



Alcohol Focus
SCOTLAND



Taking Stock:

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

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Introduction

This report analyses experiences of progress within the alcohol licensing system in Scotland since the Licensing (Scotland) Act 2005 was implemented in 2009. It identifies learning and challenges, and makes recommendations for improvement and reform.

It has been informed by evaluation and analysis of the licensing system in Scotland undertaken as part of NHS Health Scotland's Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) programme and by Alcohol Focus Scotland's (AFS) engagement with licensing stakeholders. It includes the views of over 170 participants at a series of regional licensing seminars hosted by AFS in 2016. The participants included a broad range of licensing stakeholders including licensing board members, licensing clerks, Licensing Standards Officers (LSOs), NHS staff, police, Alcohol and Drug Partnerships (ADPs), trade, members of local licensing forums and other community representatives.

The recommendations in this report include and add to the recommendations already published in May 2017 by Alcohol Focus Scotland and partners, Scottish Health Action on Alcohol Problems (SHAAP), BMA Scotland and Scottish Families Affected by Alcohol and Drugs (SFAD) in *Changing Scotland's Relationship with Alcohol: Recommendations for Further Action*.¹ These

recommendations seek to inform the Scottish Government's Alcohol Strategy refresh, anticipated to be published shortly.

This report considers alcohol availability and specifically licensing, in more detail. The MESAS programme identified multiple areas for action in its evaluation and analysis of the licensing regime and proposed that recommendations should be informed by discussion and critique by relevant stakeholders.² This paper reports on the response from licensing stakeholders at the regional seminars to the MESAS programme's findings and makes 20 recommendations based on the views expressed. Taken collectively, the recommendations contained in this report seek to promote the public interest purpose of alcohol licensing.

1 Alcohol Focus Scotland (2017a). *Changing Scotland's relationship with alcohol: Recommendations for further action*. Glasgow: Alcohol Focus Scotland <http://www.alcohol-focus-scotland.org.uk/media/222528/Alcohol-strategy-recommendations-Report.pdf>

2 Beeston, C., McAdams, R., Craig, N., Gordon, R., Graham, L., MacPherson, M., McAuley, A., McCartney, G., Robinson, M., Shipton, D., & Van Heelsum, A. (2016). *Monitoring and Evaluating Scotland's Alcohol Strategy. Final Report*. Edinburgh: NHS Health Scotland. <http://www.healthscotland.scot/publications/mesas-final-report>



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Context

What is the purpose of licensing and how do we measure its success?

That was the opening question to AFS and SHAAP's *Re-thinking alcohol licensing* report, published in September 2011.³ The question is as pertinent now as it was then.

It is now eight years since the Licensing (Scotland) Act 2005 came fully into force. In recognition of the need to protect the public from the potentially harmful impacts of the sale of alcohol, the 2005 Act contained a set of licensing objectives which should guide decision-making. Crucially, the legislation also required licensing boards to take a more policy-driven approach to licensing. Since the 2005 Act there have been further changes to licensing legislation, leading many to criticise the complexity of the system.

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 2016.⁴ 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 licences⁵ and this trend has continued, with 73% of alcohol now sold in shops and supermarkets.⁶ 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 areas⁷ and people living in those communities are six times more likely to die an alcohol-related death than people in our least deprived communities.⁸

According to Scottish Government alcohol licensing statistics, the number of off-sales increased by 170 between 2012 and 2017.⁹ Supermarkets' business models are changing, with a move to smaller convenience stores where consumers buy little and often. This has implications for the ease of purchase, particularly when products are sold chilled and ready-to-drink, encouraging impulse purchases. Various factors including price competition with off-sales have required pubs to adapt.¹⁰ Licensed trade commentators frequently highlight the decline in the pub trade, mainly in rural areas. Those that appear

3 MacNaughton, P. & Gillan, E. (2011). *Rethinking Alcohol Licensing*. Glasgow: Alcohol Focus Scotland and Edinburgh: Scottish Health Action on Alcohol Problems. <http://www.alcohol-focus-scotland.org.uk/media/59902/Rethinking-alcohol-licensing.pdf>

4 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

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

6 Giles & Robinson (2017), op cit.

7 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/track/pdf/10.1186/s12889-015-2321-1?site=bmcpublichealth.biomedcentral.com>

8 Giles & Robinson (2017), op cit.

9 Scottish Government (2017). *Statistical Bulletin Crime and Justice Series: Scottish Liquor Licensing Statistics 2016-17*. Edinburgh: Scottish Government <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubLiquor>

10 Bhattacharya, A. (2017). *Pubs Quizzed: What publicans think about policy, public health and the changing trade*. London: Institute of Alcohol Studies <http://www.ias.org.uk/uploads/pdf/IAS%20reports/rp26092017.pdf>

to be faring better tend to be 'dry-led' with a focus on food. Cinemas, petrol stations, sandwich and coffee shops are now amongst the businesses that are licensed. Meanwhile concerns have been expressed about the potential growth in online sales and the implications of this for licensing.

It is in this context that AFS has 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.

Alcohol availability in Scotland

The Scottish Government defines alcohol availability as referring to "the physical and temporal availability of alcohol, which encompasses the density of outlets in an area, the distance needed to travel to an outlet selling alcohol, the type and opening times of the outlet and the extent of the availability within the outlet (e.g. shelf space dedicated to the sale of alcohol)."¹¹

International evidence clearly indicates that increasing price, reducing availability and restricting marketing are amongst the most effective and cost-effective policy measures to reduce alcohol consumption and harm in a population.¹² Over 50 research studies published since 2000 find a link between the total number

11 NHS Health Scotland (2016). *Monitoring and Evaluating Scotland's Alcohol Strategy: Final annual report. Appendix E: Implementation of the Licensing (Scotland) Act 2005: A document review of developments since 2012*. Edinburgh: NHS Health Scotland http://www.healthscotland.scot/media/1106/26884-appendix-e_licensing-act.pdf

12 Babor, T. et al. (2010). *Alcohol: No Ordinary Commodity: Research and Public Policy, Second edition*. Oxford: Oxford University Press.

and opening hours of licensed premises in a locality, and levels of alcohol harm.¹³ Localities examined include cities, states, provinces and countries. Greater access to alcohol is related to a range of alcohol problems, including: violence, alcohol-related traffic accidents, hospital admissions, mortality, suicide, sexually-transmitted disease and child abuse or neglect.

In Scotland, there are approximately 16,700 licences in force¹⁴ – 16 times more licences than GP practices.¹⁵ Enough alcohol is sold to enable every adult in Scotland to drink on average 1.5 times the low risk guidelines every day.¹⁶ See Appendix A for further licensing statistics for Scotland.

92% of residents in Scotland think there are enough or too many places selling alcohol in their local area.¹⁷

The Licensing (Scotland) Act 2005

In 2001, the Nicholson Committee was appointed by the then Scottish Justice Minister to review alcohol licensing, with 'particular reference to the implications for health and public order'. The Committee produced a report recommending a substantial package of measures to improve the licensing regime, which formed the basis of the Licensing (Scotland) Act 2005.¹⁸ The legislation established licensing objectives which are the guiding principles on which licensing decisions should be made:

- preventing crime and disorder;
- securing public safety;
- preventing public nuisance;
- protecting and improving public health; and
- protecting children and young people from harm.

13 Alcohol Focus Scotland (2017b). *Licensing Resource Pack*. Glasgow: Alcohol Focus Scotland <http://www.alcohol-focus-scotland.org.uk/media/263116/AFS-Resource-Online-Version.pdf>

14 Scottish Government (2017), op cit.

15 ISD Scotland (2016). *General Practice: GP Workforce and practice list sizes 2006 -2016*. Edinburgh: NHS National Services Scotland. <http://www.isdscotland.org/Health-Topics/General-Practice/Workforce-and-Practice-Populations/>

16 Giles & Robinson (2017), op cit.

17 Bluegrass Research (2015). *UK Alcohol Behaviour & Attitudes Survey*. Bluegrass Research for Alcohol Health Alliance UK

18 The Nicholson Committee (2003), op cit.

The Act introduced a duty on licensing boards to issue a statement of licensing policy – setting out how they will promote the licensing objectives and their approach to licensing decisions. Policies can be formulated to restrict the overall supply of alcohol and to regulate the way individual licensed premises operate.

A licensing board must have regard to the content of its policy statement when making licensing decisions. Licensing boards can refuse to grant a licence if doing so would undermine the licensing objectives or if the granting of the licence could result in overprovision of licensed premises. Licensing boards have considerable discretionary power on a range of actions to reduce the risk of harm to individuals and communities from the sale of alcohol, providing a locally-led system for controlling the sale of alcohol.

Scottish Government Alcohol Strategy 2009

In 2009, the same year that the Licensing (Scotland) Act 2005 came into force, the Scottish Government published its alcohol strategy: *Changing Scotland's Relationship with Alcohol – A Framework for Action*.¹⁹ This established a whole population approach to reducing alcohol harm and identified action on availability as one of three key mechanisms – alongside price and marketing – to achieve this. The Scottish Government's consultation on the strategy, published in 2008, recognised that the main mechanism for controlling alcohol availability was licensing legislation. However, the consultation paper indicated that “given that the provisions of the [2005] Act will not come into force until September 2009, it would be premature to consider further revisions until the effectiveness of the incoming changes can be assessed.”²⁰ We will monitor the

19 Scottish Government (2009). *Changing Scotland's Relationship with Alcohol – A Framework for Action*. Edinburgh: The Scottish Government <http://www.gov.scot/Resource/Doc/262905/0078610.pdf>

20 Scottish Government (2008). *Changing Scotland's relationship with alcohol: a discussion paper on our strategic approach*. Edinburgh: The Scottish Government <http://www.gov.scot/Publications/2008/06/16084348/0>

effectiveness of the new measures and consider in light of this whether further measures are required.”

Monitoring and Evaluating Scotland's Alcohol Strategy

NHS Health Scotland was tasked with evaluating Scotland's alcohol strategy. It established the *Monitoring and Evaluating Scotland's Alcohol Strategy* (MESAS) programme and produced six reports between 2010 and 2016.²¹

MESAS identifies the Licensing (Scotland) Act 2005 as one of the four key components of the alcohol strategy, along with the Framework for Action, the Alcohol etc. (Scotland) Act 2010 and the Alcohol (Minimum Pricing) (Scotland) Act 2012. It identified overprovision assessments and promotion of the five licensing objectives as the main interventions of interest to the evaluation of Scotland's alcohol strategy.

As part of its work, MESAS evaluated the implementation of the Licensing (Scotland) Act 2005 (published in 2013) and undertook a subsequent documentary review of developments in licensing since 2012 (published as part of the final MESAS report in 2016).

MESAS considered the implementation of the Act to have the potential to be a key contributor to the creation of safer drinking environments and reductions in availability of alcohol. However, the two components of the MESAS evaluation found a number of areas of challenge:

Public health provisions: The public health provisions were still in the “bedding in” phase. Relationships between licensing and public health actors were still in their infancy, with both needing to develop skills and confidence to operate in each other's “system”.

21 <http://www.healthscotland.com/scotlands-health/evaluation/planning/MESAS/Publications.aspx>

Transparency and accountability: There was a lack of any real accountability or transparency in the licensing system, which had implications for effective implementation and the spreading of good practice.

Public access: There was limited involvement, and thus scrutiny, from the public in the licensing system.

Local licensing forums: Forums still had a limited role in relation to the public health provisions six years after the implementation of the Act.

The integrity of the system: Some argued that high profile challenges of licensing board decisions had made licensing boards more cautious in utilising their discretionary powers in making licensing decisions, particularly where supermarkets were the applicants.

Impact on availability: There was insufficient licensing data to determine the impact of the Act on alcohol availability.

MESAS concluded that support should be given to the different licensing stakeholders to fully take forward the public health provisions in the Act. It also concluded that there remains a lack of compliance with provisions in the 2005 Act aimed at generating accountability and transparency in the licensing system.

Rather than set out specific recommendations for improvement, MESAS suggested that recommendations for action should be informed by discussion and critique by relevant stakeholders.

Air Weapons & Licensing (Scotland) Act 2015

In December 2012 the Scottish Government consulted on a wide range of proposals for changes to the licensing system aimed at addressing “*concerns raised by a wide variety of stakeholders*”.²² In 2015, the Scottish Parliament passed new alcohol licensing legislation in the Air Weapons and Licensing (Scotland) Act 2015, informed by the consultation. The policy objectives of the Act were to strengthen and improve aspects of alcohol licensing to preserve public order and safety, reduce crime and improve public health. To this end the Act made a number of technical updates to licensing legislation which sought to clarify and improve the operation of the system. See Appendix B for further information on legislative changes to licensing in Scotland.

²² Scottish Government (2012). *Further Options for Alcohol Licensing – Consultation Paper, Executive Summary*. Edinburgh: Scottish Government. <http://www.gov.scot/Publications/2012/12/8130>

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Licensing in practice

As briefly outlined, for the past six years the licensing system in Scotland has been subject to considerable scrutiny, consultation and change which has presented significant challenge to those involved in its operation.

In September 2016, AFS hosted a series of regional seminars to provide an opportunity for licensing stakeholders to come together to reflect upon and share their experiences. Attendees were invited to identify areas of ongoing challenge and respond to the areas of action identified by the MESAS evaluation with a view to formulating appropriate recommendations for improvement.

A total of 170 people attended with a broad range of perspectives and sectors represented, including: licensing boards; local authority lawyers; local licensing forums; police; Alcohol and Drug Partnerships (ADPs); public health and health improvement professionals; community representatives; and the alcohol trade and industry (see Appendix C for further information about the roles and responsibilities of the various stakeholders within the licensing system). The events were held in Glasgow, Edinburgh, Dundee and Aberdeen and consisted of a variety of presentations, group discussions and individual exercises.

Five cross-cutting themes were identified across the four seminars:

1. Joint working and collaboration
2. Inconsistency in policy and practice
3. Transparency, accountability and public participation
4. Legislative complexity and litigation
5. Adequate resourcing of the licensing system

The themes are considered in more detail in the following section with suggested recommendations set out under each.

Joint working and collaboration

Relationships between different stakeholders in licensing are continuing to improve. Improved relationships and partnership working were the most commonly highlighted areas of success across all the regional seminars. This applied to relationships between all licensing stakeholders.

By 2013, consultation with licensing stakeholders and evaluation by MESAS had suggested there were difficulties in establishing a productive working relationship between licensing and health representatives following the latter becoming statutory consultees under the 2005 Act. Analyses highlighted competing perspectives on the purpose of the licensing system as a barrier. However, an analysis of statements of licensing policy conducted by Alcohol Focus Scotland in 2013 indicated improvements in the use of health information and data in licensing policy formulation between 2010 and 2013.²³ This suggested that, at least in some areas, working relationships were developing positively.

At the regional seminars in 2016, participants noted that relationships and understanding between licensing and health stakeholders had continued to improve over time. There was a call for action to support further progress in this area, particularly the provision of opportunities to come together, share best practice, and improve knowledge and understanding of each other's roles. Suggestions included joint training on licensing-related topics, information exchanges and attending licensing conferences and seminars.

²³ Alcohol Focus Scotland (2014). *Review of statements of licensing policy 2013 to 2016*. Glasgow: Alcohol Focus Scotland <http://www.alcohol-focus-scotland.org.uk/media/85184/Review-of-statements-of-licensing-policy-FINAL.pdf>

Other relationships between stakeholders were also highlighted as beneficial. Positive relationships between the licensing boards and police were frequently highlighted, as were improved relationships with the on-trade. Joint initiatives to tackle alcohol-related issues at a local level (e.g. Best Bar None and UNIGHT) were often held to have been successful, particularly in promoting positive relations with the on-trade.

"Good working relationships with our partners: NHS, Police, Forum, ADP, licence holders, Community Council"

Licensing Board member

"NHS relationship with the board has been strengthened over the last three years."

Not stated

"Collaborative working especially with Police Scotland"

Local Licensing Forum member

Participants at the regional seminars were in favour of low-cost and informal opportunities to develop relationships with fellow stakeholders and enhance understanding of the licensing process. They also highlighted the importance of processes and practices that facilitate effective engagement in the licensing system. Specific suggestions included protecting staff time to attend relevant meetings and events; creating work shadowing opportunities; participating in joint training; and holding knowledge exchange meetings.

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. (See data discussion on P17 for further detail).

Inconsistency in policy and practice

Inconsistency in the interpretation and application of the law was the most dominant theme across the regional seminars. This was identified in relation to policy development; the use of policy in decision-making; overprovision assessments; and promotion of different licensing objectives. Differing and often contradictory understandings of the purpose and intended outcomes of the licensing system were both discussed and demonstrated by stakeholders at each event.

The lack of collective agreement on key aspects of the licensing system may in part be due to major reform of the system happening prior to the development of the Scottish alcohol strategy. As noted previously, in adopting a whole population approach the strategy recognised that availability is a key factor in driving consumption and harm, and identified the licensing system as a key contributor to reducing harm by controlling availability. It is apparent that many stakeholders involved in the licensing system have adopted this approach. However this analysis is not universally accepted amongst licensing stakeholders. A significant number do not believe it possible or desirable for the licensing system to operate in a way which optimises public health.

Licensing stakeholders on both sides of this argument recognise that this 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. All stakeholders agreed that there is an urgent need for improved clarity over the intended outcomes of the licensing system in relation to availability, and the expectations of licensing stakeholders in this regard. A summary of the main areas of discussion is provided below.

Policy-led approaches to licensing are developing, but the picture is mixed

Progress in promoting some or all of the licensing objectives effectively was reported across all four regional seminars. This progress was often linked to the production of evidence-based licensing policies and overprovision assessments, and the extent to which these enabled licensing boards to take a more strategic approach to promoting the objectives.

"Licensing objectives [are] at forefront of discussion and decision-making"

Licensing Board member

However, many felt that boards had not been ambitious enough with their policy statements. It was also suggested that in some cases licensing boards had failed to adhere to their policies during day-to-day licensing business therefore preventing any real shift to a strategic, policy-driven process. This indicates that, while good progress has been made to some extent in developing a strategic vision, there are still questions over the transfer of policy to action and the impact of policy on decision-making.

"Policy statements are not being progressive enough"

Local Licensing Forum member

"We need to stop licensing boards ignoring/transgressing from objectives and [their] own policy statements"

Lawyer

This arguably has major implications for both national policy and local practice. The Scottish Government's alcohol strategy identifies reducing availability as one of the key actions to reduce alcohol-related harm. Without consistently robust, policy-driven local licensing systems which contribute to their national aim, the overarching strategy is weakened. At a local level, deviation from policy positions in decision-making can have negative consequences for ensuring the ongoing involvement of stakeholders, particularly those that have contributed to the policy evidence

base. It may be difficult for stakeholders to justify continued investment of staff time, resources and effort where there is little or no discernible impact on the decisions being made.

Approaches to overprovision are inconsistent and recent legal challenges have found flaws

In 2012 licensing stakeholders reported lacking confidence that appropriate data could be gathered and analysed to inform licensing policy,²⁴ but at the regional seminars in 2016 there was a notable shift with participants reporting an improvement, particularly in relation to overprovision assessments. In some areas overprovision policies had been informed by evidence, applied consistently and were believed to have led to improvements in communities e.g. a reduction in crime. These policies were considered better able to stand up to scrutiny. Where overprovision policies had been evidence-informed, they were more likely to underpin subsequent decision-making.

"Overprovision statement [was] developed and stood up to several challenges"

Alcohol & Drug Partnership

However, it was clear from the discussion across the four seminars that significant inconsistencies in approaches to overprovision have developed.

In some areas overprovision policies had not yet been developed. There were also numerous comments about licensing boards failing to adhere to existing policies, or implementing them inconsistently. Many had also encountered difficulties in defining and determining overprovision, and adapting approaches to the needs of diverse communities and localities.

Recent legal challenges which had resulted in overprovision policies being found to be flawed were highlighted by some participants as creating further uncertainty about the approach

24 Alcohol Focus Scotland and Alcohol Research UK (2014). *Using Licensing to Protect Public Health From Evidence to Practice*. London: Alcohol Research UK

to overprovision.^{25, 26} Others noted that these cases provided the detail and clarification that is perceived to be lacking in the statutory guidance. Further commentary on the impact of litigation is given later in the report.

There were widespread calls for the existing guidance to be updated as a matter of urgency in relation to both overprovision, and preparing statements of licensing policy more generally.

"Tackling overprovision is both problematic and of limited effectiveness"

Licensing Board member

"Overprovision - how do you legislate for all these diverse councils with city and rural locations?"

Local Licensing Forum member

"Difficulties proving overprovision"

Lawyer

"Produce up-to-date guidance from Scottish Government on assessing overprovision, consultation and preparing statements of policy"

Lawyer

Promotion of the public health objective is inconsistent and continues to be contentious

In line with MESAS analysis, the development of licensing policy statements, and overprovision assessments, were identified by regional seminar participants as the key tools within legislation to protect and improve public health, predominantly by controlling availability.

However, participants identified implementation of the health objective as an area of continued challenge, with difficulties in interpreting and applying the objective in practice. A number of factors were cited for this including poor

understanding of public health concepts and a lack of local data to support policy formulation and decision-making. Some stakeholders rejected the very premise that restrictions on alcohol availability could contribute to a reduction in consumption and harm. A number of health stakeholders expressed frustration that evidence of these links was continually rebutted or ignored.

"A challenge is the ongoing refusal to accept evidence of availability/consumption/harm."

Alcohol and Drug Partnership

Another perceived obstacle to the promotion of the health objective was the view that public health concerns populations, whereas licensing applications are decided on a case-by-case basis. This was often linked to perceptions that an objection to a new licence application on the grounds that it would undermine the public health objective required demonstration of a 'causal link' between potential health impacts and the operation of that individual licensed premises.

"How can we argue that one more licence makes a difference?"

Alcohol and Drug Partnership

Differing interpretations of protecting children and young people point to an emerging problem for licensing policy and practice

Progress in relation to protecting children from harm was apparent in many areas, sometimes supported through the creation of specific policies or by better applying restrictions on hours, etc. In addition, a number of attendees praised local initiatives aimed at keeping children and young people safe, and the efforts of local partners to ensure that licensing laws and regulations relevant to children and young people were being upheld.

However, there were also areas of concern. In particular, it was reported that occasional licences were increasingly being granted for events at

25 Aldi Stores Ltd v Dundee Licensing Board, 2016

26 Martin McColl Ltd v Aberdeen City Licensing Board, 2015

which large numbers of children were present, or for events specifically targeted at children. Others suggested that there needed to be greater consideration of the times and conditions under which children and young people be permitted access to licensed premises.

"We should stop issuing as many occasionals, especially for school/children's events"

Licensing Standards Officer

Scottish research has identified a divergence of opinion amongst licensing stakeholders about the role of licensing in relation to health. For example, a recent study using semi-structured interviews, found that public health stakeholders viewed the health objective as synonymous with reducing population-level alcohol consumption. However, this view was not always shared by licensing actors, some of whom did not accept public health as a legitimate goal of licensing, or prioritised economic development instead.²⁷

"Stronger leadership is needed from Scottish Government - guidance and vision for availability in Scotland"

Health

"We need a national policy"

Public Health

There was a call from all stakeholders for clearer, more robust national direction for the licensing system from the Scottish Government across a range of areas of licensing policy and practice to promote consistency across Scotland. This information was used in support of recommendations made to the Scottish

Government by Alcohol Focus Scotland and the coalition of alcohol health advocacy partners in the 2017 report *Changing Scotland's Relationship with Alcohol: Recommendations for Further Action*.²⁸ The report recommends a wide range of actions be considered as part of the Scottish Government's refreshed alcohol strategy.

The report calls for nationally-led action to reduce availability with the headline recommendation that the Scottish Government should develop a strategic approach to reducing availability in Scotland. The report identifies one of the key components in support of this strategic approach as the improvement of existing licensing regulation to strengthen its role in controlling availability, and provision of a more robust framework within which local licensing decisions can be made. This draws specifically on the information gathered at the regional seminars.

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.

27 Fitzgerald, N., Nicholls, J., Winterbottom, J., & Katikireddi, S. V. (2017). Implementing a public health objective for alcohol premises licensing in Scotland: a qualitative study of strategies, values, and perceptions of evidence. *International Journal of Environmental Research and Public Health*, 14(3): 221. <http://www.mdpi.com/1660-4601/14/3/221>

28 Alcohol Focus Scotland (2017a), op cit.

Transparency, accountability and public participation

A lack of public participation in the licensing process was a concern shared by stakeholders across the four regional seminars. Barriers to participation identified related to the perceived poor accessibility of licensing processes, but the inconsistencies in policy and practice were also highlighted as preventing meaningful engagement. MESAS also pointed to the inconsistent application and lack of compliance with key provisions of the Licensing (Scotland) Act 2005 as being a barrier to effective public engagement and argued that this prevented proper transparency and accountability.²⁹

Licensing boards are required to be an independent and impartial tribunal in terms of Article 6 of the European Convention on Human Rights. Licensing boards are therefore not subject to the same performance monitoring mechanisms, or reporting requirements, as local authorities and other public bodies.³⁰

Many stakeholders at the regional seminars questioned the factors that determined boards' decision-making, and how their decision-making was monitored. Despite the fact councillors sit on boards in an independent capacity, political agendas and allegiances were perceived by some to have impacted on boards' decisions. It was also questioned how a licensing board could ever be a fair and impartial tribunal when the members of the board were also members of the local authority.

"We need greater accountability to those the legislation serves"

Local Licensing Forum member

"[A challenge has been] political input - acting as a councillor as opposed to independent board member"

Licensing Standards Officer

29 Beeston, C., Reid, G., Robinson, M., Craig, N., McCartney, G., Graham, L. & Grant, I. (on behalf of the MESAS project team) (2013). *Monitoring and Evaluating Scotland's Alcohol Strategy. Third Annual Report*. Edinburgh: NHS Health Scotland <http://www.healthscotland.com/documents/22621.aspx>

30 The Nicholson Committee (2003), op cit.

During the passage of the Air Weapons and Licensing (Scotland) Bill through Scottish Parliament, similar concerns were raised that public scrutiny was lacking. It was noted that there was no review of the performance of boards, and no annual reports produced. In response to the concerns expressed, the Scottish Government amended the legislation to include a requirement for boards to publish an annual functions report on how they have promoted the licensing objectives and served the interests of local communities. This may go some way to improving transparency and accountability but it will be essential that the reports are made widely available for public scrutiny.

There are barriers to public access

Overly formal processes, intimidating licensing hearings, and a lack of accessible information about the work of licensing boards were all identified as barriers to participation. Board meetings, in particular, were felt to be unwelcoming and intimidating. Furthermore, meetings were sometimes held in inaccessible venues or at inconvenient times for the public.

It was suggested that well-resourced community development support could be used to encourage better community engagement in licensing. There was consensus that new ways to engage with the public were required, such as better use of technology and digital media. The need to improve public notification of licensing applications and decisions was also frequently highlighted.

Regional event participants enquired about the potential for legislation such as the Community Empowerment (Scotland) Act 2015 to be better applied to the licensing system. The 2015 Act is designed to empower community bodies through the ownership of land and buildings, and by strengthening their voices in the decisions that matter to them. The Act was introduced to give community bodies new rights and public sector authorities new duties to boost community empowerment and engagement. Local authorities and community planning partners are named as having new duties under the Act, but it is not yet clear if and how this could apply to licensing boards.

Polling carried out by the Alcohol Health Alliance in 2015 found that only 34% of Scottish respondents knew where to comment on licensing applications.³¹

"The public are not present [or] talking at licensing boards, there is a lack of representation"

Not stated

"Stop making it difficult for the public to feel comfortable attending/challenging licensing board decisions"

Community member

"Notifications of applications and decisions to neighbours and community councils is woeful and needs improving"

Licensing Board member

"Public involvement should be through community development"

Public Health

"Are new community planning partnerships aware of licensing agenda as they are (potentially) a strong voice for the public?"

Not stated

"Lots of work being done to build community capacity, partly linked to Community Empowerment Act"

Community Safety Partnership

"Using community councils is not working, do as wider part of engagement by Health and Social Care Partnership, Community Planning Partnership etc"

Not stated

"Forums are not suitable for everybody. How do the voices of interested parties get heard, accepting not everybody can or wants to be a forum member?"

Integrated Alcohol Service

"Encourage people affected by alcohol and drug issues (esp. family members) to get involved and be proactive"

Alcohol and Drug Partnership

Community Planning strategies and licensing policies are disconnected

Although boards are separate legal entities with their own constitution and statutory procedures, they are expected to take into account the views of local partners, communities, and other strategies and plans which have relevance to alcohol. Some stakeholders suggested that the independence of licensing boards resulted in disconnect between their processes, outcomes and priorities, and those of local authorities and community planning partners.

The strategies of Community Planning Partnerships (CPPs) and Alcohol and Drug Partnerships (ADPs) were seen as being of key significance to licensing boards. Licensing is potentially the most powerful mechanism available at a local level to contribute to these strategies. A review of statements of licensing policy published by Alcohol Focus Scotland in 2014 found that while nearly all of the published policies stated that they had taken account of other local strategies, only one demonstrated how.³²

"Fully integrate the statutory consultees' work into the Alcohol and Drug Partnership delivery plan activity"

Alcohol and Drug Partnership

Licensing boards are not included in local partnership arrangements on a statutory basis, and are often not subject to the same duties and requirements as other local partners. By way of addressing the perceived disconnect between local strategies on alcohol and the licensing policy statement, some called for licensing boards to be integrated with community planning structures.

31 Bluegrass Research (2015), op cit.

32 Alcohol Focus Scotland (2014), op cit.

"Integrate Community Planning Partnership/Health and Social Care Partnership with licensing processes"

Alcohol and Drug Partnership

"Bring licensing into community planning"

Lawyer

Tensions were also seen to exist between licensing boards and local authority planning and economic development committees, with the former seeking to control the availability in the interests of public safety, security and health, and the latter often seeing the licensed sector as an area for future growth. In practice, planning permission must be granted prior to alcohol licence applications being made, which in some areas was reported to have placed pressure on licensing boards to grant applications.

"Planning and economic development get in first, making it difficult to refuse some licences."

Licensing Board member

"[A challenge has been] planning: where planning is approved for licensed premises it puts pressure on the board"

Licensing Board member

Local licensing forums are not functioning effectively

Local licensing forums were introduced by the Act in 2005. The statutory guidance accompanying the Act states that the role of the forum is to keep under review the operation of the licensing system in their area and to give advice and recommendations to the licensing board. It advises that an effective local licensing forum should be widely recognised as being both independent and expert and as such should enjoy the trust of all those whose interests are affected by licensing. However, the analysis of the operation of the licensing system by MESAS identified that forums were not functioning effectively.³³ The issues which were reported to be causing difficulties included:

- Lack of leadership at the local forum level;
- Lack of interest by forums in responding to board queries;
- Perceived bias by forums towards the licensed trade;
- Lack of understanding of how boards and forums could best work together;
- Difficulty for forums in engaging and involving specific groups (e.g. young people).

MESAS concluded that if the role of the forum could be clarified and strengthened they could be a key part of alcohol licensing in Scotland.

The poor functioning of forums was a key topic of discussion at the regional seminars. Participants believed that forums should play a critical role in keeping the operation of the licensing system under review by providing the mechanism for public engagement and scrutiny. They were also identified as being the best mechanism for giving communities greater input to licensing. However, there were many comments about forums lacking clarity and being unsure of their role and remit. It was reported that in some areas, competing interests represented on the forum resulted in difficulties reaching consensus on important issues. It was also reported that forums lacked any real powers and were therefore regarded as tokenistic. The most common area of concern identified was a lack of resources, support and training for forums. Many felt that this was a significant constraint on the effective functioning of a forum.

Additionally, a number of problems were identified as preventing forums from fulfilling their role in the licensing system:

- There is a lack of awareness and shared understanding of the role and remit of licensing forums amongst existing members;
- There is concern about poor communication between forums, boards and communities;
- Forums report difficulties in attracting and retaining members;
- While forums can provide a vital link to the licensed trade, some identify trade participation in forums as creating a conflict of interest;

³³ Beeston, C. et al (2013), op cit.

- Competing interests can make reaching consensus hard for forums.

“Forums do not have teeth to challenge”

Not stated

“Do forums work in their current format? A review is required”

Licensing Standards Officer

It is important to note that while the functioning of forums has been consistently identified as being problematic by MESAS and licensing stakeholders, there are some examples of good practice. Some forums are believed to provide valuable input and have influence within the licensing system; these tend to be in areas where staff resources have been committed to the forum or where there is leadership provided by one or two key members. It is possible that much could be learned from those forums operating more effectively if opportunities for networking and sharing good practice were facilitated.

Regional seminar participants made suggestions for addressing the problems identified including the introduction of mandatory training for local licensing forums and diversification of membership. Given the range of problems identified with local licensing forums it would seem sensible that a more detailed and specific examination of the functioning of local licensing forums is prioritised. This should take place before the implementation of any actions intended to improve their functioning.

Recommendations on local licensing forums

5. The Scottish Government should 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.

The use of data is improving, but significant gaps remain

During the passage of the Air Weapons and Licensing (Scotland) Bill it was identified that accurate and up-to-date alcohol licensing registers are valuable tools to support policy-setting and decision-making in licensing. At that time, the Scottish Government reported that it had work under way to improve licensing data but to date no national alcohol licensing register has been developed.³⁴

The discussions at the regional seminars show that there remains a pressing need for the Scottish Government to deliver this.

Participants highlighted gaps in the information currently being provided by boards. Some stakeholders were unable to access comprehensive information about licensed premises in their area, and called for the creation of more robust and easily accessible licensing datasets, including information on the decisions being made, the number of licences, the capacity of premises and their opening hours. Many found that even where data was available it was out of date.

Currently 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. It was frequently highlighted at the regional seminars that without alcohol sales data it was not possible to get a true measure of alcohol availability, fully inform licensing decisions, or monitor changes over time. Licensed premises should be required by law to provide alcohol sales data to licensing boards as a condition of their licence, to help inform future overprovision policies and licensing decisions.

“Volume sales data is absolutely vital to determining overprovision”

Trade/industry

³⁴ Scottish Parliament (2015a). *Official report, Meeting of the Parliament 25 June 2015*. Edinburgh: Scottish Parliament <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10038&mode=pdf>

MESAS identified that the licensing data currently available does not allow alcohol availability to be monitored.³⁵ It outlined the data requirements necessary to ensure that alcohol availability can be measured and monitored effectively:

Data:

- **Requirements:** Data on the number of outlets, type of outlet (e.g. supermarket, restaurant), opening hours and capacity (e.g. sales, shelf spaces), reported by year.
- **Current situation:** These data are not available for vast majority of licensing board areas.

Accessibility:

- **Requirements:** Collated data publicly reported nationally and locally using standard reporting mechanisms (e.g. online).
- **Current situation:** The required data are not reported nationally. At the local level some elements (e.g. opening hours) are reported locally but are uncollated. Across licensing boards reporting is inconsistent making it impossible to report data nationally.

The data provided to boards by stakeholders also generated discussion at the regional seminars. Participants reported that in some areas the data being provided to boards (e.g. to accompany objections or to inform policies) had greatly improved. The quality of information was felt to be enhanced where stakeholders worked together to collect and provide information to boards. In addition, data collection can be resource intensive, underlining the need for improved data sharing and standardisation of data to avoid duplication of effort.

"Health Boards are getting better at providing relevant statistics"

Licensing Board member

"We need standardisation of data collection across bodies (police, health etc.)"

Local licensing forum member

Despite this progress, some commented that the health data being provided to boards – particularly to accompany objections – was irrelevant. Others felt that boards could be unfairly dismissive of health data. There were a number of criticisms that boards only appeared to value data based on their own observations and experiences, at the expense of published research and studies into the health impacts of alcohol. Others argued that boards should in fact take better account of lived experience and case studies on the local impact of alcohol, as opposed to focusing on statistics. This points to conflict and confusion over the types of evidence that boards want or need, and their ability to utilise it, particularly in relation to health.

"A challenge has been the acceptance of data by some board members"

Licensing Board member

"What information do boards get and what do they need?"

Not stated

Licensing boards are required to keep a public register containing information on the licences issued by the board. However, using standard online searching mechanisms, in March 2017, AFS was only able to locate 16 premises registers, covering 19 out of 40 licensing boards. The form and content of the information provided in the registers was highly variable.

Recommendations for improving transparency, accountability and public participation

The Scottish Government should:

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). However, even those with legal expertise identified that the legislation in its current format was confusing and unhelpful. There was broad consensus across all stakeholder groups around the country that the legislation should be simplified and consolidated as a matter of priority.

“Ever changing legislation & delay in implementing/phased in stages”

Local Authority – support staff

“Consolidate the legislation”

Lawyer

Many felt that licensing legislation was open to interpretation, resulting in the law being inconsistently applied. Emerging case law had also impacted on boards' practices resulting in variations across the country. Although clerks are likely to have a good understanding of the implications of case law, there is a need for a broader understanding across the range of stakeholders of what it means in practice.

“Legislation is not easy to navigate and is often open to interpretation”

Local licensing forum member

This further underlines the urgency for the guidance on the 2005 Act to be updated. Opportunities to clarify areas of confusion by updating or revising the guidance have not yet been taken. This lack of clarity is unhelpful to communities, to licensing boards and licensees, and may increase the chance of litigation (see recommendation 4).

A large number of comments referred to the threat of legal challenges to licensing boards' decisions/policies, and the knock-on impact this had (e.g. data being ignored by boards due to fears it may not be considered legally permissible). It was felt by many that this undermined efforts to create a policy led system. Comments often centred on overprovision, with some feeling there was an over-emphasis on legal technicalities, meaning that licensing legislation was not being implemented in the spirit intended. A number of people also highlighted concerns that large businesses can deploy considerable resources challenging decisions, while local authorities lack the resources to defend their positions.

"There was a challenge to our off sales overprovisioning which argued it was "technically" wrong. The Sheriff agreed but the change in legislation (2015 Act) agrees with our approach. We had to suspend our overprovision on off sales and now have to go through consultation all over again"

Licensing Board member

"Local authorities are unable to tackle conglomerates e.g. supermarkets when appeals are heard"

City Council

A process which is continuously under threat of legal challenge does not serve the public interest. Some suggested that an 'ouster clause' be introduced to prevent ongoing legal challenges from undermining policy.

Currently, under section 237 of the Town and Country Planning (Scotland) Act 1997, a statutory ouster clause limits legal challenges to a local plan to a period of six months following its adoption. The possibility of introducing a similar clause into licensing legislation was consulted upon by the Scottish Government within the *Further Options for Alcohol Licensing Consultation Paper* in 2012.³⁶ The majority of those responding to the consultation were in support of the proposal but it was not taken forward in subsequent legislation.

36 Scottish Government (2012), op cit.

The law is struggling to match the pace of change and legislative loopholes are being exploited

Occasional licences were reported to be causing issues in many areas, with people identifying that this was an area where loopholes in the legislation were being regularly exploited. Occasional licences were held to be significantly increasing alcohol access and availability, although they were not being taken into account in overprovision assessments. There were also a number of comments that occasional licences were being granted on a seemingly unlimited basis.

"Major contribution of occasional licences to overall alcohol supply [are] not included in overprovision considerations"

Alcohol and Drug Partnership

During the passage of the Air Weapons and Licensing (Scotland) Bill the then Cabinet Secretary for Justice was clear in his view that the purpose of the occasional licence was to provide flexibility for local licensing boards, and indicated that if clear evidence of misuse was presented the Scottish Government would consider whether further guidance was required.³⁷ (See recommendation 4)

Patterns of alcohol sales and consumption have continued to change, creating new challenges for the licensing system.

The shift from on-sales to off-sales has continued. The growth in the number of off-sales premises, in particular supermarkets, has contributed to the increasing affordability of alcohol and at-home drinking. Pre-loading (where a person consumes cheap alcohol before going out to a club or bar) was identified as a challenge by stakeholders across the country, driven by a widening disparity in the price of alcohol between the on- and off trade.

37 Scottish Parliament (2015b). Official Report, *Local Government and Regeneration Committee, Wednesday 25 February 2015, Col 12*. Edinburgh: Scottish Parliament <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=9800&mode=pdf>

"People used to go to the pub and have house parties after closing time. Now they have the party first due to cheap supermarket alcohol and later opening pubs and clubs. They turn up very drunk and get worse if they manage to get served"

Licensing Standards Officer

A number of people identified an increase in online sales as a key emerging challenge, calling for action at a national level. This cannot be addressed through local licensing mechanisms, such as overprovision, as an online retailer dispatching from one board area may distribute alcohol to any part of Scotland. There is also a distinct lack of information available about the business operations of online retailers, or the extent to which they contribute to alcohol sales and availability. Concerns about internet alcohol sales have been communicated directly to the Scottish Government by a range of stakeholders. There were also a number of references to alcohol delivery services (e.g. 'Dial-a-Drink'), and 'bring your own bottle' events/premises, which were difficult to regulate and in some cases appeared to operate out with the parameters of the law.

Online and telephone retailers, with distribution centres located in Scotland, should include information about their areas of distribution as well as the volumes of alcohol sold.

"Update legislation to be more in line with technology e.g. online trade"

Licensing Standards Officer

"Bring your own events - lack of control"

Licensing Standards Officer

"Dial-A-Drink should be subject to operating plans - it's currently not"

Licensing Standards Officer

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 policy or overprovision assessment.
15. Hold local authorities to account where they fail to fulfil their duties, in particular to establish a licensing forum.
16. To ensure a policy-led system, introduce a statutory ouster clause to time limit appeals against an adopted licensing policy statement to the first six months if 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

Resources are insufficient and reducing

Across the country people reported there has been a decrease in the resources available to support licensing work. Many identified that undertaking licensing work effectively was time consuming and resource-intensive. Reductions to budgets and personnel meant that there was less time available to focus on licensing issues.

Scottish Government data shows that the number of Licensing Standards Officer posts has decreased every year since 2011 (a total decrease of 10% from 2011 – 2017).³⁸ The number of licences has increased by 2% over the same time period.³⁹

Furthermore, a lack of perceived outcomes in some areas had made it difficult for some stakeholders to justify their ongoing involvement in the system, although it is clear that boards did value their input.

"Lack of resources - diminishing resources across the professions involved in this area due to cutbacks. This is a false economy given the problems that exist"

Licensing Standards Officer

Many commented that licensing fees are currently insufficient to ensure full cost recovery for the operation of the licensing system. Licensing fees are charged by local authorities to recoup the cost of administering the licensing system, but premises applications/annual fees are currently linked to businesses rateable values and fees are capped by legislation.

38 Scottish Government, *Statistical Bulletin Crime and Justice Series: Scottish Liquor Licensing Statistics, 2011-2016* <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubLiquor>

39 Ibid.

A 2014 review of alcohol licensing fees found that the majority of licensing boards were not covering their costs with fee income – the total deficit across the whole of Scotland was estimated to be in the order of £2.6m, in the context of an estimated total spend of £9.5m.⁴⁰ This represents recovery of about 72% of costs. The analysis showed that occasional licences were seen as the most resource-intensive to process but also attracted the lowest fee.

"We should stop imposing small fees for certain types of application e.g. £10 for occasional licenses."

Lawyer

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 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.

40 Leishman, R., Lees, F., Gilder, P. & Marsh, R. (2014). *Review of Alcohol Licensing Fees*. Edinburgh: Scottish Government Social Research <http://www.gov.scot/Publications/2014/02/8420/1>



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 have been made in developing relationships and partnership working. There is clearly an improved understanding between stakeholders of each other's roles and responsibilities, and a genuine enthusiasm to learn and work better together. Across Scotland stakeholders reported making progress 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 factors are most apparent when considering the implementation of the health objective. Interpreting this objective in practice remains challenging, for both licensing boards and health stakeholders. Defining, determining and proving overprovision has also been problematic with significant inconsistencies in approaches and understanding. 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 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.



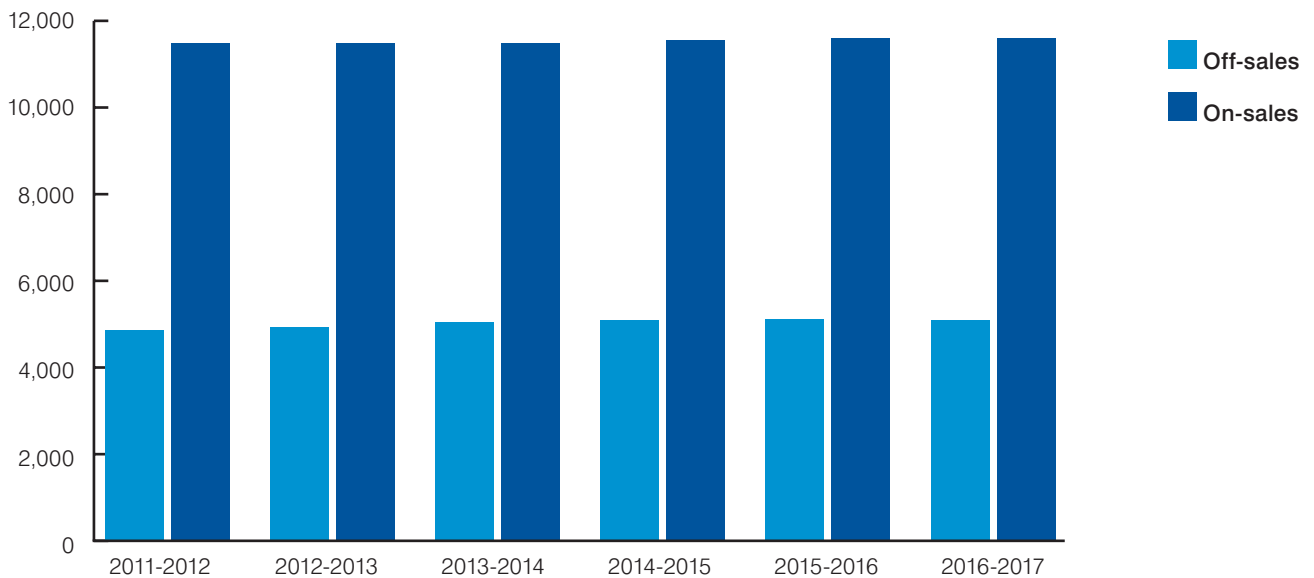
Appendices

Appendix A – Licensing Statistics for Scotland

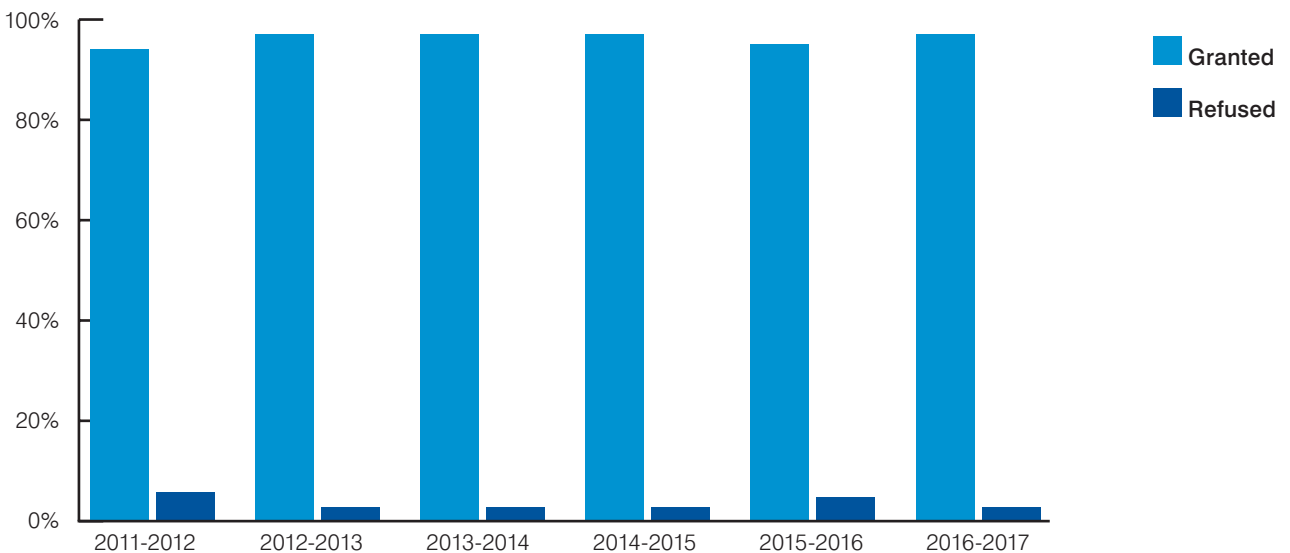
Data taken from Statistical Bulletin Crime and Justice Series: Scottish Liquor Licensing Statistics 2011-2012 onwards.

- A total of 16,678 licences in force across Scotland in 2016-2017, up from 16,338 in 2011-2012.
- Since 2011-2012, the number of on-sales licences in force has risen by 105 (1% increase) and the number of off-sales licences has risen by 235 (5% increase).
- Since 2011-2012, an average of 95% of licence applications have been granted each year.
- There has been a 10% reduction in full time Licensing Standards Officers posts between 2011-2012 and 2016-2017. In this time the number of licences has risen by 2%.

On- and off-sales licences in force across Scotland



% of licence applications granted and refused



Appendix B – Licensing in Scotland Background and Timeline

Year	Development
2001	The Nicholson Committee was appointed by the then Scottish Justice Minister to review all aspects of liquor licensing, with 'particular reference to the implications for health and public order', and to recommend changes in the public interest. The findings of the Nicholson Committee formed the basis of the Licensing (Scotland) Act 2005.
2005	Licensing Act (Scotland) 2005 The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th November 2005 and received Royal Assent on 21st December 2005. See below for a list of licensing innovations contained within this Act.
2009	Scottish Government published its alcohol strategy: Changing Scotland's Relationship with Alcohol - A Framework for Action. ⁴¹ This established a whole population approach to reducing alcohol harm and identified action on availability as one of three key mechanisms – alongside price and marketing – to achieve this. The approach to controlling alcohol availability was largely set out in reference to licensing legislation.
2013	Consultation on Further Options for Alcohol Licensing: The Scottish Government consulted on Further Options for Alcohol Licensing from 19 December 2012 to 21 March 2013. The consultation covered proposals for changes to the alcohol licensing regime; including 9 of the recommendations contained in the Rethinking Alcohol Licensing report. The proposals were intended to improve the effectiveness of the licensing regime, and contribute to the overall aims of the Scottish Government to address the problems of alcohol misuse. The consultation attracted 122 responses, with many of the proposals being taken forward through the Air Weapons and Licensing (Scotland) Bill in 2014.
2013	Evaluation of Implementation of Licensing (Scotland) Act 2005: NHS Health Scotland was tasked with evaluating Scotland's alcohol strategy and developed a programme called <i>Monitoring and Evaluating Scotland's Alcohol Strategy</i> (MESAS). As part of this work, MESAS evaluated the implementation of the Licensing (Scotland) Act 2005, and reported its findings in 2013. The aim of the evaluation was to monitor progress and identify any barriers to implementation and compliance. It found that, in general, the Act was viewed as having a positive impact. However, there were also a number of issues identified that could be improved, and the report outlined a number of recommendations for alcohol licensing.
2014	Air Weapons and Licensing (Scotland) Bill introduced: On 15 May 2014 the then Cabinet Secretary for Justice introduced the Air Weapons and Licensing (Scotland) Bill. The policy objective of the Bill was to improve aspects of alcohol and civic government licensing in order to preserve public order and safety, reduce crime, and to advance public health. The Bill proposed to amend aspects of the existing alcohol licensing regime and take forward a number of technical changes to the licensing system for alcohol sales.
2015	Air Weapons & Licensing (Scotland) Act: Parliament passed the Bill on 25 June 2015, and on 4 August the Air Weapons and Licensing (Scotland) Act 2015 received Royal Assent. However, most of the provisions relevant to alcohol are not yet in force and commencement orders are awaited.
2016	Publication of the Monitoring and Evaluating Scotland's Alcohol Strategy Final Annual Report: This was the final report of Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS); the programme established to assess the role of national policy in reducing alcohol-related harms. It included a document review of developments in the implementation of the Licensing (Scotland) Act 2005 since the original evaluation was undertaken in 2012. It found there has been limited progress in the implementation of the public health provisions of the Act, although local examples of good practice are emerging.

41 Scottish Government (2009), op cit.

Key innovations in the Licensing (Scotland) Act 2005

Public health objective: The inclusion of five licensing objectives in the 2005 Act is arguably the most important update to licensing legislation in recent times. The inclusion of a fifth licensing objective of protecting and improving public health – making public health an explicit consideration for licensing – is a particularly notable extension to the previously accepted functions of the system. The Nicholson Review had taken a health perspective in response to growing concerns about health and public order issues arising from over-indulgence in alcohol.

Licensing policy statements: The 2005 Act introduced for the first time a duty on licensing boards to issue a statement of licensing policy – setting out their general approach to licensing decisions and outlining how the board will promote the five licensing objectives. The requirement to formulate a statement of licensing policy under the 2005 Act represents a sea change in the way licensing boards operate, shifting licensing from being an application-driven process to a policy-driven one. Licensing decisions are now obliged to have a policy context and a stated policy position can be used as grounds to refuse an application for a licence.

Overprovision: A duty was placed on licensing boards to make an assessment of overprovision and to include a statement on overprovision in their licensing policy statement. “Overprovision” is where the board determines there are enough/too many licensed premises; it can relate to licensed premises generally or a particular type of premises (e.g. late-night opening premises). Overprovision is one of the grounds on which a licensing board can refuse a licence.

Local licensing forums: the 2005 Act requires every council to establish a local licensing forum for their area. The role of forums is to keep under review the operation of the licensing system in their area and give advice and recommendations to the licensing board.

Licensing Standards Officers: The 2005 Act introduced the role of the Licensing Standards Officer (LSO), who is responsible under the Act for providing guidance and information to interested parties; ensuring compliance by licence holders; and providing a mediation service for the purpose of avoiding or resolving disputes. LSOs can also apply to licensing boards for a review of any licence where there has been a failure to comply with a notice; and are afforded powers to enter and inspect premises to ensure compliance with legislation and board policy.

Mandatory training requirements: The 2005 Act set out mandatory requirements with regard to training of staff. This means that anyone who is involved in the making of alcohol sales or supplies of alcohol must have received the level of staff training required by the Act.

Mandatory conditions: The 2005 Act introduced the concept of national mandatory conditions that apply to all premises and occasional licences. They can be used to direct national policy on particular issues, such as requiring staff training or prohibiting irresponsible drinks promotions. Licensing boards may also attach local conditions to licences. Where any conditions attached to a licence are breached, it is possible to apply for a review of the licence.

Dual licensing: the 2005 Act introduced a new system of dual licensing where both place and person must be licensed: premises licences for any premises selling alcohol; and personal licences for individuals authorising or supervising the sale of alcohol. Premises licences can be broadly divided into two categories: “On-sales” licences, or “on-licences”, to sell alcohol for consumption on the premises; and “off-sales” licences, or “off-licences”, to sell alcohol only for consumption off the premises.

Appendix C – Licensing Stakeholders Roles and Responsibilities


Stakeholder	Role
Licensing boards	A licensing board is the decision-making body on licensing matters. The board is responsible for developing licensing policy and deciding on individual applications for premises and other types of licences. It is appointed by the local authority and membership is made up of between five and ten local councillors.
Clerk	The clerk of the board provides legal advice to the licensing board. They are employed by the council and are legally qualified.
Local licensing forums	The local licensing forum reviews or scrutinises the operation of the Licensing (Scotland) Act 2005 in its area and gives advice and makes recommendations to the licensing board. The licensing board must have regard to this advice and recommendations. There are between 5 and 21 members of each forum. Membership must include at least one Licensing Standards Officer for the area and a representative of the health board. Other members commonly include licence holders; police; health, education or social work; young people; and residents.
Licensing Standards Officers (LSOs)	The 2005 Act introduced the role of the LSO, who is responsible under the Act for providing guidance and information to interested parties; ensuring compliance by licence holders; and providing a mediation service for the purpose of avoiding or resolving disputes. LSOs can also apply to licensing boards for a review of any licence where there has been a failure to comply with a notice; and are afforded powers to enter and inspect premises to ensure compliance with legislation and board policy.
Health Board	<p>Under the Alcohol etc. (Scotland) Act 2010 Licensing Forum membership must include a representative of the health board.</p> <p>The local health board for the area is sent all applications for new premises licences and licence variations, and has the right to object to applications. The health board must provide the licensing board with information for the statement of licensing policy and the licensing board must consult them when the licensing board is developing its overprovision policy.</p>
Police	The police are sent all applications for new licences and licence variations, and have the right to object to applications. They enforce the law, have the power of entry to licensed premises and authorise test purchasing of alcohol. If the police have concerns about a premises or a personal licence holder, they can ask the licensing board to review the licence. The police must provide the licensing board with information for the statement of licensing policy. The licensing board must consult the police when developing its overprovision policy.
Community Councils	Community councils must be notified of new licence applications in their local area. The licensing board will often seek their views during the development of the statement of licensing policy. Representatives from community councils are often members of local licensing forums.
Alcohol and Drug Partnerships (ADPs)	An ADP includes members of the local health board, local authority, police, prison service and voluntary sector. ADPs are responsible for drawing up joint strategies for tackling alcohol and drug use in their communities.
Community Planning Partnerships (CPPs)	CPPs are hosted by the local authority and are made up of representatives from health, police, education, fire, councillors and sometimes council departments. A CPP coordinates services for a particular area.
Community Safety Partnerships (CSPs)	CSPs are local authority-led partnerships that bring together representatives from the local authority, police service and fire and rescue services. Health, education and other public sector interests may also be represented. CSPs work to reduce anti-social behaviour and fear of crime and to promote safer, more inclusive and healthier communities.
Integration Joint Boards (IJBs)	IJBs are partnerships managed by the health board and local authority, and includes voluntary sector and independent sector organisations. It plans the local delivery of integrated health and social care services.



Published: December 2017

Alcohol Focus Scotland

166 Buchanan Street, Glasgow G1 2LW

 0141 572 6700

 enquiries@alcohol-focus-scotland.org.uk

 www.alcohol-focus-scotland.org.uk

 @alcoholfocus