

LICENSING (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 3 – Premises Licences

Section 17 – Premises licence

38. This section introduces the new premises licence. This replaces the seven different types of licences under the current legislation. The Act provides that anyone wishing to sell alcohol on any premises, subject to the exceptions set out in the Act, has to hold a premises licence.

Section 18 – Meaning of “appropriate Licensing Board”

39. This section provides that for the purposes of premises licences, the “appropriate Licensing Board” for any premises is the Board in whose area the premises are situated (or mainly situated). If premises straddle two or more areas equally, applicants can nominate one of the Licensing Boards in question to act as the relevant Licensing Board. The effect of this section is to identify the Board which will carry out licensing functions in relation to premises licences.

Section 19 – Meaning of “premises manager”

40. This section introduces the term “premises manager”. Each premises licence will have to specify the premises manager for the premises. Subsection (2) ensures that a person can only be the designated premises manager for one licensed premises.

Section 20 – Application for premises licence

41. Under subsection (1) any person, which includes corporate and unincorporated bodies and statutory bodies as well as individuals, can apply for a premises licence. However, if an individual wants a licence, he or she will need to be 18 or over. Under subsection (2) the application for a premises licence must be accompanied by a draft of the applicant’s proposed operating plan and a layout plan for the premises. These plans will provide Licensing Boards and local communities with a clear indication at the time of the licence application of what activities will be undertaken on the premises. Applications will also have to be accompanied by certain certificates relating to planning, building control and food hygiene (see section 50 of the Act).
42. Subsection (4) provides for the form and content of operating plans to be set out in regulations. However, this subsection lists a number of specific requirements as to the content of operating plans, including the proposed opening hours, any other activities in addition to the sale of alcohol and the position with regards to allowing the entry of children to a licensed premises.
43. Subsection (5) clarifies that premises may sell alcohol for consumption both on and off the premises and that the times during which alcohol is to be sold may differ between the two.

Section 21 – Notification of application

44. This section places a duty on Licensing Boards to notify those persons specified in subsection (1) (a) to (e) of all applications they receive for premises licences. This is a new duty and a change from what was previously provided for in the Licensing (Scotland) Act 1976.
45. Licensing Boards must notify the chief constable of all applications for premises licences. Subsection (3) places a duty on the chief constable to respond to the Licensing Board by giving certain notices within a period of 21 days. This procedure is intended to ensure that checks are made for the existence or otherwise of any convictions for relevant or foreign offences that any applicant or those connected with the applicant may have. Section 129 provides for “Relevant offences” to be set out in regulations. “Foreign offences” are offences under the laws of countries other than Scotland which correspond to relevant offences. Section 147(2) sets out who is a “connected person” in relation to a company, partnership or club. This ensures that checks are carried out on the persons in control of these bodies as well as the bodies themselves.
46. Subsection (3) further provides that the chief constable must, within 21 days of notification of a new premises licence application, submit a report to the Licensing Board regarding antisocial behaviour which has taken place on or in the vicinity of the premises and all complaints about such behaviour.

Section 22 – Objections and representations

47. This section is wider than the provisions in the Licensing (Scotland) Act 1976 relating to persons who have a statutory right to make objections and representations in relation to applications for premises licences. Any person (whether an individual or a corporate or unincorporated body) may object or make representations provided that, as noted in section 21(3), this is not considered by the Board to be vexatious or frivolous.
48. Subsection (2) allows the chief constable, in whose area an application for a premises licence has been made, a limited right to object to an application on the grounds that the applicant or a connected person is involved in serious organised crime. The chief constable may then, for the purposes of the crime prevention licensing objective, recommend refusal of the application.

Section 23 – Determination of premises licence applications

49. This section sets out the procedure that Licensing Boards must adopt when they receive an application for a premises licence. It provides both for the circumstances where a Licensing Board proposes to grant a premises licence and where it proposes to refuse a premises licence.
50. Subsection (5) sets out the grounds on which a Licensing Board may refuse a premises licence application. Those grounds are set out in paragraphs (a) to (e). One of the grounds relates to consistency with the licensing objectives. When considering the impact on the crime prevention objective in particular, the Board must pay particular attention to any convictions for relevant or foreign offences of which they have been notified by the chief constable and any recommendation as to refusal of the application which the chief constable may have given. However, the existence of convictions does not preclude the board from granting the licence.

Section 24 – Applicant’s duty to notify Licensing Board of convictions

51. This section places a duty on anyone applying for a premises licences to notify the Licensing Board of any convictions obtained whilst the application is pending. Any convictions obtained before the application is made will be brought to the attention of the Licensing Board by the Chief constable under section 21(4)(b)(i). Once an application has been granted, the Licensing Board will be made aware of any relevant

convictions of a personal licence holder by the court making the conviction (see section 42).

Section 25 – Further application after refusal of premises licence application

52. This section provides that, where a Licensing Board has refused an application for a premises licence, a subsequent application in respect of the same premises cannot be made within one year of that refusal.
53. This section permits Licensing Boards, at the time of the initial refusal, to dispense with the one year limit, or where the limit has not been dispensed with, nonetheless to consider granting a re-application within the one year period where there has been a material change of circumstances.

Section 26 – Issue of licence and summary

54. This section requires Licensing Boards, where they grant an application for a premises licence, to issue the applicant with a licence and a summary of the licence. The section also makes provision as to the form and content of the licence and summary. Subsection (2) sets out the minimum information which must be contained in the licence.

Section 27 – Conditions of premises licence

55. This section provides that all premises licences will be subject to those mandatory conditions set out in schedule 3 to this Act, unless schedule 3 provides otherwise. The application of these mandatory conditions is intended to ensure national consistency on those matters specified in schedule 3.
56. Subsections (2) and (5) provide a power for the Scottish Ministers to set out such further national mandatory or discretionary conditions to be attached to premises licences as they think are needed for the purposes of the five licensing objectives established by this Act.
57. Subsections (3) and (4) place a duty on Scottish Ministers to set out by regulations additional mandatory licence conditions for all premises open after 1.00am.
58. Subsection (6) provides a power for Licensing Boards to impose additional licence conditions to those ones to which the licence may be subject by virtue of subsections (1) to (3). This power could be used in circumstances where additional conditions were needed for the purposes of any of the five licensing objectives established by the Act and where some other form of activity not covered by schedule 3 was being undertaken on the premises. However, under subsection (7) a Board may only impose additional licence conditions which do not run counter to the effect of national conditions, and which do not attempt to alter or add to those conditions to make them more onerous or restrictive.
59. Subsections (8) and (9) make clear the types of conditions which can be prescribed by Scottish Ministers and imposed by Licensing Boards. These can cover both the sale of alcohol and any other activity carried out on the premises.
60. Subsection (10) provides a limitation on Licensing Boards' powers under any provision of this Act to vary the conditions of a premises licence to only those conditions provided for by this section.

Section 28 – Period of effect of premises licence

61. This section establishes the maximum duration for any premises licence issued under the Act. The Licensing (Scotland) Act 1976 required licences to be renewed every 3 years. Premises licences under this Act would remain in effect indefinitely as long as the premises in question continue to be used for the purpose or purposes for which the licence was granted. However, the licence can be revoked if conditions are breached

and the licence also ceases to have effect if the holder dies, becomes incapable, or insolvent unless a transfer is made under section 34. A licence holder may also choose to surrender a licence.

62. Subsection (7) sets out circumstances under which a licence holder becomes insolvent for the purposes of this Act.

Section 29 – Application to vary premises licence

63. This section permits premises licence holders to apply, to the Licensing Board which originally granted the licence, for variations to the terms and conditions of the premises licence. This is a change to the regime under the Licensing (Scotland) Act 1976 which made no provision for variations to licence. Subsection (2) provides that where practicable all applications must be accompanied by the paper version of the premises licence,.
64. Subsection (4) provides that the duty placed on Licensing Boards under sections 21 and 22 of the Act also applies to applications under this section for variations to premises licences. This is to ensure that all those persons who have a statutory right to be notified, are notified of the proposed variation and that any such person may make representations and objections to the variation.
65. Subsection (5) explains what is meant by a “variation”. It includes any change to the operating plan. Subsection (6) provides for certain variations to be classed as “minor variations”, which are dealt with less formally, and must be granted by the Licensing Board by virtue of section 30(2)

Section 30 – Determination of application for variation

66. This section establishes the procedure that Licensing Boards must adopt when they are considering an application for a variation to a premises licence applied for under section 29 of the Act.
67. Subsection (3) places a duty on Licensing Boards to hold a hearing when considering an application for a variation to premises licences (other than a minor variation which must be granted).
68. Subsections (4) provides that the Licensing Board’s decision must be based on the statutory grounds for refusal which are set out in subsection (5). These are similar to the grounds for refusal of an application for a licence.
69. Subsection (6) provides a power for a Licensing Board to make its own additional variations to the licence conditions where it grants the variation applied for.

Section 31 – Variation to substitute new premises manager

70. This section deals with a change of premises manager in relation to any premises. Licensed premises cannot operate without a premises manager being in post (see paragraph 4 of schedule 3). Where there is a change of premises manager, before the new premises manager can act as such, his or her name needs to be added to the licence. This section allows for the proposed new premises manager to take up post pending the granting of an application to vary the premises licence so as add the new premises manager’s name to it. This helps to ensure that changes of premises manager can take effect quickly so as to enable businesses to continue to operate with the minimum disruption.

Section 32 – Further application after refusal of application for variation

71. This section in effect prevents a premises licence holder who has had an application for a variation refused from re-applying for the same variation within a year of the initial refusal.

72. Subsection (3), however, permits Licensing Boards to dispense with the one year limit or, where the limit has not been dispensed with, nonetheless to consider granting a re-application within the one year period where there has been a material change of circumstances.

Section 33 – Transfer on application of licence holder

73. Subsection (1) provides that the holder of a premises licence may apply for the transfer of the licence to another person.
74. Subsection (4) provides that the Licensing Board must notify the application to the chief constable for its area and subsection (5) provides that the chief constable must respond within 21 days by giving one of the notices required by subsection (6). The statutory content of these notices is set out in subsection (6) and covers relevant and foreign offences.
75. Subsection (7) establishes that where the chief constable notifies the Licensing Board that the person(s) to whom the licence is proposed to be transferred (or a connected person) has been convicted of a relevant or foreign offence then the chief constable may also make a recommendation for refusal of the transfer application.
76. Subsections (8), (9) and (10) establish the procedure that Licensing Boards must adopt on receipt of the chief constable's notice. Where the notice reports that no conviction is found the transfer must be granted. Where the notice reports a conviction the Board is under a duty to hold a hearing but the only ground on which the transfer application may be refused is that it is necessary to do so for the purposes of the crime prevention objective. Otherwise the application must be granted.

Section 34 – Transfer on application of person other than licence holder

77. This section allows for an application for a transfer of a premises licence to be made by the proposed transferee rather than the licence holder. Subsection (4) provides that all the procedure set out in section 33 applies to applications for transfer of a premises licence under this section.
78. The transferee may make such an application only in circumstances where the licence holder has died, become insolvent or incapable or the business is being sold or transferred. Where a sale or transfer is being made the transferee and transferor may therefore choose whether it is to be the transferor who makes the application (under section 33) or the transferee (section 34).
79. A transferee will be able to apply under this section only if the transferee has a prescribed connection to the licence holder or the premises. For example, regulations under subsection (1) may prescribe that only the licence holder's executor may apply under this section for transfer of the licence in circumstances where the licence holder has died.

Section 35 – Variation on transfer

80. This section allows persons applying for transfer of a premises licence also to apply at the same time for a variation to the terms and conditions of the premises licence. The provisions in sections 29 and 30 relating to applications and determinations of variation applications will apply to applications for variations under this section.
81. Subsection (3) caters for the case in which a proposed transfer may depend on a variation being obtained to the licence. Where the person seeking the transfer makes it clear that this is the case, the Board must determine the application for variation prior to determining the application for transfer. If the variation is refused there is no need to proceed with the transfer application.

Section 36 – Application for review of premises licence

82. This section provides for Licensing Boards to review a premises licence on the application of any person. The grounds for such a review are set out in subsection (3). These are: breach of the licence conditions or any other ground relevant to one of the licensing objectives.
83. A Licensing Standards Officer can only apply for a review on the ground that there has been a breach of licence conditions if the Officer has issued a written warning about the breach.
84. Subsection (5) places a duty on persons applying for a review of a premises licence to set out the grounds that they feel merit the review.

Section 37 – Review of premises licence on Licensing Board’s initiative

85. This section allows for Licensing Boards to initiate reviews of premises licences themselves. The grounds for review are the same as those for applications under section 36. Where a Licensing Board proposes to initiate a review of a premises licence, the Board must provide a written report (to be known as a review proposal) setting out the grounds that it considers merit such a review of the premises licence.

Section 38 – Review hearing

86. This section places a duty on the Licensing Board to hold a hearing (known as a “review hearing” for the purposes of this Act) to consider and determine an application for a review of a premises licence made under section 36 or a review proposal under section 37. The Board does not need to hold a review hearing on an application for review if it considers the application is frivolous or vexatious or if it is not relevant to the grounds for review. Subsection (4) places a duty on Licensing Standards Officers to provide a report to the Board and provides a reciprocal duty on Boards to have regard to the report. Subsections (5) and (6) permit Boards to request information, the attendance at a hearing of any person and the production of documents.

Section 39 – Licensing Board’s powers on review

87. This section provides the range of sanctions that a Licensing Board may impose on reviewing a premises licence. The Board can issue a written warning, vary the licence, suspend it or revoke it. The Board can provide for a variation to apply only for a limited period of time.

Section 40 – Review of Licensing Board’s decision to vary or suspend licence

88. This section provides a mechanism by which a licence holder can apply to the Licensing Board to have any variation of their premises licence or the suspension of their premises licence removed. If the Board feels that the sanction in question is no longer necessary then it may remove the relevant sanction. This power applies only to variation or suspension of a premises licence following review.

Section 41 – Duty to notify court of premises licence

89. This section requires premises licence holders who are charged with relevant offences to notify the court of the fact that they hold a premises licence. This will enable the courts to become aware of cases to which the duty in section 42 will apply.

Section 42 – Court’s duty to notify Licensing Board of convictions

90. Where a premises licence holder is convicted of a relevant offence by a court in Scotland, the clerk of court will, under this section, be required to give notice of the conviction to the Licensing Board. The duty only applies if the clerk is aware that the

person convicted holds a premises licence. In most cases, they will be made aware of that fact under section 41.

Section 43 – Licence holder’s duty to notify Licensing Board of convictions

91. Where a premises licence holder (or in the case of a company, partnership or club, a “connected person” – see section 147(3)) is convicted of a relevant offence in Scotland or a foreign offence then the licence holder must, no later than one month after the date of the conviction, notify the Licensing Board of the conviction. If the licence holder does not comply he or she would be guilty of an offence. The duty is imposed on the licence holder even where it is a connected person who has the conviction.
92. Subsection (4) specifies the mandatory requirements for such notices under subsection (3).

Section 44 – Procedure where Licensing Board receives notice of conviction

93. Where a Licensing Board receives notice of a conviction given under section 42 or 43 the Board must give the appropriate chief constable notice of it. The chief constable must then check the conviction and respond, within 21 days, either confirming the existence of the conviction and that it relates to a relevant or foreign offence or stating that the chief constable is unable to confirm the conviction or that it does not relate to a relevant or foreign offence. Where the conviction is confirmed, the chief constable may make a recommendation that the premises licence be varied, revoked or suspended, if the chief constable considers that necessary for the purpose of the crime prevention objective.
94. Subsection (7) places a duty on the Licensing Board to initiate a review of the premises licence should they receive notification from the chief constable confirming the existence of a conviction.

Section 45 – Provisional premises licence

95. This section makes it clear that a premises licence application can be made in relation to premises which are being constructed or converted for use as licensed premises. A premises licence granted for such premises is referred to as a “provisional premises licence”. The section modifies certain provisions of the Act as they apply to applications for provisional premises licences.
96. A provisional premises licence has no effect until it is confirmed. The licence has to be confirmed within 2 years otherwise it will automatically be revoked. The 2 year period can be extended if the construction or conversion work is delayed for reasons outwith the licence holder’s control.
97. Subsection (10) modifies section 20 (which sets out requirements as to applications for premises licences) of the Act as it applies to applications for provisional premises licences. Paragraph (a) establishes that different certificates as to planning, building control and food hygiene are to be provided and paragraph (b) establishes that the name of the premises manager need not be provided on application.

Section 46 – Confirmation of provisional premises licence

98. This section sets out the procedure for confirmation of provisional premises licences. The licence holder has to apply for confirmation to the Licensing Board before the end of the 2 year period beginning when the licence was issued. Confirmation would, in practice, be sought when the construction or conversion work is completed and the premises are ready for use.
99. Subsection (2) sets out the mandatory requirements for applications for confirmation of provisional premises licences.

100. Subsection (3) makes it clear that the operating plan accompanying the application must confirm the name of the proposed premises manager.
101. Subsection (4) requires the Licensing Board to confirm the premises licence where the statutory conditions are met. Subsection (5) sets out those conditions – i.e. that during the period of the provisional licence there had been no variation to the operating plan or layout plan (other than a variation approved by the Board already or classed as a minor variation).
102. Subsection (6) provides that when confirming a premises licence under this section, a Licensing Board may vary any licence condition for the purpose of ensuring consistency with the licensing policy statement.

Section 47 – Temporary premises licence

103. This section caters for the circumstances where premises which already have a premises licence are undergoing reconstruction or conversion work. The licence holder may want to move into temporary premises pending completion of the work. This section allows the licence holder to apply to the Licensing Board for a premises licence covering the temporary premises. Such a licence is referred to as a “temporary premises licence”.
104. Subsections (5) and (6) confirm the maximum duration of temporary premises licences issued under this section and establish that those licence conditions which were attached to the original application for the premises licence would apply to the temporary premises licence, subject to any exceptions or modification which the Licensing Board may provide for.

Section 48 – Notification of change of name or address

105. This section places a duty on the holder of a premises licence to notify the Licensing Board of any change of name or address of the premises licence holder or of the premises manager. This is meant to cover only actual name changes ie for example, where the licence holder is a company and changes its name, or the premises manager is a woman who changes her name on marriage. A change in the identity of the premises licence holder is provided for in the provisions on transfer of premises licences. If there is a new premises manager, this must be provided for by seeking a variation of the licence so as to add the new premises manager’s name. A notification of a change of the licence holder's name or address or that of the premises manager under this section must be accompanied by the premises licence (unless that is impracticable, in which case a statement must be provided).

Section 49 – Licensing Board’s duty to update premises licence

106. This section is intended to ensure that the information contained in the premises licence is kept up-to-date. Subsection (1) requires the Licensing Board to make the appropriate changes to the information in the licence when it receives the notices of change of name or address and when it varies, transfers, confirms or reviews a premises licence. This ensures that there is always an accurate record of the licence.
107. In most cases the Licensing Board will have been sent the appropriate licence, but subsections (3) and (4) provide that the Board may require a holder to produce their licence within 14 days. Subsection (5) provides that failure to do so without reasonable excuse will be an offence.

Section 50 – Certificates as to planning, building standards and food hygiene

108. This section sets out the requirements as to the production of certificates evidencing compliance with planning, building control and food hygiene legislation in relation to premises in relation to which a licence application is made. Different requirements are

imposed according to whether the application is for a full premises licence, a provisional premises licence or confirmation of a premises licence.

Section 51 – Notification of determinations

109. This section places a duty on the Licensing Board to notify its decisions on applications for premises licences, applications for variations of a premises licence, transfer applications, reviews, applications for a temporary licence, and applications for provisional premises to the applicant and other specified persons.
110. Subsection (3) requires Boards to give reasons for these decisions, but only if asked.

Section 52 – Duty to keep, display and produce premises licence

111. This section provides that a premises licence holder is under a duty to ensure that the premises licence or a certified copy is held on the premises to which it relates either by the licence holder or by the premises manager. A summary of the licence must be displayed prominently on the premises. It is an offence to fail to comply with these requirements or to fail to produce the licence or a certified copy to a constable or a Licensing Standards Officer on request.

Section 53 – Theft, loss etc. of premises licence or summary

112. Subsection (1) provides that a premises licence holder may apply to the Licensing Board for a copy of a premises licence or a summary if the licence or summary has been lost, stolen, damaged or destroyed. If lost or stolen, the theft or loss must have been reported to the police. The Licensing Board must then issue a replacement licence or summary. The Act applies in relation to a replacement and summary in the same way as it applies to the originals
113. Subsection (3) establishes that a replacement licence or summary is to be certified as a true copy by the Licensing Board.

Section 54 – Dismissal, resignation, death etc. of premises manager

114. This section deals with circumstances where the premises manager ceases to work at the premises, becomes incapable of acting or dies or where the personal licence held by the premises manager is revoked or suspended. It gives a “period of grace” to allow the premises to continue operating despite not having a premises manager and pending the recruitment of a new one.
115. Subsection (3) places a duty on the premises licence holder to inform the Licensing Board of such circumstances within 7 days.
116. Subsection (4) and (5) provide that should this notification be done within the 7 day period and an application to substitute a new premises is made within 6 weeks of the loss of the premises manager, then the fact that the premises are, in the meantime, operating without a premises manager will be overlooked.
117. Subsection (6) provides that should there not be an application for a transfer of the premises licence under subsection (4) then the Licensing Board must vary the licence to reflect the fact that there is no longer any premises manager named on it. The period of grace will have ended and the premises would have to stop operating as they would have no premises manager.

Section 55 – Certified copies

118. This section provides an interpretation of what is meant by the term “certified copy” used throughout this Part of the Act.