

LICENSING (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 9 – Miscellaneous and General

Section 123 – Excluded premises

248. This section provides that those premises described in subsection (2) are excluded from the new licensing regime, and consequently the sale of alcohol would not be permitted on these premises. Paragraph (a) is intended to cover motorway service areas and paragraph (b) covers petrol stations and garages.
249. Subsection (5) provides that garage premises which are a principal local source of fuel or groceries are not excluded premises and can therefore apply for a licence to sell alcohol
250. Subsection (6) provides a power for the Scottish Ministers to amend the list of excluded premises by way of regulations.

Section 124 – Exempt premises

251. This sets out those premises which are to be exempt from the requirement to hold a licence under the Act. An “examination station” at any airport is basically the area beyond the security check-in.
252. Subsection (1)(d)(ii) provides a specific exemption for ferries while engaged on a domestic journey. ‘Ferry service’ is defined in subsection (4).

Section 125 – Special provisions for certain clubs

253. This section deals with clubs. Part VII of the Licensing (Scotland) 1976 Act regulates clubs by virtue of registration granted by a sheriff. This system was first introduced by the Licensing (Scotland) Act 1903. That system is repealed by the Act. Instead, the general licensing regime will apply to clubs as it applies to other premises, subject to the provisions in this section.
254. Subsection (1) provides a power for the Scottish Ministers to prescribe categories of clubs that would be exempt from the application of those provisions of the Act listed in subsection (2). The general effect is that such clubs would not need to have a premises manager and the overprovision ground of refusal would not apply. Subsection (3) permits the Scottish Ministers to prescribe different descriptions of clubs for the purposes of different provisions set out in subsection (2).
255. Subsections (4) confers power on the Scottish Ministers to provide for further modifications of the Act as it applies to such categories of clubs as they may specify.

Section 126 – Vessels, vehicles and moveable structures

256. “Premises” for the purposes of the Act includes vessels, vehicles and other moveable structures. In the case of vessels, this section effectively provides for the “home port” of the vessel to be treated as the place where it is situated. That means, for example, that it will be the Licensing Board for that port that would have jurisdiction to grant a licence for the vessel.
257. In the case of vehicles and other moveable structures, the effect of this section is that, where alcohol is to be sold on or from the vehicle etc. while it is parked somewhere, a separate licence will be needed for each such place.
258. This section also makes special provision for the licensing of moving vehicles and other moveable structures. Subsection (5) sets out which Licensing Board will be responsible for licensing such premises. Subsection (6) exempts moving premises from certain requirements of the Act which are only necessary for buildings: notification to neighbours, the community council and the fire authority, requirement to provide certificates relating to planning, building control and food hygiene.
259. In addition, vessels are exempted from the requirements to notify neighbours and the fire authority, and to provide certificates relating to planning, building control and food hygiene.

Section 127 – Power to prohibit sale of alcohol on trains

260. Subsections (1) and (2) provide for the prohibition of the sale of alcohol at specified stations or on any train travelling between specified stations for a specified period. An order made under this section may be made by a sheriff on application by a senior police officer, if the sheriff is satisfied that the order is necessary for the prevention of disorder.
261. Subsection (3) requires the senior police officer who applied for the order to serve a copy of the order on the train operator or operators concerned.
262. Subsection (4) makes it an offence for anyone knowingly to sell alcohol, or to permit its sale, in contravention of such an order.

Section 128 – Power to prohibit sale of alcohol on ferries

263. This section creates a power for the Police, on application to a sheriff, to prohibit the sale of alcohol on specified vessels which are part of a ferry service. This mirrors the power in section 127 of the Act in relation to trains. This power can be used to prevent the sale of alcohol on either a particular journey or a particular route.

Section 129 – Relevant offences and foreign offences

264. This section provides a definition of the term “foreign offence” for the purposes of this Act and provides a power for the Scottish Ministers to set out by way of regulations a list of “relevant offences” for the purposes of this Act.
265. Subsection (3) allows the persistent commission of a lower level offence - which would not by itself be sufficiently serious - to amount to a “relevant offence”. Convictions for a “relevant offence” may result in refusal by the Board to grant a licence or the review of a licence. One of the uses to which this regulation making power is intended to be put is to make additional links between the Licensing Act and the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#).

Section 130 – Effect of appeal against conviction for relevant or foreign offence

266. This section provides that the duties placed on Licensing Boards under this Act relating to relevant and foreign offences may still be carried out if the conviction is subject to appeal but the Board has discretion to postpone any action it has decided to take.

*These notes relate to the Licensing (Scotland) Act 2005
(asp 16) which received Royal Assent on 21 December 2005*

267. Subsection (3) provides that the Board's actions will have no effect if the conviction is overturned on appeal.

Section 131 – Appeals

268. This section provides that any decision of a Licensing Board specified in schedule 5 of this Act may be appealed against by way of stated case to either the sheriff or the sheriff principal, as appropriate.
269. Subsection (2) sets out the circumstances in which cases will be determined by either the sheriff or the sheriff principal.
270. Subsection (3) establishes the grounds on which appeals could be made.
271. Subsection (5) sets out the powers of the sheriff or sheriff principal where an appeal made under this section is upheld.

Section 132 – Appeals: supplementary provisions

272. This section sets out those procedural matters relating to appeals made under section 131 and provides that any further procedural matters that might be required may be prescribed by Act of Sederunt.
273. Subsection (8) allows the sheriff principal to recall (pending the outcome of the appeal) any decision of the Licensing Board which has resulted in the suspension or revocation of a premises licence, if he considers it appropriate to do so on the balance of convenience.

Section 133 – Hearings

274. This section provides that any hearing held under the provisions of this Act must be held at a meeting of the Licensing Board. It also provides a power for the Scottish Ministers to make regulations to set out all other procedural matters relating to any hearing held under the provisions of this Act including those matters set out in subsection (3).

Section 134 – Form etc. of application and notices

275. This section provides a power for the Scottish Ministers to make regulations that set out the form and content of applications and notices made or given under the Act and the manner in which they are to be made or given.

Section 135 – Power to relieve failure to comply with rules and other requirements

276. This section provides a power for Licensing Boards to overlook any procedural failing and thus enable them to deal with applications etc. despite procedural requirements not having been met.

Section 136 – Fees

277. This section provides a power for the Scottish Ministers to make regulations to enable fees to be charged by Licensing Boards.
278. Subsection (3) places a duty on the Scottish Ministers to consult with those persons listed in paragraphs (a) and (b) before making any such regulations under this section.
279. Subsection (4) establishes that a Licensing Board need not carry out any of its functions relating to the application for which fees are payable until they are paid. Subsections (5) and (6) set out who fees should be payable to. Ultimately, fee income will be paid over to the councils.

Section 137 – Inspection of premises before grant of licence etc.

280. This section provides a power for Licensing Standards Officers and the police to enter premises at any time in those circumstances linked to a relevant application or review, provided for in subsection (1), and if necessary to use reasonable force to do so. This is for the purposes of assessing the likely effect on the promotion of the licensing objectives of the grant of the application or the effect of the sale of alcohol under the licence. It also provides that anyone preventing those persons from undertaking this task will be guilty of an offence.

Section 138 – Police powers of entry

281. This section provides that a constable has a lawful right of entry to any licensed premises and to any other premises on which the constable has reason to believe alcohol is being sold in breach of section 1(1) of the Act
282. Subsection (4) establishes the conditions under which a police officer below the rank of inspector may enter the premises.
283. Subsection (5) makes it an offence for anyone to obstruct the police in the carrying out of their functions under this section.

Section 139 – Remote sales of alcohol

284. This section deals with situations where alcohol is delivered from a different place from that in which the order for the alcohol is placed. Subsection (1) and (2) provide that where the place of despatch is in Scotland, the sale is treated as having happened at that place. For example, when alcohol is bought via mail order or a telephone call centre and sent out for delivery from a separate warehouse, the sale is, for the purposes of this Act, treated as having taken place at the warehouse and not the call centre. The requirement for a premises licence would, therefore, apply to the warehouse rather than the call centre.
285. Subsections (3) and (4) provide a power for the Scottish Ministers to provide for the regulation of the converse scenario i.e. where the alcohol is ordered in Scotland but delivered from a warehouse outside Scotland.

Section 140 – Presumption as to liquid contents of containers

286. This section establishes a presumption relating to the contents of a container. This essentially means that, for the purposes of a trial for an offence under the Act, any liquid found in a container is to be presumed to be the liquid that the label on the container suggests it is. This section replicates what was previously provided for in the Licensing (Scotland) Act 1976 relating to such matters.
287. Under subsection (4) the presumption can be rebutted, but notice of intention to lead evidence to rebut the presumption must be given. The prosecution or defence may wish to rebut the presumption. For example, the defence may want to prove that the contents of what appears to be a bottle of alcohol was not in fact alcohol and the prosecution may want to prove that the contents of what appears to be a bottle of coca cola was in fact alcohol.

Section 141 – Offences by bodies corporate etc.

288. This section deals with offences committed by companies, partnerships and other bodies. It effectively provides for certain persons responsible for the management or control of these bodies to share criminal responsibility for offences committed with their consent or connivance or due to their neglect.

Section 142 – Guidance

289. This section provides a power for the Scottish Ministers to issue guidance to Licensing Boards. It also allows the Scottish Ministers to modify any guidance given by them. Subsection (5) places a duty on the Scottish Ministers to lay a draft of the first set of guidance to Licensing Boards before the Parliament and confirms that the guidance would be subject to the affirmative resolution parliamentary procedure. Subsection (6) provides that any subsequent guidance issued must be laid before the Parliament.

Section 143 – Crown application

290. This section makes it clear that the provisions of the Act apply to Crown bodies as they apply to everyone else. So, for example, a licence is required for the sale of alcohol on any properties managed by Historic Scotland.

Section 144 – Modification of enactments

291. This section introduces schedule 6 of the Act which contains modifications of enactments.

Section 145 – Ancillary provision

292. This section allows the Scottish Ministers to make ancillary provision in statutory instruments in consequence of this Act. This power will, for example, be used to make transitional provision and further consequential modifications.

Section 146 – Orders and regulations

293. This section sets out the parliamentary procedure in relation to orders and regulations made by the Scottish Ministers under the provisions of the Act.

Section 147 – Interpretation

294. This section defines certain terms used throughout this Act.

Section 148 – Index of defined expressions

295. This section provides an index indicating where definitions of specific terms used throughout the Act can be found.

Section 149 – Repeals

296. This section introduces schedule 7 to the Act which contains repeals of enactments.

Section 150 – Short title and commencement

297. This section provides for commencement by order.