

## **Licensing Objective: Promotion and protection of public health**

*Personal communication from Dr Niamh Fitzgerald, University of Stirling*

“Protecting and improving public health” is a licensing objective included in the Licensing Act 2005 for Scotland.

There is a requirement for Licensing Boards to develop a policy every three years on how the Board takes account of the licensing objectives. Licensing Boards develop the policy for their own geographical area and can determine whether or not there is overprovision of licensed premises (based on premises type and/or for specific geographical areas).

Where the licensing board declares that there is overprovision of alcohol outlets in a specific area, the onus is on the applicant to demonstrate that the application does not contravene the licensing objectives.

The public health licensing objective and the assessment of overprovision are often viewed ‘hand in hand’ by public health actors. In the context of alcohol licensing, public health actors see ‘public health’ as referring to the whole population. From a public health perspective, the public health licensing objective can be used to address concerns about growth in alcohol outlet density through the assessment of overprovision, but this view is not always shared by licensing authorities. This focus on density, seems to be a bit different from the use of the England/Wales equivalent provision of ‘cumulative impact’ which seems to have been used to shape the types of outlets that are licensed (e.g. favouring licensed food/arts venues over clubs/bars), rather than the overall number. In practice this has also happened in Scotland but perhaps to a lesser extent.

In England, public health actors have also focused on placing conditions on licences, eg provision of food; limit on number of patrons permitted. This seems to be less of a focus in Scotland. Public health efforts in Scotland seem to have been more focused on the number of premises. Some areas have declared that their whole geographic area is overprovided, for example for off-licence premises, or off-licence premises of a particular side. This has been used to protect smaller premises and preventing the granting of licences above a certain area size.

Licensing boards are comprised of local elected representatives. In addition, Licensing Forums have been established which comprise representatives from trade, health, policing, the community and young people. The purpose of the Licensing Forum is to advise the Licensing Board, but the effectiveness of the Forum has been mixed due to disparate voices within the Forum. In some areas, it has been difficult to enlist community representatives to the Licensing Forum and therefore the forum never functioned as intended.

Following an amendment to the Licensing Act 2005 (the Air Weapons and Licensing Bill), Licensing Boards are now required to produce annual reports with regard to the licensing objectives, decisions made etc.

It is difficult to judge from available evidence how successful the public health objective has been in limiting the number of licenses granted, as it is not possible to tell whether applications are not made in areas of overprovision that would otherwise have been made. In general however, the Act operates under the shadow of a threat of legal action and some decisions have been overturned as a result of legal action by applicants.

### **Influencing the Implementation of a Public Health Objective in Scottish Alcohol Licensing: A Qualitative Interview Study – Summary Report. December 2015**

*Dr Niamh Fitzgerald*

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Dr Fitzgerald undertook a qualitative study to explore how public health actors<sup>1</sup> have attempted to influence local alcohol licensing policies and decisions in Scotland and to ensure that the licensing objective of ‘protecting and improving public health’ is met. The study also sought to identify factors which have been important in the experience of public health actors for helping or hindering their efforts. Interviews were conducted with 13 public health actors.

From this study, Dr Fitzgerald concluded that progress towards protecting and improving public health is being made within the Scottish licensing system, but requires extensive effort with no guarantee of success. Public health actors have sought to influence alcohol licensing, but have encountered a number of challenges in doing so.

It has been suggested that Government could support the licensing system by providing greater clarity in relation to the determinations of overprovision, giving Licensing Boards the confidence to act decisively, support greater consistency in practice and justify greater accountability. The study also concluded that whilst implementing the law is important, authorities need to be mindful of increasing availability of alcohol, beyond alcohol outlet density, via online sales and home deliveries, particularly from supermarkets. It has been suggested that the Scottish government would be well advised to consider how this situation is compatible with the public health objective and consider introducing other measures such as minimum unit pricing.

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<sup>1</sup> Individuals whose job and organisation includes a substantial remit to protect and promote public health generally of the prevention of alcohol-related harm specifically.

Fitzgerald, N (2015) Available at:

<http://www.stir.ac.uk/media/schools/nursing/ism/documents/Public%20Hlth%20Efforts%20to%20Influ%20Alc%20Licensing%20in%20Scot%20A%20Qual%20Interview%20Study.pdf>