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Identifying innovative approaches to the temporal availability of alcohol in Great Britain—a policy analysis

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ABSTRACT

Background: In Great Britain, local authorities responsible for alcohol premises licensing produce a statement of licensing policy setting out how they intend to exercise their statutory licensing functions including on trading hours. We aimed to describe and compare these policies on alcohol trading hours, including their interpretation and application of laws and guidance.

Methods: Policies were obtained from the websites of all 366 local licensing authorities and uploaded to NVivo. Using content analysis, relevant text was located through manual searching and coded inductively.

Results: Many local authorities do not explicitly seek to place controls on trading hours, while others create complex circumstances under which extended hours may be granted. Setting out core or matrix hours is the best example in the findings of local authorities applying their limited discretion to implement the law in ways that suit their needs.

Conclusion: Although licensing is ostensibly a policy system devolved to local areas, power remains at the centre in national legislation and guidance. Resultantly, local discretion is highly constrained especially in England/Wales. There is a need to attend to the details of statutory instruments to understand how headline principles and objectives can be made workable in practice for local authorities and boards.

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Introduction

In Great Britain (England, Wales and Scotland) alcohol licensing is devolved to subcommittees of local councils, made up of elected members and specialist clerks. These operate under national legislation: the Licensing Act (2003), which covers both England and Wales, and the Licensing (Scotland) Act (2005). As such, licensing functions in a multilevel governance context (Bache & Flinders, 2004; Hooghe & Marks, 2003; Nicholls, 2015) in which national legislation sets out a policy framework that is implemented, with varying degrees of discretion applied, at a local level. Consequently, it manifests many of the characteristics associated with multilevel, or multi-centric, policymaking (Cairney et al., 2019; Fitzgerald & Cairney, 2022). That is to say, decisions guiding the practical application of the law are made in the context of complex systems of power and influence, both formal and informal. In such contexts, identifying the actors, sources of authority, networks of influence and institutional structures that determine specific decisions can be difficult (Cairney et al. 2019). This paper investigates one instance of this complexity within the British licensing system—the development of statements of licensing policy (SLPs), and specifically policies dealing with operating hours within SLPs - and considers both

practical outcomes, and what this reveals about the realities of policymaking in such environments.

Systematic reviews focussing on availability of alcohol conclude that restricting availability is an effective measure to reduce alcohol-related harms (Popova et al., 2009; Sanchez-Ramirez & Voaklander, 2018). International empirical studies provide evidence on the link between extended trading hours (both on- and off-premise) and increased alcohol consumption (off-premises; Kolosnitsyna et al., 2014), alcohol-related injuries (on-premises; de Goeij et al., 2015; on- and off-premises; Hobday et al., 2015), assault (on-premises; Chikritzhs & Stockwell, 2002) and crime (on-premises; Rossow & Norström, 2012; off-premises Sánchez et al., 2011; on-premises; Schofield & Denson et al., 2013). One of the first studies to examine the impact of reductions in on-premises temporal availability on domestic and family violence in Australia found that the reductions in hours were associated with reductions in violence (Kowalski et al., 2023). Furthermore, decreases in harms associated with reductions in temporal availability have been found to be sustained over time. For example, in Newcastle, Australia, pubs and bars were required to stop selling alcohol by 3am and implement a lockout from 1:30am, with a reduction in assaults following these restrictions on operating hours found to be maintained five years

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post implementation (Kypri & Livingston, 2020; Sherk et al., 2018).

In Great Britain (England, Wales and Scotland), local authorities (made up of local elected politicians) are responsible for regulating the sale of alcohol, including temporal availability, through the provision of retail licences awarded by local licensing committees (or Licensing Boards in Scotland). The 2003 Licensing Act, which applies in England and Wales, moved away from nationally set uniform trading hours for licensed premises ('statutory hours'), instead asserting that individual licensing authorities are best placed to make decisions about trading hours based on their local knowledge (Home Office, 2022). Robust evidence on the impact of the Act is limited; however, a study by Humphreys and colleagues found no evidence that the Act affected overall volume of violence up to the end of 2007, but there was evidence of a sustained shift in violence to the early morning (3am–6am) on weekends (Humphreys et al., 2013). A study of self-reported alcohol consumption found little evidence of increased consumption up to 2008, although there was some evidence of more engagement in 'pre-loading' in England and Wales, compared to Scotland (Stevley et al., 2021). Licensing laws in Scotland changed in 2005, but national statutory hours were retained for off-sales, whilst control of on-trade hours was assigned to local Licensing Boards. We could find no equivalent studies of the impact of this change in Scotland. The translation of international evidence to the UK context is complex (Holmes et al., 2014). Part of the problem is the limited evidence, particularly from the UK, on the outcomes of concern for licensing authorities (e.g. levels of disorder), and a lack of nuance in some studies regarding how local areas are applying and using the Licensing Acts in relation to trading hours, for example, not measuring actual use of hours (Humphreys & Eisner, 2010; 2014).

A statement of licensing policy (SLP) sets out how licensing authorities intend to exercise their statutory functions in line with nationally established 'licensing objectives' to shape the local alcohol environment (Pliakas et al., 2018; Reynolds et al., 2019). In England and Wales, SLPs are required to be prepared and published by licensing authorities approximately every five years (Home Office, 2022). Ministers also set out guidance providing direction for licensing authorities on how to exercise their functions under the Licensing Act, including in the preparation of their SLPs. Critically, in relation to operating hours, the s182 guidance applying to England and Wales clearly states that 'licensing authorities must always consider each application and *must not impose predetermined licensed trading hours, without giving individual consideration to the merits of each application*' (Home Office 2022, p. 85 [emphasis added]). In England and Wales there are four licensing objectives—prevention of crime and disorder, securing public safety, prevention of public nuisance, and protection of children from harm. Scotland's objectives are broadly similar but include a fifth, 'protecting and improving public health.' The adoption of a public health objective in England and Wales would be welcomed by public health actors, as it is felt it would legitimise their role and the use of public health data within the licensing system (Nicholls et al., 2022). There is growing evidence from Scotland and England on

both the opportunities and challenges faced by public health actors in engaging with licensing authorities on matters such as trading hours (Fitzgerald et al., 2017; Fitzgerald & Cairney, 2022; Nicholls, 2015; Nicholls et al., 2022; O'Donnell et al., 2023; Reynolds et al., 2019).

In Scotland, the 2005 Licensing Act introduced a requirement to produce an SLP and a 2015 amendment altered the timescales meaning each Licensing Board is required to publish a SLP within 18 months after each local authority election. This means that in Scotland all Licensing Boards review their statements around the same time every 4–5 years. As in England and Wales, the 2005 Licensing (Scotland) Act changed from requiring standard permitted hours, to hours which are set at the discretion of Licensing Boards, except for off-sales which are set by legislation at 10am to 10pm and can only be reduced by Licensing Boards. Licensing Boards set out their policy on on-sales trading hours in the SLP, but there is a presumption against 24-hour trading, including for one-off events. Licensing guidance advises up to 14 hours of continuous trading as reasonable but acknowledges local circumstances should be considered (Scottish Government, 2023). Where an application is made seeking longer on-sales hours than the standard ones set out in the SLP, there is a legal presumption that extra hours will be declined unless the applicant can demonstrate that to grant the extra hours in this case would not breach the licensing objectives (Fitzgerald et al., 2024). See Fitzgerald et al. (2024) for further detail on the distinct licensing legislation, local government structures and policies for England and Scotland. In Scotland, the only prior analysis of SLPs we are aware of identified that a pattern of liberalisation of trading hours for on-trade premises across several local authorities. The authors recommended monitoring of trading hours on public health grounds (AFS, 2020). In Scotland, licensing guidance from 2007 also specifically states that each individual application will be considered on its individual merits while remaining cognisant of aggregate effects of a number of licensed venues on communities (Scottish Executive, 2007). New guidance released in 2023 (Scottish Government, 2023) did not apply at the time the SLPs examined here were published.

No previous study has considered how local licensing authorities in England/Wales approach the regulation of trading hours, nor compared that to practice in Scotland. Thus, we aim to contribute to this gap in knowledge by examining local SLP to identify and describe current practice. The aim of this study is to examine the text of SLPs in Great Britain to describe, compare, and critically evaluate local approaches to regulating temporal availability, in order to inform future local and national policy development.

Methods

We obtained a database from an academic colleague listing all 331 local authorities in England and Wales, including information for each authority on the region, type of local authority, date of last policy and web link to the SLP. The database was created via hand searches of local authority websites between January and April 2022. All weblinks were reviewed and updated in cases of broken links or to include the most

recent SLP. In eleven instances, the most recent SLP was not accessible online, in which case MC contacted local authorities via email to secure the SLPs. Scottish licensing board websites were similarly hand-searched December 2022 to March 2023 and data was added to the English/Welsh database. SLP documents were downloaded and imported into NVivo for analysis.

Analysis

We drew on Dalglish et al. (2021) READ approach (Ready materials, Extract data, Analyse data, Distil) which sets out a systematic approach for analysing documents in health policy—in this case, local policies outlining the regulation of temporal availability—to complete a content analysis. These policy documents must be understood in the social context of meaning within which they are produced and consumed (Bowen, 2009). Herein, each individual SLP was considered as a policy document which contains an individual approach to regulation of hours.

The lead author began by reading through a sample of SLPs ($n=50$, 14%) and inductively developed a coding framework based on the data and research question which was then used to conduct a content analysis (see Appendix 2, supplementary material). The initial coding framework was discussed with the broader team and refined based on their expertise and understanding of the licensing systems, for example adding a code to capture whether SLPs state that decisions will ultimately be made on a case-by-case basis and

splitting the risk code into risk mitigation and assessment. Given the minor changes, coding of the full sample then proceeded. The lead author coded all SLPs in regular consultation with the broader team; coding was straightforward, and so double coding was not conducted.

Findings

Between England, Wales and Scotland there were 366 potential SLPs to be accessed, all of which were obtained for analysis. The final sample comprises of 366 SLPs, 309 from England, 22 from Wales and 35 from Scotland. SLPs range from 21 to 97 pages. At the time of writing, local authorities in Scotland were reviewing their SLPs (new versions published in November 2023), so the most recent versions from 2018 were used. Several local authorities chose to update their SLP during the COVID-19 lockdowns (e.g. Argyll & Bute) and these versions were used. In England, eleven of the SLPs obtained were in draft form. All the policy documents are available in the public domain, and no human participants were involved in the research; therefore, no ethical approval was obtained for this analysis. See Figure 1 for a visualisation of the local government structure and the SLPs obtained. We outline the findings below, starting with prominence and clarity of trading hours, the way hours were framed, approaches to trading hours with a focus on core hours, and finally discussing other innovations in trading hours. It is worth noting that policies set out different approaches to trading hours depending on the day of the week, whether

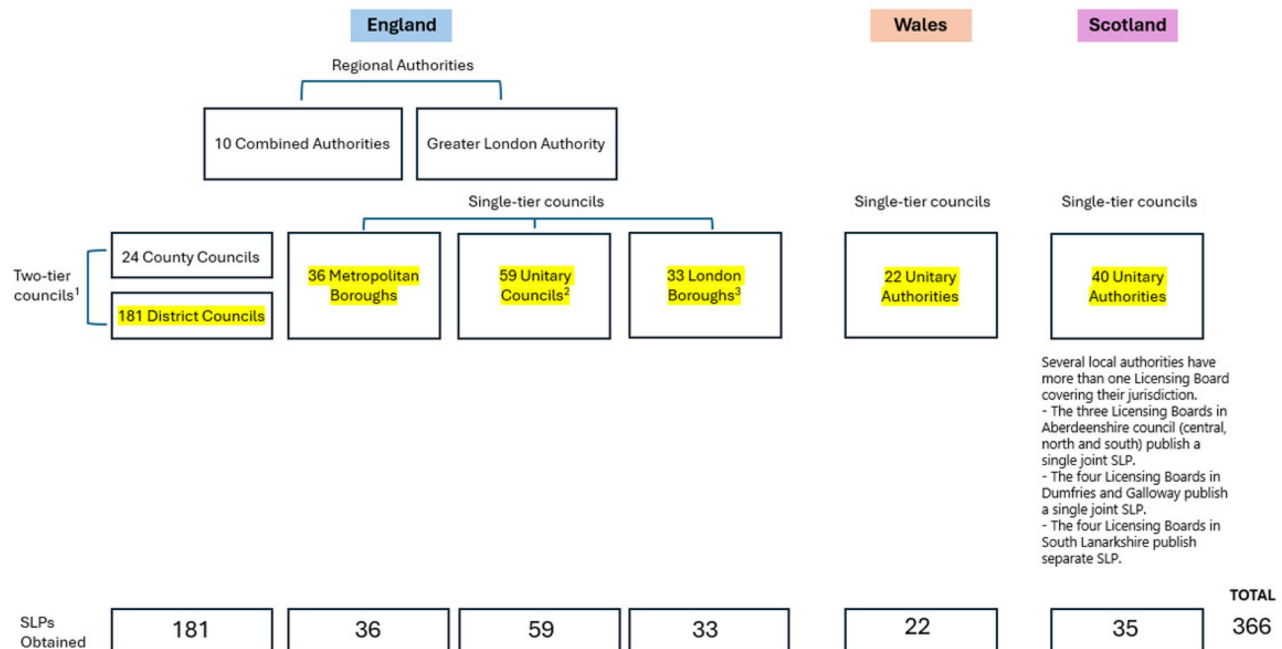


Figure 1. Government structures in Great Britain.

Note. Yellow highlighting indicates those responsible for licensing. In 2018, following council mismanagement, the current council structure was abolished in Northamptonshire and two unitary authorities—one in the West and one in the North—were introduced. Additionally, the local authorities of Vale of Whitehorse and South Oxfordshire share one SLP. See Appendix 1, supplementary material for full list of all local authorities and local boards.

1 Local government functions are spread between the two tiers, but only the 'lower tier' district councils have responsibility for licensing (i.e. community councils do not produce SLPs). The other kinds of local authorities in England are 'single tier' and all have responsibility for licensing.

2 There are 58 unitary authorities, plus the Isles of Scilly.

3 There are 32 London boroughs, plus the City of London.

premises are located in residential or commercial areas, and premises types.

Prominence and clarity

In England and Wales, 248 SLPs devote an entire chapter or specific section to discussion of hours. Others address their hours policy in disparate paragraphs at several points throughout the document. Twenty SLPs mention trading hours in the forewords or preamble (although not all SLPs had this section), establishing temporal availability as a central concern within the local authority's remit. In 216 SLPs a separate section on planning permission includes mention of trading hours (in addition to mention in other places). Planning and licensing operate as two separate systems, but both require consideration of temporal availability. Licensing committees in England and Wales are not bound by decisions made by a planning committee and vice versa (Local Government Association, 2021), as a result different trading hours can be granted under the two systems. Much of the content of English and Welsh SLPs regarding trading hours is almost verbatim the s182 guidance, for example in relation to objections based on trading hours and the need to rely on the licensing objectives. SLPs also commonly set out that trading hours need to be included in the operating schedule of licensed premises submitted as part of the license application. In England and Wales, 158 SLPs mention hours as part of their consideration of cumulative impact policies [CIPs]. CIPs allow licensing authorities to limit the growth of licensed premises, in an area demonstrably (by evidence) undermining the licensing objectives, by creating a presumption that applications for new licences or licence variations that are likely to add to the cumulative negative impact of alcohol trading will normally be refused.

In Scotland, all 35 SLPs had a separate detailed section or chapter outlining their policy on operating hours and followed the statutory guidance which requires boards to provide a clear indication of their policy in relation to trading hours in general (Scottish Executive, 2007), with standard hours set out in each policy and terminal hours varying from 12 midnight to 4am for on-trade premises. In general cities tend to have later standard hours compared to rural areas. Twenty-two SLPs in Scotland explicitly reinforce the statutory presumption against 24-hour licensing for on-trade premises, while stating that each application would be assessed on its individual merits. Nine Scottish SLPs mention hours as a part of overprovision considerations or policies (similar to CIPs; AFS, 2013; Scottish Executive, 2007) and seven in their foreword or introduction section. For example, in the foreword to Glasgow's policy their 4am pilot project is highlighted, in which ten nightclubs were granted one hour of extended trading until 4am as a part of a 12-month pilot, as an example of a way in which the board is determined to 'broaden and deepen excellence in the trade' (City of Glasgow, 2018, p. 6; Scotland). In Scotland SLPs set out that planning permission needs to be obtained prior to a premises licence application, and licensing applications should not be a re-run of the planning application nor should licensing cut across decisions made by planning. See AFS (2020) for details on changes in standard hours since the previous set of SLPs in Scotland.

General policy framing of hours and the licensing objectives

All SLPs refer to the licensing objectives, although references vary greatly from mere mentions of the objectives, through to using specific objectives to justify certain approaches. Licensing authorities in England and Wales reference the *preventing crime and disorder* and *preventing public nuisance* licensing objectives most often to justify their approaches to hours. For example, 'premises for which it can be demonstrated have effective measures planned to prevent public nuisance, may be suitable for 24-hour opening' (e.g. Brentwood Borough, 2022, p. 22; England). Overall, in Scotland, SLPs most commonly (n=29) frame consideration of hours as one of amenity (quality of an area as being pleasant and agreeable), also referencing the *preventing public nuisance* licensing objective. For example,

The Board wishes to protect and maintain the amenity of residents and occupiers of businesses in West Lothian, and recognises that the operation of licensed premises can on occasion interfere with the peaceful enjoyment or amenity of the wider community, either in the vicinity of licensed premises or more generally. (West Lothian, 2018, p. 38; Scotland).

In looking to address the prevention of public nuisance licensing objective, the policy in Fife (Scotland) acknowledges a link between hours and the impact on residential neighbourhoods and uses this to justify the consideration of a 6pm terminal hour in 'appropriate circumstances' (no further explanation provided).

SLPs in England/Wales also commonly frame consideration of trading hours as one of public order, with some suggesting that staggered closing times may reduce problems associated with customers leaving premises simultaneously. For example,

It is acknowledged that a range of different closing hours prevents customers leaving all the licensed premises simultaneously, creating a concentration of people within the town centre and also allows for more efficient and staggered use of public transport to get home. As a result, the Licensing Authority will not set a fixed closing time for all premises and will promote varied closing times. (Basingstoke & Deane, 2019, p. 15; England).

The Darlington Borough SLP included staggered opening hours explicitly as a part of efforts to address the prevention of public nuisance objective, for example,

In areas containing a number of licensed premises the Policy of the Licensing Authority will be to encourage licensees to stagger their closing times. Where voluntary agreements cannot be obtained, or are unsuccessful and problems of nuisance for local residents or businesses arise, the Licensing Authority will, if representations are made, consider whether it is appropriate to limit the hours of individual licensed premises. This will be particularly the case in areas judged to be noise sensitive areas. (Darlington Borough, 2021, p. 12; England).

In some cases, authorities state that they will not seek to formally create staggered opening through their licensing policy, apparently assuming longer hours will naturally create staggered leaving/closing (e.g. Flintshire, 2021; Wales). When considering the position of premises and public order, the

impact of extended hours was suggested to be mitigated by availability of transport. For example, Darlington Borough justified their position on staggered opening hours (above) in terms of public transport and the 'mass exodus' that occurred at certain times at night. Additionally, another English SLP stated, 'Opening hours of midnight and beyond are more likely to be considered to be acceptable, in principle, for premises in commercial areas with high levels of public transport.' (Redcar & Cleveland, 2016, p. 18; England).

Edinburgh's SLP was one of 27 in Scotland which mentions the licensing objective of *securing public safety* in relation to hours. They state that when addressing the issue of public safety, an applicant must demonstrate that they have considered where the hours of operation differ from hours when alcohol is sold and how this may impact public safety. In Scotland, SLPs discuss dispersal policies and staggered closing in relation to public order (including antisocial behaviour, public nuisance or public disturbance) and venue type, for example;

The Board considers that a differential requires to be maintained between 'other premises' and nightclubs to ensure that all business attracts a fair share of trade. The Board is... of the view that staggering closing times in this way promotes the prevention of crime and disorder licensing objective by reducing footfall on the streets. For this reason 'other premises' will only attract 1.00 a.m. opening on a daily basis. (Aberdeenshire, 2018, p. 48; Scotland)

SLPs often specify that nightclubs must have a dispersal policy and other premises types should consider one. To facilitate staggered leaving boards often discuss using winding down times (e.g. a period of time after alcohol is no longer available for sale, where non-alcoholic drinks and in some cases food are still available, and music volume decreases and lighting increases).

In England and Wales, 94 SLPs framed the issue of trading hours as important for encouraging a thriving night-time economy (NTE). The policies often discussed a tension between the needs of licensed trade, tourism, residents, and local services. For example, the Castle Point SLP states that the licensing authority 'recognises that overly restrictive hours may inhibit the development of night-time economies that are important for investment, employment and tourism' (2018, p. 7; England). Thirty-four local authorities highlight that premises seeking (longer) trading hours that are 'out of character' for the local area, would have to demonstrate that granting the hours sought would not contravene the licensing objectives indirectly, as existing competing premises might then seek approval for longer hours to compete. Some raised concerns about incremental extension of hours in this way;

Applications which are significantly out of character for a locality will need to demonstrate that granting the hours sought will not impact on the licensing objectives, given the potential for neighbouring premises to seek the same additional hours to prevent rivals gaining a commercial advantage. (Leeds, 2019, p. 22; England)

As in England and Wales, Scottish SLPs detail concerns about incremental extension of hours as a result of trying to match competitors, and in some cases, suggest that increased hours could lead to increased demand from competitors. For example;

In its experience the granting of extended hours in recognition of a particular style of trading merely leads to trade competitors adopting the same arguments in seeking similar hours and a process ensues which leads to the extended hours becoming the norm. The board is anxious this should not happen in Edinburgh. (Edinburgh, 2018, p. 37; Scotland).

In Scotland, nine SLPs mention the importance of developing the NTE, framing these references similarly to England and Wales, for example;

The Board recognises that licensing hours are important to individual licensed premises but can have a wider impact for an area. Balanced against this, the Board does not wish to unnecessarily inhibit the development of thriving and safe evening and night-time local economies, which are important for investment, employment and tourism. The Board considers that the on sale policy hours are appropriate for East Lothian and represent a balance between the interests of the public, residents, licensed businesses and patrons of licensed premises. (East Lothian, 2018, p. 22; Scotland)

Scotland also has a fifth public health licensing objective which was mentioned by 23 of 35 Scottish SLPs when discussing local policy on licensed trading hours. Some boards used the public health objective to justify a preference for certain hours: 'The Board has reached the view that it will not generally be appropriate to grant an application seeking a commencement hour of earlier than 11am having regard to the protection and improvement of public health objective' (Clackmannanshire council, 2018, p. 15; Scotland) and as a justification for the overall approach to hours taken. The Glasgow Licensing Board highlights a need to focus on preventing and protecting public health in 'Chapter 2 - The Licensing Board's Approach to the Licensing Process'¹;

...all those involved in the licensing process must continue to play their part in helping to transform the city's unhealthy relationship with alcohol, and to bring about a healthier culture of alcohol consumption. In developing this Policy Statement, the Licensing Board has focused on the need to promote the Licensing Objective of Protecting and Improving Public Health, particularly in relation to its policies on licensed hours and overprovision. (City of Glasgow, 2018, p. 16; Scotland)

Similarly, North Ayrshire make an explicit link between greater availability and harm in their SLP and link this to the public health licensing objective as follows;

It is widely accepted that there is a clear link between the availability of alcohol and alcohol-related health harms. North Ayrshire figures also demonstrate a clear link between alcohol related harm and deprivation. The greater the availability of alcohol, the greater the expected harm, particularly in more deprived communities. The Board wishes to see Licensed Premises thriving in the area, but this cannot be at the expense of the health and wellbeing of patrons or the wider community. (North Ayrshire, 2018, p. 7; Scotland)

Approaches to trading hours—core hours

Twenty-three SLPs had *no* statement outlining the hours they would accept/welcome (one from Wales and the remainder from England). A small number specify that there are no set

hours and applicants should set out their proposed hours in the operating schedule:

Under the Act there are no permitted hours for the sale of alcohol. Applicants are able to suggest in their operating schedule the hours they wish to open and to apply to vary their existing licences if they wish to open beyond their current permitted hours. (Copeland borough council, 2021, p. 23; England)

Local authorities were generally careful to ensure that they referenced the s182 guidance when outlining their approach, but some went further by outlining core hours. In these cases, the intention appeared to be to discourage applications for hours beyond the core stated hours, notwithstanding the statutory guidance. While acknowledging the s182 guidance which states that licensing authorities must always consider each application on its own merits, and providing a statement to such effect (e.g. merit statement), 51 English and two Welsh SLPs still set out 'core hours of operation' or a 'matrix approach.' A matrix approach is a 'an effort to support a diverse mix of licensed venues' (Hastings, 2022, p. 4; England) and involves setting out hours for different premises types in a table. There are policies, for example in the London borough of Redbridge (2020), which rather than setting out a presumption that proposed hours will be approved, require applicants to clearly detail how they will ensure that operating beyond the framework will not undermine the licensing objectives. However, they caveat this approach can only be triggered through a relevant representation being received.

In Scotland, all 35 SLPs set out core hours as is required under the law, and guided by the 2007 licensing guidance. For example,

7.1. While each Application is assessed on its own merits, the following sets out the Licensing Board's Policy on Licensing Hours. While there is a presumption that these hours will be allowed the Board reserves the right to reduce these depending on the circumstances of individual premises. Equally, applicants may seek to persuade the Board that additional requested hours are appropriate in the circumstances.

7.2. The Board's Policy on Licensed Hours is based on placing individual Premises (there are about 400 in North Ayrshire of all types) in one of six 'Function Types.' [...] Taking into account:

- a. the five Licensing Objectives;
- b. the presumption against 24-hour drinking;
- c. the Guidance for Licensing Boards and Local Authorities issued by the Scottish Government,

the Licensing Board has adopted a Policy for the terminal hour beyond which alcohol must not be sold on the Premises or parts of Premises. (North Ayrshire, 2018, p. 29–30; Scotland).

East Dunbartonshire increased hours on Saturday and Sundays (in its 2018 SLP) which it explicitly acknowledged as having resulted from a trade representation and a desire to promote the local economy, alongside consideration of the licensing objectives, guidance and the Act. Their policy concludes that the increase is appropriate because it represents 'a balance between the interests of public, residents, licensed businesses and patrons of licensed premises' (East Dunbartonshire, 2018, p. 14; Scotland). Aberdeen similarly mention that it considered

15 hours continuous trading to be reasonable (up from 14 hours in the previous SLP; identified by AFS 2020). The most common continuous trading hours limit set for premises in Scotland was 16 hours (15 localities). Eight localities allowed 14 hours of continuous trading and three allowed 18 hours of continuous trading (Aberdeenshire North, Edinburgh, and Fife).

Other innovations

Several authorities and boards present ways in which they 'stretched' the policy and attempted other forms of innovation. The Ealing SLP states that many licensed premises had previously been granted extended hours well after midnight and that this led to increased crime, disorder and noise, contrary to the licensing objectives. The policy states that the merits of extended hours in this context are not judged to outweigh the harms: 'The Licensing Authority has weighed up the possible benefits of later hours against the detrimental effects of later hours on local residents and their rights to peace and quiet and do not accept that later hours are better in the local context' (London borough of Ealing, 2020, p. 63; England). Redcar and Cleveland borough council (2016; England) also stated circumstances when closing beyond 2am may be appropriate, however these were focussed on the absence of a negative impact, for example, no increase in parking demand.

Hartlepool similarly describe the harm that the authority believed extended hours had caused to their local area;

The licensing authority does not accept that longer opening hours for licensed premises have been a benefit to Hartlepool but rather that they place an undue and unnecessary strain on the local transport infrastructure, Accident and Emergency services and law enforcement agencies and can create a nuisance for those residents who are affected by the general operation of a premises or from revellers returning home during the early hours. (Hartlepool borough council, 2021, p. 9; England)

Overall, Hartlepool was one of the stronger SLPs from a public health perspective, stating that it has a clear blanket policy on terminal hours. While acknowledging generally the s182 guidance that each application needs to be considered on its own merits, it states that if a terminal hour is beyond a certain time and relevant representations are received the application will be refused.

Canterbury district also acknowledge the constant increase in the number of late-night operating premises which has resulted in a concentration of over 800 licensed premises in the area (many operating after midnight). Canterbury states that it has legal confirmation that it 'has got the balance about right' between trade, residents, the licensing objectives, and as a result believes the time is right to introduce fixed hours to maintain the status quo, while also acknowledging the limitations of their remit;

This is not a policy to refuse applications for hours longer than the core hours and consideration will be given to the individual merits of each application. (Canterbury city council, 2022; England).

These fixed hours only apply to new premises licence applications, premises subject to review or applications wishing to

vary the terms of their licences beyond current or core hours. Protection of the current state of the NTE was referenced in several other SLPs as both a justification for retaining current hours or implementing a presumption against granting hours after a certain terminal hour (e.g. Hart, England). However, in all cases, SLPs also stated that they are required to be flexible and consider each application on its own merit.

Colchester's SLP sets out positive criteria (in a section called 'what we aim to encourage') that it wants licensed premises to meet, and those that do meet the criteria are offered increased freedom to operate, which could include additional trading hours. The criteria include family friendly venues and venues that 'will extend the diversity of entertainment and attract a wider range of participants' (Colchester, 2021, p. 16–17; England). This is similar to the approach taken in Glasgow, Scotland, in which only nightclubs which met certain good practice criteria were permitted to open till 4am (instead of 3am) under a pilot scheme. Similarly in Aberdeen there was a focus on diversifying the night time economy, with an existing requirement to provide significant entertainment when operating with later trading hours was removed from the SLP in (2018), providing certain licence conditions were met. In the introduction to the 2018 SLP the Licensing Board convenor wrote;

The new policy is bold and progressive, aligning itself with the intentions of the 2005 Act and the changing licensing landscape. Where once Scotland had pubs or clubs, hybrid premises have emerged. Entertainment is constantly evolving, its primacy within a venue increasingly open to debate. The new policy gives businesses the platform to be entrepreneurial and shape their offering through their operating plan to meet the needs of their clientele. (Aberdeen City, 2018, p. 3; Scotland)

This review of SLPs was carried out as part of a larger study of the changes in Glasgow and Aberdeen.

Use of specific statutory provisions on late night trading: EMROs & LNLs

Finally, England and Wales also have at their discretion additional mechanisms set out in the legislation to address late night trading hours. Specifically Early Morning Restriction Orders (EMRO's) which enable alcohol sales to be restricted in stated parts of the licensing authority's jurisdiction for any period of time between 12-midnight and 6am. Additionally, Late Night Levy's which 'allows Local Authorities to charge late-night alcohol retailers an annual fee to manage and police the NTE' (McGill et al., 2022). At the time of review no local authorities had chosen to implement an EMRO although each mentioned this as a mechanism at their disposal. However, as previously identified, seven local authorities had chosen to implement a late night levy (McGill et al., 2022). For example, Newcastle, the City of London and Chelmsford city council have implemented a late night levy for premises authorised to sell alcohol between 1am and 6am. Chelmsford's policy states that the levy is to 'combat alcohol related harm in the nighttime economy' (2021, p. 14).

Finally, although the focus of this paper is hours for on-sales premises, briefly, discussion of off-sales hours was far

more limited, and most commonly referenced the s182 guidance; 'Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.' (s182 guidance).

Discussion

The aim of the current paper was to describe and compare local approaches across Great Britain to the regulation of trading hours. Our aim has been to both assess the extent to which policy innovation has occurred on this issue, and to consider some of the tensions between national legislation, statutory guidance, and the competing interests of local stakeholders in the development of such policies. We analysed 366 SLPs – 309 from England, 22 from Wales and 35 from Scotland—and found variable inclusion of information relating to on-premises trading hours. On the surface, the process for dealing with planning permission and licensing in SLPs was clearer in Scotland than in England and Wales. Licensing objectives, although variously employed, were paramount in addressing licensing hours in both localities. Fifty-three English and Welsh SLPs establish core hours of operation, and there were clear examples where authorities 'stretched' the policy and attempted innovation. However, we highlight how, in all cases, the statutory guidance requires authorities to be flexible and consider each application on its own merit.

The constraints placed on local decision-makers in the statutory guidance (as distinct from the primary legislation itself) is key here. This is especially the case in England and Wales, where s182 guidance explicitly limits local discretion, even as it ostensibly sets out the terms by which that discretion should be applied (Home Office, 2022). Specifically, authorities are prevented from introducing blanket or area-wide policies on opening hours, and are required to ultimately consider all cases on their individual merits. Some local authorities set out a clear rationale for attempting to introduce area-wide policies in their SLPs; however, there remain concerns that such policies would not stand up in court due to the 'merit' requirement. This effectively makes it difficult to decline extra hours in England and Wales if an applicant has the resources to challenge such decisions in court. While a small number of authorities in England and Wales did seek to establish area-wide policy through core or matrix hours, considerable uncertainty about the legality of such policies, even where robustly justified in SLPs, may explain why this innovation was so rare in the SLPs reviewed.

Our analysis highlights significant tensions within a multi-level system of governance in which the devolution of decision-making is severely constrained by regulatory guidance (Fitzgerald & Cairney, 2022). Here, the nominal power of local authorities to determine a critical aspect of their licensing policy is neutralised by a brief, and seemingly innocuous, direction—that decisions must be on individual merits—buried in the guidance that accompanies the legislation. This statement shifts power from local licensing committees, and

the communities potentially engaged in SLP development, to the central departments responsible for developing the statutory guidance. In doing so, the process, people involved, or influences in the development of the statutory guidance, is not transparent, despite the legislative process occurring largely in the public domain and being subject to approval by elected representatives in parliament.

More accountability for Licensing Boards/authorities has been suggested in previous research as key to addressing tension between the legislation/guidance and local authorities/board's actions in practice (Wright, 2019), but more accountability could also stifle innovation. Even where SLPs contain core hours or matrices, these may be more performative than practical: signalling a commitment to the principle of area wide controls on operating hours, rather than establishing a legally defensible policy position. It may be that the innovations identified here show how local authorities do have greater autonomy to make broader decisions on what will best meet the licensing objectives for their areas, even if they have to allow for the fact that an individual application may still make the case that it is worthy of exception. Stronger policies may still act as deterrents for some applicants unwilling to take authorities to appeal.

The findings tell a tale of many local authorities not explicitly seeking to place controls on trading hours for alcohol, while others create complex matrices which they acknowledge are constrained by the law. This is despite evidence showing that restricting temporal availability at an area-wide level can be an effective measure to reduce alcohol-related harms (Popova et al., 2009; Sanchez-Ramirez & Voaklander, 2018). By contrast, Scottish local authorities are given greater leeway in the statutory guidance to apply limits on operating hours at an area level. The requirement to set out core hours of operation, albeit that these are not hard and fast, creates other types of policy innovation such as the blanket, liberalisation of operating hours to diversify the night-time economy in Glasgow and Aberdeen. Additionally, one limitation of this current system is that the legislation does not appear to allow local areas to limit the numbers of new premises of any given type that are granted later trading hours, again because of the requirement to judge each application on its own merits.

SLPs are a space in which what the NTE means, and crucially who it is for, is contested; and this also stands for hours. Within the SLPs there is general consensus that hours can have wider implications on the area—both positive and negative. However, aligning with previous research (Foster, 2016; Nicholls, 2015), we found the discussion of hours in SLPs to be variable and in many cases lacking in detail and clarity of logic around the mechanisms by which extended trading hours may lead to harms (see also O'Donnell et al., 2023). Instead, there was support for staggered closing times, a mechanism for reducing disorder commonly raised in previous studies (see O'Donnell et al., 2023), yet one without significant empirical support (Humphreys et al., 2013). This presents a missed opportunity for authorities to develop a robust analysis of the relationship between operating hours and a range of potential harms. In Scotland it was evident how the public health objective allows for discussion of increased consumption and health harms, not just short-term

impacts such as crime and disorder. This aligns with the international evidence base on trading hours and harms (Chikritzhs & Stockwell, 2002; de Goeij et al., 2015; Hobday et al., 2015; Kolosnitsyna et al., 2014; Popova et al., 2009; Rossow & Norström, 2012; Sánchez et al., 2011; Sanchez-Ramirez & Voaklander, 2018; Schofield & Denson, 2013). Although to some extent, even in Scotland, discussion of hours is still a bit stuck in the more traditional immediate concerns of licensing, i.e. public disorder as people leave premises, rather than longer term population level health harms from alcohol. Previous research suggests that licensing stakeholders find it challenging to articulate *how* reduced temporal availability might impact on reducing harms (O'Donnell et al., 2023), and so it may not be surprising that some licensing authorities end up avoiding the issue in their SLPs. Establishing policies that run counter to the guidance would require strong context specific evidential support.

We found that many authorities in England/Wales did not have a clear policy on hours, and if there is no policy, then the default position is liable to be shaped by market demand rather than the licensing objectives. Businesses will not be deterred from submitting applications for their preferred operating hours, and licensing authorities will not have a policy against which to challenge this. Evidence from Australia suggests that alcohol licence hearings tend to produce results favourable to the alcohol industry (Manton, 2014), with preferencing of alcohol industry concerns one of several barriers to community involvement in licensing hearings (Visontay et al., 2016). The limited number of SLPs that take a clear position on operating hours in England and Wales may be a consequence of the fact that the guidance clearly states that blanket policies are not allowed. Nevertheless, potential room for manoeuvre within the policy has been found by a small number of local authorities, especially in the adoption of core hours and additional considerations where applications exceed those hours. While the guidance stipulates that all cases must be considered on the merits of the individual application, it is questionable as to whether the requirement to consider applications on their own merit is as much of a barrier to local authority control of trading hours for alcohol as has traditionally been understood. Further research is recommended to examine how these SLPs, and the guidance related to trading hours for alcohol, are operationalised and influence local licensing decisions on the ground.

Limitations

We only examined SLPs at one point in time and were not able to assess changes overtime or changes from one version of the SLP to another. In their analysis of the same sample of SLPs in Scotland, Alcohol Focus Scotland identified that nine Licensing Boards in Scotland had amended their hours policies (for example extending hours), but these could only be identified by pro-actively comparing the new policy to the previous versions (i.e. this information was not made apparent in the policy itself) (AFS, 2020). Given new SLPs were published in November 2023 in Scotland, future work could repeat this analysis with the new or future SLPs to identify changes in practice over time. Future work could also

examine similarities/differences between policies in neighbouring authorities or those in the same region, to consider the degree of policy transfer occurring.

Conclusions

In Scotland, all SLPs set out core hours as required. Most SLPs in England and Wales reiterate the wording set out in the statutory guidance in their sections on operating hours. However, a small number of authorities in England attempted to establish innovative mechanisms for applying area-wide policies on opening hours notwithstanding the obligation to treat every licence application on its merits. We do not know if these innovations are effective (in the sense that they keep hours constrained to those outlined) or would survive legal challenge. Although licensing is ostensibly a regulatory system in which decision-making is devolved to local areas, our findings show how power remains centralised through both primary legislation and secondary guidance, placing constraints on some key operational and strategic aspects. In this case, critical powers over area-wide operating hours are almost completely removed from licensing boards through a brief statement contained in secondary guidance. This illustrates the extent to which power in multilevel contexts can not only be dispersed across an array of agents, but may be concentrated in fragments on statutory documentation that are easily overlooked. To put it simply, where licensing is concerned the devil is very often in the detail. There is a need to attend to the details of the statutory instruments if we wish to understand how headline principles and objectives can be made workable 'on the ground.'

Note

1. Note the other licensing objectives were similarly discussed.

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Ethical approval

All the policy documents are available in the public domain, and no human participants were involved in the research; therefore, no ethical approval was obtained for this analysis.

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