

EXECUTIVE NOTE

DRAFT SSI: THE LICENSING (SCOTLAND) ACT 2005 (CONSEQUENTIAL PROVISIONS) ORDER 2009 (SSI 2009/XXX)

The above instrument is made in exercise of powers conferred on the Scottish Ministers by sections 145 and 146(2) and (3) of the Licensing (Scotland) Act 2005. It is subject to the affirmative resolution procedure.

The instrument introduces consequential provisions that are required as a result of the Licensing (Scotland) Act 2005 (“the 2005 Act”).

Policy objectives

The majority of the amendments are required because of instances of enactments relying upon terminology, definitions or concepts provided by earlier licensing legislation that the 2005 Act that will fully repeal on 1 September 2009, in particular the Licensing (Scotland) Act 1976.

A number of amendments are required to replace references to Licensing Boards constituted under the Licensing (Scotland) Act 1976. They have been simply dealt with by referring to section 5 of the 2005 Act which covers the constitution of Licensing Boards. The amendments are made to the Race Relations Act 1976, the Gambling Act 2005, the Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005 and the Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007.

Section 2 of the 2005 Act uses “alcohol” as a defined term. This results in a number of amendments to pieces of legislation that use the term “alcoholic liquor” which was defined in the Licensing (Scotland) Act 1976. Amendments are made to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, the Local Government and Planning (Scotland) Act 1982, the Rent (Scotland) Act 1984, the Criminal Law (Consolidation) (Scotland) Act 1995, the Employment Rights Act 1996, the Housing (Scotland) Act 2001, the Private Security Industry Act 2001, the Town and Country Planning (Use Classes) (Scotland) Order 1997, the Prisons and Young Offenders Institutions (Scotland) Rules 2006 and the Producer Responsibility Obligations (Packaging Waste) Regulations 2007.

One of the key features of the 2005 Act is that it replaces the different licence types provided by the Licensing (Scotland) Act 1976 such as Hotel Licences, Restaurant Licences and Public House Licences with a single premises licence. This provides both Licensing Boards and the trade with additional flexibility. However, this has required amendment of legislation that relied on the 1976 Act licence types. This has resulted in amendment or partial repeal or partial revocation of the Alcoholic Liquor Duties Act 1979, the City of Edinburgh District Council Order Confirmation Act 1991 and the Controlled Waste Regulations 1992.

A number of enactments have required different changes, although mainly they are minor changes also needed to clarify concepts that were defined by the 1976 Act.

- The Antisocial Behaviour etc. (Scotland) Act 2004 is amended to replace reference to offences under the 1976 Act with reference to equivalent offences in the 2005 Act.
- Schedule 9 (certificates as to proof of certain routine matters) to the Criminal Procedure (Scotland) Act 1995 is amended to replace references to licences issued under the 1976 Act with reference to licences issued under the 2005 Act.
- The Representation of the People Act 1983 Act provides for an election court to report to a licensing authority, for entering in the register of licences, a licence holder who knowingly allows bribery or treating in relation to an election on licensed premises. As the 2005 Act provides no process for renewal of licences this will no longer work properly in Scotland. However the 2005 Act does allow for a licence to be reviewed on grounds relevant to one of the licensing objectives. Therefore the reference to registers of licences and the inclusion of the Licensing (Scotland) Act 1976 in the definition of “Licensing Acts” in the 1983 Act can be repealed.
- The Breastfeeding etc. (Scotland) Act 2005 is amended to redefine licensed premises as being those licensed under the 2005 Act.
- The Visiting Forces and International Headquarters (Application of Law) Order 1999 is amended to replace reference to the 1976 Act with reference to the 2005 Act. It has the effect of extending the privileges enjoyed by premises occupied by the armed forces of the Crown to visiting forces.
- The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 are amended to reflect the new licensed premises provided by the 2005 Act as well as the redefinition of alcohol.
- The Private Security Industry Act 2001 requires fairly complex amendment to ensure that when a door supervisor is required on any licensed premises (except clubs) as defined by 2005 Act they must be accredited by the Security Industry Authority. It is also amended to reflect the new definition of alcohol.
- As well as being amended to reflect the new definition of alcohol, the Criminal Law (Consolidation) (Scotland) Act 1995 is also amended to provide a redefinition of the term “railway vehicle”, once again as a result of the repeal of the 1976 Act.

There are also a number of straightforward repeals required. These are for similar reasons to those described above but in circumstances that mean no replacement is necessary. For example, section 22 of the Deregulation and Contracting Act 1994 amends the Licensing (Scotland) Act 1976 and can therefore be repealed itself, the Children and Young Persons (Scotland) Act 1937 provides definitions such as

“excisable liquor” that can now be repealed and the Inebriates Act 1898 is repealed for Scotland as it has no continuing effect in Scotland.

Local authority byelaws prohibiting the consumption of alcoholic liquor in public places are continued in effect but amended for similar reasons to those highlighted above. For example references to “alcoholic liquor” are replaced by reference to “alcohol” and references to “licensed premises” are read across to the 2005 Act. References to “licensed canteen”, “registered club” and “occasional permission” cease to have meaning.

Regulatory Impact

No RIA is necessary. The changes in the order are technical and have no impact on business.

Financial Effects

The instrument has no effects on the Scottish Government, local government or business. The amendments to byelaws will avoid the need for local authorities to amend or remake their byelaws.

Criminal Justice Directorate
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