Dear Mr Stewart,

Thank you for the opportunity to give oral evidence on the current Air Weapons and Licensing (Scotland) Bill (Dec 17, 2014).

As discussed at the evidence session, I enclose examples of good and bad practice in the current licensing regime and the implications for the functioning of the system. In assessing practice Alcohol Focus Scotland has applied accepted principles of good practice for public bodies\(^1\). The following has largely been drawn from work carried out by Alcohol Focus Scotland, supplemented with specific enquires made in response to your request.

The following areas have been covered:

1. Accountability and transparency
2. Working with stakeholders

If you require any further information from us please do not hesitate to get in touch.

Yours sincerely

Dr Deborah Shipton

Alcohol Focus Scotland

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Summary

Accountability and transparency

Although licensing boards must seek to promote the licensing objectives (s.6.3(a)) there is no mechanism in statute that defines how licensing boards should report on their performance against their policy; the represents a significant accountability and transparency deficit.

Existing mechanisms to ensure accountability and transparency - such as publishing of policy statements and data - are not consistently adhered to, calling for more robust measures hold licensing boards to account.

The use of evidence in policy development has increased, although it still remains limited in overprovision assessments.

Working with stakeholders

There is growing engagement and participation of some stakeholders - largely health and police- in the licensing process.

There is less evidence of feedback from licensing boards to stakeholders.

Legislation to strengthen the reporting mechanisms - such as a statutory requirement on licensing boards to annually report on their performance, including summary licensing data – would begin to address the current accountability deficit and would support continued and improved engagement of stakeholders.

1. Accountability/transparency

There are three main accountability mechanisms with respect to the licensing board:

- Licensing boards are formally accountable to Scottish ministers.²
- Local licensing forums have an “oversight” role.³
- In any healthy democracy the broader stakeholders in any process should have access to the necessary information to be able to hold the main actor to account. In alcohol licensing the main stakeholders are the community, police, health, social work and the trade. [In addition, all licensing board decisions are open to legal challenge, however, in practice this is not a not an accessible means of accountability for most stakeholders]

For the above mechanisms to function effectively it is crucial that the necessary information is made available by licensing boards in an accessible way.

The Licensing (Scotland) Act 2005 stipulates that the following are published:

- A statement of their policy (s.6)
- An overprovision statement (s.7)

² The Licensing (Scotland) Act 2005 states that “Where a Licensing Board decides not to follow any guidance issued under subsection (1), the Board must give the Scottish Ministers notice of the decision together with a statement of the reasons for it.” (S.142). When asked at the Scottish Licencing Law & Practice conference 08/11/13, no clerks reported ever given such notice when departing from the Guidance.

³ The Licensing (Scotland) Act 2005 states that “Forums must keep under review the operation of this Act in the Forum’s area and, in particular, the exercise by the relevant Licensing Board of their functions” (S.11).
A public register of licence information\(^4\) (s.9)

However, there is considerable variability in how effectively licensing boards comply with these requirements.

**Policy and overprovision statements:**

The policy statements and overprovision statements are key documents that inform interested parties of how licensing boards will exercise their discretionary powers. Six months after the deadline for publishing the policy statement and overprovision statement 25 of the possible 40 policy statements (from the licensing boards and divisions) were published and only 19 of these had overprovision statements. Alcohol Focus Scotland is unaware of any action being taken as a result of Boards not publishing policy statements or overprovision statements, suggesting a significant accountability deficit.

A review of the published licensing policy statements\(^5\) and overprovision statements for the period 2013-2016 identified some good and bad practice in the statements. For the majority of policies the evidence base for the policy approach was not demonstrated; with limited assessment of the harms associated with the licensing objectives. Four policy statements (Glasgow, Aberdeen, Dumfries and Galloway and Highlands) stood out for use of evidence to support the policy direction. Similarly, for the overprovision policy there was limited use of evidence to support the position taken. Without clear evidence supporting policy and overprovision statements decisions would be open to legal challenge. Details of good and bad practice in other aspects of the policies (presentation and readability, children’s’ access, occasional licences, etc.) can be found in the report.

**Public register of information:**

Using standard on-line searching mechanisms Alcohol Focus Scotland was able to locate only 16 publicly available registers of licensing data covering 19 of the 40 licensing board areas and divisions. The register for South Ayrshire\(^6\) is an example of an easily locatable register in an accessible format with good searchable functions. For most premises licences in the South Ayrshire register there is a map, details on the type of premises (on- or off-sales), details and dates of variations to the licence, and a layout plan of the property. However, other online registers provide details only of the premises’ name and location, which provides little meaningful information to stakeholders. Not all registers are available online, for example, the register for Angus is only “available for inspection by contacting the Licensing Section”; this is likely to have significant implications for the accessibility of this information.

However, even the best of the published registers falls short of allowing any effective oversight of the process; many published registers provide insufficient primary information and none of the registers provide the summary information necessary to monitor the functioning of the licensing board’s practice over time. As an illustrative example, although details of occasional licences are included in many of the published registers, the lack of summary data means that currently it is not possible to determine trends in granting occasional licences over time.

\(^4\) “premises licences, personal licences and occasional licences”, information “in relation to the Board’s decisions in relation to applications” and “other decisions of the Board”.

\(^5\) Review of statements of licensing policy 2013 to 2016. Alcohol Focus Scotland
http://www.alcohol-focus-scotland.org.uk/media/89685/review-of-statements-of-licensing-policy.pdf

\(^6\) http://www.south-ayrshire.gov.uk/licensing/register.aspx
**Monitoring of performance**

Although licensing boards must seek to promote the licensing objectives (s.6.3(a)) there is no mechanism in statute that defines how a licensing board should report on their performance against their policy and as far as we are aware none of the licensing boards undertake such monitoring. There are a number of areas of licensing boards’ practice that are relevant to the effective functioning of the process and, as such, are important areas to be monitored:

- Developing and monitoring performance indicators that relate to the 5 licensing objectives
- Decisions and reasoning behind decisions
- Reasons for reviews & processes that initiate a review
- Local conditions placed on licences
- Summary information on licences – personal, premises and occasional (e.g. total number, the type (large supermarkets, convenience stores, pubs, clubs, restaurants etc.), capacity; new licences granted each year: total number, type, capacity, if in an over-provision area; licensed hours: standard operating hours granted, seasonal variations, extended hours granted; objections: total number made, category of objector (police, public health, community, public, etc.) and final decision; extended hours granted each quarter/year; number of occasional licences granted (including information on capacity and hours), hours and for what reasons)
- Details of licensing boards’ meeting practices that promote accessibility and inclusiveness
- Processes to support community and other stakeholders to be involved.

A non-exhaustive review of meeting minutes (Forum meetings and joint Board & Forum meetings) was conducted by Alcohol Focus Scotland. Although examples of effective monitoring were not found, the following provides some illustrative examples of how current practice can be built on to improve the monitoring of licensing boards’ functions:

- Aberdeen City Forum made a recommendation for their licensing board to develop a “reporting framework which demonstrates how the implementation of the policy will promote the five licensing objectives” and provided a template for the reporting framework that clearly links to the five licensing objectives (February 2013). To date the licensing board has not taken forward this reporting framework.
- Glasgow licensing board reported on their “key indicators used to measure performance in administering the Act” (meeting minutes Dec 9th 2014). The indicators are administrative indicators (e.g. the time taken to process application) rather than policy and performance related. However, extending the indicators set to include information related to the five licensing objectives would begin to create an effective monitoring system.
- Fife and Highlands: these two licensing boards regularly provide updates of their decisions to their local licensing forum. Currently these updates are limited in the areas covered and as such do not provide an opportunity to monitor the regime. However, expanding the content of their updates would provide a better monitoring process.

**Accountability and transparency - relevance for legislation:** the above highlights examples of where existing legislation is not adhered to with respect to the provision of both policy statements and data, with no evidence of any action being taken. The full functioning of the licensing regimen is therefore compromised without effective accountability or transparency processes in place. Examples of seeds of some monitoring practices have been evidenced. It is widely recognised that annually reporting is the main vehicles by which public bodies should inform parliament and the
public about their activities and expenditure. Legislation to strengthen the reporting mechanisms - such as annual reporting of progress against policy statements – would begin to address the current accountability deficit.

2. Working with stakeholders and Forums
Development of robust policy statements, overprovision statements and the broader operation of the licensing regime is dependent on a constructive relationship between the licensing boards (board members and the clerk) and both statutory and non-statutory consultees. Opportunities for interaction between Boards and stakeholders include: informal and formal consultations and evidence gathering; the annual joint meeting between the local licensing forum and the licensing board; interactions with stakeholders around objecting or supporting specific applications; and the work of the License Standards Officer.

Consultation with stakeholders:
A review of the various consultation methods used for the development of the 2013-2016 licensing board policy statements identified that licensing boards adopted a variety of consultation processes to gather evidence from partners. Most Boards circulated draft policies and invited open comment, some Boards provided more structure, for example, through the use of questionnaires to guide the submissions. More extensive and varied processes tended to result in the most responses from stakeholders. Some Boards adopted multi-phased approach, and at least one Board conducted oral evidence sessions. Details of the Glasgow City consultation are provided for illustrative purposes:

- The Glasgow City licensing board carried out a pre-consultation exercise, which involved gathering information via questionnaires on specific areas of policy, followed by 12 face to face evidence sessions with responding individuals and organisations. The draft policy was then developed and consulted on, receiving 42 responses. Site visits of all proposed overprovision areas were conducted by licensing board members. Overall, this approach resulted in relatively high engagement in comparison to other parts of Scotland.

Although most policy statements reported that the licensing board gave due consideration to views of consultees very few Boards demonstrated, within their policy statements, how the information gathered through the various consultation processes was used to inform the policy development. However, Glasgow City and North Ayrshire did refer to the views of the consultees in their policy.

Stakeholders providing evidence to licensing boards:
Significant capacity building activity by Alcohol Focus Scotland and others was carried out in 2012/13 to foster closer working relationships and greater understanding between licensing personnel and public health practitioners. Since the 2010 licensing policy stakeholders - such as police and health - have increased engagement and participation in the licensing process in Scotland. Some illustrative examples of where licensing board areas have sought and/or received information from stakeholders for their policy development is described below:

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In 2013 Renfrewshire licensing board consulted on their policy statement and received 13 formal responses, including from fire services, police, the Forum, community groups, health and trade. Drawing on these responses the licensing board produced a paper on potential overprovision areas for further consultation, seeking input from both statutory and non-statutory partners.

NHS Grampian Public Health, with some support from the Aberdeen City ADP, made a submission to the Aberdeen City Council Licensing Board, providing additional information in support of potential areas of overprovision in relation to on and off sales. This information was subsequently used by the licensing board when it came to finalise its Statement of Licensing Policy.

In 2013 NHS Highland presented the licensing board with three options for an overprovision policy supported by comprehensive evidence including data on the cost of alcohol harm, alcohol related crime, house fires, alcohol consumption, behaviour, hospitalisations and mortality together with information on access to alcohol, geographical variation within the Highlands and public opinion. After consultation with wider stakeholders the licensing board adopted NHS Highlands primary recommendation for their overprovision policy.

In Edinburgh a small task group was formed from across the Alcohol and Drug Partnership to produce a report on alcohol related harm across the city. This included data on alcohol related crime, hospital and morbidity levels, alcohol related fires, numbers of licensees by licence type. Where possible this was presented by intermediate zones (smaller geographies) to help identify areas of the city with higher levels of both alcohol related harm and alcohol provision. The report also included some recommendations for the Forum and Board to consider. Although the licensing board opted not declare any areas overprovided - instead identifying 7 areas of “serious and special concern” - it remains that significant efforts were made by stakeholders.

Relationship between licensing boards and local licensing forums:

The evaluation of the Licensing Act 2005 conducted by NHS Health Scotland\(^{10}\) identified problems with the Forums working relationship with Boards (pg 41). Some License Standards Officers reported that some Boards “took little cognisance of Forums” or “had very little contact with them”. With Forums currently the only body with an oversight role it is imperative that there are effective working relations between Boards and Forums.

Partnership working - relevance for legislation: The effective functioning and monitoring of the licensing process is dependent on constructive and productive working relationships between all stakeholders involved. Participation of stakeholders in the process has increased and there are examples of good practice. However, there is less consistency in Boards feeding back to stakeholders or evidencing their policy directions and no evidence of licensing boards effectively reporting on their performance. Effective feedback to stakeholders is crucial for their continued engagement in the process. Legislation to strengthen the reporting mechanisms by Boards would support continued and improved engagement of the broader stakeholders.