

AFS RESPONSE TO ABERDEEN CITY LICENSING BOARD OVERPROVISION CONSULTATION – OFF-SALES PREMISES (FEBRUARY 2018)

INTRODUCTION

Alcohol Focus Scotland (AFS) welcomes the opportunity to participate in the Aberdeen City Licensing Board’s consultation on overprovision for off-sales premises. The licensing system plays a key role in minimising the risks of harm to individuals and society from the sale and consumption of alcohol. AFS is therefore keen to support the development of licensing policy and practice in Scotland that works most effectively to prevent and reduce alcohol problems. As a national organisation, we do not have sufficient local knowledge of the Aberdeen City area to enable us to comment in detail on some of the specific localities and premises concerned. However, we offer our opinion on the general approach and policy direction, which we hope the Licensing Board will find useful.

GENERAL COMMENT

AFS understands that the Board is keen to establish an interim overprovision policy for off-sales premises as it is currently operating without a policy in this area. This is welcomed but it will be critical that the development of such an interim policy does not in any way undermine, subvert, or confuse the imminent development of the new Statement of Licensing Policy (and the related overprovision assessment). Although boards have flexibility in deciding how to address overprovision in their area, they must follow the process set out in the guidance to the Licensing (Scotland) Act 2005 when assessing overprovision, including with regards to consultation and the publication of policies. It will therefore be important that the Board is absolutely clear as to how this consultation, and any interim off-sales overprovision policy, is intended to relate to the subsequent development of the Statement of Licensing Policy and related overprovision assessment.

AFS fully supports the Board’s decision to designate the entire Board area as one locality in order to be able to attribute meaningful weight to data which may not be available at a more localised level. In the past, the majority of licensing boards have tended to apply an overprovision assessment to relatively small areas, which is in keeping with a traditional approach to licensing that focused on town centre disorder and on-licence premises. However, the Air Weapons and Licensing (Scotland) Act 2015 clarified that the whole of a board’s area can be treated as a locality.

Alcohol consumption and purchasing patterns have changed dramatically over the past few decades. 73%¹ of alcohol sold in Scotland is now bought from off-sales premises, people travel further to buy alcohol, and some important indicators of alcohol-related harm relevant to the promotion of the licensing objectives are only available over larger areas. Therefore, using only small localities for the purpose of assessing overprovision may not be the most appropriate approach for all types of licensed premises, or for the promotion of the licensing objectives. If licensing policy must seek to promote the licensing objectives, and if indicators of the licensing objectives can only be

¹ Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland

demonstrated over a larger geographical area, then it is arguable that a licensing board should assess overprovision over the larger area to fully promote these objectives.

SPECIFIC COMMENT

1. Do you think the current provision of off-sale premises as shown as in the map is:

- a) Too many?
- b) About right?
- c) Insufficient?

A) Too many

There is no simple numerical formula for pinpointing the threshold between provision and overprovision. Determining overprovision involves the application of reason and judgement in the interests of the community. Alcohol harm statistics for Aberdeen City should therefore be considered in conjunction with density information, such as from the [CRESH alcohol outlet density map](#),² to make an informed assessment of overprovision.

Decisions on overprovision should also be informed by evidence from the police, health authorities and other agencies. AFS notes the range of evidence provided by these agencies, relevant to off-sales overprovision, cited in the Aberdeen City Licensing Board Statement of Licensing Policy for 2013-2016. This data supported the view that the whole of the Board's area had overprovision of off-sales premises, including statistical findings relating to alcohol related health harm and crime in the Aberdeen area. The most up-to-date data available for Aberdeen strongly indicates that this remains the case.

In Scotland, 1 in 4 people drink above the low-risk drinking guidelines.³ In Aberdeen City, there are more people drinking above the low-risk guidelines than in Scotland as a whole; more than 1 in 3 men (36%) and 1 in 5 women (20%) are drinking at hazardous/harmful levels.⁴ The most recent data available also shows that in Aberdeen City there were 1,658 alcohol-related hospital stays (2015/16)⁵, 56 alcohol-related deaths (2016)⁶, and 20 child protection cases where parental alcohol misuse was involved (2015/16).⁷ The Scottish liquor licensing statistics 2016/17 show that there are 658 premises licences in force in Aberdeen⁸. In fact, Aberdeen has the third highest alcohol outlet availability in Scotland, approaching two times higher than the national average.⁹ The £120.9m annual cost of alcohol harm to Aberdeen (health, social care, crime and productive capacity) is also significant, equating to £557 per person.¹⁰ Aggregated statistics such as these point compellingly to the conclusion that there exists a state of overprovision in Aberdeen.

² Available at <https://creshmap.com/shiny/alcoholtobacco/>

³ Bardsley, D. et al (2017). *The Scottish Health Survey 2016 Edition, Volume 1, Main Report*. Edinburgh: Scottish Government.

⁴ Scottish Government (2017). *Scottish Health Survey: Results for Local Areas 2013/2014/2015/2016. Local Authority Results: 2013-2016*. Edinburgh: Scottish Government.

⁵ Information Services Division (2017). *Alcohol-Related Hospital Statistics Scotland 2016/17*. NHS National Services Scotland.

⁶ National Records of Scotland (2017). *Alcohol-Related Deaths in Scotland, 1970-2016*. Edinburgh: National Records of Scotland.

⁷ Scottish Government (2017), *Children's Social Work Statistics Scotland Additional Tables 2015/16*. Edinburgh: Scottish Government.

⁸ Scottish Government (2017). *Scottish Liquor Licensing Statistics 2016/17*. Edinburgh: Scottish Government

⁹ Alcohol Focus Scotland (in press). *Alcohol Outlet Availability and Harm in Aberdeen City*. Glasgow: Alcohol Focus Scotland.

¹⁰ Alcohol Focus Scotland (2012). *The Cost of Alcohol in Aberdeen City 2010/11*. Glasgow: Alcohol Focus Scotland

- 2. If you feel there are too many do you think there are too many of:**
- a) Premises of a particular type?**
 - b) Premises of a particular size?**
 - c) Off-sales premises in general?**

AFS does not have a sufficient level of local knowledge of the Aberdeen area to provide informed comment on this.

- 3. If the Licensing Board determine there is overprovision, do you think there should be any exceptions to this policy under the following licensing objectives:-**
- a) Preventing crime & disorder.**
 - b) Securing public safety.**
 - c) Preventing public nuisance.**
 - d) Protecting and improving public health.**
 - e) Protecting children and young persons from harm.**

No: Except in exceptional circumstances, applications for new premises should be refused where it has been determined that there is overprovision. Overprovision statements should be flexible as there may sometimes be legitimate reasons as to why an application would be granted in overprovision areas. AFS would therefore encourage boards to carefully set out what will and will not be considered as an exception to avoid appeals. However, we would stress that overprovision is a grounds for refusal in its own right. This means that in an overprovision case where there is no inconsistency with the objectives does not mean there is no overprovision, as this is a separate issue.

4. Do you have any other comments on off-sales overprovision?

Given recent legal challenges¹¹, AFS would emphasise the importance of ensuring that overprovision assessments and decisions demonstrate a factual basis and can be deemed reasonable and proportionate to achieving the objectives of licensing (although a licensing board exercises discretion and judgement in the performance of its duties). Taking a systematic approach to the preparation of an overprovision statement will help to ensure well-reasoned and robust licensing decision-making.

As commented above, boards must follow the process set out in the guidance to the Licensing (Scotland) Act 2005 when assessing overprovision. The formulation of the statement required by Section 7 of the Act involves the following process:

- the selection of appropriate localities based on a broad understanding of provision across the Board's area;
- the identification of the number of licensed premises or premises of a particular description in those localities and their capacities;
- consultation with the relevant persons;
- an assessment of the information gathered from those persons;
- reaching a decision as to whether it can be demonstrated that, having regard to the number and capacity of licensed premises or licensed premises of a particular description in a locality, it is undesirable to grant further licences or further licences for premises of a particular description on the ground of overprovision, and;
- producing a statement in its published policy.

¹¹ E.g. Martin McColl Ltd v Aberdeen City Licensing Board, 2015

It should also be noted that factors other than numbers and capacity can now be considered, including licensed hours. Indeed, AFS believes that temporal availability is an important factor to be taken into account when considering the overall availability of alcohol in an area. AFS has identified over 50 research studies published since 2000 that find an association between the total number of licensed premises and opening hours in a locality, and levels of alcohol harm. Localities examined include cities, states, provinces and countries and several studies have specifically investigated the links between temporal availability and alcohol harm. This includes a 2017 systematic review of literature (published between 2000-2016) studying the impact of policies regulating alcohol trading times on alcohol related harm, which found that policies regulating times of alcohol trading can contribute to reductions in injuries, alcohol-related hospitalisations/emergency department visits, homicides and crime.¹²

¹² 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.