

This briefing provides information in advance of the Scottish Parliament Local Government & Communities Committee Evidence Session on Alcohol Licensing on Wednesday 23 May 2018. You can read the AFS report *Taking Stock: Views and experiences of alcohol licensing in Scotland in 2016/17* [here](#).

SUMMARY

Alcohol Focus Scotland has a keen interest in alcohol licensing as the main mechanism for controlling the availability and sale of alcohol. We undertake research, provide information, resources, support, training and qualifications to many stakeholders in alcohol licensing. Our main stakeholders in this work include Scottish Government, members of the licensed trade, Licensing Board Members, Licensing Standards Officers, Health Boards, Alcohol & Drug Partnerships, Local Licensing Forums and members of the public. This support is intended to promote the five licensing objectives, increase transparency and accountability within the licensing system, ensure the licensing system is evidence-led and promote and encourage public participation.

- Along with controls on the price and marketing of alcohol, controls on the availability of alcohol are amongst the most effective and cost-effective policies for reducing the burden of alcohol harm.
- The alcohol licensing system is the main tool that we have in Scotland to control alcohol availability.
- The MESAS evaluation of the implementation of the Licensing (Scotland) Act 2005 concluded that there was a lack of compliance with provisions of the Act aimed at generating accountability and transparency in the licensing system.
- AFS held a series of regional licensing events during late 2016 to consider the findings of the MESAS evaluation of the licensing system and provide an opportunity for licensing stakeholders to comment and suggest recommendations in response to the findings.
- Local Licensing Forums have the potential to play an important role in public participation, scrutiny and accountability but have faced numerous challenges including a lack of support and resources which has limited their role and potential contribution.
- Defining and determining overprovision of licensed premises continues to be an area of challenge within the licensing system.
- Clearer national direction and guidance from Scottish Government is essential for improvements to the licensing system and to ensure it is contributing to efforts to reduce alcohol harm in Scotland.

The Role of Alcohol Licensing in Reducing Alcohol Harm

Along with controls on the price and marketing of alcohol, controls on the availability of alcohol are recognized by policy experts around the world, including the World Health Organisation (WHO), as being the most effective and cost-effective policies for reducing the burden of alcohol harm. Over 50 studies published since 2000 find an association between alcohol availability and alcohol-related problemsⁱ. The greater the availability of alcohol, the more people drink and correspondingly, harms increase.

The alcohol licensing system is the main tool that we have in Scotland to control availability. It works to reduce the possible harms caused by alcohol by controlling the overall availability of alcohol through deciding the number, type and operating hours of licensed premises, and by regulating the way in which individual licensed premises do business.

At the heart of the alcohol licensing system in Scotland are the five licensing objectives:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children and young people from harm

Licensing boards must seek to promote the licensing objectives in a policy-driven approach to alcohol licensing. The promotion of the licensing objectives signifies the purpose of the licensing system to reduce harm. Licensing boards are required to publish a statement of licensing policy (SLP) within 18 months of local government electionsⁱⁱ. The SLP should set out their approach to promoting the objectives and operating the licensing system in their jurisdiction. SLPs must also include a statement on overprovision of licensed premises within the board areaⁱⁱⁱ.

Alcohol strategy and the contribution of licensing

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. 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-commissioned NHS Health Scotland project, Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) evaluated the implementation of the Licensing (Scotland) Act 2005 and undertook a subsequent documentary review of developments in licensing since 2012. MESAS found a number of areas of challenge including: a lack of transparency and accountability; limited involvement of the public leading to a lack of scrutiny; and a limited role for Local Licensing Forums. MESAS concluded that there remains a lack of compliance with provisions in the 2005 Act aimed at generating accountability and transparency in the licensing system^{iv}.

Transparency, accountability and public participation

Given the public interest purpose that underpins alcohol licensing, it is essential that communities are empowered to participate in the licensing process, and feel that their contributions have been given due regard. It is therefore of particular concern that the interlinked issues of the lack of public participation, and lack of transparency and accountability in the system are key findings of both the MESAS evaluations^v, and of AFS's work with communities and other licensing stakeholders^{vi}. Some of the main problems identified have been:

- Inconsistencies in policy and practice by licensing boards, with a lack of transparency about the factors determining boards' decision making, and challenges in monitoring those decisions. Our work with communities has shown that many feel that their views are not taken into account by licensing boards, leaving them feeling disempowered and with a lack of faith in the accountability of the system.
- An inability to access comprehensive data about licensed premises in local areas, including information on the decisions being made, the number of licences, the capacity of premises and their opening hours.
- Failures to comply with key provisions of the Licensing (Scotland) Act 2005, such as adhering to required timescales for productions of statements of licensing policy and overprovision statements.^{vii} Such failures create uncertainty for all interested parties, undermines confidence about the consistency of decision-making, and potentially leaves boards more open to legal challenge.
- The perceived poor accessibility of licensing processes acting as a barrier to meaningful engagement, including overly formal processes, intimidating licensing hearings, and a lack of accessible information about the work of licensing boards.

Transparency and accountability are key to building public trust in the licensing process and encouraging public engagement; this in turn should improve the responsiveness of the licensing system to local needs. It is to be welcomed, therefore, that some steps are being taken to address the issues identified:

- We have supported the new requirement for licensing boards to produce an annual functions report, including data reporting. This should enable greater scrutiny of the licensing process, making it easier to monitor how licensing boards are undertaking their functions^{viii}.
- AFS has produced a toolkit to support communities to engage in the licensing process. This has been well received by communities and licensing stakeholders, including licensing boards, forums and LSOs.^{ix}
- We are seeing examples of improved consultation processes as licensing boards begin to prepare their new statements of licensing policy and overprovision policies, due in November 2018.
- The Scottish Government is currently consulting on new licensing procedure regulations, including issues relating to community engagement, such as notification distances and timescales.

Nevertheless, further action is required to ensure the licensing system facilitates public engagement and proper scrutiny:

- We are disappointed that the opportunity was not taken to consult widely, particularly with communities, on the form and content of the annual functions report. While we recognise the need for a reporting mechanism which is not unduly onerous on licensing boards, it is essential that this new requirement meets the objective of increasing transparency and accountability by improving the information available to the public. We believe the Scottish Government should seek feedback on the reports published this year, with a view to providing further guidance/regulations on the form and/or content if required.
- To improve the accessibility of licensing data, we recommend that the Scottish Government create a publicly accessible, national database of personal licence holders and premises licences, including a breakdown of the types and capacity of licensed premises.
- 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.

- The Scottish Government should hold licensing boards and local authorities to account where they fail to fulfil their duties, such as failing to produce reports within required timescales, or failing to establish a licensing forum.

The role of Local Licensing Forums: A missed opportunity

Local licensing forums were introduced by the Licensing (Scotland) Act 2005 with the purpose of keeping the operation of the licensing system in their area under review and giving advice and recommendations to the Licensing Board. Forums have the potential to play an important role in providing for public engagement in, and scrutiny of the licensing system. While the 2005 Act does not require forums to have community membership, they must seek to ensure so far as possible that their membership is representative of the interests of persons resident in the forum's area.

However, the MESAS evaluations identified that forums are not functioning effectively^x and this was a key topic of discussion at the regional seminars held by AFS in 2016. A number of problems preventing forums from fulfilling their role in the licensing system were identified by stakeholders:

- A lack of resources, support and training for forums, causing a significant constraint on their effective functioning.
- A lack of awareness and shared understanding of the role and remit of licensing forums amongst existing members.
- Concern about poor communication between forums, boards and communities.
- Concern that forums' lack of any real powers risked them being tokenistic.
- Difficulties in attracting and retaining members.
- Competing interests can make reaching consensus hard for forums.^{xi}

Where forums are able to provide valuable input and have influence within the licensing system, it would appear that this tends 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 with good knowledge of licensing law and practice.

Regional seminar participants made suggestions for addressing the problems identified, including the introduction of mandatory training for local licensing forums and diversification of membership. However, given the range of problems identified, AFS has recommended that the Scottish Government commission a thorough review of the function of Local Licensing Forums, prior to implementing any actions intended to improve their functioning. This should provide recommendations on how to improve their role in ensuring effective scrutiny and accountability within the licensing system.

Forums, however, should not be viewed as a panacea for ensuring community engagement in licensing. While they have the potential to provide a structured format for regular involvement and scrutiny, communities must be supported in other means of participation, including providing input on licence applications and commenting on licensing policy and overprovision statements.

How many is too many? A question of overprovision

The overprovision assessment is intended to give licensing boards power to act in the public interest to restrict the number of licensed premises or premises of a particular type in areas where there is concern about alcohol-related harm, or the potential for the licensing objectives to be undermined. An overprovision statement can create a rebuttable presumption against the granting of further licences to premises or premises of a particular type in any given locality within the licensing board's area. This has the potential to 'cap' the number of licensed premises.

Recent research conducted by the universities of Edinburgh and Glasgow for Alcohol Focus Scotland has added to the evidence base on relationship between alcohol availability and harm. This research found that areas with the most places selling alcohol had four times the crime rate, double the alcohol-

related death rate and almost double the alcohol-related hospitalisation rate of those areas with the fewest outlets.^{xii}

Sixteen licensing boards have currently identified some or all of their area as having overprovision of alcohol outlets.

Licensing boards have a duty to consult with members of the community when assessing overprovision. The overprovision policy therefore is a key mechanism through which communities can attempt to influence licensing by providing views on the impact of alcohol in their community. However, we know that many licensing boards report difficulties both in defining and determining overprovision^{xiii}.^{xiv} While our most recent work shows confidence is growing, there is continued concern about licensing boards failing to adhere to existing policies, or implementing them inconsistently. There was consensus at the regional licensing events in 2016 that out of date statutory guidance was contributing to the inconsistency in approach and some of the other challenges outlined above.

Work to update the statutory guidance has begun and has focused initially on updating the sections on SLPs and overprovision assessments. Draft interim guidance was issued to Licensing Boards in February 2018 to assist them in the policy development process during 2018. This followed time-limited consideration and review by a group of advisors including commercial licensing lawyers, licensing clerks, LSOs, AFS and health board representatives. We are disappointed that the opportunity was not taken to engage more widely with the full range of interested stakeholders. Whilst the appointed advisors have sought to provide necessary update and clarity, we are aware that some licensing stakeholders feel excluded from this process.

Clearer national direction and guidance from Scottish Government is essential for improvements to the licensing system and to ensure it is contributing to efforts to reduce alcohol harm in Scotland. AFS and partners made a series of recommendations for the alcohol strategy refresh due for publication during 2018 including a clearer expectation of how licensing can and should contribute to reducing consumption and harm in Scotland. We provided further specific recommendations on improving the licensing system in our Taking Stock report in 2017. Transparency, accountability and public participation are at the heart of these recommendations and our ongoing work in alcohol availability and licensing.

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- ⁱ Alcohol Focus Scotland (2017) Licensing Resource Pack.
- ⁱⁱ The next Statements of Licensing Policy are due for publication by Scottish Licensing Boards in November 2018.
- ⁱⁱⁱ Alcohol Focus Scotland (2017) Licensing Resource Pack.
- ^{iv} **2 x MESAS evaluations** 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>
- ^v **2 x MESAS evaluations** 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>
- ^{vi} Alcohol Focus Scotland (2017) Taking Stock
- ^{vii} AFS's analysis of the 2013 statements of licensing policy found that despite being due in November 2013, by April 2014 only 25 of 36 policy statements were available. Six of the 25 did not include the overprovision statement. Alcohol Focus Scotland (2014) Review of Statements of Licensing Policy 2013 to 2016
- ^{viii} The first Annual Functions Reports are due for publication in June 2018.
- ^{ix} Alcohol Focus Scotland (2016) Alcohol licensing in your community: how you can get involved
- ^x Beeston, C. et al (2013), op cit.
- ^{xi} Alcohol Focus Scotland (2017) Taking Stock
- ^{xii} CRESH profile
- ^{xiii} MESAS
- ^{xiv} Taking stock