

PROPOSED CONSULTATION FOR OVERPROVISION STATEMENT**1. EXECUTIVE SUMMARY**

- 1.1 The purpose of this report is to provide details of the evidence collated from relevant agencies as well as surveys conducted with the public and licensees, in order that the Board may consider options and arrangements in relation to the required statutory consultation.
- 1.2 Financial implications are relevant in regard to the commissioning, methodology and the extent of the consultation process agreed by the Board. These are detailed at sections 6 and 7 below.

2. INTRODUCTION

- 2.1 The Licensing Scotland Act 2015 (the 2005 Act) at Section 7, requires the Licensing Board to include in its policy statement:-

“a statement as to the extent to which it considers there to be overprovision of:

- (a) Licensed premises; or*
(b) Licensed premises of a particular description.

in any locality within the Board’s area.”

- 2.2 In accordance with that requirement, the Board’s Statement of Licensing Policy 2013-2016 includes a section dealing with overprovision; as noted below:-

Section 6. 5: The Board does recognise, however, that there is a need to keep this matter (overprovision) under review and therefore an information and evidence gathering exercise has been commenced in conjunction with the Local Licensing Forum with a view to considering the matter of overprovision (including over provision of off-sales premises). The Board will conclude its consideration of overprovision by no later than 31st March 2015 and propose controls as appropriate.

- 2.3 The timescale for this process has been extended, with the agreement of the Board, due to unforeseen difficulties in collating and analysing the data received from external agencies. In particular, complications arose in relation to differences in the geographical areas referenced in statistical reports, the time periods for which data was available and in some cases, the absence of alcohol specific recording of incidents.

3. RECOMMENDATIONS

- 3.1 The Board is asked to consider limiting the scope of the proposed consultation to licensed premises of a particular description; namely off-

sales premises, as discussed at section 4.1.1 and 4.6.3 below or as detailed at section 7.2 below.

- 3.2 The Board is asked to limit the scope of the proposed consultation to licensed premises in the locality's listed at section 7.1 below or as detailed at section 7.1 below or as otherwise determined by the Board.
- 3.3 The Board is asked to refer this report to the Local Licensing Forum, requesting that they provide a report to the Board stating their position on overprovision and identifying any relevant issues which they believe should be incorporated in the proposed consultation phase of this process.
- 3.4 The Board is asked to request the Overprovision Working Group to progress arrangements for consultation as detailed in sections 6 and 7 below, once decisions have been taken in relation to the type(s) and location(s) of premises.
- 3.5 The Board is asked to request the Overprovision Working Group to determine whether any additional localities should be included in the proposed consultation, once the report from the Alcohol and Drugs partnership is available (see section 4.2 below).

4. REVIEW OF EVIDENCE

4.1.1 **NHS Highland Public Health Department** (Argyll and Bute Community Health Partnership) provided a report on potential overprovision, as attached at **Annex 1**. The period covered by this report is 2012-2014.

4.1.2 In relation to the 'particular description' of licensed premises, this report suggests a link between alcohol diagnoses / hospitalisations and those off-sales premise which have a large display area:-

".. while the number of licensed premises may be relevant, the capacity for sales of these outlets also has an impact on the health of the local population and should be taken into consideration. The overall capacity within and accessibility of adjacent intermediate data-zones should also be taken into consideration."

4.1.3 In relation to the 'locality' of licensed premises, this report lists those areas that *"the NHS have identified as being appropriate for inclusion within an over provision statement."* These areas, in order of alcohol diagnoses per 1000 population, are:-

Dunoon: Campbeltown: Oban (North + South): Helensburgh (Central):
Helensburgh (East): Rothesay

4.2 **Argyll and Bute Alcohol and Drugs Partnership (ADP)** is currently finalising a report on potential overprovision, a copy will be made circulated to Board members as soon as it becomes available.

4.3 **Police Scotland** provided a report; *Alcohol Related Crime and the Overprovision of Licensed Premises in Argyll and Bute, 01/04/2014 – 31/10/2015*, as attached at **Annex 3**.

4.3.1 In relation to the 'particular description' of licensed premises, the data in the report does not distinguish between on and off-sales premises.

4.3.2 In relation to the 'locality' of licensed premises, this report lists those areas linked with alcohol related serious crimes, alcohol specific crime, youth related alcohol incidents and alcohol specific domestic crime, as well as other categories. The report presents rankings for these statistics in terms of intermediate data-zones and for the main towns.

The top ranked areas for alcohol related crimes are:-

Intermediate data-zones: Oban North: Helensburgh Centre: Dunoon

Towns: Oban: Helensburgh & Rhu: Lochgilphead: Dunoon

4.3.3 It has not been possible to provide information on the Scottish average for the statistics included in the Police Scotland report as the data is not reported in this format at a national level.

4.4 **The Scottish Ambulance Service (SAS)** provided a statistical report; *Incidents Where Alcohol Noted as a Factor*, covering the period 2012-2013 to 2014-2015. A copy of this report is attached as **Annex 4**.

4.4.1 The data provided by SAS was collated into the Intermediate Data-zones (the methodology agreed by the Overprovision Working Group) and was averaged over the 3 years reported. The re-formatted data is shown at page 2 of Annex 4.

4.4.2 The areas with the highest levels of alcohol related incidents include; Dunoon, Oban South, Greater Lochgilphead, Whisky Isles, Helensburgh East and Helensburgh Centre.

4.5 **The Scottish Fire and Rescue Service (SFRS)** provided a report; *Incidents during 2012, 2013 and 2014 in Argyll and Bute*. A copy of this report is attached as **Annex 5**.

4.5.1 The data provided by SFRS was collated into the Intermediate Data-zones (agreed as above) and was averaged over the 3 years reported. The re-formatted data is shown at page 2 of Annex 5.

4.5.2 The areas with the highest levels of alcohol related incidents include; Dunoon, Rothesay, Helensburgh East and Oban South.

4.6.1 **Alcohol Focus Scotland (AFS)** has commissioned extensive research into the various types of harm linked to the use and availability of alcohol; this has facilitated the comparison of Argyll and Bute data with that of Scotland, the United Kingdom and Europe. A number of relevant AFS

publications are referenced below; more detailed information is available from their website:-

www.alcohol-focus-scotland.org.uk/licensing

4.6.2 Estimates of the cost of alcohol related harm in Argyll and Bute (as published by AFS for 201/11) include:-

- Crime: £10.42m
- Health: £4.01m
- Social Care £3.45m

4.6.3 AFS have published its findings in regard to the relationship between alcohol outlet density and alcohol related harm. The key findings included:-

- Argyll and Bute has an alcohol outlet availability lower than Scotland as a whole, but has pockets of high availability; one quarter of neighbourhoods in Argyll and Bute have an outlet density greater than the Scottish average, largely accounted for by on-sales outlets
- In Argyll and Bute as a whole there is an annual average of 22 alcohol-related deaths (24 deaths per 100,000 adults); this is similar to the Scottish average of 25 deaths per 100,000
- An average alcohol-related hospitalisation rate ratio of 125; this is 25% higher than the Scottish average of 100.

4.6.4 Perhaps the most noteworthy finding from the AFS research was in regard to the relationship between alcohol outlet availability and alcohol related harm in Argyll and Bute, as copied below:-

- ❖ Areas with the highest density of on-sales premises had death rates 60% higher than areas with the lowest
- ❖ Areas with the highest density of off-sales premises had hospitalisations 167% higher than areas with the lowest.

4.6.5 AFS recently commissioned research presenting statistics which provide local authority specific data in relation to alcohol related hospitalisations and death rates by individual data-zone; this data include details of the respective Scottish average. The figures provided for the relevant Scottish average are referenced at section 5.1 below. A summarised version of this data is attached at **Annex 6**

4.6.6 A copy of the full information summarised above is available via the AFS website noted above or from Legal Services.

4.7.1 **A public survey** was conducted during the month of February 2015. There were 273 valid responses to the survey. A comprehensive

statistical review of the results is available from Legal Services on request.

4.7.2 An analysis of the results showed that :-

- Responses were received from each of the 22 Intermediate Data-zones, with the exception of Helensburgh East
- 76% of the respondents were over 40 years old
- 73% of the respondents indicated that they used 'off-sales' premises most frequently when buying alcohol
- 24% of the respondents indicated that they used 'on-sales' premises most frequently buy alcohol
- 34% of the respondents indicated that they also used online retailers to purchase alcohol

4.7.3 It was not possible to provide a statistically robust analysis of the results by local area due to the low number of responses in relation to individual Intermediate Data-zones.

4.7.4 There were 87 responses which included free text comment; these are copied at **Annex 7**. The Board may wish to give consideration to the issues raised in these comments e.g.

- ❖ 20 indicated that overprovision was not an issue
- ❖ 10 indicated that overprovision was an issue
- ❖ 17 raised concerns about sale of alcohol to young people
- ❖ 9 raised concerns about alcohol sales from supermarkets

Other concerns included; the (perceived) low price of alcohol, opening hours of licensed premises, the (perceived) ready availability of Occasional licences, over-consumption of alcohol on licensed premises.

4.8.1 **A survey of licensees** was also conducted during the same period; surveys were issued in relation to 581 licensed premises and 17 responses were received.

4.8.2 The Data-zones represented in the responses were; Oban North (1), Cowal South (2), Islay (1), Rothesay (2), Helensburgh Centre (1), Whisky Isles (1), Helensburgh West & Rhu (1), Mull, Iona, Coll & Tiree (4), Benderloch Trail (1), Cowal North (1), Campbeltown (1) and Mid Argyll (1).

4.8.3 Of the responses, 10 related to on-sales only premises and the remainder to on and off-sales premises.

4.8.4 Only 5 of the responses indicated membership of 4 different trade associations; the Scottish Licensed Trade Association (2), Brewers Association of Scotland (1), British Hospitality Association (1) and the Islay and Jura Marketing Group(1).

- 4.8.5 It was not possible to provide a statistically robust analysis of the results by local area due to the low number of responses in relation to individual Intermediate Data-zones; however comments made in the survey are copied at **Annex 8**.
- 4.8.6 There were 22 comments; the Board may wish to give consideration to the issues raised e.g.:-
- 8 indicated that there was no overprovision
 - 7 raised concerns about sales from supermarkets
 - 3 identified issues relating to the price of alcohol

Other concerns related to licensing hours, seasonal constraints and late licences.

- 4.9.1 **Scottish Government** statistics include data on the index of multiple deprivation. The Scottish Index of Multiple Deprivation (SIMD) provides a relative ranking of the data-zones (rather than Intermediate Data-zones as referenced in this report) in Scotland. The data is ranked from 1 (most deprived) to 6505 (least deprived), based on a weighted combination of data in the domains of Current Income, Housing, Health, Education, Skills and Training, Employment and Geographic Access and Crime.
- 4.9.2 Data for Argyll and Bute is attached at **Annex 9** (a) and (b). The highlighted section of Table (a) shows which Intermediate Data-zones have levels of deprivation above the Scottish average (in terms of SIMD).
- 4.9.3 Table (b) shows a ranking of the Intermediate Data-zones within Argyll and Bute but also identifies (in the last column), those localities that are within the top 20% of the most deprived areas across Scotland (in terms of SIMD).
- 4.9.4 More information (including a guidance leaflet, a general report, a statistical compendium and a technical report) can be found at www.scotland.gov.uk/simd. An SIMD interactive mapping website is available from <http://simd.scotland.gov.uk/map>.
- 4.10 Data packs have been prepared to illustrate the key data described above, with maps of each data-zone within Argyll and Bute. These are attached as **Annex 10**.

5. Summary of Initial Findings

- 5.1 The proposal from NHS Highland Public Health Department (Argyll and Bute Community Health Partnership) is that the focus of the Board's overprovision statement should be on off-sales premises in the Data-zones of **Dunoon, Campbeltown, Oban South, Helensburgh Centre, Helensburgh East, Rothesay and Oban North**. This proposal is based

on the level of alcohol diagnosis / hospitalisations in those areas. All of these areas, have a level of alcohol diagnosis / hospitalisations which is higher than the Scottish national average, as detailed in research undertaken for AFS (see section 4.6.4 above and Annex 6)

5.2 The Alcohol and Drugs Partnership is currently preparing a report to identify any link between the number of licensed premises and alcohol related hospitalisations. Once this report is available any additional localities may be considered for inclusion in the proposed consultation.

5.3.1 The statistics provided by Police Scotland for crimes and related incidents do not identify whether alcohol was purchased from on-sales or off-sales premises. However the report from Police Scotland does identify the relative ranking of Intermediate Data-zones as well as ranking of main towns (in terms of crime and related incidents) which, they suggest should be considered in determining the Board's overprovision statement.

5.3.2 The Police Scotland statistics incorporate details for 4 specific types of alcohol related crime and incidents; Serious (Group 1) crimes (e.g. assault); Alcohol Specific crimes (e.g. drink driving); Youth Drinking Incidents and Alcohol Specific Domestic Crime. An extract detailing the area which all have at least one top 3 ranking for these alcohol specific crimes and incidents derived from the table presented on p18 of the Police Scotland report, is shown below:-

Intermediate Data-zone	Alcohol Specific Group 1 Crimes per 1000	Alcohol Specific Crimes per 1000	Youth Drinking Incidents per 1000	Alcohol Specific Domestic Crime per 1000
Campbeltown	3 rd	7 th	11 th	2 nd
Dunoon	6 th	2 nd	4 th	1 st
Greater Lochgilphead	19 th	11 th	2 nd	3 rd
Helensburgh Centre	2 nd	1 st	1 st	8 th
Oban North	1 st	6 th	8 th	12 th
Rothesay	4 th	3 rd	16 th	7 th

5.3.2 A comparison of these areas to those identified by NHS Highland indicates that the area of **Greater Lochgilphead** could be added to the list of those areas that potentially indicate overprovision.

5.4 Data provided by the Scottish Fire and Rescue Service indicates that the average number of alcohol related fire incidents during the 3 year period 2012-2014 were highest in the Dunoon, Rothesay and Helensburgh East Data-zones. These areas are already identified as potential areas of overprovision within the Health and Police reports.

5.5 Data provided by the Scottish Ambulance Service indicates that the highest levels of alcohol related incidents include; Dunoon, Oban South,

Greater Lochgilphead, Whisky Isles, Helensburgh East and Helensburgh Centre. With the exception of the **Whisky Isles**, all of these areas are already identified as potential areas of overprovision within the Health and Police reports.

- 5.6 The findings from AFS research complement those reported by NHS Highland; particularly in regard to the relevance of off-sales premises and confirming those areas where the levels of alcohol related hospitalisations are higher than the Scottish average.
- 5.7 A survey to assess public perception of the availability of alcohol was conducted during February 2015. Although the geographical spread of the responses to the survey was extensive, the number of responses received represented less than 1% of the area's population. Over three quarters of those who responded were over 40 years old. Given these limitations it is suggested that statistics based on the data provided would not be reliable. However the issues raised in the responses could reasonably be incorporated in the planned local communities consultation stage.
- 5.8 Similarly the level of response to the survey of licensees was low; fewer than 3% of licensees. As above it is suggested that, although the numerical data may not be statistically robust, the issue identified could be referenced within the planned consultation with licensees.
- 5.9 The Scottish Government data shows that, of the localities identified in the NHS report, Dunoon, Campbeltown, Rothesay and Oban South are also above the Scottish average for multiple deprivation.
- 5.10.1 In summary, a number of localities have been identified as areas of potential overprovision by agency, as detailed in the table below:

Intermediate Data-zone	No. of Agencies	Detail of Agencies
Dunoon*	5	NHS, Police, Fire & Rescue, Ambulance, AFS
Helensburgh Centre	4	NHS, Police, Ambulance, AFS
Helensburgh East	4	NHS, Fire & Rescue, Ambulance, AFS
Rothesay*	4	NHS, Police, Fire & Rescue, AFS
Oban South*	3	NHS, Ambulance, AFS
Campbeltown*	3	NHS, Police, AFS
Oban North	3	NHS, Police, AFS
Greater Lochgilphead	2	Police, Ambulance
Whisky Isles	1	Ambulance

*See 5.9 above

- 5.10.2 Although these localities have been identified by particular agencies

as being linked to the sale or consumption of alcohol, a statistical correlation between this and the number / type of licensed premises has not been explicitly addressed.

6. Framework for Proposed Consultation

6.1 Section 7(2) of the 2005 Act states that:-

- *It is for the Licensing Board to determine the “localities” within the Board’s area for the purposes of this Act.*
- *In considering whether there is overprovision in any locality, the Board must have regard to the number and capacity of licensed premises in the locality*
- *The Board must consult the Chief Constable, the relevant health board and such persons as appear to the Board to be representative of the interests of—*
 - (i) holders of premises licences in respect of premises within the locality,*
 - (ii) persons resident in the locality, and*
 - (iii) such other persons as the Board thinks fit.*

This section also clarifies that references to “licensed premises” do not include references to any premises in respect of which an occasional licence has effect.

In terms of Section 6(3) of the 2005 Act the following representatives should be added to this list:-

- (iv) persons having functions relating to health, education or social work*
- (v) young people*

6.2 On this basis it is suggested that the Board should include the following agencies and groups within the proposed consultation:

- a) Police Scotland
- b) NHS Highland
- c) Licensees of premises within the localities as identified by the Board
- d) Residents and relevant community groups within the localities as identified by the Board, including groups representing young persons
- e) Chambers of Commerce representing the localities as identified by the Board
- f) Relevant council services e.g. Regulatory Services
- g) Elected Members representing the localities as identified by the Board
- h) Alcohol Focus Scotland

6.3 The Scottish Government published Guidance for Licensing Boards (the Guidance) which includes specific provisions in relation to consultation on the issue of overprovision, including the scope and the considerations leading to a determination of overprovision.

6.3.1 Scope of consultation: the Guidance lists the factors which the Board may take into account:

- the information provided by the Chief Constable;
- evidence from the licensed trade that the density of licensed premises in the locality has resulted in levels of competition which have applied downward pressure on the price of alcohol;
- evidence gathered from local residents of anti-social behaviour associated with licensed premises;
- information from the local authority's Environmental Health Department about noise complaints which can be attributed to the operation of licensed premises in a locality;
- data supplied by the NHS Board or other health bodies, for example, local Accident and Emergency Departments or Alcohol Action Teams.

In particular the Board should not take into account:-

- the manner in which individual premises in a locality are managed, since it is possible that well-managed premises may act as a magnet for anti-social behaviour, or may eject a substantial number of customers who collectively produce disorder and nuisance to a degree which is unacceptable;
- any concerns as to the quality of management of individual premises, which should separately be addressed through other statutory mechanisms;
- the need or demand for licensed premises in the locality. Commercial considerations are irrelevant to a policy which is designed to protect the wider public interest; or
- the hours during which licensed premises in the locality trade, since these will be controlled through operating plans.

6.3.2 Considerations in relation to overprovision: the following extracts from the Guidance are noted for the Board's reference:-

'It will not normally be appropriate to arrive at a decision based on one particular factor alone; but rather consideration should be given as to whether aggregated information and evidence from a number of

sources points compellingly towards a particular conclusion.' This statement is made in relation the various types of evidence under consideration and confirms that a range of sources should be taken into account.

'Proper regard should be given to the contrasting styles of operation of different licensed operations and the differing impact they are likely to have on the promotion of the licensing objectives. A policy which discourages premises where the primary activity is the consumption of alcohol may leave room for the introduction of licensed premises which are likely to produce positive benefits for the locality or which will have a neutral impact on the those objectives.' With particular reference to rural areas, the Guidance notes includes the example of a hotel whose trade is mainly derived from bar sales but which may also provide a valuable local function. Similarly the Guidance states that convenience stores may provide an essential local service in some communities, particularly those with an elderly population where transport considerations make it difficult for residents to take advantage of more extensive shopping facilities available at large supermarkets in adjoining localities.

7. Options for Proposed Consultation

7.1 Localities for Consultation:

The evidence gathered from relevant agencies, together with that provided by Alcohol Focus Scotland, indicate a range of available options in regard to those Intermediate Data-zones which could be considered as potential areas of overprovision for the purposes of consultation:-

- (i) All areas which have been identified by **4 or more** agencies; Dunoon, Oban South, Helensburgh Centre, Helensburgh East, Rothesay
- (ii) All areas which have been identified by **3 or more** agencies; as above with the addition of Campbeltown and Oban North
- (iii) All areas as identified by **any** of the agencies, i.e. as at (ii) above with the addition of the Whisky Isles and Greater Lochgilphead

7.2 Type of Premises

Each of the options listed at section 7.1 above could be considered in relation to:-

- (a) Off-sales premises only
- (b) On-sales premises only
- (c) Off-sales and on-sales premises

7.3.1 Method of consultation

The view of the Overprovision working group is that, in order to demonstrate fair and independent process, the consultation should be undertaken by an external consultant. An appropriate budget has been identified for this purpose.

- 7.3.2 A formal briefing, approved by the Overprovision Working Group, will be prepared for the consultant selected, to reflect the requirements of the legislation and statutory guidance. A report detailing the findings of the consultation will be provided to the Board to assist in producing a policy statement on overprovision.

8. CONCLUSIONS

- 8.1 A significant amount of preparatory work has already been completed, with a large volume of material available for the Board's consideration.
- 8.2 The evidence gathered indicates that a number of localities should be included in the proposed process of detailed consultation with identified groups.
- 8.3 The proposed consultation exercise will provide a robust basis on which the Board can determine the content of their policy statement on overprovision.

9. IMPLICATIONS

- 9.1 Policy - Argyll and Bute Council has approved the Board's policy statement in relation to the Act and the content of this report is consistent with that policy statement.
- 9.2 Financial – expenditure will be incurred if a consultation exercise is commissioned in terms of section 7.2 above but the extent of those costs would be closely aligned to the scale and scope of the agreed brief.
- 9.3 Legal – it is not envisaged that implementation of any of the proposed actions would exceed the powers of the Argyll and Bute Licensing Board or Argyll and Bute Council.
- 9.4 HR – limited staff resources may be required to assist Board members in the implementation of agreed actions.
- 9.5 Equalities – it is not envisaged that implementation of any of the proposed actions would result in a breach of the council's Equality duties.
- 9.6 Risk – it is not envisaged that implementation of any of the proposed actions would result in any associated risk for the council.
- 9.7 Customer Service – this report incorporates a range of options with local

communities and traders to gain a better understanding of issues which may impact on the Board's statement on overprovision. It is suggested that the proposed consultation would therefore assist in improving services to people living in or visiting the area and to local businesses.

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