

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 - Alcohol Licensing

Section 179 - Premises licence applications: statements about disabled access etc.

749. This section amends section 20(2)(b) of the [Licensing \(Scotland\) Act 2005 \(asp 16\)](#), to require applicants for a premises licence to provide a “disabled access and facilities statement”, in a form set out by Scottish Ministers, to the Licensing Board along with the licence application.
750. That statement is to contain information about disabled access to the subject premises and the facilities or any other provision available to aid the use of the premises by disabled people.
751. Failure to provide this statement is not a ground for refusing an application. Rather, it would mean the premises licence application would be incomplete. The application could not therefore be considered by the Licensing Board as it would not be a valid application under section 20(2). A premises application which is accompanied by the statement would require to be determined by the Licensing Board in the normal way according to section 23 of the 2005 Act.

Section 180 - Premises licence applications: notification requirements

752. This section amends the list of those to whom the Licensing Board must send a copy of an application when undertaking its obligations under section 21(1) of the Licensing (Scotland) Act 2005. Previously a copy of the application was required to accompany each notice issued under section 21(1) of the 2005 Act. The section also removes the chief constable’s obligation to provide the Board with antisocial behaviour reports. A Licensing Board’s ability to request such reports is now provided for under section 24A of the Licensing (Scotland) Act 2005, inserted by section 183 of the Act.

Section 181 - Premises licence applications: modification of layout plans

753. This section amends section 23(7) of the Licensing (Scotland) Act 2005 concerning the determination of an application for a premises licence. Section 23(7) provided that a Licensing Board could propose a modification to the operating plan in circumstances where the Licensing Board would otherwise refuse the application. The Licensing Board would grant the license if the applicant agreed to the proposed modification.
754. This section extends section 23(7) so that a Licensing Board can also propose a modification to the layout plan, which is required to accompany the application under section 20(2)(b) of the Licensing (Scotland) Act 2005. The Licensing Board may propose a modification to the layout plan in circumstances where the Licensing Board would otherwise refuse the application. The Licensing Board grants the license if the

applicant agrees to the proposed modification. The amendment allows the Licensing Board to propose modifications to either the operating plan or the layout plan, or both if necessary.

Section 182 – Review of premises licences: notification of determinations

755. **Section 182** inserts section 39A into the Licensing (Scotland) Act 2005. Section 39A(1) and (2) requires a Licensing Board to provide notification of the outcome of a premises licence review to the premises licence holder and, if applicable, the person who applied for the premises licence review.
756. **Section 39A(3)** and (4) set out when a premises licence holder and the applicant for a premises licence review may require a statement of reasons for a Licensing Board's decision on a premises licence review. If a request is made in accordance with section 39A(3) or (4) then section 39A(5) requires a Licensing Board to issue a statement of reasons for its decision on the premises licence review to the premises licence holder and, if applicable, the person who applied for the premises licence review.
757. **Section 39A(6)** enables Scottish Ministers to prescribe the form and timing of such a statement of reasons.

Section 183 - Premises licence applications: antisocial behaviour reports

758. This section amends the Licensing (Scotland) Act 2005 requirements concerning a chief constable's obligation to provide the Licensing Board with an antisocial behaviour report. The effect is that it is no longer necessary for the chief constable to provide a report in respect of every application. Instead, a report will only be required if the Licensing Board requests one. In addition the chief constable may choose to forward a report for the Board's consideration.

Section 184 – Premises licences: connected persons and interested parties

759. **Section 184** inserts a new section 40A into the Licensing (Scotland) Act 2005. Section 40A(1) imposes a duty on a premises licence holder to notify the appropriate Licensing Board if a person becomes or ceases to be a connected person or interested party. The Licensing Board is required to give a copy of the notice to the chief constable.
760. The notification must set out the interested party or connected person's name, address and date of birth. The notification must be made within one month of the person becoming or ceasing to be an interested party or connected person.
761. Failure by a premises licence holder to supply this notice to the Licensing Board is an offence which may incur a fine not exceeding level 2 on the standard scale.
762. Subsection (3) amends section 48 of the 2005 Act to require a premises licence holder to inform the appropriate Licensing Board of changes in the names and addresses of connected persons or interested parties. Subsection (3) also provides that these details, together with any changes to the name and address of the premises licence holder or premises manager, are forwarded to the chief constable.
763. The meaning of "connected person" is set out in section 147(3) of the 2005 Act. Section 184 amends section 147 of the 2005 Act to insert the meaning given to "interested parties". A person is an interested party in relation to licensed premises if they are neither the premises licence holder or premises manager but has an interest in the premises either as owner or tenant or have managerial control over the premises or the business taking place on the premises.

Section 185 – Provisional premises licences: duration

764. This section amends section 45(6) of the Licensing (Scotland) Act 2005 to provide that the provisional period, in which the premises licence must be confirmed, is increased from 2 years to 4 years. The 4 year period begins with the date of issue of the provisional premises licence.

Section 186 – Premises licence applications: food hygiene certificates

765. **Section 186** amends section 50 of the Licensing (Scotland) Act 2005 to amend the requirements of a food hygiene certificate. The effect is to provide that a food hygiene certificate must state that premises comply with any requirements set out in an order made by the Scottish Ministers. This will enable the requirements specified in the certificate to be amended following any changes in food safety legislation.

Section 187 – Provision of copies of licences to chief constable

766. This section amends the Licensing (Scotland) Act 2005 to require Licensing Boards to provide copies of following licences to the police: the granting of a premises licence under section 26 of the 2005 Act, the granting of a temporary premises licence under section 47 of the 2005 Act, the issuing of a new summary of a premises licence under section 49 of the 2005 Act and the granting of an occasional licence under section 56 of the 2005 Act.

Section 188 – Sale of alcohol to trade

767. This section amends sections 63 and 117 of the Licensing (Scotland) Act to enable the trade, as defined by section 147(2) of the 2005 Act, to purchase alcohol from a premises which hold a premises licence or occasional licence without committing an offence. Previously the trade would only have been able to purchase from premises which supplied trade only. This means that, for example, a restaurant owner may purchase alcohol from a supermarket for their restaurant without committing an offence.

Section 189 - Occasional licences

768. This section amends section 57 of and Schedule 1 to the 2005 Act. It reduces the length of time a Licensing Board is required to wait for comments from the Chief Constable and the Licensing Standards Officer in respect of an application for an occasional licence from 21 days to a period of not less than 24 hours. This applies where the Licensing Board is satisfied that the application requires to be dealt with quickly. Subsection (3) extends the ability to delegate approval of occasional licences applications to the Clerk of the Board or a member of support staff where no objections or representations are lodged.

Section 190 – Extended hours applications: notification period

769. This section amends section 69 of the Licensing (Scotland) Act 2005 to reduce the length of time a Licensing Board is required to wait for comments from the Chief Constable and the Licensing Standards Officer in respect of an application for an extended hours application. The period is reduced from 21 days to a period of not less than 24 hours where the Licensing Board is satisfied that the application requires to be dealt with quickly.

Section 191 - Extended hours application: variation of conditions

770. This section inserts a new section 70A into the Licensing (Scotland) Act 2005. Where a Licensing Board has granted an application for extended hours in respect of a premises licence, section 70A enables the Licensing Board to vary the licence conditions of the premises licence for the duration of the extended hours and the period of licensed hours that the extension applies to. For example if a premises was ordinarily open on

a Saturday from 11am until 11pm and applied to extend its licence to 2am on that day, a Licensing Board would be able to vary conditions, for example, requiring door supervisors or use of plastic drinking vessels for the whole period, 11am on Saturday until 2am on Sunday, or any part of that period, not just for the extended period after 11pm.

Section 192 - Personal licences

771. Under section 76(3) of the Licensing (Scotland) Act 2005 a personal licence is not valid if at the time it is issued the individual to whom it is issued already holds a personal licence. The 2005 Act does not prevent an applicant making a second application and a Licensing Board must grant such an application as the 2005 Act does not enable a Board to refuse an application on the grounds that an applicant already holds one.
772. This section amends the 2005 Act to enable a Licensing Board to refuse the application or hold a hearing to decide whether or not to grant the application, if the applicant already holds a personal licence or if a previous personal licence held by the applicant had been surrendered or expired in the previous three years before a new application was made.
773. The section also makes it a criminal offence not to surrender a void personal licence or attempt to use a void licence as a valid licence. The maximum penalty for this offence is a level 3 fine.

Section 193 - Emergency closure orders

774. This section changes the rank of the constable who may request or order a closure order for licensed premises and its subsequent extension or termination under sections 97 to 99 of the Licensing (Scotland) Act 2005. The change is from a constable of or above the rank of superintendent to a constable of or above the rank of inspector.

Section 194 – Appeals

775. This section amends section 131(2) of the Licensing (Scotland) Act 2005 to remove the requirement that an appeal under section 131 is to be made by way of stated case. The effect of this is that as section 131 is silent as to the format of the appeal, the general rules on appeals contained in Part 2 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals Etc. Rules) 1999 currently apply for the purposes of appeals under section 131 of the 2005 Act.

Section 195 - Liability for offences

776. Subsection (2) repeals the word “knowingly” from certain offences in the Licensing (Scotland) Act 2005. Where criminal conduct has been allowed to take place in terms of the listed offences, an offence will be committed whether or not the person involved has knowledge of the conduct taking place.
777. Subsection (3) inserts new sections 141A and 141B into the 2005 Act. New section 141A provides a defence to certain offences where the person accused had no knowledge that the offence was being committed and exercised all due diligence to prevent the offence being committed.
778. New section 141B provides that if a person commits certain offences whilst acting as the employee or agent of a premises licence holder or an interested party. The premises licence holder or, if applicable, that interested party is also guilty of that offence.
779. A defence of due diligence is available to the premises licence holder and interested party. Proceedings may be taken against the premises licence holder or interested party even if they are not taken against the employee or agent.

Section 196 – False statements in applications: offence

780. This section inserts a new section 134A into the Licensing (Scotland) Act 2005. This provides for a new offence that is committed by any person who makes a false statement on an application made under the 2005 Act. This offence would be committed if a person applied for a second personal licence, which a personal licence holder may wish to have as a backup as their original licence being suspended or revoked for improper conduct, as the personal licence form specifically asks if the applicant already hold a licence. The maximum penalty for committing this offence is a level 3 fine.

Section 197 - Powers of Licensing Standards Officers

781. This section amends section 15 of the Licensing (Scotland) Act 2005 Act to widen the powers available to Licensing Standards Officers (“LSOs”) when investigating the activities being carried out on licensed premises.
782. Section 15(2) of the 2005 Act provides LSOs with powers to enter and carry out an inspection of the premises. Section 197(3) amends section 15(2) of the 2005 Act to allow LSOs to take copies of documents and to seize and remove any substances, articles or documents found on the premises.
783. Where LSOs exercise any of their powers under section 15 of the 2005 Act then section 15(3), as amended by section 197(4), amends section 15(3) to allow the LSOs to require an explanation from the licence holder, the premises manager or any member of staff working on the premises at the time the powers are exercised.
784. **Section 197(5)** makes further amendments to section 15 of the 2005 Act. It provides that the LSOs’ power to take copies of documents includes the power to request certain documents stored in electronic form. It provides that a person may refuse to produce a document required by an LSO on the grounds of confidentiality of communications. It also allows a person to refuse to provide information or explanation or produce any documents to an LSO if this would incriminate that person or their spouse or civil partner.
785. **Section 197(6)** inserts new subsections into section 15 of the 2005 Act. These allow Ministers to make regulations on the procedure to be followed in the exercise of an LSO’s powers and on the treatment of items seized by an LSO. Such regulations may include provision on the treatment of items seized and about compensation for anything seized. Section 197(8) provides that where an LSO seizes any item from the premises then the LSO must leave a notice on the premises specifying what was seized and why those items were seized.

Section 198 – Further modifications of 2005 Act

786. See schedule 6.