

# Briefing - Updated Licensing (Scotland) Act 2005 Section 142 Guidance

February 2023



## Guidance update - process and timeline

- First published in 2007, an update of the guidance was initiated by the Scottish Government in 2017. The Institute of Licensing was appointed to lead this work and formed a working group to review the guidance and make recommendations about what changes were needed.
- The working group recommendations were used to develop interim guidance which was issued to boards to assist them to produce their policy statements for 2018 – 2023. However, the interim guidance was not approved by Scottish Ministers.
- In 2019 the Scottish Government consulted on the draft revised (interim) guidance. Alcohol Focus Scotland (AFS), and others, raised concerns that the draft guidance was more complex and difficult to interpret and understand.
- A [revised version](#) of the guidance was approved by Scottish Ministers and issued to licensing boards in January 2023.

## Summary of changes

The purpose of the guidance is to assist licensing boards in carrying out their functions under the 2005 Act. Boards are required to have regard to the guidance but also have the flexibility to take decisions in light of their own particular circumstances. The guidance has been updated to account for changes in the law, and the ways that alcohol is purchased and consumed, since it was first published. Improvements have been made in a number of key areas:

- Examples of **good practice** have been set out throughout, highlighting the approaches being taken towards a range of issues in different board areas.
- The guidance provides further clarification of **how the objectives should be promoted**:
  - It highlights that boards are increasingly undertaking activities in relation to crimes that occur outwith licensed settings e.g., it suggests that boards may wish to consider partnership working as a way to help address domestic violence.
  - It emphasises that boards should consider the cumulative effect of licensed premises on alcohol-related health harm, rather than just individual premises. It clarifies how collecting harm data for localities can build a picture of the health and wellbeing of the population, and how doing so over time means this can be monitored and improvements made.
  - It highlights the Glasgow Licensing Board as an example of a board which has adopted an approach of looking at alcohol and health issues at a local authority area level, and then made a policy that seeks to promote the health objective; the Glasgow policy makes clear that even in areas with few (or no) licensed premises it may nonetheless be inconsistent with the health objective to grant a licence which would enable easier access to alcohol in areas with high levels of health harms.
  - It makes clear that the objective to protect children and young people from harm should encapsulate the broadest interpretation of harm e.g., children can be impacted by the drinking behaviours they observe and by adults drinking.
- The guidance clarifies key aspects of **overprovision**, stating that:
  - If there is at least potential for, or a reasonable basis for, concluding that there will be a risk of adverse impact on the objectives (should more premises licences be granted), boards are entitled to come to the view that there is overprovision.

- Consideration should be given as to whether aggregate information and evidence from a number of sources demonstrates a link between the availability of alcohol in an area and alcohol-related harm.
- To demonstrate a “**dependable causal link**”, the proof of the link must be on a balance of probabilities. What this means in practice is that based on the evidence of harm in a locality, it is more likely than not that alcohol availability is a cause, or that increasing the availability of alcohol in that area will increase that harm.
- **Inequalities** are an important consideration in relation to overprovision. There is a stark inequalities gradient to alcohol harm and a growing awareness that the impact of harmful drinking and alcohol dependence is much greater for those experiencing high levels of deprivation.
- Examples of good practice in relation to the **development of licensing policy** have been set out— including in relation to consultation, evidence gathering and transparency.
- The guidance emphasises the need for boards to engage with **communities** e.g., stating that boards should have effective engagement strategies in place to enable them to engage with and seek the views of local communities.
- It is highlighted that licensing boards are expected to operate in a **transparent and fair** way whilst being mindful of best practice when fulfilling their statutory duties and are accountable to their local communities.
- The guidance makes clear that the licensing regime does not exist in a vacuum and that boards should **take into account other strategies** when developing their policies e.g., Community Planning Partnerships, Local Health Improvement Plan, Alcohol & Drug Partnership, local crime prevention.
- The guidance includes updated information about the running of **licensing forums**. This includes examples of the types of activities that forums can undertake and how they can develop an inclusive approach to involvement and culture of participation.
- The intention is to have **more frequent updates** to the guidance. This will be achieved through the creation of a Scottish Government led stakeholder group that will meet twice a year to reflect legislative changes and other matters.