment of whether there is any overprovision of licensed premises in their area.

Policy statements are a potentially valuable tool in helping to make licensing decisions more strategic. Formulating a policy provides 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 problems can be examined with remedial and preventative licensing action identified. Consulting on a draft policy statement gives local people a chance to have their say on the approach to alcohol licensing in their community. Using a published policy to guide licensing practice supports consistent and well-reasoned decision-making and can make the licensing process more transparent. For a policy statement to be effective, however, it needs to be evidence-based, focused on promoting the licensing objectives, genuinely responsive to the views of consultees, and be applied in practice. If not, the potential value of a policy statement is unlikely to be realised.

# 3. ABOUT THIS REPORT

This report presents the findings of a review of the statements of licensing policy for 2018 to 2023. The review was undertaken by AFS to identify any emerging trends in licensing approaches, and to identify good practice and innovative approaches. It expands and builds upon previous reviews of the policies, undertaken by AFS since the first policies were published in 2007.

## Policy review process

Given the broad range of perspectives involved, and the complexity of the task and subject matter, AFS established a Licensing Policy Review Advisory Group to help inform the review and in particular to provide advice regarding the review criteria

and final report content. Membership of this group was comprised of a wide variety of licensing stakeholders, including licensing standards officers, licensing forum members, Clerks, health workers, police, and community representatives. Full details of the membership of the group are set out at Appendix 1. AFS also drew upon legislative requirements, statutory guidance, and recommended good practice in order to develop a comprehensive review criteria. The recommended good practice pertains to commonly accepted principles and standards for public bodies performing a public service<sup>2</sup> – particularly those relating to presentation, evidence use and consultation.

2 See, for example, Councillors' Code of Conduct 2018 <https://www.standardscommissionscotland.org.uk/codes-of-conduct/councillors-code-of-conduct>

In total there were 64 review criteria, the full details of which are set out at Appendix 2. In summary, the policy statements were examined in relation to the following key matters:



Policy development and consultation



Transparency and use of evidence



Promoting the licensing objectives



Overprovision



Licensed hours



Children and young persons' access



Occasional licences



Licensing processes and public participation



Emerging issues and other matters



Links to other strategies and plans



Presentation and readability

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The review comprised of the following components:

- Each policy was assessed individually against each of the 64 criteria to establish whether the relevant criterion was fully met, partially met, or not met. The results of this initial assessment were input into a spreadsheet, generating over 2,000 data entries.
- Notes pertaining to each individual policy were recorded on a separate document, with any examples of new approaches or issues that particularly stood out being logged. This generated over 400 pages of comprehensive notes, enabling for a deeper exploration of the policy content.
- Particulars of overprovision and licensed hours were recorded, including details of any changes from the previous position, and the stated reasoning for these changes.
- Information about approaches to promoting the objectives was recorded, such as board actions, suggested licensee actions, and local conditions.
- The final stage of the review involved an in-depth analysis of all the data collected and the production of this report to present the key findings.

All licensing policy statements published by the end of January 2019 were included in the analysis. Thirty-three published policy statements were available, covering 38 out of the 40 licensing Boards in Scotland. The three Aberdeenshire Divisional Licensing Boards combined their policies into a single document, as did the four Dumfries and Galloway Divisional Licensing Boards; however, where information provided in this report pertains only to a specific divisional board this has been specified. Three of the

thirty-three published statements did not include a statement on overprovision as the boards were still considering this aspect of their policy. Policy statements from 2013 were also re-examined to enable an assessment of whether there has been any policy development over time.

## Format of report

Each of the above key matters is examined in the report in terms of the legal requirements set out in licensing legislation and the recommendations contained in statutory guidance. A summary of key findings from the review of published policy statements is then presented (with more detail included in the appendices), followed by discussion and analysis of the findings. The report concludes with some general observations and recommendations for future licensing policy development.

## Accompanying online resources

The policy review generated a significant amount of information, which has been developed into a range of resources for licensing stakeholders and other interested parties:

- **Resource 1** – Evidence considered by licensing boards to develop policy
- **Resource 2** – Measures to promote the licensing objectives
- **Resource 3** – Examples of conditions to promote the objectives
- **Resource 4** – Overprovision assessments
- **Resource 5** – Standard operating hours

These are all available to download at [www.alcohol-focus-scotland.org.uk](http://www.alcohol-focus-scotland.org.uk)

# 4. BACKGROUND

## History of licensing policy statements in Scotland

The Licensing (Scotland) Act 2005 introduced a duty on licensing boards to issue a statement of licensing policy – setting out how they will promote the licensing objectives and their approach to licensing decisions.

The 2005 licensing legislation was enacted following a review of the licensing system by a government appointed committee.<sup>3</sup> The Nicholson Committee was set up in 2001 with a remit to “review all aspects of liquor licensing law and practice in Scotland... and to recommend changes in the public interest.” One of the recommendations of the Nicholson Committee was that licensing boards be placed under a statutory duty to issue policy statements. The Committee believed that policy statements could be highly beneficial for all those involved in the licensing process. It anticipated policy statements being used to “reflect any views or suggestions made to licensing boards by local licensing forums”, “give a broad indication of special terms and conditions which a board might consider appropriate in relation to particular forms of licensed business”, and be a useful means of “indicating a board’s approach to licensing hours”. The legal requirement to publish a statement of licensing policy (initially once every three years) first came into force in November 2007.<sup>4</sup>

<sup>3</sup> The Nicholson Committee (2003). Review of Liquor Licensing Law in Scotland. Edinburgh: Scottish Executive <http://www.gov.scot/Resource/Doc/47133/0027021.pdf>

<sup>4</sup> SSI 2007 No. 128 The licensing (Appointed Day and Transitional Provisions) (Scotland) Order 2007. This statutory instrument lays down 30th November 2007 as the appointed day for the beginning of the period of 3 years referred to in section 6 (7) of the Licensing (Scotland) Act 2005.

The Scottish Parliament also made a number of changes, through the Air Weapons and Licensing (Scotland) Act 2015 (the 2015 Act), to improve the operation of the licensing regime. The 2015 Act amended the period of a policy statement, requiring boards to publish their policies within 18 months of any local government election (which occur, at least, every five years). This was to enable new boards to take stock, gather evidence and set policy statements that reflect their own views and aspirations. Therefore, following local government elections in May 2017, the fourth round of licensing policy statements were required to be published by November 2018.

## The content of a policy statement

Licensing legislation contains only high-level detail about how the policies should be prepared, and what kinds of information they should contain. The Licensing (Scotland) Act 2005 states that:

- A licensing board must consult in the preparation of its statement of licensing policy (Section 6(3)(b));
- Measures contained in the policy statement must seek to promote the licensing objectives (Section 6(3)(a));
- The policy statement must include a statement as to the extent to which a board considers there to be overprovision of licensed premises in any locality within its area (Section 7(1));
- A licensing board must have regard to the content of its policy statement when making licensing decisions (Section 6(4)).

However, the accompanying statutory guidance provides more detail about the formulation and contents of policy statements. This includes that:

- Boards must give appropriate weight to the views of those consulted.
- Policy statements should provide local communities with a clear indication of the licensing board's policy.
- The overprovision policy should be expressed in such a way that there is no doubt as to the reasons for its adoption, including the evidence upon which the board relied and the material considerations taken into account.
- The policy should include a statement of the agreed procedures the board has developed for handling applications, objections, representations, delegation of functions and review hearings.

- The policy should include information on the board's approach to licensing hours, and recognise that licensing hours are important not only to individual licensed premises but can have a wider impact for an area.
- The policy should provide clear indications of how the licensing board will take into account other matters relating to alcohol when developing policy statements, for example: local crime prevention; community safety strategies; and health.

Licensing boards must have regard to both the legislation and statutory guidance in preparing and publishing policy statements. However, much of the detail and substance of a policy statement is left to a licensing board to decide.



# 5. REVIEW OF STATEMENTS OF LICENSING POLICY 2018 TO 2023



## 1. Policy development and consultation

In preparing a statement of licensing policy, a licensing board must consult with the local licensing forum for its area and any other people it thinks appropriate. The membership of a forum must include a local licensing standards officer and the health board. Membership should also be representative of the interests of licence holders, police, health, education or social work, young people and residents. The guidance explains that, if the membership of the forum is not representative of these interests, boards should make reasonable efforts to identify and engage with the persons or bodies concerned.

Consultation on a new policy statement gives local people an opportunity to input into shaping the licensed environment in their area. As well as consultation with representative bodies and organisations, the guidance suggests that boards may wish to hold well-publicised 'open meetings' at which members of the community can be afforded an opportunity to express their views on the formulation of policy.

In the preparation of 2018 policy statements, AFS responded directly to 34 policy consultations, provided oral evidence to 3 boards, and attended several consultation events. This gave

some insight into how licensing boards approached consultation on their policies. In addition, many of the policies include information about the consultation methods employed by boards and the responses that they received.

### Findings

- ✓ The majority of boards circulated their new draft policies for comment, some consulted on their existing policy statement inviting open comment, and some circulated questionnaires on specific aspects of the licensing policy.
- ✓ At least three licensing boards conducted oral evidence sessions.
- ✓ More than half of the policy statements (18) include a list of consultees, with many also specifying that named consultees responded to consultations. However, in some cases it is unclear whether those listed are individuals and organisations invited to comment, or actual respondents, so the level of participation in the consultation process is uncertain.
- ✓ Most policy statements say the licensing board gave 'due consideration', 'took account of', or 'had regard to' the views of consultees. However, fewer of the policies refer to the views of consultees throughout to demonstrate how they carried weight in the formulation of

policy – consultees' views are most often (and sometimes exclusively) outlined in relation to overprovision.

- ✓ Five policies indicate that consultation took place, but the information provided is insufficient to determine how or whether stakeholders' views had been taken into account. A further two do not provide any details of consultation, and so it cannot be determined whether any consultation was conducted.

## Discussion

Boards across Scotland used a range of consultation methods to engage stakeholders in the development of the 2018 policies. By far the most commonly employed consultation method was to issue a call for written views, with boards using their own communication channels and/or utilising council facilities to publicise and conduct their consultations. A number of boards undertook several rounds of consultation, for example having a 'pre-consultation' on the existing policy followed by a 'formal consultation' on the new draft policy. This approach enabled local stakeholders to provide general views and also more informed and specific comment about the board's intended approach. Some boards also conducted separate consultation exercises specifically on the issue of overprovision.

At least three licensing boards (Angus, Edinburgh, and Glasgow) conducted follow-up oral evidence sessions, to allow those who had submitted consultation responses an opportunity to directly address the board on their views, and allow the board to examine the basis of any evidence.

A number of boards, including Aberdeen City, Edinburgh, Glasgow, and South Ayrshire, describe hosting consultation events and workshops, often bringing together a range of licensing stakeholders with community members to discuss relevant issues. Where these events took place they appear to have been particularly helpful to boards in shaping their policies. Similarly, the Fife and Dumfries and Galloway boards describe holding drop-in sessions/public meetings to carry out consultation with the public directly. Several boards also undertook community surveys, such as the East Lothian Board, which circulated a survey to all households and business premises in the county via a local newspaper.

Some boards also describe taking targeted approaches. For example, the Aberdeenshire boards conducted engagement sessions with specific groups such as LSOs, public health and police representatives. In another example, the Glasgow board proactively met with groups of 5th and 6th year school pupils – their views being of particular assistance in considering young persons' access to licensed premises. However, of all stakeholder groups, it appears that young people were generally the least represented in boards' consultation processes and responses.

In several areas, such as Dumfries and Galloway, Glasgow, and East Lothian, local licensing forums established policy working groups (in some instances prompted by the licensing board) to provide the board with relevant information and policy recommendations. The information provided by these working groups also appears to have been particularly useful to the relevant boards for informing the development of their policies.

With consultation processes being more expansive/detailed in many places when compared to previous rounds of policy development, the views of consultees are more frequently referred to within the new policies, and also seem to have carried more weight in policy formation. In Edinburgh, for example, the policy explains that the Board consulted specifically on the use of occasional licences and amended its policy in this area as a result. In West Lothian, the policy highlights that the Board consulted on whether a change to its curfew policy was required and, as the majority of consultees were not in favour of any change, the existing policy was retained. In East Dunbartonshire, the Board indicates that it amended its policy on licensed hours in response to a representation from the trade. The Aberdeenshire Boards include

supplementary policies relating specifically to consultation, documentation and overprovision which summarise the views of consultees and provide the licensing boards' response to the points raised.

Although it is not a legal requirement, demonstrating and reflecting the views of consultees within the licensing policies themselves helps demonstrate a board's responsive approach to consultation. Furthermore, it adds legitimacy and weight to boards' approaches. However, five policies provide insufficient information to determine how or whether stakeholders' views had been taken into account (although they indicate that consultation took place). A further two do not provide any details of consultation, and so it cannot be determined whether any consultation was conducted.

## Policy statement examples

### Glasgow example: Comprehensive, proactive and targeted consultation

In order to ensure a reliable and credible basis for the development of its policy, the Glasgow Board undertook the widest consultation by a board to date, consisting of:

**Pre-Consultation Evidence Gathering.** The Board prepared a pre-consultation document and views were sought from interested parties on the development of the new Policy Statement as part of the evidence gathering process.

**Evidence Sessions.** As part of this evidence gathering process, the Licensing Board held two evidence sessions to allow those who had submitted responses to the consultation an opportunity to address the Board on their views, and to allow the Board to test and examine the basis of any evidence in support of those views. The evidence sessions were held in public, and full transcripts of the evidence sessions are available from the Licensing Board on request.

**Recommendations from the Local Licensing Forum.** The Licensing Board also requested that the Local Licensing Forum establish a subgroup to consider the Board's general approach to overprovision and its policy on licensed hours in order that it could make recommendations to the Board as part of the pre-consultation process. A report was approved by the Local Licensing Forum and was referred to the Board for consideration in the development of the Policy Statement.

Continued overleaf

**Meetings with Young Persons.** In order to gain a better insight into the views of young persons on policy issues directly affecting them, the Licensing Board met with groups of 5th and 6th year Modern Studies students at Springburn Academy and All Saints Secondary. Their views were of particular assistance in considering the sometimes controversial issue of young persons' access to licensed premises.

**Focus Group Event.** In order to engage directly with representatives from the licensed trade and local residents throughout the city, the Licensing Board held a focus group event, attended by over 40 individuals and supported by representatives from Police Scotland, Licensing Standards and Community Safety Glasgow. The focus group event was facilitated by the Clerk to the Board, with Licensing Board Members joining in discussions with the individual groups and providing their own reflections and observations on the discussions.

**Evaluation of Evidence.** Following completion of the pre-consultation exercise and evidence gathering, the Board extensively considered and discussed all of the views and evidence submitted to it in order to prepare the draft version of the Policy Statement to be issued for full public consultation.

**Public Consultation and Community Engagement Events.** The draft Policy Statement was open to full public consultation with written comments received. During that time the Licensing Board held a series of community engagement events across the city in order to provide members of the public and licence holders with an opportunity to share their views directly with members of the Board and to discuss and debate the proposals put forward in the draft Policy Statement.

#### Aberdeen City example: Demonstrating the value of a collaboration

**“** *In order to create a policy that stakeholders could feel they had helped shape, the Board recognised that they would have to rewrite the Policy and not simply amend what had gone before. To that end, the Board carried out extensive consultation which included holding a Licensing Conference. The collaborative approach generated some very interesting feedback from the community and public-sector partners, residents and the trade which helped the Board to understand their needs and wishes.*



## 2. Transparency and use of evidence

Licensing boards have a statutory duty to ensure that measures included in their policy statements seek to promote the licensing objectives. It is therefore incumbent on boards to gather sufficient information on each of the licensing objectives to enable them to ensure that the policy measures they adopt serve to promote these objectives. Sources of evidence can include consultation responses as well as the local knowledge of licensing board members.

Evidence must be considered in the formulation of policy, but it is also important that the evidence used to develop policy positions is demonstrated and explained in a policy statement, in order that a particular policy approach can be understood.

In proposing the mandatory publication of policy statements, the Nicholson Committee expected that any such statement would be “...*framed in the context of local circumstances within a licensing area.*” Contextual information includes local licensing statistics, population size, tourist/visitor numbers, and evidence relating to the licensing objectives. Statutory guidance also states that the policy (and overprovision assessment) should be “*expressed in such a way that interested parties are left in no doubt as to the reasons for its adoption, including the evidence upon which the board relied and the material considerations which were taken into account.*”

## Findings

- ✓ In over half (19) of the policies, the evidence used to develop stated policy positions is clearly demonstrated and explained. This is a significant improvement when compared with the previous policies, the majority of which did not demonstrate the evidence base for given policy approaches.
- ✓ There is wide variation between the policies in the extent to which evidence is outlined and explained; some clearly reference evidence sources or include appendices to summarise the evidence considered, while others include little to no detail about the evidence taken into account or the reasons for stated policy positions.
- ✓ Evidence considered is most often summarised in relation to overprovision, with many policies also outlining how this evidence had been interpreted by the board. However, seven policies that include an overprovision statement provide little or no information regarding the assessment of overprovision.
- ✓ Some of the policies provide details about the current and local context in relation to specific objectives
- ✓ A significant number of the policies (26) contain local contextual information, including local licensing statistics, population size, and tourist/visitor numbers. Many also provide information about the nature and extent of alcohol problems in the area.
- ✓ Fifteen of the policies indicate that the board used local knowledge to help develop the policy, although only around half of these policies specify what the said local knowledge consisted of.

## Discussion

Details of the evidence used to inform the policies is most frequently outlined in relation to overprovision and the licensing objectives. The most commonly cited evidence is statistical data relating to overprovision and the licensing objectives, provided by Alcohol and Drug Partnerships, Police Scotland and the NHS. This includes information pertaining to hospital admissions, alcohol-related death rates, alcohol-related mental health, alcohol-related brain damage, police incidents (including assaults, domestic incidents, disorder and alcohol-specific crimes), and relevant fire statistics. The vast majority of the policies also include details regarding the number, type, capacity and licensed hours of licensed premises in the board area. A full list of the types of evidence and data highlighted in the policies can be found in the accompanying online resource: *Resource 1 – Evidence considered by licensing boards to develop policy*.

In several areas, such as the Scottish Borders and Fife, Alcohol Profiles were developed by stakeholders in order to collate local alcohol-related data from multiple agencies. Where Alcohol Profiles have been provided to boards, they are described in the policies as providing an invaluable evidence base to inform the board's approach. The Aberdeenshire Licensing Boards indicate that they intend to carry out work to develop a local alcohol profile for each board area (in conjunction with partner agencies) to identify trends and supplement the information contained within their policy, and monitor its ongoing effectiveness. This approach recognises that evidence is not only vital for policy formation, but also for keeping policies under review.

Many of the policies summarise the range of evidence considered in relation to overprovision along with an explanation of how it had been interpreted by the licensing board, whether the evidence was considered sufficient to find overprovision or not – with some also including the evidence considered within an appendix or clearly signposting to where it can be accessed. There are numerous examples of policies that are strong in this regard, including Aberdeen City, Aberdeenshire, Dumfries and Galloway, East Lothian, Edinburgh, Glasgow, Highland, Midlothian, North Ayrshire, South Ayrshire, South Lanarkshire (all divisions), West Dunbartonshire and West Lothian. It is apparent that many boards invested considerable time and effort in order to gather and analyse data relevant to overprovision. However, two policies do not provide any details of the evidence used to assess overprovision or the rationale for the boards' conclusions. A further five state only the sources of evidence used to assess overprovision, without providing any details of the evidence itself or the reasoning for the boards' approaches.

The majority of the policies include information about the general profile of the board area, such as information pertaining to the local economy, geography, demographics, culture, events, and tourism. This can be helpful to provide context for stated policy approaches. For example, the Scottish Borders policy recognises the importance of historical common riding events within the area, but highlights that the Board does not consider that all events connected with common ridings should automatically be seen as justification for an occasional licence or to extend licensed hours.

Some of the policies also provide details about the current and local context in relation to specific objectives, which helps to clarify the reasons for a particular policy position. For example, in Falkirk, the Board states that it has been made aware of premises supplying alcohol to customers then collecting the payment at a later date. The Falkirk policy therefore makes clear that the Board considers this to be a breach of the public health objective as it is likely to be offered to vulnerable persons who have a dependency on alcohol. The Highland policy explains that, as the area hosts many large-scale public events that attract many thousands of people, licences may be issued subject to a condition that alcohol can only be served in plastic containers to ensure public safety.

A theme that is fairly commonly expressed across the policies is the need for boards

to strike an appropriate balance between having a licensed environment that residents and visitors can enjoy, while also working to prevent and reduce alcohol-related harm. For example, the Glasgow policy highlights that, with around 1800 licensed premises in the city, the licensed trade is a vital cog in the wheels of the city's economy. However, the policy makes clear that the importance of the sale of alcohol to the economy does not come without a significant cost to the city. The Board wants to see the trade flourish, but it also has clear responsibilities to ensure that the trade continues to uphold the five licensing objectives. The policy explains that achieving the appropriate balance continues to be a challenge for the Board, both in terms of the individual decisions that are taken and also in the development of the policy statement.

## Policy statement examples

### Dumfries and Galloway example: Outlining evidence and how it was assessed

“ The Board has undertaken an Assessment of Overprovision. The Board has taken into account all material before it and, in particular, the 2018 report prepared by the Alcohol and Drug Partnership, NHS Dumfries and Galloway.

*This report set out recommendations to the Licensing Board on the levels of provision, and possible overprovision, of alcohol licences across Dumfries & Galloway based on analysis of available data including from local data sources: NHS, Police, Fire and Rescue Service and Dumfries and Galloway Council and also sought to inform this Statement of Licensing Policy (2018 – 2023)...*

*Each data source was assessed to see whether it met the necessary requirements:*

- Should be part of a standard dataset that is routinely collected so the data can be updated when needed in the future;*
- Collected over a reasonable time period, especially the last few years;*
- Available at both locality and Intermediate Data Zone (IDZ) level;*
- Believed to be of good accuracy and completeness;*
- Must contain large enough numbers to permit robust analysis.”*





### 3. Promoting the licensing objectives

The five licensing objectives are the central most important principles of the licensing system, each one being of equal weight and significance. Licensing policies have a substantial role to play in how the objectives might be met, and boards have a legal duty to ensure that their policies seek to promote the objectives.

Boards need to consider how to give effect to the licensing objectives at both the individual premises level and population level. Developing a licensing policy provides them with the opportunity to stand back from routine administrative practice and consider the bigger picture in relation to licensing in their area. They can consider the objectives within this wider context, and their policy can determine issues in relation to wider areas in order to seek to promote the objectives.

A clear policy has a number of advantages; it promotes consistency of decision making and gives advance notice to applicants and others as to a board's likely approach to certain decisions. As such, a policy should provide a clear statement as to what the board is trying to achieve with each objective. Any trends or concerns relevant to each objective can be outlined along with the details of any supporting evidence. The policy should make clear what the licensing board intends to do, and what it would like to see the licensed trade do, in order to meet each objective.

### Findings

- ✔ It is possible to identify measures intended to promote the objectives within all of the policies, however the extent of these measures and the ease with which they can be identified greatly varies.
- ✔ Some policies focus almost exclusively on the range of factors licensed premises should take into account in the promotion of each of the licensing objectives, and potential control measures that can be implemented. Fewer set out details of specific actions the board will take in pursuance of the objectives.
- ✔ Boards are adopting new approaches to the promotion of objectives, responding to a trend towards purchasing alcohol from off-sales premises for consumption at home, and an increased awareness of alcohol-related harms occurring in private spheres as well as public.
- ✔ Twenty-six of the policies contain information about what local conditions the board may consider attaching to a licence. However, in some cases the information given is minimal, and the specified conditions have not been linked to any particular objective/s.
- ✔ Seven of the policies include an expectation that applicants supply a written statement detailing how they will promote the objectives. Similarly, some boards are encouraging applicants to complete risk assessments in order to demonstrate how they will comply with the objectives.

## Discussion

Most of the policies provide at least some information about how the licensing board intends to promote the objectives, although in some cases the information provided is minimal or has to be teased out of the policies. The most commonly identified board measures include actions like declaring overprovision, controlling licensed hours, or applying certain conditions. However, other measures cited include ensuring all policies are fit-for-purpose, working with stakeholders to ensure all relevant information is kept up-to-date and accessible, facilitating effective communication between local stakeholders, liaising with local partners, endorsing local initiatives relevant to the objectives, carrying out spot checks of premises, highlighting good practice, and conducting reviews of licences. A fuller list of example board measures to promote the objectives is provided in the accompanying online resource: *Resource 2 – Measures to promote the licensing objectives*.

Overall, the policies provide much more detail about what the licensed trade can/should do in order to promote the objectives when compared to licensing boards. Suggested licensee actions, although numerous and varied, often relate back to specific control measures that can be put in place, or ensuring proper training and supervision of staff, properly maintaining premises, and co-operating with local stakeholders (e.g. LSO, police). A fuller list of example licensee measures to promote the objectives is also provided in the accompanying online resource: *Resource 2 – Measures to promote the licensing objectives*.

Some boards are seeking to place a greater emphasis on the objectives by setting out an expectation that applicants provide written statements relevant to the objectives along with their applications, with several providing pro forma 'Supplementary Information' documents. For example, the Falkirk policy explains that, while not a requirement of the Act, applicants are expected to provide a written statement as this demonstrates an active and thoughtful engagement with the licensing objectives. Similarly, some boards such as Aberdeenshire, the Western Isles, and Moray encourage the use of risk assessments for this same purpose. Furthermore, risk assessments that take into account the licensing objectives are highlighted as being a useful tool for licensees in the ongoing management of premises and training of staff.

Some policies also take a more directive approach towards licensees/applicants than others, in particular by setting out local conditions that may and/or will be applied by the board in pursuance of the objectives. For example, in North Lanarkshire the policy states that the board will generally impose local conditions (which are detailed in an Appendix) when children are to be admitted to licensed premises. In another example, the North Aberdeenshire Divisional Licensing Board sets out more broadly the local conditions it may apply within an appendix, clearly indicating the objective/s to which each individual condition relates.

Although not every policy includes local conditions, there are clear benefits to their inclusion. Not only does this provide an important indication of the ways in which the board will promote the objectives, it also provides examples of what conditions

applicants could be subject to or volunteer themselves, and provides people making representations/objections with suggestions of the kinds of conditions they can suggest. A fuller list of example conditions to promote the objectives is provided in the accompanying online resource: *Resource 3 – Examples of conditions to promote the objectives*.

Across the policies, there was general recognition of a shift in purchasing patterns from on-sales to off-sales, with people increasingly consuming alcohol at home. This was identified by boards as having significant implications for the licensing objectives and consequently for their own policy responses.

For example, the Glasgow policy highlights that throughout the consultation process the board heard repeated concerns about the changing habits in alcohol purchasing and consumption, with a number of respondents focusing on the evidence of the link between alcohol availability and harm. The policy therefore includes a section specifically pertaining to off-sales and the public health objective. This explains that the Board is concerned by a number of areas suffering from high levels of alcohol-related harm, but containing very few licensed premises. The board does not consider it appropriate to declare these areas as being overprovided for, but the policy makes clear that it may nonetheless be inconsistent with the public health objective to grant a licence which would enable easier access to alcohol – thereby having the potential to exacerbate existing alcohol-related health problems in the area.

To date, overprovision assessments have tended to be the key tool which licensing boards have used to pursue the health objective, predominantly by controlling availability. The new policy approach adopted in Glasgow departs from this to some extent. It makes explicit that the board will use the health objective as a stand-alone ground for refusal, in order to control the availability of alcohol from off-sales premises, where unacceptably high levels of health harm are identified. This position is based on credible evidence of the links between off-sales premises and health harm, and stating this in the policy has a number of potential advantages. Firstly, it allows for appropriate consideration of alcohol harm data and information at the assessment stage, without a requirement to then link that data directly to individual licenced premises at the application stage. It also prevents the need to continually evidence 'causal link' each and every time an application is submitted in localities suffering high levels of harm, as in effect this link has been established within the policy itself.

New approaches to the objective to prevent crime and disorder can also be seen, with boards giving increasing consideration to alcohol-related crimes that may occur outwith a licensed setting. For example, the West Lothian policy identifies that gender-based violence issues have strong associations with alcohol (e.g. domestic abuse, sexual violence, commercial sexual exploitation). The policy recognises that while licensing alone cannot directly address these they are nonetheless significant issues within the crime and disorder, health, community safety and child protection agendas.

The Board therefore commits to work in partnership with local agencies to play its part in helping to reduce alcohol-related crime. In addition to partnership approaches, several policies, such as Glasgow and Stirling, encourage the use of schemes like 'Ask for Angela'<sup>5</sup> which have relevance to gender-based, sexual and domestic violence.

Specific to the objective of protecting children and young persons from harm, new policy approaches can again be seen to be developing. In particular, there is increasing recognition that the scope of this objective is not restricted to preventing people under the legal purchase age from being supplied with alcohol. For example, the East Dunbartonshire policy states that applicants and licence holders should be aware that children and young people who frequently witness alcohol consumption as normal practice have an increased risk of consuming greater quantities of alcohol and at a younger age, and that those affected are at a higher risk of developing hazardous drinking patterns. This type of approach recognises that children can be impacted by the drinking behaviours they observe and by adults drinking (see section on children and young people's access for more details).

A number of the policies, such as Glasgow and East Lothian, also refer to child sexual exploitation, and identify that there are opportunities for licensed premises to play their part in helping to prevent and respond to this issue. The East Lothian policy signposts to guidance on how to

recognise and deal with sexual exploitation of children and young persons, while the Glasgow policy refers to a Barnardo's Scotland campaign; working with businesses in Glasgow, including licensed premises, to help them understand their role in preventing and tackling child sexual abuse.

Statutory guidance states that the policies should make clear that licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are no longer on licensed premises. Although this is technically correct from a legal perspective, this approach is more in keeping with a traditional approach to licensing that focuses on town centre disorder and on-licence premises. As demonstrated in the above examples, it is clear that boards are increasingly recognising the broader impact of alcohol on local communities, changing patterns of sales and consumption, and the importance that they give to considering the full range of settings where the licensing objectives might be engaged.

5 For further information about 'Ask for Angela' visit: <https://www.bbnsotland.co.uk/news/2018/july-2018/ask-for-angela/>

## Policy statement examples

### Aberdeenshire example: Adopting a practical and partnership approach to promoting the objectives

“ The Boards have adopted a partnership approach to alcohol and alcohol issues within Aberdeenshire in order to work more pro-actively at local level, and to demonstrate on a more practical level how the Boards will adhere to and promote the licensing objectives.”

### Glasgow example: Explaining the scope of the licensing objectives

“ The Licensing Board acknowledges that licensing is not the primary mechanism for the control of public nuisance and antisocial behaviour once individuals have left licensed premises. Nevertheless the Board considers that licensing plays a key role in both preventing and controlling alcohol-related crime and disorder and antisocial behaviour through the promotion of the Licensing Objectives and the monitoring and enforcement of licensed premises.”

### Moray example: Adopting a risk assessment approach

“ The Board strongly recommends that applicants complete a risk assessment in respect of the premises and to provide a copy of this to the Board with the application and operating plan. Licensees are reminded that all activity directly connected to their premises, both inside and out, should be considered. Adopting a risk assessment approach will mean that applicants should better understand what steps are required to complete the operating plan in a manner which enables the Board and Responsible Authorities and Interested Parties to assess how they will seek to promote the licensing objectives. A risk assessment is as individual as an operating plan and will vary according to the nature of the business.”



## 4. Overprovision

Licensing boards have a legal duty to assess the extent to which they consider there is overprovision of licensed premises, or licensed premises of a particular type, in their area. A statement on overprovision must be included in their statement of licensing policy, and overprovision in an area is one of the grounds for refusing to grant a new premises licence, or a variation of an existing licence.

In deciding whether there is overprovision, licensing boards are required to consider the number, type and capacity of licensed premises in a locality. They can also have regard to such other matters as they think fit, such as the licensed hours of premises. Statutory guidance explains that to assess overprovision *“the results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality”*.

As highlighted earlier in this report, many of the policies summarise the range of evidence considered by boards in relation to overprovision. This enables for a more in-depth analysis of how boards have approached this aspect of their policies than was possible during the 2014 review.

### Findings

- ✔ Of the boards with published policies, 15 found overprovision to some extent within their area, and 20 found no overprovision (3 were still consulting on this issue).
- ✔ 5 boards increased overprovision in their board area, 6 boards decreased overprovision in their board area, and

23 boards did not make any changes in this regard. In addition, one board found overprovision in a new locality, while finding none in a previously overprovided for area, although the total number of overprovided localities remains unchanged.

- ✔ Of the five boards that increased overprovision; two found overprovision to some extent having previously found no overprovision, and three found overprovision in an increased number of localities.
- ✔ Of the six boards that decreased overprovision; four found no overprovision having previously found overprovision to some extent, one found overprovision in slightly fewer localities, and one found overprovision of on-sales only having previously found overprovision of both on-sales and off-sales.
- ✔ Of the 15 boards finding overprovision; 4 declared overprovision to some extent across the whole board area, and 11 declared overprovision to some extent within smaller localities.
- ✔ Of the 15 boards finding overprovision; 8 found overprovision of both on-sales and off-sales, 2 found overprovision of on-sales only, and 5 found overprovision of off-sales only.
- ✔ The policies indicate boards have adopted different approaches to their most recent assessments of overprovision, and seem to have different understandings of what is required in order to meet the legal tests that apply.
- ✔ There are questions as to whether the law on overprovision is struggling to keep pace with rapidly changing patterns of alcohol sales and consumption, such as the rise of online sales.

## Discussion

The policies indicate boards have adopted differing approaches to how overprovision should be assessed, and seem to have different understandings of what is required in order to meet the legal tests that apply. The primary cause of this divergence appears to be the way in which boards have interpreted and understood the concept of 'causal link'. While decisions are to be made on a balance of probabilities, there is wide variation between boards' interpretations of what evidence is required in order to meet the legal test to evidence a causal link.

While some boards seem confident to declare overprovision applying a test that considers on a balance of probabilities whether there are links between numbers of premises and levels of harm, others appear to consider that a higher bar requires to be met for causal link to be established. For example, some policies, such in Aberdeenshire and East Lothian, comment that the relevant boards were unable to establish a causal link because on the basis of evidence presented: *"The harm caused by alcohol... is not a direct and sole consequence of the number of premises but is a result of a wider, complex set of factors"*. In addition, the Aberdeen City Board found that: *"Whilst there is evidence of the correlation that evidence falls short of establishing the causal link that is required by the regulatory framework to justify overprovision"*.

These examples show the difficulty that boards can encounter when examining an issue as multifaceted and complex as alcohol-related harm. With so many confounding factors, it would be virtually impossible to prove that the number of premises in an area was the direct and sole cause of any identified harms. In addition, this raises a question as to what level of

evidence is legally required in order to justify a finding of overprovision i.e. when might the balance of probabilities tip in favour of something being considered 'causal' as opposed to correlational.

The wording of the legislation is also such that boards are directed to look for evidence of overprovision *"in any locality"* within the Board's area. With modern modes of alcohol sales and consumption, the perceived need to establish a link between identified harms and premises within a specific area also appears to have proven problematic. For example, the Fife policy states that *"due to the rise in online ordering and delivery of alcohol from premises distant from the customer's address... it was not possible to find there to be a causal link between the alcohol harms in a locality and the number of premises in the locality"*. Online sales are not a new issue but are a continuously evolving and expanding area of retail; one that was likely not foreseen in 2001 when the Nicolson Committee was established to review liquor licensing laws. This raises questions as to whether the law is struggling to match the pace of change in relation to modern patterns of alcohol sales and consumption.

Several of the policies also highlight that people may purchase alcohol from other areas in addition to and/or instead of those where they live. The West Dunbartonshire policy, for example, identifies that there is local evidence to suggest that persons in West Dunbartonshire, wishing to obtain alcohol from off-licences, will travel up to two miles across sub-localities to purchase it. Similarly persons will travel across the whole of West Dunbartonshire to attend nightclubs. Accordingly, the board's policy is that any application outwith the determined overprovision locality for new premises or increased capacity of existing premises may still be subject to an overprovision assessment. The East Lothian

Board decided that it is unreasonable to assume that residents across the local authority are purchasing alcohol only in their immediate locality. Therefore, the board considered that East Lothian should be treated as one locality for the purposes of assessing overprovision.

Furthermore, in the absence of sales data, it is unknown how much alcohol is actually sold by each premises or in each locality. The South Aberdeenshire Divisional Board comments that *“in the absence of any requirement for retailers to collect and make available alcohol sales figures there can be no direct evidence of a correlation between capacity, sales and consumption.”* Without alcohol sales data it is difficult to see how boards might get a true measure of alcohol availability, fully inform licensing decisions, or monitor changes over time.

Several boards reflected on the changes occurring during the life of their previous overprovision policy when undertaking their new assessments. Their approaches suggest that boards have differing expectations of what outcomes an overprovision policy might achieve over time, and different visions of what success in this regard might look like. For example, the Inverclyde Board came to the conclusion that the previous overprovision policy should be deleted on the ground that there had been no discernible change in health or crime figures for the area in which the overprovision policy was in place. In North Ayrshire, the data provided to the Board also demonstrated limited changes in health and other indicators since the board's previous overprovision assessment, however the Board retained its overprovision policy due to the high levels of alcohol-related harm identified. The Aberdeen City Board (finding no overprovision) commented that it had been operating without an overprovision policy for the recent period, and that this did not

appear to have resulted in any increase in the number or capacity of premises, nor the harm associated with the operation of those premises.

It can also be identified from the policies that there is particular concern about overprovision of off-sales premises and the impacts of drinking at home. As such, several boards specifically considered the display capacity of off-sales premises when undertaking their assessments. For example, the Highland Board had previously found overprovision of premises with an off-sales display area exceeding 40 square metres. In undertaking its new assessment, the Board found that there remained overprovision of larger-capacity off-sales premises and so retained its existing policy – also extending it to cover a larger geographical area. The Scottish Borders policy also acknowledged that display areas can be a factor in encouraging purchase and ultimately consumption. Accordingly, the Scottish Borders Board has stated it will look for detailed justification for any application to have a display area in excess of 10% of the overall sales area of premises. Many of the policies, although not specifically mentioning off-sales display areas, indicate that new off-sales applications will be given particularly careful consideration prior to any determination being made.

A full summary of the boards overprovision assessments is contained in the accompanying online resource: *Resource 4 – Overprovision assessments*.

## Policy statement examples – Approaches to overprovision

### Edinburgh City example:

“ The Board was satisfied that a dependable causal link could be demonstrated between alcohol-related health harms and alcohol-related crime, and the number and capacity of licensed premises in a number of localities in the board area. It reached this decision having particular regard to the evidence presented by [Edinburgh Alcohol and Drug Partnership], Police and NHS Lothian about the extent of alcohol-related harms in these localities, and it also made use of its local knowledge about these localities. The Board continues to reserve the option to refuse applications where it considers overprovision as a potential ground for refusal, even if the premises are not situated within one of the designated overprovision localities. The Board also continues to have particular concerns about large drinking establishments – which provide little or no seating for patrons and have a capacity for 200 or more patrons – and the high number of existing off-sales premises. It will continue to examine any applications for more such licences to assure itself that the application will not undermine the licensing objectives.”

### Scottish Borders example:

“ The Board will consider overprovision when relevant applications come before it. It will take into consideration the likely impact on the licensing objectives in the area where the premises are located, the type of premises along with the proposed licensed hours and capacity. The Board acknowledges the work carried out by the Scottish Borders Licensing Forum by way of the multi-agency data gathering project and the subsequently produced report “Scottish Borders Alcohol Profile”. The Board will have regard to the Profile when determining applications. When considering applications for a particular type of premises in a particular area the Board will consider the locality as the Intermediate Geographies detailed in the Alcohol Profile as the area within which the premises are situated, but will also take into account the immediate adjoining areas. The Board is aware that almost three-quarters of alcohol is sold in supermarkets and off-sale premises. Given the rural spread of the Scottish Borders area, alcohol may not be consumed and associated harm may not take place in the area it was purchased. When considering overprovision in a specific locality, the Board will also take into account the overall availability in the Borders”.

### North Ayrshire example:

“ The North Ayrshire board found that everywhere in North Ayrshire is overprovided, so if there is an application for a new licence, or for an increase in capacity, there is always a presumption of refusal, no matter which ‘Function Type’ is involved. The presumption of refusal is stronger if the Premises are in a ‘Locality’ where applications are especially unlikely to be granted (all of North Ayrshire, apart from “North Coast” and “Isle of Arran”). The presumption of refusal is also stronger if the Premises have any “Function Type’ except for hotels and restaurants, but even if the premises are hotels or restaurants the Board can still refuse due to its overprovision policy. These are all presumptions, not rigid rules, so refusal is not automatic. While the policy creates a rebuttable presumption that a case should be determined in a certain way, it will always be open to applicants or objectors to persuade the Board that the policy should not be followed in the individual circumstances of a particular case.”





## 5. Licensed hours

According to statutory guidance, policy statements should provide information on a licensing board's policy on licensing hours. It suggests that licensing boards may wish to consider applications for on-licensed opening hours of up to 14 hours a day as being reasonable.

Only off-sales hours are specified in law, with the permitted hours being between 10am to 10pm every day – although licensing boards can decide to limit off-sales hours if they consider it appropriate. It is left to each licensing board to determine the licensed hours for on-licensed premises, however there is a presumption in law against granting 24-hour licences.

In the 2018 published policies, as was the case in previous policy statements, most licensing boards indicate what they regard as being standard operating hours. These are the hours that a board says it will normally grant for on-licensed premises, often differentiated as pubs, pubs offering entertainment, nightclubs, restaurants, and hotels. Commonly, what is set out in the statements is the usual commencement and terminal hours, and any variations on different days of the week.

In addition, licensees can apply for an extension of licensed hours provided that it is in connection with a special event or occasion to be catered for on the premises, or an event of local or national significance. Licensing boards can also grant a general extension of licensed hours for particular specified occasions.

### Findings

- ✓ Of the boards with published policies, 7 made increases to opening hours, 2 made decreases, and 29 made no changes in this regard.

- ✓ Three boards increased the permitted hours for pub type premises only, mostly allowing for an additional hour on certain days of the week.
- ✓ Two boards increased the permitted hours for nightclub type premises only, with one allowing an additional hour for nightclubs participating in a pilot scheme, and another an additional hour for entertainment venues on certain days of the week.
- ✓ One board made increases to the permitted hours for both pub type premises and nightclub type premises, making various and quite significant increases to hours throughout the week.
- ✓ One board permitted specialist off-sales premises (offering tasting and sampling of products on the premises) to commence on-sales one hour prior to on-sale premises in the area.
- ✓ One board removed a requirement for late-night venues in the city to offer significant entertainment, enabling pubs and bars which did not previously qualify for later opening to apply for it.
- ✓ One board decreased the permitted licensed hours for restaurants by one hour each day, and another decreased licensing hours for pub type premises by one hour on certain days of the week.
- ✓ The vast majority of boards permit off-sales between 10am-10pm each day, although some may stipulate shorter hours when considering a premises licence application if they believe it to be appropriate.
- ✓ Overall, there does not appear to be a significant extension or contraction of opening hours, although there may be a 'creeping' extension with more boards increasing licensed hours than reducing them.

- ✓ Many of the policies outline the principles that the board will apply when considering applications for extended hours. The majority make clear that if regular applications are made for the same premises, then applicants will be expected to consider whether they should apply to vary the premises licence.

## Discussion

There is a general recognition across the policies that licensing hours are important not only to individual licensed premises, but can have a wider impact for an area. The majority of boards have not made any change to their policy on hours – instead maintaining the status quo. However, nine boards have amended their policies in this regard, although the reasons for these changes are not always set out. In some cases changes to hours could only be identified by pro-actively comparing the new policy to previous versions, as this information was not made apparent in the policy itself. However, it is changes to opening hours occurring in Glasgow City and Aberdeen City that appear to have attracted the greatest levels of interest and media coverage.

In Glasgow, the Board has launched a pilot scheme whereby it will consider granting a later terminal hour of 4am (as opposed to 3am) to nightclub premises in the city centre; however, only where the premises make a positive contribution to the late-night economy, and invest in measures designed to promote the licensing objectives. The Board states that it considers this to be an opportunity to reward and encourage good practice in the nightclub trade. The policy explains that throughout the consultation and evidence-gathering process it was evident that there are a number of differing views on the approach which the Board should take to licensed hours, particularly within the

licensed trade itself. While acknowledging that its approach is unlikely to meet the expectations of everyone, the Board considers that it weighed up all of the evidence and developed a balanced approach which seeks to promote the licensing objectives. The policy highlights that a 12-month pilot allows for a controlled experiment without a full change in policy, and that the Board will conduct a 12 month review to determine any impacts.

The Aberdeen City Board also differentiates between hours within the city centre and outlying areas. It amended its policy to extend the terminal hour for premises outwith the city from 12 midnight to 1am on Friday and Saturday nights. However, in the city, premises previously had a terminal hour of 1am, unless they were providing 'significant entertainment' – such as a nightclub – in which case they could remain open later (e.g. 3am on Friday and Saturday). The new policy removes the requirement for late-night venues in the city to offer significant entertainment, enabling pubs and bars which did not previously qualify for later opening to apply for it. The policy stresses that the latest permissible hours will not be appropriate for all premises, and that it will be the responsibility of the licence holder or applicant to demonstrate that the premises is suitable. However, no explanation is given within the policy itself as to why these changes have been applied.

In East Dunbartonshire, the policy explains that, in response to a representation from the trade requesting an increase to the opening hours, and in order to safeguard and promote the local economy, the Board has extended the terminal hour for on-sales premises on a Saturday night. The Board considers that the revised on-sale policy hours are appropriate for the area and represents a balance between the interests of the public, residents, licensed businesses and patrons of licensed premises.

The Highland Board was the only board to permit earlier opening hours. The policy comments that retail premises stocked with specialist alcoholic products for sale for consumption off the premises may wish to offer tutored tasting and sampling of products on the premises for an appropriate charge. As such, the Board may permit on-sales in such premises from 10am (as opposed to 11am) on any day provided that such a sale is made only during a formal or tutored tasting session.

Although the guidance suggests that boards may wish to consider on-licensed opening hours of up to 14 hours a day as being reasonable, 21 boards do not specifically indicate what they consider to be reasonable, and 4 specify a longer period ranging from 14.5-16 hrs. For example, the Edinburgh City policy states that for most premises there could be up to 16 trading hours.

The vast majority of boards permit off-sales between 10am and 10pm each day, which is the maximum allowed by law. However, some of the policies clarify that the board may stipulate shorter hours when considering a premises licence application if it considers this to be appropriate, depending on where the premises are situated or the likelihood of the use of the premises contributing to antisocial behaviour. For example, the Fife Board indicates that it may be inclined to stipulate a terminal hour as early as 6pm for the sale of alcohol in appropriate circumstances. In West Dunbartonshire, off-sales hours are generally only permitted to 8pm, and the Board will only consider extending the closing time to 10pm if suitable enhanced control measures have been put in place to promote the licensing objectives e.g. CCTV cameras covering the interior of the premises and the exterior area adjacent to the entrance.

When looked at in isolation, increases to hours may seem fairly innocuous. However, with more boards across Scotland extending opening hours than reducing them, there is a risk that there will occur a 'creeping' extension to hours. This can happen in a number of ways, both within board areas and between them. For example, the Edinburgh Board comments that – in its experience – the granting of extended hours in recognition of a particular style of trading merely leads to trade competitors adopting the same arguments in seeking similar hours, and a process ensues which leads to the extended hours becoming the norm. In a similar way, if one licensing board area increases its standard hours then so too might many others, to bring their board area 'into line' with other areas. In addition, the sum total of individual extensions to hours can, over time, add up to a significant increase in overall levels of temporal availability. It will therefore be vital that licensed hours are kept under review at board level, and monitored closely at national level, in order to identify if this 'creep' is occurring and, if so, to formulate an appropriate response. A full summary of standard operating hours is contained in the accompanying online resource: *Resource 5 – Standard operating hours.*

### **Extended hours**

Many of the policies outline the principles that the board will apply when considering applications for extended hours. The majority make clear that if regular applications are made for the same premises, then applicants will be expected to consider whether they should apply to vary the premises licence to reflect the change in the manner of operation of the premises. The Glasgow policy, in particular, highlights concerns that some premises were applying for extended hours with such regularity that the licensing objectives were being undermined. As such, the Glasgow Board considers that it would

not be appropriate to grant a premises extended hours on more than 10 days in each year. The majority of the policies also make clear that the board will generally look for the applicant to demonstrate that an extension is required for a particular event, such as a special birthday party or anniversary celebrations.

A number of the policies, such as Dumfries and Galloway, Edinburgh, Falkirk, Highland, Stirling, and West Dunbartonshire, also outline what might constitute an event of national or local significance. Examples given include bank holidays (e.g. Easter Monday, May Day), patron saints' days (e.g. St Andrews Day, St Patricks Day), Pride, Halloween, Royal weddings, Freshers Week, televised major sporting events (e.g. Rugby World Cup, Olympics, Superbowl), and local events and festivals (e.g. Loch Broom Skiff Regatta, Live@ Troon). Several of the policies indicate that the board will tend to look favourably on applications for extended hours which are designed to cater for increased numbers of visitors to the area arising from a particular event. In addition, some specify that where a festival or event is localised, extended hours will generally only be granted to premises in the locality of the event.

Boards have also adopted different approaches to the general extension of licensed hours. For example, the North

Ayrshire Board has chosen not grant any general extensions, meaning that applicants seeking extended hours must always apply for them. In other areas, such as Edinburgh and Shetland, boards have opted to grant general extensions for localised events. For example, the Shetland Board will annually grant a general extension of hours to premises in the relevant vicinity for Fire Festival or Up Helly Aa celebrations.

General extensions are most commonly outlined in relation to the festive period. While many boards will offer automatic hours extensions over the festive season – either for certain days or a set period – others require that applicants apply for a festive extension, or require that the operating plans of premises indicate an intention to take advantage of extended festive hours in order for the extension to apply automatically. The period of the festive hours extensions also varies significantly, ranging from the whole of December through to the start of January in some areas, to specific days (such as 24th, 25th, 26th, 31st December and 1st January) in others. The extra time permitted to premises also varies, ranging from 30min to 2hrs, with 1hr extra trading being the most common. A number of boards also indicate that the festive period and/or hours of trading will be determined and communicated on an annual basis.

## Policy statement example

### West Lothian example: A clear policy on hours

**“** The Board recognises that having a clear policy on licensed hours is important for both the licensed trade and the general public. The Board acknowledges that this is a key part of the policy and therefore central to its role in promotion of the licensing objectives. The Board recognises that licensed hours are important not only to individual premises but can have a wider impact for an area. For this reason the Board has made a clear distinction between the licensed hours which apply to premises falling within the definition of nightclubs and other premises.”



## 6. Children and young persons' access

Legislation and guidance contains minimal information about children and young persons' access to licensed premises. The guidance indicates that *"the intention of the new legislation [The Licensing Scotland Act 2005] is to encourage licensed premises to become more child-friendly and to encourage an environment where families can socialise safely together."* It also emphasises that *"children need protection from environments which are wholly unsuitable."*

Details of children and young persons' access require to be set out in individual operating plans, but it is largely for licensing boards to set out their expectations regarding factors like when children and young people should normally be allowed entry, including the ages at which they should be allowed entry, and the types, times and parts of premises to which they should have access. It is also for boards to determine the measures that may be necessary to protect children and young people from harm.

### Findings

- ✓ The vast majority of the policies provide some indication of what might be acceptable in terms of children and young peoples' access, with reference to factors like the types and parts of premises to which children should have access. However, the level of detail provided varies greatly, and four policies provide little to no detail in this regard.
- ✓ Some restrict children's access to licensed premises for the primary purpose of consuming a meal, or attending an event.

- ✓ Eight of the policies specify the hours when children and/or young people should normally be allowed entry, with the majority permitting their access until 10pm.
- ✓ Nearly all policy statements include a standard condition that children and young people should not be exposed to incidents of violence or disorder, and several express concerns in relation to gambling activities and adult entertainment.
- ✓ Several policies include measures to ensure that children admitted to on-licensed premises are not exposed to harmful drinking practices and alcohol advertising.

### Discussion

Overall, it is the extent to which premises are likely to provide a family-friendly environment that appears to be the determining factor in boards' approaches to children's access. For example, the Glasgow policy indicates that the Board fully supports the approach set out in the guidance and hopes that licence holders will seek to provide a welcoming environment for children and young persons rather than seeking to exclude them. In another example, the South Ayrshire policy explains that the board wished to strike a balance, in support of the objective of protecting children and young persons from harm, by suggesting that moderate on-premises consumption of alcohol in a supervised family-friendly environment is better able to protect young people than any provisions it could make to discourage families consuming excessive alcohol in their homes.

The most commonly cited circumstances under which boards consider it appropriate for children to be admitted to licensed

premises is for the purpose of consuming a meal, or to attend a pre-arranged function or event. In some areas, such as Dundee, East Ayrshire, South Ayrshire, and West Dunbartonshire, access for children and young people is only permitted under such circumstances as a general rule.

Conversely, premises where the supply of alcohol is the primary purpose of the service provided, and 'vertical drinking establishments', are frequently cited as being unsuitable for children and young people. A number of the policies, such as Aberdeenshire, North Ayrshire, Midlothian, and Perth and Kinross, also indicate that premises which are small and enclosed, or which have few facilities, are unlikely to be accepted as able to provide an appropriate environment for children. Nearly all policy statements include a standard condition that children should not be exposed to incidents of violence or disorder, and many express concerns in relation to gambling activities and adult entertainment. Several also set out expectations with regards to access to specific parts of premises. For example, in Highland, children under the age of 16 must be excluded from any room where there is a bar counter after 10pm.

Eight of the policies specify the hours when children and/or young people should normally be allowed entry, with the vast majority indicating that children will generally only be allowed to remain on licensed premises until 10pm, or until the end of a pre-arranged function. The latest indicated terminal hour for children is 11pm. A number of the policies also differentiate between hours for children (0-15yrs) and young people (16-17 yrs). In Glasgow, for example, the terminal hour for children will normally be 9pm, but the Board will generally apply a later terminal hour for young persons of 11pm. The latest indicated terminal hour for young

people is 1am. Some boards, such as Dumfries and Galloway (Wigtown), do not specify a terminal hour for young people, but do require that young persons be accompanied by an adult from 10pm.

Policies providing minimal detail regarding children's access mostly indicate that applications will be determined on a case-by-case basis. Applicants in these circumstances are expected to demonstrate in their operating plan that suitable measures will be implemented to protect children and young persons from harm, relevant to the individual style and characteristics of their premises and the activities for which a licence is being sought. Nonetheless it is commonly highlighted that, where applicants wish children to be permitted access, additional responsibilities will be placed upon them.

Most policy statements indicate a range of conditions for operators seeking to accommodate children and young people in order to protect children from harm. These frequently cover issues such as health and safety, and the provision of suitable facilities, children's menus, staff training etc. Several also include measures to ensure that children admitted to on-licensed premises are not exposed to harmful drinking practices and alcohol marketing. For example, some boards have developed measures in response to concerns that children can be impacted by the drinking behaviours they observe and by adults drinking. The Dumfries and Galloway Boards suggest that licensees consider placing a limit on the amount of alcoholic drinks served to adults in charge of children or young persons. The South Ayrshire policy similarly highlights this type of approach as good practice. In other areas, boards have given consideration to the effects of children's exposure to alcohol more generally. For example, the Falkirk policy states that where licensed premises intend to hold events specifically targeted at

children/young persons and alcohol is not being served (e.g. underage discos or parent and toddler groups), consideration should be given to taking steps to avoid any obvious promotion of alcohol.

It is apparent that the majority of boards are seeking to encourage licensed premises to become more child and family friendly within their new policies. However, it can also be seen that they are giving consideration to the potential impacts of alcohol on children and young people, and the objective to protect children and young

people from harm. In particular, there is increased recognition that the scope of this objective is not restricted to preventing people under the legal purchase age from being sold/supplied with alcohol. Boards are also seeking to address impacts on children and young people resulting from the drinking behaviours they observe, adults drinking, and their general exposure to alcohol. Some boards are also being far more directive in their approach than others, by setting out their expectations regarding children's access and applying relevant conditions as standard practice.

## Policy statement examples

### East Dunbartonshire example: Raising awareness of the impacts of alcohol on children

“ Applicants, licence holders, and all staff responsible for the sale or serving of alcohol on licensed premises should be aware of the risks associated with alcohol and the impact they could have on children. These include:

- the toxic effects of alcohol on the social, physical and mental wellbeing of children and young people, particularly in regards to brain development;
- alcohol-related brain damage in children and young people is irreversible;
- children and young people who frequently witness alcohol consumption as normal practice have an increased risk of consuming greater quantities of alcohol and at a younger age; and
- those affected are at a higher risk of developing hazardous drinking patterns and dependence in adult life.”

### South Ayrshire example: Specifying the types of premises suitable for children

“ The Board wishes to see family friendly premises thriving in the area. However, premises which sell alcohol for consumption on the premises and which do not offer the option of meals are unlikely to be considered a suitable environment for children and young persons. Operating plans should give detail of the measures which have been identified to protect children and young persons from harm. These may include limitations on the hours during which children and young persons may be in all or part of the premises, limitations or exclusions by age when certain activities are taking place, imposition of requirement for children and young persons to be accompanied by an adult, and measures to ensure that children do not purchase, acquire or consume alcohol.”





## 7. Occasional licences

An occasional licence allows the temporary sale of alcohol in a place that is normally unlicensed. Their intended purpose is to enable premises which are not fully licenced to sell alcohol at occasional events, which in practice can range from wedding receptions and fetes through to large scale music concerts. Voluntary organisations and members clubs are limited in the number of occasional licences they can be granted in a twelve-month period.

Occasional licence applications can be granted under delegated powers, meaning that the decision is made by a Clerk rather than a licensing board. A limited number of people are required to be notified of occasional licence applications, and the consultation period is much shorter than that for new premises applications – reducing the scope for objections or representations. When developing their new policies, some boards consulted specifically on the use of occasional licences and the possibility of placing a limit on the number of applications which could be considered under delegated powers. This was primarily in response to concerns that some applicants have sought to use the occasional licence process as an alternative to applying for a full premises licence. At the time of writing, the Scottish Government is also considering prescribing a limit on the number of occasional licences for holders of a premises and/or a personal licence.<sup>6</sup>

### Findings

- ✓ 14 policy statements provide guidance as to the kinds of occasions that will be considered for the grant of an occasional licence, such as birthdays. Many include

<sup>6</sup> Scottish Government (2019) Licensing (Scotland) Act 2005 Consultation on reviewing the fee for occasional licences and considering a limit on the number and duration of occasional licences

a presumption against granting occasional licences where the event predominantly involves children or young persons.

- ✓ 11 include a provision to ensure that repeated occasional applications from the same applicant will be automatically referred to the board for a decision.
- ✓ Some boards have set out conditions that will specifically apply to occasional licences, either as standard practice or on a case-by-case basis.
- ✓ Some policy statements simply repeat the basic rules covering the process of issuing an occasional licence.

### Discussion

The types of events which are indicted as being most likely to be considered for the grant of an occasional licence are special celebratory events such as birthdays, anniversary parties or wedding receptions. Fundraising and charitable events are also frequently cited as being suitable. Conversely, events which are least likely to be suitable are those targeted towards children and families, where the majority of attendees will be children and young persons e.g. school sports days or children's parties. Events where there is no significant entertainment, or where live entertainment is not an integral part of the function, are also frequently highlighted as being unsuitable.

A number of the policies, including Aberdeen City, Aberdeenshire, Falkirk, South Ayrshire, and Stirling, include a presumption against granting occasional licences for events aimed primarily at children and young persons, or indicate that it is highly unlikely that a licence will be granted in these circumstances. In other areas, boards have specified circumstances under which they would consider granting occasional licenses where children are to have access. For example, the Clackmannanshire Board states

it is minded to grant applications seeking to allow children and young persons to attend family-orientated events, where food and soft drinks are available and activities are deemed suitable.

Some boards have also set out conditions relating to issues such as management, supervision, signage and training, which they will apply specifically to occasional licences, either as standard practice or on a case-by-case basis. For example, in Edinburgh, Police Scotland and LSOs provided a set of "pool" conditions to be attached to occasional licences. The Board was of the view that the benefit of agreeing a set of "pool" conditions is that it enables for a better understanding of the conditions which are likely to be requested by statutory consultees. In a different example, the West Lothian Board has stated it will attach standard conditions to all occasional licences unless there is a request from the applicant that any of these conditions should be disapplied.

In response to growing concerns about the potential misuse of occasional licences, a number of boards have set out measures to ensure that this type of application is subject to appropriate scrutiny. A variety of approaches are being adopted. The most commonly indicated approach, adopted in areas such as Aberdeenshire, East Lothian, and South Lanarkshire, is for

boards to require a hearing where an application relates to activities that have been occurring (either in identical or largely similar terms) on the premises regularly over a period of three months.

In other areas, boards have adopted a slightly different approach, focusing instead on the duration of time that occasional licences have been in force within a 12 month period. For example, the Perth and Kinross Board considers it reasonable for occasional licences covering up to 30 days 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, and failure to do so may result in all further occasional licence applications being submitted to the Board for consideration.

The Edinburgh Board decided that where applications for occasional licences are received for a continuous trading period of more than two months or alternatively more than four consecutive applications, then further applications will generally be referred to the Board for determination. The Falkirk and Angus Licensing Boards have adopted a similar approach, with applications for four or more occasional licences that run consecutively being automatically referred to the Board, or applicants being expected to submit a full premises licence application.

## Policy statement example

### South Ayrshire example – Occasional licences and children and young people

**“** While the Board wishes to encourage family-friendly events, it expects all applicants to give detailed consideration as to whether or not it is appropriate for children and young persons to have access to the licensed area and for applicants to be clear in their applications as to how children and young persons will be protected from harm. In particular, if there are no other activities available other than the sale of alcohol, or if the event is aimed primarily at children and young persons, it is unlikely that a licence will be granted. The Board considers that if alcohol is to be available at events, it would be preferable to have the sale of alcohol situated in an area where food and seating is also available so that families may sit together in a relaxed atmosphere.”



## 8. Licensing processes and public participation

Given the public interest purpose that underpins alcohol licensing, it is essential that communities are empowered to participate in licensing processes, and can feel confident that their contributions will be given due regard.

The publication of policy statements provides an opportunity to set out the mechanisms available to enable community engagement and participation. There are numerous ways in which the general public can choose to engage with the licensing system, ranging from commenting on applications and observing/participating at board meetings, to joining their local licensing forum. 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.

Statutory guidance states only that the policies “*should include a statement of the agreed procedures the Board has developed for handling applications, objections, representations, delegation of functions and review hearings etc. for premises and personal licences.*” Setting out this information within the policies helps aid transparency, but more so if it is also explained how accessibility and accountability for local communities will be supported, and how it will be ensured that any proceedings are open and transparent.

## Findings

- ✔ 31 of the policies include a statement of the agreed procedures the Board has developed for handling applications, objections, representations, delegation of functions and review hearings.
- ✔ A significant majority include a commitment that the board will dispose of its business in an open, fair and transparent manner. However, fewer provide details of how this will be achieved in practice.
- ✔ Many include a commitment that hearings will be conducted in as informal a manner as possible, with some also aiming to make proceedings as friendly as possible.
- ✔ A minority include information about the various ways in which the general public can get involved or the types of information/supports available to enable them to participate.

## Discussion

Almost all the policies include information about procedures for handling applications, objections, representations, delegation of functions and review hearings. In some cases, the information provided relating to administrative matters appears unnecessarily detailed, making the policies somewhat difficult to read and follow. An alternative approach, adopted in a number of the policies, is to set out in an appendix the procedures followed (e.g. when applications are being considered, and during board meetings and hearings), or signposting to where this information can be accessed.

A significant majority of the policies include a commitment that the board will dispose of its business in an open, fair and transparent manner. Similarly, several include assurances that proceedings will be proportionate, accountable, and consistent. However fewer of the policies provide a clear indication of how this will be achieved in practice. Many explain that meetings of the board are held in public with minutes taken, and that any agendas and minutes are made publically available – with some also signposting to these documents. Some boards, such as Angus, Edinburgh, Inverclyde, Moray, Orkney, Renfrewshire, Shetland, and West Dunbartonshire, explain that the board may adjourn to consider matters in private but will reconvene to resume consideration or make its decision before the parties concerned. Several of the policies also highlight that the board will prepare and publish an annual functions report, summarising its activity in the preceding year; providing a mechanism for members of the public to access and scrutinise their operation and decision-making.

Many of the policies also recognise that community members may feel intimidated by overly formal processes, and so include a commitment that hearings will be conducted in as informal a manner as possible. Some boards, such as Angus and Moray, also go a little further by explaining that they will aim to make proceedings as friendly as possible. The Moray Board, for example, highlights that it wishes to create a less formal and more relaxed atmosphere so as not to intimidate parties. It explains that its aim is to reach out to all parts of society and genuinely reflect their interests, and that it will seek to encourage an open and honest exchange of information in a customer-friendly setting.

Although many of the policies demonstrate a desire to encourage public engagement and participation, very few provide an explanation of the ways that community members can actually get involved. For example, information about making representations or lodging an objection tends to be generic, with the policies simply highlighting that any interested party can elect to do this. It is unlikely that a community member, without prior licensing knowledge, would be able to extrapolate from the policies what avenues for their involvement exist.

Even fewer of the policies outline the types of information/supports available to enable the general public to participate. Some simply comment that information and assistance will be made available to those who wish to apply for a licence, to make representations or to object to an application. However, a minority of the policies such as Aberdeenshire, Renfrewshire, and South Ayrshire, signpost to sources of information and support, with some also providing a pro forma to assist anyone wishing to make an objection or representation. Several policies also highlight that LSOs are available to offer appropriate support to all parties seeking to be involved in the Board's licensing processes.

## Policy statement examples

### Renfrewshire example – Signposting to sources of support

“ The Board recognises that, for members of the public who do not deal with the complexities of the licensing legislation on a daily basis, lodging objections or representations to a licence application (or an application for a review hearing) is likely to be a daunting experience. The Board also recognises that, for those people, the Licensing Standards Officers may be the first contact they have with the licensing authority. The role of Licensing Standards Officers is not to make applications, or objections, on behalf of members of the public, but they are available to offer appropriate support to all parties seeking to be involved in the Board's licensing processes. They will also be able to provide information as to application procedures and may be able to signpost members of the public to helpful resources, such as the Toolkit Resource published by Alcohol Focus Scotland.”

### West Lothian example – Transparency in proceedings

“ The meetings of the Board are held in public with minutes taken; all minutes are published on the Council's information system (COINS). A link to the Board section on COINS is contained in Appendix 6 of this policy, where further information such as the current members of the Board and dates of scheduled meetings can be found. In general, meetings of the Board take place on a monthly basis and are held in the Council Chambers within the Civic Centre in Livingston. All meetings of the Board are held in public with a microphone system used to aid the proceedings. Rules are in place setting out the process which will be followed at any hearing which takes place before the Board, a link to the Rules can be found in Appendix 6 of this policy. The Board would encourage applicants and anyone with an interest in licensing in the West Lothian Board area, to visit the Board pages of the Council's website where regularly updated information and guidance is available.”





## 9. Emerging issues and other matters

Boards have wide discretion to address within their policies any matters that they believe to be of particular relevance to their role or the licensing objectives. The development of licensing policies provides boards with an important opportunity to consider the evidence of any emerging issues or concerns, take stock of legislative and policy developments, and adapt their approaches accordingly.

### Findings

- ✔ Many of the policies include information about minimum unit pricing (MUP) and its implications for the licensing system. In addition, some boards address irresponsible promotions and the advertising of free alcohol within their policies.
- ✔ Twenty of the policies set out the board's approach to online retailers and home deliveries, including by specifying the types of requirements and conditions that will apply.
- ✔ A growing trend for outside seating areas has been identified in many areas, with a number of boards setting out their expectations and requirements in this regard.
- ✔ Many boards set out their approach to licences ceasing to have effect, and are approaching this element of their policies in different ways.
- ✔ Some boards have addressed the use of Bring Your Own Bottle (BYOB) in their policies, with several indicating a preference that unlicensed premises apply for a premises licence rather than allow customers to BYOB.

### Discussion

#### Minimum Unit Pricing (MUP) and irresponsible promotions

Minimum pricing came into force on 1st May 2018 and, as such, many of the policies include information about MUP and its implications for the licensing system. This includes information about how the minimum price should be calculated, and the responsibilities of licence holders to comply with MUP.

The Glasgow policy highlights that through changes in legislation, for example minimum unit pricing and restrictions on irresponsible promotions, there are far greater controls than ever before on the sale of alcohol from off-sales. However, it comments that these safeguards alone cannot adequately mitigate the link between the availability of responsibly sold alcohol and its unregulated consumption. In a different approach, the Fife policy states that the Board considers that the introduction of minimum unit pricing of alcohol has the potential to be a more effective tool in reducing harms caused by alcohol than overprovision. The Board therefore indicates that it will keep the issue of overprovision under review and will consider the matter afresh particularly once information on the evaluation of the impact of the introduction of minimum unit pricing is available.

Some boards have also addressed irresponsible promotions within their policies. For example, the Borders policy clarifies that, while the offering of a free alcoholic drink in connection with the purchase of another drink is categorised in the list of irresponsible promotions, the Board takes the view that advertising alcoholic drinks on licensed premises as being free as a result of any purchase or activity is inconsistent with the licensing objective of protecting and improving public health.

### **Alcohol deliveries and internet sales**

Alcohol deliveries and internet sales are not a new issue but are a continuously evolving and expanding area of retail. The majority of boards have responded to this emerging trend by setting out their approach to alcohol deliveries within their new policies. For example, the East Lothian Board makes clear that delivery staff must be trained to the same level as those on licensed premises, that challenge 25 checks must be conducted, and that alcohol must not be left at premises unless a responsible adult is present. It also clarifies that where licensees use a courier service, they must ensure that the service is compliant with the Board's requirements. These types of measures were fairly common across the policies, with applicants also being expected to provide evidence of the policies and procedures that will be put in place.

Several boards, such as Midlothian, Angus and Aberdeen City, also indicate the types of premises which may be more suitable to offer home delivery. In Midlothian, cafes and restaurants may be granted home delivery services, provided the order is supplementary to a meal, and any alcohol purchased with the order is proportionate. The Aberdeen City policy similarly indicates that deliveries of alcohol will generally only be permitted as part of a delivery of food, unless from a dedicated off-sales premises. Conversely, the Angus Board indicates that, in general, takeaway premises are not considered to be suitable for the sale of alcohol for consumption off the premises.

### **Outside seating areas**

A number of boards, such as Edinburgh, comment on identifying a growing trend for outside seating areas in licensed premises. As such, many boards have set out an expectation that any outside areas should be shown on the layout plan of the premises, and explain that this will be taken into account in the overall

assessment of capacity. In addition, many policies include specific sub-sections outlining the requirements which apply to outside seating areas, such as conditions preventing the consumption of alcohol outside after a particular time (e.g. 10pm), or a requirement that licensees have policies in place to limit noise and maintain order in outside areas.

### **Licences ceasing to have effect**

Many boards are setting out their approach to licences ceasing to have effect within their policies; as there is no statutory definition of "cease to have effect" it has been necessary for individual boards to give consideration to this issue. In some areas, such as South Lanarkshire, should a premises close for longer than three months, the board will then expect the licence holder to advise it in writing, and if the premises is closed for six months without reasons being given then a review will be instigated. In other areas, such as East Lothian, if premises have been closed for over 18 months then the board will consider that the premises licence has ceased to have effect. In those circumstances, the premises would require a new premises licence to enable alcohol to be sold.

### **BYOB (Bring Your Own Bottle)**

Some boards have addressed the use of BYOB in their policies. For example, the Midlothian policy makes clear that licensees permitting BYOB are still responsible for the conduct of persons within their premises and have a duty to control how much alcohol persons are consuming. The Board encourages any unlicensed Restaurant/Café/Commercial premises that allow customers to BYOB to apply for a premises licence. Similarly, the East Lothian Board specifies that is the Board's preference that any unlicensed premises should apply for a premises licence rather than allow customers to BYOB.

## Policy statement examples

### Perth and Kinross example – Addressing the delivery of alcohol

**“** Where premises licence holders with an off-sales facility operate a delivery service, policies and procedures should be in place and implemented by staff including in relation to the process of taking and recording of orders, training for delivery drivers, recording of items despatched, age verification policy and recording deliveries made. Those policies and procedures should be aimed at preventing alcohol being delivered to and consumed by persons under 18 or drunk persons. Applicants seeking the addition of a delivery service should expect the requirement for policies and procedures to be in place to be imposed as a local condition on the premises licence. Premises licence holders are reminded that if they use a courier or the sale and delivery are carried out through a third party organisation, it is the responsibility of the premises licence holder to make sure the courier/third party has appropriate policies and procedures in place.”

### Borders example – Addressing irresponsible promotions

**“** While the offering of a free alcoholic drink in connection with the purchase of another drink is categorised in the list of irresponsible promotions, the Board takes the view that advertising alcoholic drinks on licensed premises as being free as a result of any purchase or activity is inconsistent with the licensing objective of protecting and improving public health. While the inclusion of a bottle or glass of wine for example in the cost of a meal or meals has been common practice this should not be highlighted as being free and should not be used as a means to entice patrons to consume alcohol they may not have otherwise intended to. The price quoted should be shown as being inclusive of the alcoholic drink with non-alcoholic alternatives being available. There should be no advertising of free alcoholic drinks as a result of attendance at licensed premises for any purpose such as a sporting event or the scoring of a goal or suchlike.”

### Edinburgh example – Setting out approach to licences ceasing to have effect

**“** The Board has considered the issue of whether a licence holder is under a duty to trade. It has also considered the terms of section 28 of the Act stating that a premises licence ceases to have effect where the premises cease to be used for the sale of alcohol. It is aware that on one interpretation this could be read as requiring an application for a new premises licence in the situation where premises have ceased to trade and are being actively marketed for sale. The Board has determined in the absence of a definitive legal interpretation that it will require an application for a new premises licence where the premises have not been used for the sale of alcohol for a period exceeding one year and the circumstances suggest that there is no active marketing of the premises for sale or lease. The Board will ask the LSOs to ascertain where possible, the reason for closure of the premises, with a view to then deciding whether or not to review the premises licence. Where the premises are situated in a locality where the Board is assessing overprovision these factors will also be relevant.”



## 10. Links to other strategies and plans

The statutory guidance recognises that licensing is only one means of pursuing the objectives, and so cannot be regarded as the only way to tackle challenges in our communities. As such, it highlights the importance of “*partnership work between Licensing Boards, Licensing Standards Officers, planning authorities, environmental health and safety authorities, the police, the fire and rescue authorities/joint fire and rescue boards, local people, other representative bodies and organisations working towards the promotion of the common objectives.*”

The guidance also recommends that statements of policy “*provide clear indications of how boards will take into account other matters relating to alcohol, for example: local crime prevention; community safety strategies; health...*” It specifies that the documents should describe any arrangements in place for reporting concerns regarding transport in the area, and for boards to receive reports on the local tourist economy. Furthermore, it explains that the policies should include a firm commitment to avoid duplication with other regulatory regimes, such as planning and building control.

### Findings

✓ The majority of the policies (27) provide at least some indication of how the board will take into account other matters relating to alcohol, most commonly by outlining the specific strategies/partners to which the board will have regard.

- ✓ Eighteen of the policies make reference to relevant plans and strategies of the Scottish Government, with seven of these specifically naming Scotland's alcohol strategy ‘*Changing Scotland's Relationship with Alcohol a Framework for Action*’.
- ✓ Fourteen of the policies reference relevant locality plans e.g. Local Outcome Improvement Plans (LOIPs), the ADP strategic plan, and the strategic plan of the Health and Social Care Partnership (HSCP).
- ✓ While many of the policies state that the board will have regard to relevant strategies, fewer provide an explanation of how the board intends to do this in practice.
- ✓ Four of the policies describe arrangements agreed between the police and Licensing Standards Officers for reporting views or concerns to the local authority transport committee (or other bodies with responsibility for transport in their area).
- ✓ Ten of the policies indicate that arrangements have been made for the board to receive reports on the needs of the local tourist economy for the area. Some of these policies also provide an indication of how considerations of tourism will be balanced against other matters, such as the licensing objectives.
- ✓ Twenty-five of the policies state that the board will seek to avoid duplication and inefficiency with the planning and building control regimes. However, the policies do not provide an indication of how boards might manage conflicts between these regimes should they occur. This could be an area where further guidance could be particularly beneficial.

## Discussion

Reference to strategies and plans having relevance to alcohol, at both a national and local level, was fairly common across the policies. At the national level, many policies such as the Western Isles, East Ayrshire, and Inverclyde, indicate that the board will have regard to any strategy of the Scottish Government designed to address, for example, the social, health and crime and disorder issues raised by the misuse of alcohol. Some of the policies also provide more specific detail by citing Scotland's alcohol strategy as being of particular relevance, or explaining key national policy drivers.

The Edinburgh policy highlights that the main strategic aim of the Scottish Government's Alcohol Strategy is to reduce per capita consumption of alcohol. It is within this overarching national policy context that the local licensing system operates. Other specific examples of national policy/legislation cited include: Equalities and human rights legislation; Scotland's National Action Plan for Human Rights; the Community Empowerment (Scotland) Act 2015; National Planning Frameworks; and Scottish Planning Policy (SPP) and circulars.

Many of the policies also reference relevant local strategies and locality plans e.g. Local Outcome Improvement Plans (LOIPs), Alcohol and Drug Partnership strategic plans, and strategic plans of the Health and Social Care Partnerships (HSCP). For example, the East Lothian policy explains that it is essential that the Board identifies where it shares similar objectives to Community Planning Partners (CPP), and that its policy aligns with the Community Planning Local Outcome Improvement Plans. In another example, the Falkirk policy identifies that the board has shared goals to the Falkirk Community Planning

Partnership's Strategic Outcome and Local Delivery Plan, which identifies "minimising the impact of substance misuse" as a key priority.

Although most policies state that the board will have regard to relevant strategies, fewer provide a meaningful explanation of how this might be achieved in practice. Most commonly, the policies highlight ongoing partnership working as being the key mechanism through which the board will seek to contribute to local and national priorities. The Aberdeenshire policy, for example, explains that one of the priorities of the LOIP is changing Aberdeenshire's relationship with alcohol. As such, the Boards will deliver any actions that they can to promote activities to comply with this main priority, and will support any actions taken by their Community Planning Partners where it promotes the licensing objectives. Many of the policies also clarify which local partners have a role in relation to specific objectives e.g. Police Scotland is frequently highlighted as having a key role in relation to crime prevention.

The majority of the policies also state that the board will seek to avoid duplication and inefficiency with the planning and building control regimes. The Fife policy, for example, explains that the Board will not treat applications as a rerun of any planning application and will not cut across decisions of any planning committee or seek to challenge any decision made by the planning committee. This approach is representative of that set out in the majority of the policies. However, the policies do not go on to indicate how the board might manage conflicts between these regimes should they occur. For example, a local licensing policy may seek to control availability in an overprovision locality, while simultaneously a local development plan may identify the licensed retail environment as an area for future growth

in the same location. As such, this could be an area where further guidance could be particularly beneficial.

A number of the policies make reference to tourism and the importance of visitors to the local area. For example, the Fife policy explains that the Fife Tourism Partnership highlighted the importance of creating spaces for visitors to enjoy particularly around the evening economy. As such, the Fife Board will seek reports from the tourism agencies on the local tourist economy to ensure that they are reflected in the Board's considerations. In another example, the Moray policy states that the area is well known for its whisky trails and coastal scenery and as such it is a popular tourist destination. It explains that tourism contributes greatly to the local economy and is welcomed. Accordingly, the Board will welcome measures in operating plans that actively seek to promote tourism and stimulate the local economy. In some policies, boards have also provided

an indication of how they will balance considerations of tourism against other matters, such as the licensing objectives. For example, in Falkirk, whilst the Board expresses that it is keen to support the tourist and night-time local economy, it highlights that is mindful of the impact of these on local communities and, as such, will ensure that any issues which impact negatively on the licensing objectives will be met with a rapid and proportionate response.

Although boards are quasi-judicial and need to undertake their decision-making independently, the above examples demonstrate that this has not prevented boards from considering the development of their Statements of Licensing Policy in the broader context of identified local and national priorities etc. Boards in many areas have adopted a collaborative approach, and have committed to work meaningfully with local partners where they share common objectives.

## Policy statement examples

### East Lothian example: Explaining national policy drivers

“ *'Changing Scotland's relationship with alcohol – a framework for action' identifies that Scotland is drinking too much and this causes excessive harm. Action is stated to be urgently required to reduce overall consumption by making alcohol less easily accessible. This is, as already identified, the rationale for the protecting and improving public health objective and control of availability is a large part of this strategy which also seeks to include price control, prevention and treatment.'*”

### Western Isles example: Co-operating with local partners

“ *The Board will work and appoint a Board Member to work with the Outer Hebrides Alcohol and Drug Partnership and the Outer Hebrides Community Safety Partnership in the Western Isles; the importance of such co-operation is recognised as part of the wider alcohol agenda.'*”



## 11. Presentation and readability

Legislation does not specify how a policy statement should be organised and presented and consequently the 2018 published policy statements vary considerably in structure and length.

### Findings

- ✓ The shortest policy statement is 25 pages.
- ✓ The longest policy statement is 166 pages, including appendices.
- ✓ Some policy statements, but not all, are written in legalistic language and provide excessive detail of administrative processes and procedures, making them somewhat laborious and difficult to read.

The policy statement serves a different purpose to licensing law, statutory guidance and regulations. Ideally, therefore, it should not repeat at length what is already laid out in law, regulations, or guidance. The aim of the policy statement, as envisaged by the Nicholson Committee, is to provide a broad indication of how a licensing board will exercise its discretionary power.

Statutory guidance directs licensing boards to include information on non-policy matters, such as the agreed procedures a board has developed for handling applications. As stated previously, providing this type of information can help to aid transparency and consistency, but providing too much detail about administrative matters can be counterproductive and make policies more difficult to follow. An alternative approach, adopted in a number of the policies, is to set out in an appendix the procedures

followed (e.g. when applications are being considered), or signposting to where this information can be accessed.

Lengthy policy statements written in legalistic and bureaucratic language can be off-putting for some stakeholders and potentially act as a barrier to community engagement in the licensing process. While a number of the policies are concise and fairly easy to read and navigate, a significant number contain convoluted and legalistic language. It is apparent that several of the policies have not been written with the public or lay reader in mind, as illustrated by the following example:

*"If the Board is satisfied that licensed premises are structurally adapted and bone fide used, or intended to be used, for the purpose of habitually providing, for the accommodation of persons frequenting the premises, substantial refreshment to which the supply of alcoholic liquor is ancillary and supplied in that part of the premises usually set apart for the service of such persons as an ancillary to his meal in the evening shall be increased by the addition of one hour at the end thereof on Monday, Tuesday, Wednesday, and Sunday."*

Conversely, some boards have made conscientious efforts to create a policy that is accessible to all. For example, the Edinburgh policy provides definitions of terms used throughout the policy within an appendix, and provides links to statutory provisions, guidance etc. wherever possible. Web-links and signposting similarly have been used well in a number of the policies to direct interested parties to more detailed information where required. In a different example, the Aberdeenshire policy makes use of supplementary policies, symbols and imagery to enable navigation and understanding.

## Policy statement examples

### Clackmannanshire example – Creating a policy for all audiences

“ This policy is intended to be a simple and straightforward statement of policy for all audiences; including the Board in determining applications, licensees, and the wider community.”

### Stirling example – Ensuring information is clear and concise

“ The Board considers that, if its Statement of Policy is to be of value, it must be clear and concise, so that applicants, licence holders, the public and others with an interest can easily understand what is required.”

### East Dunbartonshire example – A focus on strategy

“ This policy statement should be read in conjunction with the Act and all regulations made thereunder. It is designed to be a strategic policy statement, not an operational guide to the legislation.”

### Falkirk example – Addressing areas where the Board can exercise discretion

“ The policy is additional to the statutory requirements of the Act and any Regulations made under it. It does not seek to repeat those requirements but addresses areas where the Board is entitled to exercise discretion.”



# CONCLUSION

The purpose of this review was to identify any emerging trends in licensing approaches, and the extent to which the 2018 Statements of Licensing Policy meet minimum legal requirements and go beyond them to incorporate good practice and innovate approaches.

In some areas, policy statements for 2018 to 2023 show notable progression and development from those published in 2013. Many demonstrate to varying degrees the potential for policy statements to support a more strategic approach to promoting the licensing objectives. These statements attempt to place licensing policy in context, provide explanations for policy positions, refer to supporting evidence, and acknowledge and reflect the views of consultees in the formulation of policy.

Overall, a greater emphasis is being placed on the licensing objectives, and applicants/licensees are increasingly being expected to demonstrate an active and thoughtful engagement with them. Boards are also adopting new approaches to the promotion of objectives, responding to a trend towards purchasing alcohol from off-sales for consumption at home, and an increased awareness of alcohol-related harms occurring in private spheres as well as public. Reference to strategies and plans having relevance to alcohol, at both a national and local level, was fairly common across the policies. Many boards are evidently alert to the broader policy context within which they are operating, and the importance of collaborating with bodies and organisations working towards the promotion of the common objectives.

While many of the policies show notable progression and development, the analysis of statements of licensing policy also suggests that there is scope for action in a number of areas. In particular, the review identified areas where boards appear to have differing interpretations of their legal obligations, and areas of ambiguity where clearer guidance from the Scottish Government could be particularly beneficial.

In relation to overprovision, boards have adopted differing approaches to how overprovision should be assessed, and seem to have different understandings of what is required in order to meet the legal tests that apply. The primary cause of this divergence appears to be the way in which boards have interpreted and understood the concept of 'causal link'. As such, the review indicates that boards may benefit from clear, step-by-step guidelines on the required approach, in order to provide clarity around approaches to overprovision assessments and interpreting the causal link.

# APPENDIX 1

## Membership of Licensing Policy Review Advisory Group

Andrew Fraser, Head of Democratic Services, North Ayrshire Council

Angela Stewart, Health Improvement Officer, NHS Ayrshire & Arran

Elaina Smith, Health Improvement Lead (Alcohol Licensing), Glasgow City HSCP | Renfrewshire HSCP

Sgt Elaine Gordon (and national licensing team colleagues), Police Scotland

Elisabeth Smart, Consultant in Public Health, NHS Highland and Highland ADP

Fiona Stewart, Senior Solicitor (Democratic Services), Aberdeenshire Council

Ian Cox, Highland Licensing Standards Officer, Highland Council

Mairi Millar, Head of Licensing and Democratic Services, Glasgow City Council

Morag Leck, Principal Solicitor (Licensing, Legal and Risk), City of Edinburgh Council

Roger Colkett, Member, Tollcross Community Council

Stuart Wilson, Chair, East Ayrshire Licensing Forum

Tom Veitch, Regulatory Team Leader (Licensing Standards), City of Edinburgh Council

# APPENDIX 2

## Review criteria

Q	Policy development Yes/No/Partially/Unclear
	Did the Board consult with the below stakeholders? <i>(Legal requirement)</i>
1a	(a) the Local Licensing Forum for the Board's area
1b	(b) the relevant health board
1c	(c) the chief constable (Police Scotland)
1d	(d) holders of premises licences and personal licences
1e	(e) persons having functions relating to health, education or social work
1f	(f) young people
1g	(g) person's resident within the Forum's area
2	If 'no' to any of the above, did the Board make reasonable efforts to identify and engage with the persons or bodies concerned? <i>(Required in guidance)</i>
3	Did the Board hold 'open meetings' to afford community members an opportunity to express their views on the formulation of policy? <i>(Recommended good practice in guidance)</i>
4	Does policy include a list of named consultees; making clear whether those listed are individuals and organisations invited to comment or actual respondents? <i>(Recommended by AFS)</i>
5	Are the views of consultees referred to throughout policy statement to show how they have carried weight in the formulation of policy? <i>(Recommended by AFS. Guidance also states that Boards must give appropriate weight to the views of those consulted.)</i>
6	Have consultation responses been made public? <i>(Recommended AFS)</i>
7	Did the Board provide feedback to consultees on how and where consultation views have been taken into account? <i>(Recommended AFS)</i>
	Licensing objectives Yes/No/Partially/Unclear
	Are there clear measures to promote each of the five licensing objectives? <i>(Legal requirement)</i>
8a	(a) preventing crime and disorder
8b	(b) securing public safety
8c	(c) preventing public nuisance
8d	(d) protecting and improving public health
8e	(e) protecting children and young persons from harm

9	Does policy provide the local 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 which have had an impact etc.? <i>(Recommended AFS)</i>
10	Does policy indicate a range of factors licensed premises should take into account in the promotion of each of the licensing objectives, and provide example measures that can be implemented? The connection to the sale of alcohol should be clear. <i>(Recommended AFS)</i>
11	Does policy contain information about what local conditions the Board may consider attaching to a licence; setting out examples of the different types of conditions that could be applied relevant to each of the objectives? <i>(Recommended AFS)</i>
12	Does the policy include an expectation that applicants supply a written statement detailing how they will promote the objectives, and address the five licensing objectives in their operating plan? <i>(Recommended AFS)</i>
<b>Overprovision Yes/No/Partially/Unclear</b>	
13	Does policy include a statement as to the extent to which the Board considers there to be overprovision of licensed premises, or licensed premises of a particular description, in any locality within the Board's area? <i>(Legal requirement)</i>
14	Has the Board had regard to the number and capacity of licensed premises in the locality/localities? <i>(Legal requirement)</i>
15	Has the Board had regard to such other matters as it thinks fit including, in particular, the licensed hours of licensed premises in the locality/localities? <i>(Legal option)</i>
	Did the Board consult with the below stakeholders regarding overprovision? <i>(Legal requirement)</i>
16a	(a) the relevant health board
16b	(b) the chief constable (Police Scotland)
16c	(c) persons representative of holders of premises licences
16d	(d) persons representative of people resident in the locality
17	Did the Board follow the correct procedure/sequence of steps to determine overprovision by: <ol style="list-style-type: none"> <li>1. Scrutinising the provision of licensed premises across the whole of its area and then proceed to determine those localities which it proposes to examine.</li> <li>2. Following this initial assessment and deciding localities upon which to focus, identifying the number of licensed premises, or premises of a particular description, in those localities and determine their capacities.</li> <li>3. Finally, consulting.</li> </ol> <i>(Recommended in Guidance)</i>
18	Is the policy expressed in such a way that there is no doubt as to the reasons for its adoption, including the evidence upon which the Board relied and the material considerations which were taken into account? <i>(Recommended in Guidance)</i>

19	Does the policy avoid setting a numerical quota of licensed premises or premises of a particular description for any locality? <i>(Recommended in Guidance)</i>
20	Has the Board referred to information about the number of premises licences in force, the number of licences of a particular type (supermarket, independent retailer, pub, nightclub etc.); whether this number has increased or decreased over previous years, and extensions/reductions in capacity? <i>(Recommended by AFS)</i>
21	Have alcohol harm statistics been considered in conjunction with density information, as such from the CRESH alcohol outlet density map, to inform the overprovision assessment? <i>(Recommended by AFS)</i>
<b>Context Yes/No/Partially/Unclear</b>	
22	Does the policy make clear that licensing is about regulating the sale of alcohol and premises on which alcohol is sold, and for connected purposes within the terms of the Act? <i>(Recommended in Guidance)</i>
23	Does the policy make clear that licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are no longer on the licensed premises? <i>(Recommended in Guidance)</i>
24	Does the policy contain local contextual information, including local licensing statistics, population size, tourist/visitor numbers, and evidence relating to the licensing objectives? This should be sufficiently detailed to illuminate policy decisions. <i>(Recommended by AFS)</i>
25	Is the policy presented in the context of how the system currently operates and the nature and extent of alcohol problems in an area? <i>(Recommended by AFS)</i>
<b>Licensing hours Yes/No/Partially/Unclear</b>	
26	Does policy include information on the Board's policy on licensing hours? <i>(Recommended in Guidance)</i>
27	Does policy recognise that licensing hours are important not only to individual licensed premises but can have a wider impact for an area? <i>(Recommended in Guidance)</i>
28	Has the Board taken account of the views of the Local Licensing Forum, so that any policy published has the backing and confidence of the local community? <i>(Recommended in Guidance)</i>
29	Does the policy observe the requirement that there is an assumption against routine 24 hour opening of licensed premises? <i>(Legal requirement)</i>  <i>NB: Any application received from a premises wishing to open for 24 hours must only be granted in limited exceptional circumstances. Licensing Boards should consider "exceptional circumstances" to cover special events such as one-off local or national festivals.</i>
30	Will applications for more than 14 hours require further consideration of the effect of granting extra operating hours? <i>(Recommended in Guidance)</i>
31	If licensing hours have been extended, are the reasons for this extension should fully explained, and the impact on the licensing objectives considered? <i>(Recommended by AFS)</i>

<b>Links to other strategies and plans Yes/No/Partially/Unclear</b>	
32	Does the policy provide clear indications of how the licensing board will take into account other matters relating to alcohol when developing policy statements? (e.g.: local crime prevention; community safety strategies; health; planning; transport; tourism; race equality schemes; cultural strategies; and any other plans introduced for the management of town centres and the night-time economy.) <i>(Recommended in Guidance)</i>
33	Does the policy make reference to Scotland's alcohol strategy 'Changing Scotland's relationship with Alcohol a Framework for Action'? <i>(Recommended by AFS)</i>
34	Does the policy reference relevant locality plans e.g. Local Outcome Improvement Plans (LOIPs), the ADP strategic plan, and the strategic plan of the Health and Social Care Partnership (HSCP)? <i>(Recommended by AFS)</i>
35	Does the policy demonstrate/explain how the board will have regard to other local strategies (as opposed to simply stating they will do this)? <i>(Recommended by AFS)</i>
<b>Children's access Yes/No/Partially/Unclear</b>	
36	Does the policy put measures in place to ensure that children admitted to on-licensed premises are not exposed to harmful drinking practices and harmful influences e.g. requiring children to remain under the supervision of an adult, or specifying the parts of premises children are permitted to access? <i>(Recommended by AFS)</i>
37	Does the policy demonstrate an awareness of the influence that being in a licensed premises may have on children's knowledge and attitudes towards alcohol? <i>(Recommended by AFS)</i>
<b>Occasional licences Yes/No/Partially/Unclear</b>	
38	Does the policy provide guidance as to the kinds of occasions that will/will not be considered for the grant of an occasional licence? <i>(Recommended by AFS)</i>
39	Does the policy include a provision whereby a certain number of back-to-back occasional applications from the same applicant will automatically be referred to the Board for a decision? <i>(Recommended by AFS)</i>
40	Does the policy provide statistics on the number of occasional licences granted and granted over consecutive years? <i>(Recommended by AFS)</i>
<b>Avoiding duplication: Transport, tourism, planning and building control Yes/No/Partially/Unclear</b>	
41	Does the policy describe any arrangements agreed between the police and Licensing Standards Officers for reporting views or concerns to the local authority transport committee (or other bodies with responsibility for transport in their area)? <i>(Recommended in Guidance)</i>
42	Does the policy indicate that arrangements have been made for Licensing Boards to receive, when appropriate, reports on the needs of the local tourist economy for the area? <i>(Recommended in Guidance)</i>

43	Does the policy indicate that planning, building control and licensing regimes will be properly managed to avoid duplication and inefficiency? <i>(Recommended in Guidance)</i>
44	Does the policy include a firm commitment to avoid duplication with other regulatory regimes so far as possible? <i>(Recommended in Guidance)</i>
<b>Licensing processes Yes/No/Partially/Unclear</b>	
45	Does the policy include a statement of the agreed procedures the Board has developed for handling applications, objections, representations, delegation of functions and review hearings etc. for premises and personal licences? <i>(Recommended in Guidance)</i>
46	Does the policy include a commitment that the Board will dispose of its business in an open, fair and transparent manner, and that hearings will be conducted in as informal a manner as possible? <i>(Recommended by AFS)</i>
47	Does the policy set out how the Boards processes will provide for transparency and accountability e.g. by having 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? <i>(Recommended by AFS)</i>
48	Does the policy specify how the Board intends to delegate its various licensing functions? <i>(Recommended by AFS)</i>
<b>Communities Yes/No/Partially/Unclear</b>	
49	Does the policy provide local communities with a clear indication of the Licensing Board's policy? <i>(Recommended in Guidance)</i>
50	Does the policy include a focus on community members, and provide detail on the ways that people can get involved, as well as the supports available to them to do so? <i>(Recommended by AFS)</i>
<b>LSOs Yes/No/Partially/Unclear</b>	
51	Does the policy include a general statement on how many Licensing Standards Officers the authority intends to employ, their role and remit, and how they can be contacted? <i>(Recommended in Guidance)</i>
<b>Emerging concerns Yes/No/Partially/Unclear</b>	
52	Does the policy Board set out an approach to online retailers, or specify any conditions that might applied to online retailers?
<b>Transparency and use of evidence Yes/No/Partially/Unclear</b>	
53	Is the evidence used to develop stated policy positions demonstrated and explained in the policy statement, in order that the reasons for particular policy approaches can be understood? <i>(Recommended by AFS)</i>
54	Is the evidence considered by the Licensing Board in formulating their policy positions referenced, or included in an appendix? <i>(Recommended by AFS)</i>

55	Does the policy reflect the views or suggestions made to Licensing Board by the local licensing forum? <i>(Recommended by AFS, and Nicolson Committee)</i>
56	Has any local knowledge used to produce the policy been specified? <i>(Recommended by AFS)</i>
	<b>Presentation and readability Yes/No/Partially/Unclear</b>
57	Is the information provided in the policy accessible and easy to understand e.g. written in plain, accessible language? <i>(Recommended by AFS)</i>
58	Does the policy avoid legalistic and bureaucratic language? <i>(Recommended by AFS)</i>
59	Does the policy avoid repeating at length what is already laid out in law, regulations, or guidance? <i>(Recommended by AFS)</i>
60	Is the length of the policy appropriate (e.g. is it too lengthy or short)? <i>(Recommended by AFS)</i>
	<b>Publication Yes/No/Partially/Unclear</b>
61	Was the policy published on time (by November 2017)? <i>(Legal requirement)</i>
62	Has the Board made copies of the policy available for public inspection free of charge, and publicised the arrangements for access? <i>(Legal requirement)</i>
63	Did the Board publicise the fact that the statement has been published? <i>(Legal requirement)</i>
64	Have easy-read or summary versions of their policy been made available? <i>(Recommended by AFS)</i>

# APPENDIX 3

## List of accompanying online resources

The policy review generated a significant amount of information, which has been developed into a range of resources for licensing stakeholders and other interested parties:

- Resource 1 – Evidence considered by licensing boards to develop policy
- Resource 2 – Measures to promote the licensing objectives
- Resource 3 – Examples of conditions to promote the objectives
- Resource 4 – Overprovision assessments
- Resource 5 – Standard operating hours

**These are all available to download from the AFS website [www.alcohol-focus-scotland.org.uk](http://www.alcohol-focus-scotland.org.uk)**

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