



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 9

### ALCOHOL LICENSING

#### **179 Premises licence applications: statements about disabled access etc.**

- (1) Section 20 of the 2005 Act (application for premises licence) is amended as follows.
- (2) In subsection (2)(b)—
  - (a) the word “and” immediately following sub-paragraph (ii) is repealed, and
  - (b) after that sub-paragraph, insert—

“(ia) a disabled access and facilities statement, and”.
- (3) After subsection (5), insert—
  - (6) A “disabled access and facilities statement” is a statement, in the prescribed form, containing information about—
    - (a) provision made for access to the subject premises by disabled persons,
    - (b) facilities provided on the subject premises for use by disabled persons, and
    - (c) any other provision made on or in connection with the subject premises for disabled persons.
  - (7) In subsection (6), “disabled person” has the meaning given by section 1 of the Disability Discrimination Act 1995 (c.50).”.

#### **180 Premises licence applications: notification requirements**

- (1) Section 21 of the 2005 Act (notification of premises licence application) is amended as follows.
- (2) For subsection (2), substitute—

“(2) On giving notice of an application under subsection (1), the Licensing Board

- (a) must provide the appropriate chief constable with a copy of the application, and
- (b) may provide any other person to whom notice is given with a copy of the application.”.

(3) In subsection (3), the following are repealed—

- (a) the word “and” after paragraph (a), and
- (b) paragraph (b).

(4) In subsection (6), the following are repealed—

- (a) the definition of “antisocial behaviour”,
- (b) the word “and” following the definition of “neighbouring land”, and
- (c) the definition of “relevant period”.

#### **181 Premises licence applications: modification of layout plans**

In section 23 of the 2005 Act (determination of premises licence application), in subsection (7)(b), after “plan” insert “or layout plan (or both)”.

#### **182 Reviews of premises licences: notification of determinations**

(1) The 2005 Act is amended as follows.

(2) After section 39 (Licensing Board’s powers on review), insert—

##### **“39A Notification of determinations**

(1) Where a Licensing Board, at a review hearing—

- (a) decides to take one of the steps mentioned in section 39(2), or
- (b) decides not to take one of those steps,

the Board must give notice of the decision to each of the persons mentioned in subsection (2).

(2) The persons referred to in subsection (1) are—

- (a) the holder of the premises licence, and
- (b) where the decision is taken in connection with a premises licence review application, the applicant.

(3) Where subsection (1)(a) applies, the holder of the premises licence may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.

(4) Where—

- (a) subsection (1)(a) or (b) applies, and
- (b) the decision is taken in connection with a premises licence review application,

the applicant may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.

- (5) Where the clerk of a Board receives a notice under subsection (3) or (4), the Board must issue a statement of the reasons for the decision to—
  - (a) the person giving the notice, and
  - (b) any other person to whom the Board gave notice under subsection (1).
- (6) A statement of reasons under subsection (5) must be issued—
  - (a) by such time, and
  - (b) in such form and manner,as may be prescribed.”.

### **183 Premises licence applications: antisocial behaviour reports**

- (1) The 2005 Act is amended as follows.
- (2) In section 22 (objections and representations), after subsection (2) insert—
  - “(2A) The appropriate chief constable may, under subsection (1)(b), make representations concerning a premises licence application by giving to the Licensing Board a report detailing—
    - (a) any cases of antisocial behaviour identified by constables as having taken place on, or in the vicinity of, the premises,
    - (b) any complaints or other representations made to constables concerning antisocial behaviour on, or in the vicinity of, the premises.”.
- (3) After section 24 insert—

#### **“24A Power to request antisocial behaviour report**

- (1) A Licensing Board may, at any time before determining a premises licence application, request the appropriate chief constable to give the Board a report detailing—
  - (a) all cases of antisocial behaviour identified within the relevant period by constables as having taken place on, or in the vicinity of, the premises,
  - (b) all complaints or other representations made within the relevant period to constables concerning antisocial behaviour on, or in the vicinity of, the premises.
- (2) The appropriate chief constable must give the report within 21 days of the request.
- (3) Where the Licensing Board requests a report under subsection (1), the Board must suspend consideration of the application until it receives the report.
- (4) On receipt of the chief constable’s report under subsection (2), the Licensing Board must—
  - (a) give a copy of the report to the applicant in such manner and by such time as may be prescribed by regulations, and
  - (b) resume consideration of the application and determine it in accordance with section 23.
- (5) In this section—

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“antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act

2004 (asp 8)

, and

“relevant period” means the period of one year ending with the date of the request.”.

## 184 Premises licences: connected persons and interested parties

(1) The 2005 Act is amended as follows.

(2) After section 40 insert—

*“Connected persons and interested parties*

### 40A Connected persons and interested parties: licence holder’s duty to notify changes

(1) A premises licence holder must, not later than one month after a person becomes or ceases to be—

- (a) a connected person in relation to the licence holder, or
- (b) an interested party in relation to the licensed premises,

give the appropriate Licensing Board notice of that fact.

(2) A notice under subsection (1) that a person has become a connected person or an interested party must specify—

- (a) the name and address of the person, and
- (b) if the person is an individual, the person’s date of birth.

(3) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.

(4) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1) commits an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.

(3) In section 48 (notification of change of name or address)—

(a) in subsection (1)—

- (i) the word “or” immediately following paragraph (a) is repealed, and
- (ii) after paragraph (b) insert “, or

(c) the name or address of any person who is—

- (i) a connected person in relation to the licence holder, or
- (ii) an interested party in relation to the licensed premises,”

(b) after subsection (2) insert—

“(2A) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.”.

(4) In section 147 (interpretation), after subsection (4) insert—

“(5) For the purposes of this Act, a person is an interested party in relation to licensed premises if the person is not the holder of the premises licence nor the premises manager in respect of the premises but—

- (a) has an interest in the premises as an owner or tenant, or
- (b) has management and control over the premises or the business carried on on the premises.”.

(5) In section 148 (index of defined expressions), in the table, insert at the appropriate place—

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“interested party	section 147(5).”.
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### **185 Provisional premises licences: duration**

In section 45 of the 2005 Act (provisional premises licence), in subsection (6), for “2” substitute “4”.

### **186 Premises licence applications: food hygiene certificates**

(1) Section 50 of the 2005 Act (certificates as to planning, building standards and food hygiene) is amended as follows.

(2) In subsection (7), for the words from “the requirements” to the end substitute “such requirements as the Scottish Ministers may, by order, specify.”.

(3) After subsection (7), insert—

“(7A) An order under subsection (7) may specify requirements by reference to provision contained in another enactment.”.

(4) In subsection (8)(c), for “the 1990 Act” substitute “section 5 of the Food Safety Act 1990 (c.16)”.

### **187 Provision of copies of licences to chief constable**

(1) The 2005 Act is amended as follows.

(2) In section 26 (issue of licence and summary), after subsection (2) insert—

“(3) Where a Licensing Board grants a premises licence application, the Board must send a copy of the premises licence to the appropriate chief constable.”.

(3) In section 47 (temporary premises licence), after subsection (4) insert—

“(4A) Where a Licensing Board issues a temporary premises licence, the Board must send a copy of the temporary premises licence to the appropriate chief constable.”.

(4) In section 49 (Licensing Board’s duty to update premises licence), after subsection (2) insert—

“(2A) Where a Licensing Board issues a new summary of the licence under subsection (2), the Board must send a copy of the new summary of the licence to the appropriate chief constable.”.

(5) In section 56 (occasional licence), after subsection (9) insert—

“(10) Where a Licensing Board issues an occasional licence under subsection (1), the Board must send a copy of the occasional licence to the appropriate chief constable.”.

### **188 Sale of alcohol to trade**

- (1) The 2005 Act is amended as follows.
- (2) In section 63 (prohibition of sale, consumption and taking away of alcohol outwith licensed hours), in subsection (2)(f), after “on” where it first occurs insert “or taken from”.
- (3) In section 117 (offence relating to sale of alcohol to trade), in subsection (1), after “from” insert “licensed premises or”.

### **189 Occasional licences**

- (1) The 2005 Act is amended as follows.
- (2) In section 57 (notification of application to chief constable and Licensing Standards Officer), after subsection (3), add—
  - “(4) Subsection (5) applies where the Licensing Board is satisfied that the application requires to be dealt with quickly.
  - (5) Subsections (2) and (3) have effect in relation to the application as if the references to the period of 21 days were references to such shorter period of not less than 24 hours as the Board may determine.”.
- (3) In paragraph 10 of schedule 1 (delegation of functions of Licensing Boards), in subparagraph (4), after “Board” in the second place where it appears insert “or to a member of staff provided under paragraph 8(1)(b)”.

### **190 Extended hours applications: notification period**

- (1) Section 69 of the 2005 Act (notification of extended hours application) is amended as follows.
- (2) After subsection (3), add—
  - “(4) Subsections (5) and (6) apply where the Licensing Board is satisfied that the application requires to be dealt with quickly.
  - (5) Subsections (2) and (3) have effect in relation to the application as if the references to the period of 10 days were references to such shorter period of not less than 24 hours as the Board may determine.
  - (6) Subsection (3) has effect in relation to the application as if for the word “must” there were substituted “may”.”.

## **191 Extended hours applications: variation of conditions**

After section 70 of the 2005 Act insert—

### **“70A Extended hours applications: variation of conditions**

- (1) On granting an extended hours application under section 68(1) in respect of a premises licence, the Licensing Board may make such variation of the conditions to which the licence is subject as the Board considers necessary or expedient for the purposes of any of the licensing objectives.
- (2) A variation made under subsection (1)—
  - (a) may have effect only in relation to a period of licensed hours which is extended under section 68(1), and
  - (b) ceases to have effect at the end of the period for which the extension of the licensed hours has effect under section 68(2).
- (3) In subsection (1), “variation” includes addition, deletion or other modification.”.

## **192 Personal licences**

- (1) The 2005 Act is amended as follows.
- (2) In section 74 (determination of personal licence application)—
  - (a) in subsection (2)—
    - (i) the word “and” immediately following paragraph (a) is repealed, and
    - (ii) after paragraph (b) add—
      - “(c) the notice does not include a recommendation under section 73(4),
      - (d) the applicant has signed the application, and
      - (e) subsection (8) does not apply,”
  - (b) in subsection (3)—
    - (i) the word “and” immediately following paragraph (b) is repealed, and
    - (ii) after paragraph (b) insert—
      - “(ba) the applicant does not already hold a personal licence, and”, and
  - (c) after subsection (6) insert—
    - “(7) Subsection (8) applies if—
      - (a) all of the conditions specified in subsection (3) are met in relation to the applicant,
      - (b) the Board has received from the appropriate chief constable a notice under section 73(3)(a), and
      - (c) the applicant has held a personal licence which—
        - (i) expired within the period of 3 years ending on the day on which the application was received, or
        - (ii) was surrendered by the applicant by notice under section 77(6) received within that period.
  - (8) The Licensing Board may—

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- (a) hold a hearing for the purposes of considering and determining the application, and
  - (b) after having regard to the circumstances in which the personal licence previously held expired or, as the case may be, was surrendered—
    - (i) refuse the application, or
    - (ii) grant the application.”.
- (3) In section 76 (issue of licence), after subsection (3) add—
  - “(4) A person who holds a void personal licence must surrender it to the Licensing Board.
  - (5) A person who, without reasonable excuse, fails to comply with subsection (4) commits an offence.
  - (6) A person who passes off a void personal licence as a valid personal licence knowing that the licence is void commits an offence.
  - (7) A person guilty of an offence under subsection (5) or (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.
- (4) In section 92 (theft, loss etc. of personal licence), after subsection (3) insert—
  - “(3A) A replacement personal licence is void if at the time it is issued the personal licence in respect of which it was issued is not lost, stolen, damaged or destroyed.
  - (3B) Where a replacement personal licence is issued in respect of a personal licence which has been lost or stolen, the replacement personal licence becomes void if the personal licence is subsequently found or recovered.
  - (3C) A person who holds a void replacement personal licence must surrender it to the Licensing Board.
  - (3D) A person who, without reasonable excuse, fails to comply with subsection (3C) commits an offence.
  - (3E) A person who passes off a void replacement personal licence as a valid licence, knowing that the licence is void, commits an offence.
  - (3F) A person guilty of an offence under subsection (3D) or (3E) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

### **193 Emergency closure orders**

- (1) The 2005 Act is amended as follows.
- (2) In section 97 (closure orders)—
  - (a) in subsection (2), for “senior police officer may, if the officer” substitute “constable of or above the rank of inspector may, if the constable”, and
  - (b) in subsection (4), the words “by a senior police officer” are repealed.
- (3) In section 98 (termination of closure orders)—
  - (a) in subsection (1)—

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- (i) for “senior police officer” substitute “constable of or above the rank of inspector”, and
  - (ii) for “the officer” substitute “the constable”, and
- (b) in subsection (2)—
  - (i) for “senior police office” substitute “constable”, and
  - (ii) for “the officer” substitute “the constable”.
- (4) In section 99 (extension of emergency closure order), in subsection (1)—
  - (a) for “senior police officer” substitute “constable of or above the rank of inspector”, and
  - (b) in paragraph (b), for “officer” substitute “constable”.

#### **194 Appeals**

In section 131(2) of the 2005 Act (appeals), the words “by way of stated case, at the instance of the appellant,” are repealed.

#### **195 Liability for offences**

- (1) The 2005 Act is amended as follows.
- (2) In each of the following provisions, the word “knowingly” is repealed—
  - (a) section 1(3)(b),
  - (b) section 103(1),
  - (c) section 106(2),
  - (d) section 107(1),
  - (e) section 118(1),
  - (f) section 120(2) and (3),
  - (g) section 121(1),
  - (h) section 127(4), and
  - (i) section 128(5).
- (3) After section 141 (offences by bodies corporate etc.) insert—

##### **“141A Defence of due diligence for certain offences**

- (1) It is a defence for a person charged with an offence to which this section applies to prove that the person—
  - (a) did not know that the offence was being committed, and
  - (b) exercised all due diligence to prevent the offence being committed.
- (2) This section applies to an offence under any of the following provisions of this Act—
  - section 1(3)(b),
  - section 103(1),
  - section 106(2),
  - section 107(1),
  - section 118(1),
  - section 120(2) or (3),

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section 121(1),  
section 127(4),  
section 128(5).

#### **141B Vicarious liability of premises licence holders and interested parties**

- (1) Subsection (2) applies where, on or in relation to any licensed premises, a person commits an offence to which this section applies while acting as the employee or agent of—
  - (a) the holder of the premises licence, or
  - (b) an interested party.
- (2) The holder of the premises licence or, as the case may be, the interested party is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) It is a defence for a holder of a premises licence or an interested party charged with an offence to which this section applies by virtue of subsection (2) to prove that the holder of the licence or, as the case may be, the interested party—
  - (a) did not know that the offence was being committed by the employee or agent, and
  - (b) exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against the holder of the premises licence or the interested party in respect of the offence whether or not proceedings are also taken against the employee or agent who committed the offence.
- (5) This section applies to an offence under any of the following provisions of this Act—
  - section 1(3),
  - section 15(5),
  - section 63(1),
  - section 97(7),
  - section 102(1),
  - section 103(1),
  - section 106(2),
  - section 107(1),
  - section 108(2) or (3),
  - section 113(1),
  - section 114,
  - section 115(2),
  - section 118(1),
  - section 119(1),
  - section 120(2),
  - section 121(1),
  - section 138(5).”.

## **196 False statements in applications: offence**

After section 134 of the 2005 Act insert—

### **“134A Offence of knowingly making a false statement in an application**

- (1) A person who knowingly makes a false statement in an application under this Act commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

## **197 Powers of Licensing Standards Officers**

- (1) Section 15 of the 2005 Act is amended as follows.
- (2) The section title becomes “Powers of entry, inspection and seizure”.
- (3) In subsection (2)—
  - (a) the word “and” immediately preceding paragraph (b) is repealed, and
  - (b) after that paragraph insert—
    - “(c) power to take copies of, or of an entry in, any document found on the premises, and
    - (d) power to seize and remove any substances, articles or documents found on the premises.”.
- (4) In subsection (3)—
  - (a) for “either” substitute “any”, and
  - (b) in paragraph (b), after “information” insert “or explanation”.
- (5) After subsection (4) insert—
  - “(4A) Subsection (3)(c) includes power to require any document which is stored in electronic form and which is accessible from the premises to be produced in a form—
    - (a) in which it is legible, and
    - (b) in which it can be removed from the premises.
  - (4B) Nothing in subsection (3) requires a person to produce any document if the person would be entitled to refuse to produce that document in any proceedings in any court on the grounds of confidentiality of communications.
  - (4C) Nothing in subsection (3) requires a person to provide any information or explanation or produce any document if to do so would incriminate that person or that person’s spouse or civil partner.”.
- (6) After subsection (6) insert—
  - “(7) The Scottish Ministers may by regulations make further provision about the procedure to be followed in the exercise of a power under this section.
  - (8) Where a Licensing Standards Officer seizes any substance, article or document under subsection (2)(d), the Officer must leave on the premises a notice—
    - (a) stating what was seized, and

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- (b) explaining why it was seized.
- (9) The Scottish Ministers may by regulations make provision about the treatment of substances, articles or documents seized under subsection (2)(d).
- (10) Regulations under subsection (9) may, in particular, make provision—
  - (a) about the retention, use, return, disposal or destruction of anything seized,
  - (b) about compensation for anything seized.”.

## **198 Further modifications of 2005 Act**

Schedule 6 makes further modifications of the 2005 Act (including extending police powers to object).