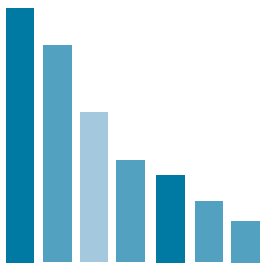


Changing Times



Why we need to change licensing practice
A guide for stakeholders



What is alcohol licensing?

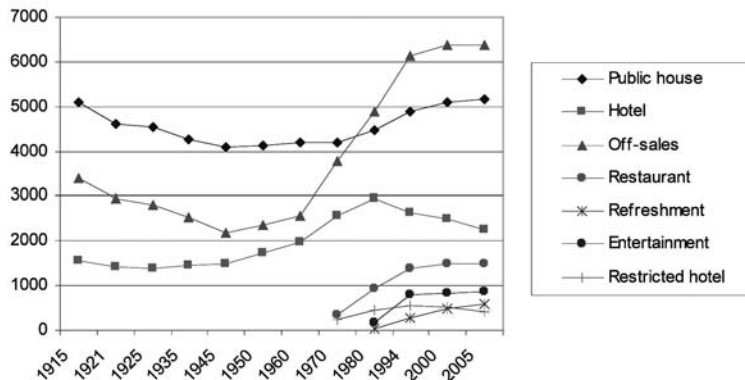
Licensing is a system of granting permits to retailers to sell alcohol. Although legally available and widely consumed in Scotland, alcohol is a drug with known toxic, intoxicating and addictive effects. Controlling the supply of alcohol is something that public authorities have done for centuries to reduce the risk of harm to individuals and society from its use. 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 premises permitted to sell alcohol.

Why do we need to 're-think' alcohol licensing?

For many decades, the main focus of licensing work has been on regulation of the on-trade to prevent noise, nuisance, and social disorder associated with drinking in public houses. However, there have been several significant changes in recent years, which make this traditional approach to licensing increasingly out of date. Firstly, where we drink has changed. Today more alcohol is sold in Scotland from off-sales than on-sales and a majority of people do most of their drinking at home. Secondly, what we know about the consequences of drinking has changed. Alcohol has a wide range of negative impacts that extend far beyond public drunkenness and anti-social behaviour in the streets. Harmful alcohol use impairs long-term health, has a detrimental effect on family and community life, and damages the productive capacity of the economy. There are growing demands for the licensing system to operate in a way that reflects these changes. Finally, licensing law has changed. A new licensing act, the Licensing (Scotland) Act 2005, came into force in September 2009. The new Act requires a different approach to alcohol licensing.

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

Sources: Clayson Committee report; Scottish Government



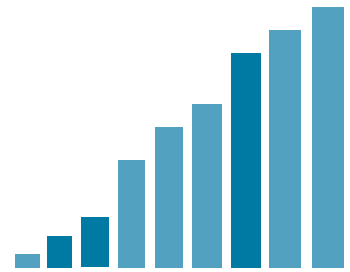
What is different about the new Scottish licensing legislation?

Unlike previous licensing legislation, the 2005 Act establishes objectives for licensing and for the first time requires a consideration of the impact of the sale of alcohol on public health. The five licensing objectives included in the 2005 Act are the prevention of crime and disorder; securing public safety; preventing public nuisance; protecting children from harm; and the protection and improvement of public health. These objectives provide a clear purpose for the licensing system. The 2005 Act also introduces for the first time a duty on licensing boards to publish a statement of licensing policy setting out what action they will take to promote the licensing objectives. This means that individual licensing decisions should now be guided by evidence-based policy. In principle, the new legislation extends the scope of licensing boards to take action to manage and restrict the supply of alcohol in the public interest. However, the potential of the new legislation will only be realised if it changes licensing practice.

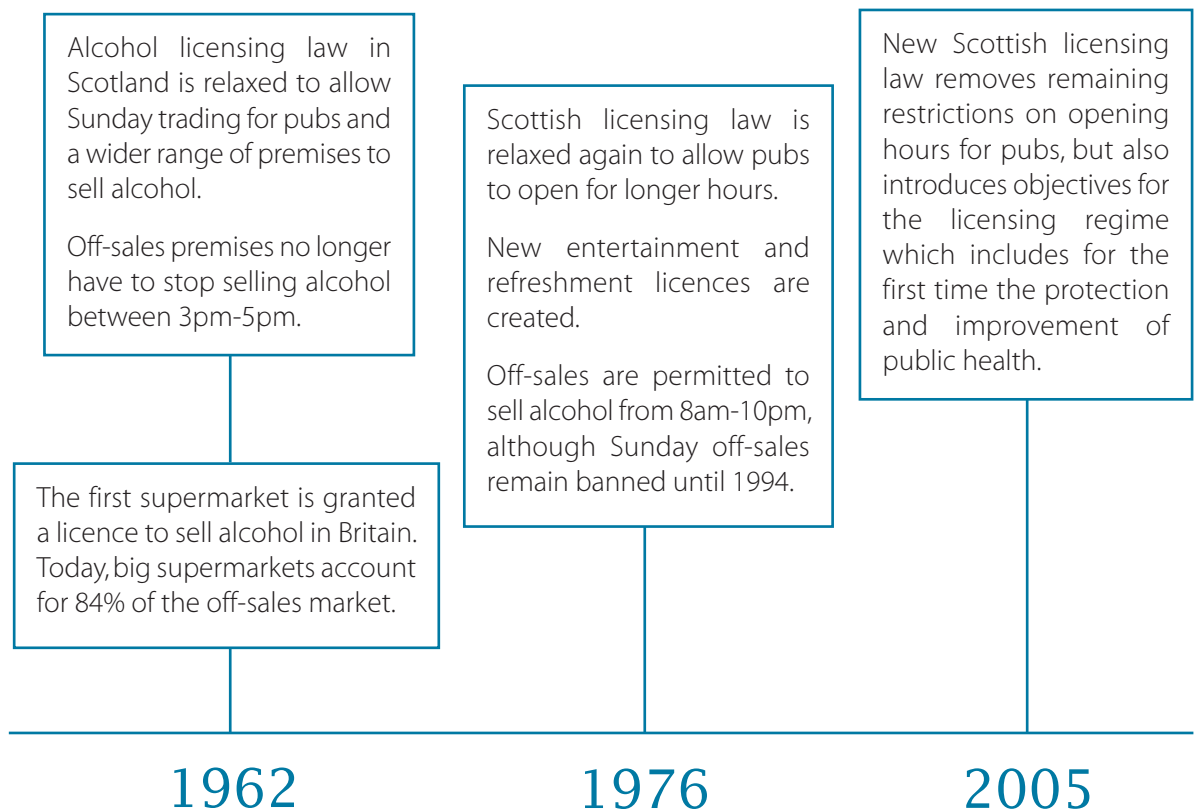
Where we drink In the 1950s 70% of the alcohol drunk in Britain was beer, and most drinking took place in pubs. Today, the most common drinking location for all age groups in Scotland apart from 16-24 years old is the home. Two thirds of the volume of pure alcohol sold in Scotland is now bought from off-sales.

But isn't excessive drinking in Scotland a cultural issue, not a licensing problem?

Licensing is part of Scottish drinking culture, not something separate from it. Changes in licensing law and practice in Scotland over the past fifty years have helped shape current attitudes to alcohol and drinking behaviour. Granting more licences to a wider range of retail premises and for longer trading hours have enhanced access, visibility and promotion of alcohol. Permitting supermarkets to sell alcohol has allowed the 'grocerisation' of alcohol, a process in which alcohol has been repositioned as an everyday shopping item to be purchased alongside bread and milk. The growth in off-sales premises, particularly supermarkets, has contributed to the rise in affordability of alcohol as competition between major supermarkets has led to more price promotions and discounting. This expansion and extension in the supply of alcohol has influenced drinking patterns and problems. If Scottish drinking culture is to change, then licensing attitudes and practice will also need to change.



Trends in alcohol licensing in Scotland



How can licensing work to reduce alcohol problems in society?

Licensing can work to reduce alcohol problems in two main ways. By carefully controlling the overall availability of alcohol through the number, type and opening hours of licensed premises, and by regulating the way individual pubs and off-licences do business. Evidence shows that applying conditions to how individual licensed premises operate can work in reducing certain types of alcohol problems. However, evidence also shows that independent of the way premises are managed, the general availability of alcohol in an area can have an impact on a range of alcohol-related harms. More premises and longer hours have been linked to increased rates of alcohol-related deaths, violence, traffic accidents, self-reported injuries and suicide, sexually-transmitted disease and child abuse and neglect. In the UK, availability and affordability of alcohol was reduced during the First World War and interwar period, and consumption and liver cirrhosis mortality fell to the lowest rates in decades.

The impact of the increased regulation on drinking behaviour during the interwar years was commented on in a report by a Royal Commission on Licensing in Scotland in 1931 which concluded :-

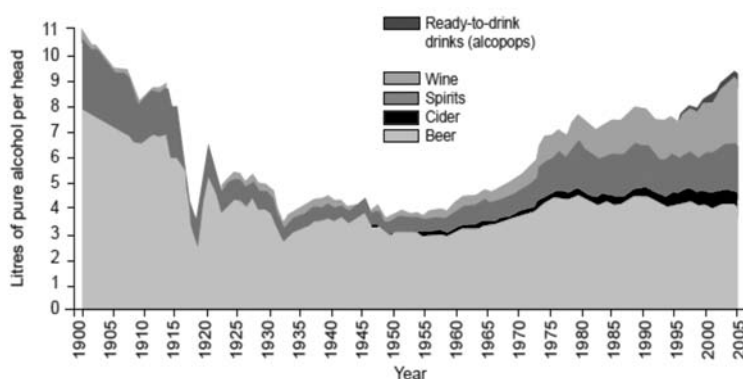
"Sobriety has increased, instances of public drunkenness have become fewer.a younger generation is growing up to which, as a whole, any resort to alcoholic excess as a necessary or usual practice is almost totally unknown."

Royal Commission on Licensing in Scotland 1931

Since the 1960s, alcohol has become increasingly affordable and available due to a more relaxed licensing regime. Consumption and deaths from liver cirrhosis mortality have reached record highs.

UK per capita consumption of pure alcohol 1900 to 2005

Source: BBPA Statistical Handbook 2007



Isn't the purpose of licensing to regulate the sale of alcohol, not how it is consumed?

The 2005 Licensing Act makes provision for regulating the sale of alcohol and regulating licensed premises on which alcohol is sold. However, regulation is there for a purpose: it is not an end in itself. Liquor licensing has been put in place to manage the selling of alcohol in such a way as to reduce the risks of harm to individuals and society from its use. The value and effectiveness of the licensing system is measured by the extent to which it achieves that purpose.

Availability of alcohol In the 1950s there were around 8000 premises licensed to sell alcohol in Scotland. Today there are around 17,000.

Why is the overall availability of alcohol important in promoting the licensing objectives?

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. Harm can occur regardless of how well-managed individual licensed premises are. Effective licensing practice therefore requires that attention is paid to the general availability of alcohol as well as the operating conditions of individual premises as both have an influence on rates of alcohol-related harm.

The 2005 Act places a duty on licensing boards to assess overprovision of licensed premises in their area and refuse premises licence applications where it considers a locality is overprovided for. The inclusion of a duty to assess overprovision recognises that the total number and capacity of licensed premises in an area, or licensed premises of a particular type, can exacerbate alcohol problems.

Traditionally, overprovision has been considered in relation to quite small areas, such as half a street in a city centre, or 200-500metres around individual premises. However this approach is increasingly at odds with the reality of how we buy and consume alcohol today. We live in highly mobile societies and drink more alcohol bought from off-sales, meaning that alcohol-related problems in one locality may not arise from alcohol bought in that locality. Overprovision needs to be considered over larger geographical areas to ensure that licensing remains relevant and effective as a regulatory mechanism.

How much we drink In the 1950s the amount of pure alcohol drunk in Britain was around 5 litres per adult (16+). Today we drink more than 10 litres per adult.

How can public health be promoted in licensing?

Public health in relation to alcohol is commonly measured by the number of alcohol-related deaths and hospital admissions in an area. Evidence indicates that rates of alcohol-related health harm can be affected by the overall availability of alcohol, including the number, type, capacity and opening hours of licensed premises. In seeking to promote the public health objective in practice, licensing boards need to consider how each of these factors can be modified to protect and improve public health.

What is the value of policy statements in licensing?

The policy statement is the engine that drives a licensing regime in an area. Formulating a statement of licensing policy provides licensing boards with an opportunity to consider the bigger picture in relation to licensing. What can be observed in terms of long term licensing trends? How is the make-up of licensed premises changing? What is the impact of these changes on indicators of alcohol problems? How can licensing practice be modified to reduce alcohol problems? The policy statement will help to provide coherence and consistency to individual decision-making and to ensure that the sum total of a licensing board's decisions serve to promote the licensing objectives. The development of licensing policy and the public consultation that is part of the process also gives members of the community an input into shaping the licensing environment in their area.

Alcohol harm In the 1950s, the liver cirrhosis mortality rate amongst men in Scotland was about 5 deaths per 100,000 of the population. Today the male mortality rate is around 30.

Is there a sound legal basis for using a policy statement to decide whether or not to grant a licence?

Some licensing boards have queried whether there is a proper basis in law for using policy statements to guide decisions on individual premises licence applications. The 2005 Act lists the grounds for refusal for a premises licence application and although being considered contrary to a board's licensing policy is not one of them, the Act states clearly that a licensing board must have regard to its policy statement when exercising its functions under the Act. Deciding on premises licence applications is one of a board's functions. Even before the 2005 Act came into force, the use of policy statements by licensing boards was accepted by the courts:

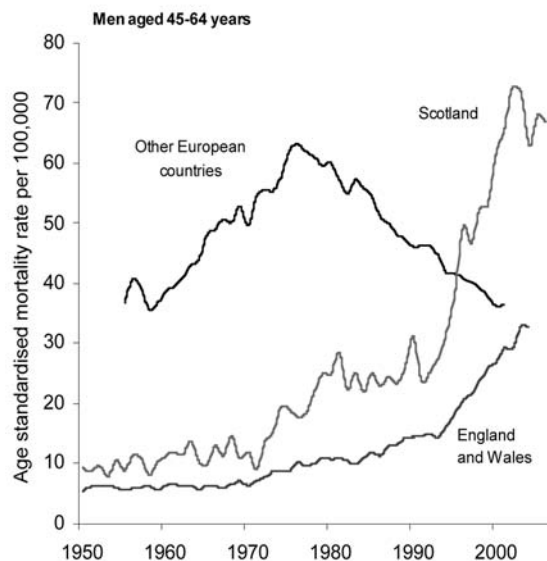
"Where a statutory body having discretionary power is required to consider numerous applications there is no objection to it announcing that it proposes to follow a certain general policy in examining such applications."

Elder v Ross and Cromarty DLB

The accepted proviso to the use of policy statements is that any applicant is granted an opportunity to explain why they should be regarded as an exception to the policy. Policy statements must also be clearly related to the licensing objectives to be considered lawful.

Chronic Liver Disease Mortality Rates, 1950 - 2006

Source: Leon and McCambridge 2006 (updated)

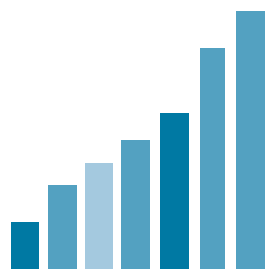


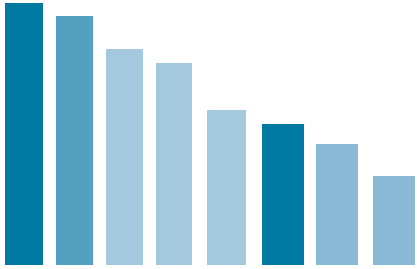
Will the use of policy statements by boards mean they will be more at risk of legal challenge?

Protection against legal challenge comes from ensuring that statements of licensing policy are well-prepared, evidence-based, and demonstrate a clear line of reasoning from the evidence to the policy position adopted and to the objectives of the Act.

What counts as evidence in the development of licensing policy?

As a general legal principle any policy has to have a sound factual basis. The 2005 Act states that a licensing board must ensure that its statement of licensing policy seeks to promote the licensing objectives. It is therefore incumbent on a licensing board to obtain sufficient information on each of the licensing objectives to be able to meaningfully promote the licensing objectives in a policy statement. It is difficult to see how a licensing board can develop effective licensing policy if it does not have all the relevant information at its disposal. There are many sources of evidence that can be used to inform a policy statement. A board's knowledge and experience of licensing matters in their area can count as evidence, but it is not sufficient. Trends in alcohol-related health, such as hospital admissions, can only be known by examining routinely collected health statistics. The same is true for certain types of crime and social problems related to alcohol use. A range of statistics is available and should be used by licensing boards to develop their policy positions. Local agencies, such as the police, health boards, and alcohol and drug partnerships, can be called on to assist licensing boards in the gathering and analysis of evidence.





Alcohol Focus Scotland is Scotland's national alcohol charity working to reduce the harm caused by alcohol.

www.alcohol-focus-scotland.org.uk

SHAAP was established by the Scottish Royal Medical Colleges and Faculties to advocate for evidence-based measures to reduce alcohol-related harm.

www.shaap.org.uk