

LICENSING (SCOTLAND) ACT 2005

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act is in 9 Parts.
4. These are:
 - Part 1 – Core provisions
 - Part 2 – Licensing bodies and officers
 - Part 3 – Premises licences
 - Part 4 – Occasional licences
 - Part 5 – Licensed hours
 - Part 6 – Personal licences
 - Part 7 – Control of order
 - Part 8 - Offences
 - Part 9 – Miscellaneous and general

5. Commentary explaining the changes introduced by each Part is provided below. The main legislation which currently governs licensing in Scotland is the Licensing (Scotland) Act 1976 (c.66) as amended and the Licensed Premises (Exclusion of Certain Persons) Act 1980 (c.32). The Act repeals this legislation.

COMMENTARY ON PARTS

PART 1 – CORE PROVISIONS

Section 1 – Prohibition of unlicensed sale of alcohol

6. This Act makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold. Section 1 establishes that a licence is required to sell alcohol unless the premises are exempt as defined in section 124.

Section 2 – Meaning of “alcohol”

7. This section provides an interpretation of the term “alcohol” for the purposes of this Act.

Section 3 – Certain supplies of alcohol to be treated as sales

8. This section provides for certain supplies of alcohol to be treated as sales of alcohol for the purposes of this Act. This ensures that those supplies would come under the provisions of the new licensing regime. Two types of supply are covered.

9. The first is supplies by clubs to their members. Members’ clubs are owned by their members. This means that the members own the stock and they do not need to sell the alcohol to themselves. But this provision ensures that the supplies are treated as sales so that the club still needs a premises licence.

10. The second type of supply is one in which the alcohol is supplied in pursuance of a contractual right. For example, some hotels or resorts may offer “all inclusive” packages under which the price paid for the stay at the hotel or resort includes unlimited supplies of “free” drink. This provision ensures that the supply of alcohol under such packages is treated as a sale so that the hotel or resort, or at least the bar in the hotel or resort, requires a premises licence.

11. The second set of circumstances might also cover arrangements under which alcohol is supplied at a bar in exchange for a voucher or token which is bought elsewhere. The supply at the bar will be treated as a sale so that the bar needs a premises licence.

Section 4 – The licensing objectives

12. This section establishes 5 high level “licensing objectives” that represent the values on which the Scottish licensing system would be based, the parameters against which everyone would measure the elements of that system and the solid foundation which local authority Licensing Boards must have regard to in carrying out their functions under the Act.

PART 2 – LICENSING BODIES AND OFFICERS

Section 5 – Licensing Boards

13. Licensing Boards were introduced by the Licensing (Scotland) Act 1976 and subsection (1) of this section retains them. There will continue to be a Board for each council area or, where a council area has been divided into licensing divisions, a Board for each division. The Boards will continue to be made up of local authority councillors elected by the local authority.

14. Subsection (2) provides that where local authorities consider it appropriate to do so, they may split their area up into licensing divisions in the future.

15. Subsection (3) sets out the consequences of establishing licensing divisions. This includes the requirement that for each of those division areas, a separate Licensing Board would have to be established and that where this occurs the existing Licensing Board for that local authority would be dissolved. The provision of licensing divisions is a continuation of the current procedure under the Licensing (Scotland) Act 1976.

16. Subsection (4) allows for licensing divisions to be merged back into a single area so that there is a single Board for the whole area. Subsection (5) provides for the consequences of such a merging of divisions.

Section 6 – Statements of licensing policy

17. Subsection (1) places a duty on Licensing Boards to publish what is to be known as a “licensing policy statement” for their area for a 3-year period. This statement would offer guidance and clarity on the policy on which Licensing Boards would base their decisions in implementing their functions under the Act. This is particularly important for a system which is likely to have quite a high degree of local flexibility in terms of the discretion given to Licensing Boards.

18. Subsection (2) provides that Boards have a power to issue a supplementary statement within that 3-year period. It is intended that this supplementary power would cover new or unanticipated issues.

19. Subsection (3) places a duty on Boards, when preparing their policy statements to ensure that the statements promote the 5 licensing objectives set out in section 4 and to consult on their proposed policy statements with those persons listed in paragraph (b)(i) to (iii).

20. Subsection (7) allows Scottish Ministers to specify the date by which Boards must prepare their first policy statement under the new regime.

Section 7 – Duty to assess overprovision

21. Subsection (1) places a duty on Licensing Boards to make a pro-active assessment of overprovision of licensed premises in their area as part of their policy statements. There would

also be flexibility for Boards to decide, for any locality, whether there was overprovision generally in relation to licensed premises or only in relation to a particular identifiable sector.

22. Subsection (2) provides that Boards would themselves determine what amounts to a “locality” for this purpose. This is as flexible as possible to reflect the very different pressures which may apply in different geographical areas throughout the country.

23. Subsection (3) places a duty on Boards when considering their policy on overprovision to have regard to those matters specified and to consult with those persons listed in subsection (4).

24. Premises which have only an occasional licence are to be left out of the assessment of overprovision.

Section 8 – Applicants attempting to influence Board members

25. This section makes it an offence for anyone who has submitted an application under the Act to attempt to influence in their favour a member of the Licensing Board at any time. Subsection (2) establishes how the Board should proceed where a prosecution for an offence under this section has been brought against an applicant.

Section 9 – Licensing Board’s duty to keep a public register

26. This section places a duty on Licensing Boards to keep a licensing register containing the information set out in subsection (1)(a) to (c). Subsection (2) provides that Scottish Ministers may regulate the type of information required and the form in which it is kept.

Section 10 – Local Licensing Forums

27. Subsection (1) places a duty on each council to establish a Local Licensing Forum for its area. The establishment of these forums is new and should enhance the local Board’s awareness of both the beneficial and detrimental impact of their policies in particular on the local community and on local trade. Where a local authority has split their area into separate licensing divisions, subsection (2) allows for the establishment of a separate Local Licensing Forum for each of those divisions.

28. Subsection (3) provides that there should as a minimum be at least one formal annual meeting between the Board and the local Forum. This is important to ensure that a relationship is established between these bodies.

Section 11 – General functions of Local Licensing Forums

29. This section establishes the general function of Local Licensing Forums. The role of the Local Licensing Forum is to comment on the Board’s general policy approach and not to comment on individual licence applications.

Section 12 – Licensing Boards’ duties in relation to Local Licensing Forums

30. This section establishes duties on Boards to have regard to the Forums’ advice, to provide any statistical information that the Forums may request from them and to present reasons why they have followed a different route from that recommended by the Forum.

Section 13 – Licensing Standards Officers

31. Subsection (1) places a duty on local authorities to appoint one or more officers to be known as Licensing Standards Officers (“LSOs”) whose general statutory functions are those set out in section 14 of the Act. This is a new role. The Civic Government (Scotland) Act 1982 empowers the police and authorised officers of licensing and fire authorities to enter and inspect premises, vehicles or vessels of a licence holder or applicant for a licence. With respect to liquor licensing, however, there is currently no such provision. Subsection (2) further provides that local authorities may share the use of LSOs across their boundaries.

Section 14 – General functions of Licensing Standards Officers

32. Subsection (1) establishes the general functions of Licensing Standards Officers and those are set out in paragraphs (a) to (c). LSOs do not act as policemen with regard to licensing, but they will liaise with the police and other relevant officials such as environmental health officers in ensuring the licensing objectives are adhered to and solutions found to problems involving licensed premises. LSOs will act as a source of advice and guidance for licensees and for the community; mediate between communities and the trade or between any two parties where there is a need to resolve a local problem and develop a local solution and supervise compliance with licence conditions by the relevant licence holders.

33. Subsection (2) sets out in more detail the power of the LSO to deal with a breach of licence conditions by issuing a written warning to the licence holder and making a referral to the Licensing Board for review of the licence.

Section 15 – Powers of entry and inspection

34. Subsections (1) and (2), give LSOs power to enter and inspect licensed premises to establish compliance with the premises or occasional licence and any other requirements of the Act..

35. Subsections (3) and (4) place a duty on licence holders and those managing and working on premises to co-operate with and assist the LSOs in the performance of their functions and to provide any information or documents requested by the LSO.

36. Subsection (5) provides that any person referred to in subsection (4) who fails to assist or who obstructs the Licensing Standards Officer would be guilty of an offence.

Section 16 – Training of Licensing Standards Officers

37. This section allows Scottish Ministers to prescribe mandatory training requirements with which Licensing Standards Officers must comply. In particular, Scottish Ministers will have power to accredit both course content and course providers.

PART 3 – PREMISES LICENCES

Section 17 – Premises licence

38. This section introduces the new premises licence. This replaces the seven different types of licences under the current legislation. The Act provides that anyone wishing to sell alcohol on any premises, subject to the exceptions set out in the Act, has to hold a premises licence.

Section 18 – Meaning of “appropriate Licensing Board”

39. This section provides that for the purposes of premises licences, the “appropriate Licensing Board” for any premises is the Board in whose area the premises are situated (or mainly situated). If premises straddle two or more areas equally, applicants can nominate one of the Licensing Boards in question to act as the relevant Licensing Board. The effect of this section is to identify the Board which will carry out licensing functions in relation to premises licences.

Section 19 – Meaning of “premises manager”

40. This section introduces the term “premises manager”. Each premises licence will have to specify the premises manager for the premises. Subsection (2) ensures that a person can only be the designated premises manager for one licensed premises.

Section 20 – Application for premises licence

41. Under subsection (1) any person, which includes corporate and unincorporated bodies and statutory bodies as well as individuals, can apply for a premises licence. However, if an individual wants a licence, he or she will need to be 18 or over. Under subsection (2) the application for a premises licence must be accompanied by a draft of the applicant’s proposed operating plan and a layout plan for the premises. These plans will provide Licensing Boards and local communities with a clear indication at the time of the licence application of what activities will be undertaken on the premises. Applications will also have to be accompanied by certain certificates relating to planning, building control and food hygiene (see section 50 of the Act).

42. Subsection (4) provides for the form and content of operating plans to be set out in regulations. However, this subsection lists a number of specific requirements as to the content of operating plans, including the proposed opening hours, any other activities in addition to the sale of alcohol and the position with regards to allowing the entry of children to a licensed premises.

43. Subsection (5) clarifies that premises may sell alcohol for consumption both on and off the premises and that the times during which alcohol is to be sold may differ between the two.

Section 21 – Notification of application

44. This section places a duty on Licensing Boards to notify those persons specified in subsection (1) (a) to (e) of all applications they receive for premises licences. This is a new duty and a change from what was previously provided for in the Licensing (Scotland) Act 1976.

45. Licensing Boards must notify the chief constable of all applications for premises licences. Subsection (3) places a duty on the chief constable to respond to the Licensing Board by giving certain notices within a period of 21 days. This procedure is intended to ensure that checks are made for the existence or otherwise of any convictions for relevant or foreign offences that any applicant or those connected with the applicant may have. Section 129 provides for “Relevant offences” to be set out in regulations. “Foreign offences” are offences under the laws of countries other than Scotland which correspond to relevant offences. Section 147(2) sets out who is a “connected person” in relation to a company, partnership or club. This ensures that checks are carried out on the persons in control of these bodies as well as the bodies themselves.

46. Subsection (3) further provides that the chief constable must, within 21 days of notification of a new premises licence application, submit a report to the Licensing Board regarding antisocial behaviour which has taken place on or in the vicinity of the premises and all complaints about such behaviour.

Section 22 – Objections and representations

47. This section is wider than the provisions in the Licensing (Scotland) Act 1976 relating to persons who have a statutory right to make objections and representations in relation to applications for premises licences. Any person (whether an individual or a corporate or unincorporated body) may object or make representations provided that, as noted in section 21(3), this is not considered by the Board to be vexatious or frivolous.

48. Subsection (2) allows the chief constable, in whose area an application for a premises licence has been made, a limited right to object to an application on the grounds that the applicant or a connected person is involved in serious organised crime. The chief constable may then, for the purposes of the crime prevention licensing objective, recommend refusal of the application.

Section 23 – Determination of premises licence applications

49. This section sets out the procedure that Licensing Boards must adopt when they receive an application for a premises licence. It provides both for the circumstances where a Licensing Board proposes to grant a premises licence and where it proposes to refuse a premises licence.

50. Subsection (5) sets out the grounds on which a Licensing Board may refuse a premises licence application. Those grounds are set out in paragraphs (a) to (e). One of the grounds

relates to consistency with the licensing objectives. When considering the impact on the crime prevention objective in particular, the Board must pay particular attention to any convictions for relevant or foreign offences of which they have been notified by the chief constable and any recommendation as to refusal of the application which the chief constable may have given. However, the existence of convictions does not preclude the board from granting the licence.

Section 24 – Applicant’s duty to notify Licensing Board of convictions

51. This section places a duty on anyone applying for a premises licences to notify the Licensing Board of any convictions obtained whilst the application is pending. Any convictions obtained before the application is made will be brought to the attention of the Licensing Board by the Chief constable under section 21(4)(b)(i). Once an application has been granted, the Licensing Board will be made aware of any relevant convictions of a personal licence holder by the court making the conviction (see section 42).

Section 25 – Further application after refusal of premises licence application

52. This section provides that, where a Licensing Board has refused an application for a premises licence, a subsequent application in respect of the same premises cannot be made within one year of that refusal.

53. This section permits Licensing Boards, at the time of the initial refusal, to dispense with the one year limit, or where the limit has not been dispensed with, nonetheless to consider granting a re-application within the one year period where there has been a material change of circumstances.

Section 26 – Issue of licence and summary

54. This section requires Licensing Boards, where they grant an application for a premises licence, to issue the applicant with a licence and a summary of the licence. The section also makes provision as to the form and content of the licence and summary. Subsection (2) sets out the minimum information which must be contained in the licence.

Section 27 – Conditions of premises licence

55. This section provides that all premises licences will be subject to those mandatory conditions set out in schedule 3 to this Act, unless schedule 3 provides otherwise. The application of these mandatory conditions is intended to ensure national consistency on those matters specified in schedule 3.

56. Subsections (2) and (5) provide a power for the Scottish Ministers to set out such further national mandatory or discretionary conditions to be attached to premises licences as they think are needed for the purposes of the five licensing objectives established by this Act.

57. Subsections (3) and (4) place a duty on Scottish Ministers to set out by regulations additional mandatory licence conditions for all premises open after 1.00am.

58. Subsection (6) provides a power for Licensing Boards to impose additional licence conditions to those ones to which the licence may be subject by virtue of subsections (1) to (3). This power could be used in circumstances where additional conditions were needed for the purposes of any of the five licensing objectives established by the Act and where some other form of activity not covered by schedule 3 was being undertaken on the premises. However, under subsection (7) a Board may only impose additional licence conditions which do not run counter to the effect of national conditions, and which do not attempt to alter or add to those conditions to make them more onerous or restrictive.

59. Subsections (8) and (9) make clear the types of conditions which can be prescribed by Scottish Ministers and imposed by Licensing Boards. These can cover both the sale of alcohol and any other activity carried out on the premises.

60. Subsection (10) provides a limitation on Licensing Boards' powers under any provision of this Act to vary the conditions of a premises licence to only those conditions provided for by this section.

Section 28 – Period of effect of premises licence

61. This section establishes the maximum duration for any premises licence issued under the Act. The Licensing (Scotland) Act 1976 required licences to be renewed every 3 years. Premises licences under this Act would remain in effect indefinitely as long as the premises in question continue to be used for the purpose or purposes for which the licence was granted. However, the licence can be revoked if conditions are breached and the licence also ceases to have effect if the holder dies, becomes incapable, or insolvent unless a transfer is made under section 34. A licence holder may also choose to surrender a licence.

62. Subsection (7) sets out circumstances under which a licence holder becomes insolvent for the purposes of this Act.

Section 29 – Application to vary premises licence

63. This section permits premises licence holders to apply, to the Licensing Board which originally granted the licence, for variations to the terms and conditions of the premises licence. This is a change to the regime under the Licensing (Scotland) Act 1976 which made no provision for variations to licence. Subsection (2) provides that where practicable all applications must be accompanied by the paper version of the premises licence,.

64. Subsection (4) provides that the duty placed on Licensing Boards under sections 21 and 22 of the Act also applies to applications under this section for variations to premises licences. This is to ensure that all those persons who have a statutory right to be notified, are notified of the proposed variation and that any such person may make representations and objections to the variation.

65. Subsection (5) explains what is meant by a “variation”. It includes any change to the operating plan. Subsection (6) provides for certain variations to be classed as “minor

variations”, which are dealt with less formally, and must be granted by the Licensing Board by virtue of section 30(2)

Section 30 – Determination of application for variation

66. This section establishes the procedure that Licensing Boards must adopt when they are considering an application for a variation to a premises licence applied for under section 29 of the Act.

67. Subsection (3) places a duty on Licensing Boards to hold a hearing when considering an application for a variation to premises licences (other than a minor variation which must be granted).

68. Subsections (4) provides that the Licensing Board’s decision must be based on the statutory grounds for refusal which are set out in subsection (5). These are similar to the grounds for refusal of an application for a licence.

69. Subsection (6) provides a power for a Licensing Board to make its own additional variations to the licence conditions where it grants the variation applied for.

Section 31 – Variation to substitute new premises manager

70. This section deals with a change of premises manager in relation to any premises. Licensed premises cannot operate without a premises manager being in post (see paragraph 4 of schedule 3). Where there is a change of premises manager, before the new premises manager can act as such, his or her name needs to be added to the licence. This section allows for the proposed new premises manager to take up post pending the granting of an application to vary the premises licence so as add the new premises manager’s name to it. This helps to ensure that changes of premises manager can take effect quickly so as to enable businesses to continue to operate with the minimum disruption.

Section 32 – Further application after refusal of application for variation

71. This section in effect prevents a premises licence holder who has had an application for a variation refused from re-applying for the same variation within a year of the initial refusal.

72. Subsection (3), however, permits Licensing Boards to dispense with the one year limit or, where the limit has not been dispensed with, nonetheless to consider granting a re-application within the one year period where there has been a material change of circumstances.

Section 33 – Transfer on application of licence holder

73. Subsection (1) provides that the holder of a premises licence may apply for the transfer of the licence to another person.

74. Subsection (4) provides that the Licensing Board must notify the application to the chief constable for its area and subsection (5) provides that the chief constable must respond within 21 days by giving one of the notices required by subsection (6). The statutory content of these notices is set out in subsection (6) and covers relevant and foreign offences.

75. Subsection (7) establishes that where the chief constable notifies the Licensing Board that the person(s) to whom the licence is proposed to be transferred (or a connected person) has been convicted of a relevant or foreign offence then the chief constable may also make a recommendation for refusal of the transfer application.

76. Subsections (8), (9) and (10) establish the procedure that Licensing Boards must adopt on receipt of the chief constable's notice. Where the notice reports that no conviction is found the transfer must be granted. Where the notice reports a conviction the Board is under a duty to hold a hearing but the only ground on which the transfer application may be refused is that it is necessary to do so for the purposes of the crime prevention objective. Otherwise the application must be granted.

Section 34 – Transfer on application of person other than licence holder

77. This section allows for an application for a transfer of a premises licence to be made by the proposed transferee rather than the licence holder. Subsection (4) provides that all the procedure set out in section 33 applies to applications for transfer of a premises licence under this section.

78. The transferee may make such an application only in circumstances where the licence holder has died, become insolvent or incapable or the business is being sold or transferred. Where a sale or transfer is being made the transferee and transferor may therefore choose whether it is to be the transferor who makes the application (under section 33) or the transferee (section 34).

79. A transferee will be able to apply under this section only if the transferee has a prescribed connection to the licence holder or the premises. For example, regulations under subsection (1) may prescribe that only the licence holder's executor may apply under this section for transfer of the licence in circumstances where the licence holder has died.

Section 35 – Variation on transfer

80. This section allows persons applying for transfer of a premises licence also to apply at the same time for a variation to the terms and conditions of the premises licence. The provisions in sections 29 and 30 relating to applications and determinations of variation applications will apply to applications for variations under this section.

81. Subsection (3) caters for the case in which a proposed transfer may depend on a variation being obtained to the licence. Where the person seeking the transfer makes it clear that this is the case, the Board must determine the application for variation prior to determining the

application for transfer. If the variation is refused there is no need to proceed with the transfer application.

Section 36 – Application for review of premises licence

82. This section provides for Licensing Boards to review a premises licence on the application of any person. The grounds for such a review are set out in subsection (3). These are: breach of the licence conditions or any other ground relevant to one of the licensing objectives.

83. A Licensing Standards Officer can only apply for a review on the ground that there has been a breach of licence conditions if the Officer has issued a written warning about the breach.

84. Subsection (5) places a duty on persons applying for a review of a premises licence to set out the grounds that they feel merit the review.

Section 37 – Review of premises licence on Licensing Board’s initiative

85. This section allows for Licensing Boards to initiate reviews of premises licences themselves. The grounds for review are the same as those for applications under section 36. Where a Licensing Board proposes to initiate a review of a premises licence, the Board must provide a written report (to be known as a review proposal) setting out the grounds that it considers merit such a review of the premises licence.

Section 38 – Review hearing

86. This section places a duty on the Licensing Board to hold a hearing (known as a “review hearing” for the purposes of this Act) to consider and determine an application for a review of a premises licence made under section 36 or a review proposal under section 37. The Board does not need to hold a review hearing on an application for review if it considers the application is frivolous or vexatious or if it is not relevant to the grounds for review. Subsection (4) places a duty on Licensing Standards Officers to provide a report to the Board and provides a reciprocal duty on Boards to have regard to the report. Subsections (5) and (6) permit Boards to request information, the attendance at a hearing of any person and the production of documents.

Section 39 – Licensing Board’s powers on review

87. This section provides the range of sanctions that a Licensing Board may impose on reviewing a premises licence. The Board can issue a written warning, vary the licence, suspend it or revoke it. The Board can provide for a variation to apply only for a limited period of time.

Section 40 – Review of Licensing Board’s decision to vary or suspend licence

88. This section provides a mechanism by which a licence holder can apply to the Licensing Board to have any variation of their premises licence or the suspension of their premises licence removed. If the Board feels that the sanction in question is no longer necessary then it may

remove the relevant sanction. This power applies only to variation or suspension of a premises licence following review.

Section 41 – Duty to notify court of premises licence

89. This section requires premises licence holders who are charged with relevant offences to notify the court of the fact that they hold a premises licence. This will enable the courts to become aware of cases to which the duty in section 42 will apply.

Section 42 – Court’s duty to notify Licensing Board of convictions

90. Where a premises licence holder is convicted of a relevant offence by a court in Scotland, the clerk of court will, under this section, be required to give notice of the conviction to the Licensing Board. The duty only applies if the clerk is aware that the person convicted holds a premises licence. In most cases, they will be made aware of that fact under section 41.

Section 43 – Licence holder’s duty to notify Licensing Board of convictions

91. Where a premises licence holder (or in the case of a company, partnership or club, a “connected person” – see section 147(3)) is convicted of a relevant offence in Scotland or a foreign offence then the licence holder must, no later than one month after the date of the conviction, notify the Licensing Board of the conviction. If the licence holder does not comply he or she would be guilty of an offence. The duty is imposed on the licence holder even where it is a connected person who has the conviction.

92. Subsection (4) specifies the mandatory requirements for such notices under subsection (3).

Section 44 – Procedure where Licensing Board receives notice of conviction

93. Where a Licensing Board receives notice of a conviction given under section 42 or 43 the Board must give the appropriate chief constable notice of it. The chief constable must then check the conviction and respond, within 21 days, either confirming the existence of the conviction and that it relates to a relevant or foreign offence or stating that the chief constable is unable to confirm the conviction or that it does not relate to a relevant or foreign offence. Where the conviction is confirmed, the chief constable may make a recommendation that the premises licence be varied, revoked or suspended, if the chief constable considers that necessary for the purpose of the crime prevention objective.

94. Subsection (7) places a duty on the Licensing Board to initiate a review of the premises licence should they receive notification from the chief constable confirming the existence of a conviction.

Section 45 – Provisional premises licence

95. This section makes it clear that a premises licence application can be made in relation to premises which are being constructed or converted for use as licensed premises. A premises licence granted for such premises is referred to as a “provisional premises licence”. The section modifies certain provisions of the Act as they apply to applications for provisional premises licences.

96. A provisional premises licence has no effect until it is confirmed. The licence has to be confirmed within 2 years otherwise it will automatically be revoked. The 2 year period can be extended if the construction or conversion work is delayed for reasons outwith the licence holder’s control.

97. Subsection (10) modifies section 20 (which sets out requirements as to applications for premises licences) of the Act as it applies to applications for provisional premises licences. Paragraph (a) establishes that different certificates as to planning, building control and food hygiene are to be provided and paragraph (b) establishes that the name of the premises manager need not be provided on application.

Section 46 – Confirmation of provisional premises licence

98. This section sets out the procedure for confirmation of provisional premises licences. The licence holder has to apply for confirmation to the Licensing Board before the end of the 2 year period beginning when the licence was issued. Confirmation would, in practice, be sought when the construction or conversion work is completed and the premises are ready for use.

99. Subsection (2) sets out the mandatory requirements for applications for confirmation of provisional premises licences.

100. Subsection (3) makes it clear that the operating plan accompanying the application must confirm the name of the proposed premises manager.

101. Subsection (4) requires the Licensing Board to confirm the premises licence where the statutory conditions are met. Subsection (5) sets out those conditions – i.e. that during the period of the provisional licence there had been no variation to the operating plan or layout plan (other than a variation approved by the Board already or classed as a minor variation).

102. Subsection (6) provides that when confirming a premises licence under this section, a Licensing Board may vary any licence condition for the purpose of ensuring consistency with the licensing policy statement.

Section 47 – Temporary premises licence

103. This section caters for the circumstances where premises which already have a premises licence are undergoing reconstruction or conversion work. The licence holder may want to move into temporary premises pending completion of the work. This section allows the licence holder

to apply to the Licensing Board for a premises licence covering the temporary premises. Such a licence is referred to as a “temporary premises licence”.

104. Subsections (5) and (6) confirm the maximum duration of temporary premises licences issued under this section and establish that those licence conditions which were attached to the original application for the premises licence would apply to the temporary premises licence, subject to any exceptions or modification which the Licensing Board may provide for.

Section 48 – Notification of change of name or address

105. This section places a duty on the holder of a premises licence to notify the Licensing Board of any change of name or address of the premises licence holder or of the premises manager. This is meant to cover only actual name changes ie for example, where the licence holder is a company and changes its name, or the premises manager is a woman who changes her name on marriage. A change in the identity of the premises licence holder is provided for in the provisions on transfer of premises licences. If there is a new premises manager, this must be provided for by seeking a variation of the licence so as to add the new premises manager’s name. A notification of a change of the licence holder's name or address or that of the premises manager under this section must be accompanied by the premises licence (unless that is impracticable, in which case a statement must be provided).

Section 49 – Licensing Board’s duty to update premises licence

106. This section is intended to ensure that the information contained in the premises licence is kept up-to-date. Subsection (1) requires the Licensing Board to make the appropriate changes to the information in the licence when it receives the notices of change of name or address and when it varies, transfers, confirms or reviews a premises licence. This ensures that there is always an accurate record of the licence.

107. In most cases the Licensing Board will have been sent the appropriate licence, but subsections (3) and (4) provide that the Board may require a holder to produce their licence within 14 days. Subsection (5) provides that failure to do so without reasonable excuse will be an offence.

Section 50 – Certificates as to planning, building standards and food hygiene

108. This section sets out the requirements as to the production of certificates evidencing compliance with planning, building control and food hygiene legislation in relation to premises in relation to which a licence application is made. Different requirements are imposed according to whether the application is for a full premises licence, a provisional premises licence or confirmation of a premises licence.

Section 51 – Notification of determinations

109. This section places a duty on the Licensing Board to notify its decisions on applications for premises licences, applications for variations of a premises licence, transfer applications,

reviews, applications for a temporary licence, and applications for provisional premises to the applicant and other specified persons.

110. Subsection (3) requires Boards to give reasons for these decisions, but only if asked.

Section 52 – Duty to keep, display and produce premises licence

111. This section provides that a premises licence holder is under a duty to ensure that the premises licence or a certified copy is held on the premises to which it relates either by the licence holder or by the premises manager. A summary of the licence must be displayed prominently on the premises. It is an offence to fail to comply with these requirements or to fail to produce the licence or a certified copy to a constable or a Licensing Standards Officer on request.

Section 53 – Theft, loss etc. of premises licence or summary

112. Subsection (1) provides that a premises licence holder may apply to the Licensing Board for a copy of a premises licence or a summary if the licence or summary has been lost, stolen, damaged or destroyed. If lost or stolen, the theft or loss must have been reported to the police. The Licensing Board must then issue a replacement licence or summary. The Act applies in relation to a replacement and summary in the same way as it applies to the originals

113. Subsection (3) establishes that a replacement licence or summary is to be certified as a true copy by the Licensing Board.

Section 54 – Dismissal, resignation, death etc. of premises manager

114. This section deals with circumstances where the premises manager ceases to work at the premises, becomes incapable of acting or dies or where the personal licence held by the premises manager is revoked or suspended. It gives a “period of grace” to allow the premises to continue operating despite not having a premises manager and pending the recruitment of a new one.

115. Subsection (3) places a duty on the premises licence holder to inform the Licensing Board of such circumstances within 7 days.

116. Subsection (4) and (5) provide that should this notification be done within the 7 day period and an application to substitute a new premises is made within 6 weeks of the loss of the premises manager, then the fact that the premises are, in the meantime, operating without a premises manager will be overlooked.

117. Subsection (6) provides that should there not be an application for a transfer of the premises licence under subsection (4) then the Licensing Board must vary the licence to reflect the fact that there is no longer any premises manager named on it. The period of grace will have ended and the premises would have to stop operating as they would have no premises manager.

Section 55 – Certified copies

118. This section provides an interpretation of what is meant by the term “certified copy” used throughout this Part of the Act.

PART 4 – OCCASIONAL LICENCES

Section 56 – Occasional licence

119. Subsection (1) provides a power for Licensing Boards to grant an occasional licence for premises other than licensed premises to those persons specified in subsection (2). For a premises licence holder this would be to authorise the sale of alcohol in the course of catering for an event taking place outwith their licensed premises. A typical example of where this might arise would be the provision of catering, including the sale of alcohol, at a wedding reception or other social event held on private property. Voluntary organisations may also apply for an occasional licence authorising the sale of alcohol at an event connected with the organisation’s activities.

120. Subsection (5) sets out a maximum duration of 14 days for each occasional licence. Subsection (6) confirms the limits on the number of occasional licences that Licensing Boards can issue within a year to a voluntary organisation.

121. Subsection (7) provides a power for the Scottish Ministers to set out in regulations the form of occasional licences and subsection (8) sets out the mandatory content of occasional licences in paragraphs (a) to (j).

122. Subsection (9) clarifies that premises for which an occasional licence has been granted may sell alcohol at different times for consumption both on and off the premises.

Section 57 – Notification of application to chief constable

123. This section places a duty on Licensing Boards to notify the chief constable and the Licensing Standards Officer of all applications for occasional licences under section 56 and for the Chief Constable, within 21 days, to notify the Board of whether, in the interests of the crime prevention licensing objective, the application should be refused. The LSO may, within the same period, submit comments on the application.

Section 58 – Objections and representations

124. This section allows any person to make objections and representations to Licensing Boards in connection with any application made to the Board for an occasional licence under section 56.

125. Subsection (2) places a duty on Licensing Boards to give the applicant notice of any objections or representations received and to take account of them in determining the application.

126. Subsection (3) permits Licensing Boards to reject any frivolous or vexatious objection or representation made to them. Subsection (4) permits Licensing Boards to recover costs from the person in question. Subsection (5) establishes the matters that would be considered acceptable evidence in any proceedings by a Licensing Board for recovery of costs under subsection (4).

Section 59 – Determination of application

127. This section sets out the procedure that Licensing Boards must adopt to determine an application under section 56 for an occasional licence. It provides both for the circumstances where a Licensing Board proposes to grant a licence and where it proposes to refuse such a licence.

128. Subsection (3) provides that the Board's decision must be based on the statutory grounds for refusal. These are set out in subsection (6). They are similar to the grounds for refusal of a premises licence application except that there is no "overprovision" ground. Subsection (7) provides that, when considering refusal on the ground that the application is inconsistent with the crime prevention objective, Licensing Boards must take into account any recommendation for refusal made by the chief constable. The Board must also take account of any comments submitted by the Licensing Standards Officer.

Section 60 – Conditions of occasional licence

129. This section makes provision as to the conditions to which occasional licences may be subject. It replicates section 27 in relation to premises licences.

Section 61 – Notification of determinations

130. This section places a duty on the Licensing Board to notify its decisions on applications for occasional licences. Subsection (3) requires the Board, on request, to provide reasons for its decisions.

PART 5 – LICENSED HOURS

Section 62 – Licensed hours

131. This section establishes the new regime of licensing hours on which the licensing system will be based. This is a move away from the system of "permitted hours" of the Licensing (Scotland) Act 1976. The Act introduces a more modern approach and gets rid of the practice of giving extensions to hours in favour of clarity up front about acceptable hours. Licence holders would be required to specify their hours in their operating plans which are submitted to the Licensing Board for approval along with their premises licence applications and are drawn up with regard to the Board's published policy statement, which sets out the Board's general approach to policy on licensing hours for their area. The hours for occasional licences are, similarly, to be set out in the application for the licence and incorporated into the licence if granted.

132. Subsection (2) establishes definitions for off-sales hours and on-sales hours respectively. These labels apply not just to hybrid premises but also to premises which are exclusively on-sales or off-sales.

Section 63 – Prohibition of sale, consumption and taking away of alcohol outwith licensed hours

133. The provisions in this section are to some extent based on section 54 of the Licensing (Scotland) Act 1976. The provisions here provide that it is an offence to sell alcohol outwith licensed hours or to allow the sale, consumption, or taking away of alcohol outwith licensed hours. Subsection (2) sets out a number of exceptions which cover, amongst other things, the period of 15 or 30 minutes “drinking-up” time.

134. Subsection (4) is a new offence which replaces that under the Licensing (Scotland) Act 1976 of consuming or taking away alcohol outwith licensed hours. The consumption or taking away is only an offence if the person was asked not to consume the alcohol or take it away but failed to comply with the request.

Section 64 – 24 hour licences to be granted only in exceptional circumstances

135. The presumption provided here is against 24 hour opening in Scotland for on and off sales. However, subsection (2) provides that Boards are entitled to agree exceptions to that presumption but only if satisfied that there are exceptional circumstances justifying it. This is a test which will have to be applied on a case by case basis. Guidance will set out national guidelines on the policy that should be adopted by Licensing Boards in relation to circumstances that might merit 24 hour opening. Boards are required to set out their policy on licensing hours for their area in their policy statements.

Section 65 – Licensed hours: off-sales

136. This section introduces statutory opening hours for off sales premises. Where an application is made for a premises licence, a variation to the licence, an occasional licence, or extended hours application for the sale of alcohol between the hours of 10.00 pm and 10.00 am for consumption off the premises, then the Board must refuse the application.

137. Subsections (4) and (5) enable Scottish Ministers to change those designated times by an affirmative resolution order and require Licensing Boards to take into account the impact of antisocial behaviour (as defined by the Antisocial Behaviour etc. (Scotland) Act 2004) when considering what hours to grant with regard to off-sales.

Section 66 – Effect of start and end of British Summer Time

138. This addresses an existing problem in relation to British Summer Time. The changing of the clock makes it difficult to fix on a uniform approach to whether the hours after midnight ought to be determined by the number of hours of extension granted in the licence application or by reference to the actual time on the clock. The Act provides that under the new licensing

system the times are determined by the number of hours authorised at the time the licence was granted. Accordingly this section provides that at the times of the year when clocks are moved forwards or backwards to accommodate the requirements of British Summer Time, there will be a uniformity of approach throughout the country as to the effect which this has on closing times.

139. Subsection (2) in effect means that the closing times of those licensed premises which are authorised to open later than the hour when the change takes place, should be determined by reference to the number of hours after midnight when they are authorised to be open rather than by the actual time shown on the clock.

Section 67 – Power for Licensing Board to grant general extensions of licensed hours.

140. This section provides a new power for Licensing Boards to grant general extensions to licensed hours in connection with special events of local or national significance.

141. Subsection (2) provides that this can apply to the whole of the Board's area or only to specified parts; licensed hours generally or only to specified descriptions of those hours; and all relevant premises in the Board's area or only to specified descriptions of such premises.

142. Subsection (4) requires Boards to give notice of any such determinations made under this section to those persons specified.

Section 68 – Extended hours applications

143. This section provides a power for Licensing Boards, on the application of a premises licence holder, to grant extensions (known under the Licensing (Scotland) Act 1976 as "occasional extensions") to licensed hours for the premises to cater for special events or occasions.

Section 69 – Notification of extended hours application

144. This section places a duty on Licensing Boards to notify the appropriate chief constable and LSOs of all applications received for extensions to licensed hours. It requires the LSO to respond within 10 days with a report and empowers the chief constable to object (also within 10 days).

Section 70 – Determination of extended hours application

145. Subsection (1) provides that in determining an application for an extension to hours the Board must take into account any objections from the chief constable and any LSO comments. Subsection (2) provides that the Board may hold a hearing for the purposes of determining any application, but this is not mandatory.

146. Subsection (3) provides that where the Board does not hold a hearing, the Board must ensure that before determining the application, the applicant is given an opportunity to comment on any objections from the Police or adverse comments from the Licensing Standards Officer.

PART 6 – PERSONAL LICENCES

Section 71 – Personal licence

147. This section provides for the new personal licence. Each premises licence must name the “premises manager” for the premises. The application for the licence will have to contain information as to the proposed premises manager. In terms of the mandatory conditions in schedule 3, the premises manager will have to hold a personal licence. Other personal licence holders could be employed on the premises to help the premises manager out. A personal licence permits that person to supervise and authorise sales of alcohol on the premises.

Section 72 – Application for personal licence

148. This section sets who can apply for a personal licence. This is any individual aged 18 years or more.

Section 73 – Notification of application to chief constable

149. This section places a duty on Licensing Boards to notify the chief constable of all applications received for personal licences. This is a key element of the new licensing system in that, when considering granting personal licences, it is important that an effective system is in place to enable Boards to ascertain whether or not someone is eligible to hold a licence. In that respect, to be eligible for a personal license a person must not have been convicted of any relevant or foreign offence. This is a change from the current test under the 1976 Act of being a “fit and proper person”.

150. Subsections (2) and (3) provide that the chief constable should respond, within 21 days, with information as to whether or not the applicant has any convictions for a relevant or foreign offence.

151. Subsection (4) provides that where a chief constable finds that an applicant has a conviction for a relevant or foreign offence then he or she may recommend to the Licensing Board that the personal licence application in question should be refused, if he or she thinks it necessary to do so for the purposes of the crime prevention objective.

Section 74 – Determination of personal licence application

152. This section sets out the procedure that Licensing Boards must undertake when considering personal licence applications, and following receipt of the chief constable’s response under section 73.

153. Subsection (2) provides that where all the conditions set out in subsection (3) are met, and there are no convictions, then the Licensing Board must grant the personal licence to the relevant person. If a condition of subsection (3) is not met the application must be refused. The conditions in subsection (3) require the applicant to be 18 or over, to hold a licensing qualification and not to have forfeited a personal licence within the preceding 5 years.

154. Subsection (5) provides that, in the circumstances where all the conditions in subsection (3) have been met, but the Licensing Board has received notice from the chief constable that the applicant has been convicted of a relevant or foreign offence, then the Board must hold a hearing so that the licence application can be considered in light of the details in the notice received from the chief constable. The circumstances thereafter under which the Boards should consider granting or refusing the licence application are set out in subsection (6). The Board therefore is not bound to refuse the licence just because of the existence of a relevant or foreign offence.

Section 75 – Applicant’s duty to notify Licensing Board of convictions

155. This section places a duty on the applicant for a personal licence to inform the Licensing Board to which they have made the application of any relevant or foreign offence that they have been convicted of in the period between making their application and it being determined by the Licensing Board.

156. Subsection (2) provides the time limit within which the applicant must notify the Licensing Board with the information set out in subsection (3).

157. The Licensing Board must suspend consideration of the application and, in the meantime, pass the notice of conviction to the chief constable. The chief constable must, within 21 days, check the conviction and whether it relates to a relevant offence or foreign offence and respond accordingly to the Licensing Board. Subsection (6) sets out the mandatory requirement for such notices to be given by chief constables.

158. Where the Chief Constable confirms the existence of the conviction and that it is for a relevant or foreign offence, the chief constable may recommend to the Licensing Board that, in the interests of the crime prevention licensing objective, the licence application should be refused.

159. The Licensing Board must resume consideration of the application on receipt of the chief constable’s response and determine it in accordance with section 74.

Section 76 – Issue of licence

160. This section provides for the issue of a licence by the Licensing Board on the granting of an application. Subsection (2) sets out the minimum content of the personal licence. Subsection (3) ensures that an individual may hold only one personal licence at a time.

Section 77 – Period of effect of personal licence

161. Personal licences will be valid for 10 years with the possibility of renewals for further periods of 10 years. Subsection (4) ensures that periods of suspension count towards the 10 year period. The Licensing Board must let personal licence holders know when their licences are about to expire.

Section 78 – Renewal of personal licence

162. This section sets out the steps an individual must take to apply for the renewal of a personal licence. Applications for renewal are to be made to the Licensing Board which originally granted the licence. Subsection (2) provides that applications for renewal can only be lodged within a two-month period beginning three months before the licence's expiry. Subsection (5) provides that the procedure outlined under sections 73 and 74 applies to renewals as it does to the grant of the personal licences.

Section 79 – Notification of determinations

163. This section places a duty on Licensing Boards to notify the applicant and appropriate chief constable of any decision to grant or refuse an application. Subsections (3) to (5) require the Board to provide, on request, reasons for its decisions.

Section 80 – Duty to notify court of personal licence

164. Where someone who holds a personal licence is charged with a relevant offence the person must, under this section, notify the court of the existence of the licence and produce the licence to the court. Anyone who fails to comply with these requirements will be guilty of an offence. This notification will help the courts identify those cases to which section 81 applies.

Section 81 – Court's duty to notify Licensing Board of convictions

165. This section sets out the obligations of the court to the relevant Licensing Board where a personal licence holder is convicted of a relevant offence. The clerk to the court must, within the time period specified, notify the relevant Licensing Board of the conviction.

166. Subsection (3) provides that where the Licensing Board receives notice from the courts, but the personal licence holder in question is working in another Board's area, then the Licensing Board which received the notice must provide that other Licensing Board with the required information.

Section 82 – Licence holder's duty to notify Licensing Board of convictions

167. This section requires that, where the holder of a personal licence is convicted of a relevant offence or foreign offence, the holder must, within one month, notify the Licensing Board which issued the licence and, if different, the Board for the area in which the licence holder is working, of the conviction. Where a Licensing Board receives a notice under this

section and has reason to believe that the licence holder is working in the area of another Board, the receiving Board must notify that other Board of the conviction.

168. Subsection (3) sets out the mandatory requirements for the content of such notices of conviction and what information must accompany those notices.

169. Subsection (5) provides that failure to comply with this section is an offence.

Section 83 – Procedure where Licensing Board receives notice of conviction

170. This section sets out the procedure to be followed when a Licensing Board receives notice that a personal licence holder has been convicted of a relevant or foreign offence. It is primarily for the Licensing Board for the area in which the licence holder is working to take action under this section. But if the licence holder is not working in any licensed premises then it will be for the Licensing Board which issued the personal licence to take action.

171. Under this section, the Licensing Board must notify the appropriate chief constable of the conviction. The chief constable must check the conviction and whether it is for a relevant or foreign offence and must reply accordingly within 21 days. Where the conviction is confirmed and it is for a relevant or foreign offence, the chief constable may recommend revocation, suspension or endorsement of the licence.

172. If the chief constable confirms the conviction the Licensing Board must hold a hearing.

173. Subsections (8) and (9) provide a power for Licensing Boards, should they decide to take action against the personal licence holder, to revoke, suspend or endorse the licence. When making such an order they must give notice of this, and their reasons for making it, to those persons listed in subsection (10)(a) to (c).

Section 84 – Conduct inconsistent with the licensing objectives

174. This section provides the procedure that Licensing Boards must adopt when, in the course of reviewing a premises licence under section 38 of the Act, the Board finds that a personal licence holder was acting on the premises in question in a manner that was not consistent with the licensing objectives established by this Act.

175. Subsections (3) to (5) provide that if the situation in subsection (1) applies then a hearing must be held by the Licensing Board for the area in which the personal licence holder is working or, if the licence holder is not working, by the Licensing Board which issued the personal licence. There is provision requiring the Licensing Board making the finding to notify the Licensing Board which is to hold the hearing, where they are not the same.

176. Subsections (6) and (7) provides a power for the Licensing Board holding the hearing to revoke, suspend or endorse the personal licence holder's licence if satisfied that it is necessary to do so for the purposes of any of the licensing objectives.

177. Subsection (8) places a duty on the Licensing Board to give notice of the making of an order to those persons listed in paragraphs (a) to (c).

Section 85 – Expiry of endorsements

178. This section provides for the expiry of endorsements of a personal licence after 5 years. An endorsement for this purpose is an endorsement made in pursuance of an order endorsing the licence made by a Licensing Board.

179. Subsection (3) permits the personal licence holder whose licence contains an endorsement to apply to the relevant Licensing Board, once the endorsement has expired, to have it removed. Where a Licensing Board receives such an application they must remove the endorsement if it has expired.

180. An expired endorsement is to be disregarded whether or not it has been removed from the licence.

Section 86 – Suspension of licence after multiple endorsements

181. This section provides that when a personal licence holder receives 3 endorsements to their licence under sections 83 or 84 of the Act the Licensing Board which issued the licence must hold a hearing to consider what action should be taken against the licence holder.

182. The Board can suspend the licence for up to 6 months or revoke the licence.

Section 87 – Licence holder's duty to undertake training

183. This section makes it mandatory for all personal licence holders to undertake prescribed training every 5 years and to provide the relevant Licensing Board with evidence that they have undertaken this training. Should a personal licence holder fail to undertake the necessary training they will have their personal licence revoked.

184. Subsection (2) places a duty on Licensing Boards to inform personal licence holders of this requirement within the time period specified in this subsection.

185. Subsections (1) and (4) provide a power for the Scottish Ministers to set out the details of the required training in regulations.

Section 88 – Notification of change of name or address

186. This section provides that the holder of a personal licence must notify the relevant Licensing Board of any change of name or address within one month and must enclose the personal licence (or a statement of reasons for failure to produce the licence) with such notice. Failure to do so is an offence.

Section 89 – Licensing Board’s duty to update licence

187. Where certain changes have been made to the terms or effect of a personal licence, (for example, where it has been renewed, suspended or a change of details has been notified), the Licensing Board must make the necessary amendments to the licence.

188. The Licensing Board may require the personal licence holder to present the licence for amendment within 14 days. Failure by the licence holder to comply with this obligation, without reasonable excuse, is an offence.

Section 90 – Power to specify which Licensing Board is to exercise functions under this Part

189. This is a general power permitting the Scottish Ministers by way of an order to re-determine which Licensing Board is the relevant one to carry out the functions of this Part of the Act.

Section 91 – Power to prescribe licensing qualifications

190. This section provides a power for the Scottish Ministers to set out in regulations the mandatory requirements for a qualification required to obtain a personal licence. Different qualifications could be prescribed in relation to different types of licensed premises. For example, the premises manager for a particular type of licensed premises may be required to hold the appropriate qualification prescribed for that type of premises (see paragraph 4(1)(d) of schedule 3).

Section 92 – Theft, loss etc. of personal licence

191. This section permits personal licence holders to apply to the Licensing Board that issued the licence for a copy of the licence if it has been lost, stolen, damaged or destroyed. Where a Licensing Board receives such an application it is under a duty to issue a replacement if the conditions set out in subsection (2) are met. If the licence was lost or stolen, this must be reported to the police before a copy can be issued.

Section 93 – Licence holder’s duty to produce licence

192. This section applies where the holder of a personal licence is working on licensed premises. A constable or Licensing Standards Officer may require the holder to produce his or her personal licence. Failure to produce it is an offence.

PART 7 – CONTROL OF ORDER

Section 94 – Exclusion orders

193. The Licensed Premises (Exclusion of Certain Persons) Act 1980 provides for the criminal courts to make an exclusion order against a person found guilty of an offence committed on

licensed premises (other than an off-licence). This section replaces the 1980 Act which is repealed in its entirety by the Act.

194. This section applies where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises (other than premises which have only an occasional licence). It also introduces a new civil procedure for a premises licence holder to apply through the civil courts for an exclusion order.

195. Subsection (2) provides a power for the criminal court, when convicting the person of the violent offence, to make an exclusion order against the person.

196. Further to the powers provided for criminal courts in subsection (2), subsection (3) provides an additional power under which the holder of the premises licence for the premises concerned may, by summary application to the sheriff made within 6 weeks of the conviction, seek an exclusion order against the person. Subsections (4) and (5) set out the conditions that must be considered by the sheriff and if he is satisfied that they are met then he may grant the exclusion order.

197. An exclusion order prohibits the person convicted from entering the licensed premises concerned without the consent of the premises licence holder or someone authorised by the licence holder to give consent. An exclusion order made by the criminal courts can also exclude the person from other licensed premises.

198. Subsection (7) provides that an exclusion order may have effect for a maximum of 2 years.

Section 95 – Breach of exclusion order

199. This section makes it an offence for a person subject to an exclusion order to breach that order and sets out in subsection (2) what sanctions may be taken against them.

200. Subsection (3) provides a discretionary power for the court to vary or terminate the exclusion order.

201. Subsections (4) and (5) provide a power for an authorised person (defined in subsection (6)), or a constable to remove the person breaching the exclusion order from the licensed premises.

Section 96 – Exclusion orders: supplementary provision

202. This section provides that an exclusion order may still be made where an absolute discharge is given under section 246(3) of the Criminal Procedure (Scotland) Act 1995.

203. Subsection (3) places a duty on the clerk of the court or the sheriff clerk to send a copy of the exclusion order to the premises licence holder.

Section 97 – Closure orders

204. Subsection (1) provides a power for Licensing Boards, on application from a senior police officer, by order to close any licensed premises if disorder is imminent and closure is necessary for public safety.

205. Subsection (2) provides a power for a senior police officer to make an order to authorise immediate closure of licensed premises under the same conditions but only if the risk to public safety is such that immediate closure is necessary. An order made by senior police officer is referred to as an “emergency closure order” and has effect for no more than 24 hours.

Section 98 – Termination of closure orders

206. This section places a duty on the appropriate senior police office to terminate any closure order (including emergency closure orders) where it is no longer necessary for public safety. The premises licence holder can also apply to the Licensing Board for termination of a closure order.

Section 99 – Extension of emergency closure order

207. This section provides a power for a senior police officer to extend the duration of an emergency exclusion order if the conditions set out in subsection (2) are met.

208. Subsection (3) provides that extensions to closure orders made under this section cannot come into force unless the appropriate constable has notified a responsible person in relation to the premises.

Section 100 – Regulations as to closure orders

209. This section gives the Scottish Ministers a power by regulation to make further provision as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders.

PART 8 – OFFENCES

Section 102 – Sale of alcohol to a child or young person.

210. This section makes it an offence for anyone to sell alcohol to children or young people anywhere. This is a widening of the existing offence provided for in section 68 of the Licensing (Scotland) Act 1976, which is restricted to the licence holder, or an employee or agent of the licence holder in licensed premises.

211. Subsection (2) provides a defence if the seller believed that the purchaser was 18 or over and either took all reasonable steps to establish the purchaser’s age or nobody could reasonably have suspected from the purchaser’s appearance that he was under 18.

212. The seller is deemed to have taken all reasonable steps if he or she had seen evidence of the purchaser's age and that evidence would have convinced a reasonable person. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it (for example if the proof of age was either an obvious forgery or clearly belonged to another person), the defence would fail.

Section 103 – Allowing the sale of alcohol to a child or young person

213. This section deals separately with “allowing” the sale of alcohol to children or young people. It applies only to sales on “relevant premises” by “responsible persons”. “Relevant premises” is defined in section 122 and essentially covers any premises on which alcohol is lawfully sold. “Responsible person” is also defined in section 122 of the Act. It has different meanings in relation to different types of premises and covers those with some responsibility for sales of alcohol. It also includes anyone over 18 who works on the premises and who has authority to prevent the sale.

Section 104 – Sale of liqueur confectionery to a child

214. This section makes it an offence to sell liqueur confectionery to a child under 16. Subsection (2) provides a defence if the seller believed that the purchaser was 16 or over and if either he or she took all reasonable steps to establish the purchaser's age or if nobody could reasonably have suspected from the purchaser's appearance that he or she was under 16.

215. Subsection (3) provides that the accused is deemed to have taken “all reasonable steps” if he or she was shown evidence of the individual's age and that evidence was such that it would have convinced a reasonable person.

Section 105 – Purchase of alcohol by or for a child or young person

216. Subsection (1) makes it an offence for a child or young person to buy or attempt to buy alcohol whether or not on licensed premises.

217. Subsection (2) gives the child or young person immunity from committing an offence under this section where the child or young person is taking part in test purchasing authorised by a chief constable.

218. Subsection (3) places an obligation on the chief constable to avoid any risk to the welfare of the child or young person who has been authorised to buy or attempt to buy alcohol.

219. Subsection (4) makes it an offence for an adult to act as an agent for a child or young person in purchasing or attempting to purchase alcohol (for example, if a child gives money to an adult to buy alcohol on their behalf). It is also an offence to buy alcohol for a child or young person to consume on relevant premises. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so.

220. Subsection (5) provides that it is not an offence to buy beer, wine, cider or perry for a person aged 16 or 17 to consume with a table meal on relevant premises.

Section 106 – Consumption of alcohol by a child or young person

221. Subsection (1) makes it an offence for a child or young person knowingly to consume alcohol on relevant premises.

222. Subsection (2) also makes it an offence for a responsible person knowingly to allow the consumption of alcohol by a child or young person on relevant premises.

223. Subsection (3) provides that the offences in this section will not be committed where a 16 or 17-year-old consumes beer, wine, cider or perry with a meal.

Section 107 – Unsupervised sale of alcohol by a child or young person

224. This section makes it an offence for a responsible person knowingly to allow a child or young person to sell, supply or serve alcohol, unless the alcohol is for consumption off the premises or is for consumption with a meal and (in either case) the sale is specifically authorised by someone aged 18 or over.

Section 108 – Delivery of alcohol by or to a child or young person

225. This section relates to off-sales. Subsections (2) and (3) make it an offence for any responsible person to allow someone under the age of 18 to deliver alcohol from such a premises or to deliver (or allow to be delivered) alcohol to someone under 18.

226. Subsection (4) provides for an exemption. Delivery by a child or young person is not an offence where the child or young person delivering or taking delivery works at the relevant premises, or at the place of delivery, in a capacity which includes the delivery of alcohol. An example of this would be where a young person is helping out in a family business, or works at a reception desk at the place of delivery.

227. Subsection (5) establishes a defence to the offences in subsections (2) and (3)(a) (allowing delivery to a child or young person), namely that the person accused took all necessary precautions to avoid committing the offence. Subsection (8) establishes a defence for the offence in subsection (3)(b) (delivering to a child or young person). It is a defence to show that the person making or allowing the delivery had been shown documents bearing to be proof of age of the child or young person. Those types of documents which are acceptable for this purpose are set out in subsection (7).

Section 109 – Sending a child or young person to obtain alcohol

228. This section makes it an offence to send a child or young person to obtain alcohol which is sold for consumption off the premises. This offence covers, for example, circumstances where

a parent sends his or her child to an off-licence to collect some alcohol which has been bought over the telephone.

229. Subsection (2) provides that the offence will be committed regardless of whether the child or young person is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent.

230. Subsection (3) provides that the offence will not be committed where the child or young person works at the premises in question and his or her job involves taking deliveries of alcohol.

Section 110 – Duty to display notice

231. This section makes it a statutory requirement that there be displayed on all relevant premises (defined in section 147) in a prominent place at all times a notice stating that it is an offence for a person under the age of 18 to buy or attempt to buy alcohol on the premises or for a person to buy alcohol on their behalf. The notice must also contain a statement as to the “no proof – no sale” requirement.

232. The form and size of the notice will be set out in regulations.

233. Subsection (4) makes it an offence for anyone specified in subsection (5) relating to the premises in question, not to display such a notice.

Section 111 – Drunk persons entering or in premises on which alcohol is sold

234. This section makes it an offence for a drunk person to attempt to enter any relevant premises (defined in section 147 – basically any premises on which alcohol is lawfully sold). It also makes it an offence for a person, whilst on relevant premises, to be drunk and incapable of taking care of himself or herself. A person committing an offence under this section can be arrested without warrant by the police.

Section 112 – Obtaining of alcohol by or for a drunk person

235. This section makes it an offence for any person to buy or attempt to buy alcohol for someone who is drunk or to help a drunk person to obtain or consume alcohol. The offences only apply where the alcohol is to be consumed on relevant premises.

Section 113 – Sale of alcohol to a drunk person

236. This section makes it an offence for any responsible person working on relevant premises to sell alcohol to someone who is drunk.

Section 114 – Premises manager, staff etc. not to be drunk

237. This section makes it an offence for any responsible person (ie the premises manager and anyone else who works on relevant premises) to be drunk on the premises.

Section 115 – Disorderly conduct

238. Subsection (1) makes it an offence for any person to behave in a disorderly manner or to annoy others with offensive language on relevant premises.

239. Subsection (2) makes it an offence for any responsible person in relation to relevant premises to allow disorderly conduct on the premises. Subsection (3) provides a “due diligence” defence for a person charged with an offence under subsection (2).

240. Subsections (4) and (5) confirm the penalties for offences committed under this section.

Section 116 – Refusal to leave premises

241. This section makes it an offence for a disorderly person to refuse to leave relevant premises when asked or for any person to refuse to leave licensed premises at closing time when asked. Subsection (3) allows certain authorised persons to use reasonable force to remove from any premises on which alcohol is sold a person who is behaving in a disorderly manner but refuses to leave when asked. “Authorised persons” is defined in subsection (6)

Section 117 – Offences relating to sale of alcohol to trade

242. This section makes it an offence for a person to sell alcohol to trade otherwise than from premises used exclusively for the purpose of selling to trade (whether such sale is solely of alcohol or not).

Section 118 – Prohibition of sale of alcohol on moving vehicles

243. This section deals with, for example, “party buses” and “stretch limousines” that currently provide alcohol. It makes it an offence for any person to knowingly sell alcohol on any vehicle whilst it is moving unless authorised to do so. “Vehicle” is defined in section 147 and basically means any road vehicle.

Section 119 – Delivery of alcohol from vehicles etc.

244. This deals with deliveries of alcohol and would provide that all such deliveries and carrying of alcohol in vehicles is properly and clearly recorded.

Section 120 – Prohibition of late-night deliveries of alcohol

245. This section deals with off-sales and makes it an offence for anyone who works on these licensed premises to deliver alcohol between 12 midnight and 6 am and also an offence for any responsible person to allow such a delivery.

Section 121 – Keeping of smuggled goods

246. This section makes it an offence knowingly to keep or allow to be kept on any licensed premises any illegally imported goods.

247. Subsection (3) provides a power for the courts to order the forfeiture or destruction of goods kept in breach of subsection (1).

PART 9 – MISCELLANEOUS AND GENERAL

Section 123 – Excluded premises

248. This section provides that those premises described in subsection (2) are excluded from the new licensing regime, and consequently the sale of alcohol would not be permitted on these premises. Paragraph (a) is intended to cover motorway service areas and paragraph (b) covers petrol stations and garages.

249. Subsection (5) provides that garage premises which are a principal local source of fuel or groceries are not excluded premises and can therefore apply for a licence to sell alcohol

250. Subsection (6) provides a power for the Scottish Ministers to amend the list of excluded premises by way of regulations.

Section 124 – Exempt premises

251. This sets out those premises which are to be exempt from the requirement to hold a licence under the Act. An “examination station” at any airport is basically the area beyond the security check-in.

252. Subsection (1)(d)(ii) provides a specific exemption for ferries while engaged on a domestic journey. ‘Ferry service’ is defined in subsection (4).

Section 125 – Special provisions for certain clubs

253. This section deals with clubs. Part VII of the Licensing (Scotland) 1976 Act regulates clubs by virtue of registration granted by a sheriff. This system was first introduced by the Licensing (Scotland) Act 1903. That system is repealed by the Act. Instead, the general licensing regime will apply to clubs as it applies to other premises, subject to the provisions in this section.

254. Subsection (1) provides a power for the Scottish Ministers to prescribe categories of clubs that would be exempt from the application of those provisions of the Act listed in subsection (2). The general effect is that such clubs would not need to have a premises manager and the overprovision ground of refusal would not apply. Subsection (3) permits the Scottish Ministers to prescribe different descriptions of clubs for the purposes of different provisions set out in subsection (2).

255. Subsections (4) confers power on the Scottish Ministers to provide for further modifications of the Act as it applies to such categories of clubs as they may specify.

Section 126 – Vessels, vehicles and moveable structures

256. “Premises” for the purposes of the Act includes vessels, vehicles and other moveable structures. In the case of vessels, this section effectively provides for the “home port” of the vessel to be treated as the place where it is situated. That means, for example, that it will be the Licensing Board for that port that would have jurisdiction to grant a licence for the vessel.

257. In the case of vehicles and other moveable structures, the effect of this section is that, where alcohol is to be sold on or from the vehicle etc. while it is parked somewhere, a separate licence will be needed for each such place.

258. This section also makes special provision for the licensing of moving vehicles and other moveable structures. Subsection (5) sets out which Licensing Board will be responsible for licensing such premises. Subsection (6) exempts moving premises from certain requirements of the Act which are only necessary for buildings: notification to neighbours, the community council and the fire authority, requirement to provide certificates relating to planning, building control and food hygiene.

259. In addition, vessels are exempted from the requirements to notify neighbours and the fire authority, and to provide certificates relating to planning, building control and food hygiene.

Section 127 – Power to prohibit sale of alcohol on trains

260. Subsections (1) and (2) provide for the prohibition of the sale of alcohol at specified stations or on any train travelling between specified stations for a specified period. An order made under this section may be made by a sheriff on application by a senior police officer, if the sheriff is satisfied that the order is necessary for the prevention of disorder.

261. Subsection (3) requires the senior police officer who applied for the order to serve a copy of the order on the train operator or operators concerned.

262. Subsection (4) makes it an offence for anyone knowingly to sell alcohol, or to permit its sale, in contravention of such an order.

Section 128 – Power to prohibit sale of alcohol on ferries

263. This section creates a power for the Police, on application to a sheriff, to prohibit the sale of alcohol on specified vessels which are part of a ferry service. This mirrors the power in section 127 of the Act in relation to trains. This power can be used to prevent the sale of alcohol on either a particular journey or a particular route.

Section 129 – Relevant offences and foreign offences

264. This section provides a definition of the term “foreign offence” for the purposes of this Act and provides a power for the Scottish Ministers to set out by way of regulations a list of “relevant offences” for the purposes of this Act.

265. Subsection (3) allows the persistent commission of a lower level offence - which would not by itself be sufficiently serious - to amount to a “relevant offence”. Convictions for a “relevant offence” may result in refusal by the Board to grant a licence or the review of a licence. One of the uses to which this regulation making power is intended to be put is to make additional links between the Licensing Act and the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

Section 130 – Effect of appeal against conviction for relevant or foreign offence

266. This section provides that the duties placed on Licensing Boards under this Act relating to relevant and foreign offences may still be carried out if the conviction is subject to appeal but the Board has discretion to postpone any action it has decided to take.

267. Subsection (3) provides that the Board’s actions will have no effect if the conviction is overturned on appeal.

Section 131 – Appeals

268. This section provides that any decision of a Licensing Board specified in schedule 5 of this Act may be appealed against by way of stated case to either the sheriff or the sheriff principal, as appropriate.

269. Subsection (2) sets out the circumstances in which cases will be determined by either the sheriff or the sheriff principal.

270. Subsection (3) establishes the grounds on which appeals could be made.

271. Subsection (5) sets out the powers of the sheriff or sheriff principal where an appeal made under this section is upheld.

Section 132 – Appeals: supplementary provisions

272. This section sets out those procedural matters relating to appeals made under section 131 and provides that any further procedural matters that might be required may be prescribed by Act of Sederunt.

273. Subsection (8) allows the sheriff principal to recall (pending the outcome of the appeal) any decision of the Licensing Board which has resulted in the suspension or revocation of a premises licence, if he considers it appropriate to do so on the balance of convenience.

Section 133 – Hearings

274. This section provides that any hearing held under the provisions of this Act must be held at a meeting of the Licensing Board. It also provides a power for the Scottish Ministers to make regulations to set out all other procedural matters relating to any hearing held under the provisions of this Act including those matters set out in subsection (3).

Section 134 – Form etc. of application and notices

275. This section provides a power for the Scottish Ministers to make regulations that set out the form and content of applications and notices made or given under the Act and the manner in which they are to be made or given.

Section 135 – Power to relieve failure to comply with rules and other requirements

276. This section provides a power for Licensing Boards to overlook any procedural failing and thus enable them to deal with applications etc. despite procedural requirements not having been met.

Section 136 – Fees

277. This section provides a power for the Scottish Ministers to make regulations to enable fees to be charged by Licensing Boards.

278. Subsection (3) places a duty on the Scottish Ministers to consult with those persons listed in paragraphs (a) and (b) before making any such regulations under this section.

279. Subsection (4) establishes that a Licensing Board need not carry out any of its functions relating to the application for which fees are payable until they are paid. Subsections (5) and (6) set out who fees should be payable to. Ultimately, fee income will be paid over to the councils.

Section 137 – Inspection of premises before grant of licence etc.

280. This section provides a power for Licensing Standards Officers and the police to enter premises at any time in those circumstances linked to a relevant application or review, provided for in subsection (1), and if necessary to use reasonable force to do so. This is for the purposes of assessing the likely effect on the promotion of the licensing objectives of the grant of the application or the effect of the sale of alcohol under the licence. It also provides that anyone preventing those persons from undertaking this task will be guilty of an offence.

Section 138 – Police powers of entry

281. This section provides that a constable has a lawful right of entry to any licensed premises and to any other premises on which the constable has reason to believe alcohol is being sold in breach of section 1(1) of the Act

282. Subsection (4) establishes the conditions under which a police officer below the rank of inspector may enter the premises.

283. Subsection (5) makes it an offence for anyone to obstruct the police in the carrying out of their functions under this section.

Section 139 – Remote sales of alcohol

284. This section deals with situations where alcohol is delivered from a different place from that in which the order for the alcohol is placed. Subsection (1) and (2) provide that where the place of despatch is in Scotland, the sale is treated as having happened at that place. For example, when alcohol is bought via mail order or a telephone call centre and sent out for delivery from a separate warehouse, the sale is, for the purposes of this Act, treated as having taken place at the warehouse and not the call centre. The requirement for a premises licence would, therefore, apply to the warehouse rather than the call centre.

285. Subsections (3) and (4) provide a power for the Scottish Ministers to provide for the regulation of the converse scenario i.e. where the alcohol is ordered in Scotland but delivered from a warehouse outside Scotland.

Section 140 – Presumption as to liquid contents of containers

286. This section establishes a presumption relating to the contents of a container. This essentially means that, for the purposes of a trial for an offence under the Act, any liquid found in a container is to be presumed to be the liquid that the label on the container suggests it is. This section replicates what was previously provided for in the Licensing (Scotland) Act 1976 relating to such matters.

287. Under subsection (4) the presumption can be rebutted, but notice of intention to lead evidence to rebut the presumption must be given. The prosecution or defence may wish to rebut the presumption. For example, the defence may want to prove that the contents of what appears to be a bottle of alcohol was not in fact alcohol and the prosecution may want to prove that the contents of what appears to be a bottle of coca cola was in fact alcohol.

Section 141 – Offences by bodies corporate etc.

288. This section deals with offences committed by companies, partnerships and other bodies. It effectively provides for certain persons responsible for the management or control of these bodies to share criminal responsibility for offences committed with their consent or connivance or due to their neglect.

Section 142 – Guidance

289. This section provides a power for the Scottish Ministers to issue guidance to Licensing Boards. It also allows the Scottish Ministers to modify any guidance given by them. Subsection (5) places a duty on the Scottish Ministers to lay a draft of the first set of guidance to Licensing

Boards before the Parliament and confirms that the guidance would be subject to the affirmative resolution parliamentary procedure. Subsection (6) provides that any subsequent guidance issued must be laid before the Parliament.

Section 143 – Crown application

290. This section makes it clear that the provisions of the Act apply to Crown bodies as they apply to everyone else. So, for example, a licence is required for the sale of alcohol on any properties managed by Historic Scotland.

Section 144 – Modification of enactments

291. This section introduces schedule 6 of the Act which contains modifications of enactments.

Section 145 – Ancillary provision

292. This section allows the Scottish Ministers to make ancillary provision in statutory instruments in consequence of this Act. This power will, for example, be used to make transitional provision and further consequential modifications.

Section 146 – Orders and regulations

293. This sections sets out the parliamentary procedure in relation to orders and regulations made by the Scottish Ministers under the provisions of the Act.

Section 147 – Interpretation

294. This section defines certain terms used throughout this Act.

Section 148 – Index of defined expressions

295. This section provides an index indicating where definitions of specific terms used throughout the Act can be found.

Section 149 – Repeals

296. This section introduces schedule 7 to the Act which contains repeals of enactments.

Section 150 – Short title and commencement

297. This section provides for commencement by order.

SCHEDULE 1

298. This schedule sets out procedural matters relating to the membership and other administrative matters for Licensing Boards provided for by section 5 of the Act.

299. *Paragraph 1* provides for the maximum and minimum numbers of members of Licensing Boards and that they should be councillors and provides for the membership of Boards for Licensing Divisions.

300. *Paragraph 2* sets out the arrangements for the election of Licensing Boards by local councils and includes provision on elections to fill vacancies.

301. *Paragraph 3* provides the circumstances in which councillors will be disqualified from membership of Licensing Boards.

302. *Paragraph 4* establishes the duration for membership of Licensing Boards and also provides that a member may seek re-election, or resign at any time, and also sets out the circumstances when a member would cease to hold office. *Paragraph 5* provides for the removal of members.

303. *Paragraph 6* makes provision for the election of a convener for each Licensing Board. It establishes the duration of office of the convener, including eligibility for re-election. It provides that the convener may resign at any time and also provides when he or she would cease to hold office. *Paragraph 7* makes provision for the removal of the convener.

304. *Paragraph 8* requires the local councils to appoint clerks for the Licensing Boards and to provide other staff, property and services that are required to enable the Boards to carry out their functions. *Paragraph 9* enables the Board to establish committees.

305. *Paragraph 10* provides a power for Licensing Boards to delegate their functions under this Act, apart from those functions set out paragraph 10(2), to any of those persons listed in paragraph 10(1).

306. *Paragraph 11* makes it mandatory under this Act for all members of Licensing Boards to undertake the required training within 3 months of appointment and that they cannot take part in any Board proceedings until they have undertaken the required training. Failure to do so will result in the member of the Board having to leave office. It also provides a power for the Scottish Ministers to make regulations prescribing the training requirements.

307. *Paragraph 12* establishes the procedure that Licensing Boards have to operate when conducting meetings of the Boards including the required quorums for meetings. A power is provided for the Scottish Ministers to make regulations that would set out further provisions relating to proceedings of Licensing Boards. Any other matters not so provided for would be determined by Licensing Boards themselves by way of rules.

308. *Paragraph 14* makes transitional provision. It provides that existing members of Licensing Boards elected under the provisions of the Licensing (Scotland) Act 1976 would continue to hold office until the new elections are held. This would ensure continuity of membership until such time as this Act comes into force and new members are elected following the first local government elections held whilst this Act is in force.

SCHEDULE 2

309. This schedule sets out the membership, administration and other procedural matters relating to Local Licensing Forums established under section 10 of this Act.

310. *Paragraph 2* makes provision as to the membership of the Forums and seeks to ensure that the membership is as representative as possible of the interests of those persons listed in paragraph 2(5)(a) to (e). It also provides that the relevant local authority may determine the terms and conditions for membership of Local Licensing Forums.

311. *Paragraph 3* establishes the procedure for the election of conveners for Local Licensing Forums.

312. *Paragraph 4* places a duty on local authorities to provide the Local Licensing Forums with administrative support.

313. *Paragraph 5* sets out the legal requirement for a quorum for meetings of a Forum, that the Forums must hold at least 4 meetings per year and that they must be held in public.

SCHEDULE 3

314. This schedule establishes the national mandatory licence conditions for premises licences issued under the Act, ensuring national consistency on those issues provided for.

315. *Paragraphs 2 and 3* ensure compliance with the operating plan which accompanies the premises licence application under section 19(2) of this Act. They also clarify the relationship between the opening times set out in the operating plan or occasional licence and the exemptions outlined in section 63(2) of the Act relating to the sale, consumption and taking away of alcohol outwith licensed hours.

316. *Paragraph 4* ensure that each licensed premises has a premises manager who holds a valid personal licence. *Paragraph 5* ensures that sales of alcohol are overseen by the premises manager or someone else holding a personal licence.

317. *Paragraph 6* establishes that it is a mandatory requirement for all persons who are involved in the sale or serving of alcohol to undertake the required training. This paragraph also provides a power for the Scottish Ministers to make regulations prescribing the mandatory training.

318. *Paragraph 7* applies to both on-sales and off-sales and makes it a mandatory requirement that the prices of alcohol would have to be fixed for at least 72 hours. This precludes “happy hours”.

319. *Paragraph 8* establishes national licence conditions prohibiting irresponsible drinks promotions for licensed premises. Sub-paragraphs (b) to (d) do not apply to off sales. These conditions are aimed at reducing the problems of binge drinking and under-age drinking. A power is provided for the Scottish Ministers to add to or modify the list of proscribed promotions.

320. *Paragraph 9* applies only to on-sales and requires non-alcoholic drinks to be made available.

321. *Paragraph 10* ensures that annual fees are paid. Non-payment of fees will accordingly be a breach of licence conditions.

SCHEDULE 4

322. This schedule establishes the national mandatory licence conditions for occasional licences issued under the Act, ensuring national consistency on those issues provided for. The conditions are similar to those for premises licences.

323. *Paragraphs 2 and 3* ensure compliance with the terms of the occasional licence issued under section 53 of this Act. They also clarify the relationship between the opening times set out in the operating plan or occasional licence and the exemptions outlined in section 63(2) of the Act relating to the sale, consumption and taking away of alcohol outwith licensed hours.

324. *Paragraph 4* applies only to occasional licences issued to persons who a premises or personal licence and requires sales of alcohol to be supervised by someone who holds a personal licence.

325. *Paragraph 5* applies only to occasional licences issued to voluntary organisations and ensures that alcohol may only be sold at events run in connection with the organisations’ activities.

326. *Paragraph 6* requires the price of alcohol to be fixed for at least 72 hours. This prohibits “happy hours”.

327. *Paragraph 7* establishes national licence conditions relating to irresponsible promotions. Sub-paragraphs (b) to (d) do not apply to circumstances where alcohol is consumed off the premises. These conditions are aimed at reducing the problems of binge drinking and under-age drinking. A power is provided for the Scottish Ministers to add to or modify the list of proscribed promotions.

SCHEDULE 5

328. This schedule sets out who may appeal against what decision. This includes: the personal licence holder (or applicant for a personal licence) who can appeal against the refusal of a personal licence or other order in relation to a personal licence; and both the applicant for and the objector to an occasional licence who can appeal against the grant or refusal (as appropriate) of occasional licence.

329. Only the decisions listed in the schedule can be appealed. Therefore there can be no appeal against a decision by a Licensing Board to reject an objection or representation on the basis that it is frivolous or vexatious.

330. There is a difference of approach between premises licence applications and occasional licence applications, in that those objecting to premises licence applications have no right to appeal against the Board's decision to grant the initial application. However, there is a review process available for premises licences, once they are up and running, which is not available in respect of occasional licences. As occasional licences will be for short periods, there is a need to allow objectors to appeal against decisions by Boards at the stage at which the occasional licence is granted.

SCHEDULE 6

331. This schedule sets out those enactments, sections of enactments and Parts of enactments that are to be repealed by the Act.

PARLIAMENTARY HISTORY

332. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official report of those proceedings and the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports.

Proceedings and reports Reference

Introduction

28 February 2005 SP Bill 37 2005

Stage 1

(a) Local Govt. & Transport Committee

- 7th Report 2005 13 June 2005 (vol.1) (vol. 2)
11th meeting 2005 22 March 2005 col 2186 – 2263
12th meeting 2005 12 April 2005 col 2263 – 2310
13th meeting 2005 19 April 2005 col 2346 – 2382
14th meeting 2005 26 April 2005 col 2416 – 2446
15th meeting 2005 3 May 2005 col 2450 – 2484
17th meeting 2005 17 May 2005 col 2558 – 2610

(b) Subordinate Legislation Committee

- 16th meeting 2005 17 May 2005 col 1039 – 1047
17th meeting 2005 24 May 2005 col 1056 – 1059

Stage 2

(a) Local Govt. & Transport Committee

- 24th meeting 2005 20 September 2005 col 2826 – 2872
25th meeting 2005 27 September 2005 col 2884 – 2924
26th meeting 2005 3 October 2005 col 2928 – 2964

Consideration by Parliament

Stage 3 Debate and Parliamentary vote 22 June 2005, col 18162 - 18216

Royal Assent

21 December 2005

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