

## PART 2

## Overprovision of licensed premises

## Questions:

- (a) Whether there is overprovision of premises within West Dunbartonshire licensed to sell alcohol.
- (b) If there is such overprovision, in which areas is there overprovision?
- (c) If there is overprovision, in what categories or types of premises is there overprovision?
- (d) If there is overprovision, why is there such overprovision?

AFS does not possess sufficient local knowledge of West Dunbartonshire to provide detailed comment on overprovision of licensed premises in specific geographical areas within the local authority. However, we offer some general comments on the approach to assessing overprovision:

- The report 'Overprovision: What does the evidence say' is a comprehensive compilation and analysis of alcohol statistics relevant to West Dunbartonshire. AFS commends the collaboration of various stakeholders who participated in this data gathering exercise. The resultant report is undoubtedly a valuable resource for the licensing board in developing its licensing policy and in its decision-making. We assume that the findings of the report will be used to inform the licensing board's position on overprovision, with responses from the consultation providing additional insights and perspectives. An overprovision statement formulated on the basis of a wide range of evidence, including statistics, is more likely to be effective in managing alcohol problems and is more likely to withstand legal challenge.
- 'Overprovision: what does the evidence say?' indicates a substantial burden of harm due to alcohol in West Dunbartonshire. In relation to some indicators, rates of harm have fallen over the past few years, but remain high in comparison to the Scottish average. In recognition of the high levels of alcohol-related harm, and of licensing's core purpose in seeking to reduce levels of harm by controlling the availability of alcohol, the licensing board adopted a robust, evidence-based position on overprovision in the 2010-2013 period, which was highly acclaimed across the UK. Based on the current analysis of evidence pertaining to the licensing objectives, it appears that there continues to be a strong case for maintaining the current overprovision stance into 2013-2016. This is particularly the case in light of the fact that there has been no increase in the resident population of West Dunbartonshire over the past few years, and as noted by the overprovision report, there has in fact been a reduction in the population over the past 30 years. If the current supply of alcohol is associated with such a high burden of harm, then it is questionable whether any further expansion in the supply of alcohol to a declining population is consistent with the licensing objectives.

- We note that the consultation states that reasons for overprovision must be relevant to the licensing objectives. However, we wonder whether this statement could be misleading to consultees. The licensing board will be aware of the court decision in *Buzzworks Leisure Ltd v South Ayrshire Licensing Board* where it was ruled that overprovision and inconsistency with the licensing objectives are separate grounds for determining a premises licence. It is the case that the licensing policy statement must seek to promote the licensing objectives and the overprovision statement is part of the licensing policy statement. However, under section 23 of the licensing act, which deals with premises licence applications, overprovision and inconsistency with the licensing objectives are separate grounds for refusal. Whilst it is likely there will be a degree of overlap between the different grounds for refusal, there is nothing in the legislation to indicate that any of the grounds must be applied together. The House of Lords in *Caledonian Nightclubs Ltd v City of Glasgow Licensing Board* 1996 commented that a licensing board has wide discretion in its determination of overprovision, which could well extend to such matters as the impact on the amenity of an area of additional licensed premises. Licensing boards can have regard to overprovision in different ways and for different purposes and we suggest that this is communicated in the policy statement, so that the reader will fully understand how overprovision policy is formulated and decisions are determined.

(e) Do you agree that the Board should refine its policy to consider the positive health benefits associated with increased employment opportunities as a factor that applicants can demonstrate in support of their application and a factor that may rebut such a presumption?

AFS is concerned at the inclusion of this question in the consultation exercise. We are not convinced that the proposed interpretation of health benefits and the application of that interpretation to licensing decisions fall within the scope and meaning of the Licensing (Scotland) 2005 Act. The licensing board will be aware of the decision of the Inner House, Court of Session in *Brightcrew Ltd v City of Glasgow Licensing Board*. The court held in this case that the licensing objectives, although couched in general terms are not freestanding. The promotion of public health is not the promotion of public health generally but the promotion of public health in relation to the sale and consequently consumption of alcohol. Evidence that is pertinent to the promotion of public health in licensing is contained in the report 'Overprovision: What does the evidence say?', and includes alcohol-related mortality and morbidity. Health benefits from being in work derive from employment in general and not from the sale of alcohol in particular. Indeed, it is not necessary for some operators, such as supermarkets, to sell alcohol, so employment opportunities can be created without alcohol being sold, as is the case with many different types of employment across the country. Interpreting the public health objective in such broad terms does not in our view fit with the core provisions of licensing legislation and we doubt that it is a proper construction of the statute. AFS recommends that the licensing board seeks advice on the legality of this proposal.

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## West Dunbartonshire Licensing Board: Consultation on licensing policy statement

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### Response from Alcohol Focus Scotland

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#### Part 1

##### Question 1

*Should the Board in its policy restrict the number of occasional licence applications that any one premise can apply for in circumstances where, in effect, the premises are being operated as a business and a premises licence application would be appropriate? Yes*

*Should the Board in respect of repeated occasional applications for the same premises require that the application be heard by the Board who will require to be addressed on why a premises licence has not been applied for?*

The level of scrutiny and conditions demanded of applicants differs between a premises licence and an occasional licence application. Unlike a premises licence application, an occasional licence does not require there to be a personal licence holder, nor does it require staff to be trained. Certain mandatory conditions that apply to premises licences do not apply to occasional licences, and occasional licences are normally granted under delegated powers. Furthermore, whereas health is a statutory consultee in applications for new premises licence, that is not the case for an occasional licence. The reduced level of scrutiny for granting occasional licences is based on the assumption that they are used, as the name suggests, infrequently and irregularly, permitting alcohol to be sold in a place that is normally unlicensed. However, repeated applications for occasional licences from the same premises suggests that occasional licences are being used in a manner that the legislation did not envisage, with the risk that proper regulatory safeguards are being by-passed.

AFS considers the board's proposal to restrict the number of occasional licence applications from any one premises, and to require premises making repeated applications for occasional licences to appear before the board to explain their position, is a necessary and justifiable course of action to ensure that occasional licences are properly used.

##### Question 2

*Should the Board extend this training requirement to all events that require an occasional licence, or should the Board continue to impose training requirements only for events that are viewed to be a high risk to the licensing objectives?*

AFS considers the position adopted in the existing 2010 to 2013 policy statement on training requirements for people operating under occasional licences to be reasonable and proportionate. The distinction made between events such as weddings, birthday parties, and other celebratory events (where the consumption of alcohol is likely to be a central part of the occasion), from events such as PTA fundraisers (where alcohol consumption may be an ancillary aspect), is pertinent, and means that training requirements can be targeted at those occasions the board feels may pose a higher risk to the licensing objectives. The policy statement provides a clear rationale for the position and gives applicants notice of what will be expected of them in terms of training.

AFS believes that the licensing board should carefully monitor the overall number of occasional licences it grants, recognising the fact that occasional licences add to the availability of alcohol. As harm can result from alcohol sold from licensed venues regardless of how well-run those venues are; a training requirement is not sufficient to reduce alcohol harm. Controlling availability, including the number of occasional licences granted, will therefore be a necessary component of a policy aimed at promoting the licensing objectives.

### Question 3

*Should the Board in its policy formally recognise certain national and international events and festivals such as St Patrick's Day and St Andrews Day? No*

*If so, what national and international events and festivals should it recognise? For example, St Patrick's Day/St Andrew's Day/Burns' night etc.*

The licensing board's current policy statement sets normal on-sale licensed hours as 11am until 12 midnight, Sunday to Thursday, and 1am on Friday and Saturday. That provides for 13 hours drinking time every day during the week and 14 hours at weekends. We strongly support the licensing board's current policy position on extended hours applications for national and international events, which states that in many cases such events can appropriately be accommodated within normal licensing hours and should not routinely be regarded as a need for extended licensed hours. We suggest the board also adopts this same policy for special events. In a local authority area with high levels of alcohol harm, automatically granting extensions in licensed hours appears to be contrary to promotion of the licensing objectives.

Q.4. (a) *What should the Board recognise in its policy as 'special events'?*

Q.4 (b) *Does the current definition of 'special events' need to be amended at all? If so, to what?*

See above.

### Question 5

*Should premises where the licence is held by another party, and not in direct control of the management of the premises on a day to day basis, have to exhibit and satisfy to the Board (where they are subject to a review of the Premises Licence) that on an ongoing basis they are ensuring that the premises are being run in a manner consistent with the licensing objectives, in*

particular protecting public safety and preventing crime and disorder? Yes/No (Delete as appropriate).

If so, what measures of compliance by the Premises Licence Holder should the Board suggest in the policy?

No response on this question.

#### **Question 6**

Are the categories of licensed premises proposed by the Board in its 11 June 2013 report appropriate and sufficiently clear? **Yes**

#### **Question 7**

Should the Board require that persons doing home deliveries are trained formally to 'Challenge 25' requirements? **Yes**

#### **Question 8**

(a) Is the current position of the Board in its policy with regard to Licensed Hours/Hours of Trading appropriate? Yes/No (Delete as appropriate).

(b) If no, please specify what the hours should be changed to and why, attaching any available evidence.

Evidence shows that extending or reducing licensed hours can influence problems related to alcohol use, particularly social disorder and violence. (See Alcohol Focus Scotland *Rethinking Alcohol Licensing* and *Licensing Factsheet 1: Using evidence to inform policy and decision-making* for overview of evidence). Licensed hours have steadily increased in Scotland over the past 30 years, helping to normalise and reinforce a heavy drinking culture to the detriment of public health and social well-being.

AFS believes there is scope for West Dunbartonshire to review its policy on licensed hours to better promote the licensing objectives. The licensing board could consider reducing normal licensed hours for on-sales by one hour, allowing for extensions of one hour for special events, and reducing standard hours for off-sales. Long licensed hours should be the exception and not the norm.

#### **Question 9**

Is the current board policy statement with regard to tourism sufficient? **Yes**

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