

# Licensing (Scotland) Act 2005 2005 asp 16

# PART 9

MISCELLANEOUS AND GENERAL

# General

# 142 Guidance

- (1) The Scottish Ministers may issue guidance to Licensing Boards as to the exercise of their functions under this Act.
- (2) The Scottish Ministers may modify any guidance issued by them under subsection (1).
- (3) Each Licensing Board must, in the exercise of their functions under this Act, have regard to any guidance issued to them under subsection (1).
- (4) Where a Licensing Board decides not to follow any guidance issued under subsection (1), the Board must give the Scottish Ministers notice of the decision together with a statement of the reasons for it.
- (5) The first guidance to Licensing Boards under subsection (1) is not to be issued by the Scottish Ministers unless a draft of the guidance has been laid before, and approved by resolution of, the Scottish Parliament.
- (6) The Scottish Ministers must lay any subsequent guidance issued by them under subsection (1) before the Parliament.

#### **Commencement Information**

II S. 142 in force at 19.3.2007 by S.S.I. 2007/129, art. 2

# 143 Crown application

(1) This Act binds the Crown.

- (2) No contravention by the Crown of any provision made by virtue of this Act makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) However, any provision made by virtue of this Act applies to persons in the public service of the Crown as it applies to other persons.

## **Commencement Information**

I2 S. 143 in force at 1.5.2007 by S.S.I. 2007/129, art. 3, Sch.

# 144 Modification of enactments

Schedule 6, which modifies enactments, has effect.

#### **Commencement Information**

I3 S. 144 in force at 1.5.2007 for specified purposes by S.S.I. 2007/129, art. 3, Sch.

# 145 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.

## 146 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes.
- (3) An order under section 145 may modify any enactment (including this Act), instrument or document.
- (4) A statutory instrument containing an order or regulations under this Act except—
  - (a) an order under section 65(4), 123(6)[<sup>F1</sup>, 150(2), paragraph 6A(4) of schedule 3, or paragraph 5A(4) of schedule 4],
  - (b) regulations under section  $27(2)[^{F2}, 27A(1)][^{F3}, 60(2)]$  or 139(3), and
  - (c) where subsection (5) applies, [<sup>F4</sup>regulations under section 9B(5) or] an order under section 145,

is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) No-

[<sup>F5</sup>(za) regulations under section 9B(5) containing provisions which add to, replace or omit any part of the text of subsection (3) of that section,]

- (a) order under section 65(4)[<sup>F6</sup>, 123(6), paragraph 6A(4) of schedule 3, or paragraph 5A(4) of schedule 4],
- (b) regulations under section  $27(2)[^{F7}, 27A(1)][^{F8}, 60(2)]$  or 139(3), or
- (c) order under section 145 containing provisions which add to, replace or omit any part of the text of an Act,

is to be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by resolution of, the Parliament.

#### **Textual Amendments**

- F1 Words in s. 146(4)(a) substituted (6.12.2017 for specified purposes, 1.5.2018 in so far as not already in force) by Alcohol (Minimum Pricing) (Scotland) Act 2012 (asp 4), ss. 1(4)(a), 5(2); S.S.I. 2017/402, art. 2; S.S.I. 2018/88, art. 2
- Word in s. 146(4)(b) inserted (1.10.2011) by Alcohol etc. (Scotland) Act 2010 (asp 18), ss. 10(2), 18(1) (with s. 16); S.S.I. 2011/149, art. 2, sch.
- **F3** Word in s. 146(4)(b) inserted (1.10.2011) by Alcohol etc. (Scotland) Act 2010 (asp 18), ss. 8(3)(a), 18(1) (with s. 16); S.S.I. 2011/149, art. 2, sch.
- F4 Words in s. 146(4)(c) inserted (1.12.2015 for specified purposes, 15.5.2017 in so far as not already in force) by Air Weapons and Licensing (Scotland) Act 2015 (asp 10), ss. 56(3)(a), 88(2); S.S.I. 2015/382, art. 2, sch.; S.S.I. 2017/119, art. 2, sch.
- F5 S. 146(5)(za) inserted (1.12.2015 for specified purposes, 15.5.2017 in so far as not already in force) by Air Weapons and Licensing (Scotland) Act 2015 (asp 10), ss. 56(3)(b), 88(2); S.S.I. 2015/382, art. 2, sch.; S.S.I. 2017/119, art. 2, sch.
- F6 Words in s. 146(5)(a) substituted (6.12.2017 for specified purposes, 1.5.2018 in so far as not already in force) by Alcohol (Minimum Pricing) (Scotland) Act 2012 (asp 4), ss. 1(4)(b), 5(2); S.S.I. 2017/402, art. 2; S.S.I. 2018/88, art. 2
- Word in s. 146(5)(b) inserted (1.10.2011) by Alcohol etc. (Scotland) Act 2010 (asp 18), ss. 10(2), 18(1) (with s. 16); S.S.I. 2011/149, art. 2, sch.
- **F8** Word in s. 146(5)(b) inserted (1.10.2011) by Alcohol etc. (Scotland) Act 2010 (asp 18), ss. 8(3)(b), 18(1) (with s. 16); S.S.I. 2011/149, art. 2, sch.

# 147 Interpretation

(1) In this Act—

"alcoholic drink" means a drink consisting of or containing alcohol,

"applicant", in relation to any application under this Act, means the person making the application,

[<sup>F9</sup>"chief constable" means the chief constable of the Police Service of Scotland,] "area" means—

- (a) in relation to a council, the local government area for which the council is constituted,
- (b) in relation to a Licensing Board or Local Licensing Forum, the council area or, as the case may be, licensing division for which the Board or Forum is established,

"capacity", in relation to licensed premises, means-

(a) in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption on the premises (or, as the case may be, that part), the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time, and (b) in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption off the premises (or, as the case may be, that part), the amount of space in the premises (or, as the case may be, that part) given over to the display of alcohol for sale,

"child" means a person under the age of 16,

"community council" has the same meaning as in Part IV of the Local Government (Scotland) Act 1973 (c. 65),

"council" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),

[<sup>F10</sup> "Health Board" means a board constituted by an order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29);]

"licensed premises" means premises in respect of which a premises licence or occasional licence has effect,

"liqueur confectionery" means confectionery which-

- (a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kilogramme of the confectionery, and
- (b) either consists of separate pieces weighing not more than 50 grammes or is designed to be broken into such pieces for the purposes of consumption,

"premises" means any place and includes a vehicle, vessel or moveable structure, "prescribed" means prescribed by regulations made by the Scottish Ministers,

"railway vehicle" means a railway vehicle within the meaning of section 83 of the Railways Act 1993 (c. 43) that is used in the provision of a railway service within the meaning of section 82 of that Act (excluding the wider meaning of "railway" given by section 81(2) of that Act),

"relevant council" means, in relation to a Licensing Board or Local Licensing Forum, the council—

- (a) for whose area the Board or Forum is established, or
- (b) in the case of a Board or Forum established for a licensing division, for the area of which the division forms part,

[<sup>F10</sup> "relevant health board", in relation to a Licensing Board, means—

- (a) the Health Board for the Licensing Board's area, or
- (b) if the Licensing Board's area forms part of the area of more than one Health Board, each such Health Board;]

"sell", in relation to alcohol, includes barter and expose to or offer for sale, and related expressions such as "sale" are to be construed accordingly,

"senior police officer" means a constable of or above the rank of superintendent, "strength", in relation to alcohol, is to be determined in accordance with section 2 of the Alcoholic Liquor Duties Act 1979 (c. 4),

"subject premises" means, in relation to any application under this Act, the premises to which the application relates,

"vehicle" means a vehicle intended or adapted for use on roads,

"vessel" includes a ship, boat, raft or other apparatus constructed or adapted for floating on water,

"young person" means a person aged 16 or 17.

(2) In this Act, references to selling alcohol or other goods to trade are references to selling the alcohol or goods to a person for the purposes of the person's trade; and related expressions are to be construed accordingly.

- (3) For the purposes of this Act, a person is, in relation to a partnership, a company, a club or other body (whether incorporated or unincorporated), a connected person if the person—
  - (a) in the case of a partnership, is a partner,
  - (b) in the case of a company—
    - (i) is a director, or

(ii) has control of the company,

- (c) in the case of a club, is an office bearer of the club,
- (d) in any other case, is concerned in the management or control of the body.
- (4) For the purposes of subsection (3)(b)(ii) and this subsection, a person is taken to have control of a company if—
  - (a) any of the directors of the company, or of any other company having control of the company, is accustomed to act in accordance with the person's directions or instructions, or
  - (b) the person is entitled to exercise, or to control the exercise of, at least one third of the voting power at any general meeting of the company or of any other company having control of the company.
- [<sup>F11</sup>(5) For the purposes of this Act, a person is an interested party in relation to licensed premises if the person is not the holder of the premises licence <sup>F12</sup>... in respect of the premises but—
  - (a) has an interest in the premises as an owner or tenant, or
  - (b) has management and control over the premises or the business carried on on the premises.]

#### **Textual Amendments**

- F9 Words in s. 147(1) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), sch. 7 para. 29(8); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- **F10** Definitions in s. 147(1) inserted (1.10.2011) by Alcohol etc. (Scotland) Act 2010 (asp 18), ss. 11(5), 18(1) (with s. 16); S.S.I. 2011/149, art. 2, Sch.
- F11 S. 147(5) inserted (29.6.2018) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 184(4), 206(1); S.S.I. 2018/102, art. 2(a)
- F12 Words in s. 147(5) repealed (29.6.2018) by Air Weapons and Licensing (Scotland) Act 2015 (asp 10), ss. 59(5), 88(2); S.S.I. 2018/102, art. 3

# 148 Index of defined expressions

The expressions in the left-hand column of the table are defined or otherwise explained by the provisions of this Act specified in the right-hand column.

Expression	Interpretation provision	
alcohol	section 2	
alcoholic drink	section 147(1)	
applicant	section 147(1)	
[ <sup>F13</sup> chief constable]	section 147(1)	

	( 147(1)
area	section 147(1)
capacity (in relation to licensed premises)	
certified copy (of premises licence or summary)	section 55
child	section 147(1)
closure order	section 97(3)
community council	section 147(1)
connected person	section 147(3)
council	section 147(1)
F14	F14
emergency closure order	section 97(4)
excluded premises	section 123(2)
exclusion order	section 94(6)
exempt premises	section 124
expiry date (of a personal licence)	section 77(7)
extended hours application	section 68(3)
foreign offence	section 129(2)
[ <sup>F15</sup> interested party	section 147(5)]
layout plan	section 20(2)(b)(ii)
licensed hours	section 62(1)
licensed premises	section 147(1)
licensing objectives	section 4(1)
licensing policy statement	section 6(1)
licensing qualification	section 91(1)
licensing register	section 9(1)
liqueur confectionery	section 147(1)
locality	section 7(2)
operating plan	section 20(4)
occasional licence	section 56(1)
occasional licence application	section 56(4)
off-sales hours	section 62(2)(a)(ii)
on-sales hours	section 62(2)(a)(i)
personal licence	section 71
personal licence application	section 72(2)
personal licence renewal application	section 78(4)

premises	section 147(1)
premises licence	section 17
premises licence application	section 20(3)
premises licence review application	section 36(2)
premises licence review proposal	section 37(2)
premises licence variation application	section 29(3)
premises manager	section 19(1)
prescribed	section 147(1)
provisional premises licence	section 45(5)
provisional premises licence application	section 45(2)
railway vehicle	section 147(1)
relevant council	section 147(1)
[ <sup>F16</sup> relevant health board	section 147(1)]
relevant offence	section 129(1)
review hearing	section 38(2)
sell (and related expressions)	section 147(1)
selling to trade	section 147(2)
senior police officer	section 147(1)
strength (of alcohol)	section 147(1)
subject premises	section 147(1)
supplementary licensing policy statement	section 6(2)
temporary premises licence	section 47(4)
variation (of a premises licence)	section 29(5)
minor variation (of such a licence)	section 29(6)
vehicle	section 147(1)
vessel	section 147(1)
young person	section 147(1)

### **Textual Amendments**

- F13 Words in s. 148 substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), sch. 7 para. 29(9); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- **F14** Entry in s. 148 repealed (1.11.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), Sch. 6 para. 17; S.S.I. 2011/354, art. 2, Sch. (with art. 5)
- F15 Entry in s. 148 inserted (29.6.2018) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 184(5), 206(1); S.S.I. 2018/102, art. 2(a)

**F16** Entry "relevant health board" in s. 148 inserted (1.10.2011) by Alcohol etc. (Scotland) Act 2010 (asp 18), ss. 11(6), 18(1) (with s. 16); S.S.I. 2011/149, art. 2, Sch.

## 149 Repeals

The enactments mentioned in the first column in schedule 7 are repealed to the extent specified in the second column.

#### **Commencement Information**

- I4 S. 149 in force at 1.6.2006 for specified purposes by S.S.I. 2006/286, art. 2(b) (with arts. 3-5) (as amended (1.5.2007) by S.S.I. 2007/128, art. 6)
- I5 S. 149 in force at 1.5.2007 for specified purposes by S.S.I. 2007/129, art. 3, Sch.
- I6 S. 149 in force at 1.2.2008 for specified purposes by S.S.I. 2007/472, art. 2, Sch. 1
- I7 S. 149 in force at 1.9.2009 at 5.00 a.m. in so far as not already in force by S.S.I. 2007/472, art. 3

## 150 Short title and commencement

- (1) This Act may be cited as the Licensing (Scotland) Act 2005.
- (2) This Act (other than this section and sections 145 to 148) comes into force on such day as the Scottish Ministers may by order appoint.

## **Changes to legislation:**

Licensing (Scotland) Act 2005, Cross Heading: General is up to date with all changes known to be in force on or before 15 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

View outstanding changes

## Changes and effects yet to be applied to :

specified provision(s) Appointed Day(s) by S.S.I. 2006/239 art. 2 (This S.S.I. is revoked on 25.5.2006 by S.S.I. 2006/286, art. 6)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:** Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 33(1)(1A) substituted for s. 33(1)-(3) by 2015 asp 10 s. 49(2)(a)
- s. 33(8)(za) inserted by 2015 asp 10 s. 49(2)(c)
- s. 33(8A) inserted by 2015 asp 10 s. 49(2)(d)
- s. 33A inserted by 2015 asp 10 s. 49(4)
- s. 134ZA-134ZC inserted by 2015 asp 10 s. 61(2)