
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 454

LICENSING (LIQUOR)

**The Licensing (Transitional and Saving
Provisions) (Scotland) Order 2007**

<i>Made</i>	- - - -	<i>9th October 2007</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>11th October 2007</i>
<i>Coming into force</i>	- -	<i>1st January 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 145 and 146(2)(b) and (3) of the Licensing (Scotland) Act 2005⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Licensing (Transitional and Saving Provisions) (Scotland) Order 2007 and comes into force on 1st January 2008.

Interpretation

2. In this Order—

- “the 1976 Act” means the Licensing (Scotland) Act 1976⁽²⁾;
- “the 1990 Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽³⁾;
- “the 2005 Act” means the Licensing (Scotland) Act 2005;
- “Board” means a Licensing Board continued in existence by or established under section 5 of the 2005 Act;
- “occasional licence” means a licence granted under section 33 of the 1976 Act⁽⁴⁾;
- “relevant permission” means—
 - (a) a licence granted under Part II or III of the 1976 Act (other than a licence provisionally granted under section 26 or an occasional licence); or
 - (b) a certificate of registration under Part VII of that Act;

(1) 2005 asp 16.

(2) 1976 c. 66.

(3) 1990 c. 40.

(4) Section 33 was amended by the 1990 Act, Schedule 8, paragraph 9.

“the transitional period” means the period from 12:01 a.m. on 1st February 2008 until 5:00 a.m. on 1st September 2009.

Delegation

3.—(1) Each Board is to make arrangements so that, during the transitional period, the functions specified in paragraph (3) are (subject to paragraph (2)) discharged by that Board’s clerk or a member of staff appointed to assist the clerk.

(2) Where during the transitional period it appears to the clerk of a Board that, as regards a particular case, it is appropriate that a function specified in paragraph (3) be discharged by the Board or by a member or particular members of the Board, that officer is to remit the case appropriately.

(3) The functions referred to in paragraph (1) are—

- (a) making a decision under section 25 of the 1976 Act⁽⁵⁾;
- (b) making a decision under section 26 of that Act;
- (c) granting or refusing an occasional licence or permission under section 33 or 34 of that Act⁽⁶⁾;
- (d) giving or refusing a consent under section 35 of that Act⁽⁷⁾;
- (e) deciding that the Board is or is not satisfied as described in paragraph (i) of section 59(1) of that Act⁽⁸⁾;
- (f) dealing with an application for an occasional extension of permitted hours under section 64 of that Act⁽⁹⁾;
- (g) dealing with an application under section 29 of the 2005 Act for a minor variation such as is described in subsection (6)(c) of that section; and
- (h) determining an application under section 33 or 34 of that Act (other than such an application as is described in paragraph 10(2)(e) of schedule 1 to that Act).

1976 Act applications – publicity

4.—(1) Within 42 days of receiving an application falling within paragraph (2), a Board is to give notice of it—

- (a) on the Board’s website; or
- (b) in a newspaper circulating in the area of the Board.

(2) An application falls within this paragraph if it is—

- (a) an application for a licence under Part II or III of the 1976 Act (other than an occasional licence); or
- (b) an application under section 64 of that Act for a regular extension of permitted hours.

(3) A notice under paragraph (1)(a) is to remain on the Board’s website for a continuous period of 21 days.

(4) Every notice under paragraph (1) is to specify—

- (a) the name of the applicant;

(5) Section 25 was amended by the 1990 Act, section 51 and the Licensing (Amendment) (Scotland) Act 1992 (c. 18), section 1(1) (c).

(6) Section 34 was amended by the 1990 Act, Schedule 8, paragraph 10.

(7) Section 35 was amended by the [Fire \(Scotland\) Act 2005 \(asp 5\)](#), schedule 3, paragraph 8.

(8) Section 59(1) was amended by the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23), Schedule 4.

(9) Section 64 was amended by the 1990 Act, sections 21(2), 46(7) and 51(5) and (6) and Schedule 8, paragraph 12.

- (b) the name and address of any person representing the applicant for the purposes of the application;
- (c) the name and address of the premises to which the application relates; and
- (d) the date by which objections in respect of the application may be made to the Board.

(5) A notice under paragraph (1) in respect of an application falling within paragraph (2)(a) is also to specify whether the application is for a licence for the sale of alcohol for consumption—

- (a) on the premises;
- (b) off the premises; or
- (c) both.

(6) A notice under paragraph (1) in respect of an application falling within paragraph (2)(b) is also to specify the nature of the extension of hours for which application is made.

(7) The date specified under paragraph (4)(d) is to be no earlier than 21 days after the date on which the notice under paragraph (1)—

- (a) first appeared on the Board's website; or
- (b) appeared in the newspaper.

1976 Act applications – display of notice

5.—(1) Where a Board intends to give notice of an application under paragraph (1) of article 4, it is to notify the applicant of—

- (a) the date on which that notice—
 - (i) is first to appear on the Board's website under sub-paragraph (a) of that paragraph; or
 - (ii) is to appear in a newspaper under sub-paragraph (b) of that paragraph; and
- (b) the date which is to be specified in the notice under article 4(4)(d).

(2) During the period specified in paragraph (3), the applicant is to display a notice of A4 size at or near the premises to which the application relates and in a place and at a height where the notice can conveniently be read by the public.

(3) That period is the period of 21 days starting with the date notified under paragraph (1)(a).

(4) Where a Board considers that a notice required by paragraph (2) has for any reason not been in place for the whole of the period specified in paragraph (3) or has been damaged during that period, it may require the applicant to display the notice for a further 21 day period.

(5) A notice required by paragraph (4) is to specify the last day of the period during which it has to be displayed as the date by which objections require to be lodged.

(6) A notice displayed under this article is to be in a form specified by the Board.

(7) Where the requirement in paragraph (2) applies, the applicant need not comply with subsection (2)(b) or (3)(b) of section 10 of the 1976 Act.

1976 Act applications – notice to occupiers

6. Subsection (5) of section 10 of the 1976 Act is to have effect in relation to an application falling within article 4(2) as if that subsection required notice to be given within 21 days of the date notified in respect of the application under article 5(1)(a).

1976 Act applications – objections and timetable for Board meetings

7.—(1) This article applies to applications falling within article 4(2).

(2) Subsection (2) of section 16 of the 1976 Act is to have effect as if the actions specified in paragraphs (a) and (b) of that subsection required to be carried out by the relevant date.

(3) An application is to be considered at a meeting of the Board held no later than 119 days after the relevant date.

(4) In this article, “the relevant date” is—

- (a) in a case where a requirement to display a notice has been imposed under article 5(4), the date specified in the notice as the date by which objections require to be lodged; or
- (b) in any other case, the date specified under article 4(4)(d).

Notification of premises licence application

8. Where during the transitional period a Board gives notice of an application under subsection (1) of section 21 of the 2005 Act, the obligation in subsection (2) of that section is to apply only in respect of a notice given to the appropriate chief constable.

Antisocial behaviour reports

9.—(1) In the case of a premises licence application received during the transitional period, a chief constable must provide a report of the kind referred to in paragraph (b) of section 21(3) of the 2005 Act only if—

- (a) the Board requests such a report when giving notice to the chief constable under subsection (1)(d) of that section; or
- (b) the application is in relation to premises in respect of which no relevant permission is in effect.

(2) Nothing in paragraph (1) prevents a chief constable providing a report under paragraph (b) of section 21(3) of the 2005 Act in any case where that person considers it appropriate to do so.

Transfer of premises licence application

10.—(1) A Board is to treat a premises licence application received during the transitional period as made by a person (“the new applicant”) who is not the original applicant where—

- (a) both the original applicant and the new applicant advise the Board prior to determination of the application that they wish this done; and
- (b) a fee of £34 is paid to it.

(2) Where a Board is treating a premises licence application as made by a new applicant in terms of paragraph (1), it is to give notice of that fact to the appropriate chief constable.

(3) Within 21 days of receipt of a notice under paragraph (2), the appropriate chief constable must give to the Board one or other of the notices mentioned in subsection (4) of section 21 of the 2005 Act in respect of the new applicant.

(4) Subsection (5) of section 21 of the 2005 Act applies in respect of a notice under paragraph (3) as it applies in respect of a notice under subsection (4) of that section.

(5) Where a Board is treating a premises licence application as made by a new applicant in terms of paragraph (1), regulation 12 of the Licensing (Procedure) (Scotland) Regulations 2007(10) does not apply.

No requirement for hearing

11. No hearing need be held under section 23(2) of the 2005 Act to consider an application lodged during the transitional period in respect of which—

- (a) no objections have been made to the Board by the date specified in terms of the Licensing Procedure (Scotland) Regulations 2007 as that by which objections to that application must be made; or
- (b) any objections so made have been rejected under section 22(4) of that Act.

Continuation of 1976 Act licences in force at the beginning of the transitional period

12.—(1) Any licence under Part II or III of the 1976 Act (other than an occasional licence) which is in force at the beginning of the transitional period is to continue in force until the end of that period.

(2) Where a licence is continued in force by virtue of paragraph (1)—

- (a) any regular extension of hours granted under section 64 of the 1976 Act is to apply until the end of the transitional period as it applied in the period before the licence would otherwise have expired; and
- (b) any children’s certificate granted under section 49 of the 1990 Act is to remain valid until the end of the transitional period.

Continuation of 1976 Act licences – provisional grants

13.—(1) A provisional grant of a licence under section 26 of the 1976 Act which is in effect at the beginning of the transitional period or which is made during that period remains in effect as a provisional grant until whichever is the earlier of—

- (a) the provisional grant being declared final; and
- (b) the end of the transitional period.

(2) Where a provisional grant of a licence under section 26 of the 1976 Act is declared final during the transitional period, that licence is to continue in force until the end of that period.

(3) A person who holds a provisional grant of a licence under subsection (2) of section 26 of the 1976 Act is to submit a plan of the premises with any request under subsection (4) of that section unless such a plan has already been submitted to the Board.

Board powers still exercisable

14. Nothing in article 12 or 13 prevents a Board—

- (a) suspending a licence under section 31 or 32 of the 1976 Act⁽¹¹⁾;
- (b) exercising any power given by section 65 or 66 of that Act⁽¹²⁾; or
- (c) suspending a children’s certificate under section 50 of the 1990 Act.

Continuation of registrations under Part VII of the 1976 Act

15.—(1) Any certificate of registration under Part VII of the 1976 Act which is in force at the beginning of the transitional period is to continue in force until the end of that period.

⁽¹¹⁾ Section 31 was amended by the 1990 Act, section 53(2) and the Licensing (Amendment) (Scotland) Act 1996 (c. 36), section 1(2).

⁽¹²⁾ Section 65 was amended by the 1990 Act, section 48(2) and (3).

(2) Where a certificate of registration is continued in force by virtue of paragraph (1), any regular extension of hours granted under section 64 of the 1976 Act is to apply until the end of the transitional period as it applied in the period before the certificate would otherwise have expired.

(3) Nothing in paragraph (1) or (2) prevents—

- (a) a sheriff cancelling a certificate of registration under section 109 of the 1976 Act⁽¹³⁾; or
- (b) a Board exercising any powers given by section 65 or 66 of that Act.

Consideration of certain applications under the 1976 Act

16.—(1) No application in terms of section 26(2) of the 1976 Act may be made after the beginning of the transitional period.

(2) A Board is not obliged to consider an application which falls within paragraph (3) but may do so if it thinks fit.

(3) An application falls within this paragraph if it is—

- (a) an application for the grant or provisional grant of a licence under Part II or III of the 1976 Act (other than an occasional licence) which—
 - (i) is lodged during the relevant period; and
 - (ii) is not lodged at the same time as an application in respect of the same premises under section 20 or 45 of the 2005 Act together with any documents required to accompany it;
- (b) an application for the grant or provisional grant of a licence under Part II or III of the 1976 Act (other than an occasional licence) which is lodged after the relevant period;
- (c) an application under section 64 of the 1976 Act for a regular extension of permitted hours which is lodged after the relevant period; or
- (d) an application for consent under section 35 of the 1976 Act which is lodged after the relevant period.

(4) In this article, “the relevant period” means the period from the beginning of the transitional period up to and including 28th February 2009.

Special procedure for certain applications under the 2005 Act

17.—(1) Where an application under section 20 of the 2005 Act (including an application under that section as applied by section 45(10) of that Act) falls within article 18 or 19, paragraphs (2) to (5) apply.

(2) The application does not require to be accompanied by any certificates otherwise required by section 50(1) or (2) of that Act.

(3) The Board is not entitled to refuse the application on the ground specified in paragraph (e) of section 23(5) of that Act.

(4) Where the application is not a provisional premises licence application and the Board is minded to refuse the application only on the ground specified in paragraph (d) of section 23(5) of that Act but would not be so minded if certain modifications were made to the character and condition of the premises, the Board is to grant the application.

(5) Following expiry of the period of 12 months after an application has been granted in terms of paragraph (4), the Board is to—

- (a) hold a hearing; or

⁽¹³⁾ Section 109 was amended by the 1990 Act, Schedule 8, paragraph 17.

- (b) continue the case for a further period of 12 months.
- (6) At a hearing under paragraph (5)(a), the Board may—
 - (a) decide that the modifications referred to in paragraph (4) have been made;
 - (b) if not satisfied that those modifications have been made, revoke the licence; or
 - (c) continue the case for a further period of 12 months.
- (7) Following expiry of a further period of 12 months referred to in paragraph (5)(b) or (6)(c), the Board is to hold a hearing.
- (8) At a hearing under paragraph (7), the Board may—
 - (a) decide that the modifications referred to in paragraph (4) have been made; or
 - (b) if not satisfied that those modifications have been made, revoke the licence.
- (9) Subsections (3) to (6) of section 38 of the 2005 Act are (subject to such modifications as are appropriate) to apply to a hearing under paragraph (5)(a) or (7) as they apply to a review hearing under that section.
- (10) For the purposes of sections 131 and 132 of the 2005 Act, a decision to revoke a licence under paragraph (6)(b) or (8)(b) is to be treated as if it were a decision listed in Part 2 of schedule 5 to that Act.

Applications to which special procedure applies – full licence held

- 18.**—(1) An application falls within this article if each of paragraphs (2) to (4) apply in respect of it.
- (2) The application must relate to premises in respect of which at the time the application is made there is in force a relevant permission granted—
 - (a) before the beginning of the transitional period; or
 - (b) following upon a provisional grant of a licence made before the beginning of that period.
 - (3) The operating plan and layout plan which accompany the application under sub paragraphs (i) and (ii) of section 20(2)(b) of the 2005 Act must show that—
 - (a) it is proposed that—
 - (i) the size and capacity of the premises;
 - (ii) the general nature of the premises; and
 - (iii) any entertainment to be provided on the premises,are to be substantially the same as at the date of the application; and
 - (b) alcohol is not to be sold on the premises outside the hours authorised by the relevant permission (whether by virtue of the original grant or by virtue of section 57, 58, 59, 60 or 64 of the 1976 Act⁽¹⁴⁾).
 - (4) The application must be made by the appropriate date, determined in accordance with article 20.

Applications to which special procedure applies – provisional licence held

- 19.**—(1) An application falls within this article if each of paragraphs (2) to (4) apply in respect of it.
- (2) The application must relate to premises in respect of which at the time the application is made there is in effect a licence under Part II of the 1976 Act—

⁽¹⁴⁾ Section 57 was amended by the 1990 Act, section 45(3) and section 60 was amended by the 1990 Act, section 46(6).

- (a) which was provisionally granted prior to the beginning of the transitional period; and
 - (b) the provisional grant of which has not yet been declared final.
- (3) The operating plan and layout plan which accompany the application under sub-paragraphs (i) and (ii) of section 20(2)(b) of the 2005 Act must show that—
- (a) it is proposed that—
 - (i) the size and capacity of the premises;
 - (ii) the general nature of the premises; and
 - (iii) any entertainment to be provided on the premises,
 are to be substantially the same as was proposed in the application which led to the provisional grant under the 1976 Act; and
 - (b) alcohol is not to be sold on the premises outside the hours authorised by the licence provisionally granted under the 1976 Act.
- (4) The application must be made by the appropriate date, determined in accordance with article 20.

Determining the appropriate date

20.—(1) For the purposes of articles 18(4) and 19(4), “the appropriate date” in respect of an application is to be determined in accordance with this article.

(2) Where the application relates to premises in respect of which a licence under Part II of the 1976 Act is in effect, the appropriate date is to be determined by reference to the date on which that licence would, but for article 12(1) or 13(1), expire.

(3) Where that expiry date—

- (a) is in March of any year, the appropriate date is 7th March 2008;
- (b) is in June of any year, the appropriate date is 6th June 2008;
- (c) is in October of any year, the appropriate date is 3rd October 2008;
- (d) is in January of any year, the appropriate date is 16th January 2009.

(4) Where the application relates to premises in respect of which a licence under Part III of the 1976 Act is in effect or a certificate of registration under Part VII of that Act is in force, the appropriate date is to be determined by the Board to which the application falls to be made.

Notice in respect of article 17 applications

21.—(1) Each Board is to give notice in accordance with this article to every person who at the time when the notice is to be given appears to the Board to be the holder of a licence or certificate of registration falling within paragraph (2).

(2) A licence or certificate of registration falls within this paragraph if it was granted or issued in respect of premises within the area of the Board before the beginning of the transitional period and it is—

- (a) a licence under Part II or III of the 1976 Act (other than an occasional licence); or
- (b) a certificate of registration under Part VII of that Act.

(3) The first notice is to be given during the month of January 2008.

(4) The second notice is to be given subsequent to the first notice and no later than one month before the date which is (in terms of article 20) the appropriate date in respect of the premises in question.

(5) Notice under paragraph (1) is to advise the recipient of what is the appropriate date in relation to the premises in question and of the consequences of an application under section 20 of the 2005 Act not being made by that date.

Assessment of overprovision

22.—(1) This article applies in any case where during the transitional period a Board is considering whether the ground of refusal specified in paragraph (e) of section 23(5) of the 2005 Act applies.

(2) In considering whether that ground applies, the Board is to have regard to the number and capacity of—

- (a) relevant licensed premises; or
- (b) relevant licensed premises of the same or similar description as the subject premises,

in the locality in which the subject premises are situated.

(3) In paragraph (2), “relevant licensed premises” means—

- (a) premises in respect of which a licence under Part II or III of the 1976 Act (other than an occasional licence) is in effect (other than such premises in relation to which an application under section 20 of the 2005 Act has been refused); and
- (b) premises which do not fall within sub paragraph (a) but in respect of which a premises licence has been issued under the 2005 Act (other than premises specified in section 125(1) of that Act).

Period of effect of personal licence

23. Section 77 of the 2005 Act has effect in respect of a personal licence issued during the transitional period as if that licence had been issued on 1st September 2009.

Information regarding premises manager

24.—(1) The operating plan accompanying an application under section 20 of the 2005 Act made between the beginning of the transitional period and 1st July 2009 need not contain the information referred to in subsection (4)(g) of that section.

(2) In a case where that information is not provided to the relevant Board by 1st December 2009, any licence issued before that date under section 26 of the 2005 Act is deemed to be revoked on that date.

(3) In a case where as at 1st August 2009—

- (a) a Board is considering an application under section 20 of the Act in respect of which the information referred to in paragraph (1) has not been provided; or
- (b) a licence has been issued under section 26 of that Act and that information has not been provided,

as soon as reasonably practicable after that date the Board is to write to the applicant, or as the case may be the licence holder, advising of the terms of paragraph (2).

Deemed grant of licence

25.—(1) Where a relevant permission in respect of premises is in effect immediately prior to 1st September 2009 and the circumstances specified in paragraph (2) or (3) apply, a premises licence is deemed to be in effect in respect of those premises during the period specified in paragraph (5).

(2) The circumstances specified in this paragraph are that—

- (a) a premises licence application in respect of the premises has been made no later than 28th February 2009; and
- (b) that application has not been determined by 1st September 2009.
- (3) The circumstances specified in this paragraph are that—
 - (a) a premises licence application in respect of the premises has been refused prior to 1st September 2009; and
 - (b) as at that date that refusal has not become final.
- (4) A licence deemed to be in effect under this article—
 - (a) is subject to the conditions specified in schedule 3 to the 2005 Act; and
 - (b) authorises the sale of alcohol during the licensed hours specified in the operating plan which accompanied the premises licence application in question.
- (5) The period referred to in paragraph (1) is the period from 5.00 a.m. on 1st September 2009 until—
 - (a) the date on which any premises licence issued following on the premises licence application takes effect; or
 - (b) the date on which any refusal of that application becomes final.
- (6) For the purposes of this article, a refusal of an application becomes final when—
 - (a) any period for appealing against that refusal (or against any appeal decision concerning that refusal) expires without an appeal being taken;
 - (b) any appeal against that refusal (or against any appeal decision concerning that refusal) is abandoned; or
 - (c) a court makes a decision on appeal confirming the refusal and there is no subsequent right of appeal against that decision.

Exclusion orders: transitional provision

26.—(1) Paragraphs (2) to (4) apply in respect of the transitional period.

(2) Sections 94 to 96 of the 2005 Act are to have effect as if any reference to licensed premises generally or to licensed premises in respect of which a premises licence has effect were a reference to licensed premises within the meaning of section 4(1) of the Licensed Premises (Exclusion of Certain Persons) Act 1980(15).

(3) Sections 94 to 96 of the 2005 Act are to have effect as if any reference to the premises licence holder were a reference to the holder of the licence granted under the 1976 Act in respect of the premises in question.

(4) Section 95(6) of the 2005 Act is to have effect as if paragraph (b) and the words “or the premises manager” were omitted.

Exclusion orders: saving provision

27. Despite the repeal of the Licensed Premises (Exclusion of Certain Persons) Act 1980 on 1st February 2008—

- (a) any exclusion order under that Act which is in effect immediately prior to that date is to continue in effect until it expires or is terminated in accordance with that Act; and
- (b) anything which could have been done under that Act in relation to such an order or a breach of it may be done on or after that date.

(15) 1980 c. 32.

St Andrew's House, Edinburgh
9th October 2007

KENNY MACASKILL
A member of the Scottish Executive

Status: This is the original version (as it was originally made). Scottish
Statutory Instruments are not carried in their revised form on this site.

EXPLANATORY NOTE

(This note is not part of the Order)

The new regime for licensing the sale of alcohol under the Licensing (Scotland) Act 2005 (“the 2005 Act”) will be fully operational with effect from 1st September 2009. This Order makes transitional and saving provision in connection with the move to that regime from the existing one under the Licensing (Scotland) Act 1976 (“the 1976 Act”). Article 2 defines “the transitional period” as the period from 1st February 2008 until 5.00am on 1st September 2009.

There are provisions in the Order as to dealing with applications under the 1976 Act during the transitional period (articles 4 to 7 and 16) and about the continuation in effect until the end of that period of licences and registrations under that Act (articles 12 to 15). Articles 17 to 21 make provision for a special procedure under which specified requirements in the 2005 Act are disapplied to certain premises licence applications where an existing permission under the 1976 Act is already held. Other articles make further transitional provision in connection with the handling of 2005 Act applications during the transitional period whilst articles 26 and 27 make provision relating to the repeal on 1st February 2008 of the Licensed Premises (Exclusion of Certain Persons) Act 1980.