



# Licensing (Scotland) Act 2005

## 2005 asp 16

### PART 9

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### **137 Inspection of premises before grant of licence etc.**

- (1) In this section, “relevant proposal or application” means—
  - (a) a premises licence application,
  - (b) a premises licence variation application,
  - (c) a premises licence review proposal or application,
  - (d) an application under section 47(2) for a temporary premises licence,
  - (e) an occasional licence application, or
  - (f) an extended hours application.
- (2) Any of the persons specified in subsection (3) may, at any reasonable time before the determination of a relevant proposal or application, enter the premises to which the proposal or application relates for the purposes of assessing—
  - (a) in the case of an application such as is mentioned in paragraph (a), (b), (d), (e) or (f) of subsection (1), the likely effect of the grant of the application on the licensing objectives, or
  - (b) in the case of a proposal or application such as is mentioned in paragraph (c) of that subsection, the effect which the selling of alcohol in accordance with the premises licence is having on those objectives.
- (3) The persons referred to in subsection (2) are—
  - (a) a constable, and
  - (b) a Licensing Standards Officer for the council area in which the premises are situated.
- (4) A person exercising the power conferred by subsection (2) may if necessary use reasonable force.

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- (5) A person who intentionally obstructs a person exercising the power conferred by subsection (2) commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Commencement Information

**II** S. 137 in force at 1.2.2008 by [S.S.I. 2007/472](#), art. 2, [Sch. 1](#)

### 138 Police powers of entry

- (1) A constable may at any time enter and inspect any licensed premises.
- (2) A constable may—
  - (a) if the condition in subsection (3) is satisfied, and
  - (b) subject to subsection (4),
 at any time enter and inspect any premises (other than licensed premises) on which food or drink is sold for consumption on the premises.
- (3) The condition referred to in subsection (2)(a) is that the constable has reasonable grounds for believing that alcohol is being sold on the premises in breach of section 1(1).
- (4) A constable below the rank of inspector may exercise the power conferred by subsection (2) only—
  - (a) if the constable has obtained written authority to do so from a justice of the peace or a constable of or above the rank of inspector,
  - (b) within the period of 8 days beginning with the date on which such authority is obtained, and
  - (c) at such time or times as is specified in the authority.
- (5) A person who intentionally obstructs a constable exercising a power conferred by this section commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Commencement Information

**I2** S. 138 in force at 1.9.2009 at 5.00 a.m. by [S.S.I. 2007/472](#), [art. 3](#)

### 139 Remote sales of alcohol

- (1) This section applies where, in connection with any sale of alcohol, the premises from which the alcohol is despatched for delivery in pursuance of the sale is not the same as those where the order for the alcohol is taken.
- (2) Where the premises from which the alcohol is despatched are in Scotland, the sale of the alcohol is, for the purposes of this Act, to be treated as taking place on those premises.

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- (3) The Scottish Ministers may by regulations make such provision as they consider appropriate for the purpose of regulating the taking of orders in Scotland for sales of alcohol in circumstances where—
- (a) the premises from which the alcohol is despatched for delivery in pursuance of the sales are not in Scotland, but
  - (b) the place to which the alcohol is delivered is in Scotland.
- (4) Regulations under subsection (3) may, in particular—
- (a) modify any provision of this Act,
  - (b) apply any such provision with modifications, or
  - (c) disapply any such provision.

#### Commencement Information

**I3** S. 139 in force at 1.5.2007 by [S.S.I. 2007/129](#), [art. 3](#), [Sch.](#)

### 140 Presumption as to liquid contents of containers

- (1) This section applies for the purpose of any trial in proceedings for an alleged offence under any provision of this Act.
- (2) Where—
- (a) liquid is found in a container (whether open or sealed), and
  - (b) there is on the container a description of the liquid contents of the container, the liquid found is to be presumed to be liquid of that description.
- (3) Where an open container is found which—
- (a) contains—
    - (i) no liquid, or
    - (ii) an amount of liquid insufficient to allow analysis of it,
  - (b) was sealed at the time it was sold or supplied, and
  - (c) has on it a description of the liquid contents of the container, the container is to be presumed to have contained, at the time it was sold or supplied, liquid of that description.
- (4) At the trial, any party to the proceedings may rebut the presumption mentioned in subsection (2) or (3) by proving that, at the time of its sale or supply, the liquid in the container was not of the description on the container.
- (5) However, a party may lead evidence for the purpose of rebutting the presumption only if the party has, not less than 7 days before the date of the trial, given notice of the intention to do so to the other parties.

#### Commencement Information

**I4** S. 140 in force at 1.9.2009 at 5.00 a.m. by [S.S.I. 2007/472](#), [art. 3](#)

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## 141 Offences by bodies corporate etc.

(1) Where—

- (a) an offence under this Act has been committed by—
  - (i) a body corporate,
  - (ii) a Scottish partnership, or
  - (iii) an unincorporated association other than a Scottish partnership, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant person, or
  - (ii) a person purporting to act in the capacity of a relevant person,

that person, as well as the body corporate, partnership or, as the case may be, unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant person” means—

- (a) in relation to a body corporate other than a council, a director, manager, secretary, member or other similar officer of the body,
- (b) in relation to a council, an officer or member of the council,
- (c) in relation to a Scottish partnership, a partner, and
- (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

### Commencement Information

**I5** S. 141 in force at 1.5.2007 by [S.S.I. 2007/129](#), art. 3, [Sch.](#)

## [<sup>F1</sup>141A Defence of due diligence for certain offences

(1) It is a defence for a person charged with an offence to which this section applies to prove that the person—

- (a) did not know that the offence was being committed, and
- (b) exercised all due diligence to prevent the offence being committed.

(2) This section applies to an offence under any of the following provisions of this Act—

- section 1(3)(b),
- section 103(1),
- section 106(2),
- section 107(1),
- section 118(1),
- section 120(2) or (3),
- section 121(1),
- section 127(4),
- section 128(5).

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### Textual Amendments

- F1** Ss. 141A, 141B inserted (13.12.2010 for specified purposes, 1.11.2011 in so far as not already in force) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 195(3), 206(1)**; S.S.I. 2010/413, **art. 2, Sch.**; S.S.I. 2011/354, **art. 2, Sch.**

## **141B Vicarious liability of premises licence holders and interested parties**

- (1) Subsection (2) applies where, on or in relation to any licensed premises, a person commits an offence to which this section applies while acting as the employee or agent of—
  - (a) the holder of the premises licence, or
  - (b) an interested party.
- (2) The holder of the premises licence or, as the case may be, the interested party is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) It is a defence for a holder of a premises licence or an interested party charged with an offence to which this section applies by virtue of subsection (2) to prove that the holder of the licence or, as the case may be, the interested party—
  - (a) did not know that the offence was being committed by the employee or agent, and
  - (b) exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against the holder of the premises licence or the interested party in respect of the offence whether or not proceedings are also taken against the employee or agent who committed the offence.
- (5) This section applies to an offence under any of the following provisions of this Act—
  - section 1(3),
  - section 15(5),
  - section 63(1),
  - section 97(7),
  - section 102(1),
  - section 103(1),
  - section 106(2),
  - section 107(1),
  - section 108(2) or (3),
  - section 113(1),
  - section 114,
  - section 115(2),
  - section 118(1),
  - section 119(1),
  - section 120(2),
  - section 121(1),
  - section 138(5).]

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**Changes and effects yet to be applied to :**

- specified provision(s) Appointed Day(s) by [S.S.I. 2006/239 art. 2](#) (This S.S.I. is revoked on 25.5.2006 by S.S.I. 2006/286, art. 6)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 33(1)(1A) substituted for s. 33(1)-(3) by [2015 asp 10 s. 49\(2\)\(a\)](#)
- s. 33(8)(za) inserted by [2015 asp 10 s. 49\(2\)\(c\)](#)
- s. 33(8A) inserted by [2015 asp 10 s. 49\(2\)\(d\)](#)
- s. 33A inserted by [2015 asp 10 s. 49\(4\)](#)
- s. 134ZA-134ZC inserted by [2015 asp 10 s. 61\(2\)](#)