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ANNANDALE AND ESKDALE DIVISIONAL LICENSING BOARD

Meeting of Friday 15 September 2023
at 10.30 am - This meeting will be held online

- Ian Carruthers (Convener)** - Annandale South
- Karen Carruthers** - Annandale East and Eskdale
- Archie Dryburgh** - Annandale East and Eskdale
- George Jamieson** - Annandale South
- Gail MacGregor** - Annandale North
- Stephen Thompson** - Annandale North

VLAD VALIENTE
Clerk to the Licensing Board

Annandale and Eskdale Divisional Licensing Board

Meeting of Friday 15 September 2023
at 10.30am - This meeting will be held online

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Next Meeting Date: Friday, 1 December 2023

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ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD

**Minute of Meeting of Friday 26 May 2023 at 10.30am
Via Teams**

MEMBERS PRESENT

Ian Carruthers - Annandale South
Karen Carruthers - Annandale East and Eskdale
George Jamieson - Annandale South
Stephen Thompson - Annandale North

APOLOGIES

Archie Dryburgh - Annandale East and Eskdale
Gail Macgregor - Annandale North

IN ATTENDANCE

Emma Connelly - Licensing Standards Officer
Cheryl Syme - Senior Licensing Officer
Caroline Treanor - Solicitor

VLAD VALIENTE
Clerk to the Licensing Board

1. **SEDERUNT, APOLOGIES AND CONVENER'S APPROVAL OF MEMBERS' REMOTE PARTICIPATION**

4 Members present with 2 apologies submitted and the Convener approved Members' remote participation at the Hearing.

2. **DECLARATIONS OF INTEREST**

NONE

3. **MINUTE OF MEETING 10 MARCH 2023**

Decision

AGREED

4. **LICENSING (SCOTLAND) ACT 2005: APPLICATIONS FOR OCCASIONAL LICENCES AND EXTENDED HOURS (GRANTED UNDER DELEGATED AUTHORITY) – Report by the Clerk to the Licensing Boards**

Decision

NOTED that the following Occasional Licences and Extended Hours had been granted under delegated powers during the period from 20 February 2023 until 15 May 2023:

Occasional Licences : Applied for by a Personal Licence Holder

Total number issued 132

Occasional Licences : Applied for by a Premises Licence Holder

Total number issued 13

Occasional Licences : Applied for by a Voluntary Organisation

Total number issued 25

Extended Hours

Total number issued 7

5. **LICENSING (SCOTLAND) ACT 2005: APPLICATIONS FOR MINOR VARIATIONS (GRANTED UNDER DELEGATED AUTHORITY) – Report by Clerk to the Licensing Boards**

Decision

NOTED the applications detailed in **Appendix 1** had been granted under delegated authority.

6. **LICENSING (SCOTLAND) ACT 2005: APPLICATIONS FOR TRANSFER OF PREMISES LICENCE (GRANTED UNDER DELEGATED AUTHORITY) – Report by the Clerk to the Licensing Boards**

Decision

NOTED the application detailed in **Appendix 2** had been granted under delegated authority.

7. **LICENSING (SCOTLAND) ACT 2005: CONFIRMATION OF PREMISES LICENCE - Report by the Clerk to the Licensing Boards**

Decision

NOTED in **Appendix 3**

8. **LICENSING (SCOTLAND) ACT 2005: APPLICATION FOR VARIATION OF PREMISES LICENCE – CROSSWAYS FILLING STATION, GLASGOW ROAD, GRETNA – Report by the Clerk to the Boards**

Decision

Having heard from the applicant and the Licensing Standards Officer, the Board **AGREED** to **GRANT** the application as detailed in **Appendix 4**

9. **LICENSING (SCOTLAND) ACT 2005: APPLICATION FOR NEW PREMISES LICENCE – SOLWAY SPIRITS, 11-13 DOWNIES WYND, ANNAN – Report by the Clerk to the Boards**

Decision

Having heard from the applicant's agent and the Licensing Standards Officer, the Board **AGREED** to **GRANT** the application as detailed in **Appendix 5**

10. **EQUALITY ACT 2010: THE EQUALITY ACT 2010 (SPECIFIC DUTIES) (SCOTLAND) REGULATIONS 2012 - LICENSING AUTHORITY AND LICENSING BOARDS EQUALITY OUTCOMES– PROGRESS UPDATE**

Decision

ADOPTED AND AGREED TO PUBLISH

**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

**THE LICENSING (SCOTLAND) ACT 2005 : SECTION 29
APPLICATIONS FOR MINOR VARIATION OF PREMISES LICENCES
GRANTED UNDER DELEGATED AUTHORITY**

<u>Application No. 1 – Ref L.1/631A</u>	
Name & Address of Applicant or Agent	Flint Bishop LLP For. Star Pubs & Bars Limited 3-4 Broadway Park South Gyle Broadway Edinburgh EH12 9JZ
Name & Address of Premises	Hazeldene Hotel Gretna Green Gretna DG16 5EA
Nature of variation	Change of Designated Premises Manager to Ian Diamond
Effective Date of Minor Variation	3 March 2023

<u>Application No. 2 – Ref L.677A</u>	
Name & Address of Applicant or Agent	James Herbet Johnson-Ferguson Springkell House Eaglesfield Lockerbie DG11 3AL
Name & Address of Premises	Springkell House Eaglesfield Lockerbie DG11 3AL
Nature of variation	Change of Designated Premises Manager to James Herbert Johnson-Ferguson
Effective Date of Minor Variation	16 March 2023

<u>Application No. 3 – Ref L.6/689A</u>	
Name & Address of Applicant or Agent	Lockett & Co For M&L Richardson and Sons Low Rise Service Station Low Row Brampton Cumbria CA8 2JE
Name & Address of Premises	Crossways Filling Station Glasgow Road Gretna DG16 5EN
Nature of variation	Change of Designated Premises Manager to David Richardson
Effective Date of Minor Variation	6 April 2023

<u>Application No. 4 – Ref L.1/627A</u>	
Name & Address of Applicant or Agent	Gretna Green Limited Headless Cross Gretna Green DG16 5EA
Name & Address of Premises	Greens at Gretna Sarkfoot Road Gretna DG16 5EP
Nature of variation	Change of Designated Premises Manager to Christopher Ainsworth
Effective Date of Minor Variation	18 April 2023

<u>Application No. 5 – Ref L.1/655A</u>	
Name & Address of Applicant or Agent	Gretna Green Limited Headless Cross Gretna Green DG16 5EA
Name & Address of Premises	Smiths Hotel Headless Cross Gretna Green DG16 5EA
Nature of variation	Change of Designated Premises Manager to Manish Saxena
Effective Date of Minor Variation	18 April 2023

<u>Application No. 6 – Ref L.6/655A</u>	
Name & Address of Applicant or Agent	TJ Morris (Scot) Ltd Axis Business Park Portal Way Gillmoss Liverpool L11 0JA
Name & Address of Premises	Home Bargains 116/132 High Street Lockerbie DG11 2BX
Nature of variation	Change of Designated Premises Manager's home address
Effective Date of Minor Variation	19 April 2023

<u>Application No. 7 – Ref L.1/603A</u>	
Name & Address of Applicant or Agent	Auchen Ltd Widbrook Grange Trowbridge Road Bradford on Avon BA15 1UH
Name & Address of Premises	Auchen Castle Hotel Beattock Moffat
Nature of variation	Change of Designated Premises Manager to Sarah Threlkeld
Effective Date of Minor Variation	25 April 2023

<u>Application No. 8 – Ref L.6/691A</u>	
Name & Address of Applicant or Agent	Tesco Stores Limited Tesco House Shire Park Kestrel Way Welwyn Garden City Hertfordshire AL7 1GA
Name & Address of Premises	Tesco Store Goods Station Road Locokerbie DG11 2DB
Nature of variation	Change of Designated Premises Manager to Kerry English
Effective Date of Minor Variation	4 May 2023

<u>Application No. 9 – Ref L.6/690A</u>	
Name & Address of Applicant or Agent	Gretna Green Group Ltd Headless Cross Gretna Green DG16 5EA
Name & Address of Premises	Foodhall at Gretna Green Gretna Green DG16 5EA
Nature of variation	Change of Designated Premises Manager to Laura Duff
Effective Date of Minor Variation	11 May 2023

<u>Application No. 10 – Ref L.1/681A</u>	
Name & Address of Applicant or Agent	Gretna Green Group Ltd Headless Cross Gretna Green DG16 5EA
Name & Address of Premises	The Old Toll Bar Sark Bridge Gretna DG16 5JD
Nature of variation	Change of Designated Premises Manager to Kimberley Gribbon
Effective Date of Minor Variation	11 May 2023

**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

**THE LICENSING (SCOTLAND) ACT 2005
APPLICATIONS FOR TRANSFER OF PREMISES LICENCES
GRANTED UNDER DELEGATED AUTHORITY**

<u>Application No 1. – Ref L.6/689A – SECTION 33</u>	
Name & Address of Previous Premises Licence Holder	Malcolm Paul Crosbie Crossways House Glasgow Road Gretna DG16 5EN
Name & Address of Transferee or Agent	M& L Richardson and Sons Low Rise Service Station Low Row Brampton Cumbria CA8 2JE
Name & Address of Premises	Crossways Filling Station Multi Convenience Store Glasgow Road Gretna DG16 5EN
Effective Date of Transfer	15 March 2023

Appendix 3

**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

**THE LICENSING (SCOTLAND) ACT 2005 : SECTION 46
APPLICATION FOR CONFIRMATION OF PROVISIONAL PREMISES LICENCE
GRANTED UNDER DELEGATED POWERS**

<u>Application No 1. – Ref L.6/711A</u>	
Name & Address of Applicant or Agent	Harper Macleod LLP For Motor Fuel Ltd Gladstone Place 36-38 Upper Marlborough Road St Albans AL1 3UU
Name & Address of Premises	Gretna Service Station A74(M) Northbound Gretna DG16 5HQ
Date of Grant of Provisional Licence	10 March 2023
Effective Date of Confirmation	5 April 2023

Annandale & Eskdale Divisional Licensing Board
Application for Variation of Premises Licence

Applicant/Agent	Lockett & Co For M&L Richardson and Sons Limited Low Row Service Station Low Row Brampton Cumbria CA8 2JE
Address of Premises	Crossways Filling Station Multi Convenience Store Glasgow Road Gretna DG16 5EN
Nature of Variation	<p><u>Operating Plan</u></p> <p>Change the description at 5(f) to read as follows: “The convenience store will operate outside and during core licensed hours selling grocery products, newspapers, confectionery, household products, hot food, hot drinks, sandwiches, cold drinks etc. The sale of petroleum via the pay at the pump system is 24/7.”</p> <p><u>Any Other Information</u></p> <p>Change the premises name from ‘Crossways Filling Station Multi convenience Store’ to ‘Crossways Filling Station’. The change of name should also be reflected on the description of the premises section on page 1 of the existing licence.</p>
Last Date for Objections/Representations	Friday 14 April 2023

Appendix 5

Applicant/Agent	Solway Spirits Limited 19 Solway Crescent Annan DG12 6HT
Address of Premises	Solway Spirits 11-13 Downies Wynd Annan DG12 6EE
Description	<p>The building is a detached property constructed of sandstone and concrete block with a part pitched roof and part flat roof. It is set back from Downies Wynd and comprises: 1 x pedestrian door to shop which in turn has one door to a small vestibule leading to toilet which is disabled accessible, a further door from the vestibule to a small cleaning cupboard.</p> <p>The proposed licensed area will contain a shop selling alcohol, fine foods, gifts and online sales.</p>
Core Times	<p>Off Sales</p> <p>Monday 10.00am – 5.00pm Tuesday 10.00am – 5.00pm Wednesday 10.00am – 5.00pm Thursday 10.00am – 5.00pm Friday 10.00am – 5.00pm Saturday 10.00am – 5.00pm Sunday 10.00am – 5.00pm</p>
Activities	N/A
Children and Young Persons	N/A
Capacity	10.46m ²
Last Date for Objections/Representations	Friday 21 April 2023

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**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

**THE LICENSING (SCOTLAND) ACT 2005 SECTION 56 AND 68
APPLICATIONS FOR OCCASIONAL LICENCES AND EXTENDED HOURS
GRANTED UNDER DELEGATED AUTHORITY**

For the information of the Licensing Board, during the period from 15 May 2023 until 28 August 2023, the following Occasional Licences and Extended Hours were granted:

Occasional Licences : Applied for by a Personal Licence Holder

Total number issued 179

Occasional Licences : Applied for by a Premises Licence Holder

Total number issued 59

Occasional Licences : Applied for by a Voluntary Organisation

Total number issued 23

Extended Hours

Total number issued 15

Cheryl Syme
Senior Licensing Officer
Licensing
Ext: 63353

Vlad Valiente
Clerk to the Licensing Boards
Kirkbank House
English Street
Dumfries, DG2 2HS

Date of Report: 7 September 2023

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**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

**THE LICENSING (SCOTLAND) ACT 2005 : SECTION 29
APPLICATIONS FOR MINOR VARIATION OF PREMISES LICENCES
GRANTED UNDER DELEGATED AUTHORITY**

<u>Application No. 1 – Ref L.6/609AA</u>	
Name & Address of Applicant or Agent	Poundsaver Stores Limited 31-33 Scott Street Annan DG12 5JE
Name & Address of Premises	Cally Service Station 31-33 Scott Street Annan DG12 5JE
Nature of variation	Change of Designated Premises Manager to Tanveer Pal
Effective Date of Minor Variation	30 May 2023

<u>Application No. 2 – Ref L.6/678A</u>	
Name & Address of Applicant or Agent	Co-operative Group Food Ltd Dept 10227 – Licensing 1 Angel Square Manchester M60 0AG
Name & Address of Premises	Co-op Glenesk Road Langholm DG13 0ES
Nature of variation	Change of Designated Premises Manager to Wendy Warren
Effective Date of Minor Variation	30 May 2023

<u>Application No. 3 – Ref L.7/601A</u>	
Name & Address of Applicant or Agent	Lesley Lupton 14c Scroggie Meadow Annan DG12 6DY
Name & Address of Premises	The Anglers 61 High Street Annan FG12 6AD
Nature of variation	Change to home address of Designated Premises Manager
Effective Date of Minor Variation	22 June 2023

<u>Application No. 4 – Ref L.4/602A</u>	
Name & Address of Applicant or Agent	Old Well Theatre Trust Old Well Road Moffat DG10 9AP
Name & Address of Premises	Old Well Theatre Old Well Road Moffat DG10 9AP
Nature of variation	Change of Designated Premises Manager to Robert Craig
Effective Date of Minor Variation	19 July 2023

<u>Application No. 5 – Ref L.1/632A</u>	
Name & Address of Applicant or Agent	RAD Limited 27 Barony Road Auchinleck KA18 2LL
Name & Address of Premises	Hetland Hall Hotel Carrutherstown Dumfries DG1 4JX
Nature of variation	Change of Designated Premises Manager to Shannon Eadie
Effective Date of Minor Variation	19 July 2023

<u>Application No. 6 – Ref L.6/691A</u>	
Name & Address of Applicant or Agent	Tesco Stores Limited Tesco House Shire Park Kestrel Way Welwyn Garden City Hertfordshire AL7 1GA
Name & Address of Premises	Tesco Store Goods Station Road Lockerbie DG11 1DB
Nature of variation	Change of Designated Premises Manager to Emma Crittenden
Effective Date of Minor Variation	21 July 2023

<u>Application No. 7 – Ref L.2/604A</u>	
Name & Address of Applicant or Agent	Charmaine Kerr 38 North Street Annan DG12 5DQ
Name & Address of Premises	Blue Bell Inn 10 High Street Annan DG12 6AG
Nature of variation	Change of home address of Designated Premises Manager
Effective Date of Minor Variation	27 July 2023

<u>Application No. 8 – Ref L.6/665A</u>	
Name & Address of Applicant or Agent	Jeya Trading Ltd 37 Heyton Crescent Tadworth KT20 5FG
Name & Address of Premises	Atwal Convenience Store 69 Springbells Road Annan DG12 6LQ
Nature of variation	Change of Designated Premises Manager to Srisivatheepan Vijeyakumaran
Effective Date of Minor Variation	11 August 2023

<u>Application No. 9 – Ref L.6/666A</u>	
Name & Address of Applicant or Agent	Pakeerathan Kandiah Mahalingham 23 Catherines Road Perth PH1 5SA
Name & Address of Premises	Mirza Store Premier 2 High Street Moffat DG10 9DW
Nature of variation	Change to layout plan – no change to capacity
Effective Date of Minor Variation	25 August 2023

<u>Application No. 10 – Ref L.1/627A</u>	
Name & Address of Applicant or Agent	Gretna Green Limited Headless Cross Gretna Green DG16 5EA
Name & Address of Premises	Greens at Gretna Sarkfoot Road Gretna DG16 5EP
Nature of variation	Change of Designated Premises Manager to Manish Saxena
Effective Date of Minor Variation	1 September 2023

<u>Application No. 11 – Ref L.1/655A</u>	
Name & Address of Applicant or Agent	Gretna Green Limited Headless Cross Gretna Green DG16 5EA
Name & Address of Premises	Smiths Hotel Headless Cross Gretna Green DG16 5EA
Nature of variation	Change of Designated Premises Manager to Samantha Nixon
Effective Date of Minor Variation	1 September 2023

Cheryl Syme
Senior Licensing Officer (Board Services)
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Ext: 63353

Vlad Valiente
Clerk to the Licensing Boards
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Dumfries
DG1 2HS

Date of Report: 7 September 2023

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**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

**THE LICENSING (SCOTLAND) ACT 2005
APPLICATIONS FOR TRANSFER OF PREMISES LICENCES
GRANTED UNDER DELEGATED AUTHORITY**

<u>Application No 1. – Ref L.1/623A – SECTION 33</u>	
Name & Address of Previous Premises Licence Holder	Stephen Kelly Ecclefechan Hotel High Street Ecclefechan DG11 3DF
Name & Address of Transferee or Agent	Sheila Mary Kelly Turrat House High Street Ecclefechan DG11 3DP
Name & Address of Premises	Ecclefechan Hotel High Street Ecclefechan DG11 3DF
Effective Date of Transfer	3 July 2023

Cheryl Syme
Senior Licensing Officer (Board Services)
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Ext: 63353

Date of Report: 7 September 2023

Vlad Valiente
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**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

**THE LICENSING (SCOTLAND) ACT 2005 : SECTION 28(6)
SURRENDER OF PREMISES LICENCES**

<u>No. 1 – Ref L.7/604A</u>	
Name & Address of Licence Holder	Annan & District Ex Service Club Mafeking Place Annan DG12 5HA
Name & Address of Premises	Annan & District Ex Service Club Mafeking Place Annan DG12 5HA
Date Licence Surrendered	27 July 2023

Cheryl Syme
Senior Licensing Officer (Board Services)
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Vlad Valiente
Clerk to the Licensing Boards
Kirkbank House
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Dumfries, DG1 2HS

Date of Report: 7 September 2023

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**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE AND ESKDALE DIVISIONAL LICENSING BOARD**

**THE LICENSING (SCOTLAND) ACT 2005 : SECTION 46
APPLICATION FOR CONFIRMATION OF PROVISIONAL PREMISES LICENCE
GRANTED UNDER DELEGATED POWERS**

Application No 1. – Ref L.2/642A	
Name & Address of Applicant or Agent	Verdant Leisure 2 Limited 10 Mannin Way Lancaster Business Park Lancaster LA1 3SQ
Name & Address of Premises	Sandpiper Queensberry Bay Dumfries DG12 5PN
Date of Grant of Provisional Licence	21 January 2022
Effective Date of Confirmation	18 July 2023

Cheryl Syme
Senior Licensing Officer (Board Services)
Licensing
Ext: 63353

Date of Report: 7 September 2023

Vlad Valiente
Clerk to the Licensing Boards
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**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

LICENSING (SCOTLAND) ACT 2005: SECTION 30

APPLICATION: MAJOR VARIATION

PREMISES: BACK TO THE BUCK, 82A HIGH STREET, ANNAN

**PREMISES LICENCE HOLDER: SHARON WILLACY, NORMANTON, NORTH ROAD,
LOWTHERTOWN, ANNAN**

1. Reason for Report

1.1 As this is a major variation application, the Board is statutorily obliged to hold a Hearing.

1.2 Members are asked to consider the application received 30 May 2023 and detailed in **Appendix 1** to this report.

2. Background

2.1 As is required by law, a copy of the application was sent to:

- Police Scotland
- The Local Authority
- Scottish Fire and Rescue Service (SFRS)
- NHS Dumfries and Galloway
- Neighbours: Persons having notifiable interest in neighbouring land (within 4 metres in any direction of any boundary of the premises)
- Community Council

2.2 In terms of the law, the Board is obliged to advertise notice of the application on its website for a continuous period of 21 days. The dates of display were **Friday 9 June 2023 to Saturday 1 July 2023**.

2.3 The applicant is also obliged to display a site notice of A4 size at or near the premises in a place and at a height where the notice can conveniently be read by the public on the same dates as the Board's notice.

2.4 On expiry of the 21 day advertising period the applicant must submit to the Board signed Confirmation of Site Notice before the Board may determine the application.

2.5 Signed Confirmation of Site Notice has been received.

3. Objections and Representations

3.1 The last date for objections/representations was **Friday 30 June 2023**.

3.2 No objections or representations have been received.

4. Responses

- LSO report: no adverse comments (**Appendix 2**)
- Police Scotland: no adverse comments
- Planning: no planning issues
- SFRS: no comments

5. Determining the application

5.1 As democratically elected individuals, ultimate decision making power rests with elected Members and not Council Officers. Whilst Officers can give advice, they cannot

clearly make decisions at Hearings. Ultimately, the Board must come to a lawful decision taking into account the following:

5.2 The Board must consider whether any of the grounds for refusal apply and

- (i) If NO ground of refusal applies, the Board must GRANT the application
- (ii) If ANY ground of refusal applies, the Board must REFUSE the application.

5.3 **The section 30(5) grounds for refusal are:-**

- The application must be refused under
 - Section 32(2) (where the Board has refused a premises licence variation application in respect of the same premises and seeking the same variation and this is a subsequent application received within 12 months of the refusal)
 - Section 64(2) (where the application is for 24 hour operation and exceptional circumstances justifying the sale of a 24 hour operation have not been proven)
 - Section 65(3) (the application is for off sales outwith 10am to 10pm)

- Licensing Objectives ground of refusal

The Licensing Board considers that the granting of the application *would be inconsistent with one or more of the licensing objectives* (preventing crime and disorder/securing public safety/preventing public nuisance/protecting and improving public health/protecting children and young persons from harm)

- Unsuitability of the premises

That having regard to:-

- a) the nature of the activities proposed to be carried on in the premises
- b) the location, character and condition of the premises; and
- c) the persons likely to frequent the premises

the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation.

- Overprovision

That the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises (taking account of the variation), in the locality.

6. Recommendation

Members are asked to either GRANT or REFUSE the application.

Vlad Valiente
Clerk to the Licensing Boards
Kirkbank House
English Street
Dumfries
DG1 2HS

7 September 2023

Annandale & Eskdale Divisional Licensing Board
Application for Variation of Premises Licence

Applicant/Agent	Sharon Willacy Normanton North Road Lowthertown Annan DG12 6TE
Address of Premises	Back to the Buck 82A High Street Annan DG12 6DW
Nature of Variation	<p><u>Operating Plan</u></p> <p>Add Adult Entertainment within core hours Add Restaurant and bar Meals within core hours Add Conference Facilities within core hours Increase capacity from 50 to 190 (Ground Floor 50; Beer Garden 40; Upper Floor 100)</p> <p><u>Change of wording Children and Young Persons:</u></p> <p>Terms – Children and Young Persons only allowed in the indoor seating area and lounge areas if accompanied by a responsible adult similarly in Beer Garden where outdoor drinking will take place children and young persons only allowed if accompanied by a responsible adult</p> <p>Ages – 0-15 inclusive; Young Persons 16-17 inclusive</p> <p>Times – Children and Young Persons 11am to 8pm except where private function allowed till 12am</p> <p>Parts – Children and Young Persons will not be allowed in the bar areas, only indoor seated areas, lounge areas, outdoor beer garden and toilets</p> <p><u>Any Other Information</u></p> <p>Change the premises name from 'Back to the Buck' to 'The Buck Inn'</p> <p><u>Layout Plan</u></p> <p>Changes to the layout plan to incorporate the upper floor to the existing layout</p>
Last Date for Objections/Representations	Friday 30 June 2023

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**DUMFRIES & GALLOWAY LICENSING BOARDS
LICENSING STANDARDS OFFICER REPORT**

**LICENSING (SCOTLAND) ACT 2005:
VARIATION TO PREMISES LICENCE,
PREMISES: BACK TO THE BUCK, 82A HIGH STREET, ANNAN**

1. This application has been submitted by Sharon Willacy seeking variations to the existing premises licence for Back to the Buck, 82A High Street, Annan, DG12 6DW. This application includes a request to amend the name of the premises to The Buck Inn.
2. The location is already established as a licensed premises and currently has licensed hours for on sales between 11am to 11pm, Monday to Wednesday, 11am to 12midnight, Thursday to Saturday unless there is a function on Friday and Saturday when the terminal hour is 1am, and 12.30pm to 11pm on a Sunday. The premises are licenced for off sales between 11am and 10pm daily.
3. The current licence relates to the ground floor and external areas of the premises only and this variation seeks to licence the upper floor which has been renovated to create an additional bar and function area. Current capacity of the premises is 50 and this application seeks an increase to 190 comprising: ground floor capacity of 50; beer garden capacity of 40; and upper floor capacity of 100. The upper floor of the premises has been operating under Occasional Licences since 11th November 2022 and at the time of writing, have utilised 21 Occasional Licences with no issues noted from a licensing perspective.
4. The application wishes to maintain the activities currently included in their premises licence, namely: Receptions; Club and other group meetings; Recorded music; Live performances; Dance facilities; Gaming; Indoor/Outdoor sports; Televised sports; and Outdoor drinking whilst adding: Conference and restaurant facilities; bar meals and adult entertainment, all of which are to be provided during core licensed hours.
5. The premises are also seeking to amend the terms, ages and times with respect the admission of children to the premises as follows:
 - Terms: To read 'Children and Young Persons only allowed in the indoor seating area and lounge areas if accompanied by a responsible adult. Similarly in the beer garden where outdoor drinking will take place Children and Young Persons only allowed if accompanied by responsible adult.' The request is for the deletion of 'Children and Young Persons must leave the premises by 8pm.'
 - Ages: The ages of Children and Young Persons are to be amended to allow Children aged 0-15 years and Young Persons aged 16-17 years. It should be noted that the premises have baby changing facilities accessible within the courtyard of the premises.
 - Times: Amended that they must leave the premises by 8pm unless private function then they will be permitted to 12midnight.

6. The application was advertised on the Board's website page from Friday 9th June 2023, simultaneously a notice was displayed at the premises.

The notice was checked on Monday 26th June 2023 during which time it was found to be correctly displayed in the front window of the premises.

7. The application is within Annandale and Eskdale Divisional Licensing Board.
8. From a licensing perspective, there are no adverse comments to be made in respect of this application.

Emma Connelly

Licensing Standards Officer
17th July 2023

**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

**LICENSING (SCOTLAND) ACT 2005 (2005 Act): SECTION 45
APPLICATION: PROVISIONAL PREMISES LICENCE
APPLICANT: PTL LIMITED, TESCO HOUSE, SHIRE PARK, KESTREL WAY,
WELWYN GARDEN CITY, UNITED KINGDOM
PREMISES TO BE LICENSED: TESCO EXPRESS, 20 BRUCE STREET,
LOCHMABEN**

1. Reason for Report

1.1 As this is an application for a provisional premises licence, the Board is statutorily obliged to hold a Hearing.

1.2 Members are asked to consider the application received 19 June 2023 and detailed at **Appendix 1** to this report.

2. Background

2.1 As is required by law, a copy of the application was sent to:

- Police Scotland
- The Local Authority
- Scottish Fire and Rescue Service (SFRS)
- NHS Dumfries & Galloway
- Community Council
- Neighbours (those having a notifiable interest in neighbouring land within 4 metres in any direction of any boundary of the premises)

2.2 Both Section 50(5) Provisional Planning Certificate and Disabled Access and Facilities Statement have been received.

2.3 In accordance with statutory advertising requirements, the Board is required to display a notice on its website for a period of 21 days and the applicant is also required to display a site notice at or near the premises and in a place and height where it can conveniently be read by the public for the same period.

2.4 Notice of the application was published on the Board's webpage from **Friday 30 June until Saturday 22 July 2023**.

2.5 Signed, Confirmation of Site Notice has been received.

3. Objections and Representations

3.1 The last date for objections/representations was **Friday 21 July 2023**.

3.2 No objections/representations have been received.

4. Responses

The following responses have been received:

- LSO Report – no adverse comments (**Appendix 2**)
- Police – clear report

- Planning – No planning issues
- Building Standards – no comment
- SFRS – No Comment

5. Determination of the Application

5.1 As democratically elected individuals, ultimate decision making power rests with elected Members and not Council Officers. Whilst Officers can give advice, they cannot clearly make decisions at Hearings. Ultimately, the Board must come to a lawful decision and take into account the following:

5.2 The key consideration in reaching a decision is to determine whether or not a ground of refusal applies.

- (i) If no ground of refusal applies, then the Board must GRANT the application.
- (ii) If any ground of refusal applies, the Board must REFUSE the application

5.3 In terms of section 23 (5) the grounds for refusal are:-

- The premises are excluded premises;
- The application must be refused under
 - Section 25(2) (where the Board has refused a premises licence and this is a subsequent application received within 12 months of the refusal)
 - Section 64(2) (where the application is for 24 hour operation and exceptional circumstances have not been shown to justify that operation)
 - Section 65(3) (the application relates to off sales outwith 10am to 10pm)
- That the Licensing Board considers, having regard to the licensing objectives, that the applicant is *not a fit and proper person to be the holder of a premises licence*;
- The Licensing Board considers that the granting of the application would be *inconsistent with one or more of the licensing objectives*, namely: (preventing crime and disorder/securing public safety/preventing public nuisance/protecting and improving public health/protecting children and young persons from harm);
- That having regard to:-
 - i) The nature of the activities proposed to be carried on in the premises
 - ii) the location, character and condition of the premises; and
 - iii) the persons likely to frequent the premisesthe Board considers that *the premises are unsuitable for use for the sale of alcohol*
- The Board considers that, if the application were to be granted, there would, as a result, *be overprovision of licensed premises* in the locality.

6. Recommendation

Members are asked to either GRANT or REFUSE the application.

Vlad Valiente
Clerk to the Licensing Boards
Kirkbank House
English Street
Dumfries
DG1 2HS

7 September 2023

Appendix

Applicant/Agent	Pinsent Masons LLP Per PTL Limited Tesco House Shire Park Kestrel Way Welwyn Garden City United Kingdom AL7 1GA
Address of Premises	Tesco Express 20 Bruce Street Lochmaben Lockerbie DG11 1PD
Description	The premises is situated in a high street location, operating as a small supermarket, part of a national chain, retailing food, non-food items and household goods and offering ancillary consumer services, including home deliveries.
Core Times	<u>Off Sales</u> Monday 10.00am – 10.00pm Tuesday 10.00am – 10.00pm Wednesday 10.00am – 10.00pm Thursday 10.00am – 10.00pm Friday 10.00am – 10.00pm Saturday 10.00am – 10.00pm Sunday 10.00am – 10.00pm
Activities	Recorded Music both within and outwith core hours Any other Activities: The sale of food, non-food items and other household goods and the provision of ancillary consumer services before, during and after licensed hours, including home deliveries.
Children and Young Persons	N/A
Capacity	31m ²
Last Date for Objections/Representations	Friday 21 July 2023

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**DUMFRIES & GALLOWAY LICENSING BOARDS
LICENSING STANDARDS OFFICER REPORT**

**LICENSING (SCOTLAND) ACT 2005:
APPLICATION FOR PROVISIONAL PREMISES LICENCE,
PREMISES: TESCO EXPRESS, 20 BRUCE STREET, LOCHMABEN.**

1. This application has been submitted by PTLL Limited, Tesco House, Shire Park, Kestrel Way, Welwyn Garden City, AL7 1GA seeking a provisional premises licence to allow for off sales only as a retail premises sited at 20 Bruce Street, Lochmaben, DG11 1PD and trading as a Tesco Express establishment.
2. The location is currently under development and will be a high street location, operating as a small supermarket which forms part of a national chain.
3. The premises will offer for sale food, non-food items and household goods alongside ancillary consumer services including home deliveries.
4. The application seeks off sales only between 10am and 10pm daily.
5. Activities sought within this application is for recorded background music which will be both during and outwith core licenced hours.
6. The application seeks a total 'off-sales' capacity of 31m² and in comparison, the overall size and layout of the proposed premises, the display area is not deemed excessive.
7. The application was advertised on the Board's website page from Friday 30th June 2023, simultaneously a notice was displayed at the premises.

The notice was checked on Wednesday 20th July 2023 during which time it was found to be correctly displayed on the barrier railings to the front of the site easily read by passersby.
8. The application has been submitted in keeping with Annandale and Eskdale Divisional Licensing Board policy.
9. There are no adverse comments to be made in respect of this application.

Emma Connelly
Licensing Standards Officer
19th July 2023

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**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE & ESKDALE DIVISIONAL LICENSING BOARD**

LICENSING (SCOTLAND) ACT 2005: SECTION 23

APPLICATION: PREMISES LICENCE

**PREMISES: QUARTER CAKE CAFÉ BAR & RESTAURANT, 5 BUTTS STREET,
ANNAN**

APPLICANT: MICHAEL TAYLOR, 9 ANNERLEY ROAD, ANNAN

1. Reason for Report

1.1 As this is an application for a new premises licence, the Board is statutorily obliged to hold a Hearing.

1.2 Members are asked to consider the application for a new premises licence received on 19 July 2023 and detailed at **Appendix 1**.

2. Background

2.1 As is required by law, a copy of the application was forwarded to the following:

- Police Scotland
- The Local Authority
- Scottish Fire and Rescue Service (SFRS)
- NHS Dumfries & Galloway
- Local Community Council
- Neighbours (those within 4 metres in any direction of any boundary of the premises)

2.2 Satisfactory Section 50 Certificates for Planning, Building Standards and Food Hygiene and a Disabled Access and Facilities Statement have been received.

2.3 In accordance with statutory advertising requirements, the Board is required to display a notice on its website for a period of 21 days and the applicant is also required to display a site notice at or near the premises and in a place and height where it can conveniently be read by the public for the same period.

2.4 Notice of the application was published on the Board's webpage from **Friday 28 July 2023 to Saturday 19 August 2023**

2.5 Signed Confirmation of Site Notice has been received. However, it contains 2 errors as follows:

- it states display dates of 28 July to 19 August 2023 but is signed in advance of those dates (signed on 28 July 2023) and
- the LSO report detailed at Appendix 2 advises – at para 4.1 – that a visit was made to the premises on 2 August 2023, at which time the notice was not displayed. After speaking to a staff member, the notice was put into the window on Butts Street.

2.6 The Site Notice should have been displayed for the full 21 day period from 28 July to 19 August 2023 and should have been signed on or after 19 August 2023.

2.7 Where the Board considers that the display Notice has – for any reason – not been in place for the whole 21 day period as stipulated above, then it may require the applicant to display the Notice for a further 21 day period.

3. Objections and Representations

3.1 The last date for objections/representations was **Friday 18 August 2023**.

3.2 No objections or representations have been received.

4. Responses

The following responses have been received:

- LSO report – (**Appendix 2**)
- Police Scotland – clear Notice
- Planning – no planning issues
- SFRS – no comments

5. Determination of the application

5.1 As democratically elected individuals, ultimate decision making power rests with elected Members and not Council Officers. Whilst Officers can give advice, they cannot clearly make decisions at Hearings. Ultimately, the Board must come to a lawful decision and take into account the following:

5.2 The key consideration in reaching a decision is to determine whether or not a ground of refusal applies.

- (i) If no ground of refusal applies, then the Board must GRANT the application.
- (ii) If any ground of refusal applies, the Board must REFUSE the application

5.3 In terms of section 23 (5) the grounds for refusal are:-

- The premises are excluded premises
- The application must be refused under
 - Section 25(2) (where the Board has refused a premises licence and this is a subsequent application received within 12 months of the refusal)
 - Section 64(2) (where the application is for 24 hour operation and exceptional circumstances have not been shown to justify that operation)
 - Section 65(3) (the application relates to off sales outwith 10am to 10pm)
- That the Licensing Board considers, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence;
- The Licensing Board considers that the granting of the application would otherwise , be inconsistent with one or more of the licensing objectives, namely: (preventing crime and disorder/securing public safety/preventing public nuisance/protecting and improving public health/protecting children and young persons from harm);
- That having regard to:-
 - i) The nature of the activities proposed to be carried on in the premises
 - ii) the location, character and condition of the premises; and

- iii) the persons likely to frequent the premises
the Board considers that the premises are unsuitable for use for the sale of alcohol
- The Board considers that that, if the application were to be granted, there would, as a result, be overprovision of licensed premise in the locality.

6. Recommendation

6.1 Members are asked to make a determination as to whether or not they wish the Site Notice to be redisplayed for a further 21 day period.

6.2 If it is to be redisplayed, then note that this application will call again before the Board at a future Hearing date.

6.3 If it is not to be redisplayed, then either GRANT or REFUSE the application.

Vlad Valiente
Clerk to the Licensing Boards
Kirkbank House
English Street
Dumfries
DG1 2HS

7 September 2023

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Appendix

Applicant/Agent	Michael Taylor 9 Annerley Road Annan DG12 6HE
Address of Premises	Quarter Cake Café Bar & Restaurant 5 Butts Street Annan DG12 5AN
Description	Café Bar & Restaurant with outdoor seating area.
Core Times	<p><u>On Sales</u></p> <p>Monday 11.00am – 11.00pm Tuesday 11.00am – 11.00pm Wednesday 11.00am – 11.00pm Thursday 11.00am – 12 midnight Friday 11.00am – 12 midnight Saturday 11.00am – 12 midnight Sunday 12.30pm – 11.00pm</p> <p><u>Off Sales</u></p> <p>Monday 10.00am – 10.00pm Tuesday 10.00am – 10.00pm Wednesday 10.00am – 10.00pm Thursday 10.00am – 10.00pm Friday 10.00am – 10.00pm Saturday 10.00am – 10.00pm Sunday 12.30pm – 10.00pm</p>
Activities	<p>Conference Facilities, Restaurant Facilities, Bar Meals, Receptions, Club/Group Meetings, Recorded Music and Outdoor Drinking Facilities both within and outwith core hours</p> <p>Live Performance, Dance Facilities, Films and Televised Sports within core hours</p> <p><u>Outwith Core Hours Information</u></p> <p>'Our core opening times are earlier than the alcohol sales noted above, we may open from 8am, for the activities</p>

	above but not be open for alcohol sales until 11am.
Children and Young Persons	<p>TERMS – Children aged 15 years of age and below may be unaccompanied until 8pm thereafter must be accompanied by an adult until closing. Young persons aged between 16-17 years may enter the premises during the opening hours and can be unaccompanied by an adult'</p> <p>AGES – Children aged 0-15 and Young Persons aged 16-17 years will be permitted entry</p> <p>TIMES – Children and Young Persons will be able to enter the premises between all of the opening hours</p> <p>PARTS – Children ad Young Persons can access all public parts of the premises.</p>
Capacity	60
Last Date for Objections/Representations	Friday 18 August 2023

**DUMFRIES & GALLOWAY LICENSING BOARDS
LICENSING STANDARDS OFFICER REPORT**

**LICENSING (SCOTLAND) ACT 2005: SECTION 45
APPLICATION FOR PREMISES LICENCE
PREMISES: QUARTER CAKE CAFÉ BAR & RESTAURANT, 5 BUTTS
STREET, ANNAN DG12 5AN
APPLICANT: MICHAEL TAYLOR**

1. This application relates to a café bar and restaurant situated in Annan.
 - 1.2 The premises serve a range of meals, snacks, coffees, cakes etc. and have been operating since January 2020.
 - 1.3 To date, 89 Occasional Licences have been granted for the premises to allow for the sale of alcohol. These Licences were granted to the applicant, who is a Personal Licence holder.
2. The building consists of a ground floor and upper floor restaurant areas with a bar situated on the ground floor. The indoor capacity is 60 persons. There is an outdoor seating area to the rear of the premises with a capacity for 40 persons.
3. The on-sale hours applied for are:-
Monday to Wednesday 11am to 11pm
Thursday to Saturday 11am to 12midnight
Sunday 12.30pm to 11pm

The off-sale hours applied for are:-
Monday to Saturday 11am to 10pm
Sunday 12.30pm to 10pm
 - 3.1 These times are within the Licensed Hours Policy of the Annandale & Eskdale Divisional Licensing Board.
 - 3.2 Children and young persons access is also in line with the Board's policy.
 - 3.3 The premises open prior to the core hours for the sale of food and non-alcoholic drinks.
4. The application was advertised on the Board's website page from Friday 28 July 2023. At the same time a notice must be displayed at the premises.
 - 4.1 A visit was made on 2 August 2023, at which time the notice was not displayed. After speaking to a staff member, the notice was put into the window on Butts Street.
5. I have no adverse comments.

Julia Farroll
Licensing Standards Officer
3 August 2023

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**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE AND ESKDALE DIVISIONAL LICENSING BOARD**

**LICENSING (SCOTLAND) ACT 2005 (THE ACT)
SECTION 9A: ANNUAL FUNCTIONS REPORT 2022/23**

1. Reasons for the report

This report seeks the Board's approval of Dumfries and Galloway Licensing Boards' annual functions report for the year 2022/23.

2. Background

2.1 In terms of section 9A of the Act, the Boards must prepare and publish an annual functions report not later than 3 months after the end of each financial year.

2.2 This means that the Board's report for the financial year 2022/23 should be published no later than 30 June 2023.

2.4 The functions report must include the following:

A statement explaining how the Boards have had regard to:

- the licensing objectives, and
- their licensing policy statement and any supplementary licensing policy statement (including the Boards' statement under section 7(1) (duty to assess overprovision)), in the exercise of their functions under the Act during the financial year,
- a summary of the decisions made by (or on behalf of) the Boards during the financial year;
- information about the number of licences held under the Act in the Boards' areas (including information about the number of occasional licences issued during the year) and
- any other information about the exercise of the Boards' functions as the Boards consider appropriate.

2.5 The report for the year 2022/23 is detailed at the **Appendix**.

3. Recommendation

That the Board approves the draft Functions Report for 2022/23 attached at the Appendix, for publication in accordance with section 9A of the Act.

Vlad Valiente
Clerk to the Licensing Boards
Kirkbank House
English Street
Dumfries DG1 2HS

7 September 2023

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Dumfries and Galloway Licensing Boards' Annual Functions Report

Licensing (Scotland) Act 2005, Section 9A

01/04/2022 – 31/03/2023



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- 2. The Licensing Objectives**
- 3. Annual Functions Report**
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- 5. Reviews**
- 6. Licensing Policy Statement**
- 7. Licensing Standards Officers**
- 8. Statement on how the Boards exercise their functions**
- 9. Conclusion**

APPENDICES

Appendix - List of Applications for a Premises Licence

1. Introduction – Dumfries and Galloway Licensing Boards

General

1.1 Dumfries and Galloway is a mainly rural area in South West Scotland. It covers approximately 2470 square miles with a population of around 148,790. The main settlements are Dumfries (including Heathhall/Locharbriggs) around 37,100 residents; Stranraer (approximately 10,600 residents) and Annan (approximately 8250 residents). All other settlements have populations under 5000. The region of Dumfries and Galloway is divided into four geographical areas (former District Council areas) as follows: Annandale and Eskdale, Nithsdale, Stewartry and Wigtonshire.

1.2 Each of these four areas has its own Divisional Licensing Board. The four Divisional Licensing Boards in Dumfries and Galloway are:

- Annandale & Eskdale
- Nithsdale
- Stewartry
- Wigtown

1.3 Each Licensing Board is responsible for the licensing and regulation of alcohol within their respective areas.

1.4 As at 31 March 2023, there were 602 (604 - 2021/22) licensed premises in Dumfries and Galloway. Within each Licensing Board Division, the breakdown is:

Board	2022/23	2021/22
Nithsdale	190	191
Wigtown	148	149
Annandale & Eskdale	154	154
Stewartry	110	110

Types of applications under the 2005 Act:

1.5 Under the 2005 Act, the four Divisional Licensing Boards are responsible for considering applications for:

- occasional licences
- provisional licences
- temporary licences
- personal licences
- transfer of premises licences
- variation of premises licences
- extension of licensing hours

2. The Licensing Objectives

2.1 The Act sets out the following five licensing objectives ("the licensing objectives"):

- (i) preventing crime and disorder
- (ii) securing public safety
- (iii) preventing public nuisance
- (iv) protecting and improving public health
- (v) protecting children and young persons from harm

2.2 The licensing objectives provide a basis for the administration of the licensing regime. They also provide potential reasons for refusal of an application, for the grant or variation of a premises licence or an occasional licence. Breach of the objectives may provide grounds for reviewing a premises licence. Conditions attached to a premises licence or an occasional licence may be based on any one or more of the licensing objectives.

2.3 In exercising its functions under the Act, the Board must have regard to the licensing objectives.

3. Annual Functions Report

3.1 Section 9A of the Licensing (Scotland) Act 2005 requires Dumfries and Galloway Licensing Boards to publish an Annual Functions Report within 3 months of the end of the relevant financial year.

3.2 Dumfries and Galloway's Divisional Licensing Boards must therefore prepare and publish an Annual Functions Report by 30 June 2023 for the financial year 2022-2023 (being 1 April 2022 to 31 March 2023).

3.3 An Annual Functions Report must include the following:

- a statement explaining how each Board has had regard to the licensing objectives;
- a statement explaining how each Board has had regard to the Statement of Licensing Policy and any Supplementary Policy Statement (including the Board's statement with regard to its duty to assess overprovision);
- a summary of the decisions made by (or on behalf of) the Board during the financial year;
- information about the number of licences held under the 2005 Act in each Board's area (including the number of occasional licences issued in each year); and
- such other information about the exercise of each Board's functions as each Board considers appropriate.

3.4 In the year from 1 April 2022 to 31 March 2023, the Licensing Boards met as follows:

Board	2022/23	2021/22
Nithsdale:	4 times	5 times

Annandale & Eskdale:	3 times	6 times
Stewartry:	2 times	2 times
Wigtown:	5 times	8 times
Conjoined meeting of all 4 Boards	Once	2 times

3.5 Applications before each Board were dealt with in an open and transparent manner in accordance with the licensing legislation and the Boards Licensing Policy Statement.

3.6 Information and guidance was made available to persons wishing to apply for a licence, make representations or lodge objections.

4. Summary of decisions made by the Boards

4.1 Each Divisional Licensing Board holds meetings to determine applications that cannot be dealt with via delegated powers (whereby a Licensing Board Hearing need not be held to determine an application and an authorised member of the licensing team may 'grant' certain applications).

4.2 The premises licences granted by the Boards in 2022/23 are detailed within the **Appendix**.

4.3 During the course of the year, 2,012 occasional licences and 61 extended hours applications were granted. For comparison purposes, during 2021/22 1,546 occasional licences and 30 extended hours were granted.

4.4 Any occasional licence and extended hours applications that attracted objections or representations were considered by the Convener of each Licensing Board in line with the Board's scheme of delegation, detailed within the Licensing Policy Statement.

4.5 In the course of the year, the Licensing Board granted 192 (2021/22 – 178) personal licences. 192 were revoked (2021/22 – 169).

5. Reviews

Premises Licence Reviews

5.1 In the 2022-23 period, 1 application for review of a premises licence was considered by the Board. A decision was made to vary the current premises licence and attach a condition in pursuance of the preventing crime and disorder licensing objective (2021/22 two).

Personal Licence Reviews

5.2 In the 2022-23 period, 3 reviews of a Personal Licence took place. In one case, the licence was suspended for 6 months and in the other two cases no further action was taken (2021/22 two).

6. Licensing Policy Statement

6.1 The Board's reviewed Licensing Policy Statement came into effect on 4 November 2018 and will exist for a maximum of 5 years. The Board may agree to prepare and publish Supplementary Statements within that period. The Policy Statement can be found at <https://www.dumgal.gov.uk/article/15196/Divisional-Licensing-Boards>

6.2 The current Licensing Policy Statement is being reviewed and the updated statement will be published by 4 November 2023, after consideration by the Licensing Boards.

7. Licensing Standards Officers

7.1 Dumfries and Galloway Licensing Boards have 6 "HMO, Landlord Registration and Licensing Standards Officers" (LSOs):

- Julia Farroll, Council Offices, Sun Street, Stranraer
- Mary Irving, Council Offices, Sun Street, Stranraer
- Amanda Green, Council Offices, Sun Street, Stranraer
- Robert Rome, Carruthers House, English Street, Dumfries
- Emma Connelly, Carruthers House, English Street, Dumfries
- Suzanne Lafferty, Carruthers House, English Street, Dumfries

7.2 The LSOs' general roles are:

- Providing information and guidance concerning the operating of the Licensing (Scotland) Act 2005
- Supervising the compliance by licence holders of the conditions of their licence and other requirements of the legislation
- Providing mediation services for the purposes of resolving or avoiding disputes or disagreements between licence holders and any other persons.

7.3 LSOs continue to carry out routine compliance check visits to licensed premises.

7.4 The LSOs continued to deal with enquiries and complaints throughout the year with the majority being resolved without having to proceed formally to the Licensing Boards. Issues which repeatedly arise are:

- Complaints of noise and anti-social behaviour at licensed premises
- Non payment of annual fees
- Changes to layout plans without variation applications having been submitted

7.5 LSOs continue to work closely with Police Scotland and other partner agencies carrying out joint visits as and when necessary.

8. Statement on how the Boards exercise their functions

8.1 The Licensing (Scotland) Act 2005 as amended (“the Act”) sets out regulations for the sale of alcohol and regulations for licensed premises and other premises on which alcohol is sold.

8.2 The Act is underpinned by five licensing objectives which the Board must have regard to when exercising its functions. These objectives are:

- (i) Preventing crime and disorder
- (ii) Securing public safety
- (iii) Preventing public nuisance
- (iv) Protecting and improving public health
- (v) Protecting children and young persons from harm

8.3 The Licensing Boards are required by law to have a Licensing Policy Statement outlining how they will exercise their functions and duties under the Licensing (Scotland) Act 2005 (the 2005 Act) in order to promote each of the Licensing Objectives.

8.4 The current Policy Statement contains a range of issues pertaining to alcohol licensing and how the Board exercises its functions under the Licensing Scotland Act 2005 and can be found at <https://www.dumgal.gov.uk/article/15196/Divisional-Licensing-Boards>

8.5 The Boards deal with all applications in accordance with the legislation and, in particular, the above five objectives, together with its Statement of Licensing Policy which is based on the objectives.

9. Conclusion

9.1 Each of the four Divisional Licensing Boards in Dumfries and Galloway are pleased to report that licensed premises are generally well run in their respective areas.

9.2 Overall, the Boards are generally satisfied that the licensed trade is upholding and promoting the five licensing objectives which underpin the functioning of the whole licensing system.

9.3 The Boards also recognise the efforts of the Licensing Service and external stakeholders (including Police Scotland) to ensure that licensed premises comply with the legislation and continue to uphold the licensing objectives.

9.4 Whilst the Boards recognise generally the good practice and effort of licence holders to ensure that the licensing objectives are upheld and promoted, they fully expect that licence holders ensure that this good practice continues.

Appendix

**List of Applications granted by the Licensing Boards
for Premises Licences – 2022-2023**

Wigtown – n/a**Annandale & Eskdale**

Annan News 84 High Street Annan DG12 6DW	Off sales
Pavilion at Kinmount House Annan DG12 5RH	Provisional On and Off sales
Gretna Service Station M74 North Bound Gretna DG16 5HQ	Provisional Off sales

Stewartry

Auchencairn Community Store Heughan House Main Street Auchencairn Castle Douglas DG7 1QU	On and Off sales
Gather Laggan Gatehouse of Fleet Castle Douglas DG7 2ES	On and Off sales
Harris & Co 111 King Street Castle Douglas DG7 1LZ	On and Off sales

Nithsdale

Marmaris Takeaway 20 Whitesands Dumfries DG1 2RR	Off sales
St Michael's Services 9 St Michael Street Dumfries DG1 2QD	Provisional Off sales

2021/22 for comparison	New Premises Licences granted
Wigtown	2 On and Off Sales 1 Off Sales
Annandale & Eskdale	1 On and Off Sales 1 Provisional On and Off Sales 3 Off Sales 1 On Sales
Stewartry	1 On and Off Sales 1 Off Sales
Nithsdale	2 On and Off Sales 1 Provisional On Sales

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**DUMFRIES AND GALLOWAY LICENSING BOARDS
ANNANDALE AND ESKDALE DIVISIONAL LICENSING BOARD**

**LICENSING (SCOTLAND) ACT 2005 (THE ACT)
SECTION 9B: ANNUAL FINANCIAL REPORT 2022/23**

1. Reasons for the report

To seek the Board's approval of Dumfries and Galloway Licensing Boards' annual financial report for the year 2022/33.

2. Background

2.1 In terms of section 9B of the Act, the Boards must prepare and publish an annual financial report not later than 3 months after the end of each financial year.

2.2 This means that the Board's report for the financial year 2022/23 will be published no later than 30 June 2023.

2.3 The financial report must include the following:

a) a statement of—

- the amount of relevant income received by the Licensing Boards during the financial year, and
- the amount of relevant expenditure incurred in respect of the Boards' areas during the year, and

(b) an explanation of how the amounts in the statement were calculated.

2.4 The report for the year 2022/23 is detailed at the **Appendix**.

2.5 Members will note that the report shows a deficit of £7,782. A full review of Licensing fees will be carried out prior to publication of the next Financial Report for 2023/24.

3. Recommendation

That the Board approves the draft Financial Report for 2022/23 attached at the Appendix, for publication in accordance with section 9B of the Act.

Vlad Valiente
Clerk to the Licensing Boards
Kirkbank House
English Street
Dumfries DG1 2HS

7 September 2023

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APPENDIX

**Licensing (Scotland) Act 2005
Dumfries and Galloway Licensing Boards Financial Report
Financial Year: 2022/23**

Section 9B of the Licensing (Scotland) Act 2005 requires Dumfries and Galloway Licensing Boards to publish an annual financial report within 3 months of the end of the relevant financial year. The report must detail income received and expenditure incurred in connection with the exercise of the Board's functions under the 2005 Act.

This report has been prepared using financial data taken for year ending 31 March 2023. Dumfries and Galloway Council's accounting system for licensing expenditure is not set up to separately record expenditure in connection with the Board's functions under the 2005 Act so as to distinguish it from all other direct or indirect expenditure in connection with the Board's and the Council's licensing functions under the legislation.

In order to provide a figure for total expenditure, the figures in this report also include a number of allocations and estimates. The report accordingly relies on best estimates and should not be read as a precise statement of income and expenditure relative to the exercise of the Board's functions under the Licensing (Scotland) Act 2005.

The financial statement is as follows:

Income¹:

Premises Licence	£6,100
Provisional Premises Licence	£1,800
Annual Fees	£188,662
Transfers	£2,580
Minor Variations	£4,124
Major Variations	£8,330
Extended Hours	£660
Occasional Licence	£19,210
Personal Licence	£9,600
Sundry Income ♦	£5,465
Total	£246,531

♦ including fees for replacement licences, applications subsequently withdrawn, miscodings etc

Direct Staff Costs²:

Licensing Standards Officers	£106,563
Licensing Board Members	£946
Management	£31,371
Legal Services	£26,625
Administrative Support	£52,876
Total	£218,381

** (total cost of administrative support was £92,265 but £39,389 was allocated to Licensing from Covid monies and the use of reserves)

Other Direct Costs³:

Training and Development	£424
Stationery	£368
Supplies and Services	£15,837
Transport/Travel	£151
Total:	£16,780

Indirect Costs⁴:

ICT	£7,887
Accommodation	£8,402
Financial Services	£2,863
Total:	£19,152

Total Expenditure	£254,313
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Net Income	-£7,782
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Notes:

1. Denotes income from the categories detailed for applications and annual fees received under the Licensing (Scotland) Act 2005
2. Denotes salary, superannuation, national insurance and pension costs associated with the Clerk and other Legal Services staff, Licensing Standards Officers and other staff responsible for administrative support under paragraph 8 of Schedule 1 to the Licensing (Scotland) Act 2005, together with an estimate of costs associated with Board Members' time dedicated to Board work.
3. Denotes the identified direct budgetary costs associated with the exercise of the Licensing Board function under each category provided.
4. Denotes the portion of central administrative costs allocated to the Licensing Board budget for each category provided.

DUMFRIES AND GALLOWAY LICENSING BOARDS ANNANDALE AND ESKDALE DIVISIONAL LICENSING BOARD

LICENSING (SCOTLAND) ACT 2005: SECTIONS 6 AND 7 RENEWAL OF LICENSING POLICY STATEMENT AND DUTY TO ASSESS OVERPROVISION (2023-2028)

1. REASON FOR REPORT

1.1 To ask Members to discuss and consider responses received to two public consultations that were undertaken 2023 with regard to all four Divisional Boards' legal duty to review the current Licensing Policy Statement and

1.2 Following a presentation given to the Board by NHS Dumfries and Galloway and after giving full consideration to its Assessment on Overprovision, make a determination as to whether or not there is overprovision of licensed premises in Annan West for on sales or for any other locality within Annandale and Eskdale.

2. BACKGROUND

2.1 All four Boards' current Licensing Policy Statement (2018 – 2023) was finalised and published November 2018 and requires to be renewed and published no later than 18 months after the last Scottish Local Government election. As the last Local Government election was 5 May 2022, the date by which all four Boards must legally publish a new Policy Statement is **4 November 2023**.

2.2 The current Licensing Policy statement can be found at [Dumfries and Galloway Licensing Boards' Policy Statement \(dumgal.gov.uk\)](https://www.dumgal.gov.uk)

2.3 In preparing a Licensing Policy statement the Board must ensure that the policy stated in the statement seeks to promote the licensing objectives and the Board must consult with:

- the Local Licensing Forum for the Board's area;
- if the membership of the Forum is not representative of the interests of:
 - premises licence holders;
 - personal licence holders;
 - the Chief Constable;
 - persons having functions relating to health, education or social work;
 - young people (aged 16 and 17 years) and
 - local people (persons resident within the Forum's area)

then the Boards must consult with representatives of the above persons whose voice is not heard at the Local Licensing Forum.

- the relevant health board, and
- such other persons as the Board thinks appropriate.

2.4 At a Conjoined Meeting of all four Divisional Licensing Boards 19 January 2023, Members agreed a consultation programme towards finalising the terms of

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their renewed Licensing Policy Statement (2023-2028) and agreed the list of consultees for this purpose (**Appendix 1**).

3. INITIAL CONSULTATION

3.1 It was agreed that an initial Consultation would take place and this occurred 31 January to 28 February 2023. The objective of this Consultation was to seek the public's general views on the terms of the new Licensing Policy Statement and a Consultation Notice was advertised via social media and posted on the Licensing Service's webpage.

3.2 One generic response was received to this consultation from Alcohol Focus Scotland in respect of all four Boards (**Appendix 2**)

4. SECOND CONSULTATION

4.1 It was further agreed that a second, more comprehensive Consultation would be undertaken and this took place 1 April to 15 June 2023 asking specific questions in policy areas including whether there is overprovision of licensed premises in each of the four Board areas including Annandale and Eskdale.

4.2 This second Consultation included sending letters/emails to consultees giving details of how to respond to the consultation and undertaking an online questionnaire (which was also available in hard copy if required by persons) and advertising the consultation on social media and the Licensing webpage.

4.3 Responses received to the second Consultation are as follows:

- LSO response in respect of all four Boards: **Appendix 3**
- Alcohol Focus Scotland response **Appendix 2**
- 46 public responses in total received in respect of all four Boards.

4.4 Specific to Annandale and Eskdale Board, **5** responses were received from the following persons:

- Organisation/Group/Trade: 3 persons
- Individual: 2 persons

4.5 A breakdown of the **AGE** of the 5 respondees is shown as follows:

- 30 to 49 years: 1 person
- 50+: 2 persons (one of which states itself to be an Organisation/Group/Trade)

4.6 The Consultation Survey covered a number of areas and the undernoted are the questions that were asked and the responses received:

4.7 Licensed Hours

Each of the four Divisional Boards has its own Licensed Hours Policy to reflect local circumstances.

The current Policy Hours with regard to each Divisional Board is set out in Section 1.7 of the current Policy Statement (2018 – 2023).

Note that, in terms of Section 64 of the 2005 Act, there is a presumption against the grant of routine 24 hour opening of licensed premises unless exceptional circumstances justify allowing the sale of alcohol for a continuous 24 hour period.

The statutory maximum hours for OFF SALE premises (usually shops/supermarkets/convenience stores) is 10am to 10pm seven days per week.

4.7.1 Q. Do you think that current licensed hours are:

- NOT LONG ENOUGH – 0 persons
- OK – 4 persons
- TOO LONG – 1 person

The reasons given for the above responses are as follows:

- Currently Wet Sales in our area are definitely in decline since the change in Drink Drive legislation and COVID Lockdowns
- They serve the needs of the majority of customers and while some would like premises to stay open much later, this isn't economically viable for a lot of businesses as customers only have a certain amount of money to spend and therefore would arrive at premises later if they stayed open beyond current licensing hours.
- Everybody is familiar with those hours and I am not aware of any complaints.
- The current license hours for general drinking are ok, it's the incredibly loud entertainment that is allowed to continue very late into the night in residential areas that should be stopped.

4.7.2 Q. If you would like to see current policy hours change, what would you suggest and what are the reasons for this suggestion?

2 responses were received as follows:

- I currently don't think there is much need for change in our location
- No live entertainment i.e bands or amplified karaoke etc after 9pm in residential areas. Some way of dampening sound being a provision of entertainment licences.

4.7.3 Q. What are the reasons for this suggestion?

One reason was given as follows:

- Currently the noise coming into my home is unbearable. It is unnecessarily loud and encourages nuisance behaviour in a residential area.

4.8 Outdoor Drinking Areas

In respect of an application for a Premises Licence or for a Variation to a Premises Licence which proposes an outdoor drinking area, none of the four Boards have a

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specific policy with regard to outdoor drinking areas as each case is determined on its own merits.

Outdoor drinking areas can provide an enjoyable experience for customers, but this must be balanced against the needs of local residents and the impact that outdoor drinking areas may have e.g. possible nuisance and disturbance. Since the Covid Pandemic, premises have made greater use of outdoor areas.

4.8.1 Q. Do you believe that the Board should have a policy on outdoor drinking areas?

- YES: 4 persons
- NO: 1 person
- NO VIEW: 0 persons

The reasons given were as follows:

- I do believe that the provision of our door Licenced areas in our area should be relaxed if they main activities is drinking to accompany food, or improve pavement cafe culture, however those premises which are solely wet led and would more likely use the outside area later in the evening are more likely to cause nuisance to neighbours, and those should be considered separately;
- I think they should have an understanding policy on outdoor drinking areas. If there are no adjacent neighbours then I see no issue provided loud music isn't being played at anti-social times; Every premises is different, but I have heard instances of people building a house next to a premises which had outdoor drinking and then complaining about noise. This seems grossly unfair on the premises owner;
- To ensure all businesses are providing a safe outdoor experience for their customers;
- These go largely unpoliced and again lead to nuisance behaviour in the evening, in some cases;
- Difficult to regulate and could prove to be costly.

4.8.2 Q. Should the Board apply a time limit on the use of Outdoor Drinking Areas?

- YES: 3 persons
- NO: 2 persons

4.8.3 Q. If yes to the above, up until what time would you suggest?

Out of the 3 persons who stated yes, suggested times are as follows:

- 10pm
- 10pm to 11pm
- 8pm

4.8.4 Q. In what circumstances do you believe there should be flexibility with regard to any proposed time limit on an outside drinking area?

5 responses were received as follows:

- If the premises had no neighbours that may be disturbed;
- Location of the premises in regards to neighbouring properties, and the nature of those properties. Residential and care homes would have to be considered differently to commercial premises;
- Public holidays, Christmas, New Year, local public festive events;
- Special events ie. weddings, gala days, Hogmanay;
- None.

4.8.5 Q. Do you believe the following factors should generally be taken into account when determining an application for outdoor drinking area?

	Yes	No	No View
Location of the licensed premises	3	2	
Location of the proposed outside drinking area	4	1	
Proximity of residential dwellings (i.e.the closeness of those who live nearby)	3	2	
Whether removable barriers should be put in place to clearly identify the outside drinking area	4	1	
Whether amplified music should be prohibited in outside drinking areas	3	2	
Whether specific monitoring mechanisms should be put in place (eg: staff are physically able to monitor or the area is caught within CCTV)	4	1	
Whether the use of glassware should be excluded after a certain time	2	2	1

Consultees were then given asked if they had answered YES to any of the above or of if they had any other comment, then to provide details.

The following 4 comments were received:

- special consideration may be given to smaller premises which may just want to provide 2 or 3 small tables on pavement areas, as these areas would not be the main trading area for the business but an alternative for people to use weather permitting;
- Any extension usually takes place when there is a festive holiday so most properly be in a festive mood. Licensed dwellings have a licence for a reason

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and are expected to be competent enough to manage them. If they are not because of complaints, then the license is reviewed;

- Location of area important to allow 1.5m clearance for passers by. Barriers to allow safety to patrons and passers by. Staff should be monitoring the area as they would indoors, cctv helpful but not within everyones budget;
- Inside noise coming from venues is often unbearable. There should not amplified music outside near residential areas.

4.8.6 LSO Response (Appendix 3)

- Since Covid, more premises are creating or expanding outdoor drinking areas, some with large capacities.
- In pursuance of Licensing Objective, Preventing Public Nuisance, it may be that consideration should be given to restricting the terminal hour for use of these areas unless they are in a remote location where there is no likelihood of noise causing a nuisance to neighbours. An informal policy of 10pm terminal hour during Covid was applied to Occasional Licences for outdoor drinking areas.

4.9 The Licensing Objectives

The Boards must seek to ensure that their Licensing Policy Statement promotes the five Licensing Objectives which underpin the whole alcohol licensing system.

The Questionnaire asked:

4.9.1 **Do you have any suggestions for promoting the Licensing Objective Preventing Crime and Disorder?**

YES: 2 persons

NO: 3 persons

Comments/Reasons for comments were as follows:

- our area lacks seriously from any visible policing which means our area has no one to help ensure crime and disorder is not an issue after licenced premises has been vacated. this was never an issue 10 years past but an ever increasing issue in more recent years.
- Inspecting venues. Ensuring there are enough trained staff. And that staff are actually old enough to work in the licence trade - this is flouted by several Moffat establishments. Ensure CCTV is in use and monitored. Ensure trading hours are actually adhered to, again this is often flouted.
- The Licensee is expected to manage this.

4.9.2 **Do you have any suggestions for promoting the Licensing Objective Securing Public Safety?**

YES: 0 persons

NO: 5 persons

Comments/Reasons for comments:

- The licensee is expected to manage this;

4.9.3 Do you have any suggestions for promoting the Licensing Objective Preventing Public Nuisance?

YES: 2 persons

NO: 3 persons

Comments/reasons for comments:

- Proper enforcement of existing laws;
- The licensee is expected to manage this

4.9.4 Do you have any suggestions for promoting the Licensing Objective Protecting and Improving Public Health?

YES: 1 person

NO: 4 persons

Comments/reasons for comments:

- Ensure children are not employed in the licence trade as well as not being served.

4.9.5 Do you have any suggestions for promoting the Licensing Objective Protecting Children and Young Persons from Harm?

YES: 2 persons

NO: 3 persons

Comments and reasons for comments were as follows:

- Mostly this issue is relevant to premises whom perform off sales and not really an issue for on trade, but again lack of visible policing in the area does not help prevent this.
- Ensure children are not employed in the licence trade as well as not being served.

4.10 Overprovision : Are there too many licensed premises?

Overprovision is where there are too many licensed premises in a locality within a Board's area.

The Boards must undertake an assessment as to whether or not they consider there to be too many licensed premises within their areas.

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The last assessment of overprovision took place in 2018. At that time, all four Divisional Licensing Boards agreed that there was no overprovision in their respective Board areas throughout Dumfries and Galloway.

Categories of Premises

At the Conjoined Board meeting 19 January 2023, all four Boards agreed that they would divide consideration of licensed premises into two categories:

- (i) Off sales (usually shops and supermarkets) and
- (ii) On sales (usually bars and restaurants)

Factors to take into account in the assessment

Whilst the Boards must consider the *number* and *capacity* of licensed premises they decided not to include licensed hours in their overprovision assessment.

The Questionnaire asked:

4.10.1 Q. Do you think there is overprovision of ON SALE licensed premises generally?

YES: 0 persons

NO: 5 persons

NO VIEW: 0 persons

The Questionnaire then stated if yes, please state where and why you consider there to be overprovision. No responses were received to this.

4.10.2 Q. Do you think there is overprovision of OFF SALE licensed premises in Nithsdale?

YES: 0 persons

NO: 3 persons

NO VIEW: 2 persons

4.10.3 If yes, please state where and why you consider there to be overprovision:

No responses were received in this regard.

4.11 Any other views and comment

The questionnaire then asked whether anyone had any further views and comment that they wished to have taken into account with regard to the new Statement of Licensing Policy and, if so, to state what they were.

One response from the public was received as follows:

- Rural areas do not seem to be held to the same standards as more populated areas. Extremely loud music is played to midnight, no security staff, lack of training before and during employment, employment of children is rife.

(i) LSO response (Appendix 3):

Paragraph 2.15 current Licensing Policy Statement:

For the purposes of the revised Licensing Policy Statement, the LSO suggests that consideration be given to including the Annandale and Eskdale Board in this paragraph which currently reads as follows:

'This local condition applies to the following Boards: Nithsdale; Stewartry and Wigtown only.

In pursuance of the preventing crime and disorder objective, the Board will apply the following local condition to all on sales and off sales premises;

- *'Premises licence holders must maintain a refusals register to include a daily incidents log and said register must be made available for inspection by Police Scotland and/or an LSO upon request'.*

(ii) LSO response (Appendix 3):

Paragraph 2.1.6 current Licensing Policy Statement:

For the purposes of the revised Licensing Policy Statement, the LSO suggests that consideration be given to this paragraph being deleted:

'This local condition applies to Annandale and Eskdale Board only.

In pursuance of the preventing crime and disorder objective, the Board will apply the following local condition to all on sales and off sales premises:

- *'Premises licence holders must maintain a Daily Incidents Register (which shall include all refusals) and said register must be made available for inspection by Police Scotland and/or an LSO upon request'.*

4.12 Summary of responses received to the consultation

4.12.1 Licensed Hours:

A majority of persons (4 out of 5 = 80%) believe that the current licensed hours are OK with no need to increase or scale back those hours. Only one person believes that current hours are too long.

4.12.2 Outdoor Drinking Areas

The Board has no Policy in place in respect of outdoor drinking and deals and each application is determined on its own merits.

A majority of persons (4 out of 5 = 80%) are of the view that the Board should have a Policy with regard outside drinking areas. One person has stated that there should be no Policy.

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With regard to imposing a time limit in respect of outside drinking areas, views are more balanced with 3 persons stating YES to a time limit and 2 persons stating NO. For those who have advised YES, various time limits are suggested from 8pm to 11pm.

In respect of a suggested time limit, the LSO response also suggests that consideration should be given to restricting the terminal hour for use of outside drinking areas unless they are in a remote location where there is no likelihood of noise causing a nuisance to neighbours. The response states that an informal policy of 10pm terminal hour during Covid was applied to Occasional Licences for outdoor drinking areas.

In respect of flexibility being given to the closing time for outside drinking areas, 4 persons believe that there should be flexibility. The reasons given are variable, including linking to special events such as weddings, public holidays such as Christmas and New Year and location of the premises with regard to neighbours/neighbouring properties.

In respect of factors that should be taking into account when determining an application for an outside drinking area, those factors which receive a strong majority support (4 persons out of 5 = 80%) are the location of the outside drinking area; removable barriers being put in place to clearly identify the outside drinking area and specific monitoring mechanisms being put in place (eg: staff are physically able to monitor or the area is caught within CCTV)

If, after consideration, the Board agrees to have a Policy in place with regard to the operation of outside drinking areas, then suggested factors that it may wish to take into account in shaping this Policy could be brought before the Board at the Conjoined meeting October 2023 for its consideration. This is, of course, a matter for elected Members to determine.

4.12.3 The Licensing Objectives

Five persons (100%) have stated that they do not have any suggestions for promoting the Licensing Objective of Securing Public Safety.

4 persons (80%) have advised that they have no suggestion with regard to promoting the Licensing Objective of Protecting and Improving Public Health. One person has advised yes to this question and stated that children should not be employed in the licensing trade or be served.

With regard to suggestions for promoting the Licensing Objective Preventing Crime and Disorder, 2 persons have suggested yes and commented on matters including lack of visibility of policing (visibility of policing is a matter for Police Scotland); inspecting venues (LSO's routinely inspect licensed premises); ensuring that there are enough trained staff (unless a personal licence holder, all staff selling or serving alcohol in licensed premises must undertake at least two hours prescribed mandatory training and training records must be kept); there are also various statutory offences in place with regard to sale of alcohol to children and young

persons and children and young persons can sell, supply or serve alcohol on licensed premises in certain circumstances.

Two persons have made suggestions for promoting the Licensing Objective of Preventing Public Nuisance and they differ in their reasons, with one stating that the licence holder should manage this and the other refers to proper enforcement of existing laws.

With regard to Protecting Children and Young Persons from Harm Licensing Objective, two persons have answered yes in respect of suggestions and have made comment in respect of lack of police visibility (not a matter for the Board) and children not being employed in the licensed trade.

4.12.4 Overprovision

Five persons (100%) have expressed a view that there is no overprovision of on sales licensed premises in Annandale and Eskdale.

With regard to off sales licensed premises, 3 persons are of the opinion that there is no overprovision of licensed premises and 2 have advised that they have no view.

4.13 Overprovision Assessment

4.13.1 In terms of section 7 2005 Act, the Statement of Licensing Policy must, in particular, include a statement as to the extent to which the Board considers there to be overprovision of licensed premises, or licensed premises of a particular description, in any locality within the Board's area (an Overprovision Assessment).

4.13.2 It is for the Boards to determine the 'localities' within their areas for the purposes of the overprovision assessment and the Boards may determine that the whole of their respective areas is a locality. Likewise, they may determine that the whole Dumfries and Galloway region constitutes a locality or a locality in a rural area may be larger than a locality in an urban area.

4.13.3 In considering whether there is overprovision in any locality, the Boards **must**:

- (i) Have regard to the number and capacity of licensed premises in the locality and
- (ii) Consult with the following persons:
 - the Chief Constable
 - the relevant Health Board
 - such persons as appear to the Board to be representative of the interests of:
 - holders of premises licences in respect of premises within the locality;
 - persons resident in the locality and
 - such other persons as the Board thinks fit.

The Boards **may** have regard to:

- (i) Other matters as the Boards think fit including, in particular,

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(ii) the licensed hours of licensed premises in the locality.

4.13.4 At the Conjoined meeting on 19 January 2023, all four Boards agreed that:

- Consultation for the Overprovision Assessment would take place simultaneously with (the second) Consultation for review of the Licensing Policy Statement (1 April to 15 June 2023);
- Consultees for the purpose of the Overprovision Assessment would remain the same as those for review of the Licensing Policy Statement (**Appendix 1**);
- Intermediate data zones within each Board area would constitute a locality – therefore mirroring the historical position to date;
- licensed hours shall not be taken into account and
- categories of licensed premises shall be both on and off sales;

4.13.5 **2018 Overprovision Assessment** : The Board agreed that there was NO overprovision of licensed premises in Annandale and Eskdale. The last overprovision assessment took place in 2018 and involved a presentation given on behalf of NHS Dumfries and Galloway by the Alcohol and Drugs Partnership (ADP). The ADP recommendations in respect of Annandale and Eskdale was that there was overprovision of licensed premises as follows:

- Annan West (on and off sales) and Annan East (off sales) (**2018**)

4.13.6 After considering all information before it (including the terms of the overprovision presentation), the Annandale and Eskdale the Board decided that there was no overprovision of licensed premises in Annandale and Eskdale and accordingly did not adopt the ADP 2018 recommendations to the contrary.

4.13.7 There were **6** more licensed premises in Annandale and Eskdale in 2018 compared to current 2023 as follows:

	2018		2023	
	Number	Capacity	Number	Capacity
Off Sales	38	1170.27	37	1215.98
On Sales	98	16152	93	16233
Total	136		130	

4.13.8 It will be recalled that Occasional licences and Members' Clubs are not included in the Overprovision Assessment.

4.13.9 It will further be recalled that overprovision is a ground of refusal in terms of the 2005 Act. Therefore, if an application is submitted in relation to premises that fall within overprovided localities then there is a rebuttable presumption against the grant of that application on the grounds of overprovision – though each case is determined on its own merits.

4.13.10 An Assessment of Overprovision in Dumfries and Galloway 2023

The NHS Assessment of Overprovision in Dumfries and Galloway 2023 is detailed at Appendix 4 to this report.

In brief, the key findings of the assessment with regard to whether there is overprovision of licensed premises throughout Dumfries and Galloway are stated at page 3 and, in respect of Annandale and Eskdale, para 4.4.1 report provides as follows:

- The findings for Annandale and Eskdale show there is overprovision in Annan West for on sales due to statistically higher rates of alcohol availability and alcohol-related harm in this area.

4.13.11 Statutory Guidance (published January 2023)

The Board will be aware that it must, in the exercise of its functions under the 2005 Act, have regard to section 142 Scottish Government Guidance.

Chapter 5 to the statutory Guidance addresses Overprovision and this is detailed at **Appendix 5** to this report. In particular, the undernoted paragraphs are extracted from Chapter 5 for the Board's attention:

Paragraph 5.6:

'An overprovision assessment must be evidenced base. It is a matter for each Licensing Board to determine what their overprovision policy will be and how the evidence it has ingathered will be interpreted and weighted. When undertaking this work Licensing Boards should be mindful of the five licensing objectives: preventing crime and disorder; securing public safety; preventing public nuisance; protecting and improving public health; and protecting children and young persons from harm. Licensing Boards Licensing Board should ensure the approach to ingathering, weighing and interpreting evidence, and consultation responses is robust, all of the relevant evidence before them is taken into account, and the rationale for regarding/disregarding that evidence in developing Licensing Policy Statements (LPS) is clearly set out.'

Paragraph 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*

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- *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.*
- *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.*

4.13.11 When considering whether there is overprovision of licensed premises in Annandale and Eskdale, the Board should take into account:

- NHS Dumfries and Galloway Assessment of Overprovision 2023
Appendix 4
- Section 142 Scottish Government Guidance Chapter 5 (**Appendix 5**) and
- The responses (detailed above) to the Consultation Questionnaire following the Consultation that took place from 1 April to 15 June 2023 including
- Alcohol Focus Scotland response detailed at **Appendix 2** (paragraph 4.2 titled ‘Overprovision’)

It is for the Board to determine, on all the material before it, whether evidence suggests that there is or is not overprovision of licensed premises in Annan West for on sales and/or within any other locality/localities in Annandale and Eskdale.

4.14 **Next Steps**

A Conjoined Meeting of all Four Divisional Boards will take place 6 October 2023 with a view to finalising for publication the terms of the revised Licensing Policy Statement including Assessment of Overprovision (2023 – 2028).

5. Recommendations

For the purposes of the revised Statement of Licensing Policy (2023 – 2028), the Board is asked to:-

5.1 Discuss and consider the terms of this report and give due regard to the responses received during both Consultations - including the NHS Assessment of Overprovision in Dumfries and Galloway 2023 and the associated presentation - and discuss and consider the following:

5.1.1 Licensed Hours:

A majority of persons (4 out of 5) are of the view that the current licensed hours are OK with no need to increase or scale back those hours

Recommendation: To consider whether the Board wishes to retain existing on sales licensed hours, reduce those hours or extend them.

5.1.2 Outdoor Drinking Areas:

A majority of persons (4 out of 5) are of the view that the Board should have in place a Policy with regard to outdoor drinking areas.

Recommendation: to consider whether or not to adopt a Policy in relation to Outdoor Drinking areas and, if yes, note that draft wording for said Policy would be placed before the Board for consideration at the Conjoined meeting 6 October 2023. If no, then each application shall be determined on its own merits as is currently the case and historically has been to date.

5.1.3 Licensing Objectives:

In respect of the Licensing Objectives Preventing Crime and Disorder, Preventing Public Nuisance, Protecting and Improving Public Health and Protecting Children and Young Persons from Harm, various suggestions are offered for their promotion.

Recommendation: to consider whether any of the suggestions offered in respect of promoting the licensing objectives should be followed.

5.1.4 LSO's first suggestion:

That the local condition requiring Premises licence holders to maintain a refusals register to include a daily incidents log apply to the Annandale and Eskdale Board as it applies to the other three Divisional Boards.

Recommendation: consider whether this condition should apply to the Annandale and Eskdale Board.

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5.1.5 **LSO's second suggestion:**

That the local condition in respect of premises licence holders requiring to maintain a Daily Incidents Register (which shall include all refusals) be deleted.

Recommendation: consider whether or not this condition should be deleted.

5.1.6 **Overprovision:**

Make a determination, based on the information before it and the presentation given by the NHS, whether or not evidence suggests that there is overprovision of licensed premises in Annan West for on sales as suggested by NHS Dumfries and Galloway;

Further discuss and consider whether there is overprovision in any other locality within Annandale and Eskdale and, if so, identify that locality stating the evidence and

5.2 Note that a report will be placed before all four Boards at a Conjoined meeting to be held 6 October 2023 requesting all four Boards to agree the final terms of the Statement of Licensing Policy including the Overprovision Assessment (2023 – 2028).

Caroline Treanor
Solicitor
7 September 2023

Vlad Valiente
Clerk to the Licensing Boards
Communities
English Street
Dumfries

Appendices –

Appendix 1 – List of Consultees

Appendix 2 – Alcohol Focus Scotland response

Appendix 3 – LSO response

Appendix 4 – NHS Assessment of Overprovision Dumfries and Galloway 2023

Appendix 5 – section 142 Statutory Guidance, Chapter 5

Background Papers –

Current Licensing Policy Statement 2018-2023: [Dumfries and Galloway Licensing Boards' Policy Statement \(dumgal.gov.uk\)](https://www.dumgal.gov.uk)

Appendix 1

- The Chief Constable, Police Scotland
- Chief Officer, Scottish Fire and Rescue Service
- NHS Dumfries and Galloway
- Dumfries and Galloway Alcohol and Drugs Partnership
- All Premises Licence Holders in Dumfries and Galloway
- All Designated Premises Managers in Dumfries and Galloway
- All Community Councils in Dumfries and Galloway
- Loreburn Housing Association
- Dumfries and Galloway Housing Partnership
- Environmental Health, Dumfries and Galloway Council
- Building Standards, Dumfries and Galloway Council
- Planning, Dumfries and Galloway Council
- Education, Dumfries and Galloway Council
- Social Work, Dumfries and Galloway Council
- Dumfries and Galloway Council Equality and Diversity Working Group
- Age Concern Scotland
- Dumfries and Galloway Voice
- Dumfries and Galloway Disability Access Panel
- Dumfries and Galloway Inter Faith Group
- Dumfries and Galloway International Women's Group
- Dumfries and Galloway Multicultural Association
- LGBT Youth Scotland
- Youth Strategy Executive Group
- Dumfries and Galloway Council Youth Justice Service
- Alcohol Focus Scotland
- Scottish Beer and Pub Association
- Alcohol and Drugs Support, South West Scotland
- Dumfries and Galloway Carers Centre
- Specialist Drug and Alcohol Service, Newton Stewart
- Dumfries and Galloway College Students' Association
- Students Union, University of the West of Scotland
- National Union of Students Scotland
- Dumfries and Galloway Multicultural Association
- Women's Aid, Dumfries and Galloway
- Licensed Victuallers Association
- Youth Enquiry Service, Dumfries
- Scottish Children's Reporter Administration (SCRA), Dumfries and Galloway
- Nithsdale Health and Wellbeing Partnership
- Training Providers
- Dumfries Licensed Trade Association
- The Scottish Licensed Trade Association

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RESPONSE TO CONSULTATION ON STATEMENT OF LICENSING POLICY

Alcohol Focus Scotland (AFS) welcomes the opportunity to provide comment on the development of local licensing policy statements. Their production provides licensing boards with an opportunity to stand back from routine administrative practice and consider the bigger picture in relation to licensing in their area. Once published, if effectively implemented, policy statements can help make licensing decisions more strategic, support consistent and well-reasoned decision-making, and make the licensing process more transparent.

1. About us

AFS is the national charity working to prevent and reduce alcohol harm. Our strategic priorities include ensuring the effective implementation of licensing legislation by supporting licensing boards and forums to promote the licensing objectives. We regularly engage and work with a wide range of licensing stakeholders, including licensing board members, licensing clerks, Licensing Standards Officers, NHS, police, Alcohol and Drug Partnerships, communities, and local licensing forums.

AFS also provides training courses for those involved in the regulation of licensing to meet the requirements of the Licensing (Scotland) Act 2005; this includes the Licensing Board Members Training and Licensing Standards Officers Training in Scotland.

2. About our response

As a national charity, AFS is not in a position to provide an individually tailored response to each of the 40 licensing boards in Scotland. However, we can offer our views on the general policy direction and emerging issues relevant to alcohol licensing, and suggestions about aspects of licensing policy that may warrant particular scrutiny during this round of policy development.

Our response has been informed by recent work AFS has undertaken to identify areas of progress and ongoing challenge within the licensing system, including a [review of the Statements of Licensing Policy for 2018-2023](#). We believe that this work and our ongoing engagement with a breadth of licensing stakeholders affords us a unique, national perspective on the licensing system. We hope that this insight and the suggestions we have provided below will be helpful to inform the Board's licensing policy review.

3. The national context

The development of licensing policies provides boards with a timely opportunity to consider emerging issues and legislative developments, and to adapt their approaches accordingly. As such, this section sets out key national developments which may be of particular relevance to licensing boards.

3.1. Post-COVID Recovery

AFS expects that, during this round of policy development, boards will be particularly keen to consider the actual and projected impact of COVID-19 on the licensing objectives and the licensed sector. While we do not yet know the full impact of the pandemic, there is evidence of its effects in a number of areas. The following topics are highly relevant to licensing and AFS would therefore recommend that they are taken into consideration as part of the licensing policy review process:

Changing drinking patterns: Evidence indicates that drinking habits have polarised as a result of the pandemic, with an overall decrease in consumption for lighter drinkers and an increase for heavier drinkers.^{1 2 3} Of major concern is the increase in high-risk drinking observed in England,^{4 5} which has sustained over the entirety of the pandemic.⁶ While equivalent research is not yet available for Scotland, it is likely that we will be experiencing similar increases, especially considering our historically higher levels of alcohol consumption and harm compared to the rest of the UK.⁷ Combined with reduced access to services, these changing drinking patterns have tragically translated into increased harm; alcohol-specific deaths in Scotland increased by 17% in 2020 and a further 5% in 2021.⁸ However, it can take 20 years to see the full effects of changes in alcohol consumption on harms, such as for cancers.⁹ The pandemic and economic crisis is also being experienced differently by different parts of our population, widening existing inequalities and creating new ones.

Home drinking: Linked to the above, the pandemic has further shifted alcohol sales and drinking from the on-trade to the off-trade, exacerbating existing trends. In Scotland, 73% of alcohol was sold in off sales prior to the pandemic, with this proportion increasing to 90% in 2020 before decreasing slightly to 85% in 2021.¹⁰ The home is an unregulated environment and the continued shift to home drinking may lead to long-term public health consequences and an upwards trend in alcohol-related injuries and accidents occurring at home. In addition, while alcohol itself does not directly cause domestic violence, there are strong associations between alcohol use and domestic violence and abuse.¹¹ Home drinking also poses potential risks for children and young people, such as neglect or modelling of parental drinking.¹² As such, it will be vital that boards consider the factors that can impact on the licensing objectives outwith a licensed setting, and that local licensing policies take account of alcohol-related harms occurring in private spheres as well as public.

The hospitality sector: Although the licensing regime does not have responsibility for promoting business growth, a recurrent theme within existing licensing policies is the need for boards to strike an appropriate balance between supporting the local licensed economy, while also upholding the five licensing objectives. During the pandemic, the hospitality sector was severely affected, with sales of alcohol in bars and restaurants plummeting by 49% overall from 2019 to 2021, while off-premises sales, such as e-commerce and supermarkets, grew significantly (by 11% between 2019 and 2021).¹³ In 2020, the Scottish Government issued guidance to advise that it “*considers flexibility and pragmatism in decision-making and sensitivity to the wider economic situation should be at the forefront of how a board decides to operate*”.¹⁴ Boards will likely be very reluctant to be seen to hurt already suffering hospitality sectors but will also want to ensure that the licensing objectives continue to be promoted. As such, decision makers, advocates, and local stakeholders alike will need to identify policies that can do both. It has been suggested that policies which may protect on-trade businesses, while reshaping the night-time economy away from alcohol-related harms, could offer a ‘win-win’ for policymakers and health advocates.¹⁵ However, this raises questions regarding how boards should seek to manage competing priorities within their policies and decision-making.

Use of outdoor areas: A growing trend for outside seating areas had been identified in many areas prior to the pandemic, with a number of boards setting out their expectations and requirements in this regard. However, COVID-19 related restrictions on sales of alcohol indoors led to an increase in applications from bars/pubs to serve alcohol in spaces outdoors e.g., car parks, pavements. If outdoor spaces are licensed on a permanent basis it could result in a significant increase in the overall capacity of venues and the visibility of alcohol, including to children and people in recovery who may be passing by. However, it is unclear how and whether boards will now seek to reverse outdoor licences granted during the pandemic, or whether the trend for outdoor seating areas will continue to grow.

Online sales/deliveries: The COVID-19 related restrictions have accelerated the general trend to online shopping and led to an increase in premises offering home deliveries of alcohol. The types of businesses that sell alcohol online now range from small independent traders, specialist drinks retailers/clubs, local convenience stores, and supermarkets through to multinational e-commerce companies (e.g., Amazon). There is also a growing variety of app-based retailers who have arrangements with restaurants, takeaways and off-licences to deliver alcohol directly to people's homes. Despite the reopening of physical stores, it is predicted that online sales will remain high as people have become more accustomed to online shopping. However, there is currently a distinct lack of information available about the business operations of online retailers in Scotland. In addition, it is unclear how age verification and other requirements can be effectively implemented when alcohol is being purchased on-line or delivered to people's homes. The majority of boards have responded to this issue at a local level by setting out their approach to alcohol deliveries within their policies, for example by making clear that delivery staff must be trained to the same level as those on licensed premises, that challenge 25 checks must be conducted, and that licensees using courier services must ensure that they are compliant with the Board's requirements.

3.2. Policy and legislative developments

Alcohol Framework: Scotland's current alcohol harm prevention framework was published in 2018 and takes a whole population approach to reducing alcohol harm. Whole population measures work to reduce and prevent alcohol harm across the entire population, reducing the likelihood of 'normal' drinkers becoming high risk. This is because targeting only harmful drinkers would not reach the majority of people who consume alcohol and who are therefore at risk of developing problems related to their alcohol consumption. Licensing is a whole population intervention. It works to safeguard individuals and communities from experiencing alcohol problems by controlling the overall availability of alcohol (through the number, type and opening hours of licensed premises), and by regulating the way individual on- and off-licences do business. The Framework therefore identifies the licensing system - alongside action on price and marketing - as being one of the key mechanisms through which the ambitions of the Alcohol Framework can be realised.

Minimum Unit Pricing (MUP): MUP came into force on 1st May 2018 and, along with restrictions on irresponsible promotions, there are now greater controls on the sale of alcohol from off-sales. Boards appear to be approaching these developments differently; for example, some state in their policies that these safeguards alone cannot adequately mitigate the link between the availability of responsibly sold alcohol and its unregulated consumption, while others state that the introduction of MUP of alcohol has the potential to be a more effective tool in reducing alcohol harm than overprovision. Many boards will be re-evaluating the relevance of MUP to their policies now that more information on the evaluation of the impact of MUP is available. In addition, in a recent legal case,¹⁶ an overprovision policy was struck down as unlawful because the sheriff upheld the argument that it didn't take into account that MUP had come into force. The price, availability and marketing

of alcohol can all impact consumption levels, which can in turn impact on harm, and it will be important that boards consider how different measures to tackle alcohol harm can be mutually reinforcing. In any local area it is impossible to say with any certainty what percentage of changes in alcohol consumption and alcohol related harms are due to changes in price/income as compared to availability or marketing. Accordingly, it is important to focus on the local evidence of alcohol related harm, to determine whether there is sufficient evidence of harm to support a case for controlling availability using an overprovision policy. It may also be useful for boards to consider the differential in price between on- and off-sale, as although the introduction of MUP created a floor price, it did not elevate the price of off-trade alcohol enough to reduce the gap between on- and off-trade prices.

Licensing Guidance update: In January 2023 [new guidance](#) to Scottish licensing boards on carrying out their functions was issued by Scottish ministers. The revised 'section 142' guidance replaces the original version which was first issued in 2009 and had become outdated due to subsequent changes. The purpose of the guidance is to assist boards in carrying out their functions under the 2005 Act, including the preparation of statements of licensing policy. We have therefore highlighted relevant sections of the guidance within this response to assist boards to have regard to it when undertaking their policy reviews.

Consultation on occasional licences: In 2019 the Scottish Government consulted¹⁷ on whether to raise the fee for an occasional licence from the current price of £10, and to seek views on considering a limit on the number and duration of occasional licences for premises licence holders and personal licence holders. The Scottish Government advised it would analyse the responses and, if considered appropriate, draft and lay secondary legislation embedding any new fee level or limit on the number and duration of occasional licences into Scottish law. At the time of writing there has been no secondary legislation proposed and AFS is not aware of any decisions as yet having been taken as a result of the consultation.

4. Issues to consider when reviewing the policy

4.1. Promoting the licensing objectives

It is a legal requirement that the policy must seek to promote the licensing objectives. For all objectives, AFS would suggest using the following format within the policy:

1. State the licensing objective.
2. Give a statement as to what the licensing board is trying to achieve with this objective.
3. Detail any concerns and/or trends in the area relating to this objective – identify what evidence was used to identify these.
4. List what the licensing board intends to do to promote the objective. Note that this could include actions like declaring overprovision, controlling licensed hours, or applying certain conditions (referring to the relevant section/s in the policy). However, other measures could include ensuring all policies are fit-for-purpose, working to ensure information is kept up-to-date and accessible, liaising with local partners, endorsing local initiatives relevant to the objectives, carrying out spot checks of premises, highlighting good practice, and conducting reviews of licences. A full list of board measures to promote the objectives is provided in our online resource: [Measures to promote the licensing objectives](#).
5. List any suggested actions the licensing board would like to see the licensed trade in the area undertake to meet this objective. The types of actions licensees can take often relate to specific control measures that can be put in place, the training and supervision of staff,

maintenance of premises, and co-operation with local stakeholders (e.g., LSO, police). A full list of example licensee measures to promote the objectives is provided in our online resource: [Measures to promote the licensing objectives](#).

Many boards have adopted new approaches to the promotion of objectives as knowledge and understanding of how to best promote them has evolved since the Licensing (Scotland) Act 2005 was first introduced. Examples of different policy approaches are now included within the section 142 guidance, including in relation to:

Preventing crime and disorder: “Alcohol related crime and disorder does not only occur within or immediately outside licensed premises. A significant proportion of alcohol is bought to be consumed at home or in other private dwellings. Whilst alcohol licensing alone cannot directly address issues such as domestic violence, licensing boards may wish to consider supporting work in this regard through partnership working. One example of a licensing board demonstrating a wider understanding of alcohol related crime can be found within West Lothian Licensing Board’s statement of licensing policy 2018.”

Protecting children and young persons from harm: “Licensing Boards will wish to be mindful that children and young people can be impacted by exposure to marketing and promotion of alcohol within licensed premises. For example, Falkirk Licensing Board comments in its statement of licensing policy 2018 that: “Where licensed premises intend to hold events where alcohol is not provided and those events are specifically targeted at children or young persons (for, example, underage discos or parent and toddler groups), consideration should be given to taking steps to avoid any obvious promotion of alcohol”.”

Protecting and improving public health: “This licensing objective encourages licensing boards to consider the cumulative effect of licensed premises on alcohol-related harm, within their licensing area, rather than the actions of any individual premises. Collecting harm data for localities will build a picture of the health and wellbeing of the people in the locality, and doing so on a consistent basis over time means the long-term health and wellbeing of a locality can be monitored and improvements made. City of Glasgow Licensing Board is an example of one of a number of licensing boards which have adopted an approach of looking at alcohol and health issues at their local authority area level, and then made a policy that seeks to promote the public health objective”.

In relation to the above, the Glasgow policy includes a section specifically pertaining to off-sales and the public health objective. This explains that the board is concerned by a number of areas suffering from high levels of alcohol-related harm but containing very few licensed premises. The board does not consider it appropriate to declare these areas as being overprovided for, but the policy makes clear that it may nonetheless be inconsistent with the public health objective to grant a licence which would enable easier access to alcohol – thereby having the potential to exacerbate existing alcohol-related health problems in the area. This is set out in section 9.2 of the [Glasgow Licensing Policy](#).

In addition, many policies set out local conditions that may and/or will be applied by the board in pursuance of the objectives. Including local conditions within policies not only provides an important indication of the ways in which the board will promote the objectives, it also provides examples of what conditions applicants could be subject to or volunteer themselves, and provides people making representations/ objections with suggestions of the kinds of conditions they can suggest. A full list of example conditions is set out in our online resource: [Examples of conditions to promote the objectives](#).

4.2. Overprovision

Overprovision is undoubtedly one of the most complex and contentious areas of licensing. AFS's review of the current licensing policies identified that boards have adopted differing approaches to how overprovision should be assessed, and seem to have different understandings of what is required in order to meet the legal tests that apply.

The primary cause of this divergence appears to be the way in which boards have interpreted and understood the concept of 'causal link'. While decisions are to be made on a balance of probabilities, there is wide variation between boards' interpretations of what evidence is required in order to meet the legal test to evidence a causal link. Although some boards seem confident to declare overprovision applying a test that considers on a balance of probabilities whether there are links between numbers of premises and levels of harm, others appear to consider that a higher bar requires to be met for causal link to be established. However, the updated guidance provides clarity around approaches to overprovision assessments and interpreting the causal link, stating that:

- *"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."*
- *"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."*

Boards have the flexibility to decide the approach they take to addressing overprovision in their area and can choose to focus on only the factors that cause them concern in the light of the evidence. It is likely that many boards will be keen to identify how the pandemic has impacted on the licensed economy in their area and will be considering this as part of their overprovision assessment.

At a national level, the number of off-licences in Scotland has reached the highest level since 2010, when the relevant statistics first started to be collected.¹ The closure of pubs and restaurants during the pandemic caused people to buy alcohol from other outlets and more shops and supermarkets applied for licences to meet demand. The number of off licences increased by 133 between March 2020 - March 2022, reaching a total of 5,155. Conversely, the nature of Covid-19, and the measures needed to reduce transmission, invariably had a disproportionate impact on the hospitality sector. While it is likely that many bars, pubs and other licensed premises will have closed permanently as a result, the available statistics don't enable for an assessment of how many licences were surrendered or lost. As such, it may be that the overprovision assessments will have a particular focus on the disparities between on and off sales, and the continued shift to home drinking.

¹ While the number of off-sales only premises is at its highest level since records began, due to variations in how the available statistics have been published in different years, it is impossible to say for certain whether this is true for all off-sales i.e., off-sales only premises combined with those providing both on-sales and offsales.

The boards consideration of overprovision need not be confined to only considering numbers and capacity but can take account of other factors. For example, inequality is a particularly important consideration in relation to overprovision. There is a stark inequalities gradient to alcohol harm, and a growing awareness that the impact of harmful drinking and alcohol dependence is much greater for those experiencing the highest levels of deprivation. For example, in 2021 alcohol-specific deaths were 5.6 times as frequent in the most deprived areas of Scotland compared to the least deprived areas. This compares to a ratio of 1.9 times for all causes of death.¹⁸ By taking account of evidence of inequalities, boards are able to meaningfully consider how different communities are impacted differently by alcohol and formulate an appropriate policy response.

4.3. Licensed hours

Policy statements should provide information on a licensing board's policy on licensed hours, which are important not only to individual licensed premises but can have a wider impact for an area.

AFS has identified numerous studies into the links between temporal availability and alcohol harm, which found that policies regulating times of alcohol trading can contribute to reductions in injuries, alcohol-related hospitalisations/ emergency department visits, homicides and crime.¹⁹ The vast majority of boards permit off-sales between 10am and 10pm each day, which is the maximum allowed by law. However, boards can stipulate shorter hours if they consider it to be appropriate. AFS believes that the maximum permitted off-sales hours should be the exception and not the norm, particularly in areas of high-rates of alcohol harm. In addition, the hours permitted for onsales and the night-time economy can have implications for matters such as crime and public order.

Boards can also grant a general extension of licensed hours for particular specified occasions. As such, AFS would recommend that the policy outlines the principles that the board will apply when considering applications for extended hours. For example, some policies make clear that if regular applications are made for the same premises, then applicants will be expected to consider whether they should apply to vary the premises licence. Others outline what might constitute an event of national or local significance. AFS believes that, in many cases, events and festivals can be appropriately accommodated within normal licensing hours and should not serve as automatic justification for extended licensed hours.

4.4. Children and young persons' access

It is largely for licensing boards to set out their expectations regarding factors like when children and young people should normally be allowed entry to licensed premises, including the ages at which they should be allowed entry, and the types, times and parts of premises to which they should have access. It is also for boards to determine the measures that may be necessary to protect children and young people from harm.

As such, AFS would recommend that the policy provides a clear indication of what the board might deem to be acceptable in terms of children and young peoples' access. Overall, it is the extent to which premises are likely to provide a family-friendly environment that tends to be the determining factor in boards' approaches to children's access. Conversely, premises where the supply of alcohol is the primary purpose of the service provided are frequently cited by boards as being unsuitable for children and young people.

The updated guidance provides examples of how different boards have approached this issue. Some restrict children's access to licensed premises for the primary purpose of consuming a meal or attending an event, while others set out expectations with regards to young peoples' access to

specific parts of premises, or specify the hours when young people should normally be allowed entry.

It is apparent that the majority of boards are seeking to encourage licensed premises to become more child and family friendly within their policies. However, it can also be seen that they are giving consideration to the potential impacts of alcohol on children and young people, and the objective to protect children and young people from harm. In particular, there is increased recognition that the scope of this objective is not restricted to preventing people under the legal purchase age from being sold/supplied with alcohol. Boards are also seeking to address impacts on children and young people resulting from the drinking behaviours they observe, adults drinking, and their general exposure to alcohol. Some boards are also being more directive in their approach than others, by setting out their expectations regarding children's access and applying relevant conditions as standard practice.

4.5. Supporting public participation

The updated guidance states that *"licensing boards should have effective engagement strategies in place to enable them to engage with and seek the views of their local community."* Given the public interest purpose that underpins alcohol licensing, AFS believes it essential that communities are empowered to participate in licensing processes and can feel confident that their contributions will be given due regard. The publication of policy statements provides an opportunity to set out the mechanisms available to enable community engagement and participation.

There are numerous ways in which the general public can choose to engage with the licensing system, ranging from commenting on applications and observing/participating at board meetings, to joining their local licensing forum. However, communities may not currently be aware of the various ways in which they can get involved or the types of information/supports available to enable them to participate. For example, some boards have developed pro formas to assist anyone wishing to make an objection or representation, while others highlight that LSOs are available to offer appropriate support. Many boards include a commitment in their policies that they will conduct business in a way that is not off-putting to members of the public. For example, by creating a less formal and more relaxed atmosphere so as not to intimidate parties.

4.6. Identifying strategic links

Although boards are quasi-judicial and need to undertake their decision-making independently, this does not prevent them from considering their policies in the broader context of identified local and national priorities etc. The pandemic has also highlighted the importance of partnership working across sectors. As such, the policy should indicate how the board will take into account other matters relating to alcohol, for example local crime prevention, community safety strategies, and health.

Boards in many areas have adopted a collaborative approach and committed to work with local partners where they share common objectives. As such, AFS would recommend the policy includes reference to Local Outcome Improvement Plans (LOIPs), Alcohol and Drug Partnership strategic plans, and the strategic plans of the Health and Social Care Partnerships (HSCP). Scotland's alcohol strategy 'Changing Scotland's relationship with Alcohol a Framework for Action' is of key relevance to the policy and should also be referenced. The Board should also take into account the views of local partners, the Forum, communities, when developing and implementing their new policy. The Licensing (Scotland) Act 2005 and accompanying guidance should inform the Board's approach to how this can best be achieved, for example the updated guidance states:

“The alcohol licensing regime in Scotland does not exist in a vacuum and Licensing Boards should clearly explain how they will take into account other pertinent strategies and regimes when developing their statement of licensing policy. For example, the Western Isles Licensing Board statement of licensing policy comments that “The Board will work and appoint a Board Member to work with the Outer Hebrides Alcohol and Drug Partnership and the Outer Hebrides Community Safety Partnership in the Western Isles; the importance of such co-operation is recognised as part of the wider alcohol agenda”.”

4.7. Occasional licences

During 2021-2022, 23,269 occasional licences were granted in Scotland.²⁰ Occasional licence applications can be granted under delegated powers, a limited number of people are required to be notified of occasional licence applications, and the consultation period is much shorter than that for new premises applications – reducing the scope for objections or representations.

This has led to concern that some applicants have sought to use the occasional licence process as an alternative to applying for a full premises licence. As such, AFS would recommend that boards set out measures to ensure that this type of application is subject to appropriate scrutiny. For example, by including a provision to ensure that repeated occasional applications from the same applicant will be automatically referred to the board for a decision.

In addition, AFS would recommend that boards set out conditions that will specifically apply to occasional licences, either as standard practice or on a case-by-case basis. These could relate to issues such as management, supervision, security, signage and training.

4.8. Presentation and readability

Legislation does not specify how a policy statement should be organised and presented and consequently the 2018 published policy statements vary considerably in structure and length. AFS’s review of the documents identified that shortest was 25 pages while the longest policy statement was 166 pages (including appendices). Some policy statements, but not all, were written in legalistic language and provided excessive detail of administrative processes and procedures, making them somewhat laborious and difficult to read.

The updated guidance states that licensing policies:

“Must also not simply be a repeat of what is set out in legislation or statutory guidance. It should provide a clear indication to the local community as to the Licensing Board’s evidenced based policy and should seek to promote the licensing objectives (see Chapter 2 for more about the licensing objectives) set out in the 2005 Act. It is important that statement of licensing policies should be written in terms that can be easily understood by the local community as consultation with the local community (including Local Licensing Forums), is a key part of providing feedback to Licensing Boards.”

Lengthy policy statements written in legalistic and bureaucratic language can be off-putting for some stakeholders and potentially act as a barrier to community engagement in the licensing process. As such, AFS recommends that boards make conscientious efforts to create policies that are accessible to all. For example, by providing definitions of terms used throughout the policy within an appendix, and providing links to statutory provisions, guidance etc. wherever possible. Web-links and signposting can similarly be used to direct interested parties to more detailed information where required.

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- ¹ Alcohol Focus Scotland (23 April 2020). [Scots report changing drinking patterns during coronavirus lockdown](#). Alcohol Focus Scotland.
- ² Alcohol Focus Scotland (23 July 2020). [Survey shows Scots lockdown drinking rise caused by stress](#). Alcohol Focus Scotland.
- ³ Angus, C. et al. (2022). [Modelling the impact of changes in alcohol consumption during the COVID-19 pandemic on future alcohol-related harm in England](#). The University of Sheffield.
- ⁴ Jackson, S.E. et al. (2021). [Moderators of changes in smoking, drinking and quitting behaviour associated with the first COVID-19 lockdown in England](#). *Addiction*, 117(3), 772-783.
- ⁵ Jackson, S.E. et al. (2021). [Association of the COVID-19 lockdown with smoking, drinking and attempts to quit in England: an analysis of 2019–20 data](#). *Addiction*, 116(5):1233–44.
- ⁶ Angus, C. et al. (2022). [Modelling the impact of changes in alcohol consumption during the COVID-19 pandemic on future alcohol-related harm in England](#). The University of Sheffield.
- ⁷ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ⁸ National Records of Scotland (2022). [Alcohol specific deaths 2021](#).
- ⁹ 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.
- ¹⁰ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ¹¹ World Health Organization (2006). [Intimate partner violence and alcohol](#).
- ¹² Alcohol Focus Scotland (2019). [Parental Drinking in Scotland Discussion Paper](#).
- ¹³ Ponce Hardy, V. & Giles, L. (2022). [Monitoring and Evaluating Scotland’s Alcohol Strategy: Monitoring Report 2022](#). Public Health Scotland.
- ¹⁴ Scottish Government (2022). [Coronavirus \(COVID-19\): Licensing \(Scotland\) Act 2005 section 142 – statutory guidance](#).
- ¹⁵ Fitzgerald, N. et al. (2021). [Lockdown and licensed premises: COVID-19 lessons for alcohol policy](#). *Drug and Alcohol Review*, 41(3), 533-545.
- ¹⁶ Aldi Stores Limited Vs Dundee City Licensing Board, Case Number: B109/21, March 2022
- ¹⁷ Scottish Government (2019). The Licensing (Scotland) Act 2005: [Consultation on Occasional Licences](#), Published 23 April 2019
- ¹⁸ National Records of Scotland (2022). [Alcohol-specific deaths 2021](#).
- ¹⁹ For example: Sanchez-Ramirez DC, Voaklander D (2018). The impact of policies regulating alcohol trading hours and days on specific alcohol-related harms: a systematic review. *Injury Prevention* 2018;24: 94-100.
- ²⁰ Scottish Government (2022). [Liquor Licensing Statistics for Period 01/04/2021 to 31/03/2022](#)

Appendix 3**LSO response**Festive Hours Policy

The Wigtown Festive Hours Policy is embedded within most of the operating plans but would be a useful addition to the Licensing Policy Statement to inform new applicants.

On-sales are permitted on 24, 25, 26, 31 December and 1 January to 2am.

Outdoor Drinking Areas

Since Covid, more premises are creating or expanding outdoor drinking areas, some with large capacities.

In pursuance of Licensing Objective, Preventing Public Nuisance, it may be that consideration should be given to restricting the terminal hour for use of these areas unless they are in a remote location where there is no likelihood of noise causing a nuisance to neighbours. An informal policy of 10pm terminal hour during Covid was applied to Occasional Licences for outdoor drinking areas.

Other Views and Comments

At 1.6.13, it would be useful to include details of the areas across Dumfries and Galloway covered by the Council's Byelaws prohibiting consumption of alcohol in designated public places.

Police Drugs Policy

For consistency, at 2.1.4, consider including Stewartry Board.

Refusals Register

For consistency, at 2.1.5, consider including Annandale & Eskdale Board and delete 2.1.6.

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An Assessment of Overprovision in Dumfries and Galloway in 2023

**NHS Dumfries and Galloway
June 2023**

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1. Executive Summary

The Licensing (Scotland) 2005 Act (the Act) places a duty on Local Authority Licensing Boards to consider the overprovision of alcohol and the impact on improving public health and preventing crime when developing their licensing policy.

There is a substantial body of evidence that has shown there is a direct link between high levels of alcohol availability and high levels of alcohol-related harm. Independent research conducted in 2018 has shown that this link was evident in Dumfries and Galloway. Alcohol-related harms include:

- hospital admissions
- deaths
- crime
- domestic violence
- drink driving

Although Dumfries and Galloway continues to have lower rates of alcohol-related harm compared to the whole for Scotland, there are early signs that harms are increasing. For example, alcohol-related hospital admissions amongst young people and young adults (those aged 11 to 25) are now above the rate for Scotland.

This analysis focuses on 8 measures: 4 measures to do with alcohol availability and 4 measures to do with alcohol-related harms. It uses these measures to assess whether there is overprovision of alcohol in different local areas within Dumfries and Galloway. This analysis also highlights local areas where there is concern about the level of alcohol-related harm.

The results are summarised in Table 1. The key findings from this analysis are:

Annandale and Eskdale

- The findings for Annandale and Eskdale show there is overprovision in Annan West due to statistically higher rates of alcohol availability and alcohol-related harm in this area.

Nithsdale

- The findings for Nithsdale show there is overprovision in Dumfries Central due to statistically higher rates of alcohol availability and alcohol-related harm in this area. Additionally, the areas neighbouring Dumfries Central (Lochside and Lincluden, Summerville, Kingholm and Nunholm) are highlighted as areas of concern due to the statistically higher rates of alcohol-related harm in these 4 areas.

Stewartry

- There is no overprovision or areas of concern in Stewartry.

Wigtownshire

- The findings for Wigtownshire show there is overprovision in Stranraer East and Rhins North due to statistically higher levels of alcohol availability and alcohol-related harm than Dumfries and Galloway and Scotland. Additionally, the areas neighbouring Stranraer East and Rhins North (Stranraer West, Stranraer South and Rhins South) are highlighted as areas of concern due to statistically higher levels of alcohol-related harm in these 3 areas.

The availability of alcohol in these local areas is almost certainly impacting adversely on people's health and wellbeing.

It is recommended that the Licensing Boards in Dumfries and Galloway limit approving new applications in Annan West, Dumfries Central, Stranraer East and Rhins North to support reducing the impact of alcohol-related harms in these areas.

Further, it is recommended that Licensing Boards in Dumfries and Galloway note that there are concerns over the level of alcohol-related harm in Lochside and Lincluden, Summerville, Kingholm, Nunholm, Stranraer West, Stranraer South and Rhins South when considering new license applications.

*Please note, a red highlight in Table 1 below indicates a statistically higher rate than Dumfries and Galloway.

Table 1: Summary Table of Alcohol Availability and Alcohol-Related Harm in Dumfries and Galloway per 100,000 population

Locality	Intermediate Zone	Rate of On-Sales Premises in 2023	Rate of Off-Sales Premises in 2023	Rate of On-Sales Capacity in 2023	Rate of Off-Sales Capacity in 2023	Rate of Alcohol-Related Hospital Admissions in 2020-21	Rate of Alcohol-Related ED Attendances in 2021-22	Rate of Alcohol Specific Deaths between 2012-22	Rate of Offences for Drunkenness between 2013-22
Wigtownshire	Rhins North	612	195	83,092	2,669	314	695	25	19
	Rhins South	277	139	55,062	970	1,163	46	23	0
	Stranraer East	1,024	315	207,131	14,460	602	749	35	323
	Stranraer West	108	81	14,493	860	645	1,129	13	19
	Stranraer South	30	89	1,478	3,016	203	532	21	18
	Machars North	202	40	27,070	121	127	202	12	0
	Machars South	348	143	44,601	4,240	252	82	18	4
	Newton Stewart	259	148	43,399	2,703	145	148	15	24
Stewartry	Gatehouse	421	84	103,960	1,348	310	84	6	3
	Glenkens	296	215	37,853	1,721	253	269	14	0
	Kirkcudbright	229	95	32,512	1,775	423	57	15	15
	Castle Douglas	338	106	42,013	5,781	512	127	11	13
	Dalbeattie	193	97	22,723	1,738	342	217	17	7
	Dalbeattie Rural	208	42	33,679	415	165	166	13	0
Nithsdale	New Abbey	321	117	74,137	935	359	29	6	12
	Shawhead	28	0	7,114	0	447	171	6	0
	Thornhill	250	75	48,090	1,297	252	125	13	5
	Upper Nithsdale	130	130	18,958	3,340	383	65	11	2
	Mid Nithsdale	112	0	25,531	0	143	90	9	0
	Lochside and Lincluden	54	54	25,235	1,193	1,217	488	18	4
	Summerville	173	195	71,768	15,436	892	541	22	22
	Dumfries Central	1,349	390	310,797	15,146	1,219	600	30	348
	Kingholm	421	32	148,204	194	1,090	550	7	10
	Nunholm	296	30	56,062	1,363	268	534	18	95
	Troqueer	58	58	7,794	1,183	233	144	12	3
	Calside	37	37	14,105	965	632	186	11	0
	Georgetown	0	37	0	987	188	183	11	0
	Heathhall	36	72	8,234	1,409	402	253	14	4
Locharbriggs	0	68	0	2,328	256	171	14	7	
Collin	149	74	34,671	6,294	161	50	2	0	
Annandale	Annandale West	284	41	60,917	40	139	162	4	0
	Lochmaben	90	60	10,150	1,831	421	90	6	0
	Lockerbie	224	143	43,302	6,523	194	163	12	24
	Moffat	592	135	77,248	2,611	386	81	11	11
	Annandale East	177	51	30,740	631	256	25	15	3
	Annan West	482	96	75,216	1,669	801	96	3	55
	Annan East	18	90	2,926	5,257	585	181	20	0
	Eastriggs	70	35	6,961	696	237	35	10	0
	Gretna	364	194	79,626	4,147	398	97	19	5
	Langholm and Eskdale	241	80	49,571	2,516	138	54	3	3

2. Introduction and Background

2.1 Purpose of the Report

The purpose of this report is to support and inform Dumfries and Galloway Licensing Board with developing the Licensing Policy Statement and assessing overprovision for 2023 to 2027. To achieve this, this report will present evidence on the extent of alcohol availability and alcohol-related harm across Intermediate Zones (IZs) within Dumfries and Galloway and assess whether any of these areas have a statistically higher level of alcohol availability and alcohol-related harm compared to the average for Dumfries and Galloway and the average for Scotland, where applicable.

2.2 The Duty to Assess Overprovision

The Licensing (Scotland) Act 2005 (the Act) outlined 5 central objectives which Local Authority Licensing Boards are required to promote when developing their licensing policy and assessing overprovision:

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health
- protecting children and young persons from harm¹

Each licensing objective is equally important and no one objective carries more weight than another objective¹. The Act therefore, places a direct obligation on local Licensing Boards to consider the protection and improvement of public health and preventing crime and disorder when developing a policy statement and assessing overprovision.

The Act also places a duty on Licensing Boards to assess overprovision and must include a specific statement on whether there is an overprovision of licensed premises either in general or in any area within the region. Dumfries and Galloway has 4 Licensing Boards which means the Statement of Licensing Policy from Dumfries and Galloway needs to include a statement as to the extent of possible overprovision within each of the 4 licensing areas:

- Annandale and Eskdale;
- Nithsdale;
- Stewartry;
- Wigtownshire

If the Licensing Policy Statement concludes that there is overprovision of a type of licensed premises in an area, it is anticipated that new applications of that type in that area should generally be refused. Conversely if there is no mention of overprovision in the Licensing Policy Statement, it is unlikely that any refusal based on overprovision could be upheld.

When assessing overprovision, Licensing Boards are asked to demonstrate a "dependable causal link" between the alleged cause and the alleged harm with the proof of the link being on a balance of probabilities². In other words, this means 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 harm³.

The Act requires local authorities to consult with their relevant health board when developing the Licensing Policy Statement with respect to overprovision. This report acts as NHS Dumfries and Galloway's consultation response.

¹ Amended to include young persons as per Air Weapons and Licensing Act 2015.

2.3 The Link between Alcohol Availability and Alcohol-Related Harm

Alcohol availability refers to the ease of access to alcohol, whether to drink on the premises (such as in restaurants, hotels, pubs or bars) or to drink off the premises (such as with supermarkets and convenience stores) as well as taking into account the number and capacity of alcohol outlets.

There is a substantial body of evidence that links increased availability of alcohol with increased consumption and increased alcohol-related harm. Research has found associations between alcohol availability and, for instance, the following areas:

- mortality⁴
- hospital attendances⁵
- suicide⁶
- drink driving⁷
- murder⁸
- domestic violence⁹
- sexually transmitted disease¹⁰
- child maltreatment and neglect¹¹
- underage drinking¹²

The evidence has found that measures to limit availability, accessibility and affordability are likely to have a beneficial impact on both consumption and alcohol-related harm¹³.

Scotland has one of the highest levels of alcohol-related harm in Western Europe¹⁴. A report published by Alcohol Focus Scotland found a strong link between a higher number of alcohol outlets and higher rate of alcohol-related harm on both a national and Dumfries and Galloway scale¹⁵. The findings for Scotland confirmed hospitalisation rates and deaths from alcohol-related illness are highest in areas with the highest density of alcohol retailers. Additionally, the following findings were reported for Dumfries and Galloway most recently in 2018:

- Alcohol-related hospitalisation rates in the neighbourhoods with the most alcohol outlets were 2.3 times higher than in neighbourhoods with the least.
- Crime rates in the neighbourhoods with the most alcohol outlets were 2.7 times higher than in neighbourhoods with the least.
- The link between alcohol outlet availability and harm was found even when other possible explanatory factors, such as age, sex, urban or rural status, and levels of income deprivation, had been taken into account.

2.4 The Impact of the Pandemic on Alcohol Sales

Since the 2018 Licensing Policy Statement and overprovision assessment, the COVID-19 pandemic and the restrictions implemented to control the spread of the pandemic have shaped trends in alcohol sales. For instance, 2 reports highlighted the following findings for Scotland:

- A 66% decrease in on trade sales in Scotland in 2020 (compared with the 2017 to 2019 annual average) and a 95% decrease between January and May 2021 (compared with January to May 2017 to 2019).¹⁶
- At the same time, alcohol sales from off sales increased by 13% in 2020 and 15% in January to May 2021 (compared with the same time periods in 2017 to 2019).¹⁷
- In 2021, 85% of all alcohol purchased was sold through off sales. This is a decrease from 90% in 2020 but an increase from 72% in 2019.¹⁸

The findings above show a clear shift from on sales to off sales with the pandemic disrupting the normal behaviour of people.

2.5 Alcohol-Related Harm across Dumfries and Galloway

The Scottish Public Health Observatory (ScotPHO) publishes a number of different measures for alcohol-related harm that have been age and sex standardised. This enables comparisons to be made between different areas of Scotland, without the differences in demographic makeup of those areas, affecting the results.

Dumfries and Galloway has consistently had a lower rate of alcohol-related hospital admissions compared to the rate for the whole of Scotland (Figure 1). However, whilst Scotland has continued to show a decreasing trend, there has been little change in the rate for Dumfries and Galloway since 2014. Further, there are early signs that alcohol-related harm may be on the rise in Dumfries and Galloway.

Alcohol-related hospital admissions for young people and young adults (those aged between 11 and 25), was increasing in Dumfries and Galloway before the pandemic (Figure 2). As people’s lives recover from the disruption of the pandemic, it is likely that this increasing trend will return.

The rate of alcohol specific deaths in Dumfries and Galloway has consistently been lower than that for Scotland. However, since reaching an historic low in 2015, the rate in Dumfries and Galloway has been steadily increasing (Figure 3).

Figure 1: Age Sex Standardised Rate for Alcohol-Related Hospital Admissions, Dumfries and Galloway compared to Scotland, 2002/03 to 2022/23

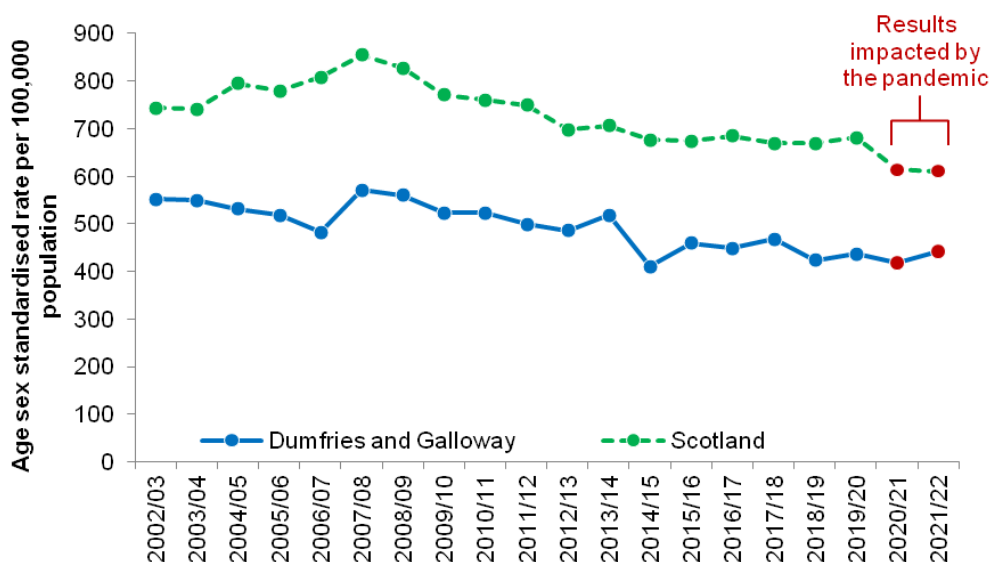


Figure 2: Age Sex Standardised Rate for Alcohol-Related Admissions for Young People and Young Adults (aged 11 to 25 years), Dumfries and Galloway compared to Scotland, 2002/03-2004/05 to 2019/20-2021/22

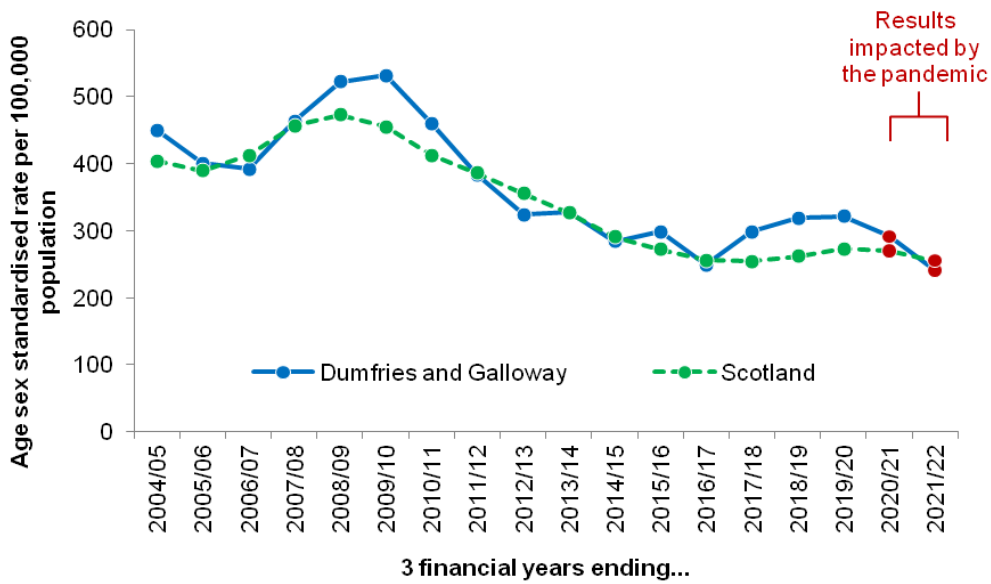
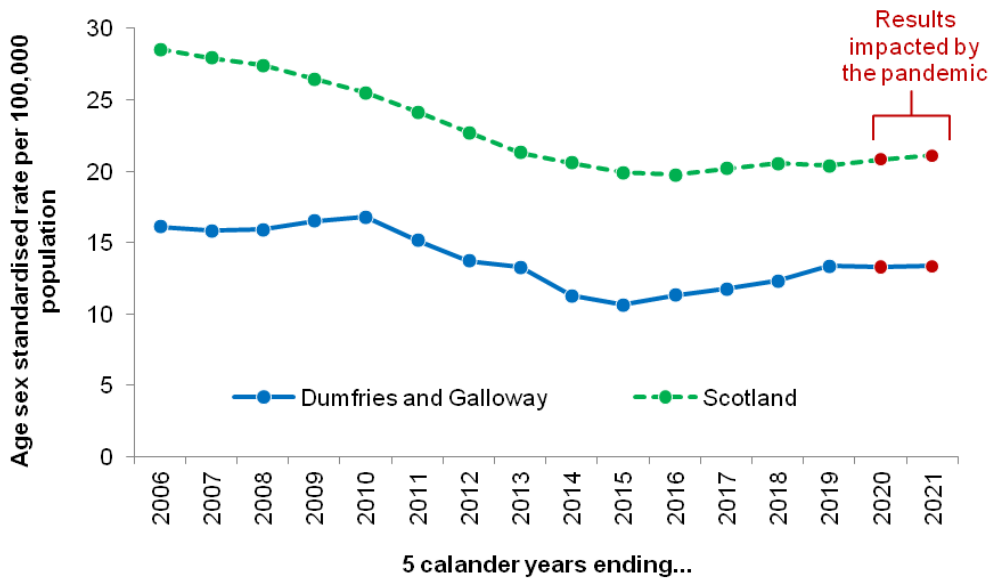


Figure 3: Age Sex Standardised Rate for Alcohol Specific Deaths, Dumfries and Galloway compared to Scotland, 2002-06 to 2017-20



3. Methodology

To support planning in local areas, this analysis focuses on understanding the overprovision of alcohol and alcohol-related harm in different places within Dumfries and Galloway.

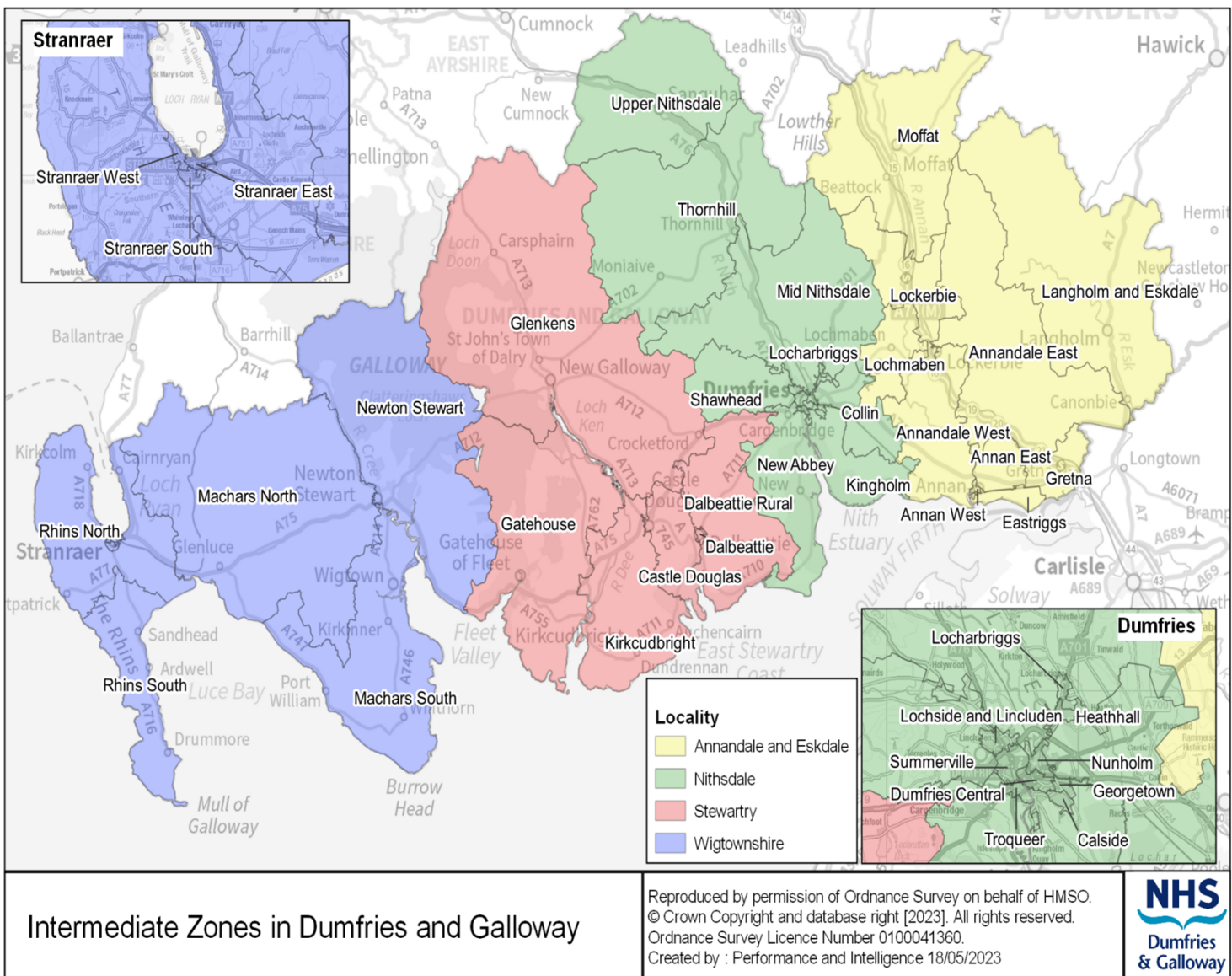
3.1 Geographical Units

For the purpose of this report, Intermediate Zones (IZs) are selected as the core unit of analysis to enable comparisons between local areas within Dumfries and Galloway. Since Scotland's Census in 2001, IZs have been a preferred standard geographical unit for planning and analysing public health activity. IZs have 2 advantages over other geographical units:

- IZs are widely used for presenting and analysing data in geographic areas because they are defined in a rigorous way with clear boundary lines;
- IZs contain a sufficient size of population for analysis, and many of the major sources of data are available at this level;

Map 1 below shows the 40 IZ across the 4 Dumfries and Galloway localities. Each IZ contains an average of approximately 3,700 residents.

Map 1: IZs in Dumfries and Galloway by Localities, 2023



Bearing in mind that people will travel to purchase cheaper alcohol, it may at first appear irrelevant to consider the distribution of licenses on an area by area basis. However, such physical clustering of alcohol outlets will have impacts on the local communities in terms of:

- visibility and normalisation of alcohol
- competitive pressures
- noise

3.2 Measures

The following measures of alcohol availability and alcohol-related harm are used in this report:

Table 2: Measures of Alcohol Availability and Alcohol-Related Harm

Measures	Source	Notes
Alcohol Availability		
1) The rate of on sales premises in 2023 per 100,000 population	Dumfries and Galloway Licensing Board	If a premise has both an on licence and off licence, it has been classified as an on licence in this report as on sales constitute the majority of its trade. Members clubs have been excluded
2) The rate of off sales premises in 2023 per 100,000 population	Dumfries and Galloway Licensing Board	No notes.
3) The rate of on sales capacity in 2023 per 100,000 population	Dumfries and Galloway Licensing Board	If a premise has both an on licence and an off licence, it has been classified as an on licence for analysis as on sales constitute the majority of its trade. The rate of sales capacity represents the maximum available capacity in an IZ. Members clubs have been excluded
4) The rate of off sales capacity in 2023 per 100,000 population	Dumfries and Galloway Licensing Board	The rate of sales capacity represents the maximum available capacity in an IZ.
Alcohol-Related Harm		
1) The rate of alcohol-related hospital admissions in 2020-21 per 100,000 population	Public Health Scotland	More information on the diagnostic (ICD10) codes used for reporting alcohol-related admissions in Scottish hospitals can be found here: https://publichealthscotland.scot/publications/alcohol-related-hospital-statistics
2) The rate of alcohol-related emergency department attendances in 2021-22 per 100,000 population	Dumfries and Galloway Information Services Team	Emergency department data is recorded in free text fields. This means the person recording the information chooses which information and how much information to record. As such, caution should be taken when interpreting this data as it is possible that some cases might not have been identified if they did not contain the key words used in the search criteria.
3) The rate of alcohol specific deaths between 2012-22 per 100,000 population	Dumfries and Galloway Performance and Intelligence Team	Alcohol specific deaths are deaths which are known to be a direct consequence of alcohol misuse, meaning they are wholly attributable to alcohol misuse. More information can be obtained here: https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/deaths/alcohol-deaths
4) The rate of criminal offences for drunkenness and other disorderly conduct between 2013-22 per 100,000 population	Dumfries and Galloway Police Division	Although alcohol is a likely contributory factor in many crimes, this report could only access data on crimes which are specific to alcohol including “drunkenness and other disorderly conduct offences”. More detail can be found here: https://www.gov.scot/publications/recorded-crime-scotland-2021-2022/

3.3 Method of Analysis

In order for a state of overprovision to exist, this report considers that **2 conditions** must be met:

- The rate of alcohol availability for at least 1 measure (the rate of on and/or off sales) in an IZ must be statistically higher than the overall rate for Dumfries and Galloway.
- The rate of alcohol-related harm for at least 1 measure in an IZ must be statistically higher than the overall rate for Dumfries and Galloway.

Whilst a statistically higher capacity rate might increase the risk of overprovision and the potential for harm, this report considers capacity rates alone are not sufficient indicators of alcohol availability because many on sales trade considerably below their maximum capacity and the estimated shelf display dedicated to alcohol in off sales might differ from the actual shelf display dedicated to alcohol due to, for instance, variations in shelf capacity or re-stocking.

The 4 measures of alcohol related harm listed in Table 2 relate to 2 of the [licensing objectives](#) (section 2.2).

Alcohol related hospital admissions, alcohol related emergency department attendances and alcohol specific deaths relate to the licensing objective to **protect and improve public health**. Therefore, if the evidence shows that an IZ has higher rates of on and off sales and, for instance, alcohol-related hospital admissions were higher than for Dumfries and Galloway, this would substantiate a finding that there is overprovision of licensed premises within that IZ.

The rate of criminal offences for drunkenness and other disorderly conduct relates to the licensing objective to **prevent crime and disorder**. If an IZ has higher rates of on and off sales and higher rates for drunkenness and other disorderly conduct, this too would substantiate a finding of overprovision within that IZ.

Areas with statistically high levels of alcohol-related harm but not statistically higher rates of alcohol availability compared to Dumfries and Galloway as a whole will be highlighted as areas of potential concern. If alcohol availability increases in these areas then it could further increase the rate of alcohol-related harm. It is worth noting that the impact of high levels of alcohol availability in an IZ will not be isolated to that specific IZ as it will also impact on surrounding areas.

This report includes confidence intervals around each measure which show the range in which we are 95% confident that the true rate lies. A wider confidence interval indicates a less accurate estimate. Estimates from larger populations (such as Scotland) will have smaller confidence intervals and therefore provide more accurate estimates, than from smaller populations (such as an IZ within Dumfries and Galloway) which will have larger confidence intervals. If the confidence intervals for an IZ within Dumfries and Galloway overlap with the rate for Dumfries and Galloway, this report will conclude that we cannot be certain that their rates differ for the measure in question. If the confidence interval does not overlap with the rate, this report will conclude that we can be 95% confident that their rates differ. A 95% confidence level is standard when conducting public health research.

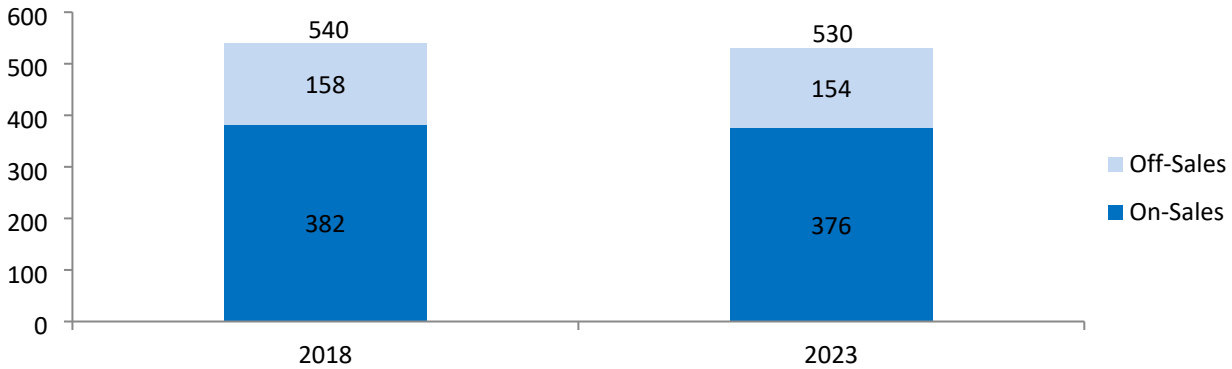
For ease of analysis and to enable direct comparison between IZs, Dumfries and Galloway and Scotland, the data in this report is provided as a rate at per 100,000 of the population.

4. Report Findings

4.1 Impact of Pandemic on Number of Outlets

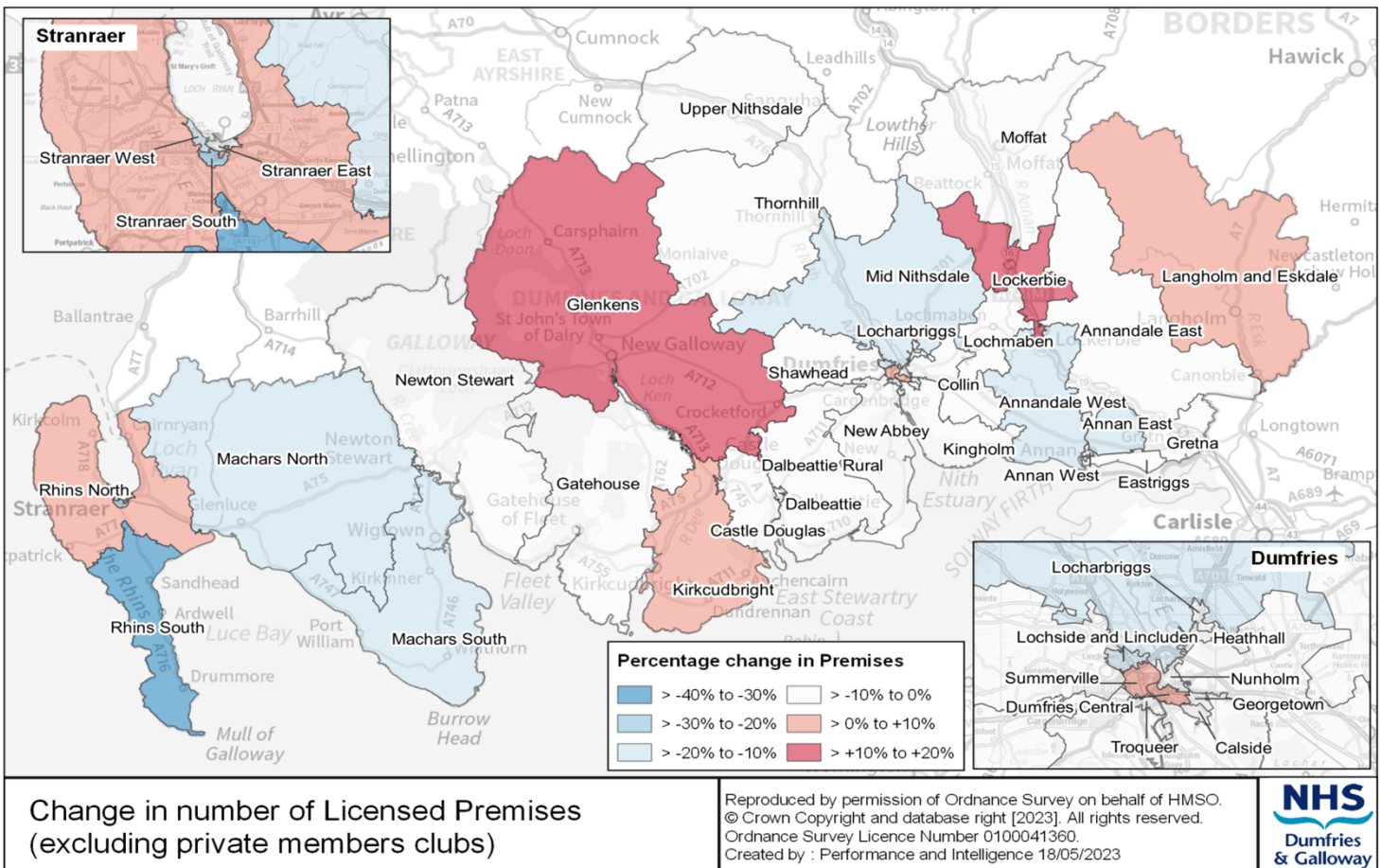
Figure 4 shows the total number of licensed premises in Dumfries and Galloway marginally decreased by 2% (a difference of 10 premises) from 540 in 2018 to 530 in 2023. The number of on sales premises also marginally decreased by 2% (a difference of 6 premises) from 382 to 376.

Figure 4: Number of Licensed Premises in Dumfries and Galloway by On Sales and Off Sales, 2018 and 2023



Although the overall number of premises has changed only marginally, there have been changes in the distribution of premises across IZs in Dumfries and Galloway. Map 2 shows out of 40 IZs, there were 15 IZs with fewer licensed premises in 2023 and 7 areas with an increase in the number of licensed premises in 2023. There was a 4% increase (2 premises) in the number of premises in Dumfries Central and a decrease of 3% (1 premise) in Stranraer East. In sum, these findings show the minimal change in the number of total premises in Dumfries and Galloway despite the pandemic disruption to business.

Map 2: Percentage Change in the Number of Licensed Premises from 2018 to 2023 by IZ



4.2 Measures of Alcohol Availability

The charts shown in Figures 5, 6, 7 and 8 show how the rates for different measures in alcohol availability for each IZ compare to the Dumfries and Galloway, and Scotland overall rates. The IZs are listed in an approximate west to east order.

Dumfries Central and Stranraer East consistently have alcohol availability rates higher than the overall rate for Dumfries and Galloway and Scotland. In addition, other IZs in The Rhins (Rhins North, Rhins South) and some IZs in Annandale and Eskdale are more likely to have a higher rate of availability than Dumfries and Galloway as a whole.

*Please note, a red highlight in the charts below indicates a statistically higher rate than Dumfries and Galloway.

**Please note, the figures for Scotland in Figures 5 and 6 are from 2021-22. This is the most recent data available.

Figure 5: Rate of On Sales Premises per 100,000 Population by IZ, March 2023

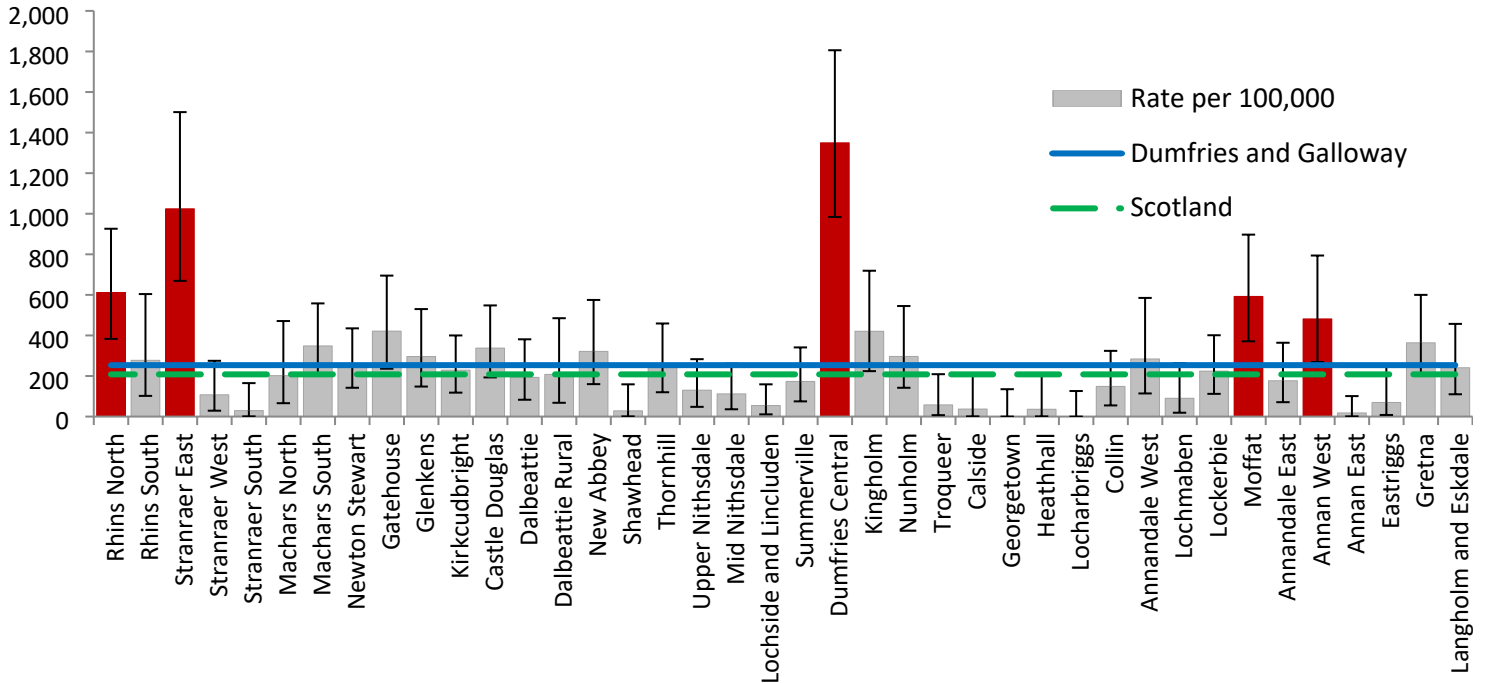


Figure 6: Rate of Off Sales Premises per 100,000 Population by IZ, March 2023

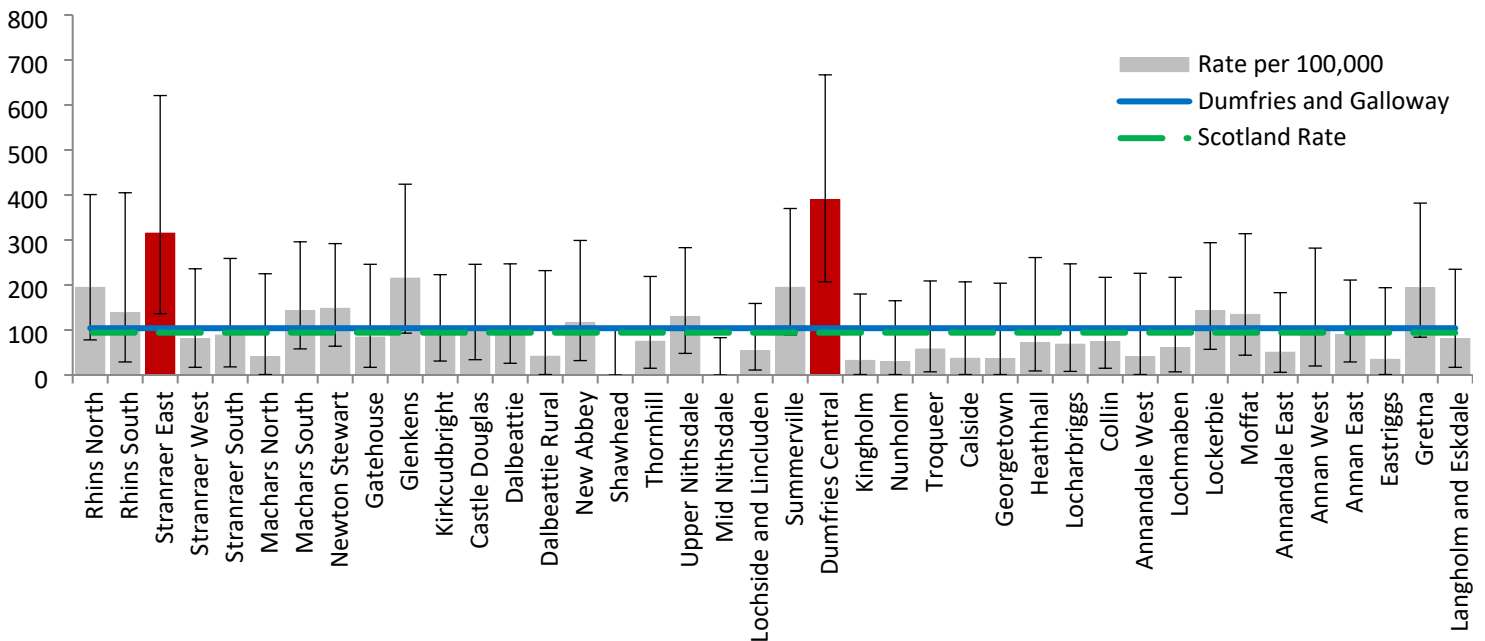


Figure 7: Rate of On Sales Capacity per 100,000 Population by IZ, March 2023

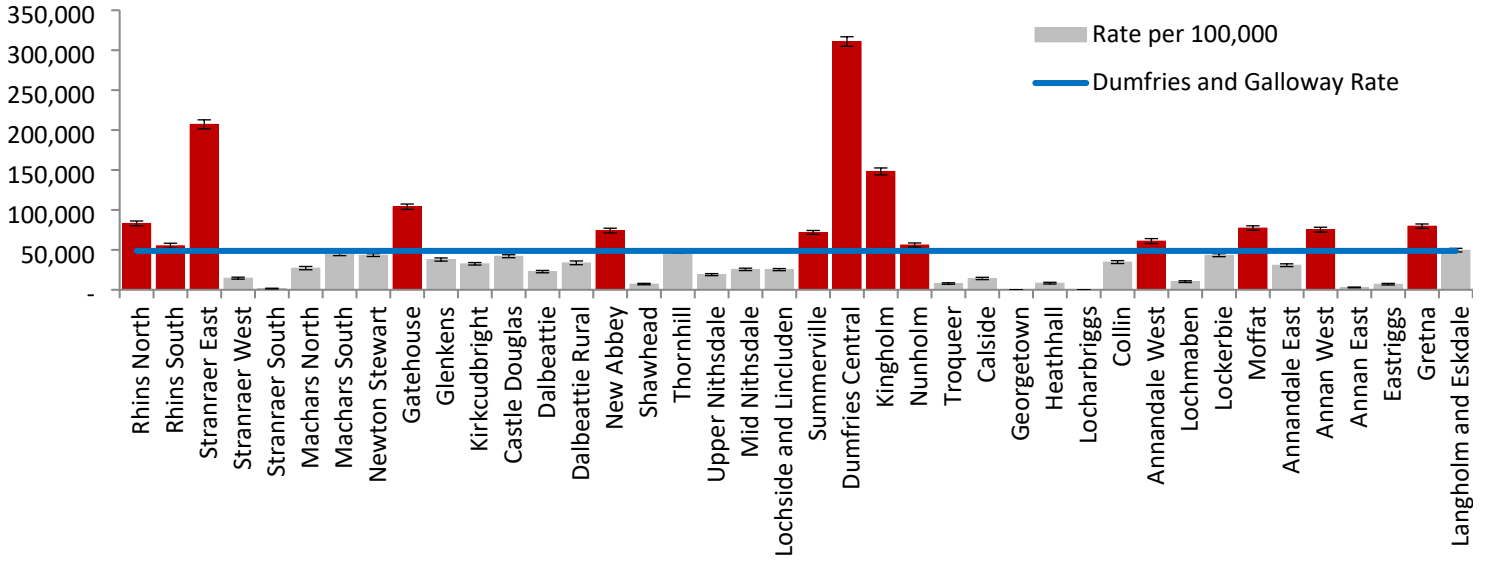
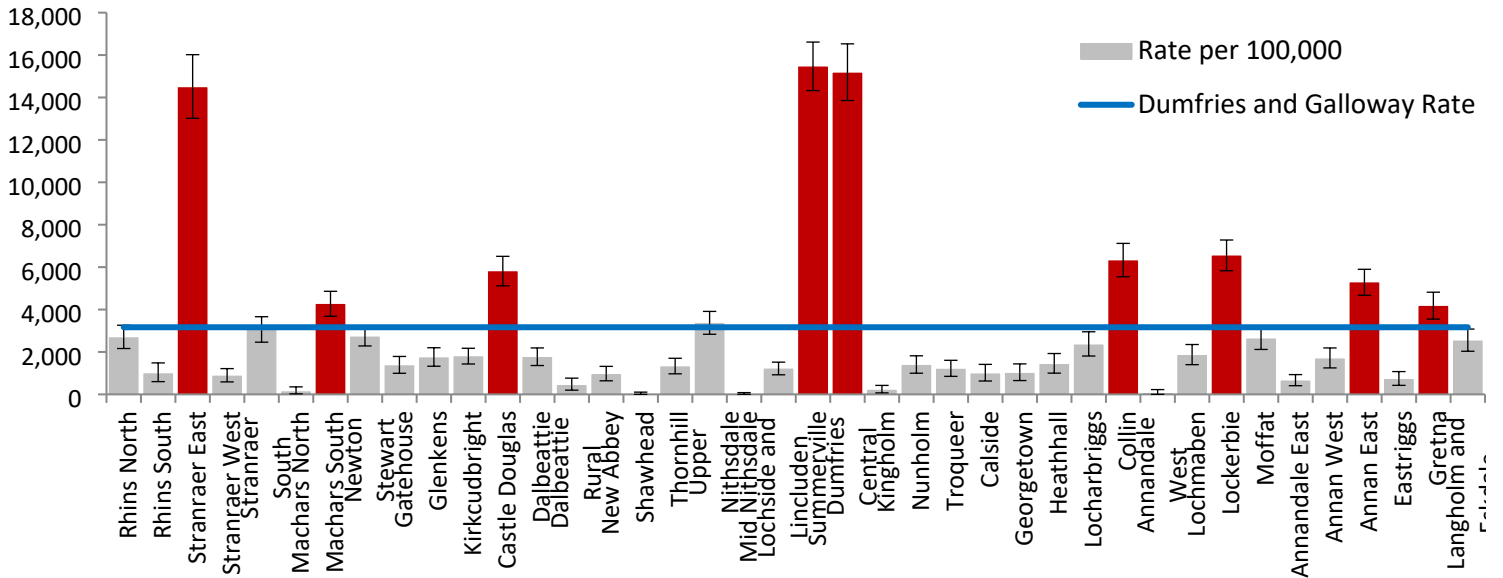


Figure 8: Rate of Off Sales Capacity per 100,000 Population by IZ, March 2023



4.3 Measures of Alcohol-Related Harm

The charts shown in Figures 9, 10, 11 and 12 show how the rates for different measures of alcohol-related harm for each IZ compare to the Dumfries and Galloway, and Scotland overall rates.

As with alcohol availability, Dumfries Central consistently has alcohol harm rates higher than the overall rate for the region and, in most cases, for Scotland. Further, the IZs that immediately neighbour Dumfries Central, including Lochside and Lincluden, Summerville and Kingholm, have higher rates of alcohol for 2 or more measures.

For nearly all measures of alcohol harm, Stranraer East has a statistically higher rate of alcohol harm than the overall rate for Dumfries and Galloway. IZs in The Rhins (Stranraer West, Stranraer South, Rhins North and Rhins South) and Annan West also show higher rates of alcohol-related harm.

Figure 9: Rate of Alcohol-Related Hospital Admissions per 100,000 Population by IZ, 2020-21

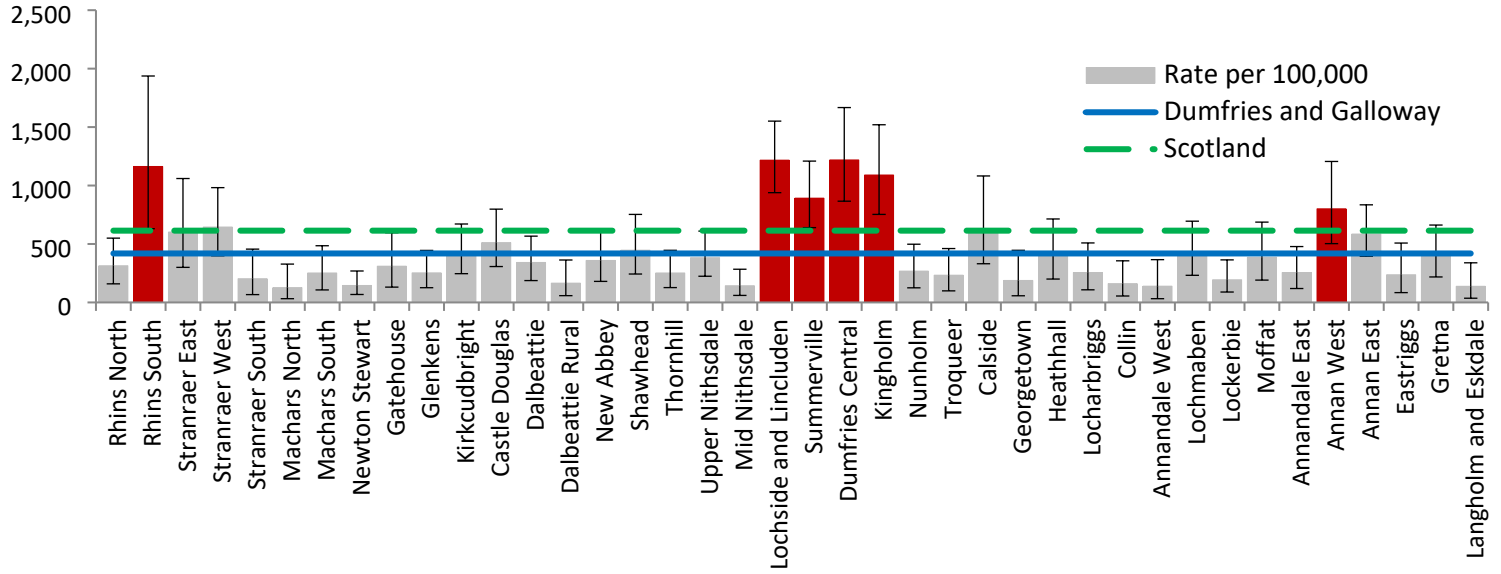


Figure 10: Rate of Alcohol-Related Accident and Emergency Attendances per 100,000 Population by IZ, 2021-22

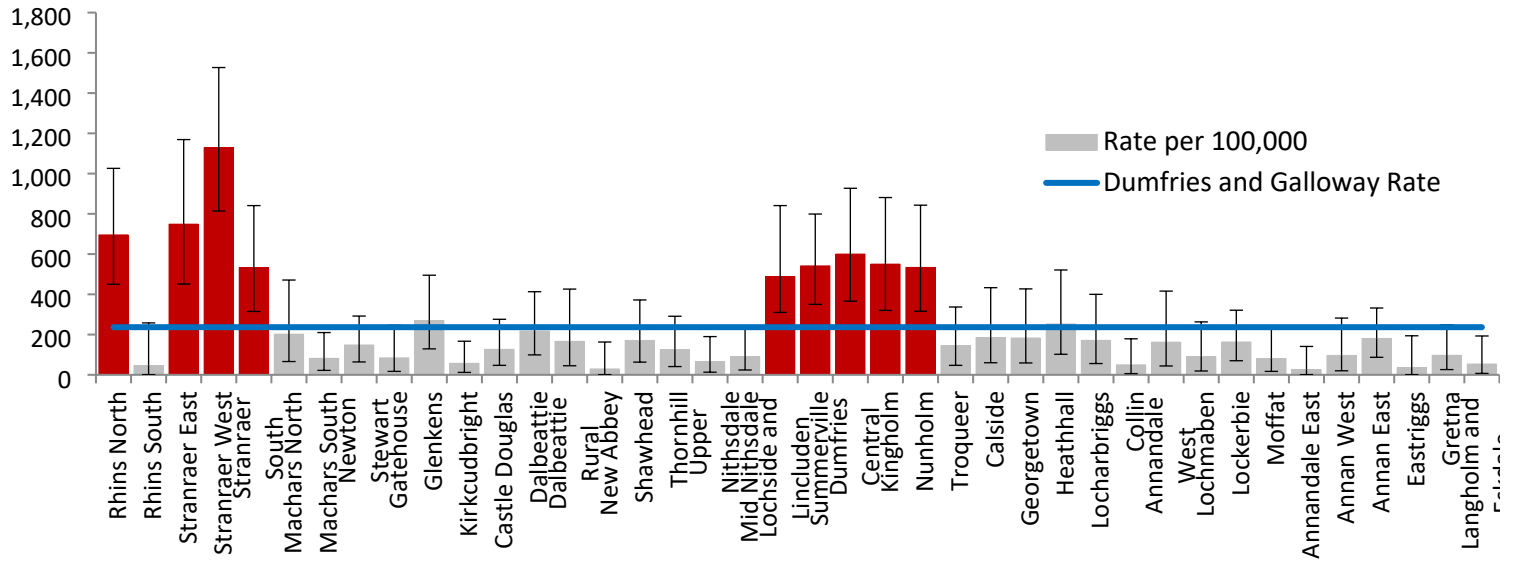


Figure 11: Rate of Alcohol Specific Deaths per 100,000 Population by IZ, 2012-22

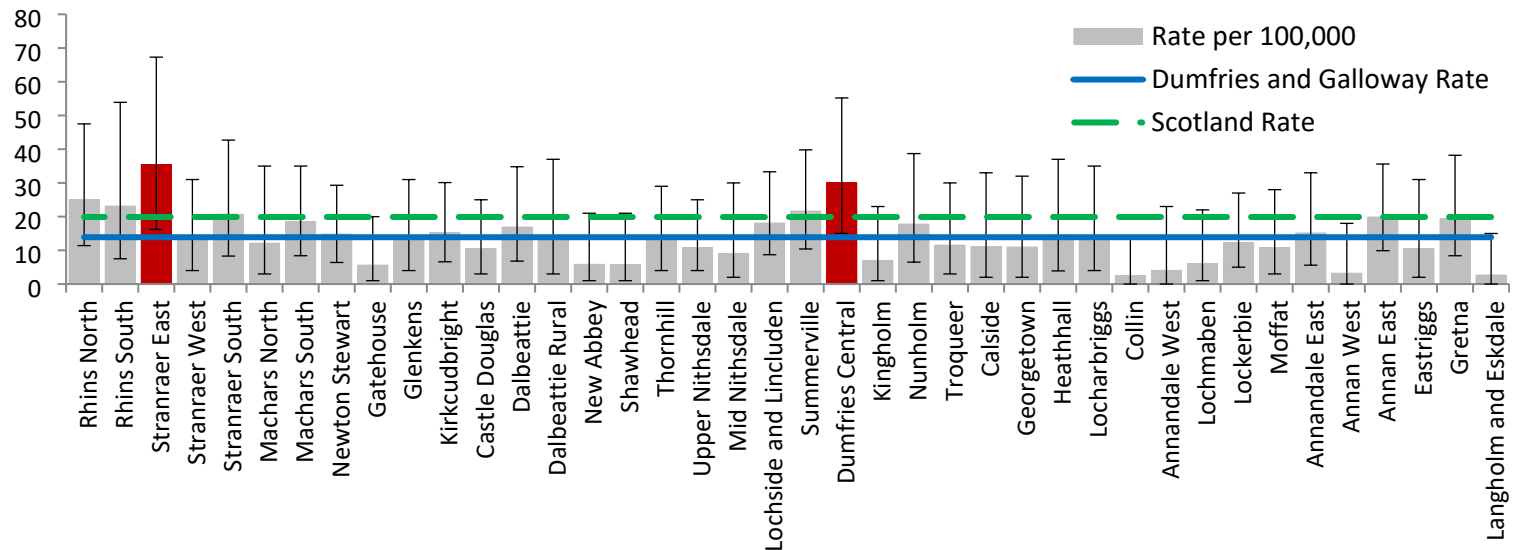
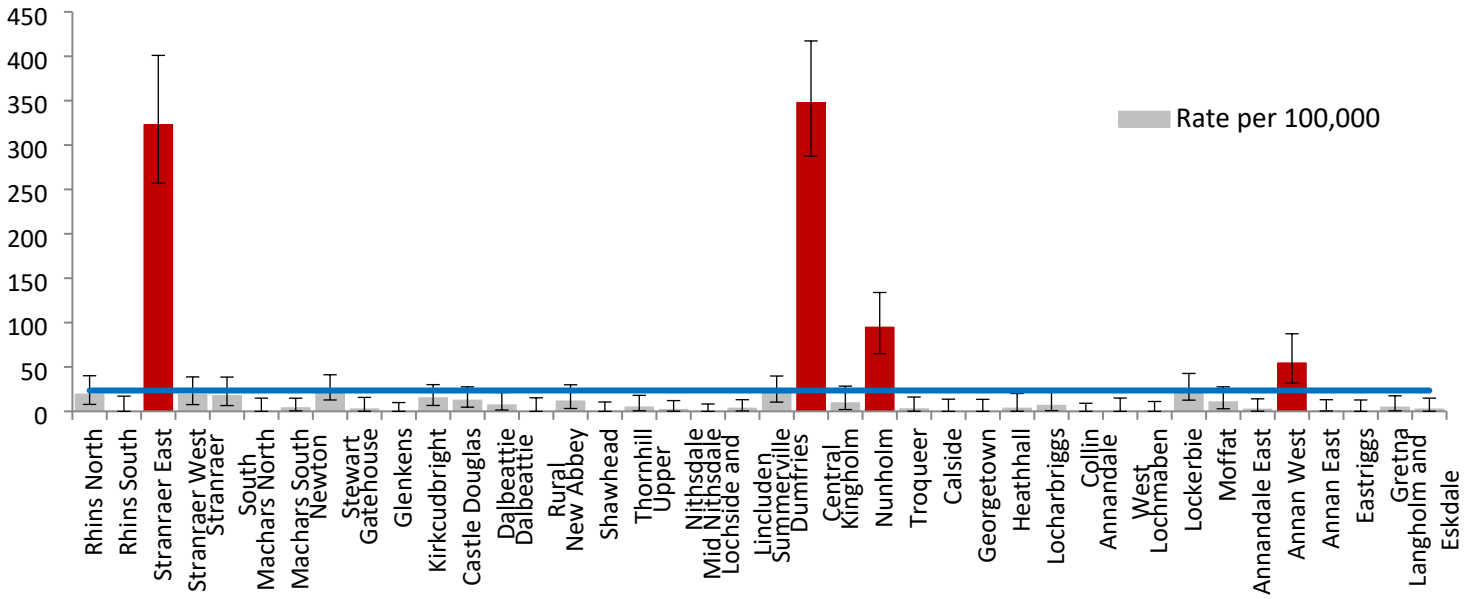


Figure 12: Rate of Drunkenness and Other Disorderly Conduct per 100,000 Population by IZ, 2012-21



4.4 Results by Locality

4.4.1 Annandale and Eskdale

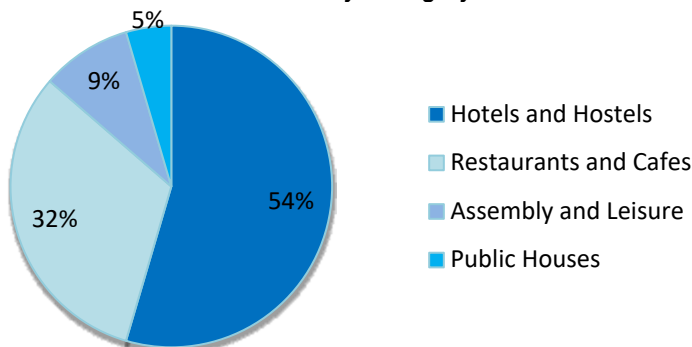
Annan West

Annan West has a statistically higher rate of on sales premises than the overall rate for Dumfries and Galloway and Scotland. The area also has a higher rate of on sales capacity than Dumfries and Galloway. The rates of alcohol-related hospital admissions and offences for drunkenness and other disorderly conduct are statistically higher in Annan West than Dumfries and Galloway. Although between 2018 and 2023 the number of premises licensed to sell alcohol in Annan West decreased marginally by 5% (a difference of 1 premise), the high rate of alcohol availability and alcohol-related harm, mean that Annan West is considered to be overprovided in on sales.

Moffat

Moffat has a statistically higher rate of on sales premises than the overall rate for Dumfries and Galloway and Scotland. The area also has a higher on sales capacity than Dumfries and Galloway. However, the rate of alcohol-related harm is not statistically higher among Moffat residents. This finding could be explained by Figure 13 which shows Moffat has a high proportion of hotels and restaurants with 87% of on sales (19 premises) following under the hotel or restaurant category. These types of establishments tend to cater for the tourist trade which likely explains the lower level of alcohol-related harm among Moffat residents despite the higher rate of alcohol availability. Therefore, the evidence does not suggest Moffat is overprovided in on or off sales.

Figure 13: On Sales Premises in Moffat by Category of Establishment



Other Areas in Annandale

Gretna has a statistically higher rate of on and off sales capacity than Dumfries and Galloway. However, the rates of alcohol-related harm are not statistically higher than the Dumfries and Galloway rate. Therefore, the evidence does not suggest Gretna is overprovided in on or off sales.

Annandale West has a statistically higher rate of on sales capacity than Dumfries and Galloway. However, the rates of alcohol-related harm are not statistically higher than the Dumfries and Galloway rate. Therefore, the evidence does not suggest Annandale West is overprovided in on or off sales.

Lockerbie and **Annan East** have statistically higher rate of off sales capacity than Dumfries and Galloway. However, the rates of alcohol-related harm are not statistically higher than the Dumfries and Galloway rate. Therefore, the evidence does not suggest Lockerbie or Annan East are overprovided in on or off sales.

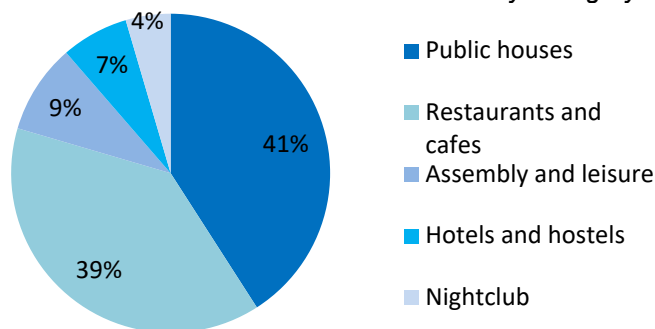
4.4.2 Nithsdale

Dumfries Central

Dumfries Central has statistically higher rates of on and off sales premises than Dumfries and Galloway and Scotland. The area also has statistically higher rates of on and off sales capacity than Dumfries and Galloway. Dumfries Central has the highest rate of on sales premises, off sales premises and on sales capacity in Dumfries and Galloway. Figure 7 above shows Dumfries Central has an overall on sales rate 310,798 sales per 100,000 population.

Figure 14 shows nearly half of all on sales premises (20 premises) in Dumfries Central are public houses or nightclubs.

Figure 14: On Sales Premises in Dumfries Central by Category of Establishment, 2023



The rate of alcohol-related hospital admissions for people living in Dumfries Central is statistically higher than both Scotland and Dumfries and Galloway. Additionally, the rates of emergency department attendances and alcohol specific deaths for people living in Dumfries Central are statistically higher than Dumfries and Galloway. Offences for drunkenness and other disorderly conduct occur at a statistically higher rate in Dumfries Central than Dumfries and Galloway.

In the 2018 Alcohol Licensing Overprovision Report, Dumfries Central was assessed as overprovided in terms of on and off sales by the health board. Since 2018, there has been a 4% increase (a difference of 2 premises) in the number of premises licensed to sell alcohol in Dumfries Central. The analysis presented in this report continues to show that Dumfries Central is overprovided in both on and off sales licences. Consequently, this is having a negative impact on rates of alcohol-related harm in Dumfries Central.

Neighbouring Areas to Dumfries Central

Summerville, Kingholm, Lochside and Lincluden and Nunholm all have rates of on and off sales which are not statistically higher than Dumfries and Galloway.

However, all 4 areas have higher rates of alcohol-related harm than Dumfries and Galloway on 2 or more alcohol harm measures. The rate of alcohol-related hospital admissions is statistically higher in Summerville, Kingholm and Lochside and Lincluden than the overall rate for Dumfries and Galloway and Scotland. The rate of emergency department attendances is statistically higher in Summerville, Kingholm, Lochside and Lincluden and Nunholm than the overall rate for Dumfries and Galloway. The rate of offences

for drunkenness and other disorderly conduct is statistically higher in Nunholm than the overall rate for Dumfries and Galloway.

The high rates of alcohol-related harm in Summerville, Kingholm, Lochside and Lincluden and Nunholm is likely due the close proximity of these areas to Dumfries Central, an area with considerably high levels of alcohol availability. This analysis highlights these 4 areas as areas of potential concern.

Other Areas in Nithsdale

Collin has a statistically higher rate of off sales capacity and **New Abbey** has a statistically higher rate of on sales capacity than Dumfries and Galloway. However, the rates of alcohol-related harm among Collin and New Abbey residents are not statistically higher than the Dumfries and Galloway rates. Therefore, the analysis does not suggest Collin or New Abbey is overprovided on or off sales.

4.4.3 Stewartry

Castle Douglas has a statistically higher rate of off sales capacity and **Gatehouse** has a statistically higher rate of on sales capacity than Dumfries and Galloway as a whole. However, in neither area are the rates of alcohol-related harm statistically higher than the Dumfries and Galloway rate. Therefore, the analysis does not suggest Castle Douglas or Gatehouse are overprovided in on or off sales.

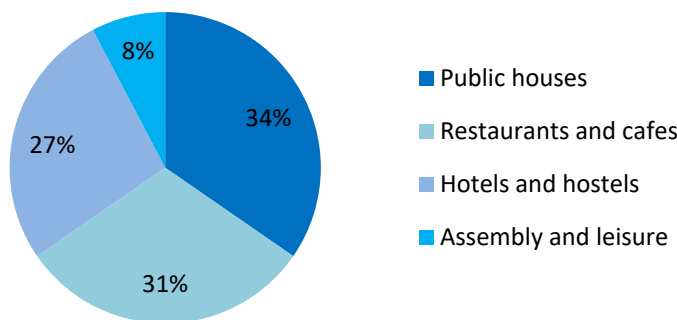
4.4.4 Wigtownshire

Stranraer East

Stranraer East has a statistically higher rate of both on and off sales premises than the overall rate for Dumfries and Galloway and Scotland. The area also has a statistically higher rate of both on and off sales capacity than Dumfries and Galloway. Stranraer East has the second highest rate of on sales, off sales and on sales capacity in Dumfries and Galloway. Figure 7 shows Stranraer East has a sales rate of 207,132 sales per 100,000 population.

Figure 15 shows 34% of on sales premises (9 premises) are public houses, 31% (8 premises) are restaurants and cafes and 27% (7 premises) are hotels and hostels.

Figure 15: On Sales Premises in Stranraer East by Category of Establishment, 2023



Additionally, people living in Stranraer East have statistically higher rates of alcohol-related emergency attendances and alcohol specific deaths than Dumfries and Galloway. Offences for drunkenness and other disorderly conduct also occur at a statistically higher rate in Stranraer East than Dumfries and Galloway as a whole.

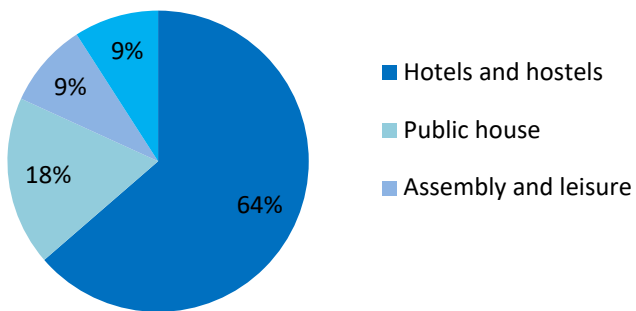
The 2018 Alcohol Licensing Overprovision Report by the health board found Stranraer East to be overprovided in the number of licences. Since 2018, there has only been a small decrease of 3% (a difference of 1 premise) in the number of premises licensed to sell alcohol. The evidence in this report suggests Stranraer East continues to be overprovided in on and off sales. Consequently, this is having a negative impact on rates of alcohol-related harm among people living in Stranraer East.

Rhins North

Rhins North has a statistically higher rate of on sales premises than the rate for Dumfries and Galloway and Scotland. The area also has a statistically higher rate of on sales capacity than Dumfries and Galloway. Additionally, the rate of emergency department admissions among people living in Rhins North is statistically higher than the Dumfries and Galloway rate.

Map 2 above shows that between 2018 and 2023, the number of licensed premises in Rhins North increased by 7% (a difference of 4 premises). Figure 13 shows 64% of on sales premises (14 premises) in Rhins North are hotels and hostels and 18% of on sales premises (4 premises) are public houses. Whilst Rhins North has a high proportion of hotels and hostels which tend to cater to the tourist trade, the high rate of emergency department admissions indicates the rate alcohol availability in the area is having an adverse impact upon the health of people living in Rhins North. This analysis indicates that there is overprovision in Rhins North.

Figure 16: On Sales Premises in Rhins North by Category of Establishment, 2023



Rhins South

The rate of on and off sales is not statistically higher in Rhins South than Dumfries and Galloway or Scotland. However, Rhins South does have a statistically higher rate of on sales capacity than Dumfries and Galloway. Additionally, Rhins South has a statistically higher rate of hospital admissions than Dumfries and Galloway and Scotland. It is worth noting that between 2018 and 2023, the number of premises licensed to sell alcohol in Rhins South decreased by 31% (a difference of 4 premises). Further, the high rate of alcohol-related hospital admissions in Rhins South is likely due to the close proximity of Rhins South to Rhins North, an area with a high level of alcohol availability. This analysis highlights Rhins South as an area of potential concern.

Neighbouring areas to Stranraer East

Stranraer West and **Stranraer South** do not have statistically higher rates of alcohol availability than Dumfries and Galloway. However, Stranraer West and Stranraer South do have statistical higher rates of alcohol-related emergency department attendances than Dumfries and Galloway. The high rate of emergency department attendances, despite low levels of alcohol availability, is likely due to the proximity of these areas to Stranraer East, an area with significantly high levels of alcohol availability. This analysis highlights Stranraer West and Stranraer South as areas of potential concern.

Other Areas in Wigtownshire

Machars South has a statistically higher rate of off sales capacity than Dumfries and Galloway. However, the rates of alcohol-related harm are not statistically higher than the Dumfries and Galloway rate. Therefore, the evidence does not suggest Machars South is overprovided in on or off sales.

5. Discussion of Findings

5.1 Overall findings

- Alcohol related harm across Dumfries and Galloway remains lower than that for Scotland as whole. However there are early signs that alcohol related harm is likely to be on the increase (young people and young adult hospital admissions), and there are specific areas within Dumfries and Galloway that this analysis indicates are overprovided or are of concern. Some of these areas have higher rates of alcohol availability or alcohol-related harm than both Dumfries and Galloway and Scotland.
- The findings for Annandale and Eskdale show there is overprovision in Annan West due to statistically higher rates of alcohol availability and alcohol-related harm in this area.
- The findings for Nithsdale show there is overprovision in Dumfries Central due to statistically higher rates of alcohol availability and alcohol-related harm in this area. Additionally, the areas neighbouring Dumfries Central (Lochside and Lincluden, Summerville, Kingholm and Nunholm) are highlighted as areas of concern due to the statistically higher rates of alcohol-related harm in these 4 areas.
- There is no overprovision or areas of concern in Stewartry.
- The findings for Wigtownshire show there is overprovision in Stranraer East and Rhins North due to statistically higher levels of alcohol availability and alcohol-related harm than Dumfries and Galloway and Scotland. Additionally, the areas neighbouring Stranraer East and Rhins North (Stranraer West, Stranraer South and Rhins South) are highlighted as areas of concern due to statistically higher levels of alcohol-related harm in these 3 areas.

5.2 Limitations

Dumfries and Galloway is a sparsely population area. This means, that when analysing results by IZs, there can be small numbers involved. Small numbers can result in statistically erroneous results. This is highlighted by the dramatic percentage changes premises for on and off sales coming from just a real-terms difference of 1 or 2 premises opening or closing. However, with respect to the measure for alcohol availability and alcohol-related harm, this has been controlled for by using 95% confidence intervals. This provides a high degree of rigour to the analysis and high degree of certainty that the areas highlighted as being overprovided or of concern, truly are.

There is very likely to be an under reporting of alcohol-related hospital admission for people living in the east of the region (such as Gretna, Cannonbie and Langholm). People in these areas are more likely to attend Cumbria Royal Infirmary in England in an emergency than they are to attend Dumfries and Galloway Royal Infirmary. Data from England is not included in the measures that monitor alcohol related harm in Scotland. This should be taken into account when considering the implications of the results of this analysis for Annandale and Eskdale.

This report does not include figures for online alcohol sales from websites such as Amazon which do not require a local licence for selling alcohol. At present, figures to show the extent of online alcohol sales among Dumfries and Galloway residents are not available so there is no way to measure the impact of online sales on levels of alcohol availability and alcohol-related harm in Dumfries and Galloway.

Similarly, this report does not include figures for UK wide alcohol sales. It is likely that some residents will buy alcohol from premises in England (where there is no minimum unit pricing). At present, figures to show the extent of alcohol purchases from areas outside of Dumfries and Galloway are not available, therefore, there is no way to measure the influence of cross border sales activity on levels of alcohol availability and alcohol-related harm in Dumfries and Galloway.

5.3 Recommendations by Locality

5.3.1 Annandale and Eskdale

This analysis has found that Annan West is overprovided. The availability of alcohol in Annan West is almost certainly impacting adversely on people's health and wellbeing. Based on the evidence of harm in the area, it is more likely than not that alcohol availability is a cause and increasing the availability of alcohol in the area will increase that harm. Therefore, it is recommended that the Licensing Board limits approving new applications to support reducing the impact of alcohol-related harms in these areas.

5.3.2 Nithsdale

This analysis has found that Dumfries Central is overprovided, and that there are concerns over the rates of alcohol-related harm in Kingholm, Lochside and Lincluden, Nunholm and Summerville. The availability of alcohol in these local areas is almost certainly impacting adversely on people's health and wellbeing. Based on the evidence of harm in the area, it is more likely than not that alcohol availability is a cause and increasing the availability of alcohol in the area will increase that harm. Therefore, it is recommended that the Licensing Board limits approving new applications to support reducing the impact of alcohol-related harms in these areas.

5.3.3 Stewartry

This analysis has found no overprovision or areas of concern for Stewartry. It is recommended that the Licensing Board considers the wider public health implications when considering applications in this locality.

5.3.4 Wigtownshire

This analysis has found that Stranraer East and Rhins North are overprovided, and that there are concerns over the rates of alcohol-related harm in Stranraer South, Stranraer West and Rhins South. The availability of alcohol in these local areas is almost certainly impacting adversely on people's health and wellbeing. Based on the evidence of harm in the area, it is more likely than not that alcohol availability is a cause and increasing the availability of alcohol in the area will increase that harm. Therefore, it is recommended that the Licensing Board limits approving new applications to support reducing the impact of alcohol-related harms in these areas.

¹ *Licensing (Scotland) Act 2022. c.2.*

² *Licensing (Scotland) Act 2022. c.5.*

³ *Licensing (Scotland) Act 2022. c.5.*

⁴ Richardson E, Shortt N, and Pierce J. 2014. *Alcohol-Related Illness and Death in Scottish Neighbourhoods: Is there a Relationship with the Number of Alcohol Outlets? Report for Alcohol Focus Scotland.*

⁵ Richardson E, Shortt N, and Pierce J. 2014. *Alcohol-Related Illness and Death in Scottish Neighbourhoods: Is there a Relationship with the Number of Alcohol Outlets? Report for Alcohol Focus Scotland.*

⁶ Popova S, Giesbrecht N, Bekmuradov D, and Patra J. 2009. Hours and Days of Sale and Density of Alcohol outlets: Impacts on Alcohol Consumption and Damage: A Systematic Review. *Alcohol and Alcoholism*, 44(5): 500-516.

⁷ Popova S, Giesbrecht N, Bekmuradov D, and Patra J. 2009. Hours and Days of Sale and Density of Alcohol outlets: Impacts on Alcohol Consumption and Damage: A Systematic Review. *Alcohol and Alcoholism*, 44(5): 500-516.

⁸ Popova S, Giesbrecht N, Bekmuradov D, and Patra J. 2009. Hours and Days of Sale and Density of Alcohol outlets: Impacts on Alcohol Consumption and Damage: A Systematic Review. *Alcohol and Alcoholism*, 44(5): 500-516.

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- ⁹ Snowden A. 2016. Alcohol Outlet Density and Intimate Partner Violence in a Nonmetropolitan College Town: Accounting for Neighbourhood Characteristics and Alcohol Outlet Types. *Violence and Victims* 31(1): 111-123.
- ¹⁰ Cohen A, Ghosh-Dastidar B, Scribner R, et al. 2006. Alcohol Outlets, Gonorrhoea and the Los Angeles Civil Unrest: a Longitudinal Analysis. *Social Science and Medicine* (62)12: 3062-71.
- ¹¹ Popova S, Giesbrecht N, Bekmuradov D, et al. 2009. Hours and Days of Sale and Density of Alcohol Outlets: Impacts on Alcohol Consumption and Damage: A Systematic Review. *Alcohol and Alcoholism*, 44(5): 500-516.
- ¹² Young R, Macdonald L, and Ellaway A. 2013. Associations between Proximity and Density of Local Alcohol Outlets and Alcohol Use among Scottish Adolescents. *Health and Place*, 19(100): 124-30
- ¹³ Vocht F, Heron J, Angus C. Et al. 2017. Measurable Effects of Local Alcohol Licensing Policies on Population Health in England. *Journal of Epidemiology & Community Health*, 70: 231-237.
- ¹⁴ Beeston C, Reid G, Robinson M, et al. 2013. *Monitoring and Evaluating Scotland's Alcohol Strategy*. Third Annual Report.
- ¹⁵ Alcohol Focus Scotland. 2020. *Alcohol Outlet Availability and Harm in Dumfries and Galloway*. Glasgow: Alcohol Focus Scotland.
- ¹⁶ Richardson E, Giles L, and Fraser C. 2022. *Alcohol Sales and Harm in Scotland during the COVID-19 Pandemic*. Edinburgh: Public Health Scotland.
- ¹⁷ Richardson E, Giles L, and Fraser C. 2022. *Alcohol Sales and Harm in Scotland during the COVID-19 Pandemic*. Edinburgh: Public Health Scotland.
- ¹⁸ Ponce Hardy V and Giles L. 2022. *Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2022*. Edinburgh: Public Health Scotland.

**LICENSING (SCOTLAND) ACT 2005
SECTION 142 GUIDANCE FOR LICENSING BOARDS****5. OVERPROVISION****Introduction**

5.1 This chapter provides information to assist Licensing Boards to make a pro-active assessment of the overprovision of licenced premises in their licensing authority area.

5.2 Licensing Boards have two separate but directly linked responsibilities in relation to overprovision. Each Licensing Board is required to include a statement as to overprovision in its authority area within the Board's statement of licensing policy (section 7 of the 2005 Act refers) and each Board also needs to consider overprovision when determining a premises licence or premises licence variation application (see chapter 8 Premises Licences).

5.3 There have been a number of amendments made to section 7 since its commencement. The Alcohol etc. (Scotland) Act 2010 and the Police and Fire Reform (Scotland) Act 2012 made changes to the to the list of persons a Licensing Board must consult when considering whether there is overprovision (as set out at section 7(1)) in any locality). The "relevant Health Board" was added to the list of consultees and a textual amendment was made to the reference to Chief constable.

5.4 The Air Weapons and Licensing (Scotland) Act 2015 made a number of amendments to section 7. Some were technical whilst others were more substantive. To assist Boards in considering the wider scope of the protecting and improving health licensing objective, section 7 was amended to enable Boards to consider the availability of alcohol across their whole geographic area. Further amendments clarified that increased capacity can be considered separately from an increase in the number of licensed premises in terms of overprovision and that opening hours should also be considered.

5.5 Currently, section 7 of the 2005 Act requires a Licensing Board to include in its statement of licensing policy, a statement as to the extent to which the Board considers there to be an overprovision of (a) licensed premises, or (b) licensed premises of a particular description, in any locality within the Board's area, and in doing so, the Board may determine that the whole of the Board's area is a locality.

5.6 An overprovision assessment must be evidenced base. It is a matter for each Licensing Board to determine what their overprovision policy will be and how the evidence it has ingathered will be interpreted and weighted. When undertaking this work Licensing Boards should be mindful of the five licensing objectives: preventing crime and disorder; securing public safety; preventing public nuisance; protecting and improving public health; and protecting children and young persons from harm. Licensing Boards Licensing Board should ensure the approach to ingathering, weighing and interpreting evidence, and consultation responses is robust, all of the relevant evidence before them is taken into account, and the rationale for regarding/disregarding that evidence in developing Licensing Policy Statements (LPS) is clearly set out.

5.7 It is also important that Licensing Boards consult widely on a draft overprovision assessment and carefully consider the views expressed by consultees prior to finalising an overprovision assessment for the Licensing Board area.

Purpose of overprovision

5.8 The requirement to produce an overprovision assessment, and note this in the statement of licensing policy, is designed to:

- enable Licensing Boards to take account of changes since the publication of their previous statement of licensing policy and any subsequent supplementary statement of licensing policies which may have been issued.

- improve public and trade confidence in the licensing system by setting out clearly the grounds on which overprovision should be determined.

- recognise that halting the growth of licensed premises in localities is not intended to restrict trade but may be required to preserve public order, protect the amenity of local communities and mitigate the adverse health effects of increased alcohol consumption.

- provide potential entrants to the market with a clear signal that they may incur abortive costs if they intend to apply for a licence in a locality which a Licensing Board has declared to have reached overprovision.

Which licensed premises are to be included?

5.9 Section 7 provides that premises which have only an occasional licence are to be left out of the assessment of overprovision. Additionally, section 125 of the 2005 Act provides that section 7 does not apply “in relation to premises which are used wholly or mainly for the purposes of any club of such description as may be prescribed”. Members clubs are a category of club which falls within Regulation 2 of the Licensing (Clubs) Scotland Regulations 2007 (2007/76). All other licensed premises should be included when considering whether there is overprovision of licenced premises generally or licensed premises of a particular description.

5.10 Licensed premises of a particular description may be determined in terms of their style of operation. For example Scottish Borders Licensing Board states in the overprovision section of its statement of licensing policy that:

- “The number of late night hour entertainment premises (after 1am) within Scottish Borders is currently four. The Board is of the view that any increase beyond that number could be overprovision”

Determining Localities

5.11 It is for each Licensing Board to determine the localities within the Licensing Board's area for the purposes of the 2005 Act. This flexibility allows Licensing Boards to reflect the different circumstances in different geographical areas throughout the country, for example, a locality in a rural area might be larger than a locality in an urban area. As mentioned above, Licensing Boards can determine that the whole of the Licensing Board's area is a single locality.

5.12 The choice of locality must, however it is done, be rational, capable of justification and be consistent across the Licensing Board area. It is expected that, in the interests of openness and transparency, Licensing Boards set out the reasons for their decision making in arriving at their locality choices (e.g. as part of the consultation on a Licensing Board's draft overprovision assessment) . For example,

- North Ayrshire Licensing Board's statement of licensing policy states:

"The Board's Overprovision Policy covers its whole area, although the Board has determined that there are 6 'Localities' in its area (coinciding with the 6 'Localities' used by the North Ayrshire Community Planning Partnership (CPP)).

"These areas contain a total of 38 Intermediate Zones ("IZs"). IZs are the areas commonly used to gather a wide range of government statistics."

- West Dunbartonshire's statement of licensing policy states:

"In its assessment of overprovision, the West Dunbartonshire Licensing Board has continued its established approach of utilising the Scottish Neighbourhood Statistics intermediate data zone (IDZ) geographies as the localities for this purpose. "The West Dunbartonshire area can be broken up in to 18 distinct IDZ localities."

5.13 City of Glasgow Licensing Board demonstrated best practice in relation to gathering local views when consulting on proposed localities in relation to its overprovision assessment. The Licensing Board indicated, through its website, that it intended to undertake visits to the proposed overprovision localities to speak directly to local residents and owners and staff of licensed premises in these areas to hear views on the impact of higher concentrations of licensed premises and to gauge whether there is support at a local level for including the area as an overprovision locality in the finalised LPS.

Matters to be considered in determining if there is overprovision

5.14 In determining whether or not overprovision exists, section 7 provides for the matters a Licensing Board needs to consider:

- must have regard to the number and capacity of licensed premises in the locality
- must consult
 - the chief constable
 - the relevant health board
 - 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
 - such other persons as the Board thinks fit.
- may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality.

Number and capacity of licensed premises

Number of licensed premises

5.15 The number of licensed premises impacts on the availability of alcohol and as many Licensing Boards recognise, the type of licensed premises is also of relevance. For example, a large supermarket and a small corner shop will each count as one licensed premises. The amount of alcohol sold by each premise will be different and the potential harms associated with the amount of alcohol sold will also be substantially different. A locality with only licensed restaurants is likely to sell less alcohol than a locality with only vertical drinking establishments. The harms associated with licensed restaurants will be less than the harms associated with vertical drinking establishments.

5.16 As discussed at Chapter 3 the 2005 Act places a duty on Licensing Boards to keep a licensing register and this can be used by Licensing Boards to determine the number of premises licensed for:

- the sale of alcohol for consumption on the premises;
- the sale of alcohol for consumption off the premises; and
- the sale of alcohol both on and off the premises.

Capacity of licensed premises

5.17 In the context of the 2005 Act and as set out at section 147, capacity –

- in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption on the premises (or, as the case may be, that part), the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time, and
- in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption off the premises (or, as the case may be, that part), the amount of space in the premises (or, as the case may be, that part) given over to the display of alcohol for sale.

On-sales

5.18 Many Licensing Boards comment in their overprovision assessments that they seek input from their local authority Building Standards Officers regarding capacity matters. For calculating the capacity for on-sales, Licensing Boards may wish to have regard to the parts of the Technical Handbook issued in support of the Buildings (Scotland) Regulations 2004 which relate to occupancy capacity and the number of licensed hours the premises is open. The Building Standards pages on the Scottish Government website Building standards - gov.scot (www.gov.scot) provides information on buildings regulations and the associated technical guidance.

Off-sales

5.19 For calculating the capacity for off-sales, Licensing Boards should have regard to the Premises License (Scotland) Regulations 2007 (SSI 2007 No. 252) and regulation 5 which makes provision as to the layout plan.

5.20 In its statement of licensing policy, Stirling Licensing Board states:

- “Assessing the capacity of licensed premises is important under the Act. This is, in part, due to the fact that capacity of premises will be taken into account in assessing overprovision.

- “On sales

The Board considers that it is very important for licence holders to have a sound knowledge of the safe capacity of their premises. Capacity for on sales premises should be presented to the Board in patron numbers. The capacity should be worked out using the formula used by Building Standards, this formula does not take into account the fixtures and fitting of the premises.

“This is particularly so where the premises are large, or where they include entertainment such as live music, dances and discos. The Board expects, in respect of these types of premises, that there should be suitable capacity control measures in place. These may include stewarding, door number clickers or issuing of tickets.

- “Off sales

Again, the Board considers that it is very important for licence holders to have a sound knowledge of the capacity of their premises. Capacity for off sales premises should be presented to the Board in meters squared”.

Consultation

5.21 As set out at Chapter 4 statements of licensing policy, Licensing Boards are encouraged to consult widely within their respective areas on both their statement of licensing policy and it is equally important for Licensing Boards to consult widely on their overprovision assessment. Licensing Boards may wish to consider carrying out these two consultations simultaneously. For example, Edinburgh Licensing Board published 2 consultations and commented on their web page:

- “The Edinburgh Licensing Board is consulting on the terms of its draft statement of licensing policy, having carried out an informal consultation earlier in the year. As part of this process, the Board is also consulting on its assessment of localities in the Board’s area

which show characteristics of overprovision of licensed premises. These two consultations are being carried out in tandem.

- “Details of the individual localities, and the basis upon which they’ve been considered, is set out in the supporting documentation provided with this consultation”.

5.22 Chapter 6 Local Licensing Forums (LLFs) sets out the important role a LLF has to play in the alcohol licensing regime. In terms of other persons a Licensing Board may wish to consult, it is encouraging to note that LLFs and third sector organisations providing treatment services for alcohol harm within their locality, are as a matter of course being invited by many Licensing Boards to offer their views. This is an approach the Scottish Government strongly supports.

5.23 For example in its statement of licensing policy under the heading of “Development of the Pro-Active Assessment of Overprovision”, Glasgow City Licensing Board comment:

- “In particular, the Licensing Board had regard to a report from the Local Licensing Forum with evidence and recommendations as to localities where the Forum considered there to be overprovision of licensed premises or licensed premises of a particular description. A copy of the report approved by the Local Licensing Forum, together with the supporting evidence gathered, is available at:

<https://www.glasgow.gov.uk/councillorsandcommittees/viewDoc.asp?c=P62AFQDN2U2UDN Z3DN>

5.24 As regards consultation on localities in relation to its overprovision assessment, Inverclyde Licensing Board commented in its statement of licensing policy:

- “As the determination of “localities” is largely a matter for the Board, local knowledge plays a significant part in such determinations. The Board has had extensive consultations with Inverclyde Licensing Forum, who have in turn consulted with Community Councils, premises licence holders, the Inverclyde Alcohol and Drug Partnership, the NHS, Police Scotland, Inverclyde Community Health and Care Partnership and local residents”.

5.25 In preparing their statement of licensing policy and overprovision assessment, Dumfries and Galloway Licensing Boards had 2 periods of consultation which included 2 public meetings and a Working Group was also set up to discuss Overprovision. This Group met several times and comprised of the following members: Scottish Fire and Rescue Service; Police Scotland; Alcohol and Drug Partnership (NHS) and Dumfries and Galloway Council.

Other matters

5.26 A Licensing Board’s consideration of overprovision need not be confined to only considering numbers and capacity but could take account of other factors too. Licensing Boards have considerable discretion in this area.

5.27 In considering the statutory definition of ‘capacity’, it is accepted that there are other ways of considering in a wider sense what the capacity of a premises is. While the 2005 Act does not permit any alternative definition of capacity to be used, Licensing Boards are encouraged to consider under other matters whether, for example, a relevant factor to be considered alongside capacity of premises would be the ability for stock to be resupplied

quickly. In other words, a premises which was able to maintain large stock levels but only had a relatively small area for displaying stock may then suggest a small capacity while actually they are capable of significant sales volumes.

5.28 Other matters could be such things as inequalities; the proximity of specific types of premises such as facilities for vulnerable adults with problematic alcohol use; mental health services; hospitals; schools/nurseries; sports facilities; gambling facilities. Other considerations could also include concerns regarding people visiting the locality from other areas.

5.29 In particular, inequalities is an important consideration for Licensing Boards in relation to overprovision. There is a stark inequalities gradient to alcohol harm and a growing awareness that the impact of harmful drinking and alcohol dependence is much greater for those experiencing high levels of deprivation. For example, people living in our most deprived communities are over seven times more likely to die or are more than eight times more likely to be admitted to hospital due to alcohol use than those in our least deprived communities (Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2019: NHS Health Scotland; 2019). Similarly, areas of high deprivation can have extremely high rates of alcohol-related fires and crime rates, and it can often be individuals other than the drinker who feel the effects of alcohol use, including children, family, friends, colleagues and those working in frontline services such as the Police and Health Service.

5.30 Research examining the association between the density of alcohol outlets and neighbourhood-level income deprivation in Scotland has also found that there are 40% more licensed premises in the most deprived areas of Scotland than in the least deprived (BMC Public Health 2015 Research article "A cross-sectional analysis of the relationship between tobacco and alcohol outlet density and neighbourhood deprivation" N.K. Shortt et al). By taking account of evidence on inequalities, Licensing Boards can meaningfully consider how different communities are impacted differently by alcohol, and use this to formulate their policy.

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.
- 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.