

FALKIRK COUNCIL LICENSING BOARD

Subject: Licensing (Scotland) Act 2005
 Overprovision Assessment and Consultation
Meeting: Licensing Board
Date: 8 June 2011
Author: Clerk to the Licensing Board

1. PURPOSE

- 1.1 The purpose of this report is to update members on the requirement under Section 7 of the Licensing (Scotland) Act 2005, for the Board's Licensing Policy Statement to include a statement as to the extent to which the Board considers the overprovision of either licensed premises, or a particular description of licensed premises exists within a locality.

2. BACKGROUND

- 2.1 Members will recall a previous report presented at a Licensing meeting of 16 February 2011, which set out a draft statement on overprovision and provided the findings and statistics in relation to the number, capacity and locality of licensed premises within the Falkirk Board's jurisdiction. It also confirmed the findings in relation to the evidence sought and the lack of robust factual evidence to support overprovision in any given locality or with regard to specific types of premises.
- 2.2 Members accepted the contents of the report, acknowledged the data collected and incorporated into the draft statement on overprovision and agreed to move to the formal consultation process on seeking feedback and any robust factual evidence that may assist in the finalisation of the analysis, to the extent of establishing if any overprovision exists within the Falkirk area.

3. UPDATE

- 3.1 The consultation exercise having been completed, resulted in a total of 5 responses being received (Appendix 1). Those who responded were as follows:
- 1. Central Scotland Police
 - 2. Scottish Beer & Pub Association
 - 3. Falkirk Local Licensing Forum
 - 4. Sandemans Solicitors
 - 5. Alcohol Focus Scotland

3.2 In summary, the comments and observations presented by each of the responders was as follows:

1. Central Scotland Police

The Chief Constable submitted a copy of their response of 7 September 2010, which was tendered at that time, as a direct response to our pre-consultation request and evidence gathering exercise, as set out in the Overprovision Guidance provided by Scottish Government. This pre-consultation with Central Scotland Police requested any relevant information in respect of overprovision and specific hotspots in the Falkirk area, which have higher levels of crime and disorder and which, could be associated with higher concentrations of licensed premises. As members are aware, the response provided indicated that any crime statistic provided by the police would include crimes reported as being within licensed premises or directly associated with licensed premises. However, it would still not be possible to say that one is a direct cause of the other. Accordingly, the conclusion was that identified hotspots, coupled with crime statistics could not be reliably used as a basis for setting boundaries for overprovision and that each application should be determined on its own merit. No additional comment or evidence was submitted by CSP as a result of the formal consultation process.

2. Scottish Beer & Pub Association

The Chief Executive for the Scottish Beer & Pub Association responded on behalf of his organisations members and stated that they concur with the Boards assessment that there is no overprovision of licensed premises within the area of Falkirk Council Licensing Board's jurisdiction.

3. Falkirk Local Licensing Forum

The response from the Forum was that they had considered the consultation documentation in its entirety, that the information provided represented a considerable amount of work and that the assessment of overprovision had been carried out within the parameters of the Guidance issued by Scottish Government in terms of the Licensing (Scotland) Act 2005. In conclusion, and given the methodology adopted, the Forum stated that they could not disagree with the conclusions that it was not possible to identify any locality within the Board's jurisdiction where data supports the proposition that saturation point is reached or close to being reached. They noted their curiosity on what findings would have resulted if a different methodology had been followed, but did not suggest examples of relevant alternative methodologies

4. Sandemans Solicitors

The respondent confirmed that they had studied the statistical information and conclusions provided within the consultation documentation carefully and have stated that in their opinion the findings of the Board that there is no overprovision is correct and therefore, they concur with the Board's position.

5. Alcohol Focus Scotland

The response from Alcohol Focus Scotland was in the context of a general response to all of Scotland's Licensing Boards and not specific to Falkirk or based on any of the statistical data within the consultation documentation. Their response highlights specific areas of work that the group are currently engaged on, relating to the assessment of overprovision, but as yet, not concluded. These being:

- Working to produce a good practice guide on making overprovision assessments.
- Making recommendations to Scottish Government on changes to Licensing Guidance to better support the Public Health objective, linked to issues of data collection, causal link, etc
- Convening a 'high level expert group' to agree a robust scientific, academic and legal evidence base for assessment of overprovision and public health objectives.

The detail within the submission relates to the licensing objectives and sets out many actions that could be implemented by Boards in order to address alcohol misuse across Scotland, many of which are already raised with the applicants and their agents by Falkirk Board Members when determining licensing applications. The group make specific reference to the methodology adopted by West Dunbartonshire Licensing Board and recommends that their approach on assessing overprovision be adopted whilst acknowledging the difficulty in gathering evidence and the range of evidence available. The methodology set out by that Board utilised statistical evidence on alcohol related incidents provided by Strathclyde Police and West Dunbartonshire Environmental Health, which evidence was not available to Falkirk Council Licensing Board in the detail provided to the West Dunbartonshire Board, e.g. travel patterns when purchasing alcohol.

4. CONCLUSION

- 4.1 In conclusion, following analysis of the information and comments received, it is clear that there has been no additional factual evidence, specific to the Falkirk area, submitted by the respondents to alter the draft statement contained within the overprovision consultation documentation and on that basis the overprovision statement for inclusion in the Policy would be as per the statement presented to Members on 16 February 2011. That being (subject to grammatical amendments now included):-

Proposed Statement

Overprovision

Section 7 of the Licensing (Scotland) Act 2005 requires each Licensing Board to include in its policy statement: a statement as to the extent to which the Board considers there to be an overprovision of:

- a) Licensed Premises, or
- b) Licensed Premises of a particular description, in any locality within the Board's area.

Falkirk Council Licensing Board has undertaken an assessment of overprovision and for the reasons stated in the overprovision assessment it has not been possible to identify any locality within the Falkirk Board's jurisdiction where data supports a robust and compelling argument that the number of licensed premises has reached, or is close to reaching, saturation point.

Therefore, there is no presumption against the granting of new licences on the basis of overprovision within any locality within the Falkirk Council Licensing Board's area. Nevertheless, Falkirk Council Licensing Board recognises that each application for a premises licence will be judged on its own merits. The Board can still find that a ground for refusal of an application based on overprovision exists where this is supported by the information placed before the Board.

If any party should seek to submit an objection or representation, in respect of a premises licence application, founded on the issue of overprovision then it is for that individual objector, group or representative of those, to present their case for consideration by the Licensing Board.

5. RECOMMENDATION

- 5.1 That Members note the contents of the responses received as a result of the consultation exercise.
- 5.2 That the Board agree the statement on Overprovision, as stated in the consultation documentation as detailed in paragraph 4.1 above, and, if agreed, require the statement to be included in Falkirk Council Licensing Board's Policy.

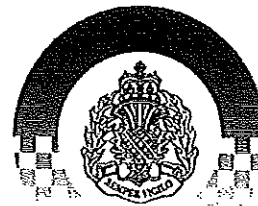
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Clerk to the Licensing Board

Date: 8 June 2011

Contact Officer: Russell Cartwright,
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LIST OF BACKGROUND PAPERS

1. Consultation Paper on Overprovision



7th September 2010

Central Scotland Police

Together for safer communities

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Dear

Licensing (Scotland) Act 2005 – Section 7 Assessment of Overprovision

I refer to the above and your request for Central Scotland Police to provide any relevant information in respect of overprovision which may assist the Licensing Board in its identification and formulation of localities for consideration within the overprovision consultation and subsequent policy.

You requested statistical information, where it can be demonstrated that there are currently 'Hotspot' areas within the Falkirk Council area and specifically that any anti-social behaviour at these locations could be attributed to customers using a concentrated number of licensed premises.

The problem with identifying specific 'hotspot' areas remains that there can be no causal link demonstrated between the existence of licensed premises within a specific area and the prevalence of crime in that same area. Without a detailed examination of each crime, which would not be feasible for the purpose of this assessment, it is not possible therefore to say that the presence of particular licensed premises are creating a problem within the Falkirk Council area. As you are aware, when we do identify a specific problem premise we take action to bring that to the notice of the Board.

Any crime statistics provided by police would include crimes reported as being within licensed premises or directly associated with licensed premises. However, it would still not be possible to say that one is a direct cause of the other.

An example of this would be where a person enters a licensed premise when they have already consumed excess alcohol elsewhere and they are refused service. In refusing to leave that person causes a breach of the peace which is subsequently recorded on police systems as having occurred within the premises. There is however, no evidence providing a dependable causal link that can be identified between the evidence gathered and the operation of that licensed premises. In this particular circumstance the licensed premise is not the cause of the problem and they have actually been efficient in their operation by refusing service.

Therefore even a direct examination of individual crimes statistics may not reveal the route cause of the antisocial behaviour.



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It was therefore agreed that identified 'hotspots' in relation to crime statistics could not be reliably used as a basis for setting boundaries upon overprovision.

Taking the above into account, Central Scotland Police are of the opinion that each application still requires to be determined on its own merits and there may be exceptional cases in which an applicant is able to demonstrate that grant of the application would not undermine the licensing objectives.

Yours faithfully

Robbie McGregor
Superintendent
Falkirk Area Commander



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FROM THE OFFICE OF THE CHIEF EXECUTIVE

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15th April 2011
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Dear Mr Watson

**LICENSING (SCOTLAND) ACT 2005 – DUTY TO ASSESS OVERPROVISION
- FALKIRK LICENSING BOARD**

I am responding on behalf of my Association to the consultation exercise relating to the Board's assessment of overprovision within its area as per your letter of 21st February 2011. I am grateful for an opportunity to comment.

You will be aware that the SBPA's members account for 1,200 of the 5,000 licensed public houses in Scotland, including a number within the area of your Licensing Board, "the Board." Our members promote the responsible sale of alcohol and management in all of its licensed premises, helping to make the area a safe and enjoyable place to visit and socialise in. The trade is also an important local employer and help contribute to the economy of the area.

I note the Board's comments in relation to the issue of overprovision and that the Board has determined that there is no overprovision of licensed premises within any locality within the Board's area, albeit that going forward the Board will consider each application on "its own merits."

Previous feedback from our members to the Association indicated that they did not believe there was an overprovision of on-sales licensed premises in any locality within the Board's area, or indeed that any area was "provided for" in terms of licensed premises, not least in light of the clear evidence that a significant number of previously licensed premises had not made the transition to the new licensing regime, effective from 1st September 2009. We would therefore concur with the Board's assessment that there is no overprovision of licensed premises within the area of the Falkirk Licensing Board.

I trust that our views are of use and we look forward to the final outcome of the Board's deliberations on these issues.

Yours sincerely

Patrick Browne
Chief Executive

**FALKIRK COUNCIL LICENSING BOARD CONSULTATION ON THE DRAFT
OVERPROVISION ASSESSMENT LICENSING (SCOTLAND) ACT 2005**

DRAFT RESPONSE BY FALKIRK LOCAL LICENSING FORUM

With reference to the above consultation, Falkirk Local Licensing Forum held a special meeting on Thursday 10th March 2011 when members considered the document and wish to make the following comments:

The Licensing Forum considered the document in its entirety and believes that it represents a considerable amount of work in the calculation of whether or not there is overprovision of licensed premises in the Falkirk Council area that could be related to the five licensing objectives. The Forum also noted that the assessment of overprovision has been carried out within the parameters of the Guidance issued by the Scottish Government in terms of the Licensing (Scotland) Act 2005.

Given the methodology adopted, the Forum cannot disagree with the conclusions of the assessment, in that it has not been possible to identify any locality within the Falkirk Licensing Board's jurisdiction where data supports a robust and compelling argument that the prevalence of licensed premises or licensed premises of a particular description, has been reached or is close to reaching saturation point. However, the Forum is aware that the same challenge exists for all local authorities in undertaking an overprovision assessment but that by applying an alternative methodology, overprovision has been capable of being identified elsewhere. The Forum is curious as to what the conclusion would have been if a different methodology had been adopted.

The Forum welcomes the statement within the overprovision assessment that this conclusion also recognises that each application for a premises licence will be judged on its own merits and could find that a ground for refusal based on overprovision exists in the future.

The Forum, would in future, welcome notification of any new premises applications being made to the Licensing Board.

Falkirk Local Licensing Forum
Date : 7 April 2011

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Our Ref: RAS/VP

Your Ref: RW/CH/LB(P)

29 March 2011

Dear Sirs

Licensing (Scotland) Act 2005

Section 7 – Due need to assess overprovision

Many thanks for your letter of 21 February.

The writer has looked at the information which you provided carefully and his conclusion is that you are correct, namely that there is no overprovision. Thus we concur.

Yours faithfully

R.A. Sandeman LL.B., N.P., S.S.C.

Alcohol Focus Scotland Response regarding the Licensing Board's Draft Licensing Policy Statement



Alcohol Focus Scotland is pleased to have the opportunity to offer comments on the Licensing Board's Licensing Policy Statement. We recognise the statement is an important overarching document which clearly sets out the Board's overall approach to licensing issues. It is also presents an opportunity for the Board to indicate the process and type of evidence that will be collected and considered.

As Scotland's national alcohol charity, we have focussed our comments on the "protecting and improving public health" licensing objective. However, as actions taken under the other four objectives can also impact on public health, we have commented on these as appropriate.

We are aware that the public health objective has proved to be a challenge for many Licensing Boards. It is the view of Alcohol Focus Scotland that more work could usefully be done to collect appropriate evidence for this objective and also to find ways to link in with the bodies already collecting such data. We recognise there are also issues in interpreting this data and relating it to localities and our organisation is keen to work with Licensing Boards to provide further assistance in this area. The Scottish Government has indicated that it will revise the guidance accompanying the Licensing Act and this presents an important opportunity to increase the efficacy of the public health objective. Alcohol Focus Scotland will engage with the Scottish Government on the process of rewriting the guidance and will also seek to develop further information and support for Licensing Boards as required.

1. Background

The purpose of liquor licensing has always been to protect the public and shape social behaviour.

"The roots of the licensing legislation lie in the desire of governments to impose a social control on the drinking habits of the population..."¹

This aim is now included within the stated objectives of the Licensing (Scotland) Act 2005. When liquor licensing fails in meeting these objectives, it risks becoming nothing more than a bureaucratic process.

Health concerns underpinned the development of the Licensing (Scotland) Act 2005. When the Nicholson Committee was set-up to review the 1976 Licensing Act, its remit was:

"To review all aspects of liquor licensing law and practice in Scotland, with particular reference to the implications for health and public order; to recommend changes in the public interest; and to report accordingly".²

The policy memorandum accompanying the Licensing (Scotland) Bill states that one of the Bill's aims is "to promote an environment for social drinking that was safe and welcoming for all"³. Alcohol Focus Scotland recognises the work Licensing Boards throughout the country have done to progress this, particularly in the on-trade. We would encourage Licensing Boards to continue this good work but we would also like to suggest that Boards broaden their focus to consider the increasing impact of off-sales on public health.

The 2005 Act is strongly on-trade focussed and reflects the alcohol policy at that time which focussed predominantly on binge drinking and harmful drinking by children and young people. However, over

the last few years, the Scottish Government's alcohol policy has moved away from focussing on specific sections of the population to consider the levels of alcohol-related harm across the whole population as can be evidenced in the alcohol policy document *"Changing Scotland's Relationship with Alcohol: A Framework for Action"* (2009).

"Alcohol misuse is no longer a marginal problem with up to 50% of men and up to 30% of women across Scotland exceeding recommended weekly guidelines. That's why we are aiming, consciously, to adopt a total population approach....Our approach is targeted at everyone including 'ordinary people' who may never get drunk but are nevertheless harming themselves by regularly drinking more than the recommended guidelines. If we can reduce the overall amount that we drink in Scotland...then we will all reap the benefits."

In addition to a change in the policy focus, there has been a significant shift in alcohol consumption patterns. NHS Health Scotland's analysis of alcohol sales data (2005-2009)⁴ reveals that 68% of alcohol is purchased through off-sales.

The shift in drinking behaviour requires policy action which reflects these changes and the Alcohol Etc. Bill includes a range of measures specifically designed to address some of the irresponsible practices in off sales including implementation of minimum unit pricing. The policy memorandum accompanying the Bill makes it clear that the purpose of the measures is to reduce overall alcohol consumption in the population in an effort to reduce the harm caused by alcohol. Licensing Boards will similarly want to widen their focus to address the problems associated with off sales, in particular the volume of alcohol sold and the irresponsible practices of the large supermarkets.

Alcohol Focus Scotland recognises that Licensing Boards have to consider economic and business needs in their area. However, Boards must also be concerned with the health and well-being of the people they serve. Boards must think carefully about whether or not granting new licences or longer licensed hours will compromise public health.

2. Overprovision

Any overprovision assessment should take into consideration the effects of all of the different types of licensed premises in an area. It is up to the Board to decide which size of area to consider the effects across – whether this is in small localities such as a street or neighbourhood, or larger areas such as a district or region.

We recognise the good work that most Boards have undertaken work with the police to consider the impact of crime, public nuisance and public safety, particularly in relation to on-licence premises. We suggest that a different approach needs to be taken with regards to off-sales, as people often travel significant distances to purchase cheap alcohol, especially to larger supermarkets. Research carried out in West Dunbartonshire indicated that people will travel up to 2 miles to purchase alcohol from a large supermarket. Clearly, the impact of large supermarket purchases will affect a much wider radius than Licensing Boards have traditionally considered.

It is also the case that people are mobile so may do their drinking in more than one premises, in addition to purchasing alcohol for consumption at home or in other places. This presents considerable difficulties for Boards who may be seeking to link problem issues to individual premises. Alcohol Focus Scotland recommends that Licensing Boards take a wider approach in considering overprovision and consider data across larger localities. We also strongly recommend that the Licensing Board investigate the full range of useful data available and work with Health Boards, Police and Environmental Services and others to identify what information would be useful and could reasonably be collected for future consideration.

3. The 5 Objectives and Sources of Useful Data

Having looked at the breadth of data that Licensing Boards across Scotland are considering in order to inform their licensing policy statements, we suggest the following types of data be examined:

3.1 Preventing crime and disorder

Commonly available statistics are:

- Breach of the Peace Incidences
- Common Assault Incidences
- Consumption of alcohol in designated places incidences
- Drunk and Incapable Incidences
- Vandalism/ Fire raising etc Incidences

In the licensing process, only incidents within a certain radius of licensed premises are considered, often this is in the region of 50m. Given that alcohol purchased in off-sales or supermarkets is frequently transported a much greater distance before it is consumed, we recommend that this radius is made much wider for off-sales premises. In addition we recommend that more attention is paid to the alcohol-related offences that take place in public spaces and in the home. This will help to provide evidence of the link between off-sales and crime and disorder.

3.2 Securing public safety

Public safety includes crime and also the fear of crime. Alcohol Focus Scotland suggests that information from community surveys, such as "The Ripple Effect"⁶ should be considered. This will give a reasonable indication of the fear of crime in relation to alcohol. Calls to the police about alcohol-related incidents should also be included.

Many Licensing Boards recognise the impact that environment has on behaviour and a number of suggestions are made about the importance of the layout of on-licence premises, eg the seating arrangements and tables. Alcohol Focus Scotland supports this approach. There is a considerable body of research, including a study conducted in Glasgow⁶ that shows that the drinking environment affects behaviour and the amount of alcohol consumed. The layout and standards in off-licensed premises also impacts on the behaviour of customers. This is particularly important when you consider that staff working in off-sales have a heightened risk of becoming victims of aggression and violence often linked to refusal of service or prevention of shoplifting. For off-sales, we suggest that the following could be added to the Licensing Policy Statement's examples of good practice:

- Controlling access to alcohol to prevent underagers and drunks attempting to buy them. This also reduces shoplifting and impulse purchasing. Bottles and cans can be used as weapons so controlling access to them will reduce this possibility.
- Precautions should be taken to ensure the safety of staff, especially lone workers and those working late at night. This could include panic buttons.
- Ensuring that prices are clear to customers in order to avoid potential sources of dispute.
- High standards, both in the physical standard of the premises (cleanliness, attractiveness etc.) and in the standard of the service demonstrate that good management is being applied and that reasonable standards of behaviour are expected. This helps to deter underage persons, agents, and those intending to shoplift etc. The exterior and interior should be clean, uncluttered and well-lit.

- Use of a refusals book or incident book to log everyone who has been refused service and to ensure all staff know of any problems that have been experienced.
- Use of external security lights to ensure that the area around the shop is well lit to discourage nuisance people from congregating outside.
- Refusing to sell to under 21s. In general, youth groups congregate near to their source of alcohol. Raising the purchase age required for alcohol will prevent group members aged 18 to 20 years old acting as agents for the younger group members.

3.3 Preventing public nuisance

Public nuisance includes litter, noise and light pollution. Alcohol Focus Scotland accepts that off-sales premises do not have the same influence over the behaviour of their customers when consuming alcohol as on-licence premises. However, alcohol is not an ordinary commodity and all licensed premises must take some responsibility for the negative consequences of excessive drinking. Many Boards include some excellent examples of 'public nuisance' relating to on-licence premises within their Licensing Policy Statements. Alcohol Focus Scotland would like to see further examples added that relate more specifically to off-licence premises and we suggest the following:

- Examining litter from outside drinking (eg. in parks). This can often be a considerable distance from the place of purchase. Statistics could be gathered from Litter Teams and Community Wardens about the amount of bottles, cans and plastic bags, etc in public places. This could give an indication of alcohol-related problems and which premises they are linked to.
- Taking into account instances of young people congregating nearby licensed premises, since this may be an indication of agent purchase activity eg. they may be asking members of the public to purchase alcohol for them.

3.4 Protecting and improving public health

Alcohol Focus Scotland acknowledges that "protecting and improving public health" requires a new way of thinking which is challenging. We are also aware that there has been some difficulty in collecting useful health statistics. We are committed to working with Licensing Boards and Health Boards on this issue over the next few years in order to identify any gaps and data collection methods. Some suggested sources of data are:

- The overall health problems in the area as evidenced in the documents produced by each of the Community Health and Care Partnerships and the Alcohol and Drug Partnerships.
- The results of community surveys.
- The number of alcohol related deaths.
- The number of people accessing services (both NHS and voluntary sector services) for alcohol issues.
- The number of arrests for selling alcohol to a drunk person.
- The number of ambulance calls related to alcohol.
- The number of hospital admissions related to alcohol.
- General acute inpatient and day case discharges with alcohol related diagnosis.
- Total alcohol related discharges, emergency admissions and emergency admissions by day of admission.

We suggest that the following may be examples of how public health could be promoted, particularly in off-sales settings:

- Health information prominently displayed beside alcohol products.

- Controlling access to alcohol.
- Limiting licensed hours.
- Displaying alcohol away from tills to discourage impulse alcohol purchases.
- No promotions that include alcohol, such as a 'meal for two with bottle of wine'.
- Alcoholic products and offers for alcohol should not be displayed in the window (with an exception for specialist off-sales).

The Board may also wish to consider the environment in off-sales premises. For example:

- Where premises offer groceries for sale, there could be a limit set on the amount of shelf space allowed. Grocery stores and supermarkets are often granted licences on the basis of the grocery services they provide, therefore limiting the space available for alcohol is reasonable.
- Limit the amount of alcohol that can be purchased in one sale.
- Large premises should ensure that alcohol is situated away from the door in order to deter theft, and also not placed at the tills prompting impulse purchases.

3.5 Protecting children from harm

There has been much work over the last few years to encourage on-licence premises to create family friendly environments which allow families to socialise safely together and this is to be applauded. Alcohol Focus Scotland would like to encourage Licensing Boards to progress further in this area. 'Protecting children from harm' must also include the impact of adults' drinking on children and young people. In on-licence premises, policies should be in place to prevent excess alcohol consumption by adults who are accompanied by children. It should also be recognised that reducing access to alcohol for adults will benefit children as estimates indicate that 65,000 children in Scotland live with a problem drinker⁶. Untold Damage, a recent report from Childline in Scotland and Scottish Health Action on Alcohol Problems⁶, shows that children calling the helpline are frequently worried by a parent's drinking and sometimes seriously affected by their parents' resulting behaviour.

In larger grocery stores, especially supermarkets where families do the weekly shopping, extra information should be included on the effects of parental drinking on children in appropriate places (eg. beside nappies, baby food, children's clothes and toys). This would help raise awareness amongst parents of the effects their drinking can have on their children and the need for at least one parent to remain fully competent when responsible for a child.

Licensing Boards have taken a strong line on premises that have been found to sell alcohol to underage persons, which is also to be applauded. However, we know that underagers will also try to access alcohol through other means. Some further statistics that may be of use in identifying the size of the problem are:

- Number of Social Work cases involving alcohol consumption and young people.
- Number of domestic abuse cases involving alcohol.
- Number of successful and unsuccessful test purchases.
- Number of exclusions from school involving alcohol.
- Number of offences related to agent purchasing.

For More Information

Please contact

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References

- 1 *The Licensing (Scotland) Act 1976*, Allen and Chapman. Fourth Edition
- 2 *Review of liquor licensing law in Scotland*, The Nicholson Committee, Scottish Executive 2003
3. *The Licensing (Scotland) Bill Policy Memorandum*, Scottish Executive, February 2005
- 4 *Analysis of alcohol sales data, 2005-2009*, Monitoring and Evaluating Scotland's Alcohol Strategy, NHS Health Scotland 2010
5. *The Ripple Effect*, commissioned by the Communities Sub-group of the Glasgow City Addictions Planning and Implementation Group and co-funded by the Communities Sub-group and the Greater Glasgow and Clyde Alcohol Action Team, 2008
6. *Factors associated with alcohol-related problems within licensed premises*, NHS Greater Glasgow, February 2005
7. *Changing Scotland's relationship with alcohol: a discussion paper on our strategic approach*, Scottish Government, 2008
8. *Untold Damage: children's accounts of living with harmful parental drinking*, Childline in Scotland and SHAAP, 2010

Overprovision – Methodology Used by West Dunbartonshire Licensing Board

Initial Steps Taken

In September 2009 the Board agreed to use the categories of premises detailed in the guidance for the purposes of its overprovision assessment:-

- Vertical drinking establishments distinguishable from those catering predominately and exclusively for persons taking meals – this includes pubs but will also include hotels where the bar facilities are not ancillary to the accommodation and dining.
- Restaurants – ie premises catering for predominately or exclusively for persons taking meals.
- Nightclubs
- Adult entertainment venues
- Mixed or chameleon premises in which the facilities offered during the day are markedly different from those provided in the evening with, for example a switch from a food led operation to a nightclub style operation.
- Town hotel – where the bar facilities are ancillary to the accommodation.
- Large supermarkets
- Off-Sales and local convenience stores

The Board agreed to a short consultation with the Chief Constable, Environmental Health and the Licensing Forum to seek their views on hot spot areas which might be reaching saturation point by reason of crime, health impact, overall impact on the amenity of the area or otherwise. Thereafter the intention was that the Board, using this information, plus its own local knowledge of the area, plus knowledge of areas in which overprovision had previously been an issue, would focus on specific areas and obtain more information on these areas and the premises therein.

In November 2009 West Dunbartonshire Licensing Forum decided that they would like to use the expertise of the Alcohol and Drug Partnership as this could bring information from accident and emergency, Health Board, Police, Children and Families, Housing and Community Safety.

In December 2009 the Board received information from the Council's Environmental Health Service on noise complaints relating to licensed premises between 2005 and 2009. The Board at that point agreed to await the information to be provided the Alcohol and Drugs Partnership.

The Partnership provided a report to the Forum in March 2010. The Forum recommended that this information should be further defined and submitted to the Board.

In June 2010 the Board considered a report and agreed to consult on whether there was overprovision of vertical drinking establishments, nightclubs, off-sales and supermarkets in 15 areas (out of a possible 18) in West Dunbartonshire. Following consideration of consultation responses, the Board in October 2010 adopted an Overprovision Policy covering these types of premises within the 15 areas.

The Data Considered By The Board

In the past the Board, like many other tended to come to its own definition of overprovision areas, based on local knowledge often looking at 'town centre' areas. However many of the statistics were not available for such ad-hoc area definitions. Instead they were available for data zones produced under the Scottish Neighbourhood Statistics. Data can be analysed at uniquely small data zones or these individual areas built up to slightly larger "intermediate data zones". The Alcohol and Drugs Partnership used 18 intermediate data zones within West Dunbartonshire, trying to match these as far as possible into individual communities.

The ADP's statistics were then 'normalised' to compare the data against a certain average figures.

The particular data obtained was as follows:-

- The rate of licensed off-sales in each of the areas, normalised to represent a number per 100,000 population and compared to the West Dunbartonshire figure.
- The number of licensed on-sales, normalised to represent a number per 100,000 population and compared to the West Dunbartonshire figure.
- The rate of alcohol indicative crimes, normalised to represent a number per 100,000 population and compared to the West Dunbartonshire figure and Strathclyde Police Force area. Alcohol indicative crimes included breach of the peace, Civic Government (Scotland) Act 1982 – Section 47 and 50(1), common assault, Criminal Law (Consolidation)(Scotland) 1995 – Section 52, culpable and reckless conduct (not with firearms), causing injury by indecent assault, Licensing (Scotland) Act 1976, malicious mischief, Misuse of Drugs Act 1971, reckless conduct with firearms, serious assault, WDC (Prohibition of Consumption of Alcohol) Bylaws 2007 and wilful fire raising.
- The rate of alcohol indicative incidents normalised to represent the number per 100,000 population, each area being compared to the West Dunbartonshire Council area rate and the Strathclyde Police Force rate. The type of Police incidents considered were those relating to assault, disturbance, drinking in public places, drugs/solvent abuse and property damage.
- The rate of alcohol related hospital admissions normalised to represent a number per 100,000 population and the comparison with the Scottish rate (where the Scottish rate equals 100%).

- The rate of alcohol related deaths, normalised to represent a number per 100,000 population and the comparison with the Scottish rate (where the Scottish rate equals 100%).

This data was shown on the table, a copy of which is attached hereto.

- Fire statistics:- of the 18 preventable deaths within the Strathclyde area, 9 had alcohol as a contributory factor. West Dunbartonshire's rate was proportionately higher than the rest of Strathclyde showing an increase in fires in all wards apart from Leven and Dumbarton.
- Proportion of those arrested under the influence of alcohol – analysis of Police holding cells in Clydebank in 2009/10 identified that only 41% of prisoners were identified as sober at the point of reception, figures which have held consistently over the past 7 years. The figure would be higher except that most warrants are planned and executed at an hour unlikely to encounter drunkenness. Anecdotal Police evidence suggests a 90% link of alcohol with local crime/anti social behaviour. Strathclyde Police statistics indicate that over 70% of those charged with violent offences are under the influence of alcohol or drugs at the time.
- Domestic violence – the review by Strathclyde Police over 3 weeks in 2009 noted that between 60% and 100% of domestic incidents had alcohol as a factor for the suspect, victim or both.
- West Dunbartonshire had the third highest alcohol related deaths in the UK.
- Evidence regarding drinking patterns – the ADP noted the studies undertaken which showed a link between the number of alcohol outlets and the level of alcohol related problems in an area. Scottish Executive research (the Relationship between Off-sales and Problem Drinking in Scotland 2007) specifically highlighted the off-sale sector as the dominant route of access. This corresponded with a survey undertaken in Whitecrock (Scott Porter Research Consultancy 2009) which showed that 85% of residents purchased alcohol for home consumption in the Clydebank Asda (outwith the Whitecrock intermediate data zone) while only 31% bought from the corner shop (over 100% indicates some purchasing from both). The evidence was that within West Dunbartonshire people would travel up to 2 miles to obtain discounted alcohol in larger off-licensed premises. It was noted that the 3 areas which had better than average statistics were located in close proximity to areas with very poor statistics. Given that individuals would travel up to 2 miles for discounted alcohol it was suggested that further consideration should be given to this issue.
- Police Officers within the Dumbarton and Clydebank areas when making routine and non routine visits to on-sales recorded information about the number of patrons present and the extent to which the premises were full to capacity. The evidence was that across the 6 Council wards, 88 – 97% of the capacity was unused.

- Number of premises – West Dunbartonshire is ranked second in Scotland in terms of the number of licences per 100,000 population, just behind Glasgow.
- Environmental Health data on noise complaints – generally this did not show any pattern suggesting overprovision.
- Consultation responses – all consultees supported the introduction of an Overprovision Policy to a greater or lesser extent. Particular comments included –

- A 2004 Audit from West Dunbartonshire Social Work Department noted addiction problems in a) 50% of all cases held by Children and Families Team b) 72% of all cases in the Criminal Justice Team and c) 61% of accommodated children and young people.
- It was pointed out that the Board used as its norm or average figures, statistics relating to either the Strathclyde Police area, Scotland or West Dunbartonshire itself. In a UK and European context these 'norm' figures were themselves poor.
- A trade response indicated that the surfeit of supply over demand carried the danger that healthy competition would move to intense rivalry and price wars, increasing the level of anti-social behaviour.
- It was noted that nightclubs were destination venues, attracting customers from well outwith localities.
- 6% of the population of West Dunbartonshire had alcohol addiction problems, with a further 2% having addition to drugs.

Conclusions from Data

It will be seen from the attached table that 15 out of 18 intermediate data zones within West Dunbartonshire had figures for crime, police incidents, alcohol hospital admissions and alcohol related deaths above either the Strathclyde Police Force area rate or the Scottish average. In some of these areas (eg Dalmuir) a clear link can be made between the extent of the problems and the number of premises in the area. In other areas, such as Whitecrook, Dumbarton North East, Fairley and Dumbarton West there are significant problems but a less than average number of premises. The evidence of the Whitecrook survey was particularly interesting, that most of the alcohol was purchased in the nearest supermarket, outwith the Whitecrook intermediate data zone. Broadly the conclusions were that different types of problem were driven by different purchasing patterns. In the West Dunbartonshire area there were 3 types of problems being:-

- Health problems largely driven by consumption at home or in local community of cheap alcohol, mostly purchased in large supermarkets. As detailed above this was not necessarily purchased in the intermediate data zone in which the problems occurred but was instead purchased at a nearby supermarket.

- Youth crime and anti social behaviour – this was often fuelled by alcohol purchased from local off-sales, often by agent purchase.
- Traditional town centre crime and anti social behaviour still peaked on a Friday and Saturday night. While pubs and clubs were the draw for persons to be in the town and under the influence of alcohol, there was anecdotal evidence that many were preloading by drinking cheap alcohol purchased from off-sales (particularly supermarkets) prior to going into town.

Legal Issues

Anecdotal evidence is that the health objective of the Licensing Act was added as an after thought to the legislation. Certainly the legislation and the statutory guidance makes it difficult to base an overprovision policy on health statistics. There are two particular problems. Firstly the Licensing (Scotland) Act 2005 talks about the Board determining the extent to which overprovision occurs "in a locality within the Boards area". Secondly the guidance refers to a clear causal link between the problems and premises in that locality. In the case of health problems these are largely fuelled by cheap supermarket alcohol purchased within 2 miles of home but outwith the immediate locality.

The second issue is that an overprovision assessment may determine that there is presently overprovision, but does not determine the correct number of premises required to bring the problem back down. Research is being carried out in NHS Greater Glasgow and Clyde in an attempt to model the link between health problems and the number of premises in an area. From a Board perspective the issue is – what happens if a licence is surrendered:- does this automatically create space for another premise of similar capacity? If not, how can overprovision be considered.

Finally, and as pointed out by Strathclyde Police, if an area falls outwith the overprovision assessment, the danger is that new premises therein will simply draw from areas with significant problems. This is particularly so for nightclubs and supermarkets.

While it is recognised that an overprovision assessment creates a presumption against grant, the Board felt that it would be helpful to provide guidance on what evidence it would expect for applications contrary to the overprovision policy.

The Board's Policy

The Board's policy is to the following effect:-

There is overprovision of the following types of licensed premises, namely:- vertical drinking establishments (including hotels where the bar facilities are not ancillary to the accommodation or dining), nightclubs, off-sales and local convenience stores and supermarkets. There is one area within West Dunbartonshire which comprises 15 sub localities. The view was taken that there was doubt in terms of the act whether the Board could have an overprovision policy covering the whole area. Nor did the Board wish to do this as figures for 3 of the 18 areas were better than

average. On the other hand it was difficult to show clear causal link between problems, particularly health problems occurring in an intermediate data zone and the premises therein. Thus the 15 intermediate data zone where problems occurred, now form 1 overprovision locality, albeit the 15 areas are retained as sub localities for statistical purposes. The policy is map based.

Applications Against The Policy:- The Board will expect applicants seeking the grant of a new licence or to increase the capacity of an existing licence within the above categories and localities to provide robust and reliable evidence to the Board why the benefits to the licensing objectives through the grant of their application outweighs the detriment to the licensing objectives and the overprovision policy. In particular the Board expects to be addressed on the benefits in terms of each licensing objective.

If an existing licence ceases to be in force, any application seeking to replace capacity so relinquished may be subject to an individual overprovision assessment. This recognises that the overprovision assessment merely shows that there is a problem, but does not show the necessary reduction in premises to remove this problem.

For applications within the 3 areas outwith the overprovision policy, if it is likely that there will be trade draw from the overprovision area then such an application will also be subject to an individual overprovision assessment. In practice trade draw is likely for an off-sales where it is the nearest off-sales for part of the over provision locality. Similarly a nightclub or super pub might draw from the over provision area. On the other hand a small village pub located well away from the boundary of an over provision area would not (and the Board has just granted one of these).

The Future

Economic development, carrying with it the promises of regeneration, employment, wealth creation and population growth is one of the main aims of Councils such as West Dunbartonshire. In the short term, refusal of an applicant for a supermarket may result in a lack of regeneration and a failure to secure jobs. On the other hand, the economic costs of alcohol are major. With 1 in 12 of the population of West Dunbartonshire addicted to either drink or drugs (with alcohol outweighing drugs 3 to 1) there are significant challenges in training work force, encouraging businesses to locate in the area and in sickness rates. Thus longer term an improvement in alcohol related problems can only benefit economic development.