

**Appendix E: Implementation of the Licensing (Scotland) Act 2005:  
A document review of developments since 2012**

**Monitoring and Evaluating Scotland's Alcohol Strategy: 5th annual  
report. NHS Health Scotland, March 2016**

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## Report summary

### Background

The Licensing (Scotland) Act 2005 (henceforth referred to as the “Act”) introduced two instruments - the statement of licensing policy and the overprovision statement - that allow strategic planning of alcohol availability for the purposes of pursuing the public interest purpose of alcohol licensing. The Act was implemented in 2009.

### Aim

To determine how the Act has been implemented and what impact it has had alcohol availability.

### Methodology

A mixed methods evaluation of the Act was conducted between 2010 and 2012 (the ‘original’ evaluation). The current study explored developments in the implementation of the Act since 2012 via review of publically available documents published in the intervening years (up to October 2015). Trends in the number of alcohol outlets were also analysed.

### Key findings

The original evaluation identified positive developments - such as the positive role of Licensing Standards Officers. This review and the original evaluation identified areas of the Act have been less well implemented, including:

- **Public health provisions:** The public health provisions are still in the “bedding in” phase. Relationships between licensing and public health actors are still in their infancy, with both needing to develop skills and confidence to operate in each other’s “system”.
- **Transparency and accountability:** There is a lack of any real accountability or transparency in the licensing system, which has implications for effective implementation and the spreading of good practice.
- **Public access:** There is limited involvement, and thus scrutiny, from the public in the licensing system.
- **Local licensing forums:** Forums still have a limited role in relation to the public health provisions six years after the implementation of the Act.
- **The integrity of the system:** Some argue that high profile challenges by supermarkets of licensing board decisions, has made licensing boards more cautious in utilising their discretionary powers in making licensing decisions, particularly where supermarkets are the applicant.
- **Impact on availability:** There is insufficient licensing data to determine the impact of the Act on alcohol availability.

## **Conclusion**

There has been limited progress in the implementation of the public health provisions of the Act, although local examples of good practice are emerging. Areas requiring action include:

- I. More support for both health and licensing personnel to take forward the public health provisions in the Act.
- II. There is a lack of compliance with several key provisions of the Act. This is contributing to a lack of accountability and transparency of the system.

# 1. Background

## 1.1 The Licensing (Scotland) Act 2005

The Licensing (Scotland) Act 2005 (hence forth “the Act”) was implemented in 2009. Although the Act included some public health-focused provisions it did mark a further shift to deregulation by introducing the principle of automatic licence acceptance and removed the requirement for licences to be renewed. Arguably these requirements have resulted in the licensing regime continuing to function primarily through its power to set conditions.<sup>1</sup>

The legislation did also introduce some significant changes to the licensing regime (summarised in Box A). Two instruments allow strategic planning at the licensing board level and provide mechanisms to manage the number of licensed premises: the statement of licensing policy and the overprovision assessment (see Box B).

### Box A: Key provisions in the Licensing (Scotland) Act 2005

- Five licensing objectives are set out representing the values on which licensing boards must have regard in carrying out their functions:
  - preventing crime and disorder;
  - securing public safety;
  - preventing public nuisance;
  - protecting and improving public health;
  - protecting children from harm
- Requirement for licensing boards to publish a statement of licensing policy every three years. Policy statements should also include an assessment of alcohol availability and overprovision locally.
- The establishment of local licensing forums.
- The creation of Licensing Standards Officers.
- A stated presumption against 24-hour licences.
- The restriction of off-sales to between 10am–10pm.
- A ‘public right’ to make representation about licence applications.
- Mandatory conditions on price promotions in the on-trade.

### Box B:

#### Statement of licensing policy

A statement produced by licensing boards guiding their practice, which should have regard for relevant stakeholders, including residents, police, health, social work and applicants.

#### A statement on overprovision of alcohol

An assessment of the level of alcohol availability in a particular locality either in terms of the number of premises, the capacity of premises, the type of premises or the size of a display area.

## 1.2 Evaluation of the Licensing (Scotland) Act 2005

The implementation of the Act was evaluated between 2010 and 2012, covering 8 main areas:

1	Trends in alcohol availability, including alcohol outlets, capacity and licensing hours ( <b>licensing trends</b> ).
2	How licensing boards promote the Act's five licensing objectives ( <b>licensing objectives</b> ).
3	The role and effectiveness of the newly established Licensing Standards Officers ( <b>LSOs</b> ).
4	How licensing boards interpret and apply key elements of the Act, including: <ul style="list-style-type: none"><li>• the assessments of 'capacity' for on and off sales (<b>overprovision</b>);</li><li>• the facilitation of the 'public right' to make objections and representations in relation to licence applications (<b>public access</b>).</li></ul>
5	The membership, roles and operation of the local licensing forums ( <b>forums</b> ).
6	Compliance, and variations in compliance across Scotland, of new provisions in the Act ( <b>compliance</b> ) including: <ul style="list-style-type: none"><li>• irresponsible promotions in on-sales;</li><li>• training for personal licence holders and staff; and</li><li>• the sale of customers who are drunk.</li></ul>
7	The implementation of test purchasing ( <b>test purchasing</b> ).
8	Learning that would inform future legislation ( <b>emerging issues</b> ).

The evaluation identified what was working well, the implementation challenges, and made recommendations for further progress (Appendix E1). For this current study six of the original evaluation objectives remained relevant issues for further explorations. The current study therefore explored: **licensing trends**; the role of the **LSO**; the **public health objective** and the **overprovision** assessment; the role of the **forums**; **public access** to the system; and the emerging issue of the **off-trade** sector.

## 2. Study aim and approach

### 2.1. Aim

To determine what developments have been made in the implementation of the Licensing (Scotland) Act 2005 since the original evaluation, with respect to the 6 outstanding areas identified in the original evaluation.

Two approaches were taken to explore the 6 outstanding issues from the original review:

- (i) Analysis of trends in alcohol availability
- (ii) A document review of all publically available reports and papers published since 2012.

This document review was based on existing written material, which was largely written from the public health perspective. As a result the licensing regime perspective is less well represented.

## 2.2. Monitor trends in alcohol availability

The Licensing (Scotland) Act 2005 was developed before the extent of alcohol harm in Scotland was apparent, and its aim was not to reduce alcohol availability. By the time the Act was implemented (2009) the Scottish Government had published a new alcohol strategy, the Framework for Action, which notably took a whole population approach to alcohol harm reduction, in addition to targeted interventions for those most at risk.<sup>2</sup> The Act was included as a key component of Scotland's alcohol strategy to be evaluated by NHS Health Scotland.<sup>3</sup> The theory of change, developed to inform the evaluation of the alcohol strategy, identified components within the Act which could potentially contribute to reductions in alcohol-related harm. It was theorised that effective implementation of the Act could result in the following:

- (1) No increase in the availability of alcohol in areas of overprovision (and a decrease in the longer term).
- (2) A reduction in the number of licences applied for, again particularly in overprovided areas in response to robust policy statements.
- (3) A reduction in alcohol availability via conditions placed on premises (e.g. reduce display sizes, limiting hours of operation, etc.).

Alcohol availability refers to the physical and temporal availability of alcohol, which encompasses the density of outlets in an area, the distance needed to travel to an outlet selling alcohol, the type and opening times of the outlet and the extent of the availability within the outlet (e.g. shelf space dedicated to the sale of alcohol).

Currently the only available national data are the number of on- and off-trade outlets, which is insufficient to provide any robust estimate of alcohol availability (see Box C), the impact of the overprovision policy or analysis of conditions set. Therefore, with respect to the trends in alcohol availability, only the following analyses were feasible:

- Monitor trends in the number of on- and off-trade premises nationally.
- Monitor trends in the number of new licence applications received, and the proportion granted and refused.

### Box C: Data requirements to be able to measure and monitor alcohol availability

#### Data:

**Requirements:** data on the number of outlets, type of outlet (e.g. supermarket, restaurant), opening hours and capacity (e.g. sales, shelf spaces) reported by year.

**Current situation:** These data are not available for vast majority of licensing board areas.

#### Accessibility:

**Requirements:** collated data publically reported nationally and locally using standard reporting mechanisms (i.e. on-line).

**Current situation:** the required data are not reported nationally. At the local level some elements (e.g. opening hours) are reported locally but are uncollated. Across licensing boards reporting is inconsistent making it impossible to report data nationally.

### 2.3. Assess developments made in implementation of the Licensing Act using document review

Relevant documents were reviewed with respect to following questions:

What improvements, if any, have been made in:

- the use of the **public health objective** in statements of licensing policy and licensing decisions? (section 5.1)
- how licensing boards conceptualise and operationalise **overprovision**? (section 5.1)
- the availability of **licensing data** on the capacity of on- and off-trade alcohol sales? (section 5.2)
- the role of **forums** in the licensing regime? (section 5.3)
- **public access** to the licensing regime? (section 5.4)
- the role of **LSOs** (section 5.6)

How have the licensing regime and the broader stakeholders addressed the emerging issue posed by the current structure of the **off-trade sector**? (section 5.5)



## 3. Methods

### 3.1. Monitoring trends in alcohol availability

Descriptive analysis of data on alcohol licences, licence applications and licensing decisions was undertaken. The following data sources were used:

- For Scotland: the British Beer and Pub Association Handbook, 2013<sup>4</sup>; Departmental Committee on Scottish Licensing Law, Cmnd. 5354 (the Clayson Report)<sup>5</sup>; the Liquor Licensing Statistics collated by the Scottish Government<sup>6</sup>.
- For England and Wales: the British Beer and Pub Association Handbook, 2013<sup>4</sup>; the National Statistics bulletins<sup>7</sup>.

### 3.2. Assessment of developments in alcohol licensing since 2012

A document review was undertaken to assess developments in the implementation of the Licensing Act 2005 since the original MESAS commissioned evaluation reported in 2013. The document review drew on methods developed by Levac et al<sup>8</sup> to carry out a scoping review. The six steps involved include:

- a) Identify the research question
- b) Search for relevant studies
- c) Select studies
- d) Chart the data, collating, summarizing
- e) Report the results
- f) Consult with stakeholders

Steps a-c are described below. Steps d-e are described in Section 5. To date Step F has not been carried out.

#### Research question

The following research question guided the documents review:

What developments have been made in the licensing regime since 2012, with respect to the six outstanding areas identified in the original evaluation?

Each of the six outstanding areas was translated into an evaluation question (see Section 5).

#### Search and select relevant studies

The following sources were searched for relevant documents and resources:

- Journal articles, grey literature and published meeting papers from forum or licensing board meetings
- National licensing or alcohol related conferences

Appendix E2 details the searches carried out and the results. Thirty-two documents and resources were reviewed in brief and 18 found to be relevant and reviewed in full (Appendix E3). For each non-research resource/document that was fully reviewed the AACODS checklist<sup>9</sup>, for critical appraisal of grey literature, was completed to support the critical appraisal of the material. For qualitative research outputs the CASP checklist for qualitative research<sup>10</sup> was completed to assess the quality of the material. Limitations identified by the CASP checklist were taken into account in the interpretation of the material. A case study of one area was used to triangulate the conclusions being drawn.

## 4. Trends in alcohol availability

Available licensing data at the local or national level does not allow alcohol availability to be monitored: only the number of licensed premises could be monitored. A real change in the number of outlets selling alcohol is only one of several explanations for a change in the number of licensed premises recorded after the implementation of the Act. Other explanations relate to the change in the way licenses were classified and managed<sup>i</sup> in the 2005 Act and the more stringent requirements on licensed premises<sup>ii</sup>. However, understanding the long-term trend is useful.

### **Trend prior to Licensing (Scotland) Act 2005**

The number of licensed premises in Scotland increased from the 1960s, the on-trade peaking in the early 2000s and off-trade peaking around 2005 (Figure 1). England & Wales had notably higher per capita numbers of on-trade premises at the beginning of the 20th century. The trends in both regions from the 1960s were similar suggesting similar legislative and societal environments, although the per capita increases of both on- and off-trade premises were greater in Scotland.

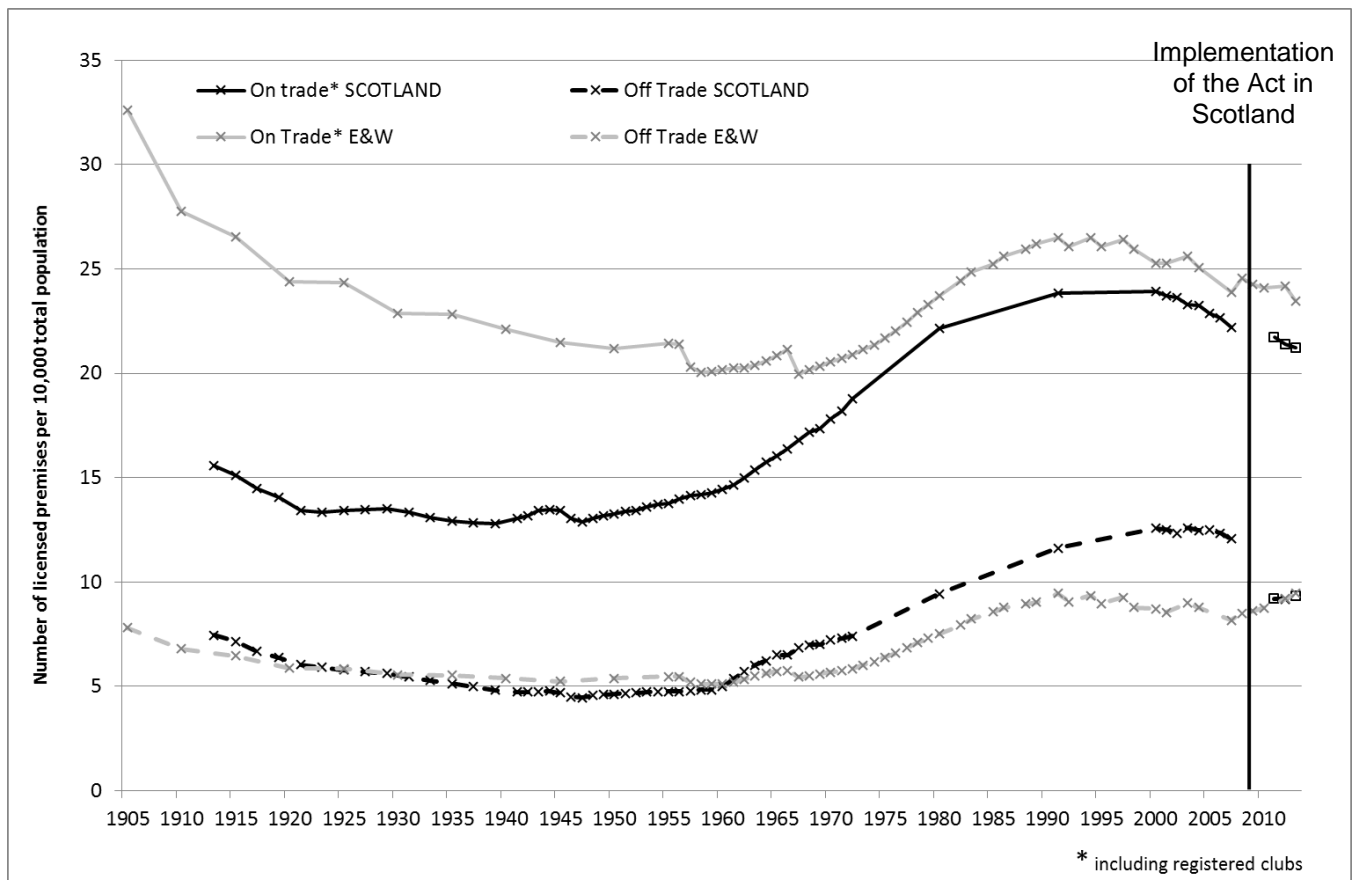
In the years prior to the implementation of the Act in Scotland the number of off-trade premises was stable in both Scotland and England & Wales, but the number of on-trade premises was declining in both regions. As discussed earlier the number of premises is only a crude measure of the availability of alcohol.

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<sup>i</sup> For example, liquor licenses for on-trade premises differ significantly between the Acts – in the 1976 Act a public house could have several different types of liquor licences but the 2005 Act rationalised the system to just on-trade, off-trade or combined on and off-trade licences.

<sup>ii</sup> The 2005 Act introduced more stringent requirements on the licence-holder. It is feasible that licensed premises selling only a small amount of alcohol (e.g. florists, gift shops) would relinquish their liquor licence rather than take on the additional responsibilities required in the new Act.

Figure 1: Number of licensed premises per capita: Scotland and England & Wales, on- and off-trade premises, 1905 to 2013. (The year 2009 is identified by the solid horizontal line)

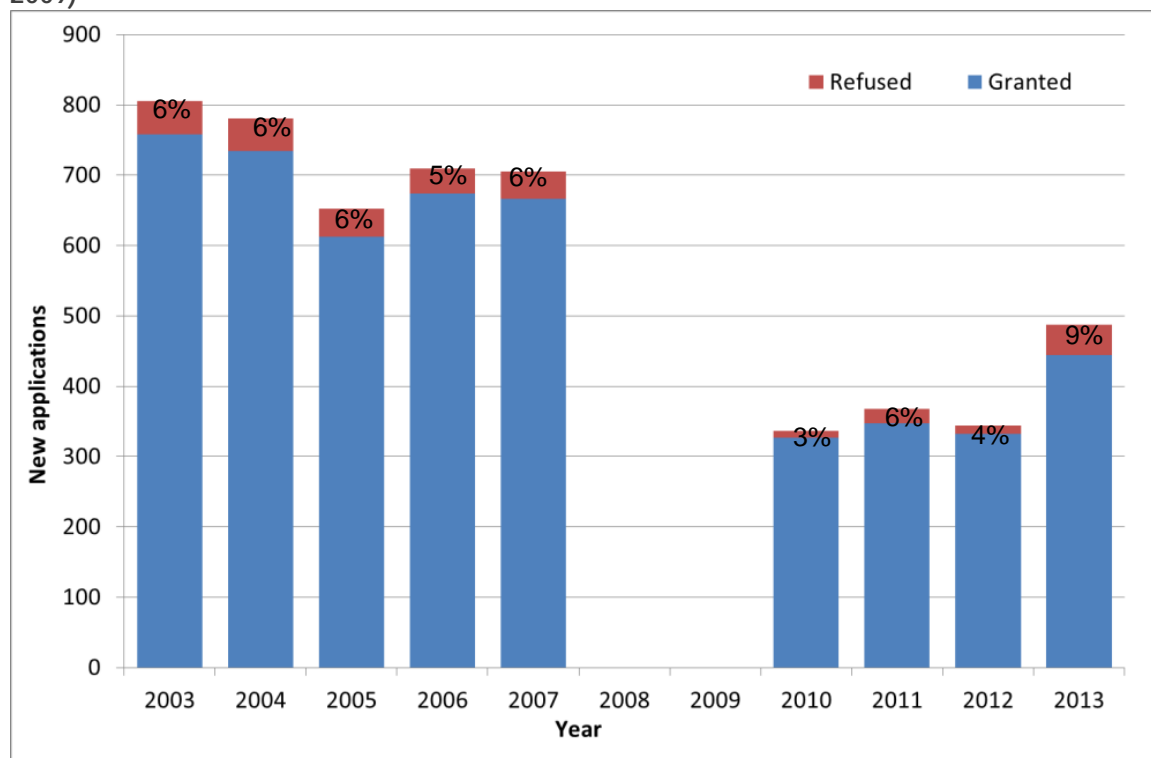


### Trends after the Licensing (Scotland) Act 2005

Between 2007 and 2011 (the years for which data are available in Scotland) there was a notable fall in the number of **off-trade** premises in Scotland, but not in England & Wales. The fall in **on-trade** premises continued in both regions (Figure 1). It is not possible to determine if the fall in number of off-trade licensed premises in Scotland was as a result changes in the off-trade market (e.g. reductions in the number of smaller independent outlets, increases in licensed supermarkets), the effect of the economic downturn or the effective implementation of the public health elements of the 2005 Act.

Since the legislation was implemented (2009) there has been no change in the number of new licences refused, although there was a reduction in the number of new licence applications (Figure 2).

Figure 2: Number of new premises licence applications granted and refused in Scotland, 2003-2013. (Note: Labels indicate % of applications refused and no data were available for 2008 and 2009)



The lower number of **new licence applications** after the implementation of the Act could be because:

- Premises were less likely to apply for a licence because of the more stringent requirements on licence holders in the new Act
- Fewer new businesses were starting up because of the economic downturn
- New applications were less likely in overprovided areas in response to robust overprovision statements

The similar level of **refusals** before and after the Act could reflect that:

- Licensing objectives and overprovision assessments were not being used by licensing board members to refuse new applications in overprovided areas
- New applications in overprovided areas were being refused, but is not reflected in the national statistics given that overprovided areas cover only a portion of Scotland
- Licensing conditions are being used to ensure that granting a licenses is consistent with the licensing objectives (e.g. limited shelf space dedicated to alcohol)

Each explanation reflects very different operation of the Act, but because of the paucity of licensing data it is not possible to distinguish between these explanations and therefore not possible to determine if the public health provisions of the Act have had an impact on licensing decisions. To fully evaluate the operation of the Licensing Act there is a need for more rigorous and systematic data from the licensing regime (Box D).

**Box D: Licensing information that would allow the functioning of the Act to be evaluated.**

- Data on outlets as detailed in Box C.
- Decisions on new licence applications/variations, including why the decisions were reached, any objections made and conditions set.
- Details of representations made about an application
- Details of licensing board meeting practices that promote accessibility and inclusiveness to the public.

## 5. Developments in alcohol licensing since 2012: findings from a document review

Documents were reviewed in relation to the outstanding areas identified in the original evaluation, outlined below:

What improvements, if any, have been made in:

- the use of the **public health objective** and **overprovision assessments** - how have these been operationalised? (section 5.1)
- the availability of **licensing data** on capacity of on- and off-trade alcohol sales? (section 5.2)
- the role of **forums** in licensing regime? (section 5.3)
- **public access** to the licensing regime? (section 5.4)
- the role of **LSOs** (section 5.6)

How have the licensing regime, and broader stakeholders, addressed the emerging issue posed by the current structure of the **off-trade sector**? (section 5.5)

This chapter outlines the developments made in implementing the Act since 2012 identified through the review, and the remaining challenges. Findings are presented under the 6 areas outlined above.

### 5.1. Public health objective and overprovision statement

Evaluation question

What improvements, if any, have been made in:

- the use of the public health objective in statements of licensing policy and licensing decisions?
- how licensing boards conceptualise and operationalise overprovision?

#### Improvements and challenges identified

- There are examples of where health and licensing work effectively together to operationalise the public health provisions, but these are isolated examples.
- Statements of licensing policy still largely have an administrative rather than a strategic focus.
- A continued lack of effective accountability and transparency limits the transfer of good practice, compromises adherence to legislation and limits engagement of stakeholders.

The developments and remaining challenges to the implementation of both the public health objective and overprovision assessments fell into three key areas:

- i. **Skills, resources and guidance**
  - Public health actor's experience and confidence in negotiating the licensing regime
  - Licensing actor's experience and confidence in understanding and using public health intelligence
  - Adequate guidance on addressing the public health objective and overprovision
- ii. **Links** between public health and licensing departments and personnel
- iii. **Accountability and transparency** in licensing board decisions and policy development

#### 5.1.1. Skills, resources and guidance

##### **Developments**

Increased skills and confidence of public health actors has been documented since the original evaluation of the Act. Capacity building activity was carried out nationally in 2012-13 with both public health and licensing personnel through the development of a licensing toolkit<sup>11</sup> and dialogue sessions for both public health and licensing stakeholders. Growing engagement of public health actors with the licensing regime was also reported.<sup>12</sup>

Public health personnel engaging with the licensing system reported increasing knowledge of and confidence with negotiating the system and with using health intelligence to inform their engagement with licensing.<sup>12,13</sup>

The use of health evidence to support a policy position has increased over time. In the 2010-2013 policy statements 9% cited health evidence compared to 36% in the 2013-2016 policy statements.<sup>12</sup>

##### **Remaining challenges**

Although there are some examples of active and innovative engagement, involvement of health in the licensing continues to be patchy and limited.<sup>15,16,17</sup> Statements of licensing policy still have a largely administrative rather than a strategic focus.<sup>14,16</sup>

The quasi legal processes employed in alcohol licensing, and the significant differences in the way licensing and public health operate (Box E), pose significant challenges for public health actors new to working within the licensing regime. Those that do engage with licensing have had to invest significant time to become confident and skilled in negotiating the licensing system and learn how to effectively translate public health intelligence for their licensing colleagues, a theme apparent in the Aberdeen City case study (see Appendix E3) and reported in other research.<sup>13</sup>

Similarly, it is argued that some licensing boards need to be more proactive in reflecting public health evidence in their policies and practice,<sup>17</sup> although, as with public health actors, licensing actors will require significant time and support to become familiar and confident engaging with public health.

The public health objective – and, when used as an instrument to address public health issues, the overprovision statement - are underpinned by a population health perspective. Currently, there is an absence of evidence at the outlet level of the direct impact of availability on consumption – i.e. linking individual or groups of premises to consumption. Indeed, it may be that such direct evidence is not achievable with current resources. Instead licensing boards are required to draw on empirical evidence of the causal link between alcohol availability and consumption. The licensing system has not traditionally operated in this way (Box E); licensing decisions have to be made on a case-by-case basis. Therefore, in order for licensing decisions to be able to fully incorporate the public health considerations not only is a significant shift in how licensing boards operate required, but there is also concern by some that the legislative framework is not fully equipped to operate in this way. With the current challenges around incorporating the population-level evidence the official guidance on the evidence base required to inform the overprovision statement is felt by some to be unhelpful (Box F).<sup>12,13,18</sup> The Scottish Government has committed to updating the guidance.



### **Box E: Practical and conceptual differences in the ways public health and licensing operate**

**New role for health:** health has traditionally played little role in licensing, there are no established relationships, shared language or shared practices.

**Reactive processes:** traditionally licensing is a largely reactive, application driven process. Licensing practice has historically not worked towards a specific strategic vision for local alcohol availability. Public health is more comfortable with working in such a strategic manner towards a given vision.

**Decision making:** Licensing and public health have distinct decision making practices. What constitutes “evidence” has different values in each setting. Licensing decisions are often guided by professional experience and local knowledge - what public health would call “anecdote” and considered a relatively low form of evidence. Public health is more comfortable with decisions supported by evidence drawn from multiple sources, settings and methods – what licensing actors considered abstract and not relevant to their setting.<sup>18</sup>

Licensing actors are comfortable with political realities, influences of power, lobbying and the negotiation of different interests. Public health is less comfortable or skilled in managing these influences.<sup>1</sup>

**Population health perspective:** with the introduction of the public health objective - which is underpinned by the population level perspective - licensing now has to be guided by two perspectives – the individual level perspective (i.e. individual outlets) and population level perspective (i.e. neighbourhoods, etc.). However, the application driven process under which licensing traditionally operated has encouraged licensing to be focused on how venues are operating, not on their collective impact on health. Many licensing actors see the health issues as one of individual self-control and not the role of the licensing regime. The public health objective now requires licensing to make significant shifts in how the role of licensing is perceived.

### **Box F: Guidance for the Alcohol Licensing (Scotland) Act 2005 on developing the overprovision statement**

Guidance provided for the type and strength of evidence that is needed to make an assessment of the level of overprovision of alcohol availability in a given area is considered unhelpful by some. Paragraph 47 suggests a dependable “causal link” between an individual premises and population level harm is required. Paragraph 48, identifies that evidence that “points compellingly towards a particular conclusion” is sufficient grounds to base an overprovision statement.

Excerpts from LICENSING (SCOTLAND) ACT 2005 – SECTION 142 – GUIDANCE FOR LICENSING BOARDS, 2007

47. “...identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, *always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality*”. (Emphasis in original document)

48. “It will not normally be appropriate to arrive at a decision based on one particular factor alone; but rather consideration should be given as to whether aggregated information and evidence from a number of sources points compellingly towards a particular conclusion.”

### 5.1.2. Links between licensing and public health

#### **Developments**

There are examples of productive relationships between public health and licensing actors that do result in more effective health input into licensing from both the Aberdeen City case study and other research.<sup>13</sup> However, these are isolated examples and there is a significant way to go in developing the types of working relationships that would fully imbed the public health objective and overprovision statement.<sup>1,13</sup>

#### **Remaining challenges**

The individual and organisational relationships across health and licensing in Scotland remain limited and there continues to be a lack of common understanding of “what public health can do for licensing, how licensing understands public health”.<sup>iii</sup> The practice differences between public health and licensing (Box E) act as barriers to the development of effective working relationships.

### 5.1.3. Accountability and transparency

There is a recognised deficit in the accountability and transparency of licensing board decisions and policy development.<sup>13,14,16,17</sup> This is affecting the degree to which good practice is being transferred to other regions, adherence to the legislation, and the engagement of stakeholders such as the community and health.<sup>13,16,19</sup>

#### **Developments**

In recognition of this lack of accountability and transparency the newly passed (July 2015) Air Weapons & Licensing Bill has introduced the requirement for licensing boards to publish an annual report describing how they have regard to the five licensing objectives and their statement of licensing policy must include a summary of their licensing decisions.

The new Bill also extends the duration of the statements of licensing policy to five years, bringing it in line with the term of local councillors. It is hoped this provision will allow the development of an evidence-informed statement of licensing policy that reflects the views of broader stakeholders and can stand up to legal challenge.

#### **Remaining challenges**

There is relatively poor compliance with existing requirements within the Act (Box G). Rigorous governance of compliance with these new provisions would improve the transparency and accountability of the system.

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<sup>iii</sup> Unpublished material – to confirm publication details: Foster, J (2016) ‘Licensing and public health’, book chapter [London: IAS]

### **Box G: Compliance with selected requirements set out in the 2005 Alcohol Licensing (Scotland) 2005 Act**

Licensing boards are required to publish a statement of licensing policy every three years, which should include an overprovision assessment. In addition, licensing boards are required to publish a register of licences held in the board area.

Five months after the deadline for publication of statements of licensing policy only 25 out of a total of 36 statements were published, and only 19 of these statements included an assessment of overprovision.<sup>14, 16</sup>

Given licensing board decisions would be particularly vulnerable to legal challenge if no licensing policy is in place, areas with no licensing policy are limiting their ability to manage alcohol availability.

Over a year after the deadline for publication of a licensing data register only 16 registers covering 19 of the 40 licensing board areas and divisions could be identified.<sup>14, 16</sup>

The authors of this report are unaware of any action being taken as a result of boards not complying with these key requirements of the Act.

## **5.2. Data availability**

### **Evaluation question**

What improvements, if any, have been made in the availability of data on capacity of on- and off-trade alcohol sales?

### **Improvements and challenges identified**

There continues to be insufficient published data to allow effective oversight of the licensing regime. Effective implementation of new licensing legislation will go some way to rectifying this issue.

Data on capacity of alcohol outlets - both individual level and aggregate data – are required to support the new requirement for licensing boards to publish an annual report; to facilitate more effective input from stakeholders and to ensure better transparency and accountability (5.1 above).<sup>13,16,18,19</sup>

### **Developments**

As part of the new annual reporting requirements licensing boards must include a summary of their licensing decisions and a summary of licences held, including occasional licences. Extending this to include robust measures of capacity (see Box C above) will go some way to providing the necessary information to monitor alcohol availability.

### **Remaining challenges**

Licensing board compliance with existing requirements to publish a public register of licence information has been poor (see Box G above) and all those that are published fall short of allowing any effective oversight of the process.<sup>16</sup>

Both support and guidance to licensing boards in collating and publishing their licensing data and annual report, along with governance of new requirements, is likely to improve compliance.

### 5.3. Local Licensing Forums

#### Current evaluation question

What improvements, if any, have been made in the role of the local licensing forums in the licensing regime?

#### Improvements and challenges identified

There is little evidence of meaningful improvements in the functioning of forums.

### Developments

Our Aberdeen City case study and examples of good practice from elsewhere suggest that implementing the public health objective and overprovision statement works best where there is an effective alliance with public sector/third sector agencies and the natural structure to facilitate this is the local licensing forum.<sup>13</sup>

The Scottish Government has committed to updating the official guidance for alcohol licensing in Scotland; expanding on the guidance to local licensing forums could support more effective forums.

### Remaining challenges

Although there are some examples of alliances being facilitated within the local licensing forums, more often they happen out with forums and there is little evidence that forums have improved since the original evaluation.<sup>13</sup> Trade involvement on the local licensing forums is seen by public health actors as a barrier to effective and coherent local licensing forum action.<sup>12,13</sup>

Forums carry out specific roles – an oversight role and as a vehicle to bring and support key stakeholders representation. Ineffective forums therefore pose barriers to the operation of the Act. If, six years after the implementation of the Act, the current forums structure is unable to carry out these roles there is a need to address how these key roles can be carried out.

### 5.4. Public access

#### Current evaluation question

What improvements, if any, have been made in the public access to the licensing regime?

#### Improvements and challenges identified

Public access to the licensing regime continues to be limited, although there are isolated examples of action to improve public access that could be built on.

## Developments

Although there is little evidence that public access to the licensing system has improved in any significant way in Scotland, there is growing awareness among licensing stakeholders, including many licensing board members of the lack of public input into alcohol licencing.<sup>12,13</sup> For example, some licensing boards have departed from the traditionally formal and legalistic format of licensing board meetings in order to make the proceedings less intimidating to the general public.<sup>16</sup>

“The Scottish Government believes that Scotland’s people are its greatest asset: they are best placed to make decisions about our future, and to know what is needed to deliver sustainable and resilient communities.”

Policy Memorandum, Community Empowerment (Scotland) Bill (SP Bill 52).

## Remaining challenges

There are formal mechanisms for communities and the public to input to alcohol licensing but they require significant knowledge of the system and skills and resources to be able to input in a meaningful way.<sup>19</sup> Community councils are the only community-based consultees in the process, however, a significant number of areas in Glasgow do not have an active community council.<sup>19</sup> This likely reflects the situation in many other areas of Scotland and leaves these areas essentially voiceless.

Local licensing forums are a natural place to provide support for communities to engage in alcohol licensing. However, as section 5.3 above identifies, to date forums have not been effective in providing the necessary support for community representatives.

Local efforts to increase public access have identified promising suggestions (Box G) for both shifting the licensing regime to be more community facing and what types of support might increase the capacity of communities and the public to input into the process.<sup>16,19</sup> This early work needs to be built on to develop local and national solutions.

### Box G: selected suggestions of how to make alcohol licensing more community facing<sup>19</sup>

The licensing board could communicate with a broader range of community groups and organisations (e.g. parent councils, development trusts, etc.)

Make licensing board meetings more accessible (e.g. locate them in community buildings rather than central council offices) and less formal.

Improve feedback to community members or groups that do input into the licensing system to allow them to identify the effect of their input.

Take account of local regeneration plans and master plans in the statements of licensing policy.

## 5.5. Emerging issues

### Current evaluation question

How have the licensing regime, and the broader stakeholders, addressed the emerging issue posed by the current structure of the off-trade sector?

### Improvements and challenges identified

There is significant imbalance of power within the system, which is disenfranchising stakeholders.

### Imbalance of resources

**Challenges:** Licensing and public health actors alike recognise that the majority of alcohol is purchased in the off-trade sector, and that this sector is dominated by large supermarkets. Indeed, three quarters of off-trade alcohol is bought in supermarkets. The resources available to the consolidated supermarket sector, together with some successful high profile challenges by supermarkets of licensing board decisions, has made licensing boards more cautious in utilising their discretionary powers in making licensing decisions.<sup>13</sup>

**Developments:** A well developed and robust statement of licensing policy should support licensing board decisions<sup>17</sup> although there is still uncertainty around the legal status of policy statements. The reticence of licensing boards to make full use of their statement of licensing policy to date suggests that more support for licensing boards to develop and utilise a well-developed and robust statement of licensing policy is needed.

### Quasi-legal versus legal

**Challenges:** Although the licensing regime is a quasi-legal process in many areas it operates more like a fully legal structure. In practice only the applicant tends to have the resources for legal support, which can further exacerbate the imbalance of power between the applicant and other stakeholders. The community representatives are arguably the most disenfranchised party.<sup>13,19</sup>

**Developments:** There are examples where licensing boards have made significant efforts to reduce the legalistic feel of the licensing board hearings and to engage a broader range of stakeholders in the regime.<sup>16</sup> Lessons from these areas could be shared with other licensing board areas.

## 5.6. Licensing Standards Officer (LSO) function

### Current evaluation question

Have LSOs continued to support the implementation of the Act?

Very little new evidence has been produced on this issue since the original evaluation. Public health actors continue to find the support of LSOs to negotiate licensing issues invaluable.<sup>13</sup> More consistent LSO support for public health actors would go some way to redress the power and knowledge gap that is inherent in the quasi-legal process.

## 6. Summary

Although managing alcohol availability was not an explicit aim of the Act, several provisions were introduced which, if implemented correctly, would allow alcohol availability to be managed. The original evaluation of the Act, published in 2013, identified challenges with operationalising these public health related provisions.<sup>20</sup> Review of the evidence available since the initial evaluation suggests that there has been limited development in embedding the public health provisions, although local examples of good practice are emerging.

**Trends in alcohol availability:** At the national level it is not possible to monitor trends in alcohol availability<sup>iv</sup>, only data on the number of outlets is available. There was a sustained increase in the number of outlets from the 1960s onwards, although more recently the number of outlets has decreased. It is not possible to determine how this decrease has impacted on alcohol availability, particularly in the off-trade sector given the change in nature of off-trade outlets (e.g. the increase in supermarkets).

**Data availability:** More rigorous and systematic information from the licensing regime would allow better monitoring and evaluation of the implementation of the Act and facilitate better engagement of stakeholders in the process. Measures could be introduced to ensure compliance with the new provisions in the Air Weapons and Licensing Act, which require licensing boards to publish an annual report.<sup>21</sup> This could increase the availability of licensing data.

**Public health provisions:** Neither the public health objective or the use of the overprovision assessment to address public health issues are embedded in licensing practice. The relationship between licensing and public health actors, which is critical for successful use of the public health provisions in the Act, is still in its infancy. Public health personnel need to develop skills and confidence in negotiating the licensing system and licensing personnel need to develop skills and confidence in using and interpreting public health information.

**Transparency and accountability:** Limited accountability and transparency in the licensing system has limited the transfer of good practice, compromises adherence to legislation and limits engagement of stakeholders. Provisions in new licensing legislation have the potential to increase accountability and transparency.

**Public access:** There remains limited involvement (and therefore scrutiny) from the public in the licensing system.

**Local licensing forums:** Six years after the implementation of the Act forums continue to have a limited impact in terms of an oversight or advising function in alcohol licensing. Given forums have these key and unique roles in the licensing system further work is need to ensure forums can function or alternative means of carrying out these functions will be required.

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<sup>iv</sup> Alcohol availability reflects not just the number of outlets selling alcohol but the opening times of outlets, the shelf space dedicated to alcohol (for off-trade) or the capacity (for on-trade).

**The integrity of the system:** The off-trade sector, and supermarkets in particular, are major providers of the alcohol consumed in Scotland. Some argue that high profile challenges by supermarkets of licensing board decisions, has made licensing boards more cautious in utilising their discretionary powers in making licensing decisions, particularly where supermarkets are the applicant. This can potentially compromise the integrity of the system.

## **7. Conclusion**

In the context of licensing legislation the provisions introduced in the Licensing (Scotland) Act 2005 are still relatively new<sup>1</sup>; it is therefore reasonable to expect licensing practice to still be in the “bedding in” phase. Review of progress to date has identified two key areas for attention:

- **Support is required** for different licensing stakeholders (licensing, health and community actors and forums) to fully take forward the public health provisions in the Act.
- **There remains a lack of compliance** with particular provisions in the Act, namely those aimed at generating accountability and transparency in the licensing system.

Translating these findings into recommendations for policy and practice require discussion and critique by the relevant stakeholders.



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## Appendix E1: Learning and recommendations from the original (2013) evaluation of the Licensing (Scotland) Act 2005.

### Learning

### Original recommendations

#### Licensing trends

National and local data were not collected or collated consistently or in a manner which allowed monitoring of trends.

(1) National and local licensing data sets should be collected and collated consistently.

#### Licensing objectives and overprovision

Licensing personnel found it difficult to conceptualise and operationalise the public health objective and the overprovision assessment.

(1) Provide guidance on how to address the public health objective and overprovision assessment. (2) Enhance links between licensing boards and the health sector. (3) Share learning across regions.

#### LSOs

The establishment of LSOs and their function across Scotland was perceived to be one of the most successful parts of the Act. LSOs reported good relationships with the trade, licensing boards, forums, the police and the public.

#### Public access

The public's awareness of their right to object was limited. In addition, a power imbalance exists at licensing board hearings between the public and lawyers (representing applicants).

(1) Community councils should provide more support to the public.  
(2) Strengthen the role of LSOs in supporting the public.

#### Forums

Forums were not functioning well.

(1) Provide guidance on the nature and function of forums.  
(2) Support better involvement of the public on forums.  
(3) Enhance relationships between forums and boards.

#### Compliance

The Act supported compliance with restrictions of irresponsible promotions in the on-trade.

#### Test purchasing

This provision was thought to be a useful and improved licensed trade staff practice.

#### Emerging issues

The integrity of the system was compromised due to an imbalance in the resources available to larger businesses to challenge/uphold licensing decisions.

## Appendix E2: document searches and results

### Selecting documents

Journal articles, grey literature reports or meeting papers were selected as potentially relevant if they:

Provided guidance on how to operationalise the licensing Act 2005 (e.g. toolkits, guidance);

- Describe how a particular area is operating
- Identify challenges or opportunities
- Describe the functioning or operation of the Scottish licensing system
- Provides insights into the above

### Identifying meeting papers

A request was circulated to all licensing boards, forums and Alcohol & Drug Partnerships (ADP) in Scotland for copies of meeting papers that relates to how the relevant agency interact or plans to interact with the licensing act, the barriers faced and approaches taken.

### Results:

- 5 sets of meeting papers were sent by Alcohol Focus Scotland – a national advocacy body
- 4 licensing boards/forums send a link to the publically available webpage or provided comprehensive information on all board papers
- 5 organisations (licensing boards, forums and ADPs) sent selected meeting papers.

This work was not a comprehensive review of all meeting minutes and papers. Where the study team were referred to local authority licensing webpages, rather than provided with material identified as relevant to the review, the webpage was comprehensively reviewed.

### Searching grey literature

General or grey literature search facilities were used (Table 1) to identify relevant document. Websites of national alcohol and licensing organisations were searched by either scanning their publication list since 2008 or using the search term “licensing” in their website search facility (Table 2).

The agenda for the following conferences were reviewed and relevant presentations obtained: Scottish Licensing Law and Practice (2015)<sup>v</sup>, Alcohol Focus Scotland’s National Licensing Conference (2012, 2013, 2014)<sup>vi</sup>, Alcohol Concern (2014)<sup>v</sup>, Police Scotland Licensing Law Seminar (2014).

The Air Weapons and Licensing Bill was scrutinised in later 2014/early 2015 and was passed in July 2015. All [Bill documentation](#)<sup>vii</sup> and that from the [scrutiny process](#)<sup>viii</sup> were reviewed.

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<sup>v</sup> Information on previous conferences not available

<sup>vi</sup> No NLC in 2015

<sup>vii</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx>

<sup>viii</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78273.aspx>

## Journal articles

Web of Science search engine was used to identify journal articles published from 2008 discussing the operation of the Licensing Act 2005. Search terms (“alcohol licensing” OR “liquor licensing”) AND (“Scotland” OR “UK”) were used. Two relevant articles were included (Nicholls, 2015; Nicholls, 2012)

**Table 1. Grey literature searches and results**

<b>Resource searched</b>	<b>Search terms &amp; details</b> (searched 15/07/2015)	<b>Included material</b>
Google.com	Search term: “alcohol licensing Scotland”  Excluded: information intended for applicants (e.g. on how to apply for a licence); Wikipedia; information about the act or related legislation.  Looked through first 5 pages of citations, skimmed the 8 documents before excluding 7 and including 1 document (Mahon & Nicholls, 2014)  One broken <a href="#">link</a> <sup>ix</sup> found	AFS EinP
OpenGrey	Search term: “alcohol licensing” Returned n=12 results; 1 published since 2009 (when the Licensing Act 2009 was implemented) was not relevant. Search term: “liquor licensing” Returned n=29 results, none since 2009.	
BASE	Search term: “alcohol licensing Scotland” (verbatim search) Returned n=23 results, 13 since 2009, 5 summaries read or document skimmed. N=2 were relevant. One was obtained (MP consulting) and the second only available to Queen Margaret University students or staff <sup>x</sup> . Search term: “liquor licensing” Returned n=21 results: 3 published since 2009. None relevant.	MP consulting
Grey literature report in public health	Search term: “alcohol licensing Scotland” or “liquor licensing Scotland”. Produced no results.	

<sup>ix</sup> <http://www.sllp.co.uk/Alcohol%20Act%20Guidance%20Package%200811.pdf>

<sup>x</sup> Master’s Thesis – “An Examination Of Overprovision Policy And Methods To Assess Overprovision Of Licensed Establishments In Edinburgh”

## Searching organisation webpages

**Table 2: Search of websites of national alcohol and licensing organisations**

<b>Organisation</b>	<b>Results</b>
Alcohol Focus Scotland	Policy statement review, Mahon & Nicholls, 2014, Toolkit,
Institute of Alcohol Studies	Jon Foster report
SHAAP	Returned n=12 results, 2 skimmed and one relevant (AWLB submission)
Alcohol research UK	One relevant (Ev in PRact)
Glasgow Centre for Population Health	One report relevant (community voice)
Scottish Licensing Law and Practice	One document relevant (AWLB submission)
Alcohol Concern	Not documents relevant to the operational aspects of alcohol licensing

### Appendix E3: document retrieved and reviewed

Author	Title	Description	Date published	Full review	Checklist	Search
Alcohol Focus Scotland	AFS supplementary evidence.	Evidence submitted on request of the Local Government and Regeneration Committee (bill scrutinising committee) ( <a href="http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78273.aspx">http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78273.aspx</a> )	January 2015	Yes	AACODOS	Air Weapons and Licensing Bill documentation
L Mahon & J Nicholls.	Using licensing to protect public health - From evidence to practice	Report of an Alcohol Research UK funded 3 year project to build capacity building in licensing stakeholders in Scotland ( <a href="http://www.alcohol-focus-scotland.org.uk/">http://www.alcohol-focus-scotland.org.uk/</a> )	August 2014	Yes	AACODOS	Google
Alcohol Focus Scotland	Review of statements of licensing policy 2013 to 2016	A review of the statements of all statements of licensing policy in Scotland for the period 2013-2016 published at the time. ( <a href="http://www.alcohol-focus-scotland.org.uk/">http://www.alcohol-focus-scotland.org.uk/</a> )	2014	Yes	CASP	Organization's website
Glasgow Centre for Population Health (D Shipton)	Re-imagining the system: how communities can have a greater say on the availability of alcohol in their local area	A summary of the findings from a explorative qualitative study of how to increase community input in the licensing regime in Scotland, based on the full project report (both can be found on <a href="http://www.gcph.co.uk/publications">http://www.gcph.co.uk/publications</a> )	2015	Yes	CASP	Organization's website

Health Boards (all territorial health boards)		Written response from all territorial health boards in Scotland to a request from the Local Government and Regeneration Committee to "advise on the extent of their relationship with their local licensing boards, how much information they provide license boards and the extent to which local health concerns linked to alcohol are brought to the attention of the licensing board." ( <a href="http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78273.aspx">http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78273.aspx</a> )	2015	Yes	AACODOS	Air Weapons and Licensing Bill documentation
N Fitzgerald, University of Stirling	Influencing the Implementation of a Public Health Objective in Scottish Alcohol Licensing: A Qualitative Interview Study	Report of a study part funded by Lanarkshire health board and NHS Health Scotland to explore how public health actors have attempted to influence local alcohol licensing policies and decisions in Scotland ( <a href="http://www.stir.ac.uk/media/schools/nursing/ism/documents/Public%20Hlth%20Efforts%20to%20Influ%20Alc%20Licensing%20in%20Scot%20A%20Qual%20Interview%20Study.pdf">http://www.stir.ac.uk/media/schools/nursing/ism/documents/Public%20Hlth%20Efforts%20to%20Influ%20Alc%20Licensing%20in%20Scot%20A%20Qual%20Interview%20Study.pdf</a> )	2015	Yes	CASP	Personal communication
J Nicholls, Bath University	Alcohol licensing in Scotland: a historical overview	Academic publication (Addiction, 2015 107, 1397–1403) ( <a href="http://onlinelibrary.wiley.com/doi/10.1111/j.1360-0443.2012.03799.x/abstract">http://onlinelibrary.wiley.com/doi/10.1111/j.1360-0443.2012.03799.x/abstract</a> )	2012	Yes	CASP	web of science
S Graham	Engaging with the Health Objective: a health board perspective.	Presentation at the Scottish Licensing Law and Practice Conference, 2015	2015	yes	AACODOS	Conference search
J Nicholls	Overprovision & public health	Presentation at the Scottish Licensing Law and Practice Conference, 2015	2015	Yes	CASP	Conference search
A Maciver,	Front line report	Presentation at the Scottish Licensing Law and Practice Conference, 2015 discussing the Air Weapons & Licensing Bill	2015	Yes (a)	Not completed	Conference search
P Clyde	Licensing Standards – Enforcement Challenges	Presentation at the Scottish Licensing Law and Practice Conference, 2015	2015	Yes (a)	Not completed	Conference search
P Reid	Air Weapons and Licensing Bill	Presentation at the Scottish Licensing Law and Practice Conference, 2015 discussing the Air Weapons & Licensing Bill	2015	Yes (a)	Not completed	Conference search



R Skinner	Sex and the civics: Licensing sexual entertainment	Presentation at the Scottish Licensing Law and Practice Conference, 2015, discussing sexual entertainment licensing	2015	No (b)	Not completed	Conference search
J Nicholls, Alcohol Research UK	Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Policy and Practice	Academic publication (Contemporary Drug Problems 2015, Vol. 42(2) 87-105) ( <a href="http://cdx.sagepub.com/content/early/2015/04/20/0091450915579875.full.pdf">http://cdx.sagepub.com/content/early/2015/04/20/0091450915579875.full.pdf</a> )	2015	Yes	CASP	web of science
MP consulting	Licensing Law and the impact of the Public Health Objective	A report commissioned by Alcohol Focus Scotland to review the potential impact of a public health objective on alcohol availability ( <a href="file:///C:/Users/deborahs/Downloads/Licensing_Law_and_the_impact_of_the_Public_Health.pdf">file:///C:/Users/deborahs/Downloads/Licensing_Law_and_the_impact_of_the_Public_Health.pdf</a> )	Aug 2008	Yes	AACODOS	
Local Government and Regeneration Committee (LGR Committee)	Stage 1 Report on the Air Weapons and Licensing (Scotland) Bill	The report by the scrutinising committee at the end of Stage 1 of the bill process ( <a href="http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx">http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx</a> )	March 2015	Yes	AACODOS	Air Weapons and Licensing Bill documentation
Scottish Parliament	Air Weapons and Licencing Bill, as passed.	The final version of the Air Weapons and Licencing Bill, which was passed in 2015. ( <a href="http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx">http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx</a> )	August 2015	Yes	AACODOS	Air Weapons and Licensing Bill documentation

Aberdeen City case study	A comprehensive set of documents relating to this document review between December 2010 and July 2015 were provided by Local Licensing Forum/ADP	The documents included: Documents provided by public health to the licensing board to support policy development (n=7), minutes of joint licensing board/forum meetings (n=4), documents relating to statements of licensing policy (n=4) and a report authored by the ADP reflecting on the experience of working with the licensing board.	From Dec 2010 to July 2015	Yes	AACODOS	Document request to all ADPs, licensing boards and forums.
Foster, J. & Charalambides, L.	10 year review of the 2003 Licensing Act	Report by the Institute for Alcohol Studies. <a href="http://www.ias.org.uk">www.ias.org.uk</a>	2016 [In press]	Yes	CASP	Organization's website

(a) not inform the review

(b) not relevant to the review