



Licensing Board

Wednesday, 06 September 2023

NOTICE IS HEREBY GIVEN that a Meeting of the **Licensing Board** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Wednesday, 06 September 2023** at **14:00**.

BUSINESS

1. **Sederunt**
2. **Declaration of Member's Interests**
3. **Minute of the meeting held 21 June 2023** **5 - 8**
4. **Application List 6 Sept 2023**
 - 4a. **Greshop Filling Station - 23-00929-PREVMA**
 - 4b. **The Gables Whisky B and B - 23-01124-PREVMA**
 - 4c. **Spar Shop - 23-00982-PREVMA**
5. **Review of Statement of Policy** **9 - 62**

Report by Depute Chief Executive (Economy, Environment and Finance)

GUIDANCE NOTES

* **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

** **Written Questions** - Any Member can put one written question about any relevant and competent business within the specified remits not already on the agenda, to the Chair provided it is received by the Proper Officer or Committee Services by 12 noon two working days prior to the day of the meeting. A copy of any written answer provided by the Chair will be tabled at the start of the relevant section of the meeting. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than 10 minutes after the Council has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he or she can submit it in writing to the Proper Officer who will arrange for a written answer to be provided within 7 working days.

*** **Question Time** - At each ordinary meeting of the Committee ten minutes will be allowed for Members questions when any Member of the Committee can put a question to the Chair on any business within the remit of that Section of the Committee. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than ten minutes after the Committee has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he/she can submit it in writing to the proper officer who will arrange for a written answer to be provided within seven working days.

THE MORAY COUNCIL

Licensing Board

SEDERUNT

Councillor Peter Bloomfield (Chair)
Councillor Sonya Warren (Chair)

Councillor James Allan (Member)
Councillor Neil Cameron (Member)
Councillor Tracy Colyer (Member)
Councillor David Gordon (Member)
Councillor Scott Lawrence (Member)
Councillor Ben Williams (Member)

Clerk Name:	Lindsey Robinson
Clerk Telephone:	07966 120593
Clerk Email:	committee.services@moray.gov.uk

Minute of Meeting of the Licensing Board

Wednesday, 21 June 2023

Council Chambers, Council Office, High Street, Elgin, IV30 1BX

PRESENT

Councillor James Allan, Councillor Peter Bloomfield, Councillor Neil Cameron, Councillor Tracy Colyer, Councillor David Gordon, Councillor Sonya Warren, Councillor Ben Williams

APOLOGIES

Councillor Scott Lawrence

IN ATTENDANCE

Also in attendance at the above meeting were Sean Hoath, Depute Clerk to the Board, Jennifer Smith, Legal Advisor, Lindsey Robinson, Committee Services Officer as clerk to the meeting, all Moray Council and Sergeant Neil Grant, Police Scotland.

1. Chair

Councillor Sonya Warren, as co-Chair of the Licensing Board, chaired the meeting.

2. Declaration of Member's Interests

The Board noted that there were no declarations of Member's interests.

3. Minute of the meeting of the Licensing Board of 3 May 2023

The minutes of the meeting of the Licensing Board held 3 May 2023 were submitted and approved.

4. Keystore - 23 00513 PREVMA

The Depute Clerk to the Board introduced the application as a major variation and advised the Board that all paperwork was in order and there were no objections or representations.

Sergeant Grant confirmed that there was nothing more to add from Police Scotland.

The applicant's representative addressed the Board and responded to the questions asked.

Thereafter, the Chair moved that the variation be granted, and there being no one otherwise minded, the variation was granted.

5. Linn House - 23 00673 PROLIC

The Depute Clerk to the Board introduced the application as a new provisional premises licence and advised the Board that all paperwork was in order. He further advised that the representation submitted by the Licensing Standards Officer had been withdrawn and there were no other representations or objections.

Sergeant Grant confirmed there was nothing more to add from Police Scotland.

The applicant's representative addressed the Board and responded to the questions asked.

Thereafter, the Chair moved that the licence be granted, and there being no one otherwise minded, the licence was granted.

6. Annual Functions Report

A report by the Clerk to the Board sought approval from the Board to publish the draft functions report which incorporated a report from the Licensing Standards Officer.

During consideration Councillor Bloomfield offered his thanks to the officers for the hard work put in to the report.

Thereafter, the Board agreed to:

- i. note the draft annual functions report; and
- ii. instruct the Clerk to publish the agreed final report on the Board's web pages.

7. Review of Statement of Policy

A report by the Clerk to the Board advised the Board of the statutory obligation to develop, consult and publish a policy statement setting out the principles they proposed to apply to the exercise of their functions under the Licensing (Scotland) Act 2005.

The legal advisor introduced the report and advised the Board that there was an error in paragraph 3.6 where the date should be 22 May 2023.

During consideration the Chair stated that the sub-group were impressed with the information they had been provided by officers.

Thereafter, the Board agreed to:

- i. note the statutory obligation to develop, consult upon and publish a statement of licensing policy and note that a revised policy must be in place by 29 November 2023;
- ii. note the progress to date in developing a draft revised policy;
- iii. note the terms of the draft revised policy as reviewed and developed by the Board following full research and informal consultation produced at Appendix 1;

- iv. note that the draft policy requires formal consultation for a period from 23 June 2023 to 14 August 2023 as per the previously agreed timetable; and
- v. make no changes to the draft policy and instructed the Clerk to proceed with formal consultation stage.



REPORT TO: MORAY LICENSING BOARD 6 SEPTEMBER 2023

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF STATEMENT OF POLICY

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 To advise the Board with regard to the statutory obligation to develop, consult on and publish a policy statement setting out the principles they propose to apply to the exercise of their functions under the Licensing (Scotland) Act 2005.
- 1.2 Every Licensing Board must, before the beginning of each relevant period, publish a statement of their policy.
- 1.3 The current period started on the 30 November 2018 and is due to expire on the 29 November 2023. A revised policy statement must be in place and publicised by then.

2. RECOMMENDATION

2.1 It is recommended that the Board:-

(i) Note the statutory obligation to develop, consult upon and publish a statement of licensing policy and note that a revised policy must be in place by 29 November 2023;

(ii) Note the progress to date in developing a draft revised policy;

(iii) Note the terms of the draft revised policy as reviewed and developed by the Board following full research and informal consultation produced at Appendix 1;

(iv) Note the draft policy has been the subject of formal consultation for the period of 23 June 2023 to 14 August 2023 and review the responses to that consultation at Appendix 2;

(v) Make any changes to the draft policy that the Board deems fit following receipt of the consultation responses; and

(vi) Approve a final policy statement for publication.

3. BACKGROUND

- 3.1 The Licensing (Scotland) Act 2005 (“the Act”) requires the Board to publish a Statement of Policy as to how it proposes to exercise its powers under the Act.
- 3.2 The Statement of Policy must be revised in line with the 5 year cycle of local government elections. A revised statement must be in place and publicised within 18 months of each local government election period. The last revised statement was published in November 2018 and a new revised statement is due to be published before the 29 November 2023. The Board may also review the policy at any time within the 5 year period.
- 3.3 The Board is required to consult certain persons/bodies as part of the process of preparing or revising the policy statement. Those are:
- the Local Licensing Forum for the Board's area;
 - if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2 of the Act, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative; and
 - such other persons as the Board thinks appropriate.
- 3.4 Unfortunately despite the best efforts of the licensing service it has not yet been possible to re-establish a Local Licensing Forum. Efforts will continue and in the meantime the Board must rely on the public consultation as well as individual responses from partner services to represent the view of the wider public, normally represented by the Forum.
- 3.5 Informal Consultation and Drafting

In order to inform the policy drafting a large volume of data from numerous sources has been collected and analysed as follows:

- 3.5.1 Research and Information Officer Christopher Dewhurst has analysed data from a great many sources including: the Police; NHS; Moray Alcohol and Drug Partnership; Census; SALSUS Scottish Schools Adolescent Substance use Survey; and other online sources. The resultant report went into some detail to inform and support policy matters, in particular an overprovision assessment. A copy of the report is reproduced within the overprovision assessment.
- 3.5.2 A wide ranging community engagement exercise was carried out through an online survey. The survey was established to ask questions

relating to policy and was distributed through a QR code link to a wide audience across Moray. Assistance was sought from the Council's Community Support Service. The response results were again analysed by Research & Information Officer Suzanne Wilson. The results were reviewed by the Board's Policy Sub Group and taken into account in developing the draft policy for formal consultation.

3.6 The Board's Policy Sub Group met to discuss revision of the policy on 22 May 2023. The key areas for discussion were:

3.6.1 Overprovision. As part of the statement of policy the Board has a duty to publish a determination as to whether it considers that there is an overprovision of licensed premises in its area. Pursuant to that duty the assessment of overprovision has been updated and this is one of the most significant areas within the policy document. The Board's Sub Group concluded from the report that there was no evidence to support a finding of overprovision within Moray.

3.6.2 Children in licensed premises. The public opinion survey asked about children in licensed premises and the majority of respondents who gave an answer indicated approval for current policies.

3.6.3 Hours in general. The Board's Sub Group did not identify any areas for change within the current policy. The public opinion survey asked about licensing hours. The majority of respondents who gave an answer indicated that licensing hours are acceptable as they are, indicating that no change in policy is required. The police had made a suggestion regarding setting a terminal hour of 02:00 for new licence applications to accord with police shifts and resources. The Board's Sub Group noted that it may affect very few applications and commented that rather than making a general policy in this regard it would be appropriate to consider individual applications on their merits.

3.6.4 Social responsibility. The police had made a suggestion for continued emphasis on social responsibility related condition(s) which the Board Sub Group agreed with and resolved to include within the policy.

3.6.5 The Board Sub Group maintained the general position that each application should be judged on its own merits and policy matters should assist and guide in that process rather than policy dictating decision making.

3.6.6 Other areas of guidance within the overall policy have also been updated including the police CCTV guidance and the Board's Scheme of Delegation.

3.7 Following on from the above, the Statement of Policy was revised and the Board considered the revised draft during the meeting of 21 June 2023. Agreeing with the conclusions of the Board's Sub Group the Board agreed

the revised Statement of Policy as drafted should proceed to formal consultation.

- 3.8 It should be noted the Scottish Government has also recently produced updated guidance to Licensing Boards under s.142 of the Licensing (Scotland) Act 2005. The guidance has previously been circulated to members and the Board is under a duty to take the guidance into account when formulating a Statement of Policy. Where the Board chooses to not follow statutory guidance for any reason the Board is obliged to notify the Scottish Government. It is considered that the draft policy complies with guidance except in so far as the number of licensing hours considered reasonable in any 24 hour period. The Board's policy has been 16 hours (instead of 15) since the first policy was created so does not require notification now.

4. FORMAL CONSULTATION

- 4.1 The draft revised Statement of Policy was subjected to a formal consultation period of approximately 7 weeks from the 23 June 2023 to 14 August 2023. Consultation with as wide an audience as possible took place by circulating a relevant link in emails to known contacts and in social media. Assistance was sought from the Council's Community Engagement Service. Paper copies of the draft revised policy statement were available on request and located at certain Council premises for inspection.
- 4.2 The results of the formal consultation are produced at **Appendix 2**. The Board is requested to consider the same and make any final adjustments to the draft revised Statement of Policy as the Board considers necessary or appropriate before proceeding to final approval.
- 4.3 After consideration of the consultation responses received no further changes have been made to the draft Statement of Policy by Licensing Officers. In light of this and the low volume of responses, a further meeting of the Board's Sub Group scheduled in the timetable for production of the policy approved by the Board (per Minute of the Board Meeting held 8 February 2023) was not arranged.
- 4.4 Once approved, the final Statement of Policy will ultimately be published on both the Council's website and at certain Council premises for example, Access Points where the document may be inspected. The publication must be available for inspection by the public free of charge.

5. SUMMARY OF IMPLICATIONS

- (a) **Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Local Outcomes Improvement Plan (LOIP)) in relation to changing our relationship with alcohol where people are healthier and experience fewer harms as a result of alcohol use, a growing, diverse and sustainable economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

(b) Policy and Legal

Legal implications are detailed in the report.

(c) Financial Implications

None.

(d) Risk Implications

None.

(e) Staffing Implications

Consultation and preparation of revised documents has involved a considerable amount of staff time across several services however it is anticipated that no additional resources are required.

(f) Property

None.

(g) Equalities/Socio Economic Impact

As part of the ongoing consultation process this report and the draft policy will be referred to the Council's Equal Opportunities Officer for comment. Previous policies have been assessed for equalities impact and given that there has not been any major changes to policy matters there is not a need for a new assessment simply a review of existing.

(h) Climate Change and Biodiversity Impacts

None.

(i) Consultations

Extensive consultation has taken place before the final policy is presented to the Board for approval.

6. CONCLUSION

- 6.1 It is proposed that the Board note the requirement to develop, consult upon and publish a Statement of Policy as to how it will exercise its functions under the Licensing (Scotland) Act 2005, note the results of the formal consultation, amend the policy as the Board deems necessary or appropriate and instruct the Clerk to proceed to publish the final approved policy.**

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board
Background Papers: There are no background papers.
Ref: SAH

If you need information from the Moray Council in a different language or format, such as Braille, audio tape or large print, please contact:

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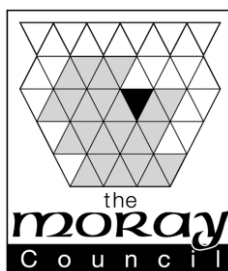
Sean Hoath, Depute Clerk to Moray Licensing
Board, Council Offices, High Street, Elgin, IV30 1BX



0300 123 4561



sean.hoath@moray.gov.uk



**The Moray Licensing Board
Statement of Licensing Policy
for the Licensing (Scotland) Act 2005
Effective Period 30/11/2023 to 29/11/2028**

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This is the Statement of Licensing Policy of the Moray Licensing Board (“the Board”) issued under the Licensing (Scotland) Act 2005 (“the Act”).

The Board recognises that licensing is about regulating the sale of alcohol, the premises on which alcohol is sold, and for connected purposes within the terms of the Act.

1. Mission Statement

The Moray Licensing Board’s aim is to serve the licensing needs of Moray as quickly and efficiently as possible, striking a balance between the business needs of its customers and the interests of the community as a whole in order to protect the public and further the licensing objectives.

To achieve this aim the Board will:

When deciding on policies, reach out to all parts of society and genuinely reflect their interests through the medium of the Local Licensing Forum;

Encourage an open and honest exchange of information in a customer friendly setting and make decisions in a fair and reasoned manner based around agreed and published policies; and

Be fair in all matters and in this context fairness includes having regard to and an interest in equality and diversity in all forms.

2. Overriding Principle

The overriding principle will be that each matter will be judged on its own merits and each person will have the right to make representations on an application or to seek a review of a licence where such provision has been made in the Act. Applicants wishing to persuade the Board to depart from this statement of policy will need to demonstrate, by means of evidence, good reasons for so doing.

3. Introduction

3.1 The Moray Area

Moray has a population of 96,410 with over half of those living in or around the five main centres of Elgin, Forres, Keith, Buckie and Lossiemouth.

Traditionally there has been a reliance on fishing, farming, food, forestry, textiles and whisky. Service industries, including information services, continue to grow. The Army barracks at Kinloss and RAF base at Lossiemouth contribute greatly to local earnings and bring skilled and qualified staff in the area. Main transport links are via Inverness to the west and Aberdeen to the east, both of which have their own air connections.

3.2 Duty to Consult On & Publish a Statement of Policy

Section 6 of the Licensing (Scotland) Act 2005 requires every Licensing Board to prepare and publish a statement of its licensing policy every five years. The policy must also be kept under review during the three year period and revised as necessary.

Before determining this policy, the Board consulted the persons listed in Appendix I. The Board has had regard to the views, **where expressed**, of all those listed and the views were given appropriate weight when the policy was determined.

3.3 The Board

The Board is made up of **8** members of the Moray Council with a quorum of 5. The Board is supported by a Clerk, Depute Clerks and administrative support staff. From time to time, the Board may also form sub-committee(s) to perform certain functions.

For details of the Board's scheme of delegation see paragraph 11 below.

3.4 Contacts

The Clerk to the Board is Alasdair McEachan however for daily enquiries the Depute Clerk is Sean Hoath:

Moray Licensing Board
Council Offices
High Street
Elgin
IV30 1BX
0300 123 4561
sean.hoath@moray.gov.uk

3.5 The Forum

The Moray Council has established a Local Licensing Forum ("the Forum") for the area of Moray. The Forum is representative of the community and will advise the Board on general matters of policy only. The Forum will not advise on or discuss individual cases.

Members of the Forum include (where relevant*) persons resident within the Moray area, holders of premises and personal licenses and persons having functions relating to health, education and social work. **The Forum is expected to meet at least four (4) times per year and once a year with the Board.**

The Board will have regard to the views of the Forum and will give reasons should it decide to depart from those views.

**The business of the Forum is not invalidated by the absence of one or more such persons.*

3.6 Other Responsible Authorities

In formulating this statement of policy the Board has had regard to the views, if any, expressed by the following bodies:

- Planning and Building Standards Departments
- Environmental Services Department
- The Police
- The Fire Authority
- The NHS
- The Moray Local Licensing Forum
- The Scottish Tourist Board

3.7 Tourism

The Moray area is well known for its whisky trails and coastal scenery and as such is a popular tourist destination. 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.

3.8 Transport

Main transport links are via Inverness to the west and Aberdeen to the east, both of which have their own air connections.

Guidance requires this policy statement to identify any arrangement between the LSO and the Police for reporting views/concerns to the local Transport Committee. There are currently no such arrangements.

4. Objectives

4.1 Licensing Objectives

The Board will seek to promote the following 5 licensing objectives set out in the Act within this statement of policy and its decision making processes:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children and young persons from harm

4.2 Measures to Promote the Objectives

Set out below are general measures that the Board has decided will help to promote the five licensing objectives. The Board has found it helpful to ask other public bodies for sector specific guidance to include with this statement. Where such additional guidance has been made available, it can be found in the Appendices.

It should be noted that Licensing law is not the primary mechanism for the control of nuisance and antisocial behaviour by individuals once they are no longer on the licensed premises and beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned.

5. General Communication

5.1 Communication

In general communication will be accepted by letter sent by post or document exchange (to the addresses above) or by electronic mail addressed to licensing@moray.gov.uk.

All communication should be addressed to the Clerk to the Moray Licensing Board.

If a party has made an objection / representation and wishes to withdraw the same then that party should indicate this to the Clerk of the Board in writing no later than 7 days before the hearing. If all objections / representations are withdrawn then, in some cases, the hearing may be cancelled and the application may be considered under delegated powers. Otherwise the application may be considered as unopposed.

If an objection / representation is not withdrawn and so must be heard then if the Board decides to reject the notice of objection / representation as frivolous or vexatious, the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

Except where otherwise provided, a requirement to give a notice (or to notify) is a requirement to give notice in writing; and for that purpose, a message sent by electronic mail must be treated as a notice given in writing.

5.2 Information Sharing

As part of application processing and/or pursuant to promoting the licensing objectives information may be exchanged with and/or sought from partner organisations such as those detailed in paragraph 8.1 below.

5.3 FOI Publication Scheme

See section 12.2 below

5.4 Data Protection

Licensing applications contain a lot of data, some of which may be personal data or event sensitive personal data.

Personal data is anything relating to an individual who can be identified from the data or a combination of the data and other information held.

Sensitive personal data is defined by reference to a list of particular information including, amongst other things, details of past convictions for offences.

The data controller is the Moray Council.

Please see the Moray Council's website http://www.moray.gov.uk/moray_standard/page_90533.html for details of the licensing privacy notice.

The data controller exercises functions under the Licensing (Scotland) Act 2005, the Gambling Act 2005 and associated legislation for the purposes of regulation, the administration of justice and other functions of a public nature in the interest of the public.

5.5 Irregularities / Mistakes

The Board may disregard any irregularity resulting from a failure to comply with a procedural provision where that irregularity comes to its attention prior to it making a determination of the matter in hand.

If the Board considers that any person may have been prejudiced by any such irregularity, it must take such steps that it considers necessary to remedy the consequences of the irregularity, before reaching its determination.

The Board may correct clerical mistakes in any document recording a determination of the Board, or errors arising in such a document from an accidental slip or omission.

5.6 Translation

Please see the start of this policy for statements regarding translation services. Translations are available upon request.

6. General Considerations

6.1 Social Responsibility

The Moray Licensing Board fully supports the idea of social responsibility in relation to licensed premises. The Board therefore considers it appropriate and proportionate to include a condition on all licences as follows:

"The licence holder must have in place a duty of care policy to ensure a standard approach is taken when any patron appears to be displaying signs of excessive

intoxication. The purpose of this policy is to reduce vulnerability through intoxication, however attained.

All staff must have additional training in identifying signs of excessive intoxication and an enhanced awareness of vulnerability through intoxication. This should include use of material such as the 'Who are You' video (whoareyou.nz), **bystander training** or similar.

All related training should be recorded and such records available for inspection by Licensing Standards Officers."

6.2 Children in Licensed Premises

It is a licensing objective that children and young people should be protected from harm. The Act defines "a child" as a person under the age of 16. A "young person" means a person aged 16 or 17. The protection of children and young persons from harm is an important consideration for the Board and the Board will welcome measures from applicants to increase accessibility for families, where appropriate, including provision of facilities suitable for children and young persons.

In general applicants are free to choose whether to allow access for children and young persons including the terms of such access, the ages to be allowed, the times for access and the places to which access will be granted. Detailed arrangements should be made very clear in the operating plan.

The Board will generally make a site visit to inspect the premises both in respect of new premises licence applications as well as applications to vary the provisions for access for children/young persons.

The Board has decided that it will not automatically add conditions to a premises or occasional licence where children and young persons are to be allowed access.

Instead, once particular area(s) have been identified the onus will be on applicants to demonstrate to the Board that those areas are suitable for children and/or young persons. Applicants should consider doing this through the medium of the risk assessment. This again emphasises the importance of applicants completing the risk assessment document. If the pro-forma document itself is felt to be inadequate then applicants are free to supplement the same with as much information as possible.

The Board will take into account the local knowledge of members about particular premises and may call applicants to a hearing to be questioned on the suitability of access for children and young persons.

The Board will naturally be more concerned about children and young persons potentially entering a vertical drinking establishment. In traditional "bar" type premises or areas the general atmosphere is less likely to be suitable for under 18's as adults tend not to moderate their behaviour. Problem indicators would include:

- General culture of drinking and/or vertical drinking
- Absence of substantial food
- General absence of tables/chairs
- TV screens e.g. televised sport
- Pub games like pool and darts that are not separated (e.g. in another room) from the main bar area
- General adult atmosphere or areas e.g. unsuitable language and/or behaviour

In addition the Board is concerned with ensuring that wherever possible children and young persons are not required to pass through unsuitable areas in order to reach the toilets.

Of less concern will be those premises that establish a family friendly atmosphere with facilities designed to cater for families, including children and young persons. This may include areas such as:

- Areas set aside specifically for use by families or children or young persons (note such areas should be identified on the layout plan in accordance with Regulations)
- Dining areas
- Designated function halls
- Bars with more of a traditional lounge bar atmosphere e.g. tables, chairs, carpets

Whether or not designated play areas exist, where applicants detail areas to which they intend to allow access for children and young persons it would be helpful for applicants to detail the sorts of facilities that will be available in those areas.

Applicants should pay particular attention to matters set out below when addressing the suitability of areas for children/young persons:

- Times for access. Suitability will be derived from a combination of information detailed in the operating plan. An essential element of this is the times as to when children/young people will be allowed access. Times will be examined in detail by the Board and times will need to be justifiable in terms of suitability. Traditionally 8:00pm (20:00) has been considered as a suitable terminal hour for younger children. However the Board recognises that changes in lifestyles and attitudes mean it is more common for families to eat later in the evening. It is noted that tourists are often accustomed to later dining hours. Therefore the Board considers 8pm to be unduly restrictive and is of the opinion that 10pm (22:00) is a suitable terminal hour reflecting liberal international practice and the wish to promote family and family friendly environments and eating and drinking cultures.
- The Board recognises that certain activities like functions may justify later access. Particular attention will be paid to applications that appear to request persistent late night access for under 18s.
- Applicants should consider the suitability of children having access to gaming machines. Gambling is regulated by the Gambling Act 2005 and for gaming purposes children are considered to be all under 18s. Under that Act applicants have a duty under the Gambling Act 2005 to ensure that children do not access gaming machines above category D (as specified in the Gambling Act 2005). Licensed premises may have both Category C and Category D gaming machines and applicants should consider siting Category C machines (or possibly all machines) away from family-friendly areas, especially where no, or no satisfactory, measures in place to deny children or young persons access.
- The Board recognises that it is becoming more common for families to want to play games such as pool together. The Board is of the opinion that pool (or similar) tables may be suitable for children or young persons to access under the right circumstances/conditions. Again applicants should consider the proximity of any bar area and the potential for vertical drinking creating an unsuitable atmosphere. Applicants should also address in the risk assessment the desirability of moving tables away from such areas or at least decommissioning them at certain times.
- Dart boards or any such similar game(s) equipment are generally not suitable to be deployed and used in areas of licensed premises at times when children may have access. Where applicants wish to do so then they should address the issues in the risk assessment. The Board considers that access for young people to these facilities should be explained in the risk assessment. This will be particularly

true where young people may be taking part in darts leagues where the presence of adults in a vertical drinking atmosphere may render access unsuitable.

- Families are often welcomed into licensed premises for the purpose of dining and a dining room will generally be one of the more suitable areas for access for children and young persons. Where catering facilities are offered applicants should consider the desirability of making children's portions and/or specific food suitable for children available.

To address the above, where the Board considers that inclusion of a particular item within child-friendly areas is not consistent with the licensing objectives and where it appears necessary to the Board to promote the licensing objective of protecting children from harm, in areas and at times to which children have access to licensed premises the Board may consider adding conditions as follows:-

- Category C machines (or possible all gaming machines) should be cited away from child-friendly areas and measures should be put in place to the satisfaction of the Moray Licensing Board to ensure that children and young persons are denied access.
- Pool tables / dart boards / similar game(s) or equipment should be moved away from areas where children and/or young persons have access and/or measures should be put in place to the satisfaction of the Moray Licensing Board to ensure that children and/or young persons are denied access.
- Children's portions and/or specific food suitable for children should be made available at times when children and/or young persons are present and catering facilities are on offer.

Each case must be judged on its own merits. Therefore this list is not, and cannot, be an exhaustive one. The Board reserves the right to add further conditions in specific cases.

6.3 Baby changing

It is a mandatory condition attached to all premises licences where alcohol is sold for consumption on the premises and to which children under the age of 5 are to be admitted that there must be facilities for baby changing which are to be accessible to all.

There is no definition of what constitutes baby changing facilities. Usually customers would expect to have somewhere to go as a safe environment to change a baby. Many premises have facilities incorporated into an accessible toilet. Alternatively there are specially designed, portable baby changing tables / trolleys.

Members' Clubs are exempt from this premises licence condition.

6.4 Outdoor Areas

Outdoor areas will normally form part of the licensed area of the premises and should be clearly defined on the layout plan. This is essential in places that are the subject of a byelaw against drinking in public places.

Where an outdoor area is not part of the licensed area of the premises then it can only be used for the consumption of alcohol where the premises has the facility to sell alcohol for consumption off the premises and where no byelaw is in place.

The Moray Council Environmental Health section can provide advice regarding smoking shelters.

Use of pavement areas for outdoor drinking facilities is subject to permission from the Council's Roads department, which should be obtained separately. Particularly for

pavement areas, applicants should give consideration to the following matters and where appropriate some or all of these matters may be the subject of conditions on the licence:

- the outside area will be delineated for patrons in accordance with the layout plan, this may include the use of barriers
- use of the outside area for consuming food and alcohol will normally be subject to patrons being seated and therefore use will be limited by the number of seats available
- the maximum number of seats available should be stated so as to ensure that no patron strays outside of the licensed area
- patrons should not normally be allowed to take any drinks (including alcohol) or food outside the premises (which expression includes the outside area) other than off sales sold on the premises
- the licence holder will provide adequate signage in appropriate places to advise patrons of the terms of use of the outside area and particularly to warn patrons that consumption of alcohol outside of the premises (inclusive of the outside area) will be an offence if there is a byelaw against drinking in public places
- the terminal hour for the consumption of food and alcohol within the outside area shall generally be 22:00 (10:00pm) after which food and alcohol will not be allowed in the outside area
- consideration should be given as to when children and young persons will be allowed in the outside area –up to 22:00 (10:00pm)
- the tables, chairs and associated furniture/removeable items will be removed from the outside area immediately following closure of the outside area and the area will be cleared by 22:30 (10:30pm). Tables, chairs and associated furniture/removeable items will not be placed outside before 08:30 (8:30am)
- the outside area will be suitably monitored (along with the remainder of the premises) at all times it is in use whether for eating, drinking or smoking for example by the use of CCTV, and staff (including door staff whether employed or contracted for) for compliance with all conditions
- the outside area should be controlled and reasonable efforts must be made so as to minimise potential noise and/or light nuisance to neighbours and no music amplified or otherwise will be permitted in the outside area
- the premises will provide suitable receptacle(s) for patrons to dispose of rubbish, particularly that related to smoking, and will ensure that the outside area remains clean and tidy at all times

6.5 Members Clubs

Members Clubs that are qualifying clubs enjoy certain exemptions/privileges. Those include reduced fees, no requirement to have a premises manager etc.

For a club to qualify, its constitution must contain a whole list of matters as set out in the Clubs Regulations. In turn the club must comply with its constitution. It is also an essential element of any Members Club/Voluntary Organisation that it is established and run otherwise than for financial gain. A club must not be conducted for the purpose of making a profit.

Clubs will be asked to provide a copy of their constitution with any application. Clubs should also keep the Board advised of changes to the constitution.

If all the required provisions are not in the constitution, then it does not prevent the club being a club or even holding a licence. It will mean, however, that all the exemptions like reduced fees will be lost. Similarly, if the provisions are in the constitution but are not being complied with then again it will mean the loss of all privileges or even the loss of the licence itself if the Moray Licensing Board decides to hold a review hearing.

Two key requirements for a qualifying club mean that anyone who is to be supplied with alcohol on the premises must be:

- a member or genuine guest of a member or a member of another qualifying club; AND
- for guests properly signed in.

There is no obligation to sign in persons who are not supplied with alcohol but in practical terms it would seem easier just to sign everyone in. Otherwise clubs will need to be very sure that such persons will not be supplied with alcohol. It is also the case that where a non member is to be supplied with alcohol then:

- he/she must be on the premises at the invitation of a member and must be accompanied by that member; AND
- he/she must be signed in.

There is no definite answer to the question of, how many people can be signed in? The answer may be stated in the club's constitution. If not then the natural limit will be the number of people that the member can reasonably accompany. It would not generally be acceptable, for example, for members to sign a blank visitors book and leave anyone and everyone to simply sign their name underneath. If a member is inviting a guest then the member should really know everyone who is there at his/her invitation.

Another privilege enjoyed by clubs is the ability to apply for an occasional licence, even where a premise licence is currently in force. This is a very important entitlement because the normal members and guests and signing in rules are suspended when an occasional licence is in force. This means that a club can admit members of the public in general and can supply them with alcohol without having to sign them in, by obtaining an occasional licence for that particular occasion/event.

By virtue of it being a very generous provision, clubs are limited in the number of occasional licences that can be obtained. So the entitlement must be used but must also be used wisely. The limit is:

- not more than 4 occasional licenses each having effect for a period of 4 days or more; and
- not more than 12 occasional licences each having effect for a period of less than 4 days

provided that, in any period of 12 months, the total number of days does not exceed 56.

6.6 Hours

The overriding principle is that each application will be considered on its individual merits.

The Board expects that customers be given adequate notice about opening hours in general and advanced warning of last orders and time. This may be in the form of signage as well as announcements. In terms of the adequacy of an advanced warning, what is adequate will vary with circumstances but applicants may consider 30 minutes as reasonable in this regard.

To assist applicants the Board has given the following general indications with regard to opening hours:

6.6.1 General Operating Hours

Licensed hours must be detailed in the operating plan of every premises.

The Board will generally consider applications for up to 15 hours in any 24 hour period as being reasonable. Any application for licensed hours for more than 15 hours will be the subject of additional scrutiny and applicants may be expected to justify their requests.

The Board does not wish to unnecessarily inhibit the development of a thriving and safe evening and night-time local economy, which is important for investment, employment, and tourism.

6.6.2 Off Sale Hours

The Board must refuse an application for off sales that would result in alcohol being sold before 10.00 a.m., after 10.00 p.m. or both on any day.

However, this does not automatically mean that applicants requesting an off-sales licence for the whole of the time from 10.00 a.m. to 10.00 p.m. will automatically be granted the same. The Board will still have regard to the licensing objectives.

6.6.3 24 Hour Opening

The Board observes the presumption against routine 24 hour opening of licensed premises. The Licensing Board must refuse the application unless they are satisfied that there are exceptional circumstances for justification.

In this context limited exceptional circumstances will only be justified by a specific event of very high local, national or international importance.

6.6.4 Early and Late opening Hours

6.6.4.1 Early Opening

Early opening will be considered as any premises that wish to open before 11:00 a.m. Where such an application is made the Board is of the opinion that it would be more consistent with the licensing objectives for the operational emphasis to be on food or tourism as opposed to vertical drinking establishments. The Board will expect applicants to demonstrate measures that promote the licensing objectives. The Board further considers that it would be difficult for any application to justify the sale of alcohol prior to 9:00 a.m. unless there are exceptional circumstances.

6.6.4.2 Late Opening

The national position is that late opening will be considered as any premises that wish to remain open after 1:00 a.m. Such premises will be subject to mandatory late opening conditions and the Board may attach further conditions. The later a premises wishes to open, the more the Board will expect applicants to demonstrate measures that promote the licensing objectives and justify the request for late hours. The Board further considers that it would be difficult for any application to justify the sale of alcohol after 3:00 a.m. unless there are exceptional circumstances.

The Board will continue to support local Schemes such as Pub Watch, Safer City Centre Initiatives, Door Safe Schemes and **Best Bar None**. The Board recognises that Voluntary Schemes amongst licensees can reduce public disorder and nuisance offences taking place within local communities. Where appropriate, the Board will encourage membership of such Schemes.

6.6.5 Curfew

Certain late opening premises have traditionally been subject to a curfew in Moray. The curfew is designed to prevent customers intending to drink past 1:30 a.m. from drifting between premises and/or remaining on the streets to possibly be the source of antisocial behaviour, public nuisance or public disturbance. It also staggers leaving times for certain premises thus reducing the overall numbers of people on the streets at any one time.

The Board considers that the curfew is no longer an effective and proportionate means of promoting licensing objectives and such a condition should not automatically be attached to any premises licence. The Board may consider such a condition (in accordance with wording below) to be appropriate in response to a particular application or set of circumstances, however it will no longer be automatically added to licences.

It is understood that applicants can take their own view on the use of curfews in respect of their own premises and set curfews as they consider appropriate.

This is a sample of the curfew condition:

Curfew

The premises will be subject to a curfew at any time when the premises will be open after 01:30 (1.30am), including seasonal variations. A curfew will apply at 00:30 (12.30am) such that the premises must deny entry to patrons (except residents) after 00:30, including re-entry to those patrons (except residents) that leave the licensed area of the premises for any reason after 00:30.

6.6.6 Seasonal Hours

This section should include details of all hours in respect of regular/special events that can be anticipated.

Christmas and New Year are obviously special occasions but given that they occur every year on the same dates allowance should be made for opening hours within operating plans.

The Board issues Christmas and New Year guideline hours and applicants that include reference to those guideline hours within their operating plan will be allowed to trade to those hours if they wish.

Licensing hours required outside of those detailed in the operating plan would have to be the subject of an extended hours application.

6.6.7 Drinking Up

Drinking up time is 15 minutes under normal circumstances and 30 minutes where alcohol was sold for consumption with a meal.

Premises should consider a winding down policy and measures within such a policy to promote the licensing objectives through effective dispersal of patrons.

6.6.8 General Extension of Hours

On occasions of national, local or possibly international significance the Board has the authority to apply a general extension of licensing hours.

The Board will notify those affected of the granting of any general extension of hours. Such grants will always be posted on the Licensing Section of the Moray Council's website. In addition, in respect of either sector or local specific grants, the Board will notify premises individually. The Board may also publish details in local newspapers as it sees fit.

6.6.9 Duty to Trade

The information provided in operating plans will enable the Board and the LSO to determine if a breach of the operating plan and/or the licence conditions has occurred. Where this is the case the LSO or the Board may initiate a review of the licence.

Applicants should note that the Act allows anyone to apply to the Board for a review of the licence on any of the grounds set out in section 36 of the Act.

Applicants should not, for example, grossly overestimate their trading hours “just in case” they may be required.

The Board recognises that there may be circumstances that would reasonably cause a temporary reduction in the trading hours given in the operating plan. Such circumstance will not ordinarily be considered a breach of the operating plan.

The Board also recognises the need for businesses, especially in a rural environment, to remain economically viable when faced with a lack of demand. Licensed premises may wish to close early owing to a lack of customers and, therefore, not trade for their full complement of licensed trading hours. In this regard there is not considered to be a duty to trade and this will not ordinarily be treated as a breach of the operating plan.

However, in considering such issues, the Board will give particular attention to whether these “un-used” hours are preventing new entrants into the market. If so, it may be appropriate to review and/or amend the operating plan of the premises concerned.

6.6.10 British Summertime (BST)

Section 66 of the Licensing (Scotland) Act 2005 states that the beginning or, as the case may be, ending of BST is to be disregarded for the purpose of determining the time at which that period of licensed hours ends and, accordingly, the period ends at the time it would have ended had BST not begun or ended.

Traditionally the time for changes to the clock is 1:00 a.m. Greenwich Mean Time (GMT).

Start of BST

On such date as is prescribed as the date in the Spring when the clocks go forward to mark the change over to BST at 1:00 a.m. GMT clocks go forward to 2:00 a.m. BST.

Licensees who enjoy licensing hours beyond 1:00 a.m. GMT will be judged by reference to the number of hours after midnight when their operating plan authorises them to be open rather than by the actual time shown on the clock. This will mean that licensees who enjoy hours until 3:00 a.m. will have 3 hours beyond midnight. The clocks will move forward at 1:00 a.m. to 2:00 a.m. At that point the terminal hour will be when the clock shows 4:00 a.m. (assuming immediate alteration of the clock).

End of BST

On such date as prescribed as the date in the Autumn when the clocks go back to mark the changeover from BST back to GMT at 2:00 a.m. BST clocks go back to 1:00 a.m. GMT.

Licensees who enjoy licensing hours beyond 1:00 a.m. will similarly close according to the number of hours after midnight which they are authorised by the Licensing Board to be open rather than the actual time shown on the clock. Therefore premises licensed until 3:00 a.m. will close 3 hours after midnight, when the clock should again show 2:00 a.m. (assuming immediate alteration of the clock).

Any Licensee who enjoys hours up until 1.00 a.m. is unaffected by the change of clocks. The Board does not accept that those licensed until 1.00 a.m. gain an additional hour on the changeover to British Wintertime.

6.7 Byelaws

The Moray Council has introduced bye-laws prohibiting the consumption of alcohol in designated public places. These bye-laws in terms of the Local Government (Scotland) Act 1973 currently apply to Elgin, Forres, Buckie, Keith and Lossiemouth.

The effect of the bye-laws is that any person who consumes alcoholic liquor in a designated public place shall be guilty of an offence. Licensed premises and Registered Clubs are exempt from the bye-laws. The bye-laws also state that they shall not have effect on 31 December from 6:00 p.m. until the end of that day and on 1 January until 6:00 a.m.

As licensed premises are exempt from any byelaw it is in the interests of applicants to take care to clearly mark on layout plans where external areas are to be counted as part of the licensed premises, for the purpose of outdoor drinking. Applicants within areas affected by a bye-law should also take all reasonable steps to exercise control over the outside area, notify customers of the existence of the bye-law and the obligation not to consume alcohol in public.

6.8 Underage Drinking

The Board strongly supports the use of the Access Moray Young Persons Card, which bears the Proof of Age Standards Scheme logo (PASS logo) available free to all young people under 26. To protect children and young persons and avoid crime the Board strongly urges licence holders and their staff to require the production of valid identification cards on a “no ID – no sale” basis.

Licensees are therefore strongly urged to practice due diligence to avoid underage sales. Due diligence will include:

- complying with the requirement to have an identification/challenge policy, i.e. to require ID if a customer appears under 25. This should also include clear signage to leave customers in no doubt as to the policy;
- training staff in the policy;
- ensuring that staff and customers comply with the policy; and
- keeping records regarding compliance including refusals.

This list is only illustrative and is not exhaustive.

6.9 Irresponsible Promotions

Protecting and improving public health is a licensing objective and the Board will view actions that encourage binge drinking as a serious matter.

Measures to tackle irresponsible drinks promotions will be welcomed.

The Board will require clear evidence linking the sale of alcohol to an inducement to the consumer to immediately drink to excess before a promotion will be considered as possibly irresponsible.

Initially complaints should be dealt with at a local level by the Licensing Standards Officer, who will mediate between the licensee and the Board to agree whether or not any promotion breached the mandatory licence conditions. In most cases it is hoped that these cases can be resolved in discussion between the LSO and the licensee without any sanctions being applied by the Board.

However, where the Board feels that further action is appropriate, it may instigate a review hearing to determine what action, if any, needed to be taken against the licensee concerned.

6.10 Overprovision

Section 7 of the Licensing (Scotland) Act 2005 requires each Licensing Board to include in its policy statement: a statement as to the extent to which the Board considers there to be an overprovision of:-

- (a) licensed premises, or
- (b) licensed premises of a particular description, in any locality within the Board's area.

The Moray Licensing Board has undertaken a recent assessment of overprovision and a copy of that assessment is included at Appendix II. The Board has also considered the report of Alcohol Focus Scotland, April 2018 "Alcohol Outlet Availability and Harm in Moray".

For reasons given within the assessment it has not been possible to identify any locality within Moray where data supports a robust and compelling argument that the prevalence of licensed premises has reached, or is close to reaching, saturation point.

Therefore there is no presumption against the granting of new licences within any locality within Moray. Nevertheless, the Moray Licensing Board recognises that each application for a premises licence is still to be judged on its own merits.

7 Licensing Standards Officer (LSO)

The LSO for the Moray area can be contacted at The Moray Council, Council Offices, High Street, Elgin IV30 1BX or via licStandardsOfficers@moray.gov.uk. **There is one full-time LSO whose remit includes advice, guidance, mediation and compliance.**

The LSO cannot provide legal advice on particular issues and advice should be sought from a solicitor.

The Board will work with the Police, LSO, Fire Authority, and other Council departments for the targeting of agreed problem and high-risk premises. Lower risk premises which are well managed and well maintained will be subject to less regular inspections.

8 Other Regulation

The Moray Licensing Board will not be used as an enforcement agency for other regulatory regimes.

Accordingly the Board will avoid, so far as possible, duplicating the roles of other regulatory regimes. 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 and beyond the direct control of the licence holder. The Board encourages applicants to consult with other relevant bodies when preparing their operating plans and any risk assessment.

Responsibility lies with applicants to comply with other regulatory regimes provided for by other Acts and Regulations. Applicants should make themselves aware of the requirements of other regimes and enforcement bodies and comply with the same. Complainants that come to the Moray Licensing Board regarding matters that could more properly be dealt with by other enforcement bodies will automatically be directed to the appropriate person(s).

Applicants should also be mindful of the duty of Social Responsibility described above.

The Board has a duty to promote the licensing objectives and, in this regard, will view certain matters as particularly serious and as having an impact on the regulation of the sale of alcohol, the premises on which alcohol is sold and connected purposes within the terms of the Licensing (Scotland) Act 2005. Examples of particularly serious matters are included at Appendix III.

8.1 Partners

8.1.1 Police

The Board has asked the Police as a responsible authority to prepare a note on possible scenarios relating to licensed premises for door stewards to consider, for example search and seizure procedures.

The Moray Council and the police also operate in partnership in respect of local CCTV. Guidance on the specification and use of CCTV appears on the Licensing Board's website pages and is subject to updating from time to time. **A copy is provided at Appendix IV.**

Both of these documents have been produced on the Moray Council website and should be referred to by applicants.

8.1.2 Environmental

The Board has also asked The Moray Council Environmental Services Department as a responsible authority to prepare useful information and applicants will find at Appendix V a guide to preventing noise nuisance from licensed premises.

8.1.3 Fire

The Board is supportive of fire safety within licensed premises therefore where appropriate will include information about fire safety requirements to inform and encourage operators to comply with legislation.

8.2 Relationships with other Regulatory Regimes

Matters raised in relation to any application must be on relevant grounds and must relate to the sale of alcohol. Inevitably there will be a cross over between the licensing objectives and matters relevant to other regulatory regimes e.g. noise, planning, smoking, unsafe premises, fire prevention etc. Matters under these headings all relate to the licensing objectives. However they are also covered by other legislation and other regulators.

Where it is considered that objectors or representers are merely using the licensing system to their own ends rather than addressing the licensing objectives then matters raised may be rejected as vexatious.

8.2.1 Short-term Let Licence Accommodation

When applying for a premises licence in respect of short-term let licence accommodation, applicants are required to demonstrate their corporate and social responsibility and how the sale of alcohol will be supervised. The Board may seek additional information to demonstrate how the sale of alcohol will be supervised within short-term let licenced accommodation.

8.3 Extra Information for Partner Organisations

Please refer to section 10.1.1 below.

Where further information is sought then applicants are strongly advised to provide the same with their application. In the absence of information that may be required by consultees/partner organisations to meaningfully comment the application may be delayed by objections/representations that will need to be addressed (by additional information) before the application can proceed.

9 Types of Licence & Applications

For application processes please see section 10 below.

There are several types of Licenses and Applications:

9.1 Premises

The operating plan should set out clearly the applicant's proposals including the activities that would be undertaken on the premises, proposed opening hours and their policy in relation to access for children.

The Moray Licensing Board will welcome accessibility for families including children and facilities suitable to cater for children.

The Board should be able to determine with certainty the kind of operation which would be permitted in terms of the licence, and be assured that the premises will continue to operate on that basis once a licence is granted.

9.2 Personal Licence

Every premises will require one or more personal licence holders.

The personal licence is intended to ensure that anyone managing premises is suitably capable of doing so. Whilst the Act requires every sale to be "authorised" by a personal licence holder, such authorisation can be a general one.

The Board will expect the terms of any general authorisation for the sale of alcohol to be specific, available for inspection by any LSO, brought to the attention of and signed by all parties involved and enforced by the premises manager.

The Board does not consider that a personal licence holder is required to be on the premises at all times. However where a personal licence holder is not present they are not removed from all responsibility. This should be addressed in the terms of the authorisation

9.3 Occasional Licence

An occasional licence will be subject to the mandatory conditions as set out in Schedule 4 of the Licensing (Scotland) Act 2005. An occasional licence may also be subject to the following:

- The Board's condition regarding a curfew if appropriate for which see section 6.1.5 above
- The mandatory condition regarding first aid as contained in Schedule 3 to the Licensing (Scotland) Act 2005
 - The Board will take any consultee response into account when granting a licence and before making a final decision may seek agreement from the applicant as to whether the applicant agrees certain conditions. The Board may publish a list of possible conditions to which the licence may be subject from time to time.
- NB where stewards are required applicants are advised to review the requirements for stewards to have appropriate SIA registration at <https://www.gov.uk/government/organisations/security-industry-authority>

The following matters are also relevant to occasional licences:

- Occasional licenses authorise the sale of alcohol only and the issue of a licence is not to be taken as any endorsement of the event or other arrangements e.g. those related to building standards, fire safety or food hygiene. It is always up to the organisers to undertake their own risk assessments and organisers remain

responsible for public safety. Licences may be issued with a disclaimer to that effect.

9.4 EU Services Directive & Electronic Applications

Applications can be accepted in electronic format, paper format or a combination of the two.

10 Applications Processes

10.1 General Pre Application Matters

10.1.1 Information & Documents Required

10.1.1.1 Risk Assessment

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.

The Board recognises that applicants best understand their business and it is for applicants to decide what is appropriate in each case.

If a risk assessment is not completed then applicants should be demonstrating how these matters have been addressed through the operating plan provided.

Applicants are particularly directed towards the section regarding children in licensed premises (at 6.2) as the risk assessment will be particularly important in this regard.

The pro-forma risk assessment can be found at Appendix VI.

10.1.1.2 Operating Plan

The operating plan for the premises should comply with regulations. Every operating plan must set out clearly the applicant's proposals including the activities that would be undertaken on the premises, proposed opening hours and their policy in relation to access for children.

Operating plans will encourage a flexible licensing regime. They must make clear to the Board how the premises are to be run, including full details of all activities to be undertaken on the premises and the times they will be undertaken. This will include seasonal variations. Operating plans must be provided with each application in a prescribed format and should be particular to each premises and not completed in general terms.

The operating plan should include detailed information and, in turn, the information provided will enable the Board to make an informed decision and later determine if a breach of the operating plan and/or the licence conditions has occurred.

The Board recognises that it is not always possible for licence holders to predict customer demand and requirements. However a balance must be struck between vague references to potential activities and definite details of actual activities. Matters that cannot be predicted when formulating an operating plan can be the subject of an

occasional license, an occasional extension or, for regular activities, a variation to the operating plan.

Where a material breach of the operating plan has occurred, the LSO or the Board may initiate a review of the licence. The Act allows anyone to apply to the Board for a review of the licence.

10.1.1.3 Layout Plan

The layout plan of the premises should comply with Regulations.

Where applicants wish to depart from the prescribed scale then plans that are line drawings will be accepted on a scale of 1:50.

Only 3 additional layout plans are required for licence applications.

Applicants are requested to pay particular attention in plans to area(s) where alcohol will be sold, seating arrangements and area(s) suitable for children, beer gardens, outdoor seating areas and smoking areas.

Where the premises cover more than one floor then there should be a layout plan for each floor.

The Board expects plans as far as possible to be of good quality. Inadequate and/or illegible plans may be rejected. Plans will be accepted in paper or electronic format.

For ease of distribution and security applicants are requested to note that wherever possible electronic format should be .pdf. Other types of specialist application, like .cad, or general applications prone to manual alteration should not be used as they may hinder processing and delay issue of any licence.

In addition electronic format files should be under 4 megabytes in size. This is owing to physical limitations of the current computer systems that support the Board's functions. Applicants are warned that file sizes over this limit may not be delivered at all and may not, therefore, be processed.

10.1.2 Guidance & Information Available

Guidance is available on the Moray Licensing Board's web pages (at www.moray.gov.uk/licensing) or upon request (see contact section 3.4 above).

10.1.3 Forms and Fees

Forms and details of fees are also available on the Moray Licensing Board's web pages (at www.moray.gov.uk/licensing) or upon request (see contact section 3.4 above).

10.2 General Processing of Application

10.2.1 Timescales

Attached at Appendix XI is a list of application types and their respective processing target dates.

The Moray Licensing Board aims to process all applications within the target dates and in many cases processing times will be significantly shorter than those quoted.

Tacit consent will not apply to the types of applications listed as it is a criminal offence to sell alcohol without the correct licence in place.

10.2.2 Hearings

The Moray Licensing Board has produced a standard set of hearing procedures that are set out in full in Appendix IX.

The Moray Licensing Board will always endeavour to ensure that the rules of natural justice are observed.

Hearings will generally be conducted in public although The Moray Licensing Board may deliberate in private.

In exceptional circumstances, for example to protect a particular commercial interest, a party may request that a hearing be conducted in private. Consideration will be given to this having regard to the interests of natural justice, fairness and potential prejudice to other parties.

In general a hearing will take the form of a discussion led by The Moray Licensing Board and in particular the Convenor. The Moray Licensing Board wishes to create, as far as possible, a less formal and more relaxed atmosphere so as not to intimidate parties.

Each party will have the opportunity to address the Board and present evidence.

10.2.3 Conditions

The Board when considering any premises licence whose operating plan states that they wish to operate after 1:00 a.m. may find it appropriate to supplement the mandatory late opening conditions with other conditions. Sample additional conditions can be found in Appendix VII.

10.3 General Post Application

All licences issued are subject to a disclaimer.

Personal licences will be issued with a credit card style badge as evidence that the holder has a personal licence. The badge does not take the place of the paper licence. It is merely issued for convenience so that the holder can carry evidence of the licence without having to carry the licence at all times. The police and the LSO have agreed to accept the badge as evidence that a licence is in place but they may still require production of the paper licence itself.

Where first aid is required as part of a mandatory or discretionary condition on any licence, the Moray Licensing Board has decided that the training standard set by the Health and Safety Executive for either the Basic First Aid at Work (FAW) or the newer Emergency First Aid at Work (EFAW) certificate will be adopted as suitable for the purpose of the mandatory condition.

The standard adopted is equivalent to emergency first aid being a 6 hour one day course designed to meet the needs of persons appointed to be first aiders in the work place which covers those aspects of first aid required to meet emergency situations such as bleeding, breathing and resuscitation. The HSE runs an accreditation scheme for first aid training providers and currently publishes a list of training organisations approved by the HSE to deliver First Aid at Work courses. HSE first aid certificates expire after 3 years and towards the end of that period the certificate holder needs to undergo a refresher first aid course in order to renew the certificate. This will be a requirement of continuing to hold a valid certificate.

11 Scheme of Delegation

Attached at Appendix VIII is a copy of the Board's scheme of delegation.

12 Other Board Policies

12.1 Gambling

Attention is drawn to the Board's Statement of Licensing Policy under the Gambling Act 2005 which can be accessed by following this link:

<http://www.moray.gov.uk/downloads/file121627.pdf>

12.2 FOI Publication Scheme

The Board has adopted a freedom of information scheme under section 23 of the Freedom of Information (Scotland) Act 2002. A copy of this scheme can be accessed on the Moray Council website – www.moray.gov.uk/licensing

12.3 Equalities

The Board has equality schemes in respect of race, disability and gender. The schemes can be found on the Moray Council's website at the following link:

www.moray.gov.uk/licensing

13 Complaints Procedure

The LSO will investigate complaints against licensed premises in relation to matters relating to the licensing objectives for which the licensing Board has responsibility. In the first instance, complainers are encouraged to raise the complaint directly with the licensee or business concerned to seek a resolution.

The Moray Licensing Board will expect all complaints to go through the mediation process before being referred to the Board.

Where a matter is not resolved by mediation, the Board will give each party the chance to make written submissions and comments on the other party's submissions before making a decision based on the facts. The Board may also choose to hold a hearing and will give the parties reasonable notice if they do so. If a hearing is to take place, procedures regarding the conduct of hearings can be found in Appendix IX.

The Board will consider the activities listed in Appendix III to be particularly serious matters when considering enforcement of the licensing objectives.

A full copy of the Complaints Procedure is also included at Appendix X.

The Board has adopted a freedom of information scheme under section 23 of the Freedom of Information (Scotland) Act 2002. A copy of this scheme can be accessed on the Moray Council website – www.moray.gov.uk/licensing

Moray Licensing Board
Formal Consultation on Draft Statement of Licensing Policy
Responses

1. From Alcohol Focus Scotland

By email.

Received 28 June 2023

“Good Morning,

Please find attached Alcohol Focus Scotland’s response to the Moray Licensing Policy Consultation.

Kind Regards

Garry Burns

Senior Coordinator (Policy)

Alcohol Focus Scotland, 166 Buchanan St, Glasgow, G1 2LW”



RESPONSE TO CONSULTATION ON STATEMENT OF LICENSING POLICY

Alcohol Focus Scotland (AFS) welcomes the opportunity to provide comment on the development of local licensing policy statements. Their production provides licensing boards with an opportunity to stand back from routine administrative practice and consider the bigger picture in relation to licensing in their area. Once published, if effectively implemented, policy statements can help make licensing decisions more strategic, support consistent and well-reasoned decision-making, and make the licensing process more transparent.

1. About us

AFS is the national charity working to prevent and reduce alcohol harm. Our strategic priorities include ensuring the effective implementation of licensing legislation by supporting licensing boards and forums to promote the licensing objectives. We regularly engage and work with a wide range of licensing stakeholders, including licensing board members, licensing clerks, Licensing Standards Officers, NHS, police, Alcohol and Drug Partnerships, communities, and local licensing forums.

AFS also provides training courses for those involved in the regulation of licensing to meet the requirements of the Licensing (Scotland) Act 2005; this includes the Licensing Board Members Training and Licensing Standards Officers Training in Scotland.

2. About our response

As a national charity, AFS is not in a position to provide an individually tailored response to each of the 40 licensing boards in Scotland. However, we can offer our views on the general policy direction and emerging issues relevant to alcohol licensing, and suggestions about aspects of licensing policy that may warrant particular scrutiny during this round of policy development.

Our response has been informed by recent work AFS has undertaken to identify areas of progress and ongoing challenge within the licensing system, including a [review of the Statements of Licensing Policy for 2018-2023](#). We believe that this work and our ongoing engagement with a breadth of licensing stakeholders affords us a unique, national perspective on the licensing system. We hope that this insight and the suggestions we have provided below will be helpful to inform the Board's licensing policy review.

3. The national context

The development of licensing policies provides boards with a timely opportunity to consider emerging issues and legislative developments, and to adapt their approaches accordingly. As such, this section sets out key national developments which may be of particular relevance to licensing boards.

3.1. Post-COVID Recovery

AFS expects that, during this round of policy development, boards will be particularly keen to consider the actual and projected impact of COVID-19 on the licensing objectives and the licensed sector. While we do not yet know the full impact of the pandemic, there is evidence of its effects in a number of areas. The following topics are highly relevant to licensing and AFS would therefore recommend that they are taken into consideration as part of the licensing policy review process:

Changing drinking patterns: Evidence indicates that drinking habits have polarised as a result of the pandemic, with an overall decrease in consumption for lighter drinkers and an increase for heavier drinkers.^{1 2 3} Of major concern is the increase in high-risk drinking observed in England,^{4 5} which has sustained over the entirety of the pandemic.⁶ While equivalent research is not yet available for Scotland, it is likely that we will be experiencing similar increases, especially considering our historically higher levels of alcohol consumption and harm compared to the rest of the UK.⁷ Combined with reduced access to services, these changing drinking patterns have tragically translated into increased harm; alcohol-specific deaths in Scotland increased by 17% in 2020 and a further 5% in 2021.⁸ However, it can take 20 years to see the full effects of changes in alcohol consumption on harms, such as for cancers.⁹ The pandemic and economic crisis is also being experienced differently by different parts of our population, widening existing inequalities and creating new ones.

Home drinking: Linked to the above, the pandemic has further shifted alcohol sales and drinking from the on-trade to the off-trade, exacerbating existing trends. In Scotland, 73% of alcohol was sold in off sales prior to the pandemic, with this proportion increasing to 90% in 2020 before decreasing slightly to 85% in 2021.¹⁰ The home is an unregulated environment and the continued shift to home drinking may lead to long-term public health consequences and an upwards trend in alcohol-related injuries and accidents occurring at home. In addition, while alcohol itself does not directly cause domestic violence, there are strong associations between alcohol use and domestic violence and abuse.¹¹ Home drinking also poses potential risks for children and young people, such as neglect or modelling of parental drinking.¹² As such, it will be vital that boards consider the factors that can impact on the licensing objectives outwith a licensed setting, and that local licensing policies take account of alcohol-related harms occurring in private spheres as well as public.

The hospitality sector: Although the licensing regime does not have responsibility for promoting business growth, a recurrent theme within existing licensing policies is the need for boards to strike an appropriate balance between supporting the local licensed economy, while also upholding the five licensing objectives. During the pandemic, the hospitality sector was severely affected, with sales of alcohol in bars and restaurants plummeting by 49% overall from 2019 to 2021, while off-premises sales, such as e-commerce and supermarkets, grew significantly (by 11% between 2019 and 2021).¹³ In 2020, the Scottish Government issued guidance to advise that it “*considers flexibility and pragmatism in decision-making and sensitivity to the wider economic situation should be at the forefront of how a board decides to operate*”.¹⁴ Boards will likely be very reluctant to be seen to hurt already suffering hospitality sectors but will also want to ensure that the licensing objectives continue to be promoted. As such, decision makers, advocates, and local stakeholders alike will need to identify policies that can do both. It has been suggested that policies which may protect on-trade businesses, while reshaping the night-time economy away from alcohol-related harms, could offer a ‘win-win’ for policymakers and health advocates.¹⁵ However, this raises questions regarding how boards should seek to manage competing priorities within their policies and decision-making.

Use of outdoor areas: A growing trend for outside seating areas had been identified in many areas prior to the pandemic, with a number of boards setting out their expectations and requirements in this regard. However, COVID-19 related restrictions on sales of alcohol indoors led to an increase in applications from bars/pubs to serve alcohol in spaces outdoors e.g., car parks, pavements. If outdoor spaces are licensed on a permanent basis it could result in a significant increase in the overall capacity of venues and the visibility of alcohol, including to children and people in recovery who may be passing by. However, it is unclear how and whether boards will now seek to reverse outdoor licences granted during the pandemic, or whether the trend for outdoor seating areas will continue to grow.

Online sales/deliveries: The COVID-19 related restrictions have accelerated the general trend to online shopping and led to an increase in premises offering home deliveries of alcohol. The types of businesses that sell alcohol online now range from small independent traders, specialist drinks retailers/clubs, local convenience stores, and supermarkets through to multinational e-commerce companies (e.g., Amazon). There is also a growing variety of app-based retailers who have arrangements with restaurants, takeaways and off-licences to deliver alcohol directly to people's homes. Despite the reopening of physical stores, it is predicted that online sales will remain high as people have become more accustomed to online shopping. However, there is currently a distinct lack of information available about the business operations of online retailers in Scotland. In addition, it is unclear how age verification and other requirements can be effectively implemented when alcohol is being purchased on-line or delivered to people's homes. The majority of boards have responded to this issue at a local level by setting out their approach to alcohol deliveries within their policies, for example by making 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 licensees using courier services must ensure that they are compliant with the Board's requirements.

3.2. Policy and legislative developments

Alcohol Framework: Scotland's current alcohol harm prevention framework was published in 2018 and takes a whole population approach to reducing alcohol harm. Whole population measures work to reduce and prevent alcohol harm across the entire population, reducing the likelihood of 'normal' drinkers becoming high risk. This is because targeting only harmful drinkers would not reach the majority of people who consume alcohol and who are therefore at risk of developing problems related to their alcohol consumption. Licensing is a whole population intervention. It works to safeguard individuals and communities from experiencing alcohol problems by controlling the overall availability of alcohol (through the number, type and opening hours of licensed premises), and by regulating the way individual on- and off-licences do business. The Framework therefore identifies the licensing system - alongside action on price and marketing - as being one of the key mechanisms through which the ambitions of the Alcohol Framework can be realised.

Minimum Unit Pricing (MUP): MUP came into force on 1st May 2018 and, along with restrictions on irresponsible promotions, there are now greater controls on the sale of alcohol from off-sales. Boards appear to be approaching these developments differently; for example, some state in their policies that these safeguards alone cannot adequately mitigate the link between the availability of responsibly sold alcohol and its unregulated consumption, while others state that the introduction of MUP of alcohol has the potential to be a more effective tool in reducing alcohol harm than overprovision. Many boards will be re-evaluating the relevance of MUP to their policies now that more information on the evaluation of the impact of MUP is available. In addition, in a recent legal case,¹⁶ an overprovision policy was struck down as unlawful because the sheriff upheld the argument that it didn't take into account that MUP had come into force. The price, availability and marketing

of alcohol can all impact consumption levels, which can in turn impact on harm, and it will be important that boards consider how different measures to tackle alcohol harm can be mutually reinforcing. In any local area it is impossible to say with any certainty what percentage of changes in alcohol consumption and alcohol related harms are due to changes in price/income as compared to availability or marketing. Accordingly, it is important to focus on the local evidence of alcohol related harm, to determine whether there is sufficient evidence of harm to support a case for controlling availability using an overprovision policy. It may also be useful for boards to consider the differential in price between on- and off-sale, as although the introduction of MUP created a floor price, it did not elevate the price of off-trade alcohol enough to reduce the gap between on- and off-trade prices.

Licensing Guidance update: In January 2023 [new guidance](#) to Scottish licensing boards on carrying out their functions was issued by Scottish ministers. The revised 'section 142' guidance replaces the original version which was first issued in 2009 and had become outdated due to subsequent changes. The purpose of the guidance is to assist boards in carrying out their functions under the 2005 Act, including the preparation of statements of licensing policy. We have therefore highlighted relevant sections of the guidance within this response to assist boards to have regard to it when undertaking their policy reviews.

Consultation on occasional licences: In 2019 the Scottish Government consulted¹⁷ on whether to raise the fee for an occasional licence from the current price of £10, and to seek views on considering a limit on the number and duration of occasional licences for premises licence holders and personal licence holders. The Scottish Government advised it would analyse the responses and, if considered appropriate, draft and lay secondary legislation embedding any new fee level or limit on the number and duration of occasional licences into Scottish law. At the time of writing there has been no secondary legislation proposed and AFS is not aware of any decisions as yet having been taken as a result of the consultation.

4. Issues to consider when reviewing the policy

4.1. Promoting the licensing objectives

It is a legal requirement that the policy must seek to promote the licensing objectives. For all objectives, AFS would suggest using the following format within the policy:

1. State the licensing objective.
2. Give a statement as to what the licensing board is trying to achieve with this objective.
3. Detail any concerns and/or trends in the area relating to this objective – identify what evidence was used to identify these.
4. List what the licensing board intends to do to promote the objective. Note that this could include actions like declaring overprovision, controlling licensed hours, or applying certain conditions (referring to the relevant section/s in the policy). However, other measures could include ensuring all policies are fit-for-purpose, working to ensure information is kept up-to-date and accessible, 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 full list of board measures to promote the objectives is provided in our online resource: [Measures to promote the licensing objectives](#).
5. List any suggested actions the licensing board would like to see the licensed trade in the area undertake to meet this objective. The types of actions licensees can take often relate to specific control measures that can be put in place, the training and supervision of staff,

maintenance of premises, and co-operation with local stakeholders (e.g., LSO, police). A full list of example licensee measures to promote the objectives is provided in our online resource: [Measures to promote the licensing objectives](#).

Many boards have adopted new approaches to the promotion of objectives as knowledge and understanding of how to best promote them has evolved since the Licensing (Scotland) Act 2005 was first introduced. Examples of different policy approaches are now included within the section 142 guidance, including in relation to:

Preventing crime and disorder: “Alcohol related crime and disorder does not only occur within or immediately outside licensed premises. A significant proportion of alcohol is bought to be consumed at home or in other private dwellings. Whilst alcohol licensing alone cannot directly address issues such as domestic violence, licensing boards may wish to consider supporting work in this regard through partnership working. One example of a licensing board demonstrating a wider understanding of alcohol related crime can be found within West Lothian Licensing Board’s statement of licensing policy 2018.”

Protecting children and young persons from harm: “Licensing Boards will wish to be mindful that children and young people can be impacted by exposure to marketing and promotion of alcohol within licensed premises. For example, Falkirk Licensing Board comments in its statement of licensing policy 2018 that: “Where licensed premises intend to hold events where alcohol is not provided and those events are specifically targeted at children or young persons (for, example, underage discos or parent and toddler groups), consideration should be given to taking steps to avoid any obvious promotion of alcohol”.”

Protecting and improving public health: “This licensing objective encourages licensing boards to consider the cumulative effect of licensed premises on alcohol-related harm, within their licensing area, rather than the actions of any individual premises. Collecting harm data for localities will build a picture of the health and wellbeing of the people in the locality, and doing so on a consistent basis over time means the long-term health and wellbeing of a locality can be monitored and improvements made. City of Glasgow Licensing Board is an example of one of a number of licensing boards which have adopted an approach of looking at alcohol and health issues at their local authority area level, and then made a policy that seeks to promote the public health objective”.

In relation to the above, the Glasgow policy 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. This is set out in section 9.2 of the [Glasgow Licensing Policy](#).

In addition, many policies set out local conditions that may and/or will be applied by the board in pursuance of the objectives. Including local conditions within policies not only provides 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 full list of example conditions is set out in our online resource: [Examples of conditions to promote the objectives](#).

4.2. Overprovision

Overprovision is undoubtedly one of the most complex and contentious areas of licensing. AFS's review of the current licensing policies identified 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'. 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. Although 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. However, the updated guidance provides clarity around approaches to overprovision assessments and interpreting the causal link, stating that:

- *"If a Licensing Board considers there is at least potential for, or a reasonable basis for, concluding that there will be a risk of adverse impact on the objectives (should more premises licences be granted), it is entitled to come to the view that there is a state of overprovision."*
- *"Consideration should be given as to whether aggregate information and evidence from a number of sources demonstrates a link between the availability of alcohol in an area and alcohol-related harm."*
- *"To demonstrate a "dependable causal link", the proof of the link must be on a balance of probabilities. What this means in practice is that based on the evidence of harm in a locality, it is more likely than not that alcohol availability is a cause, or that increasing the availability of alcohol in that area will increase that harm."*

Boards have the flexibility to decide the approach they take to addressing overprovision in their area and can choose to focus on only the factors that cause them concern in the light of the evidence. It is likely that many boards will be keen to identify how the pandemic has impacted on the licensed economy in their area and will be considering this as part of their overprovision assessment.

At a national level, the number of off-licences in Scotland has reached the highest level since 2010, when the relevant statistics first started to be collected.¹ The closure of pubs and restaurants during the pandemic caused people to buy alcohol from other outlets and more shops and supermarkets applied for licences to meet demand. The number of off licences increased by 133 between March 2020 - March 2022, reaching a total of 5,155. Conversely, the nature of Covid-19, and the measures needed to reduce transmission, invariably had a disproportionate impact on the hospitality sector. While it is likely that many bars, pubs and other licensed premises will have closed permanently as a result, the available statistics don't enable for an assessment of how many licences were surrendered or lost. As such, it may be that the overprovision assessments will have a particular focus on the disparities between on and off sales, and the continued shift to home drinking.

¹ While the number of off-sales only premises is at its highest level since records began, due to variations in how the available statistics have been published in different years, it is impossible to say for certain whether this is true for all off-sales i.e., off-sales only premises combined with those providing both on-sales and offsales.

The boards consideration of overprovision need not be confined to only considering numbers and capacity but can take account of other factors. For example, inequality is a particularly important consideration in relation to overprovision. There is a stark inequalities gradient to alcohol harm, and a growing awareness that the impact of harmful drinking and alcohol dependence is much greater for those experiencing the highest levels of deprivation. For example, in 2021 alcohol-specific deaths were 5.6 times as frequent in the most deprived areas of Scotland compared to the least deprived areas. This compares to a ratio of 1.9 times for all causes of death.¹⁸ By taking account of evidence of inequalities, boards are able to meaningfully consider how different communities are impacted differently by alcohol and formulate an appropriate policy response.

4.3. Licensed hours

Policy statements should provide information on a licensing board's policy on licensed hours, which are important not only to individual licensed premises but can have a wider impact for an area.

AFS has identified numerous studies into the links between temporal availability and alcohol harm, which found that policies regulating times of alcohol trading can contribute to reductions in injuries, alcohol-related hospitalisations/ emergency department visits, homicides and crime.¹⁹ The vast majority of boards permit off-sales between 10am and 10pm each day, which is the maximum allowed by law. However, boards can stipulate shorter hours if they consider it to be appropriate. AFS believes that the maximum permitted off-sales hours should be the exception and not the norm, particularly in areas of high-rates of alcohol harm. In addition, the hours permitted for onsales and the night-time economy can have implications for matters such as crime and public order.

Boards can also grant a general extension of licensed hours for particular specified occasions. As such, AFS would recommend that the policy outlines the principles that the board will apply when considering applications for extended hours. For example, some policies 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. Others outline what might constitute an event of national or local significance. AFS believes that, in many cases, events and festivals can be appropriately accommodated within normal licensing hours and should not serve as automatic justification for extended licensed hours.

4.4. Children and young persons' access

It is largely for licensing boards to set out their expectations regarding factors like when children and young people should normally be allowed entry to licensed premises, 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.

As such, AFS would recommend that the policy provides a clear indication of what the board might deem to be acceptable in terms of children and young peoples' access. Overall, it is the extent to which premises are likely to provide a family-friendly environment that tends to be the determining factor in boards' approaches to children's access. Conversely, premises where the supply of alcohol is the primary purpose of the service provided are frequently cited by boards as being unsuitable for children and young people.

The updated guidance provides examples of how different boards have approached this issue. Some restrict children's access to licensed premises for the primary purpose of consuming a meal or attending an event, while others set out expectations with regards to young peoples' access to

specific parts of premises, or specify the hours when young people should normally be allowed entry.

It is apparent that the majority of boards are seeking to encourage licensed premises to become more child and family friendly within their 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 more directive in their approach than others, by setting out their expectations regarding children's access and applying relevant conditions as standard practice.

4.5. Supporting public participation

The updated guidance states that *"licensing boards should have effective engagement strategies in place to enable them to engage with and seek the views of their local community."* Given the public interest purpose that underpins alcohol licensing, AFS believes it 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. For example, some boards have developed pro formas to assist anyone wishing to make an objection or representation, while others highlight that LSOs are available to offer appropriate support. Many boards include a commitment in their policies that they will conduct business in a way that is not off-putting to members of the public. For example, by creating a less formal and more relaxed atmosphere so as not to intimidate parties.

4.6. Identifying strategic links

Although boards are quasi-judicial and need to undertake their decision-making independently, this does not prevent them from considering their policies in the broader context of identified local and national priorities etc. The pandemic has also highlighted the importance of partnership working across sectors. As such, the policy should indicate how the board will take into account other matters relating to alcohol, for example local crime prevention, community safety strategies, and health.

Boards in many areas have adopted a collaborative approach and committed to work with local partners where they share common objectives. As such, AFS would recommend the policy includes reference to Local Outcome Improvement Plans (LOIPs), Alcohol and Drug Partnership strategic plans, and the strategic plans of the Health and Social Care Partnerships (HSCP). Scotland's alcohol strategy 'Changing Scotland's relationship with Alcohol a Framework for Action' is of key relevance to the policy and should also be referenced. The Board should also take into account the views of local partners, the Forum, communities, when developing and implementing their new policy. The Licensing (Scotland) Act 2005 and accompanying guidance should inform the Board's approach to how this can best be achieved, for example the updated guidance states:

“The alcohol licensing regime in Scotland does not exist in a vacuum and Licensing Boards should clearly explain how they will take into account other pertinent strategies and regimes when developing their statement of licensing policy. For example, the Western Isles Licensing Board statement of licensing policy comments that “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”.”

4.7. Occasional licences

During 2021-2022, 23,269 occasional licences were granted in Scotland.²⁰ Occasional licence applications can be granted under delegated powers, 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.

This has led to concern that some applicants have sought to use the occasional licence process as an alternative to applying for a full premises licence. As such, AFS would recommend that boards set out measures to ensure that this type of application is subject to appropriate scrutiny. For example, by including a provision to ensure that repeated occasional applications from the same applicant will be automatically referred to the board for a decision.

In addition, AFS would recommend that boards set out conditions that will specifically apply to occasional licences, either as standard practice or on a case-by-case basis. These could relate to issues such as management, supervision, security, signage and training.

4.8. 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. AFS’s review of the documents identified that shortest was 25 pages while the longest policy statement was 166 pages (including appendices). Some policy statements, but not all, were written in legalistic language and provided excessive detail of administrative processes and procedures, making them somewhat laborious and difficult to read.

The updated guidance states that licensing policies:

“Must also not simply be a repeat of what is set out in legislation or statutory guidance. It should provide a clear indication to the local community as to the Licensing Board’s evidenced based policy and should seek to promote the licensing objectives (see Chapter 2 for more about the licensing objectives) set out in the 2005 Act. It is important that statement of licensing policies should be written in terms that can be easily understood by the local community as consultation with the local community (including Local Licensing Forums), is a key part of providing feedback to Licensing Boards.”

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. As such, AFS recommends that boards make conscientious efforts to create policies that are accessible to all. For example, by providing definitions of terms used throughout the policy within an appendix, and providing links to statutory provisions, guidance etc. wherever possible. Web-links and signposting can similarly be used to direct interested parties to more detailed information where required.

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- ¹ Alcohol Focus Scotland (23 April 2020). [Scots report changing drinking patterns during coronavirus lockdown](#). Alcohol Focus Scotland.
- ² Alcohol Focus Scotland (23 July 2020). [Survey shows Scots lockdown drinking rise caused by stress](#). Alcohol Focus Scotland.
- ³ Angus, C. et al. (2022). [Modelling the impact of changes in alcohol consumption during the COVID-19 pandemic on future alcohol-related harm in England](#). The University of Sheffield.
- ⁴ Jackson, S.E. et al. (2021). [Moderators of changes in smoking, drinking and quitting behaviour associated with the first COVID-19 lockdown in England](#). *Addiction*, 117(3), 772-783.
- ⁵ Jackson, S.E. et al. (2021). [Association of the COVID-19 lockdown with smoking, drinking and attempts to quit in England: an analysis of 2019–20 data](#). *Addiction*, 116(5):1233–44.
- ⁶ Angus, C. et al. (2022). [Modelling the impact of changes in alcohol consumption during the COVID-19 pandemic on future alcohol-related harm in England](#). The University of Sheffield.
- ⁷ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ⁸ National Records of Scotland (2022). [Alcohol specific deaths 2021](#).
- ⁹ Holmes, J. et al. (2012). [The temporal relationship between per capita alcohol consumption and harm: a systematic review of time lag specifications in aggregate time series analyses](#). *Drug and Alcohol Dependence*, 123(1-3), 7-14.
- ¹⁰ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ¹¹ World Health Organization (2006). [Intimate partner violence and alcohol](#).
- ¹² Alcohol Focus Scotland (2019). [Parental Drinking in Scotland Discussion Paper](#).
- ¹³ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ¹⁴ Scottish Government (2022). [Coronavirus \(COVID-19\): Licensing \(Scotland\) Act 2005 section 142 – statutory guidance](#).
- ¹⁵ Fitzgerald, N. et al. (2021). [Lockdown and licensed premises: COVID-19 lessons for alcohol policy](#). *Drug and Alcohol Review*, 41(3), 533-545.
- ¹⁶ Aldi Stores Limited Vs Dundee City Licensing Board, Case Number: B109/21, March 2022
- ¹⁷ Scottish Government (2019). The Licensing (Scotland) Act 2005: [Consultation on Occasional Licences](#), Published 23 April 2019
- ¹⁸ National Records of Scotland (2022). [Alcohol-specific deaths 2021](#).
- ¹⁹ For example: Sanchez-Ramirez DC, Voaklander D (2018). The impact of policies regulating alcohol trading hours and days on specific alcohol-related harms: a systematic review. *Injury Prevention* 2018;24: 94-100.
- ²⁰ Scottish Government (2022). [Liquor Licensing Statistics for Period 01/04/2021 to 31/03/2022](#)

2. From Alcohol Focus Scotland
By email.
Received 14 July 2023

“Hello,

Please find attached the AFS response to the formal consultation on Moray Licensing Board’s Statement of Policy. In the attached response, we have provided our views on the general policy direction and emerging issues relevant to alcohol licensing, and suggestions about aspects of licensing policy that may warrant particular scrutiny during this round of policy development.

Many thanks,

Aidan

Aidan Collins
Involvement & Policy Manager
Alcohol Focus Scotland, 166 Buchanan St, Glasgow, G1 2LW”



RESPONSE TO CONSULTATION ON STATEMENT OF LICENSING POLICY

Alcohol Focus Scotland (AFS) welcomes the opportunity to provide comment on the development of local licensing policy statements. Their production provides licensing boards with an opportunity to stand back from routine administrative practice and consider the bigger picture in relation to licensing in their area. Once published, if effectively implemented, policy statements can help make licensing decisions more strategic, support consistent and well-reasoned decision-making, and make the licensing process more transparent.

1. About us

AFS is the national charity working to prevent and reduce alcohol harm. Our strategic priorities include ensuring the effective implementation of licensing legislation by supporting licensing boards and forums to promote the licensing objectives. We regularly engage and work with a wide range of licensing stakeholders, including licensing board members, licensing clerks, Licensing Standards Officers, NHS, police, Alcohol and Drug Partnerships, communities, and local licensing forums.

AFS also provides training courses for those involved in the regulation of licensing to meet the requirements of the Licensing (Scotland) Act 2005; this includes the Licensing Board Members Training and Licensing Standards Officers Training in Scotland.

2. About our response

As a national charity, AFS is not in a position to provide an individually tailored response to each of the 40 licensing boards in Scotland. However, we can offer our views on the general policy direction and emerging issues relevant to alcohol licensing, and suggestions about aspects of licensing policy that may warrant particular scrutiny during this round of policy development.

Our response has been informed by recent work AFS has undertaken to identify areas of progress and ongoing challenge within the licensing system, including a [review of the Statements of Licensing Policy for 2018-2023](#). We believe that this work and our ongoing engagement with a breadth of licensing stakeholders affords us a unique, national perspective on the licensing system. We hope that this insight and the suggestions we have provided below will be helpful to inform the Board's licensing policy review.

3. The national context

The development of licensing policies provides boards with a timely opportunity to consider emerging issues and legislative developments, and to adapt their approaches accordingly. As such, this section sets out key national developments which may be of particular relevance to licensing boards.

3.1. Post-COVID Recovery

AFS expects that, during this round of policy development, boards will be particularly keen to consider the actual and projected impact of COVID-19 on the licensing objectives and the licensed sector. While we do not yet know the full impact of the pandemic, there is evidence of its effects in a number of areas. The following topics are highly relevant to licensing and AFS would therefore recommend that they are taken into consideration as part of the licensing policy review process:

Changing drinking patterns: Evidence indicates that drinking habits have polarised as a result of the pandemic, with an overall decrease in consumption for lighter drinkers and an increase for heavier drinkers.^{1 2 3} Of major concern is the increase in high-risk drinking observed in England,^{4 5} which has sustained over the entirety of the pandemic.⁶ While equivalent research is not yet available for Scotland, it is likely that we will be experiencing similar increases, especially considering our historically higher levels of alcohol consumption and harm compared to the rest of the UK.⁷ Combined with reduced access to services, these changing drinking patterns have tragically translated into increased harm; alcohol-specific deaths in Scotland increased by 17% in 2020 and a further 5% in 2021.⁸ However, it can take 20 years to see the full effects of changes in alcohol consumption on harms, such as for cancers.⁹ The pandemic and economic crisis is also being experienced differently by different parts of our population, widening existing inequalities and creating new ones.

Home drinking: Linked to the above, the pandemic has further shifted alcohol sales and drinking from the on-trade to the off-trade, exacerbating existing trends. In Scotland, 73% of alcohol was sold in off sales prior to the pandemic, with this proportion increasing to 90% in 2020 before decreasing slightly to 85% in 2021.¹⁰ The home is an unregulated environment and the continued shift to home drinking may lead to long-term public health consequences and an upwards trend in alcohol-related injuries and accidents occurring at home. In addition, while alcohol itself does not directly cause domestic violence, there are strong associations between alcohol use and domestic violence and abuse.¹¹ Home drinking also poses potential risks for children and young people, such as neglect or modelling of parental drinking.¹² As such, it will be vital that boards consider the factors that can impact on the licensing objectives outwith a licensed setting, and that local licensing policies take account of alcohol-related harms occurring in private spheres as well as public.

The hospitality sector: Although the licensing regime does not have responsibility for promoting business growth, a recurrent theme within existing licensing policies is the need for boards to strike an appropriate balance between supporting the local licensed economy, while also upholding the five licensing objectives. During the pandemic, the hospitality sector was severely affected, with sales of alcohol in bars and restaurants plummeting by 49% overall from 2019 to 2021, while off-premises sales, such as e-commerce and supermarkets, grew significantly (by 11% between 2019 and 2021).¹³ In 2020, the Scottish Government issued guidance to advise that it “*considers flexibility and pragmatism in decision-making and sensitivity to the wider economic situation should be at the forefront of how a board decides to operate*”.¹⁴ Boards will likely be very reluctant to be seen to hurt already suffering hospitality sectors but will also want to ensure that the licensing objectives continue to be promoted. As such, decision makers, advocates, and local stakeholders alike will need to identify policies that can do both. It has been suggested that policies which may protect on-trade businesses, while reshaping the night-time economy away from alcohol-related harms, could offer a ‘win-win’ for policymakers and health advocates.¹⁵ However, this raises questions regarding how boards should seek to manage competing priorities within their policies and decision-making.

Use of outdoor areas: A growing trend for outside seating areas had been identified in many areas prior to the pandemic, with a number of boards setting out their expectations and requirements in this regard. However, COVID-19 related restrictions on sales of alcohol indoors led to an increase in applications from bars/pubs to serve alcohol in spaces outdoors e.g., car parks, pavements. If outdoor spaces are licensed on a permanent basis it could result in a significant increase in the overall capacity of venues and the visibility of alcohol, including to children and people in recovery who may be passing by. However, it is unclear how and whether boards will now seek to reverse outdoor licences granted during the pandemic, or whether the trend for outdoor seating areas will continue to grow.

Online sales/deliveries: The COVID-19 related restrictions have accelerated the general trend to online shopping and led to an increase in premises offering home deliveries of alcohol. The types of businesses that sell alcohol online now range from small independent traders, specialist drinks retailers/clubs, local convenience stores, and supermarkets through to multinational e-commerce companies (e.g., Amazon). There is also a growing variety of app-based retailers who have arrangements with restaurants, takeaways and off-licences to deliver alcohol directly to people's homes. Despite the reopening of physical stores, it is predicted that online sales will remain high as people have become more accustomed to online shopping. However, there is currently a distinct lack of information available about the business operations of online retailers in Scotland. In addition, it is unclear how age verification and other requirements can be effectively implemented when alcohol is being purchased on-line or delivered to people's homes. The majority of boards have responded to this issue at a local level by setting out their approach to alcohol deliveries within their policies, for example by making 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 licensees using courier services must ensure that they are compliant with the Board's requirements.

3.2. Policy and legislative developments

Alcohol Framework: Scotland's current alcohol harm prevention framework was published in 2018 and takes a whole population approach to reducing alcohol harm. Whole population measures work to reduce and prevent alcohol harm across the entire population, reducing the likelihood of 'normal' drinkers becoming high risk. This is because targeting only harmful drinkers would not reach the majority of people who consume alcohol and who are therefore at risk of developing problems related to their alcohol consumption. Licensing is a whole population intervention. It works to safeguard individuals and communities from experiencing alcohol problems by controlling the overall availability of alcohol (through the number, type and opening hours of licensed premises), and by regulating the way individual on- and off-licences do business. The Framework therefore identifies the licensing system - alongside action on price and marketing - as being one of the key mechanisms through which the ambitions of the Alcohol Framework can be realised.

Minimum Unit Pricing (MUP): MUP came into force on 1st May 2018 and, along with restrictions on irresponsible promotions, there are now greater controls on the sale of alcohol from off-sales. Boards appear to be approaching these developments differently; for example, some state in their policies that these safeguards alone cannot adequately mitigate the link between the availability of responsibly sold alcohol and its unregulated consumption, while others state that the introduction of MUP of alcohol has the potential to be a more effective tool in reducing alcohol harm than overprovision. Many boards will be re-evaluating the relevance of MUP to their policies now that more information on the evaluation of the impact of MUP is available. In addition, in a recent legal case,¹⁶ an overprovision policy was struck down as unlawful because the sheriff upheld the argument that it didn't take into account that MUP had come into force. The price, availability and marketing

of alcohol can all impact consumption levels, which can in turn impact on harm, and it will be important that boards consider how different measures to tackle alcohol harm can be mutually reinforcing. In any local area it is impossible to say with any certainty what percentage of changes in alcohol consumption and alcohol related harms are due to changes in price/income as compared to availability or marketing. Accordingly, it is important to focus on the local evidence of alcohol related harm, to determine whether there is sufficient evidence of harm to support a case for controlling availability using an overprovision policy. It may also be useful for boards to consider the differential in price between on- and off-sale, as although the introduction of MUP created a floor price, it did not elevate the price of off-trade alcohol enough to reduce the gap between on- and off-trade prices.

Licensing Guidance update: In January 2023 [new guidance](#) to Scottish licensing boards on carrying out their functions was issued by Scottish ministers. The revised 'section 142' guidance replaces the original version which was first issued in 2009 and had become outdated due to subsequent changes. The purpose of the guidance is to assist boards in carrying out their functions under the 2005 Act, including the preparation of statements of licensing policy. We have therefore highlighted relevant sections of the guidance within this response to assist boards to have regard to it when undertaking their policy reviews.

Consultation on occasional licences: In 2019 the Scottish Government consulted¹⁷ on whether to raise the fee for an occasional licence from the current price of £10, and to seek views on considering a limit on the number and duration of occasional licences for premises licence holders and personal licence holders. The Scottish Government advised it would analyse the responses and, if considered appropriate, draft and lay secondary legislation embedding any new fee level or limit on the number and duration of occasional licences into Scottish law. At the time of writing there has been no secondary legislation proposed and AFS is not aware of any decisions as yet having been taken as a result of the consultation.

4. Issues to consider when reviewing the policy

4.1. Promoting the licensing objectives

It is a legal requirement that the policy must seek to promote the licensing objectives. For all objectives, AFS would suggest using the following format within the policy:

1. State the licensing objective.
2. Give a statement as to what the licensing board is trying to achieve with this objective.
3. Detail any concerns and/or trends in the area relating to this objective – identify what evidence was used to identify these.
4. List what the licensing board intends to do to promote the objective. Note that this could include actions like declaring overprovision, controlling licensed hours, or applying certain conditions (referring to the relevant section/s in the policy). However, other measures could include ensuring all policies are fit-for-purpose, working to ensure information is kept up-to-date and accessible, 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 full list of board measures to promote the objectives is provided in our online resource: [Measures to promote the licensing objectives](#).
5. List any suggested actions the licensing board would like to see the licensed trade in the area undertake to meet this objective. The types of actions licensees can take often relate to specific control measures that can be put in place, the training and supervision of staff,

maintenance of premises, and co-operation with local stakeholders (e.g., LSO, police). A full list of example licensee measures to promote the objectives is provided in our online resource: [Measures to promote the licensing objectives](#).

Many boards have adopted new approaches to the promotion of objectives as knowledge and understanding of how to best promote them has evolved since the Licensing (Scotland) Act 2005 was first introduced. Examples of different policy approaches are now included within the section 142 guidance, including in relation to:

Preventing crime and disorder: “Alcohol related crime and disorder does not only occur within or immediately outside licensed premises. A significant proportion of alcohol is bought to be consumed at home or in other private dwellings. Whilst alcohol licensing alone cannot directly address issues such as domestic violence, licensing boards may wish to consider supporting work in this regard through partnership working. One example of a licensing board demonstrating a wider understanding of alcohol related crime can be found within West Lothian Licensing Board’s statement of licensing policy 2018.”

Protecting children and young persons from harm: “Licensing Boards will wish to be mindful that children and young people can be impacted by exposure to marketing and promotion of alcohol within licensed premises. For example, Falkirk Licensing Board comments in its statement of licensing policy 2018 that: “Where licensed premises intend to hold events where alcohol is not provided and those events are specifically targeted at children or young persons (for, example, underage discos or parent and toddler groups), consideration should be given to taking steps to avoid any obvious promotion of alcohol”.”

Protecting and improving public health: “This licensing objective encourages licensing boards to consider the cumulative effect of licensed premises on alcohol-related harm, within their licensing area, rather than the actions of any individual premises. Collecting harm data for localities will build a picture of the health and wellbeing of the people in the locality, and doing so on a consistent basis over time means the long-term health and wellbeing of a locality can be monitored and improvements made. City of Glasgow Licensing Board is an example of one of a number of licensing boards which have adopted an approach of looking at alcohol and health issues at their local authority area level, and then made a policy that seeks to promote the public health objective”.

In relation to the above, the Glasgow policy 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. This is set out in section 9.2 of the [Glasgow Licensing Policy](#).

In addition, many policies set out local conditions that may and/or will be applied by the board in pursuance of the objectives. Including local conditions within policies not only provides 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 full list of example conditions is set out in our online resource: [Examples of conditions to promote the objectives](#).

4.2. Overprovision

Overprovision is undoubtedly one of the most complex and contentious areas of licensing. AFS's review of the current licensing policies identified 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'. 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. Although 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. However, the updated guidance provides clarity around approaches to overprovision assessments and interpreting the causal link, stating that:

- *"If a Licensing Board considers there is at least potential for, or a reasonable basis for, concluding that there will be a risk of adverse impact on the objectives (should more premises licences be granted), it is entitled to come to the view that there is a state of overprovision."*
- *"Consideration should be given as to whether aggregate information and evidence from a number of sources demonstrates a link between the availability of alcohol in an area and alcohol-related harm."*
- *"To demonstrate a "dependable causal link", the proof of the link must be on a balance of probabilities. What this means in practice is that based on the evidence of harm in a locality, it is more likely than not that alcohol availability is a cause, or that increasing the availability of alcohol in that area will increase that harm."*

Boards have the flexibility to decide the approach they take to addressing overprovision in their area and can choose to focus on only the factors that cause them concern in the light of the evidence. It is likely that many boards will be keen to identify how the pandemic has impacted on the licensed economy in their area and will be considering this as part of their overprovision assessment.

At a national level, the number of off-licences in Scotland has reached the highest level since 2010, when the relevant statistics first started to be collected.¹ The closure of pubs and restaurants during the pandemic caused people to buy alcohol from other outlets and more shops and supermarkets applied for licences to meet demand. The number of off licences increased by 133 between March 2020 - March 2022, reaching a total of 5,155. Conversely, the nature of Covid-19, and the measures needed to reduce transmission, invariably had a disproportionate impact on the hospitality sector. While it is likely that many bars, pubs and other licensed premises will have closed permanently as a result, the available statistics don't enable for an assessment of how many licences were surrendered or lost. As such, it may be that the overprovision assessments will have a particular focus on the disparities between on and off sales, and the continued shift to home drinking.

¹ While the number of off-sales only premises is at its highest level since records began, due to variations in how the available statistics have been published in different years, it is impossible to say for certain whether this is true for all off-sales i.e., off-sales only premises combined with those providing both on-sales and offsales.

The boards consideration of overprovision need not be confined to only considering numbers and capacity but can take account of other factors. For example, inequality is a particularly important consideration in relation to overprovision. There is a stark inequalities gradient to alcohol harm, and a growing awareness that the impact of harmful drinking and alcohol dependence is much greater for those experiencing the highest levels of deprivation. For example, in 2021 alcohol-specific deaths were 5.6 times as frequent in the most deprived areas of Scotland compared to the least deprived areas. This compares to a ratio of 1.9 times for all causes of death.¹⁸ By taking account of evidence of inequalities, boards are able to meaningfully consider how different communities are impacted differently by alcohol and formulate an appropriate policy response.

4.3. Licensed hours

Policy statements should provide information on a licensing board's policy on licensed hours, which are important not only to individual licensed premises but can have a wider impact for an area.

AFS has identified numerous studies into the links between temporal availability and alcohol harm, which found that policies regulating times of alcohol trading can contribute to reductions in injuries, alcohol-related hospitalisations/ emergency department visits, homicides and crime.¹⁹ The vast majority of boards permit off-sales between 10am and 10pm each day, which is the maximum allowed by law. However, boards can stipulate shorter hours if they consider it to be appropriate. AFS believes that the maximum permitted off-sales hours should be the exception and not the norm, particularly in areas of high-rates of alcohol harm. In addition, the hours permitted for onsales and the night-time economy can have implications for matters such as crime and public order.

Boards can also grant a general extension of licensed hours for particular specified occasions. As such, AFS would recommend that the policy outlines the principles that the board will apply when considering applications for extended hours. For example, some policies 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. Others outline what might constitute an event of national or local significance. AFS believes that, in many cases, events and festivals can be appropriately accommodated within normal licensing hours and should not serve as automatic justification for extended licensed hours.

4.4. Children and young persons' access

It is largely for licensing boards to set out their expectations regarding factors like when children and young people should normally be allowed entry to licensed premises, 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.

As such, AFS would recommend that the policy provides a clear indication of what the board might deem to be acceptable in terms of children and young peoples' access. Overall, it is the extent to which premises are likely to provide a family-friendly environment that tends to be the determining factor in boards' approaches to children's access. Conversely, premises where the supply of alcohol is the primary purpose of the service provided are frequently cited by boards as being unsuitable for children and young people.

The updated guidance provides examples of how different boards have approached this issue. Some restrict children's access to licensed premises for the primary purpose of consuming a meal or attending an event, while others set out expectations with regards to young peoples' access to

specific parts of premises, or specify the hours when young people should normally be allowed entry.

It is apparent that the majority of boards are seeking to encourage licensed premises to become more child and family friendly within their 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 more directive in their approach than others, by setting out their expectations regarding children's access and applying relevant conditions as standard practice.

4.5. Supporting public participation

The updated guidance states that *"licensing boards should have effective engagement strategies in place to enable them to engage with and seek the views of their local community."* Given the public interest purpose that underpins alcohol licensing, AFS believes it 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. For example, some boards have developed pro formas to assist anyone wishing to make an objection or representation, while others highlight that LSOs are available to offer appropriate support. Many boards include a commitment in their policies that they will conduct business in a way that is not off-putting to members of the public. For example, by creating a less formal and more relaxed atmosphere so as not to intimidate parties.

4.6. Identifying strategic links

Although boards are quasi-judicial and need to undertake their decision-making independently, this does not prevent them from considering their policies in the broader context of identified local and national priorities etc. The pandemic has also highlighted the importance of partnership working across sectors. As such, the policy should indicate how the board will take into account other matters relating to alcohol, for example local crime prevention, community safety strategies, and health.

Boards in many areas have adopted a collaborative approach and committed to work with local partners where they share common objectives. As such, AFS would recommend the policy includes reference to Local Outcome Improvement Plans (LOIPs), Alcohol and Drug Partnership strategic plans, and the strategic plans of the Health and Social Care Partnerships (HSCP). Scotland's alcohol strategy 'Changing Scotland's relationship with Alcohol a Framework for Action' is of key relevance to the policy and should also be referenced. The Board should also take into account the views of local partners, the Forum, communities, when developing and implementing their new policy. The Licensing (Scotland) Act 2005 and accompanying guidance should inform the Board's approach to how this can best be achieved, for example the updated guidance states:

“The alcohol licensing regime in Scotland does not exist in a vacuum and Licensing Boards should clearly explain how they will take into account other pertinent strategies and regimes when developing their statement of licensing policy. For example, the Western Isles Licensing Board statement of licensing policy comments that “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”.”

4.7. Occasional licences

During 2021-2022, 23,269 occasional licences were granted in Scotland.²⁰ Occasional licence applications can be granted under delegated powers, 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.

This has led to concern that some applicants have sought to use the occasional licence process as an alternative to applying for a full premises licence. As such, AFS would recommend that boards set out measures to ensure that this type of application is subject to appropriate scrutiny. For example, by including a provision to ensure that repeated occasional applications from the same applicant will be automatically referred to the board for a decision.

In addition, AFS would recommend that boards set out conditions that will specifically apply to occasional licences, either as standard practice or on a case-by-case basis. These could relate to issues such as management, supervision, security, signage and training.

4.8. 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. AFS’s review of the documents identified that shortest was 25 pages while the longest policy statement was 166 pages (including appendices). Some policy statements, but not all, were written in legalistic language and provided excessive detail of administrative processes and procedures, making them somewhat laborious and difficult to read.

The updated guidance states that licensing policies:

“Must also not simply be a repeat of what is set out in legislation or statutory guidance. It should provide a clear indication to the local community as to the Licensing Board’s evidenced based policy and should seek to promote the licensing objectives (see Chapter 2 for more about the licensing objectives) set out in the 2005 Act. It is important that statement of licensing policies should be written in terms that can be easily understood by the local community as consultation with the local community (including Local Licensing Forums), is a key part of providing feedback to Licensing Boards.”

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. As such, AFS recommends that boards make conscientious efforts to create policies that are accessible to all. For example, by providing definitions of terms used throughout the policy within an appendix, and providing links to statutory provisions, guidance etc. wherever possible. Web-links and signposting can similarly be used to direct interested parties to more detailed information where required.

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- ¹ Alcohol Focus Scotland (23 April 2020). [Scots report changing drinking patterns during coronavirus lockdown](#). Alcohol Focus Scotland.
- ² Alcohol Focus Scotland (23 July 2020). [Survey shows Scots lockdown drinking rise caused by stress](#). Alcohol Focus Scotland.
- ³ Angus, C. et al. (2022). [Modelling the impact of changes in alcohol consumption during the COVID-19 pandemic on future alcohol-related harm in England](#). The University of Sheffield.
- ⁴ Jackson, S.E. et al. (2021). [Moderators of changes in smoking, drinking and quitting behaviour associated with the first COVID-19 lockdown in England](#). *Addiction*, 117(3), 772-783.
- ⁵ Jackson, S.E. et al. (2021). [Association of the COVID-19 lockdown with smoking, drinking and attempts to quit in England: an analysis of 2019–20 data](#). *Addiction*, 116(5):1233–44.
- ⁶ Angus, C. et al. (2022). [Modelling the impact of changes in alcohol consumption during the COVID-19 pandemic on future alcohol-related harm in England](#). The University of Sheffield.
- ⁷ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ⁸ National Records of Scotland (2022). [Alcohol specific deaths 2021](#).
- ⁹ Holmes, J. et al. (2012). [The temporal relationship between per capita alcohol consumption and harm: a systematic review of time lag specifications in aggregate time series analyses](#). *Drug and Alcohol Dependence*, 123(1-3), 7-14.
- ¹⁰ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ¹¹ World Health Organization (2006). [Intimate partner violence and alcohol](#).
- ¹² Alcohol Focus Scotland (2019). [Parental Drinking in Scotland Discussion Paper](#).
- ¹³ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ¹⁴ Scottish Government (2022). [Coronavirus \(COVID-19\): Licensing \(Scotland\) Act 2005 section 142 – statutory guidance](#).
- ¹⁵ Fitzgerald, N. et al. (2021). [Lockdown and licensed premises: COVID-19 lessons for alcohol policy](#). *Drug and Alcohol Review*, 41(3), 533-545.
- ¹⁶ Aldi Stores Limited Vs Dundee City Licensing Board, Case Number: B109/21, March 2022
- ¹⁷ Scottish Government (2019). The Licensing (Scotland) Act 2005: [Consultation on Occasional Licences](#), Published 23 April 2019
- ¹⁸ National Records of Scotland (2022). [Alcohol-specific deaths 2021](#).
- ¹⁹ For example: Sanchez-Ramirez DC, Voaklander D (2018). The impact of policies regulating alcohol trading hours and days on specific alcohol-related harms: a systematic review. *Injury Prevention* 2018;24: 94-100.
- ²⁰ Scottish Government (2022). [Liquor Licensing Statistics for Period 01/04/2021 to 31/03/2022](#)

3. From Police Scotland
By email.
Received 11 August 2023

“Good afternoon,

I've had a look through the draft Policy and I wish to highlight the following;

6.1 – Refer to Bystander Training as well as 'Who are You' video (whoareyou.nz)

6.5 – In respect of Members Clubs, what is the natural limit for the number of guests allowed to be signed in by one member? Perhaps a prescribed limit would be more appropriate?

6.6.4.2 - The Board will continue to support local Schemes such as Pub Watch, Safer City Centre Initiatives, Door Safe Schemes and Best Bar None. Are Moray Council looking to actively promote these schemes? For example Aberdeen city recently relaunched the Best Bar None scheme, are we likely to see a similar approach in Moray?

6.6.5 – What evidence has the Board received that leads it to conclude that the curfew for late opening premises is no longer required?

7. Is there likely to be an increase in the number of LSO's in Moray?

8.1.1 April Doig from the SIA has agreed to prepare this instead of Police Scotland.

Kind regards

Neil

Neil Grant
Sergeant A9888

Licensing Sergeant | Partnerships, Preventions and Interventions | Police Service of Scotland

Internal 64154 Telephone 101 | Email neil.grant@scotland.police.uk Stonehaven Police Office, Dunnottar Avenue, Stonehaven



4. From Moray Council Community Council Liaison Officer
By email
Received 17 August 2023

“Good afternoon,

Apologies as I am aware that the closing date for the consultation has now passed.

I took the details to the Joint Community Councils of Moray meeting on 10 August.

No specific comments about the policy were made. However, they wanted it to be recorded that a 7 week consultation period over the summer does not enable all community councils to be able to respond. Six out of the 17 community councils did not meet over the period of the consultation. Most do meet monthly, but a couple meet every six weeks, and all of them (except Elgin) do not hold a meeting in either July or August.

Any queries please do not hesitate to contact me.

Kind regards

Debra

**Debra Duke | Community Council Liaison Officer | Education
Resources and Communities”**