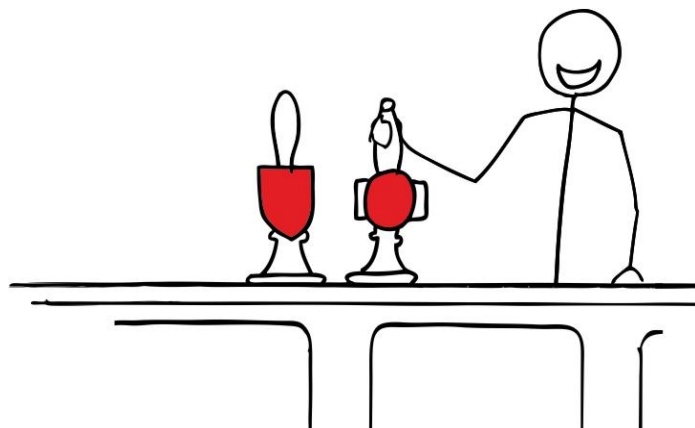


SELECT COMMITTEE ON THE LICENSING ACT 2003: THE HEALTH OBJECTIVE AND SCOTLAND

1. John Gaunt & Partners are in the unusual and relatively unique position of being retained by operators in the licensed and leisure sector, acting both north and south of the border; this gives an insight into the workings of both licensing regimes and of the impact of the fifth licensing objective (the protection and improvement of public health) In Scotland in particular.
2. The Scottish licensing regime derives from the Licensing (Scotland) Act 2005, which became operational on 1 September 2009. We have been retained in Scotland since that time.
3. It is fair to say that the health objective has been problematical in its application since that time – acknowledged by Boards and health professionals.
4. Well intentioned as it undoubtedly is, the health bodies and Boards have struggled effectively to understand how to apply it and what evidence should properly be advanced in support of a relevant representation. That position endures to this very day, some 7 years later.
5. At a licensing conference I attended recently, one of the talks was devoted to this subject ‘Health – no ordinary objective’. This was devoted to the history and origins of the Health objective and continuing issues with its application.
6. The Scottish Government Guidance (under section 142 of the 2005 Act) at paragraph 47 states that the results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached, *always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality*. That causal link, or the absence of it, is a significant source of the problem of the application of the health objective. This Guidance has never been updated since its original issue in 2007.
7. The Health objective was reinforced in 2010 by new requirements that:
 - a. Health Boards be notified of each licence application
 - b. Health Representatives be invited to join the local consultative Local Licensing Forums
8. What evidence is relied upon to sustain or lay the foundations of a health objection? Health data is usually broken down from Intermediate Data Zones (IDZs) and at a national level. Sometimes this data can be or has been out of date and in any event is not premises specific – and as such can usually be relatively easily challenged on this basis, thereby undermining the credibility of any representation made to a specific application. This evidence when presented is not easily referenced by Board to the application before them; evidence in respect of the other licensing objectives can be much more premises centric.
9. Resourcing of health professionals in the field of licensing has also been an issue, along with



(particularly initially) appropriate training. Whereas initially there was much presence of health representatives at Board hearings (but with limited appreciation of the process in which they were engaging, this attendance has declined and in any event is geographically patchy. Appropriate resourcing on an ongoing basis would appear to be an issue.

10. We suspect that similarly resourcing and training would be an issue if a health objective were to be adopted under the 2003 Act.
11. Case law has reinforced the need for each application to be demined on its own merits and for the need for site specific evidence; as above this has proved very difficult for Scottish professionals to do. A similar position would ensue in England and Wales, in our view.
12. Alcohol Focus Scotland hosted a series of regional experience sharing events in September 2016. Although we did not attend we have seen reports conclusions drawn that the health objective is still (seven years on) 'bedding in', concerns being expressed about insufficient licensing data, a lack of up to date guidance from the Scottish Government and an acceptance that 'using the licensing regime to regulate alcohol availability has yet to be realised'. See <http://www.alcohol-focus-scotland.org.uk/events/afs-regional-licensing-events/>
13. Our own experience direct and from seeing other applications determined (all new applications in Scotland result in a Board hearing whether or not there is an objection) is that where health has been raised as a concern, it has usually not resulted in any curtailment or refusal of the application. Certainly that experience is that this has been the case on the many applications which we have made for new build developments in Scotland over the years (notably for Whitbread and Premier Inn, Marston's and Greene King).

John Gaunt

8 December 2016

