

Developing an effective overprovision policy

Key Points

- Overprovision is where there are problems linked to the number and type of licensed premises.
- 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.
- Though each application still must be determined on its own merits, overprovision policies can create a rebuttable presumption against the granting of a relevant application in an area deemed overprovided by the board.
- Decisions on overprovision should be informed by evidence from the police, health authorities and other agencies.
- Boards have the flexibility to decide the approach they take to addressing overprovision in their area and can focus on only those factors that cause them concern in the light of the evidence.
- An association between the number of alcohol outlets and a wide range of alcohol-related harm has been found in over 50 separate studies published since 2000.
- 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 is overprovision?

Overprovision is where there are problems linked to the number and type of premises in an area. 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, the board must take into account:

- the number of premises in the locality (Members' clubs are not included in the assessment of overprovision)
- the capacity of licensed premises in the locality

The board may also have regard to other matters it thinks fit, including in particular:

- the licensed hours of licensed premises

Overprovision of one or more of these factors can be considered for one or more localities in a board's area as well as for the entire board area. Boards have the flexibility to decide the approach they take to addressing overprovision in their area and can focus on only those factors that cause them concern in the light of the evidence. 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 extended capacity could result in overprovision of licensed premises.

A board's 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 outlets selling alcohol would be decided by the 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 that causes a wide range of negative impacts.
- Secondly, overconsumption of alcohol in the short-and long-term imposes substantial health, social and financial costs - not only for the drinker, but for 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 harm.

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, capacity or hours 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 harm

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 harm. The power to restrict the total number of premises selling alcohol has been a component of Scottish licensing legislation for over 30 years.

The scientific study of the relationship between outlet density and alcohol harm, 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.

At the national level, 2014 research by the Centre for Research on Environment, Society and Health (CRESH) found that alcohol-related deaths in Scottish neighbourhoods with the most alcohol outlets were more than double those in neighbourhoods with the fewest. Similarly, neighbourhoods with the most alcohol outlets had significantly higher rates of alcohol-related hospitalisation.

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 to enhancing quality of life.

Resource 2 in Section 5 sets out evidence on the impact of overall alcohol availability on alcohol problems.

Applying research findings in a local context

Research on the impact of outlet density on alcohol harm 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 explaining why the research would not apply in a particular area.

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 outlines the factors that are to be considered, rather than stipulating how overprovision is to be determined, or the number of licensed premises that amounts to overprovision.

The 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.

Alcohol is a risky substance, with intoxicating, toxic and addictive effects, including chronic health harms and a wide range of social problems. Harm can occur at relatively low levels of use, for example, drink driving. Despite these risks, alcohol is a legal product. Society seeks to manage and minimise the risks from alcohol by controlling its supply through the licensing regime. However, because 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 at the local level 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 a certain number of premises constitute overprovision is a value judgement for licensing boards to make. 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 the local community.

Overprovision and inconsistency with the licensing objectives are separate grounds for refusing 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 or applications for major variations.

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 2005, 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 apply 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 Ltd v City of Glasgow Licensing Board*, 2012).

Therefore, 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. This means that boards can determine that there is overprovision without relating this to the licensing objectives.

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.

Before beginning...gather and consider the evidence

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.

Section 1 of this toolkit sets out how boards should use evidence to support policy and decision-making.

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 extended capacity would result in overprovision of licensed premises. A decision to refuse such applications 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.

Though 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 following table sets out this process.

1. Select appropriate localities based on a broad understanding of provision across the board's area

By law, the localities or geographical areas that a licensing board uses to assess overprovision are a matter for the board to decide (see *Aldi Stores Ltd v Dundee City Licensing Board*, 2016).

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, 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% of pure 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 all 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.

Different-sized localities can be used to assess overprovision in relation to different types of licensed premises and different alcohol harm. 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.

2. Identify the number of licensed premises or premises of a particular description in those localities and their capacities

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 business model 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 business models if it is reasonable to do so.

3. Consult with the relevant persons

By law, boards must consult with the local licensing forum and the relevant health board. In addition, if the forum doesn't have representation from all the following groups, then the board must consult with someone who can represent their interests: holders of premises licences and personal licences; the chief constable; young people; and persons resident within the forum's area.

Note that it is the board's duty to identify localities that might be overprovided and then consult on them, rather than ask consultees to identify areas of overprovision (see Aldi Stores Ltd v Dundee Licensing Board, 2016).

4. Assess the information gathered from those persons, taking into account only relevant considerations and material which has a proper evidential base.

Section 2 sets out the role of evidence in supporting policy and decision-making.

5. Come to a decision as to whether it can be demonstrated that, having regard to the number, capacity and licensed hours 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 grounds of overprovision.

6. Produce a statement in its published policy which meets the requirements set out in paragraph 35 of the [guidance](#)

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 four years, within 18 months following local government elections. A proactive assessment of the extent of overprovision within a licensing board area will therefore normally be conducted every four years.

What are the benefits of an effective overprovision policy?

If the board determines that evidence points to overprovision of licensed premises, or premises of a certain type, in an area, then a robust overprovision statement is important to guide the board's decision-making on individual applications. The potential benefits of an effective overprovision policy are set out below.

Enhanced 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 live.

Improved health and wellbeing and reduced 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.

Reduced drinking among children and young people

Tackling overprovision of alcohol outlets can help to reduce alcohol harm amongst children and adolescents. The number of licensed premises and proximity of alcohol outlets to where people live, particularly off-sales, is linked to risky drinking practices, especially amongst young adolescents.

Reduced costs and improved local productivity and economic performance

The cost of alcohol-related harm is estimated to be £3.6 billion per year. This includes an estimated £230 million of social care costs due to alcohol misuse; £727 million for alcohol-specific offences and crimes; a loss of £866 million to the Scottish economy's productive capacity due to presenteeism, absenteeism, unemployment and premature alcohol-related mortality and a cost of £267 million a year to the NHS in Scotland. Reducing alcohol-related harm through proven, effective alcohol policies can deliver substantial cost savings.