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### ► An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005: final report.

**MacGregor A., Sharp C., Mabelis J. et al.**  
**NHS Health Scotland, 2013**

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*Scotland's 2005 licensing reforms placed it in the vanguard across the UK, notably in adding public health to licensing objectives. There were important positives, but implementing this key measure foundered on the difficulty of relating decisions on individual licensed premises to health trends across an area.*

**SUMMARY** The [Licensing \(Scotland\) Act 2005](#) came fully in to force in September 2009, establishing five licensing objectives:

- preventing crime and disorder;
- securing public safety;
- preventing public nuisance;
- protecting and improving public health;
- protecting children from harm.

In January 2010 NHS Health Scotland commissioned the Scottish Centre for Social Research to undertake a three-year evaluation of the implementation of, and compliance with, the objectives of the act. Under the act [licensing boards](#) are local decision-making bodies which implement licensing law and set local policy within the context of the law. Licensing standards officers are employed by local authorities to provide information and guidance on the act, supervise compliance, and mediate disputes. They can also issue notices regarding remedial action to rectify breaches or apply for a review of a licence. They are intended to be the first port of call for most matters pertaining to licensing, often resolving issues without the need for formal proceedings. There are 40 licensing boards in 32 local authority areas.

The evaluation included [initial telephone surveys](#) in 2010 of 30 licensing standards officers and 29 licensing board representatives (mainly clerks) from across Scotland. In 2012 follow-up surveys tapped the opinions of 32 licensing standards officers and 28 licensing board representatives. In between, five selected local authority areas acted as case studies. In each researchers conducted a focus group with the licensing board, a focus group or in-depth interviews with members of the [licensing forum](#), and analysed local data collected and collated by licensing standards officers. Finally, in 2013 preliminary findings were discussed at a national seminar attended by 14 key stakeholders representing organisations and interests including the Scottish Government, licensed trade, licensing boards, the Crown Office, Procurator Fiscal Service and public health.

#### Main findings

In general, the act was seen as having a positive impact and increasingly so over time. In the initial survey it had provoked a mixed response, and many concerns were expressed about its likely effectiveness. But at the follow-up one and a half to two years later, its perceived impacts were viewed more favourably, and many of the concerns previously expressed had been resolved.

These aspects were viewed most positively throughout the study, but particularly at follow-up:

- Licensing standards officers were seen as one of the most successful aspects. At follow-up, most officers were able to devote most of their time to alcohol licensing issues, links with the licensed trade had improved, and many issues were being dealt with between officers and the alcohol trade, without the need for board-level review.
- Boards appreciated their extra powers, especially their ability to review, revoke or suspend licences with immediate effect. This was thought a useful deterrent and ultimate sanction if an alcohol outlet was guilty of poor practice.
- The consensus was that training for licensing standards officers, board members and trade staff had increased their knowledge and standards of professional practice.
- There was evidence that the relationships licensing standards officers had with boards and with staff involved in the alcohol trade had improved; links between officers and trade members were seen as one of the main positive outcomes of the act.
- In respect of irresponsible promotions, at follow-up the consensus was that the act had impacted favourably on the on-sale sector; few such promotions were now being reported in pubs and clubs.
- Reduction of direct sales of alcohol to underage young people was seen as another positive. Test purchasing in particular was regarded as a very useful way to gauge and potentially improve licensed trade staff practice.

These issues provoked a more mixed response:

- At follow-up licensing standards officers and boards had mixed views on licensing forums, but there did appear to be a hardening of attitudes, with a number of interviewees describing them as having stalled or failed completely.
- The public health objective was seen as especially problematic, and it was the objective that boards, forums and officers across Scotland were struggling to address.
- The act obliged all boards to assess whether there is overprovision of licensed premises in their area, having regard to the number and capacity of existing premises. Respondents found these concepts difficult to define and measure. At follow-up only five boards thought overprovision a concern.
- Throughout the evaluation the consensus was that pricing in the off-trade sector had been largely unaffected by recent legislation, and that the sector was too powerful and was able to overturn board decisions due to its financial clout, allowing it access to the best legal resources.
- The 'Brightcrew' court ruling that boards should only base their decisions on licensed premises on the sale of alcohol was viewed as being problematic. This was because issues pertaining to licensing objectives, such as noise, public safety and even certain disturbances in or near licensed premises, were arguably not always associated directly with the sale of alcohol.
- On the whole national and local data were not being collected or collated consistently or in a manner which permitted meaningful comparison. In relation to the capacity of licensed premises, more guidance needs to be given to boards so they can provide more consistent and useful data. It would be helpful for boards and licensing standards officers to improve the collection and entry of key data so the provisions of the act can be monitored.

#### The authors' conclusions

The consensus was that at a minimum, the act had been moderately successful three years after its implementation, and could have even greater impact if consideration were given to aspects working less well.

More guidance and support is needed nationally in relation to the public health objective, capacity and overprovision, the role and function of licensing forums, and any relevant new legislation. The Scottish Government should continue to consider measures to address pricing of alcohol, for example, pressing for the introduction of minimum pricing once the judicial process has been fully determined. Consideration should be given to the numbers of licensing standards officers in some areas (where there was a possible need for more officers) and the need for them to maintain their skills and spend most of their time on alcohol licensing issues. All officers should have access to legal advice, and collect and collate an agreed dataset locally.

Licensing boards should give further thought to the operation and effectiveness of the public health objective. As legally required, they should also assess capacity and overprovision, seeking additional guidance if necessary. If they have sought their views, boards should inform licensing forums of their decisions and why they were made, particularly when they contradict proposals from forums. Sharing experiences with other boards would enhance learning and improve practice. Boards might also publicise examples of good trade practice and seek to improve the consistency of data collection and collation so the act's provisions can be assessed.

More guidance could be provided on licensing forums which could also be given greater powers. Forums should continue to find ways to involve members of the public and young people in their discussions and decisions.

The licensed trade should continue to undergo mandatory training, maintain good links with licensing standards officers and ensure training of staff is on-going. The alcohol industry could consider measures to address the public harms caused by the misuse of alcohol.

National and local datasets should be collected and collated consistently by boards and licensing standards officers, so meaningful comparisons can be made based on an agreed minimum dataset. A scoping exercise might establish what data is available at national and local levels, and key partners could discuss what data should be collected.

**FINDINGS COMMENTARY** Scotland's licensing reforms [placed it in the vanguard](#) of such controls across the UK. How things work out there could influence whether other UK nations follow suit. The clearest positive was the role played by licensing standards officers in informally preventing or resolving issues without the need for licensing board proceedings, aided by the officers' good relationships with police and the boards, and most critically, with the alcohol trade.

Things seem to have worked out less well with respect to the potentially most far-reaching innovation in Scotland – adding public health impacts to the issues licensing authorities should consider, a step campaigners saw as major advance. This is also an ambition in Wales, and is being considered for England. What may prove a step towards it was an [amendment](#) to licensing law giving local health bodies in England and Wales the power to make representations to licensing authorities about new licence applications and to request reviews of existing licences. From 2012 this meant they could oblige the authority to consider issues such as the impact of new licensed premises on the local NHS (primarily accident and emergency departments and ambulance services) and more generally the safety of the public within the night-time economy.

Of all the [five licensing act objectives](#) in Scotland, the new public health objective was the most difficult for boards to get to grips with. The experience documented by the featured report suggests that effectively embedding public health as a licensing objective will need far more than simply requiring licensing authorities to consider it. Much more specific guidance, stronger links with bodies responsible for public health, and the selection or creation of data to assess whether progress was being made, were among the suggestions. Some respondents expressed a more fundamental disconnect; public health is about the welfare of an entire population, yet licensing boards generally make decisions about individual alcohol outlets. For example, assessing the possible impact of an application for an extension to a pub's serving hours to the incidence of alcohol-related liver disease in an area would seem near impossible, and if the decision went against the applicant, would be ripe for legal challenge.

The difficulties were apparent in [licensing policy](#) for Glasgow, Scotland's most populous city and the UK's worst for alcohol-related deaths. The city's licensing board was aware that "many of the problems are deep-rooted in the cultural history of the city". Its ability to affect this was limited by its legal powers, the exercise of which is "open to legal challenge ... While the Licensing Board is fully supportive of efforts to tackle the problems associated with harmful and dependent drinking in the city, it recognises that existing licensing laws are such that there has to be a causal connection between a particular licensing application and a concern for the Public Health Objective." In the end its suggestions for how applicants and licence holders could incorporate the objective in their plans seemed minor and unlikely to affect the core factor of overall alcohol consumption. Included were providing food and entertainment, making information available to staff and customers on sensible drinking levels and the effects of harmful and dependent drinking, offering soft drinks, and adequate seating.

Where boards come closest to the population-wide level of public health is in their decisions on whether particular areas are over-provided with licensed premises, given not just the number of existing outlets of that type, but also their capacity in terms of the numbers of customers on-licensed premises can accommodate, and the display space allocated to alcohol in off-licensed premises. In [guidance](#) on the act the density of alcohol outlets is recognised as a factor not just in disorder but in alcohol-related ill health, a position supported by research assessed by the UK's health advisory body in its [own guidance](#) on preventing alcohol-use disorders. Yet it was here too that the featured report found boards unable to define and measure 'capacity', and fearful of legal challenges if they tried to use the generally flimsy data to oppose licensing applications. Most boards did not identify over-provision in their areas. When they did, applications had been refused on these grounds, though there remained some reluctance to oppose applications for licences which might aid the local economy in straitened times.

There are, however, [signs](#) that since the featured evaluation was completed, more Scottish licensing boards are getting to grips with and using the health objective and more (10 in 2013) are using the over-provision criteria to control availability of alcohol.

For more on licensing see this Findings [hot topic](#) on controlling alcohol-related nuisance and disorder.

*Thanks for their comments on this entry in draft to research author Andy MacGregor of ScotCen Social Research in Edinburgh, Scotland, and to his colleagues. Commentators bear no responsibility for the text including the interpretations and any remaining errors.*

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