

East Lothian Licensing Forum

New Statement of Licensing Policy – review and recommendations

This paper outlines the role of East Lothian Licensing Forum, comments on the existing East Lothian Licensing Policy and operation of the Alcohol Licensing (Scotland) Act 2005, and makes sixteen recommendations to the East Lothian Licensing Policy Group and Licensing Board for the development of the new Statement of Licensing Policy 2017-22.

BACKGROUND

Role of the Local Licensing Forum

Under the Alcohol Licensing (Scotland) Act 2005 the Local Licensing Forum has the following general functions,

- (a) keeping under review (i) the operation of this Act in the Forum's area, and,(ii) in particular, the exercise by the relevant Licensing Board or Boards of their functions, and
- (b) giving such advice and making such recommendations to that or any of those Boards in relation to those matters as the Forum considers appropriate.

Under the Act, A Licensing Board must— (a) in exercising any function, have regard to any advice given, or recommendation made, to them in relation to the function by a Local Licensing Forum, and

(b) where the Board decides not to follow the advice or recommendation, give the Forum reasons for the decision.

In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must (a) ensure that the policy stated in the statement seeks to promote the licensing objectives, and consult the Local Licensing Forum for the Board's area.

REVIEW OF THE OPERATION OF THE ACT IN THE FORUM'S AREA

The Forum's view is that the current Statement of Licensing Policy 2013-16 has not been very influential in the actual decisions of the Board during the period of its application. There is a perception that the economy and jobs have been a prime concern of some Board members although they are not one of the five licensing objectives, and that there may also have been party political aspects to the voting (please see recommendation 14).

Overprovision

The Forum has considered the overprovision statement, in particular the whole area aspect of the statement. There has been a lack of clarity around whether the whole area overprovision statement was contrary to the law at the time. However, it is clear now under an amendment to the Act that this is lawful.

The pros and cons of an overprovision statement for the whole area have been debated. Advantages identified are that it creates a presumption of rebuttal, therefore further information is required to be submitted with licensing applications which is recognised as being very useful in giving a comprehensive picture to inform decision making. It also avoids certain council areas being stigmatised as ‘problem’ areas, and takes into account that some people may travel to purchase alcohol. Disadvantages are that it becomes meaningless if the majority of licenses continue to be granted. To the Forum’s knowledge, only one application has been refused without challenge in the last four years which was for an extension to display area of a supermarket prior to opening. It has been suggested that there may have been some reluctance to ‘take on’ larger operators.

It is acknowledged that members are representing their own communities as being Board members. Consistency in decisions and conditions is important, for example between size and type of outlet.

ISSUES TO BE CONSIDERED AND RECOMMENDATIONS

Forum members have built up a degree of expertise in the licensing area and have noted a number of issues that they feel the new policy should consider. The Forum has discussed these issues thoroughly, drawing on a variety of sources of evidence – available data on alcohol e.g. health and police statistics and outlet densityⁱ, local knowledge of alcohol-related issues e.g. availability, cultural factors, and the published evidence around causes of alcohol-related behaviour e.g. consumption and best practice in addressing alcohol-related harm.

The Forum respectfully reminds the Board that the promotion of the five licensing objectives is intended to form the basis of the policy and licensing decisions. The main issues the Forum brings to the attention of the Policy Group and Licensing Board are outlined as follows,

1. Protecting Children and Young People from Harm

Protecting Children and Young People from Harm (amended under the Air Weapons and Licensing Act to include young people) is a licensing objective the Forum takes particularly seriously. There are a number of elements to consider.

- a. Granting of occasional licenses. The Forum does not consider it appropriate for occasional licenses to be granted for events that are primarily child or family-orientated, where the majority of attendees will be children, young people and families. The Forum has concerns over the exposure of children and young people to alcohol and the ‘normalisation’ of alcohol, its effects and behaviour associated with consumption and intoxicationⁱⁱ.

Recommendation 1: Occasional licenses are not granted for events that are primarily child or family-orientated, where the majority of attendees will be children, young people and families.

Recommendation 2: Where licenses are granted, there is a requirement in the Statement of Licensing Policy that applications include a justification for why alcohol is required to be served and for a risk assessment to be conducted, including items on security.

Recommendation 3: Where licenses are granted, there is a requirement for separate areas for the serving of alcoholic and soft drinks for occasional licensees where children and young people will be present.

b. On-sales premises.

Recommendation 4: The Forum recommends that the Statement of Licensing Policy states that access for children and young people will only be granted for on-sales premises when a meal is to be consumed e.g. restaurants, pubs serving food, i.e. not vertical drinking establishments, or for organised events e.g. sports.

c. Deliveries. The Forum suggests that the new policy incorporates steps to reduce the potential for children and young people to access alcohol via online sales and deliveries, e.g. Challenge 25, checks and records being in place, personal licenses and training requirements for all delivery drivers.

Recommendation 5: Applicants could be asked to make explicit what measures they are going to take to prevent children and young people getting access to alcohol, which would include details of how they are going to enforce Challenge 25, training and record-keeping.

These measures would support all the licensing objectives but in particular those of protecting children and young people from harm, and protecting and improving public health by reducing access by children and young people and levels of consumption, by and around children and young people.

2. Seasonal/festive extensions.

The Forum recommends that the seasonal extension each year, which premises can use providing they have stated this in their operating plan, be extended hours until to 2am for three days over Christmas (Christmas Eve, Christmas Day and Boxing Day), and two days over New Year (Hogmanay and New Year's Day) for on-sales only.

This would reduce the increases in volume of workload for both the licensing team and the police by reducing the need to apply for occasional licenses but without the Police having to plan for additional capacity, especially when it has been observed locally that the number of premises that took advantage of the extension beyond these proposed main holiday dates was considered to be quite small.

These measures would support all the licensing objectives but in particular those of protecting and improving public health, prevention of crime and disorder, securing public safety and preventing public nuisance by reducing the levels of consumption over the festive period.

3. Overprovision

It is noted that overprovision can be considered in terms of number and density of premises, type of premises (e.g. restaurants, pubs, supermarkets, small independent retailers), hours of sale, display capacity. The Forum has considered the issue of overprovision at length. In particular the evidence linking the availability of alcohol and alcohol-related harmⁱⁱⁱ and the figures around the volume of sales from off and on-sales premises^{iv}.

a. Whole area versus locality. As outlined already, the pros and cons of the current overprovision statement for the whole area have been considered. In general the whole area approach is supported. The Forum has paid close attention to the evidence base that nearly three-quarters of alcohol sales in Scotland is purchased from off-sales.

Recommendation 6: The Forum recommends that the whole of East Lothian is declared overprovided for by off-sales. The exception to this would be in areas of new build development where the availability of local amenities is important for new communities. In these instances, an upper limit of display capacity would apply.

Recommendation 7: In the exceptional circumstance of new build developments where off-sales licenses are granted, display capacity should not exceed 15 square metres.

b. Off-sales hours.

Recommendation 8: The Forum recommends that the commencement of off-sales is raised to 12pm. The impact of the availability of alcohol from 10am on public health was considered, particularly amongst problem drinkers and other substance use^v.

c. On-sales hours.

Recommendation 9: The Forum recommends keeping the existing on-sales hours of 11.00 am start to 11.00 pm Monday to Wednesday (inclusive), 11.00 am to 1.00 am Thursday to Saturday (inclusive) and 11.00 am to 12.00 midnight on Sunday.

A reasonable exception to these times would be if a nightclub were to apply for a license in East Lothian.

d. Display capacity.

Recommendation 10: The Forum recommends that the Statement of Licensing Policy restricts any more increases in capacity of existing off-sales premises in East Lothian.

The above components of an overprovision statement would support all the licensing objectives by reducing the ease by which alcohol can be accessed in East Lothian and therefore associated alcohol-related harms.

4. Layout of premises; height of shelves, security.

The Forum considers it important that recognition is made in the new licensing policy of the influence the layout of shops (including fixtures and fittings) has in the ability of off-sales premises to monitor and regulate alcohol sales (e.g. segregated aisles, height of shelves around alcohol areas). The policy should clearly state that layout plans will be under scrutiny by the Board. The Forum notes that in many off-sales premises soft drinks and alcohol are often displayed side by side or in adjacent aisles.

Recommendation 11: The Forum recommends that alcohol aisles be segregated in supermarkets, with greater separation between commodities popular with children and young people (e.g. soft drinks) and alcohol aisles, and with no end of aisle displays.

Recommendation 12: Security requirements should be made explicit in the policy according to the nature and size of premises. For supermarkets and larger retail outlets, this includes adequate CCTV that is maintained and working, manned security and display arrangements that minimise the risk of theft. For small shops, the location of the alcohol should make supervision easy e.g. behind the till, and height of shelves be restricted, to minimise the risk of theft.

With alcohol being the most frequently shop-lifted item from retail outlets^{vi}, these measures would support the licensing objective of the Prevention of Crime and Disorder as well as Protecting Children and Young People from Harm and Protecting and Improving Public Health.

5. On-line sales and deliveries.

The rise in sales of alcohol from on-line outlets is an area of concern nationally. Whilst the Forum recognises that the Board is not able to control the purchase of alcohol from large, national, on-line retailers, this should not deter the Board from making a statement in the East Lothian policy regarding restrictions to increases in on-line sales from within East Lothian. Recommendations have already been made regarding the inclusion of requirements for training, personal licenses for drivers and challenge 25 for deliveries (see 1c).

Recommendation 13: On-line sales will only to be granted with food orders from restaurants, or from pubs or distilleries for specific purposes e.g. to promote their own products. These would be stated as conditions in the license.

These measures would support all the licensing objectives but in particular those of protecting children and young people from harm and protecting and improving public health.

6. The Five Licensing Objectives.

Recommendation 14: In the interests of transparency and accountability, the minutes of Board meetings should specify reasons for decisions and record the votes cast by the respective members.

Recommendation 15: The Forum recommends that the new policy includes guidance as to what the 'exceptional circumstances' are that would mean that a license application is granted which apparently contravenes some or all of the conditions specified in the policy statement. These should be in relation to all five of the licensing objectives.

Recommendation 16: Overall the Forum would like to see the implementation of more detailed application forms to enable more rigorous scrutiny and consideration of applications in context by the Board and consultees.

Elizabeth Oldcorn, Senior Health Promotion Specialist

On behalf of and in collaboration with members of East Lothian Alcohol Licensing Forum

November 2017

ⁱ <https://cresh.org.uk/webmap>

ⁱⁱ <http://www.ias.org.uk/uploads/pdf/IAS%20reports/rp28102017.pdf>

ⁱⁱⁱ <http://www.alcohol-focus-scotland.org.uk/media/65042/Alcohol-outlet-density-and-harm-report.pdf>

^{iv} <http://www.healthscotland.scot/media/1202/27345-00-alcohol-consumption-and-price-in-scotland-2015-may2016.pdf>

^v Ryder et al (2009) *Prevalence of problem alcohol use among patients attending primary care for methadone treatment* <https://bmcfampract.biomedcentral.com/articles/10.1186/1471-2296-10-42>

^{vi} <http://www.retailresearch.org/shopliftershithitparade.php>