



Alcohol Focus
SCOTLAND



SUMMARY

Taking Stock:

Views and experiences of alcohol
licensing in Scotland in 2016/17

Recommendations for further action

It is now eight years since the Licensing (Scotland) Act 2005 came fully into force. This report summarises Alcohol Focus Scotland's analysis of progress within the licensing system in Scotland, and recommendations to help promote the public interest purpose of alcohol licensing. To read the full report go to www.alcohol-focus-scotland.org.uk.

In recognition of the need to protect the public from the potentially harmful impacts of the sale of alcohol, the Licensing (Scotland) Act 2005 established a set of five licensing objectives to guide decision-making: preventing crime and disorder; securing public safety; preventing public nuisance; protecting and improving public health; and protecting children and young people from harm. The legislation requires licensing boards to seek to promote the licensing objectives in a policy-driven approach to licensing.

Considerable effort, by many people, has been invested in operationalising the new system. Licensing board members, licensing clerks, licensing standards officers, NHS, police, Alcohol and Drug Partnerships, community and trade, members of local licensing forums, and licensing lawyers have all had a role. Significant progress has been made in developing understanding and cooperation between partners. But is the licensing system delivering positive outcomes for our communities?

Scotland continues to have the highest level of alcohol consumption and harm in the UK, with 1,265 Scots dying because of alcohol in 2016.¹ Despite the recognition in the Scottish Government's alcohol strategy that the availability of alcohol has a key role in reducing population consumption and harm, the evidence is that things are moving in the wrong direction. The number of premises licensed to sell alcohol has increased over the last six years. In 2001, the

Nicholson Committee remarked on a spectacular increase in off-sale licences² and this trend has continued, with 73% of alcohol now sold in shops and supermarkets.³ Competition between stores – including loss-leading on alcohol to attract consumers into stores – has pushed prices down, with negative consequences for levels of consumption and harm in our communities. Our poorest communities are hit hardest. There are 40% more licensed premises in the most deprived areas⁴ and people living in those communities are six times more likely to die an alcohol-related death than people in our least deprived communities.⁵

It is in this context that AFS sought the views of those involved in the licensing system about where we can learn from success and how we can continue to improve the operation of licensing in the public interest.

We have identified a need for greater national direction on availability and a clearer expectation of how licensing can and should contribute to reducing consumption and harm in Scotland. Our recommendations are relevant for the Scottish Government, licensing boards and those who support them, and to individuals and communities across Scotland.

1 Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland http://www.healthscotland.scot/media/1449/mesas-final-report_english1.pdf

2 The Nicholson Committee (2003). *Review of Liquor Licensing Law in Scotland*. Edinburgh: Scottish Executive <http://www.gov.scot/Resource/Doc/47133/0027021.pdf>

3 Giles & Robinson (2017), op cit.

4 Shortt, N. K., Tisch, C., Pearce, J., Mitchell, R., Richardson, E. A., Hill, S., & Collin, J. (2015). *A cross-sectional analysis of the relationship between tobacco and alcohol outlet density and neighbourhood deprivation*. BMC Public Health, 15(1): 1014. <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-015-2321-1>

5 Giles & Robinson (2017), op cit.

Joint working and collaboration

Relationships between different stakeholders in licensing are improving. This applies to relationships between all licensing stakeholders. Understanding between licensing and health stakeholders have continued to improve over time. Positive relationships between licensing boards and police have developed in many areas, and joint initiatives to tackle alcohol-related issues at a local level (e.g. Best Bar None and UNIGHT) are held to have been successful, particularly in promoting positive relations with the on-trade.

Recommendations for improving joint working and collaboration within the Scottish licensing system

1. All licensing stakeholders should consider ways in which they can support mutual learning and understanding.
2. Licensing stakeholders should develop a joint memorandum of understanding. This should identify the type of data and evidence to be provided to the licensing board to inform policy and decision-making.



Inconsistency in policy and practice

Inconsistency in the interpretation and application of the law is apparent across Scotland. This applies in relation to policy development; the use of policy in decision-making; overprovision assessments; and promotion of different licensing objectives. Stakeholders have differing and often contradictory understandings of the purpose and intended outcomes of the licensing system.

Disagreement about the purpose of alcohol licensing is the main factor that creates inconsistency of approaches to policy and practice. It acts as a barrier to progress and collaborative working.

Recommendations for improving consistency and clarifying purpose

3. The Scottish Government should introduce a national licensing policy. This would underpin the strategic approach to reducing availability, and provide a national driver for the licensing system which is currently lacking.
4. The Scottish Government should update the guidance on the Licensing (Scotland) Act 2005 as a matter of priority. Specific attention should be given to: effective promotion of the licensing objectives; the assessment of overprovision; the role and function of local licensing forums; and any new relevant legislation that has been implemented.

Transparency, accountability and public participation

There is a distinct lack of public participation in the licensing process. Barriers to participation can relate to poor accessibility of licensing processes, but inconsistencies in policy and practice can also prevent meaningful engagement.

Local licensing forums should play a critical role by providing the mechanism for public engagement and scrutiny. There are some examples of good practice where forums are believed to provide valuable input and have influence. Overall, however, forums are not functioning effectively; they can lack clarity about their role and remit, and competing interests represented on forums can result in difficulties reaching consensus on important issues.

Some stakeholders are unable to access comprehensive information about licensed premises in their area. The only licensing data at a national level is the number of on- and off-trade outlets and the number of licences granted and refused. This is insufficient to provide any robust estimate of alcohol availability. Without alcohol sales data it is not possible to get a true measure of alcohol availability, fully inform licensing decisions, or monitor changes over time.

The new requirement⁶ for boards to publish an annual functions report on how they have promoted the licensing objectives may go some way to improving transparency and accountability, but it will be essential that these reports are made widely available for public scrutiny.

⁶ The Air Weapons and Licensing (Scotland) Act 2015 introduced a requirement that licensing boards publish annual functions reports. This requirement has not yet come into effect.

Recommendations for improving transparency, accountability and public participation

The Scottish Government should:

5. Commission a thorough review of the function of local licensing forums. This should provide recommendations on how to improve their role in ensuring effective scrutiny and accountability within the licensing system.
6. Consult widely with the full range of stakeholders on the form and content of the annual reports, including the data reporting requirement.
7. Ensure that new data reporting requirements lead to an increase and improvement in the amount, type, accessibility and consistency of licensing data made available by licensing boards, and do not simply replicate the limited data currently available from existing sources.
8. Create a publicly accessible, national database of personal licence holders and premises licences, including a breakdown of the types and capacity of licensed premises.

In addition:

9. Aggregated anonymised sales data should be provided to the Scottish Government to help inform future national policy on availability and licensing.
10. Licensing boards should ensure that their administrative processes provide transparency and accountability, for example by: having a set of published standing orders; board papers and minutes being published on time; board minutes recording the names of board members voting for/against a decision; and holding hearings on statements of licensing policy.

Legislative complexity and litigation

The complexity of licensing legislation is creating difficulties. With a raft of changes being implemented at different times, many stakeholders have encountered difficulties administering or navigating the system. The complexity of licensing legislation has been a particular challenge for stakeholders who receive no legal training, but are nonetheless expected to navigate a legalistic system (e.g. health board representatives). Even those with legal expertise have identified that the legislation in its current format was confusing and unhelpful.

Patterns of alcohol sales and consumption have also continued to change. This is creating new challenges for the licensing system as the law struggles to match the pace of change, and legislative loopholes are exploited.

Recommendations for responding to legislative complexity

The Scottish Government should:

11. **Prioritise the consolidation of licensing legislation to support local authorities to fulfil their obligations.**
12. **Review the use of occasional licences with a view to identifying what further actions are required.**
13. **Fulfil its commitment to consult on new licensing procedure regulations, including issues relating to community engagement, such as signage, notification distances and notification timescales.**
14. **Hold licensing boards to account where they fail to fulfil their statutory obligations. At present, there is no sanction for not publishing a statement of licensing or overprovision assessment.**

15. **Hold local authorities to account where they fail to fulfil their duties, in particular to establish a licensing forum.**

16. **Ensure a policy-led system by introducing a statutory ouster clause to time limit appeals against an adopted licensing policy statement to the first six months of its operation.**

17. **Commission research into online and telephone sales of alcohol to better understand the scale and nature of these markets, how they are evolving, and to identify options to regulate them effectively.**

Adequate resourcing of the licensing system

Across the country stakeholders report a decrease in the resources available to support licensing work. Undertaking licensing work effectively can be time consuming and resource intensive. Reductions to budgets and personnel mean there is less time available to focus on licensing issues.

Recommendations for improving resourcing of the licensing system

18. **The level at which licensing fees are capped should be subject to a full-cost recovery analysis, and fees revised accordingly to ensure the operation of the local licensing system is adequately resourced.**
19. **Local authorities should provide adequate resources to support Licensing Standards Officers (LSOs) to fulfil their duties.**
20. **Health authorities should ensure sufficient investment of resources to enable their participation in the licensing system as part of a preventative agenda.**

Conclusion

While there has been some progress, the potential of licensing to prevent and reduce alcohol harm has yet to be fully realised. There is a clear and pressing need for continued action to maintain momentum and ensure that the gains achieved so far are built upon.

Considerable advances had been made in developing relationships and partnership working. Across Scotland progress is being made in relation to implementing the licensing objectives, policies are becoming more evidence based, and to a certain extent more strategic approaches are being taken.



Despite these successes, there is an apparent disconnect between the strategic aspiration of the alcohol strategy to reduce consumption and harm and practical decision-making and action to control availability through the licensing system. There also appears to be a persistent difference of opinion amongst licensing practitioners about what licensing is for and how it should work. These ongoing and fundamental challenges underline the need for policy, legislation, regulations, orders and statutory guidance to all be absolutely clear and consistent about the role and functioning of the licensing system.

There are also serious concerns over the levels of community engagement in licensing and the extent of transparency and accountability within the licensing system. It is essential that communities are better informed about licensing and more meaningfully involved in the future. The complexity of legislation and the threat of legal challenges are also having an impact, with many stakeholders struggling to navigate the system. Finally, there has been a marked decrease in the resources available for all licensing stakeholders to fulfil their roles, underlining the need for more strategic and joined-up approaches.

We are at a critical juncture in alcohol licensing in Scotland. As we look ahead to newly constituted licensing boards with a fresh round of statements of licensing policy in 2017/18, it is essential that we build upon our successes to date, and work constructively together to develop solutions into the future. Only through such an approach can we hope to create a system which is truly responsive to the rapidly evolving alcohol market, and the diverse needs of our communities.