



# Licensing (Scotland) Act 2005

## 2005 asp 16

### PART 5

#### LICENSED HOURS

##### *General*

## 62 Licensed hours

- (1) In this Act, “licensed hours” means, in relation to licensed premises—
- (a) in the case of licensed premises in respect of which a premises licence has effect, the period or periods of time specified for the time being in the operating plan contained in the premises licence as those during which alcohol is to be sold on the premises, and
  - (b) in the case of licensed premises in respect of which an occasional licence has effect, the period or periods of time specified in the licence as those during which alcohol may be sold on the premises,
- and a reference to a period of licensed hours is a reference to any of those periods of time.
- (2) In this Act—
- (a) in relation to any premises—
    - (i) “on-sales hours” means licensed hours applying to the sale of alcohol for consumption on the premises,
    - (ii) “off-sales hours” means licensed hours applying to the sale of alcohol for consumption off the premises, and
  - (b) in relation to any licensed premises on which alcohol is sold both for consumption on the premises and for consumption off the premises, references to licensed hours are—
    - (i) in relation to alcohol sold for consumption on the premises, to be read as references to on-sales hours,
    - (ii) in relation to alcohol sold for consumption off the premises, to be read as references to off-sales hours.
- (3) Subsection (1) is subject to sections 67(6) and 68(5).

### **63 Prohibition of sale, consumption and taking away of alcohol outwith licensed hours**

- (1) Subject to subsection (2), a person commits an offence if, outwith licensed hours, the person—
- (a) sells alcohol, or allows alcohol to be sold, on licensed premises,
  - (b) allows alcohol to be consumed on licensed premises, or
  - (c) allows alcohol to be taken from licensed premises.
- (2) It is not an offence under subsection (1) for a person to—
- (a) allow alcohol to be consumed on licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol was sold during that period,
  - (b) allow alcohol to be taken from licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol—
    - (i) was sold during that period, and
    - (ii) is not taken from the premises in an open container,
  - (c) allow alcohol to be consumed on or taken from licensed premises outwith licensed hours if the person consuming or taking the alcohol—
    - (i) resides on the premises, or
    - (ii) is a guest of a person who resides there,
  - (d) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to a person who resides on the premises,
  - (e) allow alcohol to be consumed on licensed premises at a meal at any time within 30 minutes of the end of any period of licensed hours if the alcohol was sold—
    - (i) during that period,
    - (ii) at the same time as the meal, and
    - (iii) for consumption at the meal,
  - (f) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to—
    - (i) a person who is a trader for the purposes of the person's trade, or
    - (ii) a person for supply to or on any premises which are occupied for the purposes of the armed forces of the Crown.
- (3) It is a defence for a person ("the accused") charged with an offence under subsection (1) of allowing alcohol to be consumed on or taken from any licensed premises outwith licensed hours to prove—
- (a) that the accused, or an employee or agent of the accused, took all reasonable precautions and exercised all due diligence not to commit the offence, or
  - (b) that there were no lawful and reasonably practicable means by which the accused could prevent the person consuming or taking the alcohol on or from the premises from so doing.
- (4) A person commits an offence if, having been requested by a responsible person not to do so, the person consumes alcohol on, or takes alcohol from, licensed premises outwith licensed hours.
- (5) In subsection (4), "responsible person" means—
- (a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,

- (b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,
  - (c) in either case, any person who works on the premises in a capacity (whether paid or unpaid) which authorises the person to make the request mentioned in subsection (4).
- (6) Nothing in this section prevents or restricts—
  - (a) the ordering of alcohol for consumption off licensed premises, or
  - (b) the despatch of alcohol so ordered by the person selling it.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **64      24 hour licences to be granted only in exceptional circumstances**

- (1) Subsection (2) applies where, in relation to any premises—
  - (a) an application of any of the following kinds is made to a Licensing Board in respect of the premises, namely—
    - (i) a premises licence application,
    - (ii) a premises licence variation application,
    - (iii) an occasional licence application, or
    - (iv) an extended hours application, and
  - (b) if the application were to be granted, the licensed hours in relation to the premises would be such as to allow alcohol to be sold on the premises during a continuous period of 24 hours or more.
- (2) The Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.

#### **65      Licensed hours: off-sales**

- (1) This section applies where an application specified in subsection (2) is made to a Licensing Board in relation to any premises, but only so far as the application is for—
  - (a) a licence authorising the sale of alcohol for consumption off the premises, or
  - (b) an extension of off-sales hours in relation to the premises.
- (2) That application is—
  - (a) a premises licence application,
  - (b) a premises licence variation application,
  - (c) an occasional licence application, or
  - (d) an extended hours application.
- (3) If the off-sales hours proposed in the application are such that alcohol would be sold for consumption off the premises—
  - (a) before 10am,
  - (b) after 10pm, or
  - (c) both,on any day, the Board must refuse the application.

- (4) The Scottish Ministers may by order substitute other times for the times specified in subsection (3).
- (5) Where subsection (3) does not apply, in considering whether the granting of the application would be inconsistent with any of the licensing objectives, the Board must, in particular, consider the effect (if any) which the off-sales hours proposed in the application would have on the occurrence of antisocial behaviour.
- (6) In subsection (5), “antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).
- (7) This section is without prejudice to the generality of sections 23(4), 30(4), 59(3) and 68(1).

## **66      Effect of start and end of British Summer Time**

- (1) Subsection (2) applies in relation to any period of licensed hours—
  - (a) during which, or
  - (b) at the end of which,
 British Summer Time is due to begin or end.
- (2) The beginning or, as the case may be, ending of British Summer Time is to be disregarded for the purpose of determining the time at which that period of licensed hours ends and, accordingly, the period ends at the time it would have ended had British Summer Time not begun or ended.
- (3) In this section, “British Summer Time” means the period of summer time for the purposes of the Summer Time Act 1972 (c. 6).

### *Occasional extensions*

## **67      Power for Licensing Board to grant general extensions of licensed hours**

- (1) A Licensing Board may, if they consider it appropriate to do so in connection with a special event of local or national significance, make a determination extending licensed hours by such period as the Board may specify in the determination.
- (2) A determination under subsection (1) may apply to—
  - (a) the whole of the Licensing Board’s area or only to specified parts of the area,
  - (b) licensed hours generally or only to specified descriptions of licensed hours, and
  - (c) all licensed premises in the Board’s area or only to specified descriptions of such premises.
- (3) A determination under subsection (1) has effect for such period as the Board may specify in it.
- (4) Where a Licensing Board makes a determination under subsection (1), the Board must—
  - (a) give notice of the determination to—
    - (i) the appropriate chief constable, and

- (ii) the holders of premises licences and occasional licences in respect of premises to which the determination applies, and
  - (b) publicise it in such manner as the Board sees fit.
- (5) Nothing in this section is to be taken as requiring any licensed premises to be open for the sale of alcohol during the period of any extension of licensed hours specified in a determination under subsection (1).
- (6) Except where the context requires otherwise, references in this Act to “licensed hours” are, in relation to any relevant premises to which a determination under subsection (1) applies, to be taken as references to such hours as extended by the determination.
- (7) In this section, “specified” means specified in a determination under subsection (1).

## **68 Extended hours applications**

- (1) The appropriate Licensing Board may—
  - (a) on the application of the holder of the premises licence in respect of any licensed premises, and
  - (b) if the Board consider it appropriate to do so in connection with—
    - (i) a special event or occasion to be catered for on the premises, or
    - (ii) a special event of local or national significance,extend the licensed hours in respect of the premises by such period as is specified in the application or such other period as the Board consider appropriate.
- (2) An extension of licensed hours under subsection (1) has effect for such period as is specified in the application or such other period as the Board consider appropriate; but in either case the period must not exceed one month.
- (3) An application under subsection (1) is referred to in this Act as an “extended hours application”.
- (4) A period of licensed hours which is extended under this section may not be further extended under this section.
- (5) Except where the context requires otherwise, references in this Act to “licensed hours” are, in relation to any period of licensed hours extended under this section, to be taken as references to such hours as so extended.
- (6) References in this section to “licensed premises” do not include premises in respect of which an occasional licence has effect.

## **69 Notification of extended hours application**

- (1) Where a Licensing Board receives an extended hours application, the Board must give notice of it, together with a copy of the application, to—
  - (a) the appropriate chief constable, and
  - (b) any Licensing Standards Officer for the area in which the subject premises are situated.
- (2) The appropriate chief constable may, within 10 days of receipt of a notice under subsection (1)(a), by notice to the appropriate Licensing Board object to the application if the chief constable considers it necessary to do so for the purposes of the crime prevention objective.

- (3) A Licensing Standards Officer must, within 10 days of receipt of a notice under subsection (1)(b), prepare and submit to the Licensing Board a report setting out the Officer's comments on the application.

## **70 Determination of extended hours application**

- (1) In determining an extended hours application, the Licensing Board must take into account—
- (a) any notice of objection given by the appropriate Chief Constable under section 69(2), and
  - (b) the Licensing Standards Officer's report under section 69(3).
- (2) The Board may hold a hearing for the purpose of determining an extended hours application.
- (3) Where the Board does not hold a hearing for that purpose, the Board must, before determining the application, ensure that the applicant is given an opportunity to comment on any such notice or report as is mentioned in subsection (1).
- (4) Where a Licensing Board grants or refuses an extended hours application, the Board must give notice of the grant or refusal to—
- (a) the applicant,
  - (b) the appropriate chief constable, and
  - (c) any Licensing Standards Officer for the area in which the subject premises are situated.
- (5) A person to whom notice is given under subsection (4) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.
- (6) Where the clerk of a Licensing Board receives a notice under subsection (5), the Board must issue a statement of the reasons for the grant or refusal of the application to—
- (a) each person giving the notice, and
  - (b) each other person to whom the Board gave notice under subsection (4).
- (7) A statement of reasons under subsection (6) must be issued—
- (a) by such time, and
  - (b) in such form and manner,
- as may be prescribed.