



# Air Weapons and Licensing (Scotland) Act 2015

2015 asp 10

## PART 2

### ALCOHOL LICENSING

#### *Fit and proper person test*

#### **43 Premises licence application: ground for refusal**

- (1) The 2005 Act is amended as follows.
- (2) In section 22 (objections and representations)—
  - (a) after subsection (1) insert—

“(1A) A person giving a notice under subsection (1) may include in the notice any information that the person considers may be relevant to consideration by the Board of any ground for refusal including, in particular, information in relation to—

    - (a) the applicant,
    - (b) where the applicant is neither an individual nor a council, a connected person in relation to the applicant, or
    - (c) any person who would be an interested party in relation to the subject premises if the application were to be granted.”
  - (b) in subsection (3)(b), after “representation” insert “(including any information included under subsection (1A))”.
- (3) In section 23 (determination of premises licence application)—
  - (a) in subsection (5)—
    - (i) after paragraph (b) insert—

“(ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence,”

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*Status: This is the original version (as it was originally enacted).*

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- (ii) in paragraph (c), after “would” insert “otherwise”,
- (b) in subsection (6), for the words “the granting of the application would be inconsistent with one or more of the licensing objectives,” substitute “either of the grounds for refusal specified in subsection (5)(ba) and (c) applies”,
- (c) in subsection (8)(b), for “(5)(c)” substitute “(5)(ba) or (c)”.

#### **44 Application to transfer premises licence: ground for refusal**

- (1) The 2005 Act is amended as follows.
- (2) In section 33 (transfer on application of licence holder)—
  - (a) after subsection (7) insert—
 

“(7A) On giving a notice under subsection (6)(a) or (b), the chief constable may also provide to the Licensing Board any information in relation to—

    - (a) the transferee,
    - (b) where the transferee is neither an individual nor a council, a connected person, or
    - (c) any person who would be an interested party in relation to the licensed premises if the application for the transfer of the licence to the transferee were to be granted,

that the chief constable considers may be relevant to consideration by the Board of the application.”,
  - (b) in subsection (8)—
    - (i) the word “and” immediately following paragraph (a) is repealed,
    - (ii) after paragraph (b) insert “, and
    - (c) no information has been provided under subsection (7A),”,
  - (c) in subsection (10)—
    - (i) after “notice” insert “and any information provided under subsection (7A)”,
    - (ii) in paragraph (a), for the words from “it” to “objectives” substitute “a ground for refusal applies”,
  - (d) after subsection (10) insert—
 

“(11) The grounds for refusal are—

    - (a) that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence,
    - (b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”.

#### **45 Ground for review of premises licence**

- (1) The 2005 Act is amended as follows.
- (2) In section 36 (application for review of premises licence)—
  - (a) in subsection (3), before paragraph (a) insert—

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*Status: This is the original version (as it was originally enacted).*

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- “(za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,”
  - (b) in subsection (5), before paragraph (a) insert—
    - “(za) where the ground is that specified in subsection (3)(za), a summary of the information on which the applicant’s view that the alleged ground applies is based,”
  - (c) after subsection (5) insert—
    - “(5A) A person making a premises licence review application may include in the application any information that the applicant considers may be relevant to consideration by the Licensing Board of the alleged ground for review including, in particular, information in relation to—
      - (a) the licence holder,
      - (b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
      - (c) any person who is an interested party in relation to the licensed premises.”
- (3) In section 37 (review of premises licence on Licensing Board’s initiative)—
  - (a) in subsection (4), before paragraph (a) insert—
    - “(za) where the ground is that specified in section 36(3)(za), a summary of the information on which the Board’s view that the alleged ground applies is based,”
  - (b) after subsection (4) insert—
    - “(5) A Licensing Board making a premises licence review proposal may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for review including, in particular, information in relation to—
      - (a) the licence holder,
      - (b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
      - (c) any person who is an interested party in relation to the licensed premises.”
- (4) In section 39 (Licensing Board’s powers on review)—
  - (a) after subsection (1), insert—
    - “(1A) Subsection (1) is subject to subsection (2A).”
  - (b) after subsection (2), insert—
    - “(2A) Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the licence.
    - “(2B) Subject to section 39B, a revocation under subsection (2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision.”
- (5) In section 39A (notification of determinations), in subsection (1)—
  - (a) the word “or” immediately following paragraph (a) is repealed,
  - (b) after paragraph (b), insert “, or

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*Status: This is the original version (as it was originally enacted).*

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(c) decides to revoke a premises licence under section 39(2A),”.

(6) After section 39A insert—

**“39B Recall of revocation of licence under section 39(2A)**

- (1) This section applies where a Licensing Board decides to revoke a premises licence under section 39(2A).
  - (2) The Board must recall the revocation if—
    - (a) a relevant application is made before the end of the period referred to in section 39(2B) (“the 28 day period”), and
    - (b) the Board grants the application.
  - (3) The Board may extend the 28 day period pending determination of a relevant application.
  - (4) In this section, “relevant application” means—
    - (a) an application under section 33(1) for the transfer of the premises licence, or
    - (b) a premises licence variation application seeking a variation of the licence that the Board considers would remove the ground on which the licence was revoked under section 39(2A).
  - (5) This section does not affect the right to appeal against the decision to revoke the licence under section 39(2A).”.
- (7) In Part 1 of schedule 5 (appeals to the sheriff principal), in the entry in the left-hand column relating to a decision under section 39(1), after “39(1)” insert “or (2A)”.

**46 Personal licence applications and renewals: ground for refusal**

- (1) The 2005 Act is amended as follows.
- (2) In section 73 (notification of application to the chief constable), after subsection (4) insert—
 

“(5) On giving a notice under subsection (3)(a) or (b), the chief constable may also provide to the Licensing Board any information in relation to the applicant that the chief constable considers may be relevant to consideration by the Board of the application.”.
- (3) After section 73 of the 2005 Act insert—

**“73A Notification of application to Licensing Standards Officer**

- (1) Where a Licensing Board receive a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board’s area.
- (2) A Licensing Standards Officer may, within 21 days of the date of receipt of a notice under subsection (1), respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration by the Board of the application.”.

- (4) In section 74 (determination of personal licence application)—
- (a) in subsection (2), after paragraph (c) insert—
    - “(ca) no information has been provided under section 73(5) or 73A(2),”
  - (b) after subsection (5A) insert—
    - “(5AA) If—
      - (a) all of those conditions are met in relation to the applicant,
      - (b) the notice received from the chief constable under subsection (3)(a) or (b) of section 73 does not include a recommendation under subsection (4) of that section, and
      - (c) information has been provided under subsection (5) of that section or under section 73A(2),the Board may hold a hearing for the purpose of considering and determining the application.”
  - (c) in subsection (5B), after “(5A)” insert “or (5AA)”,
  - (d) in subsection (6)—
    - (i) for “(5) or (5A)” substitute “(5), (5A) or (5AA)”,
    - (ii) after “notice” insert “and any information provided under section 73(5) or 73A(2)”,
    - (iii) in paragraph (a), for the words from “it” to “objectives” substitute “a ground for refusal applies”,
  - (e) after subsection (6) insert—
    - “(6A) The grounds for refusal are—
      - (a) that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence,
      - (b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”
- (5) In section 78 (renewal of personal licence), in subsection (5), for “73 and 74” substitute “73, 73A and 74”.

#### **47 Personal licence holders: procedure on receipt of notice of conviction**

- (1) The 2005 Act is amended as follows.
- (2) In section 83 (procedure where Licensing Board receive notice of conviction)—
- (a) after subsection (8), insert—
    - “(8A) Subsection (8) is subject to subsection (9A).”
  - (b) after subsection (9), insert—
    - “(9A) Where, at the hearing, the Licensing Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.”
  - (c) in subsection (10), after “(9)” insert “or (9A)”.

- (3) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “83(9)” substitute “83(9) or (9A)”.

#### **48 Personal licence holders: conduct inconsistent with the licensing objectives**

- (1) The 2005 Act is amended as follows.
- (2) In section 84 (conduct inconsistent with the licensing objectives)—
- (a) after subsection (6), insert—
- “(6A) Subsection (6) is subject to subsection (7A).”,
- (b) after subsection (7), insert—
- “(7A) Where, at the hearing, the Licensing Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.”,
- (c) in subsection (8), after “(7)” insert “or (7A)”.
- (3) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives), in subsection (3), for “(6), (7)” substitute “(6), (6A), (7), (7A)”.
- (4) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “84(7)” substitute “84(7) or (7A)”.