

Re-thinking alcohol licensing

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This report has been written by Petrina MacNaughton and Evelyn Gillan with input from members of the expert group on public health and licensing.



Alcohol Focus Scotland is Scotland's national alcohol charity working to reduce the harm caused by alcohol. Our vision is to create a culture where low alcohol consumption is the norm and people who choose not to drink are supported in their choice.

www.alcohol-focus-scotland.org.uk



Scottish Health Action on Alcohol Problems

Scottish Health Action on Alcohol Problems (SHAAP) was established by the Scottish Royal Medical Colleges and Faculties to raise awareness of the nature and extent of harm linked to alcohol use in Scotland, and to campaign for evidence-based measures to reduce this harm.

www.shaap.org.uk

Preface

What is the purpose of alcohol licensing and how do we measure its success?

There are 40 licensing boards in operation in Scotland making decisions on applications for licences to sell alcohol. Licensing regulates who can sell alcohol, where it can be sold, the conditions of sale, the hours and days of sale and the total number of outlets permitted to sell alcohol. The licensing system exists because there is a consensus in society that alcohol is not an ordinary commodity. Although widely consumed and enjoyed by many, alcohol is a substance with known toxic, intoxicating and addictive effects. Controlling the availability of alcohol has been a strategy employed by public authorities over many centuries to limit the risk of harm to individuals and society from its use.

In recent decades, however, there has been a steady relaxation of licensing law and practice. More licences have been issued to a wider range of retail premises and for longer licensing hours. The resulting expansion in the supply of alcohol has greatly enhanced the ease and convenience with which alcohol can be obtained. The easy availability of alcohol has decreased the perception that alcohol is not an ordinary commodity. The extent to which alcohol has been repositioned as an everyday shopping item is reflected in recent research in which children named the supermarket as the place they most associated with alcohol.¹

In Scotland, greater availability of alcohol through more and bigger-capacity licensed outlets, longer licensing hours and increased affordability and marketing, have been associated with a substantial rise in alcohol consumption and harm. Over the past two decades Scotland has had one of the fastest growing liver cirrhosis mortality rates in the world.² Compared to other licensed or otherwise regulated products, such as cigarettes, knives, and medicines, alcohol stands out in being highly visible, accessible and aggressively promoted. Compared to many unlicensed products, alcohol stands out for the same reasons. The liberalisation of licensing has, it seems, served to undermine its fundamental purpose and rationale.

New Scottish licensing legislation, which came into effect in 2009, provides an opportunity to reaffirm the public interest purpose of the licensing system in controlling the availability of alcohol to prevent harm. The new legislation introduces objectives for licensing and for the first time requires a consideration of the impact of the sale of alcohol on public health. The licensing objectives, together with a duty to formulate a statement of licensing policy, provide a broader scope for action and shift the focus of licensing practice from individual licensed premises to the management of the overall availability of alcohol in the interests of society's health and well-being.

Ensuring that the potential of the new legislation is realised in practice will take the commitment of licensing boards, the support of local authorities, other public agencies, the Scottish Government and the engagement of local communities.

Background

In June 2011, Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP) convened an expert workshop to consider the operation of Scotland's licensing system and how it could more effectively regulate the availability of alcohol to reduce high levels of alcohol-related harm. The introduction of new licensing legislation in Scotland which came into effect in September 2009 provided the context for discussions and a key question for the workshop was how licensing policy and practice could give meaningful effect to the newly introduced licensing objective of promoting and protecting public health.

Expert Workshop

In the course of its deliberations the workshop examined:

- The international, UK and Scottish evidence base on the relationship between the physical availability of alcohol, alcohol consumption and harm; and how alcohol availability can be managed and controlled to better protect and improve public health.
- The legal framework for licensing decisions in Scotland and the extent to which it empowers or restricts licensing authorities in making decisions to reduce alcohol availability in the public interest.
- Licensing boards' interpretation of the legislation and factors that influence board decisions in the formulation of licensing policy statements; in overprovision assessments and in individual licensing applications.

Expert participants from the fields of licensing, law, history, public health, social science and local government contributed to the workshop (see Appendix One).

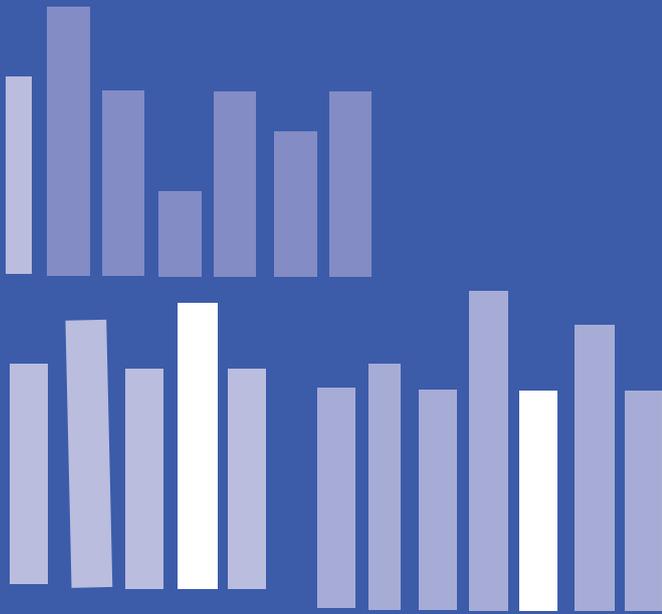
Discussion was also informed by an Opinion from Sir Crispin Agnew QC which was jointly commissioned by AFS and SHAAP and a paper providing a historical overview of alcohol licensing in Scotland prepared by Dr James Nicholls.

The Report

Section 1 of the report considers the trends in alcohol consumption; levels and patterns of alcohol harm; diversification of retail practices and changing drinking behaviour in Scotland. Section 2 provides an overview of the history of licensing in Scotland. Section 3 considers the policy context of the Licensing (Scotland) Act 2005 which moved licensing from an application-driven process to a policy-driven one. Section 4 considers how licensing boards have sought to interpret and promote the licensing objective to protect and improve public health and the perceived difficulties they face. Section 5 considers what action boards can take to promote the public health objective within the existing legislative framework. This section also offers recommendations for consideration by Scottish Ministers that would clarify certain provisions of the 2005 Act and better serve the public interest in licensing policy and practice. Further detail is provided in the appendices. AFS and SHAAP are grateful to the expert participants for their significant contribution.

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Section 1

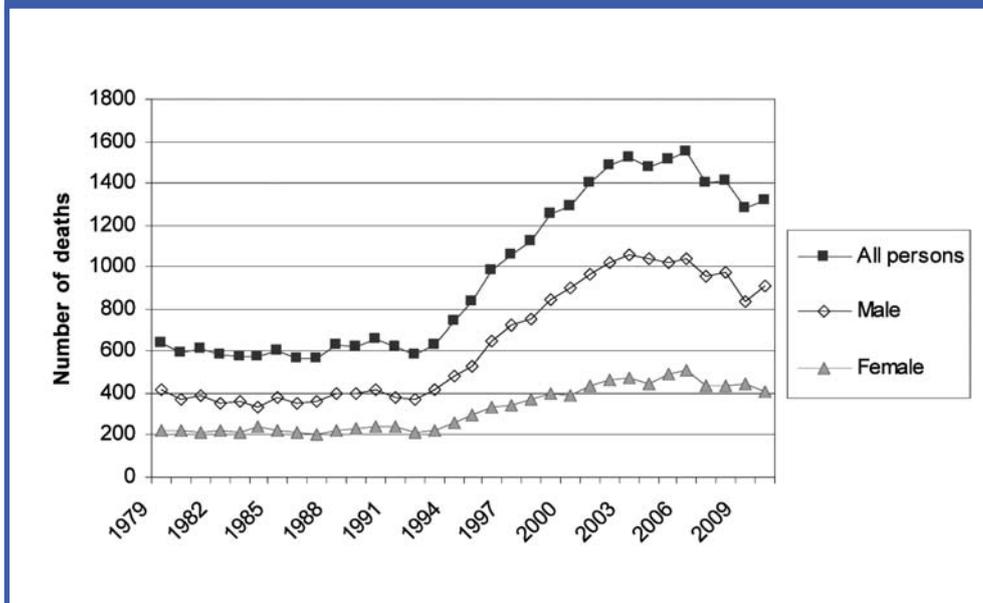
Alcohol Licensing, Consumption and Harm in Scotland

Alcohol harm at historically high levels

Over the past few decades Scotland has experienced a substantial rise in alcohol-related harm which can be seen to be linked to increased alcohol consumption. Since 1994, consumption has gone up by over one litre of pure alcohol per adult² and self-report survey data suggest that nearly one million people in Scotland are drinking at hazardous or harmful levels.³ Consumption trends in Scotland mirror trends in consumption across the UK as a whole where the amount of pure alcohol consumed per adult has almost doubled over the past fifty years, rising from 5.7 litres per capita (16+) in 1960 to 10.7 litres in 2009.⁴ As consumption has gone up so has the burden of harm attributable to alcohol in Scotland. Alcohol-related mortality has nearly tripled since the early 1980s and alcohol-related hospital admissions have more than quadrupled.² Rates have stabilised over the last few years but remain at historically high levels. The contributory role that alcohol plays in a wide range of adverse social consequences in Scotland is also increasingly recognised with links to crime, social disorder, fire fatalities, violence, domestic violence, child neglect and work-related problems.⁵ The cost of alcohol misuse to the Scottish economy has been estimated at £3.56 billion per year.⁶

Figure 1: Alcohol-related deaths in Scotland 1979 to 2010

Source: General Register Office for Scotland (GROS)



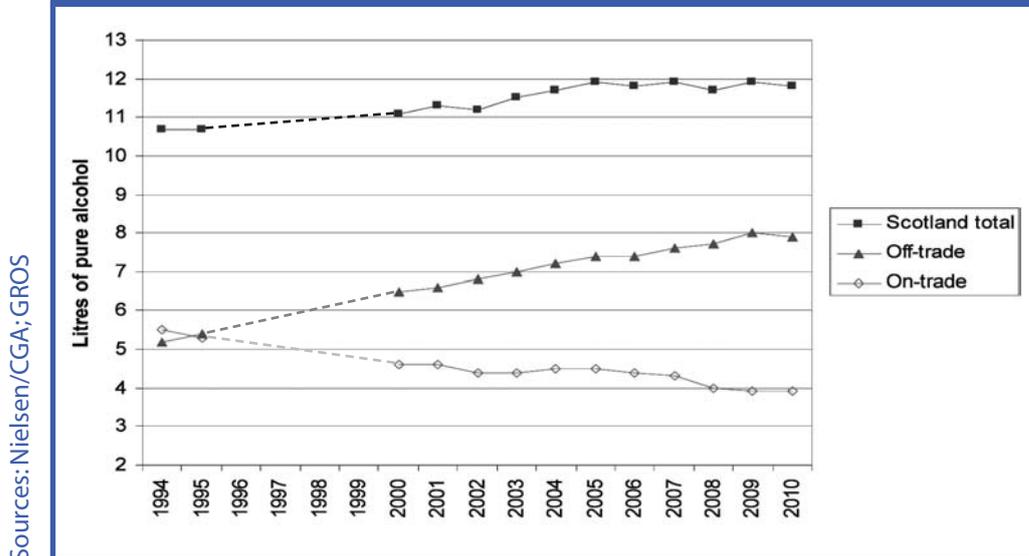
Alcohol licensing and the increased availability of alcohol

Rising consumption in Scotland has been attributed to the increased affordability, availability and promotion of alcohol, along with a greater social acceptance of regular drinking and a tolerance of drunkenness.² Increased availability of alcohol has come about through the progressive relaxation of the licensing regime. The liberalisation of licensing regulation since the 1960s has led to an expansion and diversification in the retail supply of alcohol in Scotland, contributing to a shift in sales and purchasing patterns that in turn have influenced drinking behaviour and problems.

Between 1980 and 1997, the number of liquor licences in Scotland rose by 25 per cent and there was a 31 per cent increase in off-sales licences. Extending licences to a wider range of outlets from petrol stations, to cinemas, florists and fast-food takeaways has greatly enhanced the visibility of alcohol in the public sphere and created a bigger platform for promotional activity. The growth in off-sales premises, and in particular supermarkets, has contributed to the rise in the affordability of alcohol as competition between the major supermarkets has led to more price promotions and discounting, with supermarkets sometimes selling alcohol at a loss to drive footfall and increase trade.⁸ Since 2000, off-sale prices of alcohol have increased much more slowly than on-sales prices in Scotland.² Low-priced alcohol makes up a high proportion of off-sales with around two thirds of all off-sale alcohol sold at less than 45 pence per unit of alcohol.²

As the price gap between on- and off-trade has widened, there has been a corresponding shift from on-sales to off-sales. Since 1994, off-sales have increased by 53 per cent whilst on-trade sales decreased by 29 per cent.² Two thirds of the volume of pure alcohol sold in Scotland is now bought through off-sales, predominantly large supermarkets.² The rise in population consumption in Scotland since 1994 is related to the increase in off-sales, and the shift from on-sales to off-sales is also associated with a change in drinking practices. Whereas in the 1950s drinking in Britain was a predominantly pub-centred activity, in 2009 the most common drinking location for all age groups in Scotland apart from 16-24 year olds was the home.⁹

Figure 2: Litres of pure alcohol sold per capita (16+) in Scotland, total and by market sector 1994 to 2010



Licensing activity has fostered another change in the alcohol retail environment in recent years that is linked with risky drinking patterns. During the 1990s, efforts to regenerate many city centres by developing the night-time economy led to the rise of the so-called ‘superpub’ and the emergence of clusters of high-volume, ‘vertical’ drinking establishments (large drinking spaces with limited seating/tables). The bunching of alcohol outlets in an entertainment district, targeting a young demographic, has become associated with certain types of social disorder and has raised concerns about ‘binge drinking’.

The phenomenon of ‘pre-loading’, the practice of drinking alcohol before going out for a night in pubs and clubs, combines the growing propensity to drink at home with weekend risky drinking in public and has been blamed for exacerbating the problems of binge drinking and social disorder in town centres.¹⁰ Drinking at home has become part of the going out ritual. Research into drinking attitudes and behaviours in Scotland found ‘cost-effectiveness’ cited as the principal reason for pre-loading amongst young people due to the disparity in the price of alcohol bought on- and off trade.¹¹

The relationship between availability, consumption and harm

A range of factors are likely to have contributed to a rise in harmful alcohol consumption, but the interplay between the increased affordability, availability and promotion of alcohol provides a large part of the explanation. The relationship between the physical availability of alcohol in society and levels of alcohol consumption and harm has been explored in a large number of research studies from different countries.

Empirical evidence shows that increasing access to alcohol, through more outlets and longer trading hours, is linked to a range of alcohol-related harms and in certain circumstances, levels and patterns of consumption.

Significant positive relationships have been found between the number of alcohol outlets and opening hours and levels of violence, alcohol-related traffic accidents, self-reported injuries and suicide, sexually-transmitted disease and child abuse or neglect.

Overall, the weight of evidence supports the conclusion that restrictions on the availability of alcohol can contribute to a reduction in alcohol-related problems. (See Appendix Two for an overview of the evidence on availability, alcohol consumption and harm).

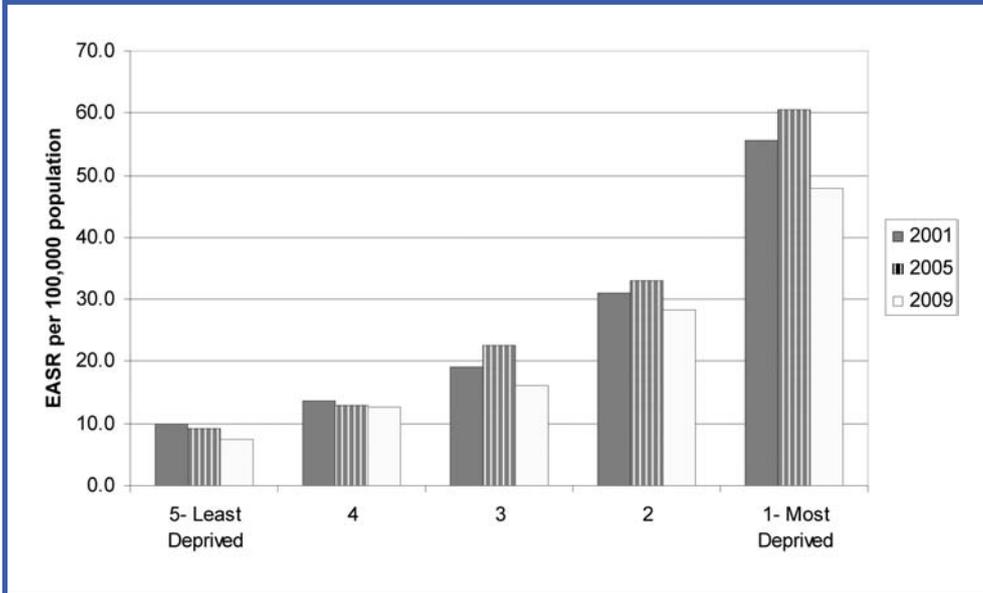
Disproportionate harm on poorer communities

Poorer populations and communities experience a disproportionately greater level of alcohol-attributable harm. Over the past decade, the gap in alcohol-related harm between the most and least deprived quintiles in Scotland has widened.

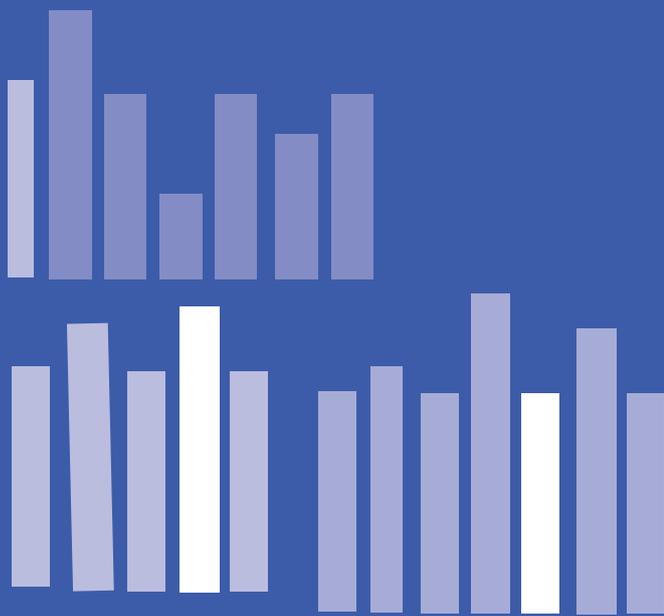
In 2007 in Scotland, adults aged 45-74 years in the lowest income deciles were 13.5 times more likely to die an alcohol-related death than those in the highest income deciles (see Figure 3 on page 16).

Figure 3: Alcohol-related deaths (underlying cause), deprivation category, 2001, 2005, 2009

Source: ISD Scotland (GROS)



In August 2011, NHS Health Scotland published an update of alcohol sales and price band analyses as part of the Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS). The new sales data confirmed that 11.8L of pure alcohol were sold per adult in Scotland (22.8 units per adult per week) compared to 10.7L in 1994, an increase of 11%. In 2010, an additional 2.2L of pure alcohol were sold in Scotland (11.8L) compared to England and Wales (9.6L). Most of this difference was due to the higher off-trade sales in Scotland than in England and Wales.



Section 2

Historical Overview of Licensing in Scotland

Alcohol - no ordinary commodity

Licensing is the mechanism by which the availability of alcohol is regulated in Scotland, controlling numbers and types of alcohol outlet, opening hours and conditions of sale. Licensing exists because there is a consensus that alcohol is not an ordinary commodity. The role of licensing is to manage the retail provision of alcohol in such a way as to mitigate the risks of harm associated with its consumption. How strict or relaxed licensing controls need to be to minimise risk has been the subject of much debate. The Scottish licensing system has developed over many years. Historically, licensing has been concerned with the intoxicating effects of alcohol and the maintenance of public order and consequently paid more attention to the activities of the on-trade. However, growing knowledge of the role of alcohol in a wide range of acute and chronic disorders, and a greater understanding of its negative social impacts, has increased the demand for licensing to regulate availability in a way that addresses the full spectrum of alcohol-related harm. Furthermore, growing awareness of the role of off-sales and home drinking in driving consumption has led to calls for stricter regulation of the off-trade.

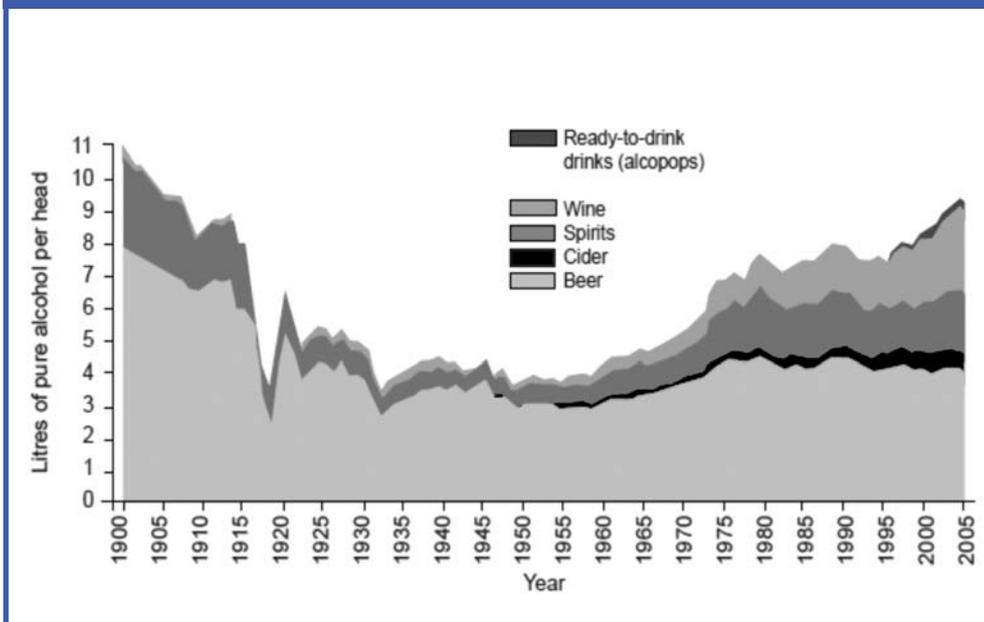
Early efforts to regulate the availability of alcohol

Licensing law in Scotland has developed broadly in parallel with legislation in England and Wales, although some key differences between the two systems have emerged. Licensing by magistrates was first introduced in Scotland in 1756 and since then licensing legislation has undergone periodic revision and amendment. A significant piece of early legislation was the Forbes Mackenzie Act of 1853 which brought in three separate licensing certificates: hotel, public houses and an off-sales-only certificate for grocers. Sales to under-14s and intoxicated persons were banned. Restrictions were placed on opening times and Sunday closing introduced. In the latter part of the 19th-century opening hours were reduced further and stricter controls on drunkenness and disorderly conduct were imposed. This period also saw the introduction of the principle that nearby residents, police and magistrates could formally object to new licence applications.

The general thrust of legislative activity in the early part of the 20th-century was towards greater restrictions on the availability of alcohol. The Temperance (Scotland) Act of 1913 established a system whereby local votes could be triggered on the question of whether to reduce, or ban altogether, outlets selling alcohol. Votes did not begin until 1920, but at its height, fourteen burghs, ten wards and fourteen parishes were effectively 'dry'; although by the 1930s the system was largely seen as having failed. Concerns about the negative impact of drinking on the war effort prompted action to restrict access to alcohol in the Defence of the Realm Act 1915. The establishment of the Central Control Board resulted in the imposition of licensing controls across the UK with permitted bar hours reduced to six hours a day. At the same time, wartime tax increases made beer more expensive and regulations made it weaker. By the end of the war alcohol consumption in the UK had fallen sharply, as had rates of liver cirrhosis mortality (a recognised indicator of alcohol-related harm).¹² After the war, opening hours for licensed premises were extended, but not to pre-war levels. The Licensing (Scotland) Act 1921 maintained the practice of permitted hours which were set at 11.30am - 3pm and 5.30pm - 10pm, with a ban on Sunday trading.

Figure 4: UK per capita consumption of pure alcohol 1900 to 2005

Source: BBPA Statistical Handbook 2007

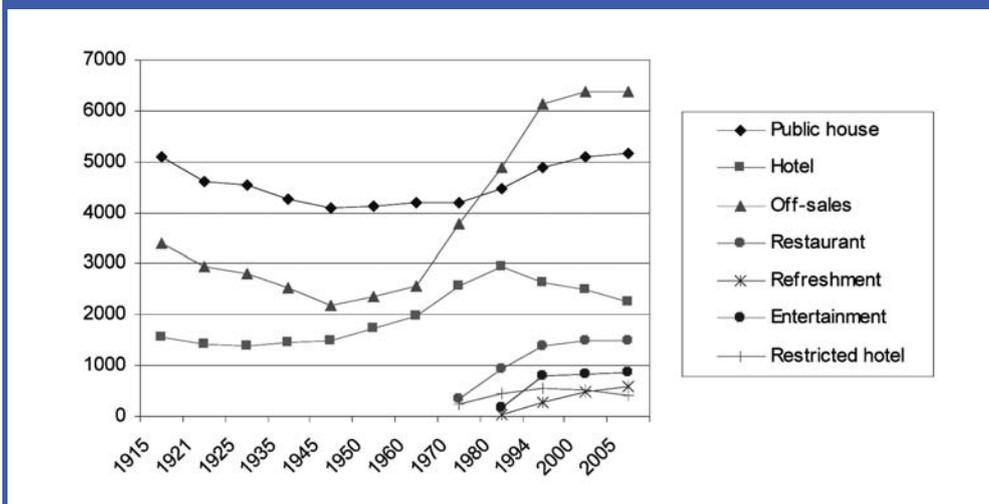


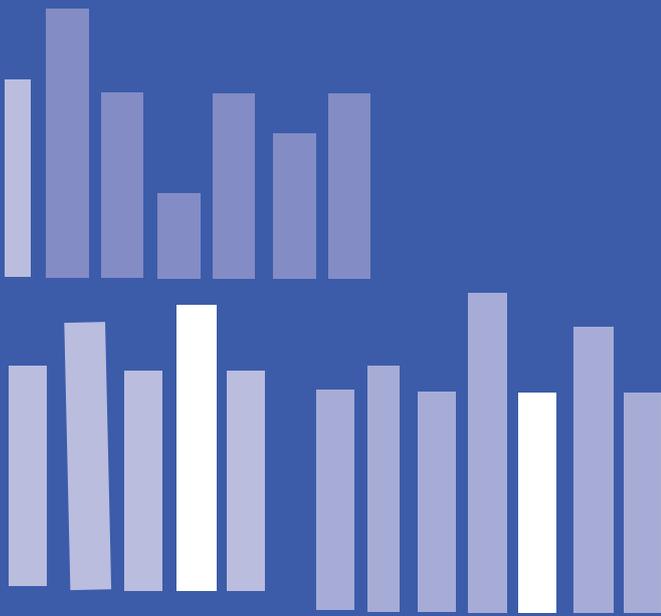
Progressive liberalisation - alcohol as an ordinary grocery item

After 1918, alcohol consumption declined across the UK, and in 1931 the Mackay Commission on Scottish Licensing pointed to six possible causes for the marked reduction in drunkenness: a better understanding of health; alternative leisure pursuits; better education; better licensing law; improved housing; and the increased cost of alcohol due to taxation. Consumption remained historically low across the UK throughout the 1930s and stayed flat until the late 1950s. From the mid-20th-century onwards, the direction of licensing legislation and policy was one of progressive liberalisation. Under the 1962 Licensing (Scotland) Act licensing for the on-trade was relaxed in regard to Sunday trading and diversified through the introduction of new licences for restaurants and other outlets which sold food. Off-trade licensing was relaxed in regard to the 'afternoon gap', meaning off-licences were no longer required to stop selling alcohol between 3pm-5pm. This change coincided with the rise of the supermarkets and arguably contributed to the positioning of alcohol as an everyday grocery item. Under the 1976 Licensing (Scotland) Act new licensing boards were established, standard opening hours were extended, and regular extension to these were permitted – leading to an increase in late-night opening in many cities. Off-licences were permitted to sell alcohol from 8am-10pm, Sunday off-sales remained banned until 1994.

Sources: Clayson Committee report; Scottish Government

Figure 5: Number of liquor licences in force in Scotland by licence type 1915 to 2005





Section 3

A New Approach to Licensing

Nicholson Committee 2001 and Licensing (Scotland) Act 2005

In 2001, a committee was appointed by the then Scottish Justice Minister to review all aspects of liquor licensing and practice in Scotland with 'particular reference to the implications for health and public order' and to recommend changes in the public interest. The findings of the Nicholson Committee formed the basis of the Licensing (Scotland) Act 2005.¹³ The 2005 Act came into full effect in September 2009 following a transitional period. In certain respects the 2005 Act continues the liberalising thrust of earlier legislation with the abandonment of permitted hours. However, in other ways the new legislation appears to provide licensing boards with more scope to act in the public interest to restrict the availability of alcohol. A new feature of the 2005 Act is the establishment of licensing objectives, recommended by Nicholson to be the guiding principles on which licensing decisions are made. Five objectives are stated in the Act: preventing crime and disorder; securing public safety; preventing public nuisance; protecting children from harm; and protecting and improving public health. Making the protection and promotion of public health an explicit consideration for licensing is a notable extension to its previously accepted functions.

The 2005 Act also introduces for the first time a duty on licensing boards to issue a statement of licensing policy setting out their general approach to licensing decisions and outlining how the board will promote the five licensing objectives. Prior to the 2005 Act, policy statements were not universally produced by boards and some boards expressed an unwillingness to publish a policy statement for fear that it would leave them open to the challenge that it had in some way fettered their discretion in relation to future applications. This was not regarded as a real risk by the Nicholson Committee:

".. a licensing board is not a court of law where there is an adversarial system, and where it is essential that every case must be decided by reference to its own facts and circumstances. While licensing boards are of course expected to act in a judicial manner, their main function in our opinion is, or at least should be, a regulatory one."

The requirement to formulate a statement of licensing policy under the 2005 Act represents a sea change in the way licensing boards operate, shifting licensing from being an application-driven process to a policy-driven one. Licensing decisions are now obliged to have a policy context and a stated policy position can be used as grounds to refuse an application for a licence.

Other new measures in the 2005 Act include the creation of local licensing forums, a stated presumption against 24-hour licences, test-purchasing, and a ban on irresponsible promotions in the on-trade. Unlike the licensing legislation for England/Wales enacted in 2003, the 2005 Act in Scotland retains the power of licensing authorities to refuse an application on the grounds that there would be an overprovision of premises. A duty is placed on licensing boards to make an assessment of overprovision and to include a statement on overprovision in their licensing policy statement.

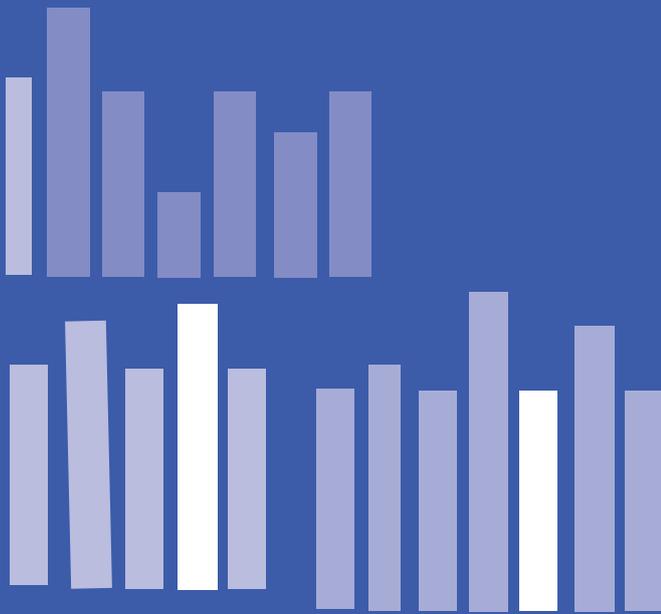
Further provisions relating to licensing have been included in more recent legislation, the Criminal Justice and Licensing (Scotland) Act 2010 and the Alcohol etc (Scotland) Act 2010. The 2010 Alcohol Act extends a ban on quantity discounts to off-sales premises, restricts alcohol promotions and displays in off-sales, includes a power to introduce a social responsibility levy on licence-holders, and requires that health boards become statutory consultees. Building on provisions introduced by the 2005 Act, the 2010 Alcohol Act signals a retraction of the liberalising trends of previous decades as moves are made to address rising rates of alcohol-related harm.

Licensing in the wider context of Scotland's alcohol strategy

In response to the rising indicators of alcohol-related harm, a new strategic approach to tackling problem alcohol use in Scotland was taken by the Scottish Government in 2008. In contrast to earlier national alcohol strategies that emphasised individual responsibility and focused on specific population groups, namely children and young people, the new Framework for Action on Alcohol encompasses measures aimed at the whole population as well as targeted interventions for high-risk groups.¹⁴ Whole population measures work to both *reduce* and *prevent* harm. Targeting only harmful drinkers would

not reach the majority of people who consume alcohol and who are therefore at risk of developing diseases related to their alcohol consumption. Whole population measures also work to generate social norms about the use of alcohol and the place of alcohol in society that can support and encourage individuals to change risky and harmful drinking practices.

Licensing is and always has been a whole population intervention. In the new Scottish alcohol strategy, licensing legislation is identified as a key mechanism for delivering a reduction in harmful consumption and safer drinking environments. Short-term outcomes identified include reduced density of premises, a decrease in price incentives, and an explicit recognition that alcohol is not an ordinary commodity and should not be sold and promoted as such.



Section 4

Limitations of Current Licensing Practice

Realising the potential of new legislation

New legislation in principle extends the scope of licensing boards to regulate the overall availability of alcohol through the promotion of the licensing objectives. However, implementation of the legislation to date suggests that that potential has yet to be fully realised. Feedback from licensing boards and analysis of licensing board policy statements reveal difficulties in interpreting the licensing objectives in practice, particularly the objective to protect and improve public health. A number of factors have been cited for this including limitations in the law, a lack of guidance, a lack of understanding of public health concepts, and a lack of local data to support policy formulation and decision-making. One perceived obstacle to the promotion of the public health objective in the licensing process is the view that public health considerations concern populations, whereas licensing applications are decided on a case-by-case basis and therefore action to limit overall availability to improve public health is precluded.

Interpreting and promoting the licensing objectives

In the 2005 Act, the licensing objectives are given effect through the operation of licensing policy, the duty to assess overprovision, and in the determination of premises licence applications. The 2005 Act specifies that a licensing board must ensure that the policy set out in its statement seeks to promote the licensing objectives and that the licensing board must have regard to its licensing policy statement in exercising its functions under the Act. However, implementation of the new legislation to date suggests that promotion of the licensing objectives in the policy statement and overprovision assessment has been limited. An examination of licensing boards' most recent policy statements exemplifies some of the reported difficulties interpreting the legislation.

Under the 2005 Act, licensing boards are required to issue a statement of licensing policy every three years. The most recent statements of licensing policy were due to be published by 30 November 2010. By the end of April 2011, 34 out of 40 licensing boards had made their policy statements for 2010 to 2013 publicly available on their council website. An analysis of these statements undertaken by Alcohol Focus Scotland reveals considerable

variance in the boards' approach to policy-making and in their understanding and interpretation of the licensing objectives, particularly the public health objective. In terms of policy content, the main emphasis of boards' policy statements was on the operating conditions of individual premises and on actions that licence-holders could take to promote the licensing objectives. Recommendations for good practice to promote the public health objective contained within policy statements included providing information on 'sensible' drinking limits and promoting soft drinks. Few boards addressed the overall supply of alcohol as a factor in risky drinking practices and problems, either in their assessment of overprovision or in their overall policy statement.

Of course, a number of different measures can and should be employed by licensing boards to manage the availability of alcohol. Interventions can range from restricting physical access to alcohol by limiting number, type, capacity and licensed hours of licensed premises, to specifying the operating conditions of individual premises or types of premises. Examples of the latter type of intervention include the introduction of toughened glassware in pubs, or CCTV in off-licensed premises to monitor for underage sales.¹⁵

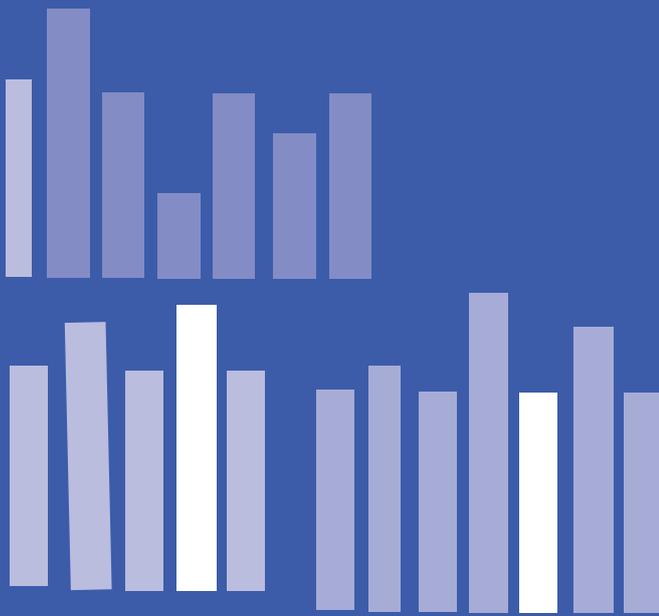
Measures that modify the retail environment where alcohol is sold or consumed can work in reducing certain types of alcohol problems, particularly those relating to intoxication and public order. There are more opportunities for applying conditions to on-licensed premises to influence consumption and harm than off-licensed premises which helps explain why a lot of licensing activity is on-trade focused. However, evidence strongly indicates that measures aimed at restricting the supply of alcohol have the potential to reduce both acute and chronic alcohol harm. To fully promote the licensing objectives therefore requires consideration of the overall impact of availability on alcohol consumption and harm as well as the operating conditions of individual premises. This is particularly the case when seeking to protect and improve public health, but it applies to all the licensing objectives. The duty to assess overprovision and the inclusion of overprovision as one of the grounds for refusal of a premises licence application in the 2005 Act is an explicit indication that licensed premises exert an *aggregate* effect and therefore licensing in Scotland involves managing the *overall* supply of alcohol as well as individual premises.

Limited use of evidence

The limited interpretation of the licensing objectives in policy statements is perhaps in part a reflection of the newness of policy formulation for boards and the process of systematically gathering evidence, interpreting it, and then developing a policy position based on the evidence and in relation to the objectives. In the current batch of published policy statements evidence sources are not routinely cited, nor is there always a clear line of reasoning from the evidence to the policy position adopted. In determining overprovision, 14 boards gave no information on statistics used or individuals/groups consulted; 14 specifically listed the police as a consultee, attesting to a continued licensing emphasis on public order problems; and four listed the licensing forum. Only one board listed the NHS and just one listed an alcohol and drug partnership. A lack of local data relating to the licensing objectives is sometimes highlighted in this regard. However, whilst it is arguably the case that data on alcohol-related consumption and harm could be made more easily accessible and usable, a lot of local data exist that are not currently utilised by most boards or if referred to are not translated into policy action. One licensing board's policy statement was a notable exception in demonstrating a systematic approach to gathering and analysing evidence and translating evidence into policy positions that related to the licensing objectives.¹⁶ The patchy use of evidence of alcohol-related harm in policy statements is perhaps indicative of the degree to which licensing boards have traditionally operated in isolation from other public bodies and could therefore be symptomatic of a lack of integration between licensing policy and other public policies on which licensing matters pertain.

Support and guidance for licensing boards

Recently published interim findings of a study of the implementation of the Licensing (Scotland) Act 2005, undertaken as part of the national monitoring and evaluation of Scotland's alcohol strategy,¹⁷ confirms some of the problems licensing officials have identified trying to give meaningful effect to the public health objective. Amongst a number of issues raised by licensing officials is a perceived lack of guidance in how to address the public health objective and a view that it is too wide in scope and therefore too difficult to define and measure. What the interim findings identify is the need for more support and guidance for licensing authorities in fulfilling their duties under the 2005 Act.



Section 5

Recommendations for Action

Recommendations to licensing boards and local authorities

Although evidence indicates that a number of boards perceive difficulties in promoting the public health objective, the view of the expert group, informed by Counsel's opinion, is that the existing legislative framework permits boards to take a greater range of actions to protect and improve public health than is currently the case.

Recommendation 1

Licensing boards should prioritise formulating a comprehensive, evidence-based statement of licensing policy.

Ensuring a policy basis for licensing decisions

Difficulties interpreting the public health objective are frequently ascribed to limitations in the law. In making licensing decisions, some boards have been advised that the law only allows them to assess licensing applications on an individual basis and therefore they can only refuse an application for a licence if harm can be shown to be directly linked to particular premises.

When a board considers an application for a licence, the law stipulates that it is bound to grant the application unless one of the grounds for refusal is made out. Grounds for refusal include whether the board considers that the granting of the application would be inconsistent with one or more of the licensing objectives. If the indicator of harm is rates of alcohol-related mortality in the local population, then it is difficult to make a direct connection between this measure and any single licensed premises. The likelihood therefore of refusing an individual application on the grounds of inconsistency with the public health objective is low, *unless there is a policy reason for refusal*. In exercising its functions, which include determining individual applications, a licensing board must have regard to its licensing policy statement which must be based on a sound basis. If an application for a licence was contrary to a policy position of the board then it could be refused, although applicants would have to be given the opportunity to explain why they should be an exception to the policy.

Recommendation 2

Licensing policy should take into account the aggregate effect of licensed premises on drinking behaviour and levels of alcohol-harm in their local population, as well as the operating conditions of individual licensed premises.

Overall availability of alcohol

Much of the difficulty in interpreting the public health objective appears to be conceptual. For example, boards may have difficulty trying to reconcile everyday licensing practice which deals with individual premises with the objective of protecting and improving public health which pertains to populations. Critical to a meaningful interpretation of the public health objective, however, is an understanding of the full spectrum of alcohol problems and the relationship of types of problems to patterns of drinking. Harm from alcohol can be caused during a single drinking occasion in one licensed premises, but is more likely to result from many drinking episodes with alcohol bought from many licensed premises. Evidence indicates that high outlet density and longer trading hours affect risky drinking and alcohol problems by increasing the ease and convenience with which alcohol can be obtained. Availability is not measured in relation to one licensed premises, but is a function of all licensed premises in an area.

Promoting and protecting public health therefore entails consideration of the aggregate effect of licensed premises on public health, in terms of both the immediate and long-term risks from alcohol consumption. The same applies for the other licensing objectives. The shift in purchasing patterns to off-sales means that alcohol-related problems arising in one locality or premises may not arise from alcohol bought in that locality or premises. Licensing objectives need to be interpreted in terms of the overall supply of alcohol as well as individual premises as both exert an influence.

Recommendation 3

Licensing boards should determine the locality for an assessment of overprovision that is appropriate to the licensing objectives, and define areas for assessing overprovision for which statistics are available rather than adopting areas for which no statistics are available.

Availability of alcohol over larger geographical areas

A statement on overprovision forms part of the licensing policy statement and provides the most obvious mechanism for promoting the public health objective, restricting access to alcohol through limits on new licences, licences of a particular type, or variations of existing licences. The localities or geographical areas that a licensing board uses to assess overprovision are, according to the law, a matter for the board to determine. In the past, licensing boards have tended to apply an overprovision assessment to relatively small areas within their total board area. This practice can pose difficulties for promoting the public health objective if certain alcohol-related health indicators are only available across a larger geographical area, a point made by a number of licensing boards. However, if one of the requirements of the licensing policy is that it seeks to promote the licensing objectives, and if health indicators can only be demonstrated over a larger area, then it is arguable that a licensing board assess overprovision over a larger area in respect of protecting and improving public health. Many key health data are however available at a sub-local authority level, including the Scottish Neighbourhood Statistics and the Community Health Partnership Profiles. These statistics can be built up by licensing boards into data zones that reflect community boundaries. The key point is that licensing boards define areas that are appropriate for the objectives they are trying to promote and for which there are statistics available.

Recommendation 4

Local authorities should ensure that there are mechanisms in place to check consistency and complementarity of different policies of local government to ensure that due consideration of licensing policy is taken into account in other areas, for example, planning and economic development.

Competing interests

In addition to conceptual issues and perceived difficulties in interpretation of the law, a number of other factors may impact on licensing boards' decision-making. As licensing deals with the granting of permits to sell alcohol, business has a strong vested interest in licensing matters. Big businesses can and do deploy considerable resources challenging licensing decisions that they deem to interfere with their business operations. Decisions that aim to restrict supply are therefore particularly vulnerable to legal challenge. The supermarket ASDA has openly stated that it will not operate without a licence to sell alcohol and recently withdrew plans to open a new store in Northern Ireland after it was denied a licence by the licensing court.¹⁸

Licensing objectives may also on occasion compete with other local authority strategies and decision-making if, for example, plans for economic development include new business that involves the sale of alcohol and the proposed business is sited in an area with high-levels of alcohol-related harm. Expansion of the alcohol supply is often promoted in support of the development of tourism despite an absence of evidence linking the two.¹⁹

Recommendation 5

Licensing boards should publish detailed information about licences in force in their area for the better monitoring of licensing, consumption and harm trends, to inform policy formulation and to equip local licensing fora, community groups and others wishing to engage in the process of shaping their local licensing environment.

Monitoring licensing trends

Information should include but not necessarily be restricted to: number and types of licence; a breakdown of off-sales licence type; whether a licence holder is an independent operator or part of a chain; and the capacity of licensed premises.

Recommendations for other public bodies

Making alcohol-related data accessible

Public bodies responsible for the collation of statistics relating to the five licensing objectives – crime, public nuisance and disorder, public safety, health and protecting children from harm – should ensure as far as possible that local data are available to licensing boards on an ongoing basis, in an accessible format, to facilitate the formulation of evidence-based licensing policies.

Recommendations to Scottish Government

Whilst the expert workshop concluded that there was much that licensing boards could do within the current legislative framework to give meaningful effect to the public health objective, it is nevertheless recognised that clarifying certain provisions within the 2005 Act would be beneficial. This section of the report outlines specific recommendations for consideration by Scottish Ministers on action that the Scottish Government could take to further strengthen and clarify the public interest in licensing policy and practice.

Recommendation 1

The Licensing (Scotland) Act 2005 is amended to place a general duty on licensing boards to promote the licensing objectives.

It is the view of the expert group that it would be helpful to strengthen the licensing objectives to ensure that they are clearly identified in law as being the overriding principles governing the Act, and given similar weight to the licensing objectives in the equivalent English legislation. Section 4 (1) of the Licensing Act 2003 (England and Wales) states a licensing authority must carry out its functions under the Act with a view to promoting the licensing objectives.

Recommendation 2

The objective to protect children from harm is amended to state children and young persons.

Ministers are asked to consider amending the objective to protect children from harm to children and young people given that the definition of a child in the 2005 Act is 16 yet the legal minimum age for purchasing alcohol is 18 years.

Recommendation 3

The period a statement of licensing policy is in force is extended to five years and a statutory ouster clause is introduced limiting appeals against an adopted licensing policy statement outside its introductory period.

Under the current arrangements, a licensing policy that has been subject to a full consultation can be challenged in any individual appeal, perhaps years later, on the basis of a narrow set of facts in a legal process in which consultees have no opportunity of involvement. It is the view of the expert group that having a licensing policy continuously under threat of legal challenge does not serve the public interest. It is recommended that increasing the period of the licensing policy from three to five years and introducing a statutory ouster clause limiting appeals against an adopted licensing policy statement, similar to Section 237 of the Town and County Planning (Scotland) Act 1997, would provide more stability in licensing policy and practice.

Recommendation 4

A national licensing policy statement is formulated that local licensing boards are required to have regard to when drawing up their own policies.

In the same way that the national planning framework serves as an overall guide to local planning statements and decision-making, it is suggested that a national licensing policy statement would be beneficial to local licensing boards and help to integrate local and national strategies for managing alcohol-related problems.

Recommendation 5

A statutory duty is placed on licensing boards to gather and assess information on each of the five licensing objectives in the preparation of their statement of licensing policy.

Although it can be contended that the current wording of the 2005 Act, in stipulating that a licensing board must “ensure” that its policy seeks to promote the licensing objectives, already places an obligation on boards to gather sufficient information to formulate its policy, making this a statutory duty removes any ambiguity. Imposing a statutory duty on boards to gather and assess information on each of the five licensing objectives in the preparation of their statement of licensing policy would help ensure that boards’ policies were based on the best available evidence and therefore less likely to be successfully challenged.

Recommendation 6

A statutory obligation is placed on licensing boards to report each year on how the board has fulfilled its duty to promote each of the licensing objectives.

Accountability is central to good governance, and evaluation is essential for effective policy-making. As is the case with other public bodies, each licensing board should be required to report annually on its activities, measuring its performance in relation to outcomes in each of the licensing objectives.

Recommendation 7

Section 7 of the 2005 Act, the duty to assess overprovision, should be amended to state that the locality for assessment of overprovision can be the entire board area.

As it is currently drafted, the 2005 Act places a duty on licensing boards to make an assessment of overprovision in any locality *within* the board's area. The use of *within* is taken as indicating that the area for the assessment of overprovision cannot be the entire board area. This wording is considered to present an obstacle to the promotion of the public health objective as some important indicators of alcohol-related health harm are measured at a licensing board level. If boards are required to protect and improve public health, then it follows that the ready availability of alcohol across their whole geographical area is a factor they must consider. It is therefore recommended that the wording of Section 7 (1) is amended to a consideration of "overprovision within the board's area, or a specific locality within the board's area".

Recommendation 8

Off-sales hours should be reduced to 10am until 8pm

Given the evidence linking increased licensed hours with alcohol-related problems and given the fact that the rise in consumption and harm in Scotland is related to an increase in off-sales, the expert group strongly recommends that Scottish Ministers consider further regulatory measures for the off-trade. It is suggested that the 2005 Act is amended to reduce off-sales hours from 10am until 8pm. Research demonstrates that reductions in licensed hours for off-sales in the evening can work to reduce alcohol-related harm, particularly for vulnerable groups such as young adolescents and dependent drinkers who rely on off-sales as their main or only source of alcohol.²⁰

Recommendation 9

Section 7 should be amended to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises, and the law should also be amended to include opening hours in the assessment of overprovision.

As it is currently drafted, Section 7 of the 2005 Act states that licensing boards should consider overprovision of licensed premises or licensed premises of a particular description. The wording is a rather ambiguous as to whether an increase in the capacity of licensed premises can constitute overprovision by itself. It is therefore recommended that Section 7 and 23 (5) (e) are amended to make it clear that increased capacity can be considered separately from an increase in the number of licensed premises in terms of overprovision and that opening hours should also be considered. Increased capacity and opening hours can expand the supply of alcohol in the absence of any change in the total number of alcohol outlets.

Recommendation 10

The specific circumstances under which alcohol can be sold in garage forecourts should be clarified.

Under the 2005 Act, garage forecourts are excluded premises for the sale of alcohol unless persons resident in the locality in which the premises are situated are likely to become reliant to a significant extent on the premises as a principal source of petrol or groceries. Some ambiguity exists over the threshold of reliance that would permit the sale of alcohol in a garage forecourt. Clarification of the circumstances under which the sale of alcohol in garage forecourts is permitted would assist boards that have developed an evidence-based licensing policy statement identifying the need to reduce overall availability of alcohol and decrease the perception that alcohol is a commodity that can be made available anywhere, any place, anytime.

Recommendation 11

Licensed premises should be required by law to provide annual information on the volume of alcohol sold by beverage type as a condition of their licence.

The volume of alcohol sold is most directly related to levels of alcohol harm, with higher volumes of alcohol sold and consumed associated with a greater burden of harm. If the purpose of licensing is to regulate the sale of alcohol to minimise risks of harm, then it would assist licensing boards in that purpose to know how much alcohol is being sold in their board area. Due to the changing nature of sale and purchasing patterns of alcohol, the number of outlets selling alcohol is not by itself a precise-enough indicator of the amount of alcohol being sold or consumed. Information on the volume of alcohol sold by beverage type by each outlet would provide for better monitoring of alcohol purchasing and consumption patterns and enable boards to optimise their policies to manage alcohol availability to limit harm. Such data would also assist health boards in monitoring the potential impact of health behaviours on individual health and health services.

Recommendation 12

Guidance to the 2005 Act should be updated and it is recommended that guidance to all licensing provisions contained in several different pieces of legislation should be amalgamated into one document.

It is suggested that the guidance is revised and if it serves to speed up the process of revision, the updating could be done on a chapter-by-chapter basis as part of a phased programme of updates.

Recommendation 13

Separate alcohol-only checkouts should be introduced in large multiple retail outlets. Auto-service tills should not be used for the sale of alcohol.

It is recommended that new regulations are introduced requiring that all off-sales alcohol sold in large, multiple retailers is purchased through an alcohol-only checkout and that auto-service tills must not be used for the purchase of alcohol. The majority of off-sales alcohol in Britain is now sold through large multiple retailers who position alcohol as an everyday product to be purchased as part of the weekly shop. Positioning alcohol as an everyday commodity weakens the basis of the licensing system which is set up precisely because alcohol is not an ordinary commodity, but is in fact a high-risk product. Ensuring that all alcohol is sold through alcohol-only checkouts reinstates to a degree the separation of alcohol from other groceries that existed when most alcohol was purchased or consumed in specialist locations such as dedicated off-sales and pubs. This is particularly important for children who visit supermarkets and will pick up on messages promoting alcohol and normalising its everyday consumption. Recent research from the Joseph Rowntree Foundation on the transmission of drinking practices found children most associated alcohol with supermarkets even though they had visited pubs and restaurants with family members.¹

Recommendation 14

Licensing fees should be applied in relation to volume of alcohol sold.

Under the current system rateable values are used to set a scale of licensing fees, however rateable values are calculated differently across the sector. On-licensed premises pay according to a percentage of turnover whereas fees for off-licensed premises are based on square metre size of property. Large supermarkets, with a turnover of millions of pounds in alcohol sales, do not therefore pay licence fees in proportion to the amount of alcohol they sell. The lack of proportion between licensing fees and alcohol sold is likely to be a contributory factor in the price gap between alcohol sold in the on and off-trade and the shift to home drinking that has been associated with increased consumption and harm in recent years. If fees are applied as part of the system of regulation of the sale of alcohol, then as far as possible they should relate to the sale of alcohol. Licensing fees based on volume of alcohol sold provides a more rational basis for the system, makes it more accountable, and prices the cost of regulation of the sale of alcohol in a proportionate manner.

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Appendix One

Workshop participants

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Appendix two

Relationship between alcohol availability, consumption and harm

Availability of alcohol concerns the ease and convenience with which it can be obtained. The relationship between the physical availability of alcohol in society and levels of alcohol consumption and harm has been explored in a large number of research studies from different countries. Strong and repeated evidence shows that increasing access to alcohol, through more outlets and longer trading hours, affects a range of alcohol-related harms and in certain circumstances, levels and patterns of consumption. Overall, the weight of evidence supports a conclusion that restrictions on the availability of alcohol can contribute to a reduction in alcohol-related problems.

Increasing access to alcohol

Access to alcohol can be influenced by a number of factors: how affordable it is; the time and effort required to obtain it (determined by number, type and location of alcohol outlets); the hours and days of sale; and restrictions on eligibility to purchase alcohol such as a legal minimum purchase age. A substantial number of studies have examined the relationship between outlet density (number and type of outlets) and a variety of alcohol-related problems.¹ The clearest evidence of a relationship comes from natural experiments in countries where large scale policy changes have been implemented over a relatively short time period. Two recent studies from Canada assessed the impact of privatisation of government-run liquor stores on consumption and harm following a 33.4% increase in the number of private liquor stores in British Columbia between 2003 and 2008. The research found increasing density of liquor outlets associated with a rise in alcohol sales per head of population, as well as a 27.5% increase in the alcohol-related death rate per 1000 residents for each extra private liquor store.^{2 3}

In countries that have experienced a gradual change in numbers and types of alcohol outlet, through a progressive liberalisation of licensing restrictions for example, the evidence suggests a more complex relationship between outlet

density and alcohol consumption. Research looking at licensing and the demand for alcohol in England between 1956 and 1980 found an association between licence numbers and demand for beer, with increases in outlets leading to greater beer consumption, but not with respect to wine or spirits.⁴ Research from other countries has produced mixed results. However, the evidence consistently shows a link between areas of high outlet density and increased risky drinking and alcohol-related harm, particularly violence.¹

A recent systematic review found 44 studies showing significant positive relationships between the density of outlets and levels of violence, alcohol-related traffic accidents, self-reported injuries and suicide, sexually-transmitted disease and child abuse or neglect.⁵ An association between outlet density and domestic violence was found in a study from Australia that assessed whether changes in outlet density at a post-code level were related to changes in domestic violence rates over a ten-year period. The study showed a 28.6% above-average increase in the domestic violence rate for each additional 'packaged liquor' outlet per 1000 residents in a postcode.⁶ New research from England has found a positive relationship between density of off-licensed premises and alcohol-related harms amongst under-18s. The study demonstrated that nearly 10 per cent of all alcohol-specific hospital admissions in England, excluding London, could be attributed to off-licence density, with every two extra off-licences per 100,000 of population resulting in one alcohol-specific hospital admission of an under 18-year-old per 100,000.⁷

Hours and days of sale

The effect of increasing the number of hours in which alcohol can be sold has also been examined, with an association found between opening hours and alcohol-related problems in countries including Australia, Canada, New Zealand and Ireland. Two recent studies exploring the impact of a reduction in licensed hours have demonstrated that modest restrictions in opening hours can be relevant for public health and safety. A reduction in late night trading hours for pubs by two hours in New South Wales, Australia produced a large relative reduction in assault incidence.⁸ In Geneva, Switzerland a policy change in 2005 prohibiting off- sales of alcohol between 9pm and 7am and banning

sales in petrol stations and video stores, resulted in a significant decrease in hospital admissions for alcoholic intoxication among adolescents and young adults over two years following the intervention. Strong effects were found for 10-15-year-olds, even though they were below the legal purchase age for alcohol. This particular finding can be explained by the greater reliance young adolescents have on off-sales outlets as their main or only source of alcohol, which together with the fact that they are less able to stock alcohol for later use, means that they are more likely to be affected by curtailments in off-premises retail sales.⁹

In the UK, a number of studies have evaluated the impact of longer trading hours following legislative changes. An extension of Scottish licensing hours (by one hour a day and Sunday opening for off-sales) in 1977 was found not to have had a dramatic effect on chronic alcohol-related health harms as indicated by mortality rates and hospital admissions for alcohol dependence.¹⁰ However, it has been noted that the research period of this study coincided with an economic downturn and recession in Britain,¹¹ and it is likely these conditions exerted a strong countervailing influence to the effects of increased availability. The situation may have been different if opening hours had been extended at a time of rising prosperity.

A review of literature examining the impact of the England and Wales 2003 Licensing Act (in force from 2005), which abolished nationally fixed licensing hours, revealed varying results.¹¹ A 2006 survey of 33 A&E departments reportedly found no increase in violence-related injury and concluded from this that there was little evidence to suggest that the 2003 Act had any significant effect on violence-related injuries.

However, a 2006 cohort study carried out at an emergency department in a central London hospital found that overnight alcohol-related attendances significantly increased after the introduction of the new licensing legislation. Much of the research reviewed however did not compare changes in levels of alcohol-related problems with actual changes in trading hours. Although the 2003 Act permits 24-hour licensing, reports suggest that extensions in licensing hours have been limited.

Interpreting the evidence

Availability theory posits that the more abundant the supply of alcohol in society and the greater the ease and convenience with which it can be obtained the more a population will consume and the greater the level of harm that will be experienced. A large number of research studies and evaluations of natural experiments have tested this theory and the accumulated evidence supports a relationship between availability, consumption and harm. However, the nature of the relationship is not static, nor is it simple cause and effect, but can involve a number of interplaying factors. An understanding of the dynamics of the relationship between availability, consumption and harm is necessary for effective management of the supply of alcohol to limit harm.

Where changes in alcohol availability have occurred incrementally over a long time, possibly many decades, it can sometimes be difficult to assess their impact if other influencing factors are changing over the same period. It may be possible that other factors mask the effects of changing alcohol availability or alternatively amplify their effect. One of the most influential factors on alcohol consumption and harm is affordability. Evidence strongly indicates that increasing affordability of alcohol in the UK in recent decades has been a major driver of rising rates of alcohol consumption and harm.¹² To a certain extent alcohol affordability is related to availability. Licensing more outlets to sell alcohol increases competitive pressures on existing outlets and this can result in more promotional activity and discounting, depressing alcohol prices and making products more affordable. In the UK supermarkets are known to sell alcohol below cost price to drive footfall and increase trade as well as offering extensive price promotions.¹³ Recent analysis of affordability trends by NHS Health Scotland has revealed that since 1987 off-sales prices of alcohol have increased more slowly than on-sales prices and beer off-sales prices have actually fallen since 2000. In 2009 large multiple retailers, i.e. big supermarkets, accounted for 84 per cent of the all alcohol off-sales in Britain.¹⁴

Changes in affordability, however, may help in interpreting the impact of changes in availability in other respects. Affordability is affected by increased availability, but is influenced to a greater extent by general economic

conditions, and the rise and fall in disposable incomes appears to be a more powerful predictor of levels of alcohol consumption and harm than availability. When affordability drops it may override the effects of expanding availability to a degree, as possibly seen in Scotland in the late 1970s following the extension in licensing hours and in England from 2005 onwards. However when affordability remains constant or goes up, an expansion in the numbers and types of outlet selling alcohol and trading hours may lead to a rise in harmful alcohol use. In Scotland from the mid-1990s to early 2000s, a highly accessible and aggressively marketed alcohol supply, together with rising economic prosperity and inadequate alcohol price regulation, was associated with an exponential rise in alcohol consumption and harm.¹⁴ It can be hypothesised from the evidence that easy access to alcohol and a liberal licensing regime can exacerbate the negative consequences of rising affordability on levels of alcohol consumption and harm. Conversely, careful regulation and restrictions on availability can moderate the effects of rising disposable incomes, and alongside price controls limit harmful consumption.

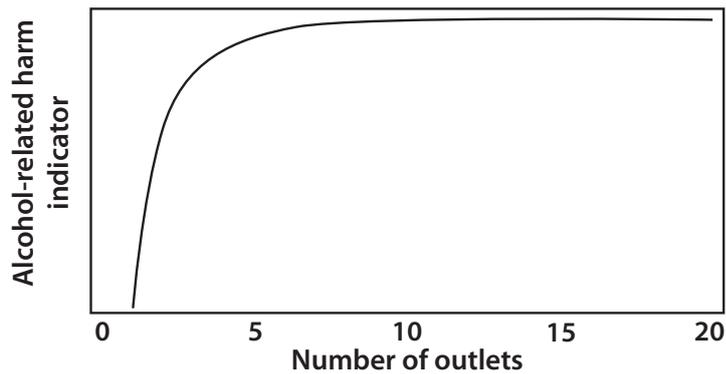
A further aspect of the complexity of the relationship between alcohol availability, consumption and harm is demonstrated by evidence showing that increased availability of alcohol affects alcohol-related problems even in situations where overall consumption does not increase. A variety of factors may help explain this phenomenon. Not enough custom to support all alcohol outlets in an area, particularly in times of economic hardship, can result in on-trade establishments running under-capacity and therefore not making enough income to maintain their premises or adequately train staff. Evidence shows that violence is more likely to occur in bars that are untidy or poorly kept.¹⁵ 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 of the week.¹⁶

Refining the analysis

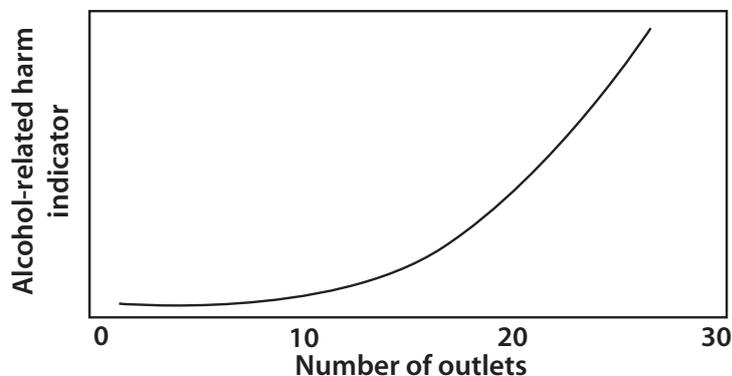
In recent years some work has been undertaken to more fully describe the relationship between availability, consumption and harm. Livingston et al

(2007)¹⁷ suggest a theoretical framework for assessing the impact of outlet density that considers both 'proximity' and 'amenity' effects. Proximity effects relate to how easy it is to obtain alcohol with the assumption being that increased convenience and access leads to more consumption and harm. Amenity effects relate to the negative consequences in terms of violence, social disorder, littering etc linked to licensed premises that impact on the neighbourhoods in which they operate. The researchers hypothesise slightly different relationships between proximity and amenity effects of outlet density and indicators of alcohol-related harm; both increasing with increased outlet density but at different rates.

Model of the proximity effects of outlets



Model of the amenity effects of outlets



Campbell et al (2009)¹⁸ suggest at least seven characteristics of retail outlets that may influence levels of alcohol consumption and harm:

1. Outlet size (physical size of the retail premises or volume of sales).
2. Clustering (the concentration of outlets within a given area).
3. Location (the proximity of retail sites to places of concern, such as schools or places of worship).
4. Neighbouring environmental factors (demographics of the community and the degree of isolation of a community).
5. The size of a community (which may affect access to other retail sites).
6. The type and number of alcohol outlets (bar, restaurant, liquor store, grocery store) in a community may also influence whether and how outlet density affects drinking behaviour.
7. Alcohol outlets may be associated with illegal activities, such as drug abuse, which may also contribute to public health harms.

An important consideration for the management of alcohol availability is the aggregation effect of alcohol outlets. Alcohol outlets operate in a competitive relationship with other outlets and this relationship shapes retail practices and can in turn shape drinking behaviour and problems. Evidence suggests that particular features of alcohol outlets, as well as market dynamics, can affect consumption and harm. Research from Canada (above) evaluating the effects of a privatisation of government liquor stores found not only a significant association between increasing outlet density and per capita alcohol sales, but that the proportion of liquor stores in private hands significantly predicted the level of alcohol sales. Australian research (above) showing an association between domestic violence rates and increased outlet density, found a much larger effect for packaged liquor licences.

Alcohol outlets are not 'static risk factors' (Gruenewald)¹⁹ but are part of a market that continuously restructures to meet and create demand. Markets shape and are shaped by drinking habits and cultural practices. An understanding of market dynamics, together with a more refined analysis of availability that differentiates types of premises, types of problem and types of drinker is required for a better management of the alcohol supply to minimise alcohol-related problems.

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Appendix three

Executive Summary of Opinion by Sir Crispin Agnew of Lochnaw Bt QC regarding Alcohol, Health, Over Provision etc and the Licensing (Scotland) Act 2005 Act

The Policy

- Sections 6 and 7 provide the key for licensing boards to promote the licensing objective of “protecting and improving public health”. As section 6(3) states that “a Licensing Board must (a) ensure that the policy ... seeks to promote the licensing objectives” it is incumbent on a board to obtain sufficient information to enable it to “ensure” that its policy promotes the licensing objectives. Evidence of the effects of alcohol is available at national and board area level which could be sufficient to inform the policy.
- The most obvious control for protecting and improving public health lies in the policy on overprovision of licensed premises within the locality determined by the board. The policy can be wider than overprovision and a board could have a policy in relation to the suitability of premises in localities where the sale of alcohol impacted on the objective of protecting and improving public health; ie localities where children or young persons gathered to buy alcohol and drink to excess and thus were persons likely to frequent premises in that area. The policy could include a policy on different opening hours in different areas, if those opening hours could be shown to have the objective of promoting the health objective.
- Any policy has to be founded on a sound factual basis and fall within the legal parameters of the Act – , cf the test in *Brightcrew* that the promotion of the health objective must be linked to the effects of the sale of alcohol. However, a board will have a wide discretion as to the policy adopted and its expertise in licensing matters will be respected.
- Purpose of 2005 Act - The primary purpose of the 2005 Act is not to minimise the risk of harm from alcohol; it is an act to regulate the sale of alcohol, albeit a board has to have regard to the licensing objectives in implementing regulation and to refuse an application if it is inconsistent with one of the licensing objectives.

- Individual applications. These have to be determined on an individual basis under section 23, where there is no onus on the applicant. There must be a proper basis in the material before the board for the board to hold that a particular ground of refusal applies. Accordingly it is difficult for a board to promote the health objective in relation to any individual application, because it is difficult to evidence the ill effects of alcohol at a premises level, because the evidence is generally at population or board area level. An individual application could be refused if it was shown to be contrary to the policy, where the policy can be formulated on the basis of wider evidential basis. A board has to have regard to its policy.
- ECHR – While a licence is a property right for the purposes of the convention, the 2005 Act is generally compatible with convention rights provided that a board exercises its functions proportionately and balances the rights of the individual against the general interests of the community.



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