City of Glasgow Licensing Board

Licensing (Scotland) Act 2005

Draft Overprovision Assessment and General Approach to the Consideration of Overprovision

Consultation Document

August 2013
Introduction – the Duty to Assess Overprovision

Section 7 of the Licensing (Scotland) Act 2005 requires the Licensing Board to include in its Licensing Policy Statement “a statement as to the extent to which the Board considers there to be an overprovision of –

(a) licensed premises, or

(b) licensed premises of a particular description,

in any locality within the Board’s area.”

In determining if there is overprovision, the Licensing Board must have regard to the number and capacity of licensed premises in the locality. For the purposes of overprovision, “licensed premises” does not include members clubs.

The assessment of overprovision must also seek to promote the five Licensing Objectives. These are:

• preventing crime and disorder;
• securing public safety;
• preventing public nuisance;
• protecting and improving public health; and
• protecting children from harm.

Guidance on Carrying out the Overprovision Assessment

In its Guidance to Licensing Boards and Local Authorities on the Licensing (Scotland) Act 2005, the Scottish Government set out guidance as to how Licensing Boards should carry out the assessment on overprovision (“the Overprovision Guidance”). This Overprovision Assessment has been developed and prepared in accordance with that Overprovision Guidance.

Purpose of an Overprovision Assessment

In terms of the Overprovision Guidance, the requirement to produce an Overprovision Assessment is designed to provide potential entrants to the market with a clear signal that they may incur abortive costs if they intend to apply for a licence in a locality which the Licensing Board has declared to have reached overprovision. It is also designed to improve public and trade confidence in the licensing system by setting out clearly the grounds on which overprovision should be determined.

Such an assessment should also recognise that halting the growth of licensed premises in localities is not intended to restrict trade but may be required to preserve public order, protect the amenity of local communities and mitigate the
adverse health effects of increased alcohol consumption resulting from growing outlet density.

**Number and Capacity of Licensed Premises**

In considering the issue of overprovision, the Licensing Board took into account information as to the number and capacity of licensed premises in the city at the time of the development of its first overprovision assessment in August 2010 and the current position as of August 2013, excluding members clubs:

<table>
<thead>
<tr>
<th>Description of Licensed Premises</th>
<th>Number of Licences as at August 2010</th>
<th>Number of Licences as at August 2013</th>
<th>Percentage Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises licensed for the sale of alcohol for consumption on the premises only</td>
<td>568</td>
<td>569</td>
<td>0.18%</td>
</tr>
<tr>
<td>Premises licensed for the sale of alcohol for consumption off the premises only</td>
<td>489</td>
<td>522</td>
<td>6.75%</td>
</tr>
<tr>
<td>Premises licensed for the sale of alcohol for consumption both on and off the premises</td>
<td>496</td>
<td>538</td>
<td>8.47%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1553</strong></td>
<td><strong>1629</strong></td>
<td><strong>4.89%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description of Licensed Premises</th>
<th>Total capacity as at August 2010</th>
<th>Total capacity as at August 2013</th>
<th>Percentage Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>On Sales</td>
<td>364,650 persons</td>
<td>363,110 persons</td>
<td>-0.42%</td>
</tr>
<tr>
<td>Off Sales</td>
<td>25884.3 m²</td>
<td>26169.7 m²</td>
<td>1.10%</td>
</tr>
</tbody>
</table>

These figures show that there has been a slight increase in the number of licensed premises overall in the three year period, and that the greatest increase is in relation to premises selling alcohol for consumption on and off the premises, but that the overall capacity has remained relatively unchanged.

**Pre- Consultation Exercise and Evidence Gathering**

In accordance with the Overprovision Guidance, the Licensing Board carried out a wide ranging pre-consultation exercise with a range of interested parties to establish not only whether it should continue to include the localities contained within its current Licensing Policy Statement but also whether other localities should be added. In doing so, the Board was aware that the pro-active assessment of overprovision must be based on reliable and credible evidence of a causal link between the engagement of one or more of the licensing objectives and a concentration of licensed premises in that locality.
Interested Parties

The following interested parties were consulted as part of the evidence gathering process:-

(a) Police Scotland with a view to establishing localities where, for example, higher levels of crime and disorder can be associated with a higher concentration of licensed premises.

(b) NHS Glasgow City Community Health Partnership and the Public Health Directorate for Greater Glasgow and Clyde with regard to information which may support a finding of overprovision in a particular locality, for example related to A&E hospital admissions where alcohol is a factor;

(c) The Council’s Environmental Health section in order to obtain information such as areas where there are large numbers of noise complaints and whether this can be associated with a high concentration of licensed premises;

(d) Alcohol Focus Scotland;

(e) Alcohol and Drug Partnerships;

(f) Glasgow Chamber of Commerce;

(g) Representatives from the licensed trade on issues such as whether there is evidence that the density of licensed premises in a locality has resulted in levels of competition which have applied downward pressure on the price of alcohol;

(h) Elected Members within Glasgow City Council and Community Councils as to whether there is evidence as to the cumulative impact of licensed premises in particular communities throughout the city.

Local Licensing Forum Sub Group

The Licensing Board also requested that the Local Licensing Forum establish a sub-group to consider the Board’s general approach to overprovision and to make recommendations to it as to localities where the Forum considered there to be overprovision of licensed premises or licensed premises of a particular description. The resulting report was approved by the Local Licensing Forum on 14 May 2013 and was referred to the Board for consideration.

Evidence Sessions
As part of this evidence gathering process, the Licensing Board held two evidence sessions to allow all of those who had submitted responses to the consultation to address the Board on their views regarding overprovision and to allow the Board to test and examine the basis of that evidence. The evidence sessions were held on 3 and 10 May 2013 and full transcripts of the evidence sessions are available from the Licensing Board on request.

Having carried out this extensive pre-consultation exercise, the Licensing Board took into account all of the responses which were received, which included views that there is no overprovision in the city, that there is overprovision in certain localities and that there is overprovision of certain types of premises in certain localities.

**Proposed Localities**

Where potential localities were identified, the Licensing Board then evaluated all of the responses against the evidence it had obtained from Police Scotland and NHS Greater Glasgow and Clyde in order to determine whether there was robust and reliable evidence to suggest that a saturation point has been reached or is close to being reached in certain localities within the city and that a causal link could be established between that evidence and the operation of licensed premises in those localities.

**Locality Visits**

In order to enhance the Board’s consideration of the potential localities that had been identified to it, the Board undertook visits to all those localities to see for itself if there were clear signs of any cumulative impact on the areas arising from a concentration of licensed premises in terms of issues such as public nuisance and disorder and public health issues due to the increased availability of alcohol.

**Analysis of Evidence Gathered**

The information provided to the Board by the Local Licensing Forum related to localities based on intermediate data zones which are small statistical areas used for analysis and policy development comprising a population of between 2500 and 6000 people.

Having considered all of the information gathered, including the report from the Forum, together with supplementary information provided by Police Scotland and NHS Greater Glasgow and Clyde, the Licensing Board believes that there is clear evidence of alcohol related harm in a number of localities in the city in terms of information relating to:-

- number and capacities of licensed premises;
- alcohol related emergency hospital admissions;
- deaths where alcohol was the underlying cause;
- alcohol related brain damage admissions;
• the Scottish Index of Multiple Deprivation statistics
• alcohol related statistics including incidents of disorder, reports of drinking in a public place, domestic incidents involving alcohol, incidents of drunk and incapable, incidents of drink driving and offences under the Licensing (Scotland) Act 2005.

The Proposed Localities

In taking into account the numbers, capacities and location of licensed premises, the Board was satisfied that there is sufficient evidence to establish the required causal link between alcohol related harm and the number and capacity of licensed premises at the level of an intermediate data zone for the purposes of creating a pro-active presumption against the grant of further licences in the following intermediate data zone localities:-

• Calton, Gallowgate and Bridgeton
• Carntyne West and Haghill
• Govan and Linthouse
• Ibrox
• Laurieston and Tradeston
• Parkhead West and Barrowfield
• Shettleston North
• Whiteinch

(Referred to as the “Proposed Localities”)

The extent of these Proposed Localities are shown in the Appendix to this Assessment.

In identifying these areas the Licensing Board took account of the statistics collated from the information provided by the Police and the NHS. This information was combined with data from the Scottish Index of Multiple Deprivation to identify localities which scored above average in all three of the following criteria when compared with the average figures across the city (excluding the distortive effect of taking into account the city centre area):-

• incidents of disorder per 10,000 population
• alcohol related emergency hospital admissions and
• the scoring based on the Scottish Index of Multiple Deprivation

Having regard to this data, the number and capacity of licensed premises in each of the Proposed Localities, together with its own local knowledge of the city, the Licensing Board considers that it is necessary and appropriate to identify these as areas of overprovision in order to promote the Licensing Objectives of Preventing Crime and Disorder and Protecting and Improving Public Health.
In the Board’s view, the use of intermediate data zones, combined with the other evidence gathered during the development of this Assessment and its own local knowledge provides sufficient evidence to demonstrate a clear causal link between licensed premises and a concern for these Licensing Objectives at a sufficiently local level.

Other Localities

However, the Board strongly believes that the statistics also provide compelling evidence that real harm is being caused to the citizens of Glasgow from the consumption of alcohol in other localities in the city and that this is linked to the availability of alcohol from licensed premises.

The Rebuttable Presumption and the Board’s Discretion

Having carried out this pro-active assessment of overprovision, the Board has chosen to identify the Proposed Localities where there will be a presumption against the grant of further premises licences. However, given its general concerns regarding the negative and detrimental impact that alcohol has had on localities throughout the city, the Board strongly urges any potential applicant for a licence and licence holders to have regard to the statistical information provided by Police Scotland and NHS Greater Glasgow and Clyde which will be available on the Licensing Board’s pages of the Council’s website and will be updated from time to time.

It is therefore proposed that while there will be a rebuttable presumption against the grant of an application for a premises licence, provisional premises licence or, potentially, an application for variation of a premises licence in terms of the grounds for refusal set out in sections 23(5)(e) and 30(5)(d) in each of the above Proposed Localities, the Licensing Board will consider each application on its individual merits.

As such the Licensing Board proposes to reserve its position to grant an application in any of these Proposed Localities where it considers that the Licensing Objectives would not be undermined by the specific proposals set out in the application form and draft operating plan, or those Licensing Objectives would not be undermined if the applicant’s operating plan were to be modified or the grant of the licence or variation made subject to certain licence conditions.

Equally, the Licensing Board also reserves its position to refuse an application in terms of overprovision where the premises are not located within one of the Proposed Localities but where it is satisfied that a ground for refusal applies in relation to the specific locality in which the applicant premises are situated.
The Licensing Board’s General Approach to Overprovision

In all cases, the Licensing Board will have regard to the following criteria:-

(1) Determining Localities – Individual Applications

In considering applications for premises licences, provisional premises licences and applications for variations, the Licensing Board will generally determine the relevant locality as being the area disclosed within a radius of 200 metres from the applicant premises within the defined City Centre Area and the area disclosed within a radius of 500 metres for premises to be located elsewhere in the city.

If the Board intends to depart from that general approach given the individual circumstances of an application, the applicant will be given advance notice of the locality to be taken into account.

(2) Determining the Comparator - “Licensed Premises” or “Licensed Premises of the Same or Similar Description.”

In considering whether the overprovision ground for refusal set out in section 23(5)(e) or 30(5)(d) of the Act applies, the Licensing Board will take into account whether the application is for on-sales only, off-sales only, or both on and off-sales, as well as the activities and licensed hours proposed in the draft operating plan and the submissions made regarding the intended nature of operation of the premises.

In addition, if the application is readily distinguishable by a particular form of proposed activity such as “adult entertainment”, or mode of operation such as “supermarket” or “hotel”, or in terms of licensed hours sought outwith the Board’s standard policy on licensed hours, such as late night hours or early morning hours, the Licensing Board may have regard to those licensed premises in the locality which also offer that form of activity, or mode of operation, or have such licensed hours.

(3) Assessing the Cumulative Impact of Licensed Premises or Licensed Premises of the Same or Similar Description

In considering whether or not there is an overprovision of licensed premises, or licensed premises of the same or similar description in the defined locality, having regard to the cumulative impact that licensed premises can have on a locality, the Licensing Board will take into account the following factors:-

• the number of licensed premises or licensed premises of the same or similar description already making provision for the sale of alcohol to members of the public for consumption in the defined locality;

• the distances of these licensed premises from the applicant premises;
• the total capacity figure in relation to these licensed premises;
• any relevant letters of objection or representation (including those in support of the application) and any submissions made in terms of those letters;
• evidence provided by Police Scotland as to antisocial behaviour in the defined locality;
• health statistics in relation to the intermediate data zone in which the defined locality is situated;
• the Board’s own local knowledge of the locality; and
• any information and submissions made in support of the application.

**General Concerns Regarding the Number and Capacities of Off-Sales Premises**

Based on information and evidence gathered as part of the pre-consultation exercise, the Licensing Board continues to be concerned at the high number of off-sales licensed premises in the city, and particularly in residential areas, and the amount of area given over to the display of alcohol in terms of the total capacity figures for such premises.

Given the well-documented negative effects that the increased availability of alcohol can have on anti-social behaviour, together with Glasgow’s unhealthy relationship with alcohol and the health problems associated with alcohol misuse as evidenced by the statistical information provided, the Licensing Board considers that in general terms there is a clear link between the numbers of such premises in the city and concern for one or more of the licensing objectives.

While each application will be considered on its own merits, taking into account the intended nature of operation of the applicant premises, the Licensing Board will wish to satisfy itself that any increase in the number of off-sales licensed premises, taking into account capacity figures in terms of the total area given over to the display of alcohol, will not be inconsistent with one or more of the Licensing Objectives underpinning the licensing system.
Appendix

Maps of Proposed Localities