

2009 No. 277

LICENSING (LIQUOR)

**The Licensing (Scotland) Act 2005 (Transitional Provisions)
Order 2009**

<i>Made</i> - - - -	<i>23rd July 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>24th July 2009</i>
<i>Coming into force</i> - -	<i>30th July 2009</i>

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

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Licensing (Scotland) Act 2005 (Transitional Provisions) Order 2009 and comes into force on 30th July 2009.

(2) In this Order—

- (a) “specified premises manager” means the premises manager referred to in article 2(3)(b) or 2(4)(b); and
- (b) “the Act” means the Licensing (Scotland) Act 2005.

Deemed Personal Licence

2.—(1) Where paragraph (3) or (4) applies, a personal licence is deemed to be in effect in respect of the specified premises manager during the period specified in paragraph (7) if the requirements set out in articles 3 to 5 have all been complied with.

(2) Where paragraph (5) or (6) applies, a personal licence is deemed to be in effect in respect of the individual who is to be the premises manager mentioned in article 3(1)(a) during the period specified in paragraph (7) if the requirements set out in articles 3 to 5 have all been complied with.

(3) This paragraph applies where—

- (a) a Licensing Board granted a premises licence on or before 31st July 2009; and
- (b) the premises manager specified in that licence as at 31st July 2009 does not hold a personal licence.

(4) This paragraph applies where—

- (a) a premises licence application made no later than 28th February 2009 has not been determined; and
- (b) the premises manager specified in that application as at 31st July 2009 does not hold a personal licence.

(a) 2005 asp 16.

- (5) This paragraph applies where—
- (a) a Licensing Board granted a premises licence on or before 31st July 2009; and
 - (b) the individual who is to be the premises manager is not specified in the premises licence as at 31st July 2009.
- (6) This paragraph applies where—
- (a) a premises licence application made no later than 28th February 2009 has not been determined; and
 - (b) the individual who is to be the premises manager is not specified in that application as at 31st July 2009.
- (7) The period runs from 5:00am on 1st September 2009 until the earlier of—
- (a) the date on which the personal licence application submitted in accordance with article 4 is determined; or
 - (b) 1st November 2009.

Requirements

3.—(1) The premises licence holder or applicant for a premises licence, as the case may be, must provide the following information to the Licensing Board no later than 31st August 2009—

- (a) the name, date of birth and contact address of the specified premises manager or the individual who is to be the premises manager, as the case may be; and
- (b) the Licensing Board to which that person's personal licence application is made under article 4.

(2) The information in paragraph (1) may be given by electronic transmission if the Licensing Board to which the information is to be given so agrees, but must be in the form set out in the Schedule to this Order.

4. The individual who is to be the premises manager or the specified premises manager, as the case may be, must submit a personal licence application to a Licensing Board under section 72 (application for personal licence) of the Act no later than 31st August 2009.

5. The personal licence application submitted in accordance with article 4 must be accompanied by evidence that the applicant possesses a licensing qualification.

Deemed personal licence – one use

6. The premises licence holder or applicant for a premises licence, as the case may be, may only provide the Licensing Board with the information set out in article 3 on one occasion.

Application of the Act to deemed personal licence

7.—(1) The Act applies to a personal licence that is deemed to be in effect under article 2(1) or (2) with the following modifications.

(2) In section 56 (occasional licence) subsection (2)(b) is disapplied.

(3) Sections 71(a) (personal licence), 72 (application for personal licence) to 81 (courts' duty to notify Licensing Board of conviction), 85 (expiry of endorsements) to 87 (licence holder's duty to undertake training) and 89 (Licensing Board's duty to update licence) to 93 (licence holder's duty to produce licence) are disapplied.

(4) In section 82 (licence holder's duty to notify Licensing Board of convictions) subsections (2)(a) and (3)(b) are disapplied.

(5) Section 83 (procedure where Licensing Board receives notice of conviction) is modified as follows—

- (a) subsections (1)(b) and (10)(c) are disapplied;

- (b) any reference to endorsement of a personal licence is of no effect; and
 - (c) paragraph (b) of the definition of “relevant Licensing Board” in subsection (11) is disapplied.
- (6) Section 84 (conduct inconsistent with the licensing objectives) is modified as follows—
- (a) subsections (4), (5), (8)(b) and (c) are disapplied; and
 - (b) any reference to endorsement of a personal licence is of no effect.
- (7) Subsection (2) of section 88 (notification of change of name or address) is disapplied.
- (8) References in sections 82 to 84, and 88 to the personal licence holder are to be read as references to the holder of the deemed personal licence.

St Andrew’s House,
Edinburgh
23rd July 2009

KENNY MACASKILL
A member of the Scottish Executive

SCHEDULE

Article 3(2)

Licensing (Scotland) Act 2005

The Licensing (Scotland) Act 2005 (Transitional Provisions) Order 2009 Premises Manager Information where requesting a deemed Personal Licence

Name and Address of Premises:

PREMISES MANAGER

Personal details

(a) Name

(b) Date of birth

(c) Contact address

(d) Email address/Telephone number

(e) Personal licence – Name of Licensing Board applied to for Personal Licence

Signature

Date

APPLICANT/AGENT (delete as appropriate)

Telephone number and email address of signatory

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional provision in relation to the introduction of the new licensing regime for the sale of alcohol under the Licensing (Scotland) Act 2005 (“the 2005 Act”), which will be fully operational from 1st September 2009.

In particular, this Order makes transitional provision in relation to personal licences under the 2005 Act. Article 2 provides that in certain circumstances, where various requirements are met, then a personal licence is deemed to be in effect, in relation to the premises manager or the person who is going to be the premises manager, from 1st September 2009. The circumstances are set out in article 2(3) to 2(6). Where those circumstances are present then the requirements in articles 3 to 5 have to be met. The deemed personal licence is only in effect until the earlier of 1st November 2009 or the date when the personal licence application is determined, and requires that an application for a personal licence is made no later than 31st August 2009.

Article 3 provides that the premises licence holder or the applicant for such a licence must provide the Licensing Board responsible for those premises with certain information no later than 31st August 2009. Article 3(2) states that the information required can – where the Licensing Board consents – be supplied by electronic transmission, but must be in the form set out in the Schedule.

Article 4 requires that the person who is the premises manager or, where appropriate, the individual who is to be the premises manager has submitted an application for a personal licence under s.72 of the 2005 Act to a Licensing Board no later than 31st August 2009. Section 72 provides that the application be submitted to the Licensing Board where the individual is ordinarily resident or, in any other case, to any Licensing Board.

Article 5 requires that where the application for the personal licence is submitted then evidence that the applicant possesses a licensing qualification must accompany it.

Article 6 provides that the premises licence holder or applicant for a premises licence can only gain the advantage of a deemed personal licence on one occasion in relation to one premises manager or individual who is to be the premises manager.

Article 7 applies the provisions of the 2005 Act to the deemed personal licence as if it were a personal licence issued under the 2005 Act but with some modifications to reflect the transitional nature of the deemed licence.

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