

# GOOD LICENSING PRACTICE

## Developing an effective overprovision policy

This factsheet covers the main issues for licensing stakeholders to consider when assessing overprovision of licensed premises and making overprovision decisions. It includes guidance on determining overprovision in practice, the process of preparing an overprovision statement, and the benefits of an effective overprovision policy.

### Key Points

- Licensing boards are required by law to assess the extent of overprovision of licensed premises, or licensed premises of a particular type, in their area.
- A licensing board must refuse new premises licences or extra capacity in areas it deems to be overprovided; or where it considers that any additional licensed premises or capacity would result in overprovision.
- Licensing boards have traditionally assessed overprovision of premises over relatively small areas, mainly in town centres. Today, most alcohol is bought from off-sales and people travel further to buy alcohol.
- Licensing boards should define areas for assessing overprovision that reflect current purchasing and consumption patterns; are appropriate for the objectives they are trying to promote; and for which statistics and evidence are available.
- The number of licensed premises that constitutes overprovision is a matter for a licensing board to decide, based on an assessment of the evidence.
- Decisions on overprovision can and should be informed by evidence from the police, health authorities and other agencies. However, the difference between provision and overprovision is, ultimately, a value judgement.
- Evidence can indicate the degree of harm associated with expanding the supply of alcohol, but only society can determine the level of harm that is acceptable. A licensing board is empowered, through legislation and the democratic process, to act in the interests of society.
- A link between the number of alcohol outlets and a wide range of alcohol problems has been found in over 50 separate studies published since 2000 in countries with mature alcohol markets, including Scotland and England.
- By carefully controlling the overall availability of alcohol, an effective overprovision policy can help to prevent and reduce alcohol problems; enhancing community life, improving health and well-being, and boosting local productivity and economic performance.

## What does overprovision refer to?

Scottish licensing law requires licensing boards to assess the extent to which they consider there is overprovision of licensed premises, or licensed premises of a particular type, in their area. A statement on overprovision must be included in the statement of licensing policy. In considering whether there is overprovision, licensing boards must have regard to the number, type and capacity of licensed premises in a locality.

A licensing board must refuse applications for new premises licences or extensions in capacity in areas where it judges that the granting of an additional licence or capacity would result in overprovision of licensed premises.

Overprovision policy only applies to prospective premises licences. It is not possible under current legislation to retrospectively revoke premises licences that have been granted on the grounds of overprovision. However, the law enables licensing boards to prevent further expansion in the supply of alcohol in areas that are considered well-provided for and at risk of becoming overprovided.

## Why is assessing overprovision of licensed premises important?

In the absence of a licensing regime, the number and type of outlet selling alcohol would be decided by market forces of supply and demand. In a market economy, the opening of new premises could be taken as an indication of consumer demand, or if there was no demand a business would fail. However, there are good reasons why society does not rely on the market alone to control the availability of alcohol.

Firstly, alcohol is not an ordinary commodity. It is a drug of dependence. Its addictive properties can induce an increase in demand to levels that are harmful to individual consumers and the population.

Secondly, overconsumption of alcohol in the short and long-term imposes substantial health, social and financial costs; not only on the drinker, but on families, friends and communities, including many people who do not drink.

Thirdly, evidence repeatedly shows that controlling the overall availability of alcohol can help to prevent and reduce alcohol problems.

The purpose of the licensing system in Scotland is to regulate the retail provision of alcohol in such a way as to mitigate the risks of harm to individuals and society from its use. The market still operates in relation to whether a business case for a new alcohol outlet is established. The job of a licensing board is to decide whether any proposed further expansion in the supply of alcohol, through additional licensed premises, is compatible and consistent with the licensing objectives and the wider public interest.

## What difference does one more make?

### What the evidence tells us about the relationship between the number of licensed premises and alcohol problems

In the development of licensing law and practice over two centuries, public authorities have long observed a link between the number of licensed premises in an area, sometimes referred to as outlet density, and alcohol problems. The power to restrict the total number of premises selling alcohol has been a component of Scottish licensing legislation for the past 30 years.

The scientific study of the relationship between outlet density and alcohol problems, however, has a much more recent history. Advanced research techniques and improved data availability now allow for more detailed examination of the aggregate effect of licensed premises on drinking patterns and levels and types of alcohol-related harm.

Since 2000, over 50 separate studies in countries with mature alcohol markets, including Scotland and England, have demonstrated a significant association between outlet density and a range of alcohol problems, including: violence, hospital admissions, risky and underage drinking, alcohol-related traffic accidents, sexually-transmitted disease, and child abuse or neglect (See Alcohol Focus Scotland Factsheet 1: Using evidence to support policy and decision-making, Appendix 2).

Research carried out in Glasgow (GoWell, 2012, [www.gowellonline.com](http://www.gowellonline.com)) found that the two neighbourhood characteristics most strongly associated with higher crime rates were levels of poverty or income deprivation and the number of alcohol outlets in an area. The number of alcohol outlets was found to have an effect on crime rates independent of income deprivation. This means that if poverty was eliminated, the number of alcohol outlets would still exert a negative influence on levels of crime. The research estimated that a doubling of the number of alcohol outlets in an area (from three to six) would be associated with almost a doubling of the local crime rates, when all other factors were controlled for.

The difference that each additional licensed premises can potentially make is to exacerbate existing problems and undermine the effectiveness of interventions to tackle problems in which alcohol is a contributory factor.

Conversely, accumulated evidence strongly indicates that careful control of the overall availability of alcohol can make a key contribution to a range of strategies aimed at reducing crime, poverty, health inequalities, and enhancing quality of life.

## **How outlet density influences rates of alcohol-related harm**

Increasing outlet density makes alcohol more easy and convenient to access. "The more available an addictive product is, the more some people will take the opportunity to access it." (GoWell, 2012).

Licensing more outlets to sell alcohol increases competitive pressures on existing outlets and this can result in more promotional activity and discounting, lowering alcohol prices and making products more affordable. The growth in off-sales premises, particularly supermarkets, has contributed to the rise in affordability of alcohol, with supermarkets sometimes selling alcohol at a loss to increase trade.

As the price between on- and off-trade has widened, there has been a corresponding shift from on-sales to off-sales. Two thirds of the volume of pure alcohol sold in Scotland is now bought through off-sales, predominantly large supermarkets. Increased off-sales have driven the rise in alcohol consumption in Scotland since 1994. (See Health Scotland MESAS annual reports: <http://www.healthscotland.com/scotlandshhealth/evaluation/planning/MESAS.aspx>)

Competitive pressures from too many licensed premises, particularly in times of economic hardship when reduced disposable income depresses demand, can result in poor maintenance of premises and inadequately trained staff. Evidence suggests that violence is more likely to occur in bars that are untidy or poorly kept.

Competitive pressures in off-sales may lead to more underage selling. Other evidence indicates that clustering of premises in entertainment districts is particularly problematic and is associated with higher rates of risky drinking leading to more incidents of alcohol-related social disorder, violence and injury and spikes in A&E attendances on set days and times of the week.

## **Applying research findings in a local context**

Research on the impact of outlet density on alcohol problems in one area can be used to inform policies in other areas. Just as the results from randomised control trials are generalised to larger populations, the findings of social research can be applied in different areas that share similar characteristics. Research carried out in Glasgow demonstrating a relationship between number of alcohol outlets and crime can be used to guide policy development in Edinburgh, South Ayrshire, or any other local authority area in Scotland. There are differences in the degree of alcohol-related harm in different areas, but the relationship between alcohol consumption and harm still holds across the country. It is reasonable to infer that the relationship between affordability, availability and consumption of alcohol also holds, unless there is evidence to the contrary.

## How is the difference between provision and overprovision judged?

The level of provision that constitutes overprovision is for a licensing board to decide. Licensing law does not stipulate how overprovision is to be determined, or the number of licensed premises that amounts to overprovision. However, court decisions can offer guidance on applying the law in practice. Some points from relevant case law are considered below.

### **Difference between provision and overprovision is a value judgement**

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.

In 2012, a licensing board refused a new premises licence on the grounds of overprovision. Reasons provided for the decision included the fact that there were already seven other licensed premises operating in the locality, which was an area of high unemployment and social deprivation. Noting that the cumulative impact of licensed premises can lead to public nuisance, disorder and public health issues due to the increased availability of alcohol, the licensing board judged that the existing provision constituted sufficient off-sales capacity in a residential area outwith the city centre. The decision was appealed (*Tesco Stores Limited v City of Glasgow Licensing Board, 2012*), with the failed applicant claiming that the licensing board had acted unreasonably because it had not applied its policy consistently and it had not provided adequate explanation of its decision. The appeal was refused. The sheriff held that the licensing board's position was logical and reasoned and that it had provided sufficient detail of the facts on which its decision was based. The sheriff commented: "The pursuer demands a standard appropriate to a court not a licensing board. Unlike a court judgement, it is sufficient for a board to make a value judgement."

In the arguments advanced against the licensing board decision, legal counsel for the appellant stated that "it was not explained why eight premises, as opposed to seven premises, was the tipping point for unacceptability." Understanding the limitations of this line of argument is key to understanding how overprovision decisions can be applied.

Alcohol is a risky substance, with intoxicating, toxic and addictive effects. Alcohol consumption can result in overdose, chronic health harms, as well as being implicated in a wide range of social problems. Harm can occur at relatively low levels of use; drink driving, for example. Despite these risks, alcohol is a legal product. Society seeks to manage and minimise the risks from alcohol by controlling the retail supply through the licensing regime. However, if the evidence demonstrates a relationship between outlet density and alcohol problems, with increased levels of harm associated with greater availability, then as long as alcohol is supplied, risk cannot be eliminated. The threshold between provision and overprovision is therefore a matter of discretion.

Decisions on overprovision can and should be informed by evidence from the police, health authorities and other agencies. Ultimately, however, the question of whether seven or eight premises constitute overprovision is a value judgement. Evidence can indicate the degree of harm associated with increasing the supply of alcohol, but only society can decide on the level of harm that is acceptable. A licensing board is empowered, through legislation and the democratic process, to act in the interests of society.

### **Overprovision and inconsistency with the licensing objectives are separate grounds for determining a premises licence**

Overprovision can be assessed and measured in relation to the licensing objectives, but overprovision and inconsistency with the licensing objectives are separate reasons for refusing a new premises licence.

A statement on overprovision is included in the statement of licensing policy. As the policy statement must seek to promote the licensing objectives, it follows that the overprovision sections of the policy statement must also serve to promote the licensing objectives.

However, under section 23 of the Licensing (Scotland) Act, which deals with premises licence applications, inconsistency with the licensing objectives and overprovision are two separate grounds for refusal. The legislation states that if any of the grounds for refusal applies then the application must be refused.

In 2010, a sheriff court ruled that a licensing board had erred by refusing a new premises licence on the grounds of overprovision, because it had not also demonstrated that the application was inconsistent with one or more of the licensing objectives (*Tesco Stores Ltd v Aberdeen City Licensing Board, 2010*). Essentially, it was held that overprovision can only be assessed and judged in terms of the licensing objectives. However, two subsequent court rulings have found this interpretation of the law to be incorrect (*Buzzworks Leisure Ltd v South Ayrshire Licensing Board, 2012*, and *Tesco Stores Limited v City of Glasgow Licensing Board, 2012*).

Whilst it is acknowledged there is likely to be a degree of overlap between the different grounds for refusal, there is nothing in the legislation to indicate that any of the grounds must be applied together.

In the case of *Caledonian Nightclubs Ltd v City of Glasgow 1996*, the House of Lords commented that a licensing board has wide discretion in its determination of overprovision and the "relevance of the number of licensed premises is not necessarily confined to economic considerations such as whether demand exists for further premises, but could well extend to such matters as the amenity of an area of additional licensed premises." Licensing boards can have regard to overprovision in different ways and for different purposes.

## What is the process for preparing an overprovision statement?

Although a licensing board exercises discretion and judgement in the performance of its duties, overprovision assessments and decisions must nevertheless demonstrate a factual basis and be deemed reasonable and proportionate to achieving the objectives of licensing. Taking a systematic approach to the preparation of an overprovision statement will help to ensure well-reasoned and robust licensing decision-making.

### 1. Gather and consider the evidence

Evidence from a wide range of sources, including health and crime statistics, personal testimonies from members of the community and a licensing board's own experience and knowledge, can help to make informed judgements about the extent of provision and overprovision of licensed premises in an area.

An overprovision statement formulated on the best available evidence is more likely to be effective in managing and reducing alcohol problems and is more likely to withstand legal challenge.

The standard of evidence that applies in overprovision decisions is that of probability and likelihood. Licensing law dictates that a licensing board must refuse applications for new premises licences or extensions in capacity in areas where it judges that the granting of an additional licence or capacity *would result* in overprovision of licensed premises. A decision to refuse a premises licence is therefore anticipatory.

The licensing system is primarily a mechanism to prevent harm and a licensing board will often need to act in advance of problems developing. In seeking to effect a positive change or outcome, a licensing board has to proceed on the basis of what is likely, probable or reasonable based on the evidence.

This is the appropriate standard of evidence for licensing decisions and is the test that has been applied by the courts to date.

## 2. Decide on the localities to be used to assess overprovision

By law, the localities or geographical areas that a licensing board uses to assess overprovision are a matter for the board to decide. In the past, 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-licensed premises.

However, alcohol consumption and purchasing patterns have changed dramatically over the past few decades. Two thirds of pure alcohol sold in Scotland is now bought from off-sales premises and people travel further to buy alcohol.

Using only small localities for the purpose of assessing overprovision may not be the most appropriate approach for all licensed premises, or for all of the licensing objectives.

Public nuisance and social disorder issues related to alcohol 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.

Different-sized localities can be used to assess overprovision in relation to different types of licensed premises and different alcohol problems. The area for assessing overprovision in terms of promoting and protecting public health, for example, is likely to be bigger than the area for addressing issues of public nuisance and social disorder, which could conceivably be confined to several streets within a town centre.

Licensing boards should define areas for assessing overprovision that are appropriate for the objectives they are trying to promote and for which statistics and evidence are available.

### 3. Consider overprovision in relation to different types of premises

In determining a premises licence application, and whether overprovision applies, the law directs licensing boards to have regard to licensed premises, or licensed premises of the same or similar description in a locality. Licensing boards can therefore, for the purposes of assessing overprovision, make comparisons between licensed premises whose operating business is not identical. Comparisons can be widely or more narrowly drawn.

Off-licences, for example, whether they sell groceries or not, share a major defining characteristic, which is that they sell alcohol for consumption off the premises. This characteristic has a bearing on purchasing and drinking patterns and can be taken into account when assessing overprovision. Licensing law affords licensing boards the discretion to make comparisons with a variety of differing businesses if it is reasonable to do so.

### 4. Consult on the draft overprovision statement

A licensing board must consult with the police, health board, holders of premises licences in the locality and residents in the locality on its draft overprovision statement. Most licensing boards consult more widely.

## How can conflicts between licensing and economic objectives be managed?

Action to restrict the supply of alcohol to prevent alcohol problems is sometimes portrayed as an obstacle to economic development aimed at bringing new businesses and jobs to local areas. Although the licensing regime does not have responsibility for promoting business growth or tourism; in practice, licensing boards will often have to manage competing priorities in their assessment and decision-making in relation to overprovision.

In considering the economic impact of refusing a new premises licence, it is important to test any assumptions about the economic value of an expansion in the licensed trade. It is often not a simple equation between a new premises licence and more local jobs, and nor is there evidence that a vibrant tourism industry depends on an ever-expanding alcohol supply. Moreover, the financial costs to a local economy from rates of alcohol-related harm can be considerable and should not be overlooked. It is estimated that alcohol-related problems cost Scotland £3.5 billion each year. This includes direct costs for dealing with alcohol-related crime and health damage, but also indirect costs such as employee absenteeism and reduced productivity. Estimates for local authority areas are also available (<http://www.alcohol-focus-scotland.org.uk/local-cost-profiles>).

Effective alcohol policies, including controls on the availability of alcohol, can have positive financial benefits. Reducing harmful alcohol consumption will lower the financial burden of alcohol-related problems, with the potential for some of the cost-savings to be redirected towards more sustainable economic development with lower external costs.

In seeking to manage competing interests, licensing authorities should endeavor to check consistency of licensing policy with other local authority policies, including planning and economic development. Improving outcomes for local people requires policy coherence across local authority departments, with programmes of work complementing rather than contradicting each other.

## How often should overprovision of licensed premises be assessed?

The statement on overprovision is part of a local licensing board's statement of licensing policy, which is renewed every three years. A proactive assessment of the extent of overprovision within a licensing board area will therefore be conducted every three years.

However, as overprovision decisions can be made on a case-by-case basis, a licensing board can keep the situation under review and respond to changing circumstances. There is no fixed number of premises that constitutes overprovision so if the number of licensed premises falls within a specific time period, it does not follow that licensing board must grant an equivalent number of new licensed premises. A licensing board can use its discretion in determining any application for a new premises licence.

## What are the benefits of an effective overprovision policy?

### **Enhance community life**

Greater availability of alcohol is linked to higher levels of crime, public nuisance and social disorder, all of which negatively impact the quality of life in local neighbourhoods. Controlling the number of licensed premises can help to improve the environment in which people can live.

### **Improve health and well-being and tackle health inequalities**

Health and health equity are important measures of the success of social policies. Across Scotland, however, people living in the most deprived areas are six times more likely to die an alcohol-related death than those living in the wealthiest areas. Measures to restrict the availability of alcohol are amongst the most effective and cost-effective interventions for minimising alcohol-related harm. As part of an overall strategy, they can work to reduce health inequity and improve life chances.

### **Reduce drinking among children and young people**

Tackling overprovision of alcohol outlets, as well as longer licensed hours, can help to reduce alcohol problems amongst children and adolescents. The number of licensed premises and proximity of alcohol outlets, particularly off-sales, is linked to risky drinking practices, particularly amongst young adolescents who rely on off-sales as their main or only source of alcohol.

### **Reduce costs and improve local productivity and economic performance**

The costs of alcohol-related harm drain public resources and impede the productive capacity of local economies. Reducing alcohol-related harm through proven, effective alcohol policies can deliver substantial cost savings.



Alcohol Focus Scotland is Scotland's national alcohol charity working to reduce the harm caused by alcohol.

[www.alcohol-focus-scotland.org.uk](http://www.alcohol-focus-scotland.org.uk)

The licensing resource toolkit is a range of resources developed by Alcohol Focus Scotland to facilitate and support good licensing practice. The toolkit aims to provide guidance on key areas of the new approach to licensing and promotion of the licensing objectives. This includes:

- Changing Times: Why we need to change licensing practice – A guide for stakeholders
- The licensing process – Who's involved
- Factsheet 1: Using evidence to support policy and decision-making
- Factsheet 2: Statements of licensing policy – Using policy to guide licensing decisions
- Factsheet 3: Developing an effective overprovision policy

[www.alcohol-focus-scotland.org.uk/licensing-toolkit](http://www.alcohol-focus-scotland.org.uk/licensing-toolkit)