

Cunninghame House
Irvine
KA12 8EE

16 October 2023

North Ayrshire Licensing Board

You are requested to attend a Meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Ground Floor, Cunninghame House, Irvine on **Monday 23 October 2023 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. Declarations of Interest

2. Licensing (Scotland) Act 2005 – Licensing Policy Statement

Review of existing Licensing Policy Statement and consideration of consultation responses for the Licensing Policy Statement 2023-2027 with NHS Ayrshire & Arran, Public Health Presentation to Licensing Board.

Licensing Board

Sederunt: Eleanor Collier (Convenor)
Nairn McDonald (Vice-Convenor)
John Bell
Cameron Inglis
Christina Larsen
Matthew McLean
Jean McClung
Donald L Reid
Ronnie Stalker
Angela Stephen

Chair:

Apologies:

Meeting Ended:

AGENDA ITEM 2

Report
to
North Ayrshire Licensing Board
by
Solicitor (Licensing)

Subject:	Licensing (Scotland) Act 2005 – Review of existing Licensing Policy Statement and consideration of consultation responses for the Licensing Policy Statement 2023-2027
Purpose	To continue the review process
Recommendation:	That the Board: (a) consider the consultation responses, (b) give directions to the Clerk as to the content of a draft Licensing Policy Statement 2023-2027, and (c) continue consideration to a Special Meeting to consider the draft and to adopt it, with or without amendment.

CONTINUED FROM 18 SEPTEMBER 2023

A. Health Board presentation to the Board on 23 October 2023

The Health Board have been asked to give a presentation to the North Ayrshire Licensing Board at the next meeting on Monday 23 October 2023. They will send an electronic version of their presentation so that Council officers can set it up on the big screens in the Chambers.

B. Background

B.1. All Boards must have a "Licensing Policy Statement" ("LPS") setting out the Board's approach to a wide range of licensing matters (such as the Core Hours allowed to on-sales and off-sales, and overprovision).

B.2. Under Section 6 the Board must revise its LPS every 4 years. The current calculation of the 4-year period sets the revision date as 18 months after the last Council election. The last Council election was on 5 May 2022, so the period ends on Sunday 5 November 2023.

B.3. NALB adopted its first LPS in 2007 and it had been revised every 3 to 5 years ever since (the interval has varied as the legislation has changed, although it is now 4-yearly).

AGENDA ITEM 2

B.4. The policy only sets out guidelines, and not rigid rules – for example, at present NALB has an 'overprovision' policy that says that in most of North Ayrshire there is a presumption against either:

- new premises, whether on-sales or off-sales, or
- an increase in capacity.

But that is only a presumption. It just means that the Applicant is told in advance "The Board is likely to refuse". The Board cannot say "refuse" before hearing the Applicant. The Applicant might persuade the Board that the particular proposal is not destructive of the aims of the policy, so that the Board might agree to treat the particular case as an exception to Policy.

For example:

- the Board might well say "no" to a proposal for a new off-sales shop,
- the Board might be more sympathetic to a proposal for a new restaurant.

And even with the off-sales proposal no-one can say, in advance, "this is certain to be refused".

C. Revision Procedure

C.1. The procedure for revision involves public consultation. The procedure approved by the Board at its meeting on 26 June 2023 was that there should be a public notice placed on the website of either:

- NALB itself or
- the North Ayrshire Community Planning Partnership (NACPP),

in either case coupled with posts put on NAC's Facebook and Twitter accounts.

C.2. The social media posts were to the following effect:

"Do you have an opinion about the sale of alcohol in pubs, shops and other licensed premises? If you do, read this [link to website] "

C.3. The website notice published is Appendix A below ("Consultation document published on Website"). It:

- explained the purpose of a LPS,
- said where the current NALB one is (it is on the NALB website, along with the many supporting documents from the Health Board, Police and Fire),
- gave the NALB email address so that the public can send comments.

AGENDA ITEM 2

C.4. The website notice asked the public to give opinions, e.g.

"Do you think that the policy on any matter should be different?"

Do you think the LPS should cover any matter it does not yet cover?

Why do you think that?"

C.5 Copies of the consultation document were sent to:

- (a) NHS Ayrshire & Arran,
- (b) Police Scotland,
- (c) Scottish Fire and Rescue,
- (d) all active Community Councils in North Ayrshire
- (e) North Ayrshire Drug and Alcohol Partnership,
- (f) North Ayrshire Council's Protective Services Department.
- (g) Unite Scotland (scotland@unitetheunion.org)
- (h) Scottish Beer & Pub Association (contact@beerandpub.com)
- (i) Scottish Grocers' Federation Healthy Living Programme (healthylivingeast@sgfscot.co.uk)

C.6 The Consultation document included "Examples of matters for discussion" (Part 6):

- (a) Overprovision
- (b) Occasional Licences
- (c) Trade Union "Safely Home" campaign

and stated:

*"These are **only** examples and the Board welcomes comments on **any** aspect of Licensing policy."*

C.7 The consultation period closed on Friday 25 August 2023. There were two responses, one from the Health Board and one from a member of the public. These are summarised in Appendix B below ("Summary of consultation responses").

D. Procedure

D.1. On Monday 23 October 2023 the Board can consider:

AGENDA ITEM 2

- the current LPS
- the responses to the consultation
- a presentation from the NHS

and give directions to the Clerk as to the preparation of a revised draft LPS. Appendix C contains "Suggested matters for consideration" which the Board might give directions on.

D.2 The Board will convene later, at a Special Meeting prior to the revision deadline on 5 November 2023, and adopt the draft, with or without changes.

Appendix A: Consultation document published on Website

North Ayrshire Licensing Board Licensing (Scotland) Act 2005, Section 6 Licensing Policy Statement 2023-2027

Members of the public and consultees are invited to make written comments (by letter or email) on the proposed Licensing Policy Statement 2023-2027, to arrive no later than Friday 25 August 2023.

1. How to give us your comments

If you believe any of the existing Policies should be changed, added to or deleted, please say why and how. If you have any statistics to support your opinion please send them.

Please send any comments by letter or email to:

Raymond Lynch

Clerk to the Licensing Board:
North Ayrshire Council
Democratic Services
Cunninghame House
Irvine
KA12 8EE

licensing@north-ayrshire.gov.uk

AGENDA ITEM 2

The Board will be told of all responses. Please note that all responses may be made public.

[2. The present position](#)

The Licensing (Scotland) Act 2005 regulates the sale of alcohol in Scotland. It is administered by Licensing Boards. Every Licensing Board must publish a Licensing Policy Statement ("LPS") setting out its policy for the exercise of its functions under the Act. This must be reviewed and adopted every 4 years. The next LPS must be adopted before Sunday 5 November 2023. Boards must have regard to the LPS when exercising their functions, although the LPS is only a set of guidelines and each individual case is dealt with on its merits.

[3. The content of the LPS](#)

This is left up to individual Boards, but the Policies must seek to promote the Licensing Objectives (LOs). These are stated in Section 4:

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children and young people from harm.

The current North Ayrshire Licensing Board LPS is on the North Ayrshire Council website:

<https://www.north-ayrshire.gov.uk/business/licences-and-permits/food-alcohol-gambling/licences/licensing-board.aspx>

This page has several links to the documents from the Health Board, Police Scotland and the Scottish Fire and Rescue Service which were used in the preparation of the LPS.

The webpage also has the Board's Standard Conditions for Premises Licences (the current version of the Conditions is Edition 5).

To see these documents, right-click the mouse, and select 'Save Target As ...'. This will save the chosen document onto your own computer, so that you can then read it as a WORD or EXCEL document.

[4. Consultation](#)

The Board must consult before it decides on a LPS. As well as inviting members of the public to comment, the Board is inviting the following to make representations as to what the next LPS should contain:

AGENDA ITEM 2

- (a) NHS Ayrshire & Arran,
- (b) Police Scotland,
- (c) Scottish Fire and Rescue,
- (d) all active Community Councils in North Ayrshire
- (e) North Ayrshire Drug and Alcohol Partnership,
- (f) North Ayrshire Council's Protective Services Department.
- (g) Unite Scotland (scotland@unitetheunion.org)
- (h) Scottish Beer & Pub Association (contact@beerandpub.com)
- (i) Scottish Grocers' Federation Healthy Living Programme (healthylivingeast@sgfscot.co.uk)

When the Board considers what the next LPS should contain, the Board will be told of any responses received.

5. Summary of the Alcohol Licensing System

Unlike the previous system (based on the Licensing (Scotland) Act 1976), where the only Licences related to individual Premises, the 2005 Act system has both 'Premises Licences' and 'Personal Licences':

Premises Licences:

- (a) These are roughly equivalent to the 1976 Act Licences. The Board now regulates Members Clubs in addition to the Public Houses, Restaurants, Hotels, Off-sales and other Premises that had Licences under the 1976 Act system. The 2005 Act replaced the 1976 Act system where Members Clubs were registered at the Sheriff Court rather than licensed by the Board;
- (b) There are over 300 Premises Licences in North Ayrshire;
- (c) The legislation applies some 'mandatory' conditions - these conditions apply across Scotland, and local Boards cannot change them. In addition, local Boards are entitled to apply their own conditions to reflect the LPS and Licensing Objectives, and in North Ayrshire this is done by 'Standard Conditions';
- (d) A Premises Licence lasts indefinitely, although with an Annual Fee (unlike the 1976 Act system, where Licences had to be renewed every three years).

AGENDA ITEM 2

Personal Licences:

- (a) These Licences were introduced by the 2005 Act. Many people working in Licensed Premises have Personal Licences, and those who do not must have statutory training. Most Licensed Premises have at least one Personal Licence holder - many have two or more;
- (b) There are about 1,600 Personal Licences in North Ayrshire;
- (c) Unlike Premises Licences, there are no conditions (mandatory or local) for Personal Licences;
- (d) A Personal Licence lasts 10 years, but can be renewed indefinitely;
- (e) Holders must do 'refresher training' every 5 years to make sure that their knowledge of Licensing Law is up-to-date. If they do not do so then the Licence is automatically revoked.

Occasional Licences:

Premises which are not otherwise licensed (such as Community Halls) may apply for temporary "Occasional Licences". These last for the duration of a function (such as a wedding reception or party). Each year about 900 Occasional Licences are granted in North Ayrshire.

The Licensing Board cannot refuse an Occasional Licence or Personal Licence due to "Overprovision".

6. Examples of matters for discussion

These are **only** examples and the Board welcomes comments on **any** aspect of Licensing policy.

(a) Overprovision

The Board has an "Overprovision" Policy for "Premises Licences" which reflects a recognition that in some parts of North Ayrshire the link between drinking and crime and social problems make it inappropriate to grant new Premises Licences (or to allow an increase in size for existing Premises). This policy operates as a "presumption against", which means that when the Board look at a proposal for a new licence (or a request for an increase in size) the Board starts from the assumption of 'this proposal should be refused', and it is then for the Applicant to try to persuade the Board that the particular case can be treated as an exception to the policy.

Currently:

the policy operates a 'presumption against' all Premises Licences, but the 'presumption against' is stronger for some types of Premises, such as off-sales

AGENDA ITEM 2

and public houses, and not as strong against Premises where the main activity is food or accommodation (restaurants and hotels).

the policy is 'strongly against' in 4 of the 6 Localities in North Ayrshire:

“Three Towns” Locality (Ardrossan, Saltcoats & Stevenston)

“Kilwinning” Locality (including Pennyburn, Blacklands, Whitehurst Park, Woodside)

“Irvine and Area” Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torran yard)

“Garnock Valley” Locality (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton)

but not so 'strongly against' in 2 Localities:

“North Coast” Locality (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride)

"Isle of Arran" Locality

These variations

Questions

Do you think there should be any "Overprovision" Policy at all?

Do you think there should be an "Overprovision" Policy in some parts of North Ayrshire, but not in others?

Do you think there should be an "Overprovision" Policy for some types of Premises, but not for others?

(b) Occasional Licences

What sort of activities should Occasional Licences be used for?

(c) Trade Union "Safely Home" campaign

Should the Board recommend that On-Sales licence-holders should provide free transport for their staff after hours? (On-Sales like public houses and restaurants might stay open till midnight or later, but by Law all Off-sales must be shut by 10.00 p.m.).

The Board can only recommend that Licence-Holders should implement policies like "Safely Home" or "Ask for Angela". The Board cannot threaten to revoke or suspend Licences if Licence-Holders don't implement these recommendations.

AGENDA ITEM 2

Appendix B: Summary of consultation responses

Two responses:

1. Ayrshire and Arran Health Board
2. Resident in Irvine

1. Ayrshire and Arran Health Board (25 August 2023)

BACKGROUND

The Licensing (Scotland) Act 2005 places a duty on Licensing Boards to publish a statement of their licensing policy outlining how they will protect the public's interests with regards to the supply of alcohol by promoting the five licensing objectives of:

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

The Public Health Department in NHS Ayrshire & Arran has considered the proposed Statement of Licensing Policy 2023- 2027 and provides the following comments relating to the promotion of the licensing objectives. We have given particular consideration to the objectives of: preventing crime and disorder; protecting and improving public health; and protecting children and young people from harm. We appreciate that the licensing objectives are a consideration throughout the Policy Statement not least in Section 4: Management of Premises, however have elected to make comment on each of the above separately.

We have also included comment on specific issues such as: overprovision; alcohol home deliveries; outside drinking areas; and occasional licenses which, we feel, require further consideration due to their potential contribution to alcohol-related risks and harms.

We submit these comments along with a data report illustrating alcohol deaths and alcohol-related hospital admissions in North Ayrshire and across its 6 localities. Data on alcohol-related hospital admissions is also available at the level of smaller communities or intermediate zones. This illustrates which communities are experiencing the greatest risks and harms to health and also how this is changing over time.

AGENDA ITEM 2

COMMENTS

❖ **The Licensing Objectives: Preventing Crime and Disorder**

There is evidence of the impact that alcohol has on crime and anti-social behaviour. 44% of violent crime in Scotland is alcohol-related; and 41% of prisoners report being under the influence of alcohol at the time of their arrest.

It is welcomed that the Board supports a strategy aimed at making the area a safe place to live and visit and that it is committed to '*ensuring so far as possible that Licensed Premises are run in such a way as not to contribute to crime and disorder.*' It may also be helpful for the Board to consider how it might use its knowledge and influence to work with partnerships such as the Safer North Ayrshire Partnership and the Alcohol and Drug Partnership to maximise their collective impact given the effect that alcohol can have on crime and disorder and the role of licensing within this.

It is helpful to see set out clearly the issues the Board expects applicants to address in license applications. It is noted that examples are given in Section 4 of the existing Policy Statement of control measures expected by the Board such as dispersal policies and use of CCTV. It may be helpful to extend these examples further where possible in the revised Policy to include: staff training on policies and procedures for managing incidents; and installing lighting and safety infrastructure measures as a minimum.

It is welcome that examples of good practice are also provided in the existing Policy Statement under Section 4 such as Radiolink, Pubwatch and bottle marking. However, there may also be an opportunity to promote further examples in the revised Policy Statement such as: facilitating safe journeys home; conflict management training for staff; and participating in initiatives and campaigns such as 'Ask for Angela' aimed at keeping patrons safe.

❖ **The Licensing Objectives: Protecting and Improving Public Health**

The harmful impacts alcohol can have on health are well known and we have provided data to the Licensing Board on alcohol-specific deaths in North Ayrshire and more detail on alcohol-related hospital admissions across each locality and intermediate data zone¹.

At the most extreme end, alcohol specific deaths have increased in North Ayrshire over the last decade at a steeper rate than in East and South Ayrshire. From 2011-15 to the current period for which data are available (2017-2021), the increase in North was 51% compared to 22% for Ayrshire and Arran as a whole. The current rate is significantly higher than Scotland as a whole at 27 per 100,000 compared to 21 per 100,000 population. These deaths are essentially preventable and the impacts are felt more

AGENDA ITEM 2

acutely in the most deprived areas in North Ayrshire which are experiencing a 4.5 times higher alcohol specific death rate than the least deprived communities.

We are seeing an increase in more severe alcohol-related harms. In 2021/22 North Ayrshire had the 6th highest recorded figure (of 32 council areas) in Scotland that year for general hospital rates of alcoholic liver disease at 94 patients per 100,000 population compared to 71 per 100,000 in Scotland. This has more than doubled since 1997/98 from 39 patients per 100,000 population to 94 per 100,000 in 2021/22 – a 140% increase. Hospital admissions for alcohol dependence have also gradually risen over the last two decades in North Ayrshire from 54 patients per 100,000 population in 1997/98 compared to 95 per 100,000 in 2021/22, constituting a substantial increase of 76% over that period. This was the 4th highest recorded of the 32 Scottish council areas in 2021/22.

Evidence indicates that drinking habits polarised as a result of the pandemic, with an overall decrease in consumption for lighter drinkers and an increase for heavier drinkers. Combined with reduced access to services during this period, these changing drinking patterns may translate into increased harm.

As illustrated in the health data report accompanying this submission; there are number of specific communities in North Ayrshire who are experiencing alcohol related hospitalisations which are significantly higher than the Scottish average and it is likely that the pandemic and economic crisis are also being experienced differently by different parts of the population, widening existing inequalities and creating new ones. It can also take 20 years to see the full effects of changes in alcohol consumption on other health-related conditions, such as cancers. More detail on these communities is summarised under the section on overprovision below.

We welcome the fact that the Board is concerned about the link between the consumption of alcohol and public health and appreciates the statement that *'whilst the Board wishes to see premises thriving in the area, this cannot be at the expense of the health and wellbeing of patrons or the wider community'*.

We also appreciate the opportunity we have to engage in dialogue and present data and information to the Board in order to help inform its Statement of Licensing Policy and it is helpful to see intentions set out in the Policy Statement for working in partnership with and consulting the NHS on relevant licensing applications. It would also be useful to set out what other bodies and partnerships the Board might engage with in North Ayrshire moving forward to continue to inform this dialogue as well as formulate further suggestions of how the licensing objectives (including Protecting and Improving Public Health) might be promoted. This might include the NHS, Police Scotland, North Ayrshire Alcohol and Drug Partnership and local communities including those with lived or living experience of problematic alcohol use as well as licensees.

AGENDA ITEM 2

We also welcome the measures that the Board would expect to see when an applicant or license holder is formulating and implementing their operating plan in order that public health may be protected and can see these measures woven through Section 4 of the existing policy including its position on adult entertainment and the use of plastic glasses in late opening premises. We also welcome the reference in the current Policy Statement to gambling as we recognise the risks of co-locating gambling facilities and alcohol at the same premises given the relationship between and impact of both on health .

We would, however, like to see the revised Policy Statement go further with more detail against this objective of additional measures that the Board would like to see licensees consider and for this to be promoted to licensees in their everyday practice as well as when they are preparing operating plans.

Alcohol Focus Scotland (AFS) has produced a helpful resource which sets out suggested measures to promote all of the licensing objectives for both Licensing Boards and licensees. This refers to some of the measures the Licensing Board may wish to also reference against other licensing objectives. For example: measures to prevent crime and disorder can also be utilised to protect and improve public health; such as promoting designated driver campaigns and incentivising this with reduced cost or free soft/alcohol-free drinks. Other, more innovative measures to promote to applicants and licensees aimed at protecting and improving public health, which go beyond information provision and campaigns, include the following (more examples can be found in the AFS resource):

- **Making available low/non-alcoholic products and providing a greater range e.g. alcohol-free beer on tap**
- **Ensuring adequate staff training regarding the refusals policy and the effects of alcohol on the body (beyond the statutory minimum requirements for bar staff)**
- **Supporting customers to be aware of the number of units they are consuming through information provision and staff being aware, and being able to advise, on the strength of products they are dispensing**
- **Training and supporting staff to be vigilant and introducing standard approaches to responding to patrons who have consumed too much alcohol or are at risk;**
- **Development and promotion of workplace alcohol policies;**
- **Providing food on the premises, so that patrons may eat at the same time as consuming alcoholic beverages if they wish.**

It would also be beneficial for the Board to be mindful of those individuals who are experiencing or in recovery from problematic alcohol use and propose measures in the Policy Statement which may be supportive to their health and wellbeing. For example, we know from engagement with

AGENDA ITEM 2

individuals with lived experience that locating alcohol displays at the entrance/exit/ centre of general retail premises create unnecessary pressure for individuals as they are forced to enter the alcohol display area to carry out their shopping.

❖ **The Licensing Objectives: Protecting Children and Young People From Harm**

The clear expectations and measures set out under Section 4 in particular of the current Policy that licensees require to consider in relation to protecting children and young people are particularly positive and welcome.

It may be helpful if the Board sets out how it might engage with other bodies and partnerships on any application where concerns are raised regarding access for children and young persons. This might include the North Ayrshire Child Protection Committee or the Alcohol and Drug Partnership. Future engagement may also include dialogue with organisations, public stakeholders and licensees who may be able to suggest other measures which could be put forward to keep children and young people safe.

Home drinking also poses potential risks for children and young people, such as neglect or modelling of parental drinking . It would, therefore, be favourable if the Statement of Licensing Policy also takes account of alcohol-related risks to children occurring in private spaces as well as public. The risks to children resulting from parental alcohol consumption also include Foetal Alcohol Spectrum Disorder (FASD). This is an umbrella term that is used to describe a range of lifelong disabilities caused by prenatal alcohol exposure. It may, therefore, be pertinent for the Board to consider how best to support licensees to: increase staff awareness of the impact of parental alcohol consumption on children; how to recognise risk; and when and how to alert a relevant professional if they have concerns about the wellbeing of a child.

❖ **Annex D: Overprovision**

Although it is appreciated that the Board will be considering the impact of the COVID-19 Pandemic and other pressures particularly impacting on the hospitality sector in North Ayrshire we feel the evidence of alcohol risks and harms being experienced in North Ayrshire warrants the need to consider how controlling availability using an overprovision policy may help impact positively on this.

Evidence suggests that neighbourhood areas with a higher number of alcohol outlets have higher rates of alcohol-related deaths, alcohol-related hospitalisations and crime rates than those neighbourhoods with the least number of alcohol outlets . NHS Ayrshire & Arran is generally supportive of the Licensing Board's existing policy position of a 'presumption against' the granting of all new Premises Licences or a request for an increase in size to

AGENDA ITEM 2

existing premises- placing the emphasis on the Applicant to make the case to the Board that a particular request should be treated as an exception to the policy.

Prior to the COVID-19 pandemic, the majority of alcohol (73%) was sold in off-sales premises. The pandemic further shifted alcohol sales and drinking from the on-trade to the off-trade with this proportion increasing to 90% in 2020 before decreasing slightly to 85% in 2021. We are therefore supportive of the position that 'presumption against' granting a license is stronger for off-sales in particular. In addition, as individuals are likely to travel to purchase alcohol it seems sensible that any action to limit the availability of alcohol should be taken across the Licensing Board area. This also requires to be considered in the context of alcohol deliveries which is explored further below.

As indicated in the information NHS Ayrshire & Arran has provided to the Licensing Board along with this response, alcohol related hospital admissions are higher in the communities also experiencing higher income deprivation. The most recent hospital data (2017-2021) highlights that 4 of the 6 areas in North Ayrshire where alcohol related hospitalisations are significantly higher than the Scottish average are in the 3 Towns locality (Saltcoats Central; Ardrossan Central; Stevenston Hayocks and Stevenston Ardeer). The other two areas are Kilwinning West and Blacklands (Kilwinning locality) and Largs Central and Cumbrae (North Coast and Cumbraes locality). All are areas which also experience significantly higher levels of income deprivation than the Scottish average. It is therefore worth considering whether Largs Central and Cumbrae may require some specific consideration when identifying additional areas to be included in the list where the presumption against granting an alcohol license is stronger.

❖ **Paragraph 2.20 :Home Delivery**

Alcohol deliveries are a growing area of retail associated with an increase in online shopping which has further developed in the context of COVID-19 restrictions. The types of businesses that sell alcohol online and deliver alcohol now is diverse and it is appreciated that many will operate out with the local authority area of the Licensing Board. There is also a dearth of data relating to the distribution areas of these retailers or the volumes and types of alcohol they sell. Given the lack of information about alcohol deliveries and online sales would it be possible for the Board to request that relevant licensees in their area provide data on the volume of alcohol being ordered for delivery, what type and where alcohol is being delivered to, as a minimum to support collective understanding of this area?

Given the recognition that the home is an unregulated environment, and that the continued shift to home drinking may result in negative impacts; it is positive that the Board has described measures in their Policy Statement, which retailers must adhere to. For example, steps taken to ensure age verification; and adequate record keeping. It would be helpful to retain this in the revised Policy Statement and consider strengthening these to include

AGENDA ITEM 2

other measures which are consistent with promoting the licensing objectives such as: ensuring that alcohol deliveries are not left in nominated spaces; and protecting the safety of those delivering alcohol.

In addition, it is somewhat unclear why *orders* for delivery of alcohol can only be taken during licensed hours however, *deliveries* may take place out with these times, albeit not between the hours of midnight and 6am. It would perhaps be clearer and more consistent to stipulate that alcohol deliveries are also only permitted in line with licensed hours (i.e. between 10am and 10pm) providing the same 12 hour window.

❖ **Section 4: Management of Premises- Outside Drinking Areas**

The guidance contained in the existing Policy Statement around the management of outdoor drinking areas remains positive. It may be worth considering in the revised policy if there are now more permanent outside drinking areas in place in North Ayrshire than before, perhaps as a result of COVID, and whether this has had a significant increase in the overall capacity of venues. It may be helpful to consider if a separate occupancy capacity may be required for external drinking areas. This would seem important in the interest of public safety and in preventing crime and disorder as well as protecting public health and ensuring access to adequate facilities. This requirement would also help with monitoring overall provision. In addition, it is worth acknowledging that outdoor drinking areas have the potential to increase the visibility of alcohol to those not necessarily accessing the premises including children and people in recovery which may have a detrimental effect.

❖ **Section 8: Occasional Licences**

Whilst we recognise the complexity of regulating the temporary sale or supply of alcohol it may be worth noting that the granting of occasional licences can have an impact on the general availability of alcohol and the cultural norm that alcohol is available in the majority of social situations. It would be useful for the Board to keep the number of occasional licenses granted under review with this in mind.

In the interests of protecting children and young people from harm, it may be helpful to consider if the revised Policy Statement could set out a presumption that an occasional licences will not be granted for events that are aimed primarily at children or young people or events where children and young people will be present where there are no other activities other than the sale of alcohol. It would be of interest for applicants to clearly set out how children and young people will be protected from harm and that they consider the reason for an occasional licence for an event to which children and young persons will have access.

It may also be helpful to give applicants examples of suitable measures that might be helpful in protecting children and young people from harm such as being vigilant about underage sales and proxy purchasing; giving

AGENDA ITEM 2

consideration to the impact of adult alcohol consumption on children and young people who are present; and ensuring there are sufficient staff or responsible adults on hand to offer support where required. These measures would be equally appropriate for events granted occasional licenses as licensed premises. It is welcome that a number of positive measures are set out in Section 4 of the current Policy Statement specifically around children and young people on licensed premises. Many of these would be equally applicable in the context of occasional licenses.

Notes

- i Scottish Crime and Justice Survey 2019 20
- ii NHS Ayrshire & Arran Public Health Research Team (2023) Alcohol Trends 2023 North Ayrshire
- iii Fraser C, Giles L. The impact of the COVID-19 pandemic on alcohol consumption and harm in Scotland and England: an evidence summary. Public Health Scotland; 2023 the-impact-of-the-covid-19-pandemic-on-alcohol-consumption-and-harm-in-scotland-and-england/
- iv 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.
- v Do 'environmental bads' such as alcohol, fast food, tobacco, and gambling outlets cluster and co-locate in more deprived areas in Glasgow City, Scotland? - ScienceDirect
- vi measures to promote the licensing objectives (alcohol-focus-scotland.org.uk)
- vii Alcohol Focus Scotland (2019) -parental-drinking-in-scotland discussion paper
- viii Cresh (2018) Alcohol Outlet availability and harm in East Ayrshire. <https://www.alcohol-focus-scotland.org.uk/media/310738/alcohol-outlet-availability-and-harm-in-east-ayrshire.pdf>
- ix Ponce Hardy, V. & Giles, L. Public Health Scotland 2002. MESAS Monitoring Report 2002 <https://www.publichealthscotland.scot/publications/mesas-monitoring-report-2022/#:~:text=Description,found%20in%20the%20workbooks%20below.>

AGENDA ITEM 2

2. Resident in Irvine

He wants the Board to alter policy for Outdoor Drinking Areas ('beer gardens') to reduce opening to 5pm or 6 pm (from the current 10 p.m.). He refers specifically to a public house in Irvine. This comment concerns a Board decision in 2021, when the Board granted a variation for a public house to allow an ODA. There was one objection, from neighbours (not the present LPS respondent). The Board's decision to grant was unanimous.

It is open to the Board to change the policy, but this would only immediately affect future decisions. Existing licences would continue to have 10 pm. On a case-by-case basis the Board could, after Review procedure, vary the Licence, but this change would only affect the particular premises.

Board-wide retroactive variations are not allowed. In 2010 the Scottish Parliament allowed Boards to propose changes to conditions, but this power cannot be used because the Scottish Government has never made Regulations prescribing the variations which Boards may impose (Licensing (Scotland) Act 2005, Section 27A, inserted by a provision of the Alcohol (Scotland) Act 2010 commenced in 2011).

There would have to be a Board Hearing if anyone objected (which presumably Premises Licence Holders would do if the Board proposed to restrict their Licences).

Appendix C: Suggested matters for consideration

A. Overprovision Policy

The Board could review its policy on Overprovision, for example

- abandoning it altogether
- limiting its application to Premises which sell off-sales only
- limiting its application to areas where health and other statistics are substantially worse than the Scottish average
- setting out in the LPS factors which might lead it to allow an exception

Overprovision: "correlation v causation"

The Overprovision Policy is the practical application of the Board's Policy on the Licensing Objective "Protecting and Improving Public Health" (the "PHLO").

The Board must have regard to the 5 Licensing Objectives in all its functions. These are stated in the Licensing (Scotland) Act 2005, Section 4, and are:

AGENDA ITEM 2

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting Children and Young Persons from harm.

Of the 5 Licensing Objectives, with 4 of them there is no problem with linking the two concepts because the Board will have information which is specific to particular Premises. The exception is the 'Protecting and Improving Public Health' Licensing Objective. This is the " correlation v causation problem".

The Health Board can produce a lot of statistics on a 'whole area' basis (see their submission to the LPS consultation) but it's unlikely that anyone can produce specific evidence enabling the Board to point to particular Premises and say:

"The operation of those Premises is inconsistent with the Licensing Objective 'Protecting and Improving Public Health' ".

This is why the legislation has an alternative approach. Instead of requiring Boards to have specific evidence for the particular Premises, the Board can have an Overprovision Policy covering all or part(s) of its area, creating a presumption of refusal.

So, when a Board has to make a decision on:

- an Application for a new Licence, or
- an Application to increase the Capacity (display space in a shop, or the number of customers on on-sales premises),

the Board can say to the Applicant:

"Your premises are in an area with a 'presumption of refusal' due to poor health etc. figures, so we start from a presumption of refusal. Why should the Board grant your proposal – how will it help the Board meet the 'Protecting and Improving Public Health' Licensing Objective?"

Overprovision: Factors

It is for the Board to decide whether or not what the Applicant says justifies an exception from the Board's Policy. For example, Applicants have said:

"If my shop is granted a licence or expands its display:

- *I'll be able to employ X new staff,*

AGENDA ITEM 2

- *if I can stock a wider range of goods then it will benefit the public, because if they have more choice they can get all their shopping locally*
- *my business will be more profitable so it's more likely that the public will retain access to a local groceries outlet, and*
- *I myself will benefit because the business will be more profitable."*

The Board could take the view that the Licensing Objective refers specifically to 'Public Health' so:

- any supposed benefits to staff and/or Applicant are irrelevant, and
- since 'Public Health' is unlikely to be improved by adding a new alcohol outlet or increasing an existing one,

the Application should be refused. But it can be suggested that that would be too strict a reading of the legislation. The whole of the Licensing (Scotland) Act 2005 is about regulating drinking, not stopping it: just looking at 'Public Health' is not enough.

Overprovision: Scottish Government Guidance

Previous LPSs were based on Guidance that was published in 2007. This was updated on 13 January 2023 and now includes:

"Assessing overprovision

5.31 There are a number of underlying principles that the Licensing Board should take into account as they approach the development of their statement of overprovision:

- *Licensing Boards should use alcohol-harm information (or potential alcohol-harm information) to identify localities and then proceed to consider the number, type and capacity of premises in those areas.*
- *It is the potential for undesirable consequences which is intended to be addressed through overprovision assessments as a requirement within the 2005 Act. This can be thought of as the cumulative effect of more and more licences being granted in a locality and what this means in respect of the effect on life in that area. It is the cumulative effect rather than the actions of any single operator that is key.*
- *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.*

AGENDA ITEM 2

- 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.

- 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."

Overprovision: Basis of assessment - 6 Localities or 38 Intermediate Zones?

An issue with the data supplied in Board reports was raised by a Board Member who questioned why data was based on the 6 Localities in North Ayrshire.

This was the instruction of the last Board, and is used in the current LPS. The previous Board determined that the Overprovision Policy should be based on 6 'Localities', coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership (the Licensing (Scotland) Act 2005 leaves it to individual Boards to determine 'localities', which may include the whole Board area).

The Localities are:

- (1) "North Coast" Locality (Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride)
- (2) "Three Towns" Locality (Ardrossan, Saltcoats & Stevenston)
- (3) "Kilwinning" Locality (including Pennyburn, Blacklands, Whitehurst Park, Woodside)
- (4) "Irvine and Area" Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranside)
- (5) "Garnock Valley" Locality (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton)
- (6) "Isle of Arran" Locality

as opposed to the 38 Intermediate Zones in North Ayrshire.

An earlier LPS did present data based on the 38 Intermediate Zones, but the Board considered that that was an unnecessary complication and encouraged an approach that might be mathematically accurate but was unrealistic, given that people might well travel to buy alcohol.

For example, the "Three Towns" is a single locality but covers 9 Intermediate Zones:

- 1 Ardrossan North West
- 2 Ardrossan Central
- 3 Ardrossan North East

AGENDA ITEM 2

- 4 Saltcoats Central
- 5 Saltcoats North East
- 6 Saltcoats North West
- 7 Stevenston Ardeer
- 8 Stevenston Hayocks
- 9 Stevenston North West

There is a vast amount of data available but to assist comparison the Solicitor (Licensing) asked the NHS this time (2023) to use only the same 3 'health indicators' which we used in the two previous LPSs:

Life expectancy: males

Life expectancy: females

Alcohol-related hospital stays

So the data is $3 \times 38 = 108$ items, provided as a colour-coded "Traffic Light" spreadsheet:

- red: Statistically significantly 'worse' than Scottish average
- amber: Statistically not significantly different from Scottish average
- green: Statistically significantly 'better' than Scottish average

Looking just at the 'Three Towns' Locality, the 'reds' predominate, but if the examination goes down to Intermediate Zone level one sees that in '**Ardrossan North West**' all the indicators are 'green' whereas in the neighbouring '**Ardrossan Central**' all the indicators are 'red'. So if there were effectively 38 different Overprovision Policies:

- an applicant in '**Ardrossan North West**' might say

"the Overprovision Policy doesn't need to apply to me"

whereas

- the Board would say to an Applicant in '**Ardrossan Central**' – perhaps only 100 metres from the boundary –

"We're starting from the presumption of refusal. You persuade us why we shouldn't refuse."

When the Board did have an Overprovision Policy based on Intermediate Zones, we could get round the 'near the boundary' issue by also giving the Board data for the surrounding Intermediate Zones, but Members may have felt that they were being swamped with detail.

There's an even smaller statistical unit called the "Data Zone" (which can cover areas of only a few streets). NAC consists of 138 Data Zones: a lot of official data is supplied at the "Data Zone" level, e.g. in the "Scottish Index of Multiple Deprivation" (SIMD). The Board has never used "Data Zones" before, and the advice offered by officers is that it should not do so now, as this would lead to more "It's largely a mathematic exercise and it's unrealistic" comments.

AGENDA ITEM 2

Overprovision: National Records of Scotland: annual report "Alcohol-specific deaths":

This was published on 29 August 2023 and is on the internet at:

<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/deaths/alcohol-deaths>

The website includes a summary of the report:

"Small increase in alcohol-specific death statistics

Tuesday, 29 Aug 2023

The number of deaths from alcohol-specific causes rose in Scotland in 2022 by 2%, according to figures published today by National Records of Scotland.

In total 1,276 deaths were attributed to alcohol-specific causes last year, 31 more than in 2021; the highest number since 2008.

Male deaths continue to account for around two thirds of alcohol-specific deaths. Female deaths increased by 31 to 440, with the number of alcohol-specific male deaths unchanged at 836.

Taking into account the changing size and age-structure of the population, the rate of death had changed from 22.3 per 100,000 to 22.9 per 100,000 over the last year. This is not considered statistically significant.

Daniel Burns, Head of Vital Events Statistics, said:

"Looking at the long term trend the number of deaths from alcohol-specific causes fell between 2006 and 2012 but has risen since and is now about the same as 2010 levels.

"In 2022, the average age at death for females from an alcohol-specific cause was 58.7 years and for males it was 60.0 years."

There are 4.3 times as many deaths from these causes in the most deprived communities as in the least deprived communities but this equality gap has been narrowing. This compares to a ratio of 1.8 times for all causes of death."

B. "Safely Home", "Ask for Angela" and other initiatives

As the Law stands the Board can't do anything more than recommend to Licence Holders that they adopt the various initiatives.

The "Safely Home" initiative was at a meeting of North Ayrshire Licensing Board on 22 November 2021. While the Board were sympathetic to the aims, they considered that the matters raised were beyond the legal competence of Licensing Boards and would

AGENDA ITEM 2

require legislation, so instead of adopting a requirement on Premises to provide travel for their staff the Board instructed the Convenor to write to the Scottish Government, and this was done.

ⁱ NHS Ayrshire & Arran Public Health Research Team (2023) Alcohol Trends 2023 North Ayrshire