

An evaluation of the implementation  
of, and compliance with, the  
objectives of the Licensing  
(Scotland) Act 2005:  
Final Report

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## Abbreviations and glossary

**ADP:** Alcohol Drug Partnership. An ADP is the focal point for local action on drug and alcohol misuse and involves all relevant partners. There are 30 ADPs across Scotland – they develop local alcohol and drug strategies.

**Agent purchase:** A young person asking someone over the age of 18 years to purchase alcohol on their behalf.

**Alcohol etc. (Scotland) Act 2010<sup>1</sup>:** the Act came into force in October 2011, and introduced new mandatory conditions for premises and occasional licences, including conditions on minimum pricing of multi-packs and drinks promotions in off sales, and age verification policies. The Act also made it a requirement for Licensing Boards to consult with the relevant Health Board when preparing their licensing policy statement and to notify Health Boards of all premises licence applications. In addition at least one member of the Local Licensing Forum must be nominated by the Health Board for the Forum's area.

**Alcohol (Minimum Pricing) Scotland Act 2012<sup>2</sup>:** This Act was passed by the Scottish Parliament in May 2012 and provides for the minimum price for a unit of alcohol, below which it cannot be sold at licensed premises. At present the implementation of this Act is uncertain until judicial proceedings are concluded.

**Best Bar None:** An initiative sponsored by the alcohol industry which focuses on safety and customer care, and gives each licensed venue the opportunity to prove it meets a standard of operation set in consultation with the government and alcohol industry at a national level.

**Bottle marking:** A voluntary scheme run in some local authorities whereby retailers agree to mark their bottles of alcohol with an invisible code specific to their store; any alcohol confiscated from young people found drinking can be traced back to the premises where it was purchased.

**Brightcrew<sup>3</sup>:** This refers to case law Brightcrew Ltd v City of Glasgow Licensing Board, 2011, CSIH 46. The ruling in this case held that the purpose of the Licensing Act is the regulation of alcohol and all Licensing Board decisions have to be related specifically to the sale of alcohol. The licensing objectives are therefore not free-standing but linked to the sale of alcohol. This case law has implications on the decision-making powers of Boards.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2010/18/contents>

<sup>2</sup> <http://www.legislation.gov.uk/asp/2012/4/contents/enacted>

<sup>3</sup> <http://www.scotcourts.gov.uk/opinions/2011CSIH46.html>

**Challenge 25:** Young customers who appear to be under the age of 25 years are asked for proof of age by staff serving in licensed premises.

**Conditions:** There are a number of national mandatory conditions that are attached to all premises and occasional licences. These are listed in Schedule 3 and 4 of the Licensing Act, as amended. In addition a Licensing Board can choose to attach local conditions to some or all of the premises and occasional licences in their area. There are also Late Opening Premises Conditions that are applied to relevant premises.

**COPFS:** Crown Office and Procurator Fiscal Service. COPFS is responsible for the prosecution of crime in Scotland, the investigation of sudden or suspicious deaths, and the investigation of complaints against the police.

**Criminal Justice and Licensing (Scotland) Act 2010<sup>4</sup>:** Part of this Act aimed to improve the operation of the Licensing (Scotland) Act 2005 through modifying a number of the provisions to reduce costs, shorten process times, remove unintended barriers and close loopholes, while ensuring Licensing Boards receive sufficient information on which to base their decisions concerning licences to sell alcohol.

**Irresponsible promotion:** The Licensing (Scotland) Act 2005 prohibits irresponsible promotions, and these are defined at Schedule 3 and 4 of the Act. These were subsequently amended by the Alcohol etc. (Scotland) Act 2010.

**Licence Holder:** The Licensing (Scotland) Act 2005 made it a requirement that anyone wishing to sell alcohol on his/her premises has to hold a premises licence. The Act also introduced a new personal licence. Each premises licence must name the 'premises manager'. The premises manager will have to hold a personal licence. A personal licence permits that person to supervise and authorise the sales of alcohol on the premises. *N.B. Personal licence holders were interviewed in the test-purchasing sub-study, but other respondent types used the term 'licensee' to cover both licence holders and those serving in on- and off sale outlets.*

**Licensing Board (LB):** There is at least one Board in each local authority area. The main function of the Board is to regulate premises that sell alcohol to the public. LBs are made up of local councillors. A clerk provides the LB with legal advice.

**Licensing Standards Officer (LSO):** The LSO role was established in the Licensing (Scotland) Act 2005, and each local council has at least one LSO in post, although local authorities may share an LSO. LSOs provide information and guidance with regard to the Licensing Act, and supervise compliance and provide mediation for disputes.

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<sup>4</sup> <http://www.scotland.gov.uk/Topics/Justice/criminal-justice-bill>

**Licensing (Scotland) Act 2005:** This Act, which came into full effect on 1 September 2009, overhauled existing licensing arrangements and introduced a range of significant new measures to protect communities from alcohol-related harm. It established five licensing objectives, including the Protecting and Improving Public Health objective.

**Local Licensing Forum (LLF):** LLFs were established in the Licensing (Scotland) Act 2005, and each local authority has at least one LLF. The role of the forums is to keep under review the operation of the Act by the Licensing Board in their area. LLF members include representatives from the licensed trade, the police, community councils, public health and LSOs. Other bodies represented can include addiction services, environmental health, the legal profession, and business bodies, including representatives of the 'night time economy'.

**MESAS:** Monitoring and Evaluating Scotland's Alcohol Strategy<sup>5</sup>

**Occasional Licence:** If a premises is not usually licensed but wishes to sell alcohol on an occasion, an application can be made to the Licensing Board for an occasional licence. The Licensing Board will attach various conditions to the licence

**Overprovision<sup>6</sup>:** An assessment that there are too many licensed premises 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.

**Personal licence:** To be the premises manager for a licensed premises a person must be a personal licence holder (PLH). Personal licence holders must complete a one-day accredited course and pass an exam. They must then apply to the Licensing Board for their licence and include certain information. It may be good practice for premises to have more than one person trained to this level to provide support for the premises manager. The Licensing Board may require large or busy premises to have several personal licence holders. Certain late opening premises – mainly nightclubs and adult entertainment venues – are required by the law to have a personal licence holder on the premises at all times after 1am.

**Policy Statement:** Each Licensing Board is obliged to issue a Licensing Policy Statement every 3 years that sets out the Board's general approach to making licensing decisions. It also sets out how the Licensing Board will meet the five licensing objectives as well as a statement of overprovision (from Nov 2010); a statement regarding Licensing Standards Officers and the agreed procedures the Board has for licensing administration

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<sup>5</sup> <http://www.healthscotland.com/scotlands-health/evaluation/planning/MESAS.aspx>

<sup>6</sup> <http://www.legislation.gov.uk/asp/2005/16/contents>



**Premises Licence:** In order to sell alcohol a premise must be licensed. The company or owner applies to the Licensing Board of the council area where the premises is situated for a premises licence. If the application is granted, the Licensing Board will attach various conditions to the premises licence which they must abide by.

**Procurator Fiscal:** Public prosecutors in Scotland (see also COPFS above for role of PF).

**Proof of age schemes:** All licensed premises are required by law to take reasonable steps to establish that young customers are aged 18 or over.

**Pubwatch:** Licensees of the premises taking part in such a scheme agree on a number of policies to counter individuals who threaten damage, disorder, and violence or use or deal in drugs in their premises.

**Sheriff:** Sheriffs deal with the majority of civil and criminal court cases in Scotland and the main role of the Sheriff is to sit as a trial judge. Most appeals are dealt with by the Sheriff Principal, hence any reference in this report to a Sheriff also include the Sheriff Principal.

**Test purchasing:** Suitable 16 year old volunteers are recruited by the police to attempt to purchase alcohol from licensed premises (with undercover police supervision). Premises which fail the test purchase referred to the Procurator Fiscal and Licensing Board.

# Executive Summary

## Background

The Licensing (Scotland) Act 2005 (hence forth, 'the Licensing Act' or 'the Act'), is an Act of the Scottish Parliament which makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold, came into full effect in September 2009. As part of the Monitoring and Evaluation Scotland's Alcohol Strategy (MESAS) portfolio of studies, NHS Health Scotland commissioned a three-year evaluation of the implementation of, and compliance with, the Licensing (Scotland) Act 2005<sup>7,8</sup>.

The evaluation was undertaken by the Scottish Centre for Social Research (ScotCen). The study was commissioned in January 2010. Fieldwork and data collection were carried out between February 2010 and June 2012. A national seminar at which key preliminary findings were presented to key stakeholders was convened in February 2013. A separate sub-study examining test purchasing and other mechanisms for enforcing underage alcohol sales regulations was commissioned in April 2011. Fieldwork and data collection for the sub-study were carried out between July and December 2011.

## Objectives

The evaluation had eight main objectives:

1. To monitor changes in the numbers of licences applied for and registered, and assess trends (from Sept 2009) in 'capacity' and in licensed hours with a view to assessing the on-going effectiveness of the Act in controlling the availability of alcohol
2. To monitor compliance with the relevant requirements of the Licensing Act and actions taken in terms of sanctions for breaches and to identify and account for any differences in practice across Licensing Board areas. The following are of particular interest:
  - Bans on irresponsible promotions in on-sales
  - Training for personal licence holders and staff
  - Refusal to serve a customer who is drunk
3. To obtain an understanding of the numbers of LSOs, the local authority department/services within which they are based, their roles and activities and the implications for their potential to improve the implementation of, and compliance with, the Licensing Act

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<sup>7</sup> More information on MESAS can be found at <http://www.healthscotland.com/scotlands-health/evaluation/planning/MESAS.aspx>

<sup>8</sup> The evaluation brief and proposal for the evaluation of the Licensing Act can be found at: <http://www.healthscotland.com/documents/4044.aspx>  
<http://www.healthscotland.com/documents/4043.aspx>

4. To obtain an understanding of whether and how Local Licensing Boards are addressing the Licensing Act's five objectives in their Licensing Policy Statements, building on the research commissioned by Alcohol Focus Scotland in 2008<sup>9</sup>
5. To obtain an understanding of the ways in which Licensing Boards interpret and apply key relevant requirements of the Licensing Act, including: assessments of 'capacity' for on and off sales; definition and application of criteria of 'over-provision' <sup>10</sup>; and facilitation of the 'public right' to make objections and representations in relation to licence applications
6. To analyse the membership, roles and operation of the Local Licensing Forums, their relationships with Local Licensing Boards and the impact of the forums on the policies and actions of the Boards, identifying the factors that facilitate their role and those which act as barriers to their effectiveness
7. To review the implementation of test purchasing, including the actions taken when failure to comply is identified, and to determine the barriers and facilitators to implementation, including the implications of the roll out model being different from the model originally piloted<sup>11</sup>
8. To analyse and integrate the findings to generate learning to further improve the effective implementation of, and compliance with, the Licensing Act and inform any future legislation.

## Methods

The evaluation comprised a number of different phases outlined below:

### Scoping phase (January to July 2010)

- Documentary review (e.g. Licensing Board policy statements)
- Key stakeholder interviews (e.g. trade and alcohol policy representatives)
- Monitoring data: (e.g. analysis of existing data).

### Baseline surveys (July to October 2010)

- Semi-structured telephone interview surveys were conducted with (a) LSOs and (b) Licensing Board representatives across Scotland. At baseline, 30 LSOs and 29 Board members were interviewed.

### Case study phase (June 2011 to September 2011)

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<sup>9</sup> See MP Consultancy (2008) *Licensing Law and the Impact of the Public Health Objective - A Review Paper*, Glasgow: Alcohol Focus Scotland <http://www.alcohol-focus-scotland.org.uk/pdfs/Licensing%20and%20Public%20Health%20Review.pdf>

<sup>10</sup> Chapter 3 of the Guidance issued for Boards (op cit), addresses assessment of capacity and overprovision. A need to assess overprovision in Licensing Boards' policy statements was suspended for the transition period

<sup>11</sup> For the evaluation of the pilot see Macgregor, A. (2007) *Evaluation of Test Purchasing Pilot for Sales and Alcohol to under 18s: Final Report*, Edinburgh: Scottish Government <http://www.scotland.gov.uk/Publications/2007/10/16091859/0>

A case study design was used to explore the issues addressed by the evaluation aims and objectives in more depth. In each of five selected local authority areas, the following research was carried out:

- A focus group with the Licensing Board
- A focus group/in-depth interviews with Local Licensing Forum members
- An exploration of local data being collected and collated by LSOs.

#### **Follow-up surveys (April to June 2012)**

Semi-structured telephone interview surveys were conducted with LSOs and Licensing Board informants across Scotland. At follow-up, 32 LSOs and 28 Board members were interviewed.

#### **National Seminar (February 2013)**

In February 2013, a national seminar was organised and convened by the research team in order to discuss key preliminary findings. Fourteen key stakeholders representing organisations and interests including the Scottish Government, licensed trade, Boards, the Crown Office and Procurator Fiscal Service (COPFS) and public health participated in the seminar.

#### **Summary and Discussion**

In general, the Licensing Act was viewed as having a positive impact and perceptions of it became increasingly positive over time. At baseline the Act provoked a mixed response, and many concerns were expressed as to its likely effectiveness. However, at follow up the Act and its perceived impacts were viewed more favourably, and many of the concerns expressed at baseline had been resolved.

Aspects which were viewed most positively throughout the study, but particularly at follow-up, included:

- LSOs: role and function: the establishment of the LSO role and its function across Scotland were perceived to be one of the most successful parts of the Licensing Act. At follow-up most LSOs were able to devote most of their time to alcohol licensing issues, links with the licensed trade had improved and many issues that were arising were being dealt with by LSOs and trade members, without the need for a review at Board level.
- More powers for Licensing Boards: the fact that Boards had the ability to review, revoke or suspend licences with immediate effect was particularly well-received by the Boards. It was thought to be a useful deterrent and an ultimate sanction if an outlet selling alcohol was guilty of poor practice.
- Training for LSOs, Board members and trade staff: the consensus was that the training had increased knowledge and standards of professional practice among Board members, LSOs and the Trade.

- Links with Licensed Trade and Trade Practice: there was evidence that the relationships between Boards/LSOs and trade staff had improved, and that the links between the LSOs and trade members in particular were now one of the main positive outcomes of the Licensing Act.
- Irresponsible promotions: at follow-up the consensus was that the Licensing Act had impacted favourably on the on-sale sector, and few irresponsible promotions were reported as taking place in pubs and clubs.
- Reduction of direct sales of alcohol to underage young people: test purchasing in particular was regarded as a very useful way to gauge and potentially improve licensed trade staff practice.

Issues which provoked a more mixed response included:

- Role and function of Local Licensing Forums: At follow-up the views of LSOs and Boards were mixed, with Forums having their supporters and detractors, but there did appear to be a hardening of attitudes towards Forums, with a number of interviewees describing them as having stalled or failed completely.
- The public health objective: this objective was viewed as being especially problematical, and it was the objective that Boards, Forums and LSOs in areas across Scotland were struggling to address.
- Capacity and overprovision: respondents found these concepts difficult to define and measure. All Boards are under a duty to carry out an overprovision assessment, only five Boards found there to be an overprovision of licensed premises in their area.
- Off trade sector: the consensus throughout the evaluation, though, was that the larger off-trade sector had been largely unaffected by recent legislation in terms of its pricing, was too powerful and was able to overturn decisions reached by Boards due to its financial clout allowing it access to the best legal resources.
- Brightcrew and case law: this ruling, in essence that Boards should only base their own decisions related to licensed premises directly on the sale of alcohol itself was viewed as being problematical. This was because issues pertaining to licensing objectives, such as noise, public safety and even certain disturbances in or near licensed premises were arguably not always associated directly with the sale of alcohol.
- National and local data: On the whole national and local data were not being collected or collated consistently or in a manner which allowed meaningful comparison. In relation to capacity, more guidance needs to be given to Boards in order that they are able to provide more consistent and useful data. It would be helpful for Boards and LSOs to seek to improve the collection and entry of key data in order that provisions of the Act are able to be monitored.

## Conclusions

There was evidence of a more positive reception for the Licensing Act as the evaluation progressed. In particular, the views of Board members and LSOs at follow-up suggested that the Act had made a positive impact on the whole, with a minority of respondents reporting that its impact had been negligible or negative.

It is important to note that the Licensing Act evaluation did not operate in a vacuum, and since the research commenced three Acts have been passed which have or will impact significantly on alcohol licensing. Similarly, contextual issues such as the economic recession and case law also have a major effect on the Act and issues it seeks to regulate. However, despite this the consensus was that the Licensing Act had been, at the very least, moderately successful three years after its implementation, and had the potential to have an even greater impact if consideration is given to aspects which are working less well.

## Recommendations

- More guidance and support to be given nationally in relation to:
  - The public health objective
  - Capacity and over-provision
  - The role and function of Licensing Forums
  - Any new, relevant legislation that is implemented
- Scottish Government should continue to consider measures to address pricing of alcohol, for example press for the introduction of minimum pricing once the judicial process has been fully determined.

All would require input from the Scottish Government, as well as potentially input from key bodies and stakeholders.

- Consideration to be given to:
  - The numbers of LSOs in areas of Scotland
  - The need for LSOs to maintain their skills with appropriate training for existing and new staff
  - LSOs to spend the majority of their working time on alcohol licensing issues
  - All LSOs to have access to legal advice
  - LSOs to collect and collate an agreed dataset locally.
- All Licensing Boards to:
  - Give further thought to the operation and effectiveness of the public health objective
  - As required by legislation, carry out assessments of capacity and over-provision, after seeking additional guidance if necessary
  - Inform Licensing Forums of decisions if they have sought Forum views for guidance beforehand

- Share experiences with other Boards across Scotland to enhance learning and improve practice
- Highlight and publicise examples of good practice of trade members in their areas
- Members to seek to improve the consistency of data collection and collation in order that provisions of the Licensing Act can be assessed.
- To support the work of Licensing Forums:
  - More guidance could be provided as to the nature and function of Forums,
  - More powers could also be given to Forums
  - They should continue to find ways to involve members of the public and young people in their discussions and decisions
  - There is a need for Boards to inform Forums of reasons for decisions, particularly on the occasions when they are in disagreement with proposals from Forums
- The licensed trade:
  - To continue to undergo mandatory training, and maintain good links with LSOs
  - Ensure training of staff is on-going
  - The alcohol industry could consider measures to address the public harms caused by the misuse of alcohol
- Both national and local datasets:
  - To be collected and collated consistently by Boards and LSOs, in order that meaningful comparison can be made of an agreed minimum dataset.
  - Scoping of what data are available at national and local levels
  - Discussion by key partners about what data should be collected in the future

# 1. Introduction

## 1.1 Background

There is considerable evidence that excessive alcohol consumption in Scotland is harming the health and well-being of a large number of people, both directly and indirectly.<sup>12</sup> Alcohol consumption has been steadily increasing over time and so have the harms caused by alcohol misuse. The most recently available estimates of alcohol sales in Scotland show that 11.2 litres of pure alcohol per person aged 16 and over were sold in 2011 (the equivalent figure for England and Wales was 9.3 litres)<sup>13</sup>. This volume is sufficient for every adult aged 16 and over in Scotland to exceed the weekly recommended maximum consumption for men of 21 units. Scotland also has one of the highest rates liver cirrhosis mortality in Western Europe<sup>14</sup> and 1 in 20 deaths in Scotland are from alcohol related conditions.<sup>15</sup>

In response, the Scottish Government published “Changing Scotland’s Relationship with Alcohol: A Framework for Action” to address Scotland’s damaging relationship with alcohol.<sup>16</sup> It complements and builds on two existing pieces of legislation, the Licensing (Scotland) Act 2005<sup>17</sup> and the Alcohol etc. (Scotland) Act 2010.<sup>18</sup> The Framework for Action also contains a further piece of legislation, which has yet to be implemented, the Alcohol (Minimum Pricing) (Scotland) Act 2012.<sup>19</sup>

In 2009 the Scottish Government asked NHS Health Scotland to lead the evaluation of the Alcohol Strategy through the Monitoring and Evaluating Scotland’s Alcohol Strategy (MESAS) work programme. The evaluation described in this report is part of the MESAS portfolio and focuses on assessing the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005.<sup>20,21</sup>

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12 Beeston C, Robinson M, Craig N, and Graham L (2011). Monitoring and Evaluating Scotland’s Alcohol Strategy. Setting the Scene: Theory of change and baseline picture. NHS Health Scotland, Edinburgh. Accessed 5<sup>th</sup> October at: <http://www.healthscotland.com/documents/5072.aspx>

13 Robinson, M., Beeston, C., Mackison, D.(2012). Monitoring and Evaluating Scotland’s Alcohol Strategy (MESAS) – An update of alcohol sales and price band analyses. Edinburgh: NHS Health Scotland, 2012. Available from: [www.healthscotland.com/documents/6019.aspx](http://www.healthscotland.com/documents/6019.aspx)

14 Leon DA and McCambridge J (2006). Liver cirrhosis mortality rates in Britain from 1950 to 2002: an analysis of routine data. *The Lancet*, **367**(9504): 52-56.

15 Grant I, Springbett A and Graham L (2009). *Alcohol Attributable Mortality and Morbidity: Alcohol Population Attributable Fractions for Scotland*. Edinburgh: Information Services Division (ISD) Scotland.

16 Changing Scotland’s Relationship with Alcohol: A Framework for Action. Edinburgh: Scottish Government, 2009.

17 Licensing (Scotland) Act 2005, [http://www.legislation.gov.uk/asp/2005/16/pdfs/asp\\_20050016\\_en.pdf](http://www.legislation.gov.uk/asp/2005/16/pdfs/asp_20050016_en.pdf)

18 The Alcohol etc. (Scotland) Act 2010,

[http://www.legislation.gov.uk/asp/2010/18/pdfs/asp\\_20100018\\_en.pdf](http://www.legislation.gov.uk/asp/2010/18/pdfs/asp_20100018_en.pdf)

19 Alcohol (Minimum Pricing) (Scotland) Act 2012,

[http://www.legislation.gov.uk/asp/2012/4/pdfs/asp\\_20120004\\_en.pdf](http://www.legislation.gov.uk/asp/2012/4/pdfs/asp_20120004_en.pdf)

<sup>20</sup> More information on MESAS can be found at

<http://www.healthscotland.com/scotlands-health/evaluation/planning/MESAS.aspx>

<sup>21</sup> The evaluation brief and proposal for the evaluation of the Licensing Act can be found at:

<http://www.healthscotland.com/documents/4044.aspx>



## 1.2 The Licensing Act

The Licensing (Scotland) Act 2005<sup>12</sup> is an Act of the Scottish Parliament which makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold.<sup>12</sup> It supersedes the Licensing (Scotland) Act 1976<sup>22</sup>, and followed the publication of the Nicholson Committee's review of liquor licensing law in Scotland<sup>23</sup> and provides the police and Licensing Boards (hence forth, Boards) with new powers and sets out new offences. Included among its provisions the Licensing Act makes it an offence for a child to buy or attempt to buy alcohol whether or not on licensed premises. Provision is however made for test purchasing operations to establish whether premises are complying with the prohibition on underage sales.

It came into effect on 1 September 2009 and has five objectives. The objectives are principles on which the new licensing system is based and provide Boards with a solid foundation on which to build local policies. Each has equal weighting and all must be considered when Boards are carrying out their responsibilities. The five objectives are:

1. preventing crime and disorder,
2. securing public safety,
3. preventing public nuisance,
4. protecting and improving public health, and
5. protecting children from harm.

Boards are central to the implementation of the Licensing Act, being responsible for issuing premises licenses. They are also required to prepare and publish a licensing policy statement every three years, keeping it under review and making revisions where appropriate. Policy statements should promote the five licensing objectives, and provide 'guidance and clarity' on the bases on which the Boards make their decisions. In developing their policies the Boards are required to consult with the Local Licensing Forums.

Following a proposal contained in the Nicholson report<sup>23</sup>, the Licensing Act requires every council to establish a Local Licensing Forum (hereafter 'Forums'). The role of Forums is to review the operation of the local licensing system and to give advice and recommendations to the Board. Boards have a duty to "have regard" to the Forum's views and must offer reasons when these views are not taken into account.<sup>24</sup> An effective Forum should be independent, expert and able to identify local licensing issues and develop advice on how to address them.<sup>18</sup>

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<sup>22</sup> Licensing (Scotland) Act 1976, [http://www.legislation.gov.uk/ukpga/1976/66/pdfs/ukpga\\_19760066\\_en.pdf](http://www.legislation.gov.uk/ukpga/1976/66/pdfs/ukpga_19760066_en.pdf)  
<http://www.scotland.gov.uk/Publications/2007/04/13093458/0>

<sup>23</sup> The Nicholson Committee (2003), *Review of Liquor Licensing Law in Scotland*, Scottish Executive: Edinburgh (<http://www.scotland.gov.uk/Publications/2003/08/17590/22947>)

<sup>24</sup> Licensing (Scotland) Act 2005 – Section 142 – Guidance for licensing boards  
<http://www.scotland.gov.uk/Resource/Doc/175487/0049459.pdf>

The legislation also requires each local authority to appoint a Licensing Standards Officer (LSO) for their area. LSOs have three main roles: Guidance, Mediation and Compliance. Licence holders can make requests to LSOs about applications and the general working of the legislation and national and local policies. Forums and other parties may also require information and advice from LSOs. LSOs are not expected to give legal advice or make applications or objections on behalf of any party; however, they are expected to be approachable and have a sufficient knowledge of the licensed trade. They are able to advise licence holders on what actions are required to prevent or resolve complaints and are required to attend Forums.

In their policy statements Boards are required to include a statement as to the extent to which they consider there to be an overprovision of licensed premises or licensed premises of a particular description in any locality in their area. The assessment of overprovision can be one of the grounds on which a Board can refuse a premises licence in a particular locality.

The Licensing Act includes a mandatory condition for a premises licence and occasional licence at paragraphs 8 and 7 respectively. These prohibit irresponsible promotions and sets out the following as irresponsible promotions:

- Relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18
- Involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks)
- Involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink
- Involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises)
- Encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume
- Is based on the strength of any alcohol
- Rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or
- Offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.

The Licensing Act, as amended, sets out which of these apply to on-sales transactions and which apply to off-sales transactions. Separate mandatory conditions also cover variation of prices and the minimum price of packages containing two or more alcoholic products.

The Scottish Government consulted on Further Options for Alcohol Licensing over the period 19 December 2012 to 21 March 2013. This consulted on a wide variety of stakeholder proposals and sought views on concerns raised, for example, through this ongoing evaluation of the Licensing Act. Of particular relevance are a proposal to reintroduce the 'fit and proper test', and proposals to address the uncertainties highlighted by the 2011 decision in Brightcrew Ltd v City of Glasgow Licensing Board. The consultation also sought suggestions for further reforms to the licensing regime. The consultation responses are currently being considered and an analysis will be published in the summer of 2013.

The purpose of the evaluation of the Licensing Act was to increase learning to support improvements in implementation and compliance, with the Act, as well as assessing whether the five Licensing objectives were achieved at national and local levels. This is the final report of the three year project, but it is important to note that two interim reports have already been published.<sup>25,26</sup> In addition, a full final report from the sub-study of test purchasing and other measures aimed at enforcing underage alcohol sales regulations was published in 2012.<sup>27</sup> As a result, although elements of the earlier parts of the evaluation as well as the test purchasing sub-study are reported here, the focus of this final report is on the results of the follow-up survey phase and subsequent stages of the evaluation.

### 1.3 Aims and objectives

The overall aims of the evaluation were to:

- Monitor and describe the implementation of, and compliance with, the licensing objectives and relevant requirements of the Licensing Act and associated regulations<sup>28,29</sup>
- Assess the effectiveness of implementation and compliance in controlling the availability of alcohol
- Assess the factors facilitating implementation and compliance and/or which act as barriers
- Generate learning to support further improvement in implementation and the achievement of the Act's objectives at national and local levels and, as appropriate, inform any future legislation

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<sup>25</sup> An evaluation of the implementation of the objectives of the Licensing (Scotland) Act 2005 - First interim report summary, <http://www.healthscotland.com/documents/5253.aspx>

<sup>26</sup> An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005' <http://www.healthscotland.com/documents/6141.aspx>

<sup>27</sup> An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005 <http://www.healthscotland.com/documents/5989.aspx>

<sup>28</sup> For more information on the regulations see <http://www.licensingScotland.com/transition/regulations/>

<sup>29</sup> Guidance for Boards and Local Authorities on the Act was issued by the Scottish Executive in 2007 (Licensing (Scotland) Act 2005 Guidance for Licensing Boards and Local Authorities (Scottish Executive, 2007)) (<http://www.scotland.gov.uk/Publications/2007/04/13093458/0>)

- Contribute the findings from the evaluation to the evidence from the wider portfolio of studies developed by MERGA (now MESAS) to assess the overall impact of the actions aimed at tackling alcohol related harms.

To meet these aims the research had eight objectives:

1. To monitor changes in the numbers of licences applied for and registered, and assess trends (from Sept 2009) in 'capacity' and in licensed hours with a view to assessing the on-going effectiveness of the Act in controlling the availability of alcohol
2. To monitor compliance with the relevant requirements of the Licensing Act and actions taken in terms of sanctions for breaches and to identify and account for any differences in practice across Licensing Board areas. The following are of particular interest:
  - Bans on irresponsible promotions in on-sales
  - Training for personal licence holders and staff
  - Refusal to serve a customer who is drunk
3. To obtain an understanding of the numbers of LSOs, the local authority department/services within which they are based, their roles and activities and the implications for their potential to improve the implementation of, and compliance with, the Licensing Act
4. To obtain an understanding of whether and how Local Licensing Boards are addressing the Licensing Act's five objectives in their Licensing Policy Statements, building on the research commissioned by Alcohol Focus Scotland in 2008<sup>30</sup>
5. To obtain an understanding of the ways in which Licensing Boards interpret and apply key relevant requirements of the Licensing Act, including: assessments of 'capacity' for on and off sales; definition and application of criteria of 'over-provision'<sup>31</sup>; and facilitation of the 'public right' to make objections and representations in relation to licence applications
6. To analyse the membership, roles and operation of the Local Licensing Forums, their relationships with Local Licensing Boards and the impact of the forums on the policies and actions of the Boards, identifying the

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<sup>30</sup> See MP Consultancy (2008) *Licensing Law and the Impact of the Public Health Objective - A Review Paper*, Glasgow: Alcohol Focus Scotland <http://www.alcohol-focus-scotland.org.uk/pdfs/Licensing%20and%20Public%20Health%20Review.pdf>

<sup>31</sup> Chapter 3 of the Guidance issued for Boards (op cit), addresses assessment of capacity and overprovision. A need to assess overprovision in Licensing Boards' policy statements was suspended for the transition period

factors that facilitate their role and those which act as barriers to their effectiveness

7. To review the implementation of test purchasing, including the actions taken when failure to comply is identified, and to determine the barriers and facilitators to implementation, including the implications of the roll out model being different from the model originally piloted<sup>32</sup>
8. To analyse and integrate the findings to generate learning to further improve the effective implementation of, and compliance with, the Licensing Act and inform any future legislation.

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<sup>32</sup> For the evaluation of the pilot see Macgregor, A. (2007) *Evaluation of Test Purchasing Pilot for Sales and Alcohol to under 18s: Final Report*, Edinburgh: Scottish Government  
<http://www.scotland.gov.uk/Publications/2007/10/16091859/0>

## 2. Methods

A mixed methods approach was used to conduct the evaluation, incorporating both case study and baseline and follow-up phases. Methods used included interviews with key stakeholders, baseline and follow up semi-structured telephone interviews with LSOs and Board members across the whole of Scotland, as well as in-depth interviews and focus groups with Boards and Forum representatives in five council areas in the case study element of the study. National and local data were also collected and examined as part of the evaluation. Two interim reports, covering both the baseline<sup>33</sup> and case study<sup>34</sup> phases, are already available online.

### 2.1 Summary of evaluation methodology

The evaluation comprised a number of different phases outlined below:

#### Scoping phase (January to July 2010)

- Documentary review: Key policy documentation, including a sample of policy statements and LSO job descriptions, were reviewed. This review also helped formulate questions for the surveys and case study topic guides.
- Key stakeholder interviews: Six interviews were carried out with seven key informants, ranging from key policy representatives, licensed trade representatives, Licensing Board clerks, Police representatives, LSOs, etc. These interviews provided background context, and also assisted the development of the research instruments.
- Monitoring data: Analysis of existing data as well as a baseline 'snapshot' collection exercise of national alcohol statistics was carried out. The research team emailed a spreadsheet to a Licensing Board in each local authority area to cover the September 2009 time period when the Licensing Act came into force.

#### Baseline surveys (July to October 2010)

- Semi-structured telephone interview surveys were conducted with (a) LSOs and (b) Licensing Board informants (clerks/depute clerks and convenors) in nearly every council area in Scotland. At baseline, 30 LSOs and 29 Board members were interviewed. The interviews explored all issues of relevance addressed by the evaluation objectives (see Section 1.2).

#### Case study phase (June 2011 to September 2011)

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<sup>33</sup> <http://www.healthscotland.com/documents/5253.aspx>

<sup>34</sup> <http://www.healthscotland.com/documents/6141.aspx>

A case study design was used to explore the issues addressed by the evaluation aims and objectives in more depth. Five different local authority areas were selected on the basis of:

- Differences in perceived impact of the Licensing Act: Areas in which the impact in the baseline surveys was reported as being 'very positive' on the one hand, to 'quite negative' or 'no impact' on the other, were selected for in-depth study
- Type of area: the five local authorities covered cities, towns and rural areas.

In each of these areas, the following research was carried out:

- A focus group with the Licensing Board
- A focus group with the Local Licensing Forum
- A review of the Licensing Board Policy Statement
- An exploration of local data being collected and collated by LSOs.

It should be noted that Boards and Forums were given the choice of focus groups or in-depth individual interviews. The members of one Forum preferred to give individual interviews. As a result, six in-depth interviews were conducted with these Forum members, selected to cover different roles and interests on the Forum, including the police, public health and licensed trade members.

#### **Follow-up surveys (April to June 2012)**

- Semi-structured telephone interview surveys were conducted with LSOs and Licensing Board informants. An LSO was interviewed in each local authority area in Scotland (n=32), and 28 Board respondents also participated in this phase. A majority of respondents (25 LSOs and 21 Board members) took part in both the baseline and follow-up surveys. The follow-up survey was similar to the baseline survey, although some question areas were not included, and questions related to the Alcohol Act (came into force in October 2011) were added at follow-up.

#### **Test purchasing sub-study (April to December 2011)**

As part of the Licensing Act evaluation, a separate sub-study of test purchasing and other measures aimed at enforcing underage alcohol sales regulations was undertaken. A case study design was used, whereby key stakeholders, including police, procurators fiscal, licensing board representatives and licensees from three separate police force areas in Scotland were interviewed. The full report of

this sub-study was published in 2012<sup>35</sup>, and as a result it is not the focus of this report.

### **National Seminar (February 2013)**

In February 2013, a national seminar was organised and convened by the research team. Fourteen key stakeholders representing organisations and interests including the Scottish Government, licensed trade, Boards, the Crown Office and Procurator Fiscal Service (COPFS) and public health participated in the seminar. The seminar consisted of a presentation of key preliminary results of the evaluation, as well as the facilitation of a series of guided discussions. The main aims of the seminar were to:

- Learn whether people closely involved in alcohol licensing at both an operational and policy level saw these findings as sound and comprehensive in light of their knowledge and experience
- Gain additional depth and richness in interpreting the findings.

This report also includes findings from this event.

## **2.2 Data collection and analysis**

### **2.2.1 Scoping phase**

All interviews were digitally recorded, transcribed and a basic thematic analysis was conducted. Monitoring data: A Board respondent in every local authority area of Scotland was asked to complete an Excel spreadsheet, and a central spreadsheet was created for data entry and basic analysis.

### **2.2.2 Baseline and follow-up surveys of LSOs and Licensing Board representatives**

The semi-structured schedules for the telephone interview surveys were developed by the evaluation team, and agreed with the Project Advisory Group. During the baseline and follow-up surveys the ScotCen interviews took detailed notes during the interview, and wrote up a full near-verbatim account of the interview immediately after its completion. All interviews were digitally recorded, with the interviewees' consent, to aid the writing up process. Transcripts were entered into Access, basic frequencies were calculated and thematic analysis was carried out on open-ended data.

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<sup>35</sup> <http://www.healthscotland.com/documents/5989.aspx>



### 2.2.3 Case study areas

The focus group and interview topic guides were developed by the evaluation team, and agreed with the Project Advisory Group. All groups and interviews were digitally recorded, with the participants' consent, and fully transcribed. Transcripts were entered into NVivo 9.2, and a thematic analysis was carried out.

The Licensing Board policy statements from each case study area, updated in late 2010, were reviewed and examined for key issues and themes.

A lead LSO in each case study area was sent an Excel spreadsheet with potential key data fields. They were asked to complete as much of this spreadsheet as possible, and to indicate if and why they were unable to provide specific data. A ScotCen researcher also contacted these LSOs by telephone to discuss issues related to local data collection in more detail.

### 2.2.4 National seminar

Lyn Jones, a freelance consultant, facilitated the running of the seminar. He also prepared a brief report of the day, and this is drawn on in this report.

### 3. Results

Both the baseline telephone survey of LSOs and Board informants and the case study phase yielded very rich data, much of which has already been summarised in two interim reports<sup>36 37</sup>. Similarly, the sub-study of test purchasing and other measures aimed at enforcing underage alcohol sales regulations was published in 2012. As a consequence, although some of the findings reported below do draw on these other components of the study; the emphasis is on the results of the follow-up telephone survey with LSOs and Board respondents.

The results reported below are structured around the eight main study objectives outlined on pages 5 and 6.

#### 3.1 Objective 1

*“To monitor changes in the numbers of licences applied for and registered, and assess trends (from Sept 2009) in ‘capacity’ and in licensed hours with a view to assessing the on-going effectiveness of the Act in controlling the availability of alcohol”*

The evaluation team sent out spreadsheets for Boards to complete in May 2010; one spreadsheet was sent out per local authority area. The Boards were asked to supply data addressing issues such as number of licences, licence refusals, capacity and overprovision to cover the time period September 2009, when the Licensing Act came into force. It took several months for all Boards to respond to this query, and there were a number of problems noted and caveats given in relation to the provision of these data. The problems collecting these data are:

- Not all Boards were able to supply data in every requested field
- Some Boards did give retrospective data to cover September 2009, but others found this too difficult a request and provided data as of the time of spreadsheet completion
- Not all Boards maintained an electronic record of all data fields, and it was possible that data were not being collected and reported in a consistent manner
- Not only were fields left incomplete, but estimates were often provided. For example, in terms of capacity, 12 local authorities were unable to provide data in relation to on sales and 15 in relation to off sales. In addition, seven areas provided estimates for both trade sectors only. As a result only a minority of areas provided data of a potentially robust nature,

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<sup>36</sup> <http://www.healthscotland.com/documents/5253.aspx>

<sup>37</sup> <http://www.healthscotland.com/documents/6141.aspx>

and it is possible that further scrutiny of data from these areas would have also identified similar problems.

The evaluation team also attempted to collect local data from LSOs in the case study phase in 2011. This attempt to collect what might appear to be quite basic local data, such as number and purpose of LSO visits, numbers of non-compliance (e.g. training breaches, irresponsible promotions), was unsuccessful. A national LSO group also wanted to collect this information from LSOs across Scotland, but abandoned this exercise. The reasons for this lack of success mirrored the problems identified in collecting the national dataset, with LSOs not collecting or entering the data consistently, even if information was being entered electronically it was not in a useable or easily extractable format, IT systems were not necessarily in place and there was also a possible concern that LSO league tables might result, which would be unfair in that LSOs worked in different ways and covered very different areas across Scotland.

In April 2013 the Scottish Government released the most recent liquor licensing statistics covering the period up to and including March 31<sup>st</sup> 2012. The conclusion reached was that there were too many problems related to data comparability, and that trend data would only be able to be reported upon after a few data sweeps had been completed:

*“While the figures are subject to quality assurance processes as far as is possible, they will be subject to the types of errors inherent in any such system and may be subject to on-going revision. Most local authority licensing boards have put in place new IT systems to manage the implementation of the 2005 Act and there may be issues of comparability until a longer run of data becomes available. At this stage, it is difficult to meaningfully compare these figures over time due to changes in the way licences are being administered under current licensing arrangements (for instance, single licences for premises which were previously subject to multiple licences, and registered clubs coming under the responsibility of licensing boards rather than sheriff courts).”<sup>38</sup>*

### **3.2 Objective 2**

*“To monitor compliance with the relevant requirements of the Licensing Act and actions taken in terms of sanctions for breaches and to identify and account for any differences in practice across Licensing Board areas. The following are of particular interest: Bans on irresponsible promotions in on-sales; Training for personal licence holders and staff, and Refusal to serve a customer who is drunk”*

In order to address breaches of licensing conditions, the legislation introduced a number of conditions with which licensed premises had to comply, including bans

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<sup>38</sup> <http://www.scotland.gov.uk/Resource/0041/00418315.xls>

on irresponsible promotions and training for personal license holders and their staff.

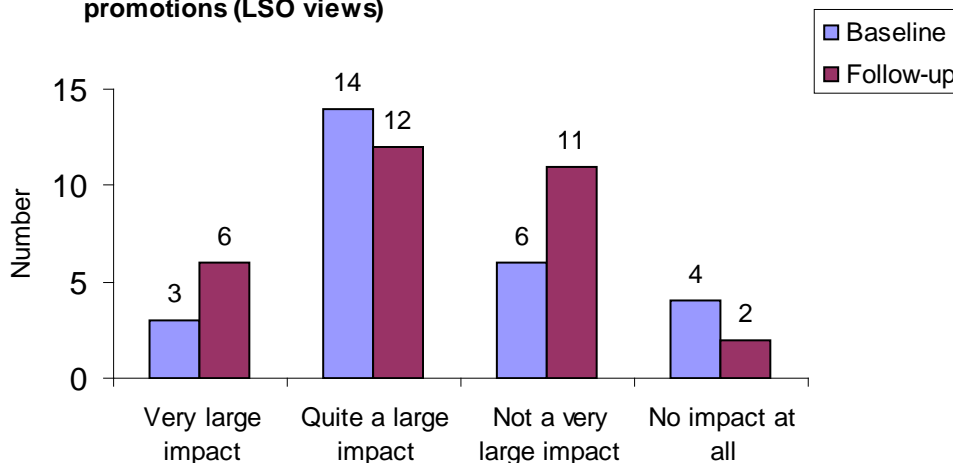
### 3.2.1 Addressing irresponsible promotions

The Licensing (Scotland) Act 2005 prohibits irresponsible promotions, and these are defined at Schedule 3 and 4 of the Act. These were subsequently amended by the Alcohol etc. (Scotland) Act 2010. Section 1.2 of the report addresses irresponsible promotions in more detail (see page 3).

LSO and Board respondents were asked how much impact there had been in relation to stopping irresponsible promotions in their area, as a result of the legislation that had been introduced. At baseline in 2010 respondents were asked to consider impact in relation to the Licensing Act; at follow-up in 2012 they were also asked to consider impact in relation to the Alcohol Act.

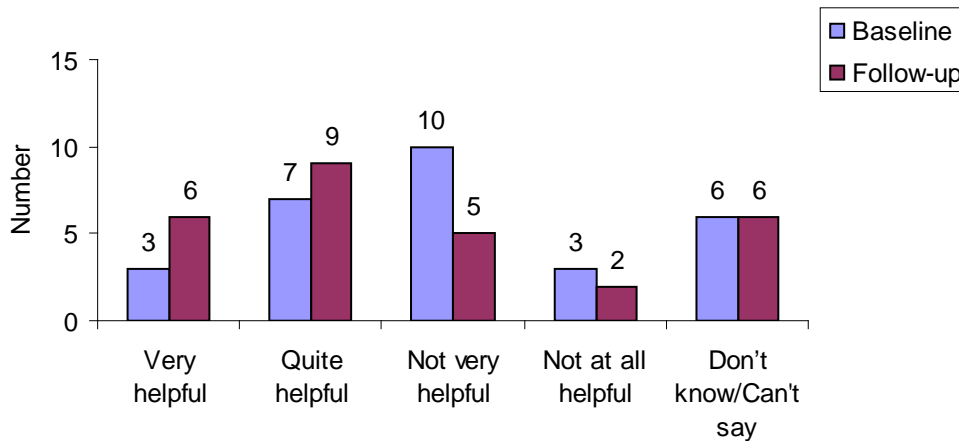
There was no clear consensus among the LSOs as to the impact of both Acts on irresponsible promotions, with 18 LSOs at follow-up reporting that the impact was at least quite large, and 13 LSOs stating that the impact was negligible (see Figure 3.1). Similar results were noted at baseline, with again a slight majority of the LSOs reporting that there had been at least quite a large impact in relation to the Licensing Act (n=17).

**Figure 3.1: Perceptions of impact of legislation on irresponsible promotions (LSO views)**



From the Board perspective, Figure 3.2 shows that a majority of respondents (n=15) thought that both Acts had been helpful in addressing irresponsible promotions at follow-up. Only seven Board respondents said that the Acts had been unhelpful on the whole. At baseline, 13 respondents stated that the Act had not been helpful to Boards in addressing irresponsible promotions, and so there was evidence of a more positive view as time progressed.

**Figure 3.2: Perceptions of helpfulness of Acts in addressing irresponsible promotions (LB views)**



A number of Board respondents, representing predominantly rural areas, said that irresponsible promotions were not a major problem locally. LSOs also commented that rural and island areas don't tend to have problems with irresponsible promotions. Where irresponsible promotions had occurred, it was reported that these were mostly dealt with by LSOs and resolved before reaching the Board level.

Like their Board peers, Forum representatives felt that, in general, irresponsible sales had become less of a problem. One forum member representing the licensed trade, while suggesting that overprovision was an issue in the area, nonetheless expressed some sympathy with what he saw as the economic pressures on the licensed trade to adopt such promotions in order to make a profit in a competitive market.

... 'we're in this to make money, we've got to pay a lot of wages, we've got a lot of rates, a lot of staff, and we don't want to be selling a drink cheaper than we have to and yet we do because the place next door is doing it....so I think there is irresponsible promotions out there but they're not there because ...they want to do them, they're there because they have to do them.' (Individual interviewee, Forum A)

### 3.2.2 Irresponsible promotions in the on-trade

There was a clear consensus that the perceived positive impact in relation to irresponsible promotions was limited to the on-sales sector. The views of respondents during the case study phase and follow-up interviews were that the Licensing Act had had a positive impact on pubs and clubs, with happy hours and other promotions now no longer a major issue. This is further evidenced by fewer Board respondents reporting that they had taken action against premises that were deemed to be utilising irresponsible promotions (13 at baseline compared with 8 at follow-up). At baseline, it had been suggested that some premises had been working their way around the legislation regarding the

mandatory requirement for alcohol prices to be fixed for at least 72-hours in order to curb 'happy hour' type promotions. Although this was still an issue at follow-up, there appeared to be more acceptance of on-trade premises 'taking a hit' by reducing prices for 3 days earlier in the week before raising their prices again at the busier weekend period.

The role of LSOs, the police, Boards and trade staff was thought to have contributed to the success in dealing with and preventing irresponsible promotions in the on-trade. Where LSOs and on occasion, Boards had had to deal with irresponsible promotions, it was said that these had been resolved with relative ease, with only the occasional breach arising. LSOs reported that licensed trade members had 'raised their game' and improved their practice in relation to adhering to the legislation. The factors behind this were thought to be: the legislation itself; the work of the LSOs in offering guidance and support and in supervising compliance, and that members of the trade did not want their licences to have to come under review by the Board.

'Standards within the licensed trade have improved directly because of the Act being taken seriously. The increased training of staff, the licensees take the running of their establishments more seriously and realise how important it is not to step out of line. The role of the LSO has helped as they are seen to be policing that area and ensuring standards are maintained. Licensees are being a lot more wary and taking action before things get out of hand to prevent any crime and disorder has helped the potential success of the objective.' (LSO 13)

### 3.2.3 Irresponsible promotions in the off-trade

Although irresponsible promotions in the on-trade were now reported as being largely dealt with, those who had expressed negative views (See Figures 3.1 and 3.2) did so because of the lack of perceived impact of the Licensing Act on off-sale outlets. Forum members also shared this view. Whilst respondents had hoped that the Alcohol Act might remedy this, most were of the view that retail practice, particularly in the larger off-sale sector, had barely changed. There were a few comments from Board respondents which suggested that the Alcohol Act had helped tighten up the legislation and made some impact in terms of displays and promotional materials in off sales, but this was a minority view.

'The Alcohol Act 2010 has certainly tightened up provisions of the 2005 Act. I think the licensees have been made more aware of these provisions by government circulars... so there is a better awareness of what is considered to be an irresponsible promotion. Prior to the 2010 Act there was more room for misinterpretation.' (LB 10)

One issue which was raised related to the legislation itself. There was concern regarding the drafting of both Acts and that the trade had managed to circumvent their aims in some circumstances. Examples of this included reducing the price

of a single wine bottle to £3.33 rather than have a 3 bottles for £10 promotion; the production of different sizes and types of cans and bottles in order to counteract multibuy restrictions, and the increased use of cheap multipacks themselves. It was also argued that there were grey areas in licensing legislation and it could be difficult to understand– as a result it was perceived that some traders were not aware that they were even breaking the law. Solutions to these problems included the tightening up of the legislation and the introduction of minimum unit pricing.

... 'there are a lot of grey areas and it can be difficult to work with... The smaller off-sales tend to comply when you explain it to them the problem is with the big supermarkets.' (LSO 15)

#### 3.2.4 Actions taken for breaches

As has been mentioned, many perceived breaches in relation to irresponsible promotions (and indeed other licensing issues) were dealt with by LSOs, and therefore were not reviewed by the Boards.

Examples of breaches being reviewed by Boards were cited during the evaluation. However, there were some concerns about how breaches of licensing conditions were being dealt with. There was a view from some respondents, and in particular Board members, that Sheriffs were interpreting the legislation in such a way that they were often overturning Boards' decisions, and were potentially undermining the effectiveness of the legislation as a consequence. Examples were given where LB decisions to suspend or refuse a licence had been overturned (these were for cases relating to perceived overprovision, underage alcohol sales, or poor practice/poorly run premises resulting in a breach of the licensing objectives).

#### 3.2.5 Training for personal licence holders and staff in premises; Board and LSO training

In addition to bans on irresponsible promotions, the Licensing Act also brought in mandatory training for personal licence holders<sup>39</sup> and staff serving alcohol in premises<sup>40</sup>.

Respondents were asked for their views on the Licensing Act's training requirements for licence holders and their staff. On the whole, Boards and LSOs viewed that training was operating well locally, and had helped increase awareness of pertinent issues among licensed trade staff. Some Board members provided positive examples of impact from the training, such as licence holders having to be on site and not leaving an outlet in the hands of junior staff

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<sup>39</sup> Must be an accredited Personal Licence Holder qualification

<sup>40</sup> Training to last a minimum of two hours covering a set syllabus (as set out in the Licensing (Training of Staff) (Scotland) regulations 2007). Training to be provided by either a personal licence holder or an approved trainer

members<sup>41</sup>. A common view among LSOs was that the licensed trade had improved its overall awareness and standards and was now more responsible on the whole as a result of compulsory training of staff.

‘The big thing has been training - both for licence holders and staff. Refusal to sell alcohol to people already drunk and to under-age has been a direct result of training.’ (LSO 11)

The main factors which were thought to be important in facilitating training for personal licence holders and their staff were the fact that training was a mandatory requirement and that LSOs were able to monitor this training. LSOs were able to check the training records of licensed trade staff. If any breach of the training regulations had occurred, this would be noted and a compliance notice issued, giving the licence holder a set period of time to comply. Failure to comply would result in cases reaching the Board, which might result in a warning letter in less serious or first time cases. Representatives of the trade also emphasised the substantial investment that had been made in terms of licensed trade staff training in the national seminar convened in February 2013.

‘There would have to be training records kept on the premises to show that the staff had been trained, and that would be something that the LSO would ask to see when he visits premises.’ (Case Study: Licensing Board D)

Although training for personal licence holders and their staff was seen as a move in the right direction, some issues around this training were also mentioned by respondents. A few Board members interviewed during the case study phase argued that the impact of the training had been minimal at best, and cited issues still arising such as sales to those who were under the legal age to buy alcohol, the serving of drunken individuals and a failure to display statutory notices. Concerns were expressed with regard to the adequacy of training licence holders who were then delivering to their own staff members.

... ‘I think maybe the jury's still out on that one... I'm not entirely certain that its working as well as maybe it might. I think... too many people (are) selling drink to people who have had too much...’ (Case Study: Licensing Board C)

Concerns were also expressed during the case study phase that those who did not have a good command of English could pass the training courses, sometimes with the help of interpreters, when it was argued that they would need competent English if they were at the point of sale and, for example, asking for proof of age. In addition, it was thought to be unnecessary for those working in various sectors, such as the heritage industry or tourist shops, to go through the full

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<sup>41</sup> Please note that only late opening premises (as defined in the Licensing Act) have a legal requirement to have a PLH on the premises.



training and also have to train their members of staff if, for example, they only had to occasionally sell miniatures of whisky.

‘A licensee who didn’t speak English who sat their exam online with a translator sitting by their side. And there was a great deal of discomfort on this Board about that, when we were told that that was acceptable.’  
(Licensing Board E)

Although Objective 2 specifically addressed the training of licensed trade staff, frequently it led on to discussion of training of other groups such as Board members and LSOs. Comments in relation to Board training are examined below whilst those relating to LSOs are covered in section 3.3.2.

Licensing Board members have to undergo training to assist them in their role. The content is specified by the Scottish Government and covers an introduction to licensing, responsible operation of licensed premises, and the effect of irresponsible operation on society and health. Board members have three months from being elected to the Board to complete this training and are unable to participate in Board meetings until they have passed the exam. Views indicated that training was generally well-received by respondents during the study, and was thought to have resulted in improved practice and facilitated the Board member role.

However, during the national seminar held in February 2013, whilst there was broad agreement that the mandatory training had improved practice in the trade and had benefited the LSO role, there was concern expressed that Board training was not always as useful as it might be. It was argued in this seminar that some courses could be dominated by the Licensing Act itself, and issues such as the Public Health objective, whereas what was needed was more practical training in how to exercise the day-to-day functions of the Licensing Board, such as how to run Board meetings, their powers as members and case law and its implications, and the role of other stakeholders (although it is understood that this type of training requirement should be the responsibility of the relevant local authority, as opposed to other training providers). It was argued that training had to be ongoing, and not just restricted to the formal course setting. Similarly it was argued that more training might be needed for Board members after major legislative changes or new guidance have been introduced.

### 3.2.6 The serving of drunk customers

Although a number of respondents throughout the evaluation acknowledged that the serving of drunken individuals did still take place, it was also argued that it was neither a major problem nor a priority area. In general, trade staff were said to behave in a responsible manner in such circumstances. It was also argued that it could be difficult to define ‘drunk’, and often those who were inebriated were well practised at covering the effects of excess alcohol consumption. As a

result only five Board respondents described the serving of drunk customers as being even 'quite a big problem' at follow-up.

'Generally licensed premises operate in a responsible way in our area' (LB 28)

### 3.3 Objective 3

*"To obtain an understanding of the numbers of LSOs, the local authority department/services within which they are based, their roles and activities and the implications for their potential to improve the implementation of, and compliance with, the Licensing Act"*

#### 3.3.1 LSO working context and key responsibilities

In order to understand the context and key responsibilities of the LSO role, the research team gathered information from a number of sources, including LSO job descriptions and the baseline and follow-up survey of LSOs.

At baseline, about 65 LSOs were in post across Scotland. In one area no LSO was in post, whereas the largest number of LSOs working in the same local authority area was fourteen. At the time of final reporting, numbers had risen slightly to 70 LSOs working across Scotland. As part of the evaluation, the research team asked one key LSO to represent each local authority area. At baseline, 30 LSOs were interviewed, each from a separate council area; at follow-up, this was 32 (25 of whom had previously been interviewed at baseline).

The baseline interviews highlighted a number of contextual similarities and differences in relation to how LSOs operate. For example, most were working full-time and on permanent contracts with the council and many (n=22) worked either on their own or with one other person. Their jobs were located within a range of service areas; the most commonly mentioned was 'legal services', mentioned by seven respondents at baseline; five reported working in the licensing department, and a further five in environmental health. In terms of their background experience, many LSOs had come from a similar local authority post, but five of them had previously worked for the police.

For most LSOs (26 at baseline and at follow-up), the vast majority of their time was spent on alcohol licensing activities. In terms of the type of alcohol licensing activities LSOs performed as part of their role at follow-up:

- 17 reported that they spent a majority of their time 'providing information and guidance'
- 16 said that most of their work involved 'supervising compliance by licensees'.

- No LSO reported that mediation accounted for a majority of their work at follow-up (at baseline 2 LSOs reported this)
- 4 indicated that they spent 50% or less of their time on alcohol licensing activities (at baseline this was also 4). The wider remit of some LSO posts included licensing responsibilities for other areas such as gambling, smoking prohibition and civic licensing.

### 3.3.2 LSO training and support received

LSO training is mandatory and comprises a three-day course which must meet a national set of training specifications. The course must be delivered by a qualified trainer and is assessed by an accredited exam. LSOs have to complete this training within 18 months of their appointment. Most LSOs were satisfied with the training and support they received, a view which was expressed both at baseline (n=22) and follow up (n=26), and there was a general view that training had resulted in improved practice and facilitated their role. However, five LSOs at both stages felt that the training had been of little or no use. Additional comments were also received which suggested that some LSOs had been very well-supported within their council and had therefore been allowed to attend several training courses and conferences. These LSOs tended to state that they only needed occasional updates, especially after legislative changes have occurred. It was clear that due to financial constraints other LSOs had been on training courses initially, but had not been on any refresher courses or been able to attend conferences since then. As a result these LSOs said that they had to try to keep abreast of any developments by carrying out their own desk research, internet searches, etc. On the whole, the need for more guidance after major legislative change appeared to be the greatest perceived need of LSOs.

A few respondents called for a rolling programme of modules and more specific training on the licensing objectives, especially the public health objective, as well as in relation to aspects of the LSO role such as mediation.

‘The LSOs have received good training and get good support. When we get updated legislation, we organise training from outwith the council so nothing else is required’. (LSO 1)

### 3.3.3 Perceived success of the LSO role

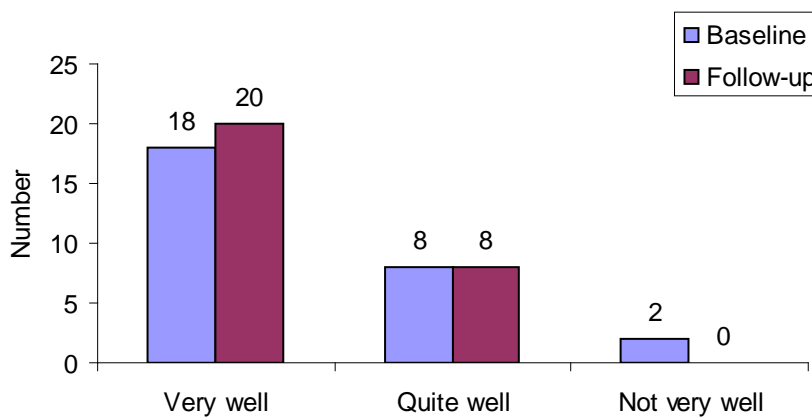
Overall, there was a general consensus that the LSO role had been one of the Licensing Act’s most positive aspects. Whilst LSOs themselves felt that they had been successful in their role, this was supported by other key groups, including Board representatives and members of Forums.

At follow-up a large majority of LSOs stated that they had been successful in conducting their main roles. The LSO responses were also positive at baseline, but there was evidence of an increase in perceived success at follow-up:

- 31 said they were ‘very’ or ‘quite’ successful in their compliance role
- 30 thought that were ‘very’ or ‘quite’ successful in their guidance role
- 27 reported that they were ‘very’ or ‘quite’ successful in their mediation role.

Further evidence of the success of the LSO role was obtained from Board respondents. Figure 3.3 below shows that at follow-up all Board respondents felt that the LSO role was working well in their board area.

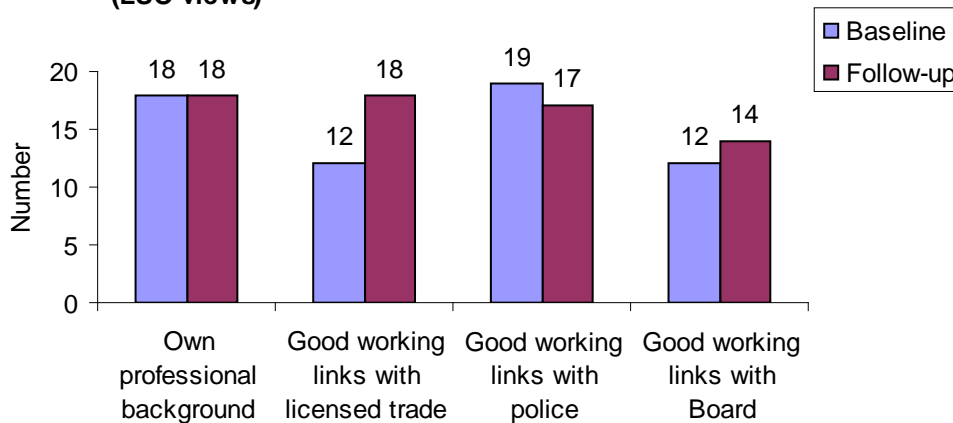
**Figure 3.3: Perceptions of how LSO role functioning (LB views)**



Considering the views of LSOs, Forum members and Board respondents, the reasons for this perceived success in relation to the LSO role centred on the good working relationships which had formed between LSOs and others (including the licensed trade, the wider community, Boards and the police) and the proactive role that LSOs have adopted in their work.

From the LSO perspective alone, a number of factors were highlighted as having facilitated their role. The most commonly mentioned factors are presented in Figure 3.4 below.

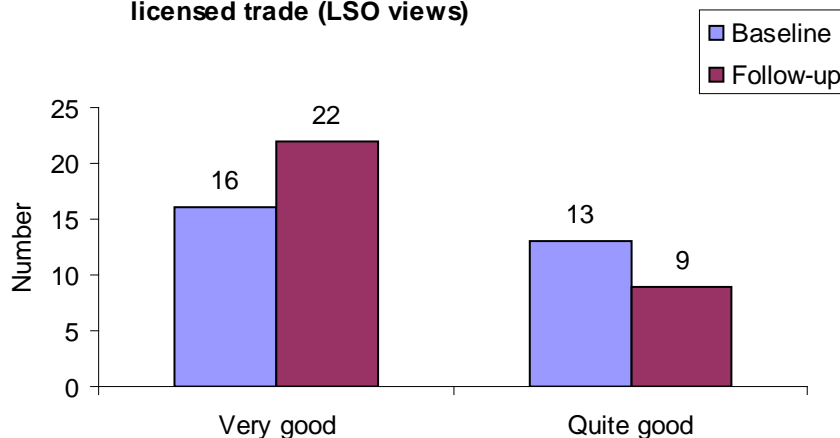
**Figure 3.4: Major perceived facilitating factors for LSO role (LSO views)**



**Good working relationship with the licensed trade**

Good working links with the licensed trade was among the most commonly mentioned facilitators for LSOs in helping them to perform their role (see Figure 3.4). Also, the number of LSOs who rated their working relationship with the licensed trade as ‘very good’ increased from 16 at baseline to 22 at follow-up. (see Figure 3.5). Therefore, although the relationship with the trade was viewed positively at baseline, it was thought to have improved over time to the extent that it was one of the major factors assisting LSOs in their work.

**Figure 3.5: Perceptions of working relationship with the licensed trade (LSO views)**



LSOs reported that they had received positive feedback about their role from licensed trade members, with views that the advice they provided was appreciated and being taken on board by many in the trade. LSOs also reported greater trust and support from trade members since they came into post, including a greater trade presence at any events they had hosted. Board representatives reiterated the good working relationships which had formed between LSOs and the trade, and that this had helped to resolve issues before

they were escalated to Board level, something which was greatly welcomed by Boards.

### **Good working relationship with Licensing Boards**

LSOs reported that they attended either most or all meetings of their Board. This was mainly to comment on licence applications and present reports they had written on compliance and any observations they had made. At follow-up most LSOs said their links with the Board had not changed, although a few added that as their role had become more established and understood, their work with the Board had become more focused and productive.

Developing a good working relationship with their Board was also a commonly mentioned facilitator for the LSO role (see Figure 3.4). At follow-up, almost all of the LSOs (29) reported that they had a 'very good' or 'quite good' working relationship with their Boards. The 20 LSOs who described all of their dealings with the Boards as being 'very good' spoke of excellent communication with members of the Board, the Board being respectful of the LSO role and LSO views, and reacting positively to LSO reports.

### **Building links with the wider community**

LSOs also pointed to their success in building rapport within the wider local community, with their involvement with other groups in the establishment of good practice schemes such as local Pub Watch initiatives, and some success in mediation of cases involving the public and members of the licensed trade. All LSOs, both at baseline and follow-up, expressed positive views about the contact they had had with the general public.

It was said that the public tended to engage with LSOs when they had a complaint to make about a particular pub or shop – usually the complaints related to excessive noise. In most instances it was argued that the public had been appreciative of the LSO input, especially if the particular complaint was resolved in their favour, and if it had not even had to be considered by the Board. On the other hand, it was felt that the public could have unrealistic demands (e.g. requesting the closure of premises), did not always appreciate that an agreed process had to be followed and also expected immediate resolution, in their favour.

### **Good working relationship with the police**

Most LSOs spoke of positive working relationships with the police, which was seen as another important factor in facilitating the LSO role (see Figure 3.4). Indeed, the fact that a few LSOs had been police officers previously was also said to facilitate the LSO role. At follow-up, 25 LSOs rated their working relationship with the police as 'very good'. They utilised regular formal and informal meetings in order to share information. Although comments from a few LSOs at baseline suggested that there were occasional difficulties with the police due to perceived overlap of their roles, this did not appear to be a concern at

follow-up. However, there was a minority view from LSOs that either the frequency or quality of communication had decreased over the previous two years or that the communication tended to be one-way, with LSOs being better at keeping police informed than vice versa. Overall, though, the LSOs spoke very positively about their relationship with the police.

'I'm a former police officer myself so it's easy to establish that relationship. We have a good system of information exchange - both formally and informally. We work together on issues.' (LSO 9)

### **Good working relationship with Forums**

LSOs also reported good relationships with Licensing Forums, although concerns were expressed about the performance and function of Forums (see Section 3.6), and the additional input some LSOs have been providing. Despite this LSOs felt that the advice and guidance they had given was appreciated by other Forum members.

### **Proactive approach of LSOs**

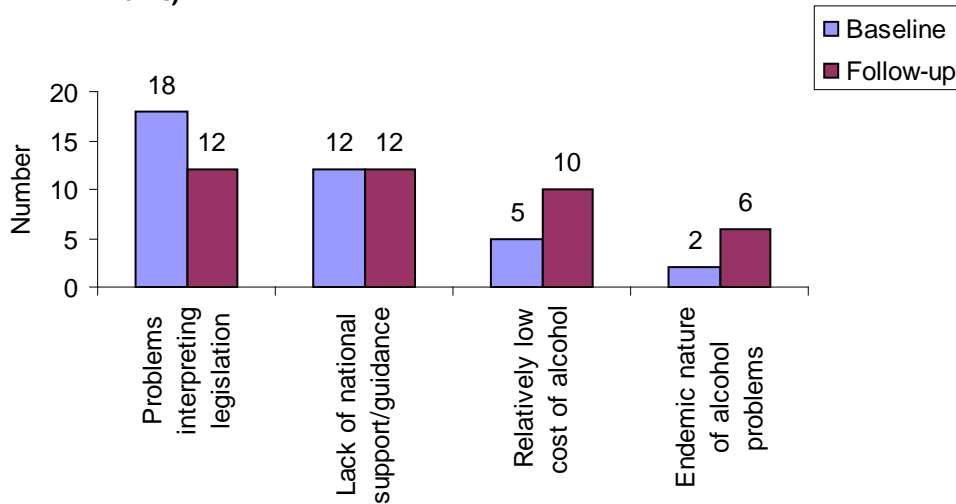
Finally, LSOs cited the benefits of the proactive approach many have adopted in their work, for example, informing premises of the potential impact and requirements of the Alcohol Act. The work conducted by LSOs in acting quickly to ensure irresponsible promotions either didn't take place or were nipped in the bud was praised by Board and Forum respondents.

'I would like to say successful - 8.5 out of 10. I would say I've managed to sort things out without bringing things to the Licensing Board in the majority of cases. Out of 260 issues, I've only had to bring 7 to the Board so I would say I've managed to sort things out, relatively quietly, at source without going down too formal a route.' (LSO 12)

#### **3.3.4 Problematical issues relating to the LSO role**

Whilst general perceptions of the LSO role were positive (only one LSO perceived their role as being unsuccessful), a few concerns about the role were raised by LSOs and others. The most commonly perceived barriers which LSOs cited in relation to carrying out their role effectively are presented in Figure 3.6.

**Figure 3.6: Major perceived barriers to the work of LSO (LSO views)**



At baseline, the major reported barrier to the LSO role was the issue of interpreting the licensing legislation. At follow-up it was still one of the most commonly-reported barriers, along with a perceived lack of support and guidance from a governmental level in relation to understanding legislative changes and other issues which could impact on the role, but there was evidence that it was not viewed as being as much of a difficulty. A minority of LSOs also called for other types of support including a national website for LSOs, an annual national LSO conference, and more administrative and financial support.

Figure 3.6 also demonstrates that an increased number of LSOs at follow-up now thought that the perceived low cost of alcohol, as well as Scotland’s relationship with alcohol and the wider drinking culture, were among the biggest problems they faced as LSOs.

A number of LSOs said they needed more support from their line managers and the council. Two LSOs spoke of the difficulty of being located in licensing departments especially if they were line-managed by clerks or depute clerks to Boards. It was said that conflicts of interest had occurred at times, which resulted in clerks being unable to support or advise LSOs.

‘We need clearer line management to get direction. At present we are based in licensing and the depute clerk to the board is our line manager and he feels he cannot always give us advice as there would be conflict of interest. With regards to mediation, when we have exhausted all avenues and get no resolution, we have nowhere else to go as our line manager steps back from that. We need clearer guidance from "higher up". The Alcohol Act has thrown up more questions than answers; we need clearer guidance from the Scottish Government’ (LSO 6)



Some concerns were expressed both by LSOs, Forum and Board members that LSOs were over-stretched in some areas, and the economic downturn had resulted in LSOs not being able to attend training courses or conferences. As the role was perceived positively, particularly at follow-up, it was argued that the LSO role needed to continue to be supported, and in some areas there was a possible need for more LSOs to be employed. In current economic circumstances it was acknowledged that this would be unlikely, but the consensus was that the LSO role should not become diminished in any way across Scotland.

Although the general perception was that of a positive relationship between LSOs and the licensed trade and the Board, a minority of LSOs reported that problems remained. It was thought that some trade would continue to be suspicious of LSOs and would be resistant to working together with them. A few Boards were also said not to value the LSO role greatly, and in one case had stopped the LSO from attending meetings.

‘There have been a couple of decisions by the Board which have been unpopular with the trade. They see us as the face of the board and as part of the decision making process which has made come disgruntled when we visit. We work hard at keeping relationships good and work with the Trade rather than against them.’ (LSO 6)

‘Simply because of the diminished role and lack of support. "Support" is maybe not the correct word - it seems to be a lack of conviction by the Board to have us more physically involved - well that's my perception. We are simply not valued. We have not been employed specifically to deal with licensing.’ (LSO 27)

### **3.4 Objective 4**

*“To obtain an understanding of whether and how Local Licensing Boards are addressing the Licensing Act's five objectives in their Licensing Policy Statements, building on the research commissioned by Alcohol Focus Scotland in 2008”*

One of the aims of the evaluation was to obtain an understanding of whether and how Local Licensing Boards are addressing the five licensing objectives underpinning the Licensing (Scotland) Act 2005. The objectives are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm.

Although the evaluation objective indicated that the licensing policy statements would be the main data source scrutinised as part of this research question, more useful information was gathered as part of the interviews with LSOs and Board representatives, as well as case study groups and interviews with Boards and Forum members. The policy statements themselves showed that the Boards were addressing the five licensing objectives, but the generic nature of many of the statements outlining how Boards were addressing such objectives suggested that it would be advisable to extend the scope of this objective to include the views of key respondents. As a result, the focus of the results below is based on the views of Board, Forum and LSO respondents.

#### 3.4.1 Perceptions of success of licensing objectives

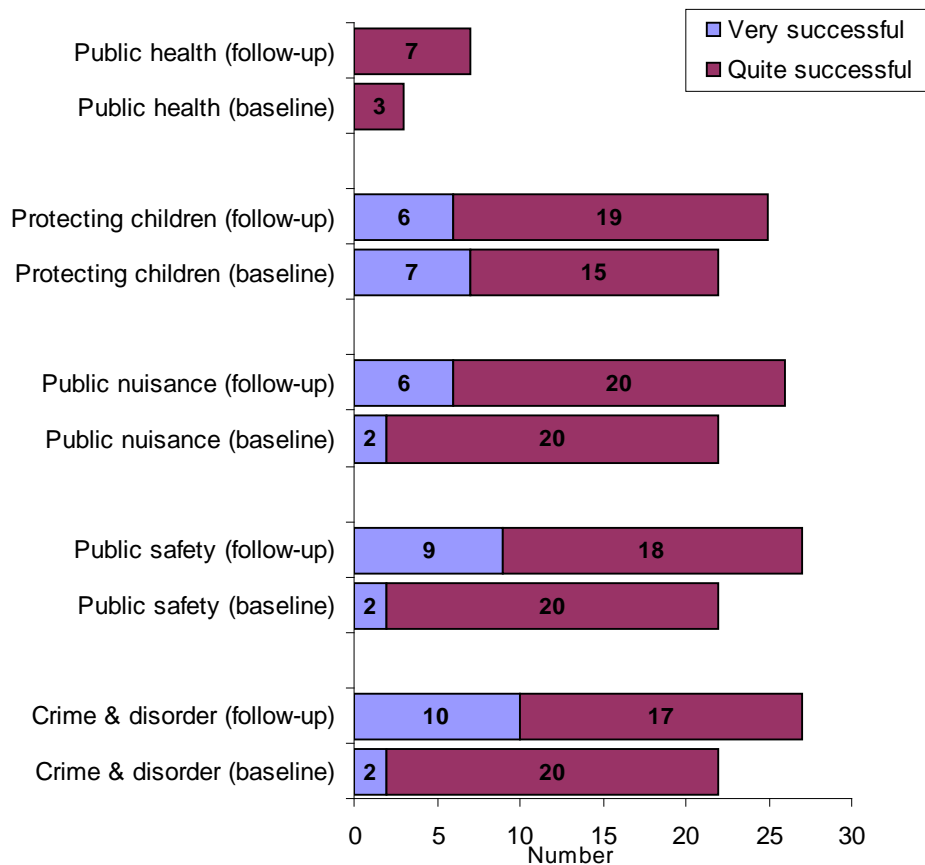
Respondents were asked which of the five licensing objectives they thought were being most and least successfully addressed in their areas. Not everyone, though, found these easy questions to answer as, for example, there was a perceived overlap between some of the objectives and what they were setting out to achieve, such as the crime and disorder, public safety and public nuisance objectives. In addition, views expressed in both the interview and the case study phases demonstrated that not all Boards were thinking primarily in terms of the objectives, or indeed thought of Boards as being policy-driven, with a case study Board respondent stating that: *“the law is being broken, objectives are not being breached”*.

#### **Most successfully addressed objectives**

The consensus of LSO, Board and Forum respondents was that most progress had been made in their Board areas in relation to preventing crime and disorder, securing public safety and preventing public nuisance. Protecting children from harm was also thought to have been addressed well in some areas – particularly those who chose to make this a focus of their activities. Examples of this include the provision of more family-friendly establishments in areas.

Figure 3.7 demonstrates that Board representatives thought that crime and disorder and the public safety objectives had been most successfully addressed at follow-up. In addition, a majority of Board respondents also reported that the protecting children and the preventing public nuisance objectives were being at least quite successfully addressed at baseline and follow-up. It can also be seen in Figure 3.7 that the views expressed at follow-up were more positive than those elicited at baseline.

**Figure 3.7: Perceptions of success in addressing objectives (LB views)**



Only a minority of Board respondents (n=7) thought that they had been dealing successfully with the public health objective even quite successfully at follow-up. Also, members of one of the case study Forums felt they had had some progress in addressing the public health objective via their overprovision policy, as well as joint working with the Board and the ADP in relation to an anti-binge drinking campaign. A health impact assessment of the policy statement had also been carried out in this area.

### **Factors associated with addressing objectives successfully**

A number of factors were thought to be associated with success in dealing with or addressing the objectives. These included:

- **The availability of good quality data:** This was felt to be important in helping to identify the extent of the problem(s) associated with the objective, and to then monitor progress when the particular objective was being addressed. For example, one of the driving factors behind the success of the crime and disorder objective cited by Board respondents was that data were accessible and relatively easy to interpret. In some

areas these data had shown a decrease in crime-related statistics (although it was acknowledged that this was not solely due to the work of the Board).

- **Effective joint working:** Respondents recognised that successfully tackling the objectives required partnership working. Therefore, good working relationships between Boards, the licensed trade, LSOs and the police were seen to be important, as well as input from other key bodies. For example, members of one Forum described how they worked with the local community safety forum and anti-social behaviour task group to identify areas with crimes linked to alcohol sales and consumption.
- **Specific initiatives:** For example, initiatives to disperse people quickly from nightclubs; introduction of plastic and toughened glass, and the implementation of test purchasing to address underage drinking helped address the objectives. Initiatives which also rely on good partnership working between, for example, different trade members and police, such as the Best Bar None and local Pub Watch schemes, were also thought to have helped address the preventing public nuisance and preventing crime and disorder objectives.
- **Local priority issues:** The protecting children from harm objective had been made a priority in a few Board areas – it was addressed specifically and in detail in the policy statement, local policies were implemented to support dealing with this issue and applications were checked carefully to ensure that issues around children’s access and family-friendly environments were addressed.
- **Role of Board members:** The local knowledge and expertise of board members, and the legal expertise of clerks, were said to contribute to Boards’ success in achieving the Act’s objectives.
- **Role of trade and LSOs:** A factor contributing to the success in dealing with a few of the objectives was the LSO perception that the trade were now much more likely to comply with the Licensing Act legislation, resulting in fewer breaches, and therefore fewer reviews reaching Board level. LSO work with the trade was said to have helped this.
- **Training:** This was thought to have helped improve practice of LSOs, Board and trade members.

‘Standards within the licensed trade have improved directly because of the Act being taken seriously. The increased training of staff, the licensees take the running of their establishments more seriously and realise how important it is not to step out of line. The role of the LSO has helped as they are seen to be policing that area and ensuring standards are maintained. Licensees are being a lot more wary and taking action before things get out of hand to prevent any crime and disorder has helped the potential success of the objective.’ (LSO 13)

‘Preventing crime and disorder, securing public safety and protecting children from harm are all equal. Problem premises have been shut down or

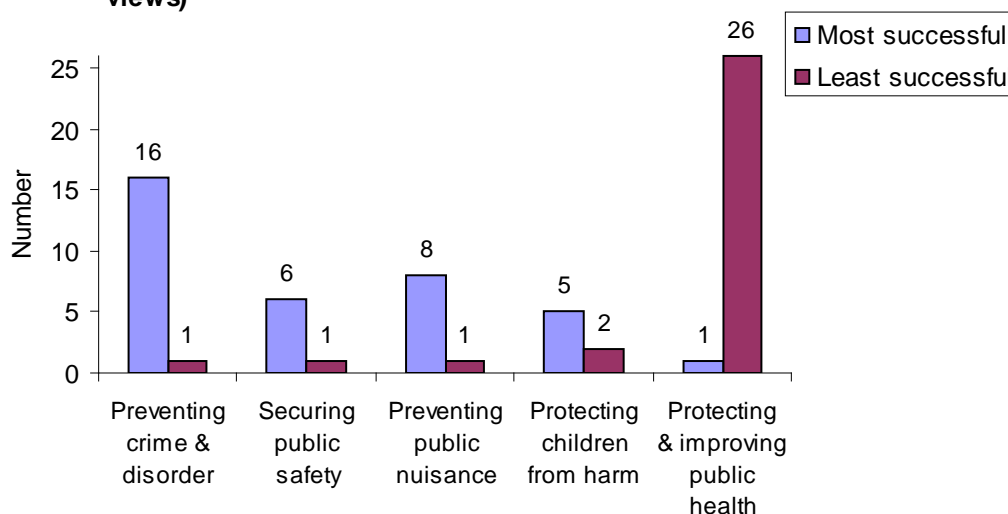
had their hours reduced and have been harshly, but fairly, dealt with. We are very rigorous in dealing with underage sales - we will shut premises and hold reviews and the Licensing Board are very supportive.’ (LSO 20)

### Least successfully addressed objectives

The general consensus of the LSOs, Board respondents and Forum representatives was that least progress had been made in relation to the objective concerned with ‘protecting and improving public health’. This view was expressed consistently throughout the study.

Figure 3.8 shows the views of Board respondents in terms of their perceptions of the most and least successfully addressed objective at follow-up. Only one Board respondent stated that the public health objective was being most successfully addressed locally. Factors contributing to this perceived success included the Board gathering local alcohol-related impact data, as well as the development of an original overprovision policy. However, almost all (n=26) of the Board respondents argued that it was the least successfully addressed objective.

**Figure 3.8: Most and least successfully addressed objective (LB views)**



The respondents gave a number of reasons as to why the public health objective was not being addressed successfully. These included:

- **No adequate definition:** Many respondents stated that the objective was not fully understood, it was not defined clearly and there was insufficient guidance available on how to address it. It was also argued that the legislation was open to interpretation.
- **Measurement and data sources:** Respondents were unclear which datasets they could draw on, how the objective could be monitored and in

- what way potential success could be gauged. The intangible nature of this objective was frequently commented on.
- **Population-based:** A view was expressed by Forums, Boards and LSOs that the objective had a more 'global' perspective or a 'population-based approach', which made it difficult to relate it to individual outlets or to establish any 'causal link'. One Forum described the 'discrepancy' between individual licence applications, practice in individual premises, reviews of licences and the wider public health objective.
  - **Links with health sector:** These were thought to be relatively poor in many areas, and it was argued that they often were at cross purposes (*'health don't understand licensing and licensing don't understand health'*). A few Board respondents cited a lack of public health knowledge and expertise within Boards.
  - **Off-trade sector:** It was argued that the Licensing and Alcohol Acts had not made any real impact on the retail price of alcohol within the off-trade sector, especially supermarkets. As such it was stated that the continued availability of cheap alcohol via supermarkets undermined the realisation of this objective. It was also argued that perhaps the objective was at odds with the aims of the on and off trade as a whole, which might be to sell more alcohol.
  - **Scotland's drinking culture:** It was argued that Scotland's relationship with alcohol was unhealthy, binge drinking was still too prevalent, and as such this was contrary to the aims of the public health objective. Boards were also described as being relatively powerless in relation to people drinking alcohol in their own homes.
  - **Legal decisions:** Boards in the case study phase in particular expressed concern that their decisions had been overturned by Sheriffs, and as a result they were increasingly cautious in making such decisions. Boards were also wary of the perceived power of large supermarket chains to mount a legal challenge to their decisions. At follow-up, a lot of concern was expressed related to the Brightcrew case,<sup>42</sup> in which it was ruled that licensing decisions made by Boards should relate specifically to the sale of alcohol and the objectives should not therefore be viewed as reflecting wider social concerns (see also Section 3.8). This ruling was perceived as creating difficulties for all of the five objectives, but perhaps in particular the public health objective was compromised as it itself was more of a wider population-focused objective.

'It's not because of a lack of will to do something. There are 2 problems, i) lack of guidance from Government and local health board on how to do it, ii) statistics are not available.' (LSO 10)

'The legislation makes it legal to sell a potentially lethal drug that you can take into your own home and abuse as you like - how on earth are

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<sup>42</sup> <http://www.scotcourts.gov.uk/opinions/2011CSIH46.html>

Licensing Boards expected not only to protect public health but to improve public health?... At the end of the day, you can buy drink, take it back to the privacy of your own home and drink yourself silly. To actually be as effective as we have been in the other 4 objectives seems to me to be very difficult.’ (LB 30)

### **Increasing the impact of the public health objective**

Respondents reported a number of ways in which problems relating to the public health objective could be addressed. It should be noted, though, that a minority of respondents also called for the objective to be dropped as it was perceived to be flawed. Ways in which the objective could be improved included:

- The objective being given a clearer definition, and more guidance being provided to Boards, Forums and LSOs on how to address this objective
- Advice to be provided on which national and/or local datasets to use or to develop in the future
- The links between Boards and the health sector to be enhanced. At follow-up there was more indication of these links being forged, probably related to the Alcohol Act, but the view was that they were still relatively poor
- There was a view that the Licensing and Alcohol Acts had not impacted on the price of alcohol in the larger off-sale sector, and that legislation such as the establishment and enforcement of minimum unit pricing would be needed to alter their retail practice.

## **3.5 Objective 5**

*“To obtain an understanding of the ways in which Licensing Boards interpret and apply key relevant requirements of the Licensing Act, including: assessments of ‘capacity’ for on and off sales; definition and application of criteria of ‘over-provision’<sup>43</sup>; and facilitation of the ‘public right’ to make objections and representations in relation to licence applications”*

### **3.5.1 Assessing capacity and overprovision**

As part of their policy statements, Boards have a duty to assess the extent to which there is overprovision of licensed premises in their areas. In undertaking their assessments, Boards can take into account the number of licensed premises, their capacity and the type of establishment.

Capacity is defined in the Licensing Act (Section 147) for premises which sell alcohol for consumption on site (defined as the maximum number of customers which can be accommodated in the premises at any one time), and for premises

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<sup>43</sup>Chapter 3 of the Guidance issued for Boards (op cit), addresses assessment of capacity and overprovision. A need to assess overprovision in Licensing Boards’ policy statements was suspended for the transition period

which sell alcohol for consumption off-site (defined as the amount of space in the premises which is used for the display of alcohol for sale). Boards struggled with the definition of capacity, and its measurement (see also Section 3.1). Indeed, when the research team conducted a data collection exercise among local authority areas in 2010, many Boards were unable to provide data on capacity in their council areas for the on-sales and off-sales sector. Twelve areas were unable to provide data for the on-sales sector, whilst fifteen were unable to do this for the off sales sector. Whilst seven areas did provide data, they pointed out these figures were only estimates. At follow-up, the concerns about the definition of capacity and how to assess it still remained among LSOs and Boards, and it was reported that not all Boards had addressed capacity or assessed it properly within their policy statements.

A few Boards had been more active than others in developing their overprovision assessments. Board respondents during the case study phase described how they had consulted with the police, the Forum and with the public in developing their assessment. Some had studied local data on alcohol-related crimes, alcohol-related health harms and the number of outlets, and a few Boards had commissioned specific research to undertake this analysis. The local ADP in one area had analysed alcohol-related health and offence data on behalf of the Board and Forum.

However, both Board and LSO respondents expressed the same concerns around the definition of overprovision as they had in relation to capacity. LSOs at baseline suggested that Boards were either not addressing it, or merely referring to it in their policy statements.

‘There is no guidance on how to assess overprovision - as a result I think many are reluctant to make decisions on over provision and our statement policy only pays lip service to it.’ (LSO 2)

Only five Board respondents at follow-up felt that overprovision was an issue of relevance for their area. At baseline, respondents stated that local sources of data, including crime figures, confirmed that their Board areas did have an overprovision issue, or that there had been local ‘hot spots’ that had to be addressed in the future. However, it is clear that many areas don’t consider overprovision to be a problem, with a view expressed that licences had been lost due to a number of factors (see below). It is not surprising then that the majority of Board respondents were unable to express a view as to how successful their Board had been in dealing with overprovision (see Figure 3.9).

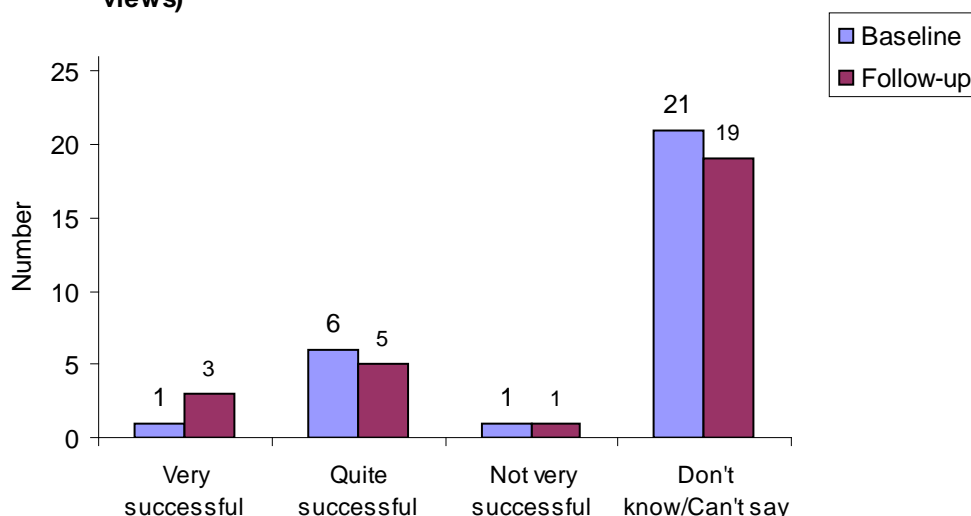
Board respondents who stated that they had been successful in dealing with overprovision said that they had identified areas of overprovision, and had refused licence applications as a result of this (although a challenge from a large supermarket had been received in one case).



'We have comprehensive data on the problems and issues. We have an overprovision policy which covers 15 out of the 18 areas in the council area, covering on-sales, supermarkets, off-sales, nightclubs. It has been in place for 18 months and we have granted one new licence.' (LB 1)

'Off-sales – yes; On-sales - No (in terms of) Overprovision. A number of applications for off-sales have been refused in relation to over-provision without legal challenge but we are waiting a legal challenge from [name of supermarket]' (LB 14)

**Figure 3.9: Success of Boards in dealing with overprovision (LB views)**



It is notable that most areas did not perceive overprovision to be a problem in their area. Respondents cited a number of factors in relation to this: the economic downturn was thought by Board and LSO respondents to have resulted in a decrease in the number of licences; more people were buying their alcohol from larger supermarkets and consuming it at home, and the increased costs associated with applying for or renewing a licence as a result of the Licensing Act. LSOs, predominantly representing rural areas, reported that operators such as heritage sites and some small shops had decided not to renew their licences due to the cost. It was also thought the increased costs had discouraged licence holders of bed and breakfast establishments, and those with multiple licences, from renewing licences.

'It's not an issue - we are losing licensed premises every year due to the economic downturn.' (LB 32)

The challenges of balancing and weighing up the 'health' and 'economic' arguments in assessing overprovision was raised by Board and Forum respondents during the case study phase. In one Board, health concerns appeared to have been given a higher priority, with the overprovision assessment being driven by a perceived high level of alcohol-related health problems. In

another area, the Board tended to regard licence applications as business opportunities in the context of a perceived loss of licences locally.

### 3.5.2 Overprovision: influence on Boards

A number of factors were thought to influence Boards' decision-making in relation to overprovision. A few LSO and Board respondents highlighted that in the current economic climate, Boards are under pressure to approve applications if there is thought to be an economic benefit to the area as a result. As such, it was said that licence applications for hotels, restaurants and supermarkets were likely to be approved in many cases. Three of the five case study Boards indicated that their overprovision assessments had informed their decision-making, and that they had refused licence applications on overprovision grounds. However, it was added that consideration would also be given to the type of premises applying, especially if there was 'an economic case' and the application was for a hotel or restaurant.

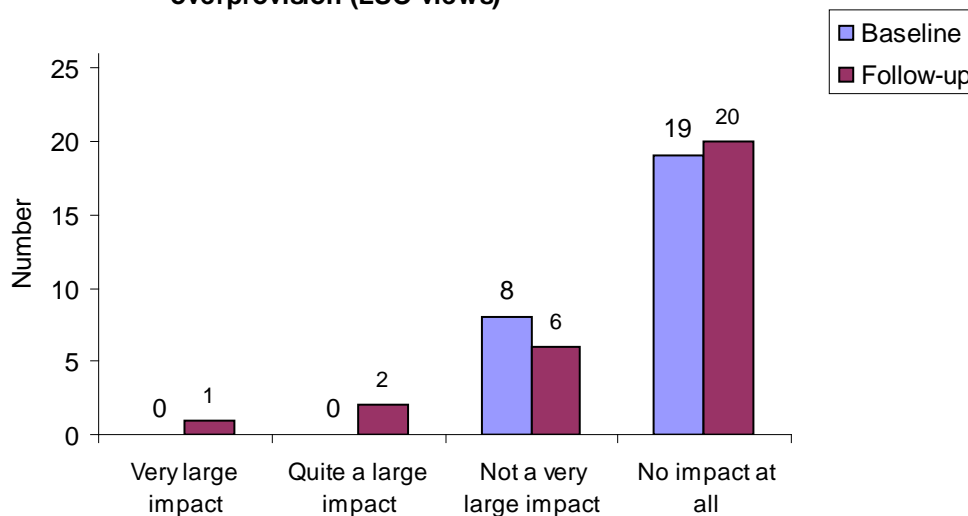
The fear of legal challenges from large establishments such as hotels or supermarkets was also perceived by LSOs and Board respondents to have influenced Boards' decisions on the grounds of overprovision.

### 3.5.3 Impact of the legislation on overprovision

The vast majority of LSOs reported that neither the Licensing Act nor the Alcohol Act had impacted greatly on the issue of overprovision. Only three LSO respondents at follow-up stated that there had been any impact (see Figure 3.10). These three LSOs suggested that the Licensing Act had been responsible for any impact, with Boards in their areas refusing applications due to perceived overprovision and generally taking the issue more seriously. It was added that input from health professionals and other key stakeholders could potentially produce more meaningful overprovision policies in the future.

'We have only one area of over-provision. It's in our policy and it's a very small defined area in the town centre. It's not a big problem, there have been refusals on those grounds but I can't say there has been much impact. I think only the 2005 Act dealt with overprovision. I think the 2010 Act might have tweaked things but it was the 2005 Act that set out the overprovision legislation.' (LSO 15)

**Figure 3.10: Impact of Licensing and Alcohol Acts on overprovision (LSO views)**



**3.5.4 Improving the way that capacity and overprovision are assessed**  
 Respondents raised the need for national guidance on how to measure capacity, and clearer guidelines and support in assessing overprovision. This was in terms of what might constitute overprovision, and also what weight should be given to health and economic arguments. More clarity around Board decisions was also called for in cases where applications are approved in areas where overprovision is thought to exist and in cases where Board decisions are overturned by Sheriffs. It was also argued that it was helpful for overprovision assessments to be carried out regardless of whether this was thought to be an issue for the area, as indeed is required by the Act, as licence numbers might increase in the future if the economic situation improved.

**3.5.5 The public right to object**

The Licensing (Scotland) Act 2005 makes it possible for anyone to object or make representations to a Board about any application for a premises licence<sup>44</sup>. To support this, case study board members described using websites to provide information and guidance to the public on making objections, as well as providing advice to community councils on the procedures. New licence applications were also advertised in the press and statutory notices pinned to the doors of premises making applications.

Board members did, however, draw attention to some of the difficulties of facilitating the public right to object. These included:

- The public's awareness of their rights was still felt to be limited.
- A small number of groups and individuals were thought to be responsible for a disproportionate number of complaints and objections.

<sup>44</sup> Under the Licensing (Scotland) Act 1976 only certain categories of people could object, such as a neighbour, community council or a church.

- There was a perceived power imbalance when members of the public attended Board meetings where they may encounter opposition from a lawyer representing the licence holder. As a result it was possible members of the public may be reluctant to either submit their objections in writing or to repeat their objections at a board meeting.

Community Councils were seen as having a role in redressing the power imbalances and raising concerns on behalf of a local community. It was also suggested that LSOs were acting as a channel for local objections, and resolving issues without the need for them to come before the Board. At baseline and follow-up, LSOs described generally positive links with the public, who tended to engage with LSOs when they had a complaint to make about a particular pub or shop, usually in relation to excessive noise. In most instances it was argued that the public had been appreciative of the LSO input, especially if the particular complaint was resolved in their favour, with or without the need for Board review. On the other hand, it was stated that members of the public could have unrealistic demands, did not always appreciate that an agreed process had to be followed and also expected immediate resolution, in their favour.

‘Generally when it is a presentation it is positive, where there is a complaint it is not always positive - they expect you to solve their problems and don’t always appreciate there is a procedure to follow.’ (LSO 3)

### 3.6 Objective 6

*“To analyse the membership, roles and operation of the Local Licensing Forums, their relationships with Local Licensing Boards and the impact of the forums on the policies and actions of the Boards, identifying the factors that facilitate their role and those which act as barriers to their effectiveness”*

#### 3.6.1 Role and perceived success of Forums

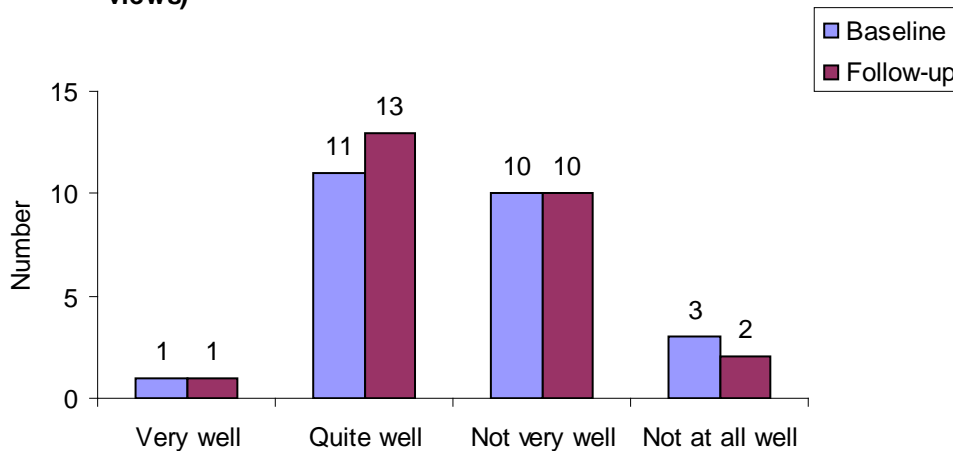
Following a proposal contained in the Nicholson report<sup>45</sup>, the Licensing Act requires every council to establish a Local Licensing Forum. The role of the Forum is to keep the operation of the licensing system in their area under review. The Forum does not review or offer advice in relation to individual licence applications or cases that come before the Board. The Board has a duty to “have regard” to the Forum’s views and must offer reasons when it takes decisions against the advice of the Forum. Board and Forums in the same area are required to have one joint meeting at least once a year.

Perceptions of how well Forums were performing were gathered from LSOs, Board respondents and Forum members themselves. A common concern expressed at baseline related to the performance and functioning of Forums. However, LSO and Board respondents added that Forums had only just been

<sup>45</sup> <http://www.scotland.gov.uk/Publications/2003/08/17590/22947>

established and it was too early to gauge their impact and success at that stage. Figure 3.11 demonstrates that there was very little improvement noted at follow-up, with Board respondents quite divided in their perceptions of the functioning of Forums, with 14 stating that they were working at least quite well whereas 12 thought they were not performing well almost three years after the Licensing Act had come into force.

**Figure 3.11: Perceptions of how Forums are functioning (LB views)**



### 3.6.2 Perceived problems in the operation of Forums

It is important to note that both Board and LSO respondents tended to be more negative about Forums in their open-ended responses. The problems which were perceived to be associated with poorly-performing Forums were associated with a number of broad areas – the membership, role and remit of Forums, and the way that Boards and Forums work together.

In relation to the membership, role and remit of Forums, a number of issues were viewed as acting as barriers to the effective functioning of Forums. There are examined in the following sections.

#### **Recruitment**

Some Forums had experienced difficulties in recruiting sufficient members to the group. Indeed, during the baseline phase, LSOs commented that in two council areas, the Forums were not operating due to membership problems. Both LSOs and members from all five case study Forums reported problems in recruiting young people, and it was also thought to be difficult to involve sufficient community representatives.

#### **Leadership and participation from members**

Some Forums were thought to suffer from a lack of leadership or interest among their members, with the result that they had become over-reliant on LSOs to make progress. The input provided by LSOs varied significantly across Forums; some were providing information and advice, but others were chairing and arguably directing the Forum, which was thought to be outwith their LSO remit. It

was argued that a number of Forums did not meet frequently enough, and could be more proactive and conduct research into specific issues. However, they added that the large geographical areas covered by some Forums made it quite challenging to bring people together regularly.

'I have a good relationship with them; it is the forum itself which is a failed organisation. There is a reluctance to attend meetings by the relevant people in the Forum who can actually make the changes. We have had a real issue with membership...' (LSO 17)

### **Different interests working together**

The Licensing Act requires Forums to comprise representatives from a number of "constituencies of interest" including the licensed trade; the chief constable for the police area in which the forum's area is situated; people having functions relating to health, education or social work; young people; and people resident within the Forum's area<sup>46</sup>. The Act also requires a local LSO to be a member of the Forum. The Licensing Act guidance<sup>47</sup> underlines the need for the Forum to be seen as "independent and expert" and able to develop an identity separate from the Board or other interest groups.

Licensing Forum members who took part in the case study phase thought that there were advantages and disadvantages in such a diverse group working together. On the one hand, bringing together people with a range of expertise and knowledge was seen as valuable in itself. However, not all Forums had managed to achieve a good working relationship between members of different bodies, and struggled to achieve a consensus. Members of one Forum, for example, alluded to fundamental differences between those representing a health agenda and those representing business interests. It was suggested that this had resulted in some issues effectively becoming 'off limits' for discussion.

Board respondents and LSOs also stated that Forums had the potential to become 'bogged down' in conflict, which was unsurprising given the different constituent groups represented on the one body. The issue of independence was touched upon indirectly by representatives of one Forum among whom there were differences of opinion about whether the appropriate balance had been struck between the level of licensed trade involvement and that of community and health representation.

'It could be better - there are people with conflicting ideas and aims, so it will always be a different situation to be in. You've got the voluntary sector, people from the community halls, the big licensees and the health board -

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<sup>46</sup> The Alcohol Act introduced a requirement for at least one member of the Forum to be nominated by the Health Board for the Forum's area.

<sup>47</sup> <sup>47</sup> Licensing (Scotland) Act 2005: Guidance for Licensing Boards and Local Authorities (2007), Edinburgh: Scottish Government (<http://www.scotland.gov.uk/Publications/2007/04/13093458/0>)

there is always going to be conflict. It's a more difficult thing to manage - but still good.' (LSO 32)

'While our relationship is very good, I think the Forum is a pointless exercise, no real work gets done by the Forum. Our Board attends the Forum as members, therefore no negatives are discussed, only back slapping. It is flawed especially when you have Trade members on it and Board members on it, Trade are not going to be anything but complimentary to what is going on in that Board area. It is like a busted flush and pointless...' (LSO 21)

### **Role and remit of Forums**

Another barrier to the functioning of Forums was thought to be a lack of clarity around their role and remit, a point raised by LSOs and Forum members. This resulted in a lack of focus among some Forums, which impacted on their ability to provide meaningful support to their Board. The case study phase showed that there were differences emerging in relation to how Forums perceived their role. Most described their role as reviewing the Board policy statement and feeding any issues back to the Board. Some augmented this role slightly by adding they were an intermediary between the community and the Board, providing a 'balanced opinion', highlighting 'practical problems' or attaching 'commonsense provisions'. Others, however, described a much broader role, encompassing wider public health and social issues. Such comments suggest that there could be differences in approach both between and within Forums, with members questioning the attempts by their colleagues to raise social problems in the context of Forum discussions.

It was suggested that guidance or training was needed to help clarify the role of the Forums and the responsibilities of their members, as well as help them to understand the licensing system and how they could influence Boards. One Forum, however, thought that the greatest need was on how to evidence their effectiveness as a body; they argued that they had no way of measuring whether they were carrying out their functions successfully or not.

### **Scope and power**

A few Forum respondents expressed frustration that there were issues which were considered outwith the scope of the Forum, such as specific local problems or issues:

'We can talk about street crime but not actually talk about where the crime was, or how it developed.' (Forum A)

These limitations were built into the very way the meetings in one forum were managed: the introduction of a constitution for the Forum was said to have limited the scope for more open and wide-ranging discussions. On the whole, and this is also related to the section discussing the working relationships with

Boards below, the consensus was that Forums lacked sufficient powers and as such were not always taken seriously by Boards.

### **Resources**

All five case study Forums reported that they received administrative support from their local councils; some also received legal advice. Forums did not, however, necessarily have their own budgets. One Forum felt that a budget would be helpful in supporting members to attend workshops and conferences to support them in their role. Members of another Forum had held discussions with their Board and within the council about the provision of a separate budget for the Forum.

### **Public awareness**

In terms of links with the communities they represent, Forum members perceived that there was very little public awareness of the existence or role of the Forums. Although the details of Forums were potentially available on council websites, it was suggested that finding this information could be difficult. Members of one Forum acknowledged that they could perhaps do more to increase awareness and represent communities more effectively, but that they did not have a budget for this. This Forum, as well as others included in the case study, had engaged in activities to improve their public profile, such as through their contacts in the community councils, support for local Alcohol Awareness events, a 'beer mat campaign' distributing the Forum's contact details and through articles in the press.

### **Working relationship with Boards**

In addition to being able to function properly (as discussed above), respondents also pointed out that for Forums to have any success in their role it was critical that they enjoyed a good working relationship with their Board. A number of Board respondents raised the importance of actively consulting with the Forums, and Boards taking their views into account. It is clear, though, that working relationships differed widely across areas, as Board respondents described several Forums as having 'stalled' at follow-up, and as such Boards were not greatly influenced by any view expressed by such a Forum.

LSOs also supported the view that a number of Boards took little cognisance of Forums. A few of the Forums in the case study phase stated they did not have a close working relationship with their Board, and had very little contact with them. For example, it was argued that the Board could do more to seek input from, and feedback decisions to, Forum members in order that Forums could more effectively inform policy. The value of more frequent contacts was raised by a number of Forum members: in two case study areas it was suggested that there should be more than one joint meeting with the Licensing Board per year. Others argued that there should be scope for Board members to attend forum meetings



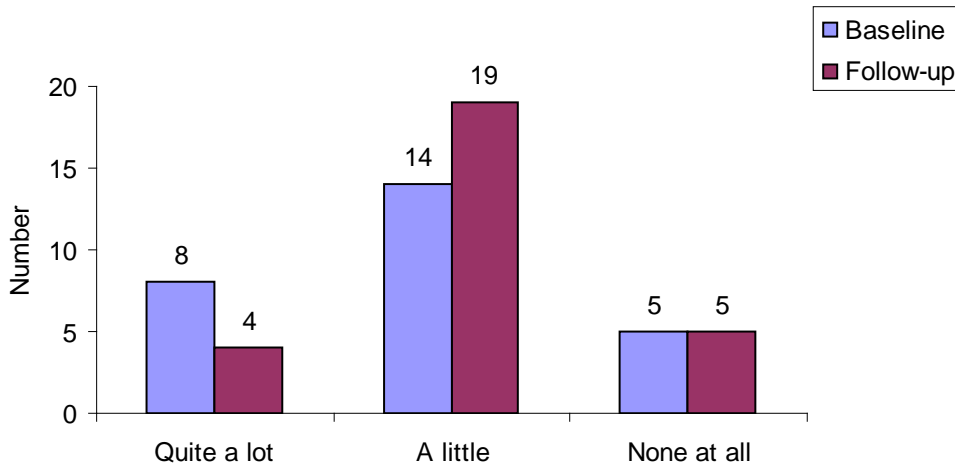
regularly<sup>48</sup> to ensure that the views of the Forum reached Board level.

‘Recommendations we have done, with one exception, the Board have rejected them. There is no comeback on them as to their decision, other than they have to tell us why they rejected it and that has left the Forum feeling "what's the point?" It is an epic fail in the Act.’ (LSO 17)

### 3.6.3 Impact of Forums

Given these problems relating to the functioning of Forums and the working relationship between Forums and Boards, it is not surprising that perceptions of the overall impact that Forums have made were quite negative across all respondent groups. Figure 3.12 demonstrates that at baseline 19 Board respondents perceived Forums to have made only a little or no impact, and at follow-up the number of Board members who felt this way had risen to 24. At follow-up, only four Board respondents reported that Forums had impacted on the licensing environment in quite a major way.

**Figure 3.12: Perceptions of impact made by Forums (LB views)**



Forum members themselves gave examples in which they thought they had made a modest impact on Boards, including informing the local overprovision assessment, the introduction of more flexibility into conditions in relation to Sunday morning drinking, for example, or conversely to introduce greater controls on availability to curb excessive drinking associated with big events. On the other hand, one Forum representative, expressing concerns over the levels of alcohol-related violence which was impacting on the local A & E department, said that the Forum would have liked to have been able to work more closely with the Board to examine licensing hours, but felt that it “*had not been successful in being able to influence that*”.

<sup>48</sup> The Licensing Act guidance does suggest that councils may wish to consider whether a member of the board should sit on the forum to provide a direct link to the board.

### **Forum success: associated factors**

Although they were in the minority at follow-up, it is clear from the views of LSOs and clerks that a few Forums were managing to function successfully, work effectively with their Board and achieve some influence in relation to Board decisions in their area. A number of factors appear to be associated with the successful function of Forums:

- Forums which had been established early on (and some pre-dated the Act) were thought to be more successful as they had had time to develop both an understanding of their role and:
- Good working relationships with other key groups and individuals;
- Boards taking Forum views into account: For example, one Forum described how it had worked “hand in glove” with its Board to develop the overprovision policy. Also, Board respondents cited positive examples of where Forums were being consulted on the Board’s policy and overprovision statements, as well as being tasked to carry out work associated with the public health objective.

### **3.7 Objective 7**

*“To review the implementation of test purchasing, including the actions taken when failure to comply is identified, and to determine the barriers and facilitators to implementation, including the implications of the roll out model being different from the model originally piloted<sup>49</sup>”*

A separate sub-study was commissioned to examine test purchasing and other measures to enforce underage alcohol sales regulations; this study reported in 2012<sup>50</sup>. As there is already a final report which addresses these issues in much more detail, only one key figure (Figure 3.13) is presented below.

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<sup>49</sup> For the evaluation of the pilot see Macgregor, A. (2007) *Evaluation of Test Purchasing Pilot for Sales and Alcohol to under 18s: Final Report*, Edinburgh: Scottish Government  
<http://www.scotland.gov.uk/Publications/2007/10/16091859/0>

<sup>50</sup> <http://www.healthscotland.com/documents/5989.aspx>

**Figure 3.13: Licensed trade staff views of preferred enforcement measures**

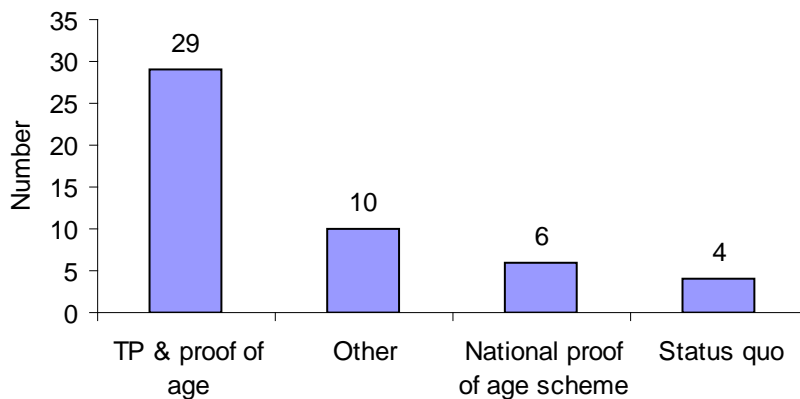


Figure 3.13 shows that a majority of licensed trade staff themselves favoured test purchasing to be used, as long as it was used in tandem with proof of age documentation. Those 10 respondents who chose the ‘other’ category tended to opt for test purchasing in tandem with increased education, surveillance or Challenge 25. It should be noted that Challenge 25 was just coming into force when the research was being conducted, but it appeared to be one of the better received aspects of the Alcohol Act at that point.

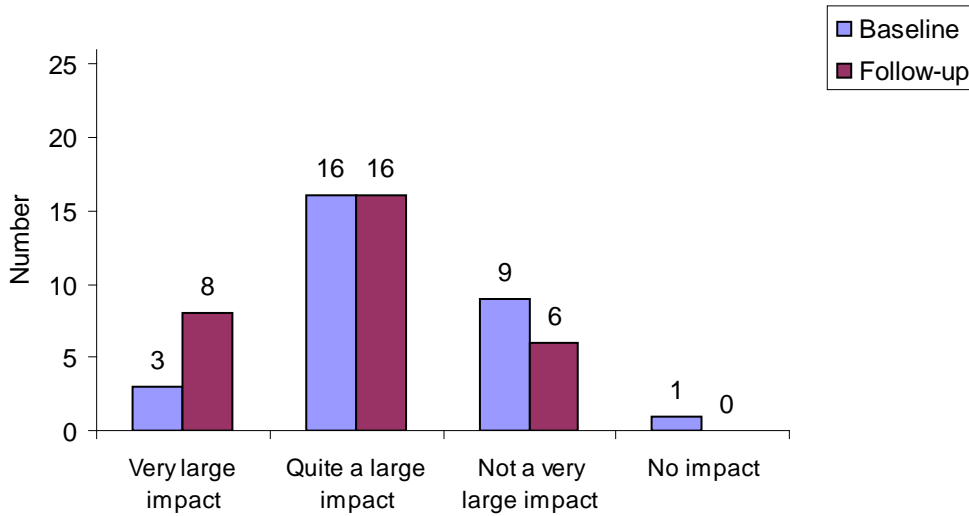
### **3.8 Objective 8**

*“To analyse and integrate the findings to generate learning to further improve the effective implementation of, and compliance with, the Licensing Act and inform any future legislation”*

It is clear that the perceptions of the impact and success of the Licensing Act were more positive over time, with LSOs and Board respondents at follow-up tending to report that the Act had a positive impact on the whole. The case study participants also held generally favourable views about the impact of the Act, but there was evidence of more positive perceptions developing in the subsequent research phases.

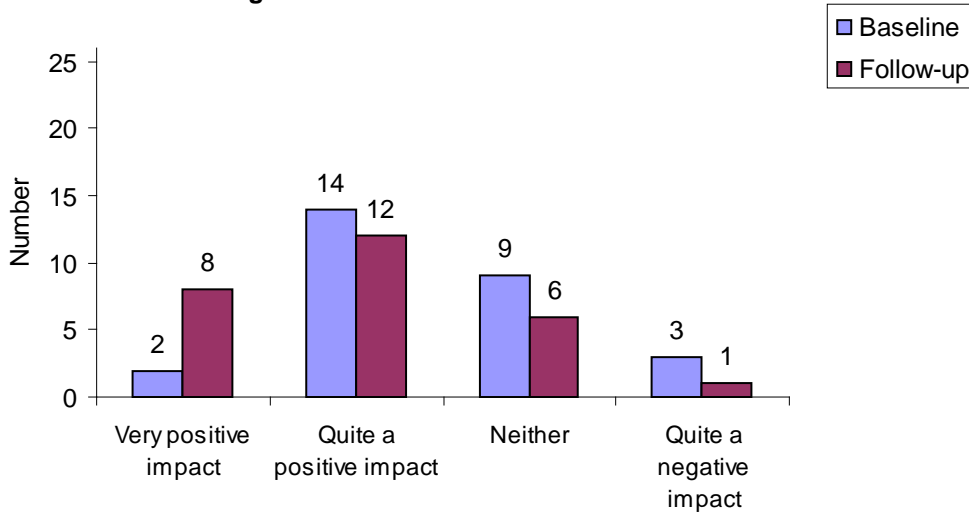
It can be seen in Figure 3.14 that LSOs were more likely to state that the Licensing Act had been responsible for at least quite a large impact at baseline in 2010 (n=19), but after a further two years had passed 24 LSOs reported this positive impact.

**Figure 3.14: LSO views of the impact of the Licensing Act**



A majority of Board respondents thought that the Act had made a positive impact at baseline (see Figure 3.15). However, at follow-up the views expressed were even more positive, with 20 Board interviewees reporting that the Act had been responsible for a positive impact, and only one respondent arguing that the Act had made things worse.

**Figure 3.15: Board respondent views of the impact of the Licensing Act**



Both LSO and Board respondents were asked to expand on their reasons for stating that the Licensing Act had produced a particular level of impact. As most respondents expressed positive views, many of the comments that were elicited addressed those issues that were perceived to be working particularly well, which have already been reported elsewhere in the report. The main issues that were cited as evidence of a positive impact for the Licensing Act included:

- LSOs: The establishment of the LSO role, and its subsequent function, were described as one of the most successful aspects of the Act.
- Increased powers for Boards: in particular, the fact that Boards had powers to refuse applications, suspend, review and revoke licences was thought to have had a positive impact. However, there was also a view expressed that not all Boards were consistent in their use of these powers, and not all were comfortable with the idea they were now policy-driven bodies with specific objectives to address.
- Training for licensed trade staff, Board members and LSOs: The mandatory training for LSOs, trade staff and Board members was well-received on the whole, and was thought to have improved practice.
- Relationships between the licensed trade and Boards/LSOs: There was broad agreement that these links had improved, and that the Act had been at least partly responsible for this.
- Irresponsible promotions in the on-trade: The consensus was that the Licensing Act had resulted in the end of these promotions in the vast majority of pubs and clubs.

‘From the compliance visits, where we have found issues, the licence holders have fixed them, are complying. We have had fewer complaints from the public because the licensees are doing what they should be doing. Before the Alcohol Act came in last year we went round the local Pub Watches, identified the changes and that was passed on. We also went round the off-sales to make sure they were aware, which was well received.’ (LSO 29)

‘The LSOs have been a fantastic innovation. I think the licensing objectives have made the Board look at things in a different perspective from the old 76 Act.’ (LB 20)

Although the majority of respondents expressed positive views, thought that the Act had made a real impact and was responsible for an overall improvement in practice, a number of negative impacts or concerns were also expressed. Again, many of these have been addressed in sections above. In summary these were:

- Public health objective, capacity and overprovision: The consensus was that these were all difficult to define and address.
- Licensing Forums: on the whole, these were perceived to be underperforming at follow-up.
- Impact of the Licensing and Alcohol Acts on the off-trade sector: although perceived successes were cited, including staff training, Challenge 25 and its impact on underage sales, reductions in advertising and displays in shops, the consensus was that there had been minimal impact on the pricing of alcohol in the larger off-sale sector.

- Success in addressing the licensing objectives: there was a view expressed that the impact of the Act on the objectives had not been particularly impressive.
- The Brightcrew case: At follow-up there was a lot of concern expressed in relation to the Brightcrew ruling and its implications, with the result that Boards had become more cautious.
- National and local data: it was clear in the evaluation that it was very difficult to gather data or to assess trends from existing datasets given problems related to definitions, data collection methods and other issues.

'... its focus should be on the safe selling of alcohol and there's no safe selling in supermarkets at the moment and...in a way there is no safe drinking in the house. But there's safe drinking in restaurants, there's safe drinking in hotels, there's safe drinking at bars, and clubs because they're monitored. And the staff are trained, so there's...right in there is your core, that's where the problem is.' (Member: Licensing Forum A)

'The Brightcrew case has driven a cart and horse through what I think the government intended to achieve with the Licensing Act. The Government needs to sort this out.' (LB 25)

'The trade have worked well with the changes, especially the on trade. But I think it's a bureaucratic nightmare.' (LB 8)

## 4. Discussion

The discussion section will focus on aspects of the Licensing Act that appear to have been:

- working particularly well, and reasons why
- not working as well, and reasons for this.

It is important to recognise, though, that on the whole the Licensing Act was viewed as having a positive impact. During the baseline and case study phases of the study views were expressed which suggested that the Act provoked a very mixed response at best. However, in the follow-up phase in 2012 and indeed the national seminar in 2013 it was evident that the Act and its perceived impacts were viewed favourably, and any criticism that was voiced tended to be somewhat muted.

### 4.1 What is working well and why

#### 4.1.1 LSOs: role and function

The LSO role was established in the Licensing (Scotland) Act 2005, and each local council has at least one LSO in post, although it is possible for local authorities to share an LSO post. LSOs provide information and guidance with regard to the Licensing Act, and supervise compliance and provide mediation for disputes. LSOs are able to advise licence holders on what actions are required to prevent or resolve complaints and are required to attend Forums. As a result they were introduced in order to improve practice within the licensing environment more generally, and to reduce possible breaches of the legislation at source.

The establishment of the LSO role and its function across Scotland were perceived to be one of the most successful parts of the Licensing Act. Licensing Board respondents, Forum members and indeed the LSOs themselves spoke very positively of the role, its perceived impact and also its improvement over time. It should be noted that the LSO role was viewed positively at baseline, and by follow-up many of the initial problems or issues encountered by LSOs appeared to have resolved. Therefore, at follow-up most LSOs were able to devote most of their time to alcohol licensing issues, links with the licensed trade had improved and many issues that were arising were being dealt with by LSOs and trade members, without the need for a review at Board level.

LSOs themselves reported four main factors that helped facilitate their work:

- Their own professional background and expertise. Many LSOs had come from a very relevant background, such as previous post in licensing or in the police.

- Good working relationships with the police. This is interesting in that a few interviews conducted in the early phase of the evaluation suggested that there was a perceived overlap between aspects of the LSO role and work carried out by police, and that this had resulted in conflict in a few areas. Although the baseline interviews with LSOs uncovered some evidence of this, by follow-up there did not appear to be any evidence of conflict.
- Links with the trade: at baseline, it was reported that a minority of licensed trade staff did not appreciate or respect the LSO role. By follow-up the positive working links with trade staff were viewed as being one of the greatest benefits to the LSO role.
- The quality of the working relationships with Licensing Boards: Board members appreciated the assistance given to them by LSOs. It was also thought that there needed to be a good understanding by the LSO of the Board's policy, but LSOs did not act, and could not be seen to act, on behalf of the Board. In general, it was argued that this balance was well struck.

The question should be asked why it is that LSOs have been reported as becoming an established part of the landscape, but other innovations of the Act, such as the establishment of Licensing Forums and the public health objective, have not achieved this within the first three years of the Act coming into force. It would appear that the perceived success is related to the need for such a role, the fact that LSOs could demonstrate usefulness to key organisations such as Boards and the trade through a series of 'quick wins', and LSOs crucially having sufficient clout to make an impact, with their views and decisions becoming increasingly respected by trade staff and Board members. Indeed, by follow-up it appeared as if the LSOs had become such an established part of the national and local licensing environment that they had carved out their own niche, and were respected and appreciated by all of the main key stakeholders.

Despite the consensus that LSOs function and role were one of the most successful parts of the Act, some concerns and also modifications to the post were proposed. This partly relates to cuts in public finance/expenditure, with a suggestion that LSOs were becoming over-stretched, with little chance of additional LSOs being employed to help them, and also their training budgets were being reduced. It was still the case that not all LSOs were able to devote as much time specifically to alcohol licensing as they would like, as they had been given a wider remit locally which encompassed other licensing issues. LSOs made it clear that they needed access to legal advice, and ideally their position within the council would allow this to happen, but that they should not necessarily be line managed by clerks. There was some evidence of a conflict of interest in such cases, with clerks not able to advise LSOs if a case was being reviewed at Board level.

This suggests that the LSOs posts are already working well across Scotland, and radical revision is not required. The proposal that extra LSO resource may be



required, and LSOs should continue to have access to adequate training budgets, has to be considered in light of the current financial pressures on the public sector. However, given the perceived success of the role it would be unfortunate if this were to become diluted over time due to financial pressures. There were relatively few calls for the LSO role to become a formally accredited role, similar to a Trading Standards or Environmental Health Officer.

One other factor that would be useful for the future, though, relates to the collection of local monitoring data. It would be useful for LSOs to have to collect information and enter it on a database in a standardised way, to provide data on key issues such as number of LSO visits, non-compliance with the Act (e.g. irresponsible drink promotions, breaches related to training, etc). This might also help provide further evidence of the worth of the LSO role, as well as that more LSO assistance may be required in a particular area. It would also appear to be the case that many LSOs are already collecting this information for their own benefit as they are carrying out their duties, and all that would be required would be to enter data in a consistent way and in an agreed format. Again, though, this suggestion emphasises the fact that both the LSO role and function appear to have been particularly effective.

#### 4.1.2 More powers for Licensing Boards

Boards are required to prepare and publish a licensing policy statement every three years, keeping it under review and making revisions where appropriate. Policy statements should promote the five licensing objectives, and provide 'guidance and clarity' on the bases on which the Boards make their decisions. These policy statements also have to include an assessment of overprovision in the Board area.

In order to give more influence to Boards and their decision-making processes, though, they were also given an increased scope to deal with licensed premises. Board members in particular thought that the elements of the Act had been of great help to them. The fact that Boards now had the ability to review, revoke or suspend licences with immediate effect was particularly well-received by the Boards. It was thought to be a useful deterrent, and an ultimate sanction if an outlet selling alcohol was guilty of poor practice. This, coupled with the fact that lower level breaches or poor retail practice were being dealt with by LSOs, resulted in a perceived improvement in the overall running of premises selling alcohol. Although this more powerful function was appreciated by Boards, they also voiced concerns that Sheriffs on occasion had reversed their decisions. This suggests that Boards may need to provide greater evidence to verify their decisions in terms of the law.

Not all of the changes which had impacted on Boards, brought about by the implementation on the Act, appeared to be viewed so positively. On the one hand, a minority view was expressed that the Act had helped transform Boards

from relatively passive organisations that merely processed applications into modern, dynamic organisations with their own policies, underpinned by policy statements which outlined the Board's approaches to dealing with the licensing objectives, as well as issues such as overprovision. This view, surely reflecting what might have been one of the aspirations of the Act, was not shared by the majority of Board interviewees at follow-up. These respondents tended to state that the public health objective, and issues such as capacity and overprovision were difficult to assess, and the Boards had not made a great deal of progress in addressing them. It should also be noted that LSOs and Forum members argued that a minority of Boards were still stuck historically in the Licensing (Scotland) Act 1976, and were not particularly interested in changing their processes.

The factors that helped explain why the additional powers to Boards were one of the Licensing Act's main perceived successes included:

- The role of LSOs and working links with the police – both were viewed as assisting Boards and thus enabling them to exercise their powers.
- Boards not only had more powers in terms of dealing with premises that were breaching regulations, reviewing licences, applying conditions or variations, but also crucially their decisions had immediate effect, thus allowing Boards to have more impact.
- Other factors which were cited as having assisted Boards were the ending of the multiple licence types, the advent of the personal and premises licence across establishments, and the much more detailed operating and layout plans which had resulted in a much more informative, meaningful licence for Boards to scrutinise. In addition, the ability to assess a more detailed application and plan once, without the need to review it every 3 years, was viewed positively.

As has been pointed out above, it is evident that not all parts of the Act which impacted on Boards had been received as favourably as their increased powers. This raises the question as to what is behind this mixed response to different provisions of the Act. The perceived barriers to the work of Boards, as reported by Board members, would seem to answer this question. The main problems faced by Boards reported at follow-up were a perceived lack of national support and guidance, and problems interpreting the legislation. Most of the more specific criticisms that were aimed at the lack of guidance and the legislation related to the public health objective, and issues such as capacity and overprovision. Whilst the increased powers were easy to understand, and most organisations would welcome the provision of any additional powers, other parts of the Act were much more ambiguous and challenging to address. It is possible that a further review, when all Boards have had more time to develop their thinking with regard to more challenging parts of the legislation, will show progress further down the line.

Participants at the national seminar agreed with some of these findings, but also expressed a more sceptical view. They tended to argue that Boards were

inconsistent in their use of the new powers, or failed to use them appropriately, for example, more use could be made of the provisions to reduce hours or impose additional conditions. Participants emphasised that Boards were apprehensive about the power of large supermarkets and their readiness to challenge Board decisions, especially given that Sheriffs could overturn them, with possible legal and compensation costs to be met. The possible implications of the Brightcrew case prompted further caution. They concluded, though, that Boards needed both a better understanding of the new Licensing regime and greater confidence in exercising their powers, but this would take more time.

#### 4.1.3 Training for LSOs, Board members and trade staff

The Act requires LSOs, licensing board members, personal licence holders and staff to complete training. The content, and to a lesser extent the format, of training for LSOs, Board members and personal licence holders is detailed in national standards or training specifications passed by the Scottish Government Minister in accordance with Section 91 of the Licensing (Scotland) Act 2005. In addition there are requirements for the qualifications of persons delivering the training. These candidates must sit an exam. These three qualifications are regulated by the Scottish Qualifications Authority Accreditation.

LSOs have up to 18 months to complete the training and qualification from being appointed. It is therefore possible to have some persons fulfilling the LSO role who have yet to complete formal training. Board members have three months from being elected to the Board to complete the training and they cannot participate in a Board meeting until they have passed the exam. As a result the take-up rate of Board member training is 100%. Similarly, anyone applying for a personal licence must include evidence that they have completed the training and passed the exam. Therefore, all personal licence holders will have undertaken the mandatory training.

The content of licensed trade staff training is detailed in a Regulation to the Act. It must take a minimum of two hours and be completed before the person serves or sells alcohol. Training does not require to be assessed and can be delivered by a personal licence holder or trained trainer. Records of staff training must be available on the premises where they work.

It is difficult to ascertain what percentage of licensed trade staff has actually completed training. For example, a few LSOs expressed doubts about the knowledge demonstrated by a minority of licensed trade staff. It should also be noted that there is no requirement for persons serving or selling alcohol under an occasional licence to complete training.

The training of LSOs, Board members and trade staff was viewed positively on the whole by LSOs and Board members at follow-up. The consensus was that the training had increased knowledge and standards of professional practice

among Board members, LSOs and the Trade. This overall increase in standards as a result of the training was not viewed as a panacea for all problems related to licensing, and indeed examples of members of trade staff being inadequately trained were given, but it was perceived to be a step in the right direction. The case study phase was not quite as positive, with Forum and Board members saying that some individuals were playing lip service to the training requirement, staff were not all being trained and those in heritage shops should not have to undergo the same training requirement. Additional concerns were also raised about licence holders not being able to speak English, and being allowed to sit exams with the aid of interpreters. Even in this phase, though, training was viewed as being beneficial on the whole.

The factors that were said to assist this training function, and indeed its perceived positive impact, included:

- The investment in training: for example, it was emphasised that the licensed trade had made a considerable investment into the training of its members, and this had worked very well although some smaller retailers perhaps found it more difficult to meet the requirement.
- The fact that training was mandatory for LSOs, Board and trade staff.
- There could be repercussions for licence holders of premises in which staff were not adequately trained.
- Training had to be on-going, and not viewed as a one-off course with no further learning required. Up until the very end of the evaluation this did appear to be the case in most areas.

In terms of future challenges and possible changes, at follow-up most concerns were expressed in relation to LSO training. In particular, it was argued that LSO training and conference budgets had to be maintained, LSOs potentially needed a rolling training programme (with possible additional formal accreditation) and training updates were needed after major legislative changes had come in. This latter point was also stressed by Board respondents – they called for more national guidance to be given when changes to the legislation were coming into force. Boards also asked for more specific training related to the public health objective, as well as on how to gather evidence for policy statements, and on conducting reviews. Participants at the national seminar agreed with many of the points raised above, but also argued that Board training had to be more functional, and thus had to address the running of Board meetings, how members could exercise their powers and case law and its implications. This might suggest that more priority is given to this at local authority level as ultimately councils have the responsibility to ensure that Board members receive this training and support. Another view expressed was that training courses for the trade, LSOs and Board members could vary in their quality and usefulness, and further scrutiny and monitoring of these courses was needed in the future.

#### 4.1.4 Links with Licensed Trade and Trade Practice

The Licensing Act impacted on the licensed trade in a number of ways. Examples of the direct effects the Act had on the trade include the mandatory training for personal licence holders and staff, national mandatory conditions for all premises, a ban on irresponsible promotions and the requirement for a named premises manager for each outlet. As has been noted above, LSOs and Boards also have an influence on trade practice. As is the case with the previous examples, the role of LSOs in offering advice and guidance to the trade, as well as supervising compliance and providing mediation, clearly was aimed at improving trade practice as well as assisting with the regulation of the overall licensing environment.

The evaluation demonstrated that links between LSOs and Boards and the Licensed Trade were generally good at baseline, although concerns were expressed from both perspectives. LSOs and Board members gave examples of poor trade practice, and it was also claimed in the underage sales sub-study that a minority of trade staff were always willing to flout the law. On the other hand, trade representatives reported that LSOs had occasionally given advice or guidance that was factually wrong, and had over-stepped the mark in reporting outlets to Boards.

As time progressed, there was evidence that the relationships between these key players had improved, and that the links between the LSOs and trade members in particular were now one of the main positive outcomes of the Licensing Act. The reasons given for this were:

- LSOs offering advice, resolving issues of non-compliance, addressing irresponsible promotions and only reporting more serious breaches to Boards for review led to increased trust and value of their role among trade members.
- There had been a willingness to engage at an early stage, before formal action might have been necessary.
- LSOs also reported that they had developed good links with the trade, and many trade members were proactive in seeking advice from LSOs. It was also said that this might not be solely attributable to the Act, and that the trade had worked hard to improve practice in recent years.
- Boards reported reduced levels of contact with the trade at follow-up, and spoke positively of LSOs successfully resolving a number of issues which might previously have ended up before the Board.

There was one aspect to the relationship between LSOs and Boards and the Trade which was not viewed as working so well. It was thought that the Licensing and Alcohol Acts had barely impacted on the retail practice of the larger off-sale sector, particularly in relation to pricing. It was added that LSOs and Boards were relatively powerless to intervene in such cases. Despite this, the links with the larger off-sale sector were not described as being particularly poor, though, it

was more the case that Board members and LSOs expressed disappointment that the Acts had not had the effect on the pricing of alcohol in supermarkets that they had hoped for.

There would appear to be few reasons to modify what are perceived as being positive working relationships between LSOs and the trade in particular at present. The maintenance of this working environment would seem to be the most sensible way forward, which may not be as straightforward as it would appear. Arguably, with the financial pressure on the public sector, LSOs may not be able to be as visible a presence on the ground, with a likely effect on their guidance and compliance roles. It is possible that training budgets will also be affected in such a climate. In addition, the context of these working relationships is always changing, and it is difficult to assess what the impact of proposed policies such as minimum unit pricing will be in the future.

Certainly, the evaluation suggests that the emphasis should be on the maintenance and further fostering of a positive working relationship between LSOs and trade staff, as this also has positive outcomes for the work of Boards, as well as both of these groups. It was also suggested that one way of maintaining and indeed extending these positive links would be to learn from those areas which had been most successful, disseminate examples of good practice and give praise and positive publicity to licence holders and their outlets which demonstrate good practice.

#### 4.1.5 Irresponsible promotions

Irresponsible promotions were prohibited by the Licensing Act, as defined at Schedule 3 and 4 of the Act. However, it was more successful at addressing these promotions in the on-sale sector, and very little impact was noted in relation to the off trade. In order to address this, further restrictions were introduced by the Alcohol etc. (Scotland) Act 2010. For example, new conditions on minimum pricing of multi-packs and drinks promotions in the off-sale sector were introduced. It should be noted, though, that the Alcohol Act only came into force in October 2011, and as the follow-up phase in the evaluation commenced in April 2012 it arguably did not have a great deal of time to make an impact.

The off trade has been responsible for the majority of alcohol sales in Scotland since the early 1990s. Since 1994 the trend towards increased sales from the off trade compared with the on-sale sector has increased<sup>51</sup>. Hence, it is not surprising that concerns were expressed that both Acts had little perceived impact on the off trade in relation to irresponsible promotions. Respondents also argued that this increased power of the off trade sector, plus the economic downturn, had impacted unfavourably and disproportionately on pubs and clubs. Concern was voiced that much of the alcohol being sold was now consumed at

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<sup>51</sup> Robinson, M., Beeston, C., Mackison, D.(2012). Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) – An update of alcohol sales and price band analyses. Edinburgh: NHS Health Scotland, 2012. Available from: [www.healthscotland.com/documents/6019.aspx](http://www.healthscotland.com/documents/6019.aspx)

home, an unregulated and potentially unsafe drinking environment. This is the context in which the perceived failure of both Acts to influence practice, particularly the retail price of alcohol in the off sale sector (predominantly in larger outlets such as supermarkets), needs to be considered.

At follow-up the consensus was that the Licensing Act had impacted favourably on the on-sale sector, and few irresponsible promotions were reported as still taking place in pubs and clubs. Examples of irresponsible promotions which had been dealt with by LSOs, and on occasion by Boards, were given, but the view was that despite occasional breaches these had been ironed out with relative ease. However, both the Licensing Act and the Alcohol Act were described as having very little impact on the off-trade sector, particularly the larger off sales outlets. An initial impact was noted in a few areas, but the perception was that supermarkets had modified their 'three for two' offers by reducing their unit price for a single bottle, and multipacks were still being sold in large volume. However, during the national seminar it was stressed that the off-trade were complying with the legislation, as they were removing the incentive for an individual to buy more alcohol than intended. Other views expressed at the national seminar were that training and other measures had improved practice in off-sales outlets, but it was fairly easy for retailers to find ways to reduce prices which did not fall foul of the law and these were being widely exploited.

The Licensing Act in particular was viewed as being successful in addressing irresponsible promotions in the on trade. The role of LSOs, Boards and trade staff were thought to have contributed to this relative success observed in the on trade. Issues raised at baseline such as the 72 hour reduction in prices, deemed as counteracting the ban on 'happy hour' type promotions, were not viewed as negatively at follow-up. However, the consensus was that the off trade, and particularly larger retailers such as supermarkets, had not been affected greatly by the Licensing or Alcohol Acts in terms of their pricing of alcohol, even if promotions such as 'three for two' offers had been curtailed, and they were still thought to be the source of most of the cheap alcohol being purchased in Scotland. As a consequence, the introduction of minimum unit pricing was the most common proposal put forward to address this problem. Other suggestions were not as concrete, for example, initiatives aimed at changing the attitude of the public towards alcohol and the Scottish drinking culture as a whole.

#### 4.1.6 Reduction of direct sales of alcohol to underage young people

A test purchase pilot scheme, in which underage young people attempted to buy alcohol in the presence of plain-clothed police officers, took place in Fife in 2006-2007. As a result of a successful evaluation of this pilot, the go-ahead was given for the potential use of alcohol test purchasing to be rolled out across Scotland in order to help enforce underage sales regulations<sup>52</sup>. As a result of this, it was adopted for use in a number of police force areas in Scotland in late 2007. Part 8

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<sup>52</sup> <http://www.scotland.gov.uk/News/Releases/2007/02/22090341>

of the Licensing Act sets out a number of offences, including offences relating to children and young people. Section 102 outlines the 'Sale of alcohol to a child or young person' offence.

The evaluation team also conducted a sub-study examining test purchasing and other mechanisms aimed at enforcing alcohol sales regulations in 2011. This study demonstrated that test purchasing in particular is regarded as a very useful way to gauge and potentially improve licensed trade staff practice. A majority of licence holders also reported that test purchasing was their preferred enforcement tool, as long as it was used in tandem with a robust proof of age documentation scheme. All of the approaches, though, from test purchasing to alcohol diversion schemes, were reported to have resulted in a reduction in direct sales of alcohol to underage young people. This point was disputed in the national seminar, as it was said that there was no evidence that rates of test purchase failures were decreasing.

The longer-term aim of reducing alcohol consumption in this age group was deemed to be more problematical. Interviewees in this study did not necessarily see a link between direct sales of alcohol to young people, and alcohol consumption in this age group. The consensus was that the drinking culture in Scotland as a whole would have to be addressed before there would be evidence of a fall in alcohol consumption levels among young people. Test purchasing and other enforcement measures were not regarded as sufficient in themselves in reducing alcohol consumption by young people where broader cultural factors were seen to be more powerful, and specific issues such as agent purchase and drinking at home had still to be addressed.

## **4.2 What is working less well and why**

### **4.2.1 Role and function of Local Licensing Forums**

Local Licensing Forums were established in the Licensing Act, and each local authority has at least one Forum. The role of the forums is to keep under review the operation of the Act by the Licensing Board in their area. Forum members include representatives from the licensed trade, the police, community councils, public health and LSOs. Other bodies represented can include addiction services, environmental health, the legal profession, and business bodies, including representatives of the 'night time economy'.

At baseline a number of concerns were expressed about Forums, but it was also argued that they needed time to bed in, and the follow-up phase would give a truer reflection of their worth. At follow-up the views of LSOs and Boards were quite polarised, with Forums having their supporters and detractors, but there did appear to be a hardening of attitudes towards Forums, with a number of interviewees describing them as having stalled or failed completely. When the establishment of Forums is compared with another of the Act's provisions, the



implementation of the LSO role, even allowing for the major differences between these provisions of the Act it is evident that the Forums have not been anywhere near as successful in the licensing environment as the implementation of the LSO role.

Respondents gave a variety of reasons for the perceived lack of success of Forums:

- It was difficult for Forums to develop a coherent and consistent voice given the very diverse groups that are represented on the body, such as public health, the trade, public and police.
- Similarly, there was a potential that conflict might arise between these different constituent parts.
- Forums did not have a clear remit, and also crucially lacked powers, with the result that they were not taken seriously. Examples of Forums making proposals or recommendations to Boards, with the Board ignoring these representations, were reported. Forum members themselves claimed that Boards did not view the Forum as a meaningful organisation.
- A number of Forums struggled to maintain their membership, and also that some had become over-reliant on LSOs to drive their agendas forward.
- Forums had found it difficult to get meaningful input from the general public and young people in particular.
- Forums were said to lack administrative and financial support.

As a result, it is perhaps not unexpected that several Forums were said to have stalled. On the other hand, though, a minority of Forums were described as working well. These Forums were said to benefit from early establishment and good partnership working between the different key stakeholders on the Forum and in the wider community. These Forums were also seen to have positive working relationships with Boards (and importantly the Clerks of these Boards), with Forums given key tasks and the Boards taken their views into account.

If Forums are to continue, and areas that reported having successful Forums perceived that they had a useful contribution to make, and participants attending the national seminar were reluctant to suggest they should be disbanded, it is clear that they could be much more effective than they currently are.

In order to help Forums make a useful contribution, it would seem advisable that further guidance is given as to the role and function of Forums, almost certainly from a national level. It would seem self-evident that a body that represents interests as diverse as the licensed trade, public health, police and the public will not always be able to speak with a unified voice on particular issues related to alcohol and alcohol licensing, but positive examples of Forums' work could be utilised to emphasise the potentially meaningful impact Forums can make. Improved relationships and better partnership working, particularly with Boards,

may also be essential for the function of Forums, but it is likely that if they are to flourish it is also probable that they require additional powers. At present the perception is that if Forums present Boards with an opinion or guidance on an issue, Boards will often ignore the advice and will not give an explanation as to why they disagree with the Forum view. Finally, one view was that Forums and Boards should resolve these issues locally, whereas others argued that the formation of a national licensing forum would assist Forums across Scotland.

#### 4.2.2 The public health objective

Five objectives underpin the Licensing Act, and all licensing decisions must be made with reference to these objectives. All are of equal importance. One of these objectives, referred to below as the public health objective, is 'protecting and improving public health'. As such, Boards are able to refuse licence applications or revoke licences if they believe there is a breach of the public health objective.

One of the most consistent findings throughout the three years of the evaluation was that the public health objective was viewed as being especially problematical, and with only one main exception it was the objective that Boards, Forums and LSOs in areas across Scotland were struggling to address. However, it is worth adding that a minority view of Forums, LSOs and indeed a few Board informants was that a few Boards had yet to embrace all of the five objectives, were still 'stuck historically' in the Licensing (Scotland) Act 1976 and tended to think in terms of the law being broken rather than objectives being breached. The fact that clerks had to delineate the objectives to Board members in a few areas during the case study phase also supports this minority view. It might be argued that in such a context the objective which is deemed to be most difficult to define and demanding to address would inevitably come in for forceful criticism.

When respondents were asked why the public health objective was particularly problematical, they gave a number of reasons:

- There was no adequate working definition of the public health objective, and the guidance given on how to address it was inadequate.
- It was also a population-focused objective, and difficult to relate to an individual outlet or licensing decision. Although legislation requires Boards to pay heed to the objectives and their policy statement when making individual decisions, and thus population measures are supposedly applied to individual cases, Board members still struggled with this concept.
- Boards, LSO and Forums did not know how to measure the objective, which data sources may be most relevant, and as a result how to gauge success if they adopted particular approaches to address it.

- Links with the health sector were still not particularly fruitful, and it was not necessarily the case that those working in public health understood alcohol licensing, and those involved in alcohol licensing understood the wider public health agenda.
- Sheriffs have overturned decisions if Boards cited this objective.
- Both Acts had not impacted greatly on the retail price of alcohol in supermarkets – this was thought to mitigate against the success of this objective. A few respondents also stated that the aims of the licensed trade, which were to increase sales of alcohol, were fundamentally at odds with the public health objective.

In order to address these perceived shortcomings the most important modification was for more guidance to be given to Boards on how to address the objective in their policy statements and more generally, the objective to be more clearly defined and advice given as to which datasets to use or indeed develop in the future. It is clear that this would require further input at a national level, although consideration of what local data sources may be most useful also has to be taken into account. Theoretically, the longer-term impact of Forums and the Alcohol Act may allow the public health agenda to become more of a feature of alcohol licensing, but it is clear that in the shorter term something needs to be done to improve the links between Boards and the health sector. As for the perceived power of the off trade, and supermarkets in particular, it was argued that it would take a policy such as minimum unit pricing to have any impact on their retail practice.

Participants attending the national seminar agreed with many of the issues outlined above, although some said it was not more guidance, but better and clearer guidance, that was needed. More specific training for Board and Forum members was also called for. It was stressed that Boards also needed to heed the guidance, which was not always the case, and apply it within the context of strong, clear local policies. Participants added that problems could still arise though; guidance did not supersede the law, and Sheriffs generally based their judgements on their view of the law, not on any official guidance.

#### 4.2.3 Capacity and overprovision

As part of their policy statements, Boards have a duty to assess the extent to which there is overprovision of licensed premises in their areas. In undertaking their assessments, Boards can take into account the number of licensed premises, their capacity and the type of establishment. Capacity is defined in the Licensing Act (Section 147) for premises which sell alcohol for consumption on site (defined as the maximum number of customers which can be accommodated in the premises at any one time), and for premises which sell alcohol for consumption off-site (defined as the amount of space in the premises which is used for the display of alcohol for sale).

In many ways the perceived problems caused by assessments of capacity and overprovision reflected the same concerns expressed in relation to the public health objective. In terms of capacity, Boards in particular seemed to struggle with its definition and measurement. This was perhaps best exemplified when the evaluation team attempted to collect a dataset from a Board in every local authority area of Scotland in 2010, including figures relating to capacity. In terms of the on sale sector, 12 areas were unable to provide these data. The situation was even worse when it came to capacity in the off sale sector – 15 areas were unable to supply figures. Given that seven areas that did provide capacity figures also indicated that these were estimates only, it is evident that Boards did not find this a straightforward request. At follow-up it was still the case that Board and LSO respondents reported that there was no clear definition of capacity or how to gauge it, and that not all Boards had addressed capacity or indeed assessed it properly as part of their policy statements.

It is possible that overprovision may have been viewed as being similarly problematical, if it were not for a number of contextual issues which were perceived as impacting on the number of licensed premises. These were:

- Overprovision was viewed primarily as a problem affecting urban areas, and many respondents in rural areas said that it was not an issue for them.
- The economic downturn had resulted in the closure of licensed premises, which could have had an impact on overprovision.
- Even in areas of perceived overprovision, it was stated that Boards were loath to refuse applications for establishments such as hotels or restaurants for economic reasons. It should be noted, though, that the Act pays no credence to any economic argument in terms of Boards' consideration of licence applications.
- It was said that the Licensing Act itself had resulted in a number of heritage sites, bed and breakfast establishments, or multiple licence holders and/or those holding licences for 'gap sites', not renewing their licences.

It is perhaps to be expected, considering all of these views, that overprovision was even thought to be an issue of relevance in only five Board areas at follow-up. The majority of LSOs also reported that both the Licensing and Alcohol Acts had made little impact on the issue of overprovision. Perhaps if there had not been a perceived drop in numbers of licensed premises for whatever reason, overprovision and how to define and monitor it might have been more of a concern in the evaluation. As it was, even in the areas where it was reported as being an active issue, it did not seem to be viewed as being especially burdensome. The current economic climate and a fear of legal challenges have been cited by respondents as having an influence on Board decisions in relation to overprovision.

In the future, it would be helpful if Boards were given more guidance on how to measure capacity, and indeed on how to assess overprovision. It is clear that capacity data in particular were not being assessed or collected in a standardised way, and it would seem advisable and appropriate for Boards to do this across Scotland. As well as this national guidance for Boards regarding capacity, it would appear to be worthwhile to reinforce for Boards their duty to carry out overprovision assessments, as indeed is required by the legislation, even if they had concluded that it was not an issue in their area. It is possible that in healthier economic circumstances the number of applications for new licences will increase, and overprovision may become a more active issue for more areas than cities and larger towns. If Boards had developed a statement on what would constitute overprovision it should help if licence numbers were to increase in the future. Finally, more clarity is needed in cases where the Board has decreed that overprovision exists, yet applications are approved by Boards, or indeed Boards' decisions are overturned by Sheriffs. It is possible, for example, that in these cases Boards need to provide better evidence that overprovision exists.

#### 4.2.4 Off trade sector

Section 4.1.4 outlines the main ways in which the Licensing Act has impacted on the licensed trade. However, as was pointed out in Section 4.1.5, the Licensing Act and Alcohol Act (which importantly had only been in force for six months before the follow-up survey phase of the evaluation), were not thought to have had such an influence on the off-trade sector as they had on the on trade.

One of the main perceived negative outcomes of the Licensing Act, and indeed Alcohol Act, was that there appeared to be little discernible impact on the practice of the off-sale, particularly the larger off-sale, sector. This was thought to be especially true in relation to irresponsible promotions. These price promotions were thought to have been addressed successfully in the on trade, but both Acts' aims of curtailing these promotions in the off trade were described as being unsuccessful<sup>53</sup>. The consensus was that the off trade had complied with the legislation, but had different interpretations as to what constituted the spirit of the law. For example, cheap multipack deals of beer were still reported as being commonplace and dominating displays in supermarkets. As a consequence, it was thought that unregulated drinking at home was as much as a problem as it had ever been. On-trade representatives in the case study phase reported that this increased power of the off-trade sector was having a deleterious effect on pubs and clubs.

The views expressed in the national seminar were more varied. The Licensing and Alcohol Acts were viewed as having a significant impact on the off trade, in

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<sup>53</sup> Statistical analysis of quantitative data has subsequently shown that the introduction of the Alcohol Act in Scotland was associated with a 2.6% decrease in off-trade alcohol sales, largely driven by a statistically significant 4% decline in off-trade wine sales.

relation to staff training, sales to under-age people, advertising and displays. Challenge 25 had been widely supported and implemented. Retailers had invested large amounts in complying with the Acts, and practice generally had improved. However, it was agreed that the impact on irresponsible promotions was minimal, with the larger retail chains setting the pricing agenda, with smaller traders feeling compelled to emulate this practice.

The consensus throughout the evaluation, though, was that the larger off-trade sector had been largely unaffected by recent legislation, was too powerful, was able to absorb the costs of irresponsible promotions and to overturn decisions reached by Boards due to its financial clout allowing it access to the best legal resources. As such it was said to be at least indirectly responsible for the majority of people now consuming alcohol at home, and not in a regulated environment. Scotland's drinking culture was viewed as being problematical, and if it were to be addressed action had to be taken that would impact on the larger off-sale sector.

As a result of this, various suggestions were made as to how to alter this perceived imbalance of power between the (predominantly larger) off-trade sector and other key interests, including the on-trade and the wider public health agenda. These included the off-trade sector behaving more responsibly in terms of its pricing structure for alcohol, and support for the introduction of an appropriate minimum unit price for alcohol.

#### 4.2.5 Brightcrew and case law

During the case study phase, the test purchasing evaluation and the follow-up interviews there were a number of comments, particularly from Board members, that Sheriffs were overturning their decisions and as a result Boards were becoming more wary of taking action against perceived breaches of the legislation. Examples of Board decisions when they had suspended or refused licences being overturned were given, for example, in cases of refusing licence applications in areas of perceived overprovision.

At follow-up, it was clear that the major concern expressed by Board members and LSOs related to the Brightcrew ruling. This verdict, in essence that Boards should only base their own decisions related to licensed premises directly on the sale of alcohol itself, was viewed as being problematical. This was because issues pertaining to licensing objectives, such as noise, public safety and even certain disturbances in or near licensed premises were arguably not always associated directly with the sale of alcohol. However, the concern appeared to be greatest in relation to the public health objective in particular, as possible breaches in this area might be seen as wider issues aimed at the greater public good, and thus more difficult to relate to the direct sale of alcohol. As a result, Boards making a decision based on a perceived breach of this objective may well have this overturned on the basis of a Brightcrew defence, as it would be difficult to link the possible violation with the sale of alcohol per se.

A minority view, though, expressed at the national seminar was that the Brightcrew case had actually clarified the law. Other participants argued that the Brightcrew judgement was often misquoted and its implications exaggerated or misunderstood. Nevertheless, it was added that it had made Boards very cautious in their decisions, given the potential costs of contesting challenges in the courts, and it was referred to frequently by legal agents and Sheriffs. Although the Licensing Act refers to the sale and supply of alcohol and related activities, it was argued that Boards often take the Brightcrew case as preventing them from taking into consideration any "related activities". This might mean that they do not seek to refuse or revoke a licence in certain cases as they believe – rightly or wrongly – that the law would not allow them to do so.

The majority view was that more guidance was needed to be given to Boards by the Scottish Government which addressed the implications of case law, and the Brightcrew ruling in particular. What is clear given the responses of Board members is that the status quo would not be advisable – great concern was expressed over the implications of the Brightcrew verdict, it was clearly affecting the practice of Boards and those who held the most pessimistic views argued that the ruling undermined everything the Licensing Act had set out to achieve.

It should be noted, though, that the implications of individual cases require to be determined by Sheriffs, and it is not within the remit of the Scottish Government to offer guidance on such cases. However, the Scottish Government has consulted on a variety of proposals for possible legislative changes to address the uncertainties highlighted by the Brightcrew ruling.

Those attending the national seminar were again less pessimistic. They called for the reintroduction of the concept of "a fit and proper person" as a condition for eligibility to hold a licence. They admitted that this would affect only a small minority of licensing decisions, but these would be very significant both in themselves and in terms of their wider impact. It was also argued that, with time and additional case law, it would emerge that the law and the implications of Brightcrew were not quite as restrictive as feared.

#### 4.2.6 National and local data

A number of the aims and objectives of the study, and the underage sales sub-study, necessitated the collection, collation and analysis of national and local alcohol-related data, or the review of existing datasets. Unfortunately, the evaluation demonstrated that in the main the data were not being collected consistently or in a manner which allowed meaningful comparison. In addition, the evaluation team's efforts to collect data from Boards on issues such as capacity were not very successful as the responses indicated that the definition of capacity, and how to measure it, was viewed as being inadequate.

The context is also important when considering the datasets. Even data which would appear to be more straightforward to collect and compare, such as the number of licences in force across Scotland, is difficult to interpret. The Scottish Government statisticians concluded that it is impossible to make meaningful comparisons between the most recent dataset, covering the period up to the end of March 2011, and the number of licences before September 2009, when the Act came in to force. It is important to note, though, that the Government statisticians have concluded that meaningful comparison will be possible again in relation to the national dataset after a few more sweeps of data have been collected. This will also necessitate that Boards collect and collate the data in a consistent manner.

The evaluation team also attempted to collect local data from LSOs in the case study phase. This attempt to collect what might appear to be quite basic local data, such as number and purpose of LSO visits, numbers of non-compliance (e.g. training breaches, irresponsible promotions), was unsuccessful. The reasons for this lack of success mirrored the problems identified in collecting the national dataset, with LSOs not collecting or entering the data consistently (many were recording this in paper form only), IT systems were not necessarily in place and there was also a possible concern that LSO league tables might result, which would be unfair in that LSOs worked in different ways and covered very different areas across Scotland.

What this suggests, though, is that there should be an agreed national and local dataset which needs to be collected consistently by Boards and LSOs across Scotland. Of course, there is a national dataset being collected, which hopefully will allow meaningful comparison to take place over time if certain issues are resolved. However, it is still possible that additional data can be collected in the future to improve the national dataset. At present, though, LSOs do not appear to be entering local data. This may mean that resources are required to allow compatible IT systems to be set up and allow data entry to occur. It would seem worthwhile and advisable for this to be established – at present it would appear that this information is being gathered locally, but data are not necessarily being extracted and entered appropriately, and when they are there are doubts as to how consistently this is being done in different areas.

### **4.3 Limitations of the study design and methods**

It is important to note that there were several limitations in the study design or the conduct of the study. The main limitations were:

- Given that the five licensing objectives may be thought of as longer-term objectives, it was arguably beyond the scope of the evaluation to evaluate their overall success at this stage.
- The Alcohol Act was implemented in October 2011, and it should be noted that any reflections on the impact of the Alcohol Act during the follow-up



- phase (conducted in spring 2012) are based on a limited period of implementation.
- It is important to point out that the findings are based on the perceptions of the interviewees who took part in the study. Different interpretations in relation to key issues were expressed, as might be expected, and these are often reported as these views clearly influenced working practices.
  - Respondents representing licensing boards in the telephone interviews were predominantly clerks, so their views may not be representative of Boards as a whole. However, views of other Board members were elicited via the case study phase.
  - National and local data were not being collected and/or collated in a consistent manner. As a result it is very difficult to draw inferences or report trends in these data.
  - Due to a number of reasons, including new individuals coming into post, illness and pressure of work, it was not always possible to interview the same LSO and Board member at follow-up who had given the baseline interview. Also, for similar reasons it was not always to get a response from an LSO and Board representative in every local authority area, as hoped, although the vast majority of areas were covered.
  - Given the complexity of the evaluation, and the number and range of aims and objectives, it was very challenging to ascertain views in relation to every issue.
  - Given the budget, it was not possible to obtain the views of other key stakeholders, including the licensed trade, public health and the police, during the baseline and follow-up phases. However, these other organisations and groups contributed during the case study phase and the national seminar.
  - The case study phase:
    - Although part of the case study area selection was based on differential perceived impact of the Act as elicited during the baseline phase, the views of the impact of the Act among Board and Forum members did not always equate with the views of the respondents who had taken part in the earlier interview.
    - As the focus group discussions often took place at the end of an official Board or Forum meeting, several of which overran, time was relatively limited and the facilitators were not always able to address all question areas.
    - In addition, as the Forums in particular tended to be very large groups – 17 members attended in one area – it was difficult to obtain the views of all interested parties in relation to every issue.
    - It is possible that Forum members would have been more likely to give negative views or voice concerns in individual interviews, as was arguably the case in the one area in which members agreed that they would give their views on an individual basis. Of course, this may also reflect the fact that this Forum was experiencing particular difficulties.

- The evaluation did not set out to evaluate administrative aspects of the Licensing Act. As might be expected, though, respondents often covered these issues as they thought them most relevant to a particular question or issue.
- The Licensing Act was and is not operating in a vacuum, and the context in which it was operating made it very difficult for respondents to gauge its success, or state that a specific perceived impact was solely attributable to the Act. For example, other legislative and contextual factors that were cited as influencing the broader alcohol licensing agenda included the Alcohol Act, the Alcohol Minimum Pricing Act and the economic recession.
- The research team were unsuccessful in their attempts to invite a small number of organisational representatives to the national seminar.

## 5. Conclusions and key learning

There was evidence of a more positive reception for the Licensing Act as the evaluation progressed. In particular, the views of Board members and LSOs at follow-up suggested that the Act had made a positive impact on the whole, with a minority of respondents reporting that its impact had been negligible or negative. Those attending the national seminar in February 2013 shared this positive view, and described the Act as being a force for good overall, with a number of positively perceived impacts, although they acknowledged that a few significant problems remained.

It was evident throughout the evaluation that the perceived positive elements of the Act tended to outweigh the negative aspects. The main perceived positive elements or impacts of the Act included:

- The role and function of the LSOs: the LSO role was viewed as being one of the most positive impacts of the Act. LSOs were reported as providing excellent support and assistance to Boards, had developed good working links with the trade and were dealing with issues of non-compliance at source.
- Increased power for Licensing Boards: the fact that Boards had greater powers in terms of refusing, suspending, revoking or applying conditions to licences was viewed positively, especially in those Boards that were aware of their powers and were exercising them appropriately.
- Training: the mandatory training requirement for LSOs, Trade staff, Board members was well-received and was thought to have improved practice on the whole. Also, the fact that LSOs could monitor the training of trade staff assisted this.
- Irresponsible promotions: at baseline these promotions appeared to be an active problem in the on-trade, but at follow-up few concerns were expressed, although the off-trade was viewed as being largely unaffected.
- Licensed trade: there was a perception that working relationships with the trade were more positive, in particular due to the links forged by LSOs. Also, as a result of the work of LSOs and the mandatory training requirement there was a view that the retail practice of trade staff had improved. It was stated that the trade had given significant investment to ensure that licensed trade staff were appropriately trained.
- Reduction in sales of alcohol to those under the age of 18 years: although not necessarily related to the Licensing Act in isolation, and indeed the perceived preliminary success of Challenge 25 is clearly a function of the Alcohol Act, the sub-study suggested that there had been a perceived decrease in sales of alcohol to those under the legal age for purchasing alcohol as a result of enforcement mechanisms including test purchasing and improved trade practice.

The issues that were reported as being problematical or providing significant challenges at follow-up included:

- Parts of the legislation that required more guidance – the public health objective, capacity and over-provision: Board members in particular reported difficulties in addressing these issues. They were unclear as to the definitions and monitoring of these issues, how they could be assessed and also what would constitute success if they were addressed. Almost all Boards reported that they were not addressing the public health objective particularly well at follow-up.
- Local Licensing Forums: these were not viewed as being particularly successful at follow-up. Despite notable exceptions, Forums were said to lack power and influence, could become immersed in conflict and a number were described as having ‘stalled’.
- Case law: the Brightcrew case in particular was perceived as creating significant difficulties for Boards and their decision-making powers. If all decisions have to relate specifically to the sale of alcohol, the view was that arguably it will become increasingly difficult to take action against breaches related to the public health objective (and indeed other objectives), as well as issues such as over-provision. Sheriffs were also overturning decisions made by Boards, which was also said to make Boards more reluctant to take action against premises.
- The power of the larger off-sale sector: the Licensing and Alcohol Acts were reported as having little impact on this sector, particularly in relation to its pricing of alcohol, which was regrettable due to its perceived dominance, and ability to sell large volumes of alcohol at relatively cheap prices.
- Data: national and local datasets are either not being collected consistently, or data are not being collected and collated at all. For example, LSOs were often recording information from their visits to licensed trade outlets, but were not entering key data from these visits in a way which would allow for meaningful comparison.

It is important to note that the Licensing Act evaluation did not operate in a vacuum, and since the research commenced three Acts have been passed which have or will impact significantly on alcohol licensing. Similarly, contextual issues such as the economic recession and case law also have a major effect on the Act and issues it seeks to regulate. However, despite this the consensus was that the Licensing Act had been, at the very least, moderately successful three years after its implementation, and had the potential to have an even greater impact if consideration is given to aspects which are working less well.

## Key Learning

- More guidance and support to be given nationally in relation to:
  - The public health objective
  - Capacity and over-provision
  - The role and function of Licensing Forums
  - Any new, relevant legislation that is implemented
- Scottish Government should continue to consider measures to address pricing of alcohol, for example press for the introduction of minimum pricing once the judicial process has been fully determined.

All would require input from the Scottish Government, as well as potentially input from key bodies and stakeholders.

- Consideration to be given to:
  - The numbers of LSOs in areas of Scotland
  - The need for LSOs to maintain their skills with appropriate training for existing and new staff
  - LSOs to spend the majority of their working time on alcohol licensing issues
  - All LSOs to have access to legal advice
  - LSOs to collect and collate an agreed dataset locally.
- All Licensing Boards to:
  - Give further thought to the operation and effectiveness of the public health objective
  - As required by legislation, carry out assessments of capacity and over-provision, after seeking additional guidance if necessary
  - Inform Licensing Forums of decisions if they have sought Forum views for guidance beforehand
  - Share experiences with other Boards across Scotland to enhance learning and improve practice
  - Highlight and publicise examples of good practice of trade members in their areas
  - Members to seek to improve the consistency of data collection and collation in order that provisions of the Licensing Act can be assessed.
- To support the work of Licensing Forums:
  - More guidance could be provided as to the nature and function of Forums,
  - More powers could also be given to Forums
  - They should continue to find ways to involve members of the public and young people in their discussions and decisions

- There is a need for Boards to inform Forums of reasons for decisions, particularly on the occasions when they are in disagreement with proposals from Forums
- The licensed trade:
  - To continue to undergo mandatory training, and maintain good links with LSOs
  - Ensure training of staff is on-going
  - The alcohol industry could consider measures to address the public harms caused by the misuse of alcohol
- Both national and local datasets:
  - To be collected and collated consistently by Boards and LSOs, in order that meaningful comparison can be made of an agreed minimum dataset.
  - Scoping of what data are available at national and local levels
  - Discussion by key partners about what data should be collected in the future

The Licensing (Scotland) Act 2005 was increasingly well received as the evaluation progressed. Preliminary findings have already been provided to The Scottish Government and other key stakeholders in order to inform the licensing agenda. The recommendations in this final report will also help shape the future licensing regime, as will The Scottish Government's own consultation on Further Options for Alcohol Licensing. This consultation, which addresses a number of key issues raised during the evaluation, including proposals to address the uncertainties highlighted by the 2011 decision in *Brightcrew Ltd v City of Glasgow Licensing Board*, is due to report in the summer of 2013. As a result of this evaluation and the consultation exercise, it is likely that the Act and its perceived impact will be viewed even more favourably in the future.