

LICENSING (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

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 licence 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.