



# Licensing (Scotland) Act 2005

## 2005 asp 16

### PART 7

#### CONTROL OF ORDER

##### *Exclusion of violent offenders*

#### **94 Exclusion orders**

- (1) This section applies where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises in respect of which a premises licence has effect (referred to in this section and section 96 as “the licensed premises concerned”).
- (2) The court by or before which the person is convicted of the offence may, in addition to any sentence imposed or other disposal in respect of the offence, make an order prohibiting the person from entering—
  - (a) the licensed premises concerned, and
  - (b) such other licensed premises (if any) as the court may specify in the order, except with the appropriate consent.
- (3) The holder of the premises licence in respect of the licensed premises concerned may, by summary application to the sheriff of the appropriate sheriffdom made no later than 6 weeks after the date of the conviction, seek an order prohibiting the person convicted from entering the licensed premises concerned except with the appropriate consent.
- (4) On such an application, the sheriff, if satisfied that—
  - (a) there is a substantial risk that the person convicted will commit a further violent offence on, or in the immediate vicinity of, the licensed premises concerned, and
  - (b) an order has not been made under subsection (2) in relation to the person in respect of the same conviction,may grant the order sought.
- (5) For the purposes of an application under subsection (3), where the sheriff is satisfied that the person to whom the application relates has been convicted as mentioned in

subsection (1), it is to be presumed, unless the contrary is proved, that the risk referred to in subsection (4)(a) exists.

- (6) An order under subsection (2) or (4) is referred to in this Act as an “exclusion order”.
- (7) An exclusion order has effect, subject to section 95(3), for such period, being not less than 3 months and not more than 2 years, as is specified in the order.
- (8) In this section—
  - “the appropriate consent” means, in relation to any licensed premises, the express consent of—
    - (a) the premises licence holder in respect of the premises, or
    - (b) a person authorised by the premises licence holder to give consent for the purposes of this section,
  - “the appropriate sheriffdom” means the sheriffdom in which the licensed premises concerned are situated,
  - “violent offence” means any offence involving violence or the threat of violence.

## **95 Breach of exclusion order**

- (1) A person who enters licensed premises in breach of an exclusion order commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding level 4 on the standard scale,
  - (b) imprisonment for a term not exceeding one month, or
  - (c) both.
- (3) The court by or before which a person is convicted of an offence under subsection (1) of breaching an exclusion order made under section 94(2) may, if it thinks fit, terminate the exclusion order or vary it so as to delete any licensed premises specified in it.
- (4) Where, in relation to any licensed premises, an authorised person reasonably suspects a person of having entered the premises in breach of an exclusion order, the authorised person may—
  - (a) remove the person from the premises, and
  - (b) if necessary for that purpose, use reasonable force.
- (5) A constable must, if—
  - (a) asked by an authorised person to assist in exercising a power conferred by subsection (4), and
  - (b) the constable reasonably suspects the person to be removed of having entered the premises in breach of an exclusion order,
 provide the assistance asked for.
- (6) In this section, “authorised person” means, in relation to licensed premises, any of the following persons, namely—
  - (a) the premises licence holder,
  - (b) the premises manager, and
  - (c) any other person who—
    - (i) works on the premises, and

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*Status: This is the original version (as it was originally enacted).*

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(ii) is authorised by the premises licence holder or the premises manager for the purposes of this section.

## **96 Exclusion orders: supplementary provision**

- (1) References in section 94 to a person's being convicted of an offence are, in the case mentioned in subsection (2), to be read as references to the court's being satisfied that the person committed the offence.
- (2) That case is the case where—
  - (a) the person is charged with the offence before a court of summary jurisdiction, and
  - (b) the court, without proceeding to conviction, discharges the person absolutely under section 246(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46).
- (3) Where—
  - (a) a court or the sheriff makes an exclusion order, or
  - (b) a court makes an order terminating or varying an exclusion order,the clerk of the court or, as the case may be, the sheriff clerk must send a copy of the order to the premises licence holder in respect of the licensed premises concerned.

### *Closure of premises*

## **97 Closure orders**

- (1) A Licensing Board may—
  - (a) on the application of a senior police officer relating to any licensed premises situated within the Board's area, and
  - (b) if satisfied that, by reason of the likelihood of disorder on, or in the vicinity of the premises, closure of the premises is necessary in the interests of public safety,make a closure order in relation to the premises.
- (2) A senior police officer may, if the officer reasonably believes that—
  - (a) there is, or is likely imminently to be, disorder on, or in the vicinity of, any licensed premises,
  - (b) closure of the premises is necessary in the interests of public safety, and
  - (c) the risk to public safety is such that it is necessary to do so immediately and without making an application under subsection (1),make a closure order in relation to the premises.
- (3) A closure order is an order requiring the licensed premises to which it relates to be closed for such period, beginning with the coming into force of the order, as may be specified in the order.
- (4) A closure order made by a senior police officer under subsection (2) is referred to as an "emergency closure order".
- (5) The period of closure specified in an emergency closure order must not exceed 24 hours.

- (6) A closure order comes into force in relation to any licensed premises to which it relates when a constable gives notice of it to a responsible person.
- (7) Any responsible person who allows any licensed premises to be open in breach of a closure order commits an offence.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to—
  - (a) a fine not exceeding £20,000,
  - (b) imprisonment for a term not exceeding 3 months, or
  - (c) both.

## **98 Termination of closure orders**

- (1) A senior police officer must terminate a closure order (whether or not an emergency closure order) relating to any licensed premises if the officer is satisfied that it is no longer necessary in the interests of public safety for the premises to be closed.
- (2) Where a senior police officer terminates a closure order relating to any licensed premises, the officer must ensure that notice of the termination is given by a constable to—
  - (a) a responsible person, and
  - (b) in the case of a closure order made by a Licensing Board, the Board.
- (3) A Licensing Board may—
  - (a) on the application of the holder of the premises licence or, as the case may be, occasional licence in respect of any licensed premises to which a closure order made by the Board relates, and
  - (b) if satisfied that it is no longer necessary in the interests of public safety for the premises to be closed,
 terminate the closure order.

## **99 Extension of emergency closure order**

- (1) Where an emergency closure order is in effect in respect of any licensed premises, a senior police officer may—
  - (a) before the expiry of the period during which the order has effect (referred to in this section as the “original closure period”), and
  - (b) if the officer reasonably believes that the conditions mentioned in subsection (2) are met in relation to the premises,
 extend the original closure period for a further period not exceeding 24 hours.
- (2) The conditions referred to in subsection (1)(b) are—
  - (a) that there continues to be, or is likely to continue to be, disorder on, or in the vicinity of, the premises,
  - (b) that extending the original closure period is necessary in the interests of public safety, and
  - (c) the risk to public safety continues to be such that it is necessary to extend the original closure period immediately and without making an application under section 97(1).

- (3) An extension under subsection (1) has no effect in relation to any licensed premises unless a constable has, before expiry of the original closure period, given notice of the extension to a responsible person.

#### **100 Regulations as to closure orders**

The Scottish Ministers may by regulations make further provision as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders including, in particular, provision—

- (a) as to the form and manner in which—
  - (i) any application under section 97(1)(a) or 98(3)(a) is to be made,
  - (ii) any notice under section 97(6), 98(2) or 99(3) is to be given,
- (b) as to the form of closure orders,
- (c) for the holding of hearings by Licensing Boards before making closure orders or extensions to them.

#### **101 Interpretation of sections 97 to 100**

In sections 97 to 100 “responsible person” means—

- (a) in the case of premises in respect of which a premises licence has effect—
  - (i) the premises licence holder, or
  - (ii) the premises manager,
- (b) in the case of premises in respect of which an occasional licence has effect, the person who holds the occasional licence, and
- (c) in either case, any person working at the premises in a capacity (whether paid or unpaid) which authorises the person to close the premises.