

DUNDEE CITY LICENSING BOARD

OVERPROVISION ASSESSMENT UNDER LICENSING (SCOTLAND) ACT 2005

PUBLIC CONSULTATION QUESTIONNAIRE

Introduction

Alcohol Focus Scotland (AFS) welcomes the opportunity to participate in the Dundee City Overprovision Assessment. The licensing system plays a key role in minimising the risks of harm to individuals and society from the sale and consumption of alcohol. AFS is therefore keen to support the development of licensing policy and practice in Scotland that works most effectively to prevent and reduce alcohol problems. As a national organisation, we do not have sufficient local knowledge of the Dundee area to enable us to comment in detail on some of the specific localities and premises concerned. However, we offer our opinion on the general approach and policy direction, which we hope the Licensing Board will find useful.

Q1. What is your view regarding the availability of alcohol in Dundee?

Too many premises selling alcohol Not enough premises selling alcohol Just about the right number of premises selling alcohol

Q2. Do you agree with the Board's proposal that the whole of its area be considered on the locality for the purpose of the overprovision assessment?

Yes No

In the past, the majority of licensing boards have tended to apply an overprovision assessment to relatively small areas, which is in keeping with a traditional approach to licensing that focused on town centre disorder and on-licence premises. However, as *Report 241-2017* identifies, the Air Weapons and Licensing (Scotland) Act 2015 clarified that the whole of a board's area can be treated as a locality.

Alcohol consumption and purchasing patterns have changed dramatically over the past few decades. 73%¹ of alcohol sold in Scotland is now bought from off-sales premises and people travel further to buy alcohol. Therefore, using only small localities for the purpose of assessing overprovision may not be the most appropriate approach for all licensed premises, or for the promotion of the licensing objectives.

Alcohol-related public nuisance and social disorder issues may often be localised to relatively small areas. However, the relationship between outlet density and health harm, as well as certain crimes, is demonstrated over larger geographical areas. Moreover, important indicators of alcohol-related harm relevant to the promotion of the licensing objectives are only available over larger areas. If licensing policy must seek to promote the licensing objectives, and if indicators of the licensing objectives can only be demonstrated over a larger geographical area, then it is arguable that a licensing board should assess overprovision over the larger area to fully promote these objectives.

Based on the evidence presented in *Report 241-201*, and the *Dundee City ADP Report*, the Boards proposal to consider the whole of its area a locality appears appropriate in relation to promoting the licensing objectives, and to the statistics and evidence available to the Board pertaining to alcohol harm in Dundee City. This is especially so given that Dundee City is the smallest local authority area in Scotland by area and second only in population density to Glasgow City. As stated in the ADP Report, it would therefore be difficult to discern the impact of alcohol sales provision at a geographical level smaller than Dundee City overall.

If you answered no, what do you think the locality or localities should be?

N/A

¹ Giles, L., & Robinson, M. (2017). *Monitoring and Evaluating Scotland's Alcohol Strategy: Monitoring Report 2017*. Edinburgh: NHS Health Scotland

Q3. Of which types of premises do you think there may be overprovision in Dundee?

*On-Sales (pubs, hotels, clubs, restaurants.)	X
*Off-Sales (Supermarkets, shops)	X
All Premises	
None	
Other	

(Please specify)

(* If you tick this box, please specify which type or types of on-or off-sales licences you consider are overprovided.)

Q4. If you think there is overprovision of licensed premises at Q3 above, what do you think are the reasons for this?

There is no simple numerical formula for pinpointing the threshold between provision and overprovision. Determining overprovision involves the application of reason and judgement in the interests of the community. Alcohol harm statistics for Dundee should therefore be considered in conjunction with density information, such as from the CRESH alcohol outlet density map (available [here](#) but due to be updated before the end of 2017 with 2016 data), to make an informed assessment of overprovision.

In Scotland, 1 in 4 people drink above the low-risk drinking guidelines.² In Tayside, more than 1 in 4 men (29%) and 1 in 6 women (15%) are drinking at hazardous/harmful levels.³ There were 901 alcohol-related hospital stays⁴ and 50 alcohol-related deaths⁵ in Dundee last year, statistically significantly 'worse' than national average. There were also 45 child protection cases in Dundee where parental alcohol or drug misuse was involved.⁶ The Scottish liquor licensing statistics 2015/16 show that there are 439 premises licences in force in Dundee⁷. In fact, Dundee has the fourth highest alcohol outlet availability in Scotland; neighbourhoods have between 2 and 199 outlets within an 800m radius, with an average of 40.⁸ The £71m annual cost of alcohol harm to Dundee (health, social care, crime and productive capacity) is also significant, equating to £492 per person.⁹ Aggregated statistics such as these point compellingly to the conclusion that there exists a state of overprovision in Dundee.

Decisions on overprovision should be informed by evidence from the police, health authorities and other agencies. The *Dundee City ADP Report* outlines robust statistical findings relating to alcohol related health harm and alcohol related crime in the Board's area. AFS would support the view of the ADP that, given the evidence of alcohol-related harm in Dundee City, the impact on health inequalities and the impact of drinking in private settings, the Licensing Board should include in its policy statement that no further off-sale licenses are granted. With 73% of alcohol now being purchased in off-licenses, it will be important that the new policy reflects and responds to this reality. AFS would also support the proposed new overprovision policy model set out in *Report 241-201* that focuses on off-sales and on-sales in pubs and bars across the city; this position appears to be well supported by the summary data cited and the evidence of alcohol harm provided by the ADP. However, AFS does not have sufficient local knowledge to provide more detailed comment about the types of premises or localities concerned.

Q5. Are there any other comments/suggestions you wish to make in relation to the issue of overprovision?

AFS notes that the previous overprovision policy was overturned, following the Aldi Stores Ltd v Dundee City Licensing Board case, and that the policy has not been in operation since the ruling. The Sherriff in this case decided that the Board had not properly consulted on overprovision areas and was selective with the information they used. This underlines the importance that overprovision assessments and decisions demonstrate a factual basis and can be deemed reasonable and proportionate to achieving the objectives of licensing (although a licensing board exercises

² Scottish Health Survey 2015, Scottish Government, 2016

³ Scottish Health Survey 2015 Health Board Results, Scottish Government, 2016

⁴ Alcohol-related hospital statistics Scotland 2015/16, NHS National Services Scotland, 2016

⁵ Alcohol-related deaths 2015, National Records of Scotland, 2016

⁶ Children's Social Work Statistics, ScotPHO Alcohol Profile, 2015

⁷ Scottish liquor licensing statistics 2015/16, Scottish Government, 2016

⁸ Alcohol outlets and health in Scotland, CRESH, 2014

⁹ Local cost of alcohol profile, Alcohol Focus Scotland, 2012

discretion and judgement in the performance of its duties). Taking a systematic approach to the preparation of an overprovision statement will help to ensure well-reasoned and robust licensing decision-making.

Although boards have flexibility in deciding how to address overprovision in their area, boards must follow the process set out in the guidance to the Licensing Act (Scotland) 2005 when assessing overprovision. The formulation of the statement required by Section 7 of the Act involves the following process:

- the selection of appropriate localities based on a broad understanding of provision across the Board's area;
- the identification of the number of licensed premises or premises of a particular description in those localities and their capacities;
- consultation with the relevant persons;
- an assessment of the information gathered from those persons;
- reaching a decision as to whether it can be demonstrated that, having regard to the number and capacity of licensed premises or licensed premises of a particular description in a locality, it is undesirable to grant further licences or further licences for premises of a particular description on the ground of overprovision, and;
- producing a statement in its published policy.

As *Report 241-201* also identifies, factors other than numbers and capacity can now be considered, including licensed hours. Indeed, temporal availability is an important factor to be taken into account when considering the overall availability of alcohol in an area.

In summary, AFS welcomes that Dundee City Licensing Board has clearly set out the data being used to inform its approach to overprovision. AFS also supports the proposed new overprovision policy model set out in *Report 241-201*, which appears reasonable and proportionate based on evidence presented. An overprovision statement formulated on the best available evidence is more likely to be effective in managing and reducing alcohol harm and is more likely to withstand legal challenge.

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