

LICENSING (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 5 – Licensed Hours

Section 62 – Licensed hours

131. This section establishes the new regime of licensing hours on which the licensing system will be based. This is a move away from the system of “permitted hours” of the Licensing (Scotland) Act 1976. The Act introduces a more modern approach and gets rid of the practice of giving extensions to hours in favour of clarity up front about acceptable hours. Licence holders would be required to specify their hours in their operating plans which are submitted to the Licensing Board for approval along with their premises licence applications and are drawn up with regard to the Board’s published policy statement, which sets out the Board’s general approach to policy on licensing hours for their area. The hours for occasional licences are, similarly, to be set out in the application for the licence and incorporated into the licence if granted.
132. Subsection (2) establishes definitions for off-sales hours and on-sales hours respectively. These labels apply not just to hybrid premises but also to premises which are exclusively on-sales or off-sales.

Section 63 – Prohibition of sale, consumption and taking away of alcohol outwith licensed hours

133. The provisions in this section are to some extent based on section 54 of the Licensing (Scotland) Act 1976. The provisions here provide that it is an offence to sell alcohol outwith licensed hours or to allow the sale, consumption, or taking away of alcohol outwith licensed hours. Subsection (2) sets out a number of exceptions which cover, amongst other things, the period of 15 or 30 minutes “drinking-up” time.
134. Subsection (4) is a new offence which replaces that under the Licensing (Scotland) Act 1976 of consuming or taking away alcohol outwith licensed hours. The consumption or taking away is only an offence if the person was asked not to consume the alcohol or take it away but failed to comply with the request.

Section 64 – 24 hour licences to be granted only in exceptional circumstances

135. The presumption provided here is against 24 hour opening in Scotland for on and off sales. However, subsection (2) provides that Boards are entitled to agree exceptions to that presumption but only if satisfied that there are exceptional circumstances justifying it. This is a test which will have to be applied on a case by case basis. Guidance will set out national guidelines on the policy that should be adopted by Licensing Boards in relation to circumstances that might merit 24 hour opening. Boards are required to set out their policy on licensing hours for their area in their policy statements.

Section 65 – Licensed hours: off-sales

136. This section introduces statutory opening hours for off sales premises. Where an application is made for a premises licence, a variation to the licence, an occasional licence, or extended hours application for the sale of alcohol between the hours of 10.00 pm and 10.00 am for consumption off the premises, then the Board must refuse the application.
137. Subsections (4) and (5) enable Scottish Ministers to change those designated times by an affirmative resolution order and require Licensing Boards to take into account the impact of antisocial behaviour (as defined by the Antisocial Behaviour etc. (Scotland) Act 2004) when considering what hours to grant with regard to off-sales.

Section 66 – Effect of start and end of British Summer Time

138. This addresses an existing problem in relation to British Summer Time. The changing of the clock makes it difficult to fix on a uniform approach to whether the hours after midnight ought to be determined by the number of hours of extension granted in the licence application or by reference to the actual time on the clock. The Act provides that under the new licensing system the times are determined by the number of hours authorised at the time the licence was granted. Accordingly this section provides that at the times of the year when clocks are moved forwards or backwards to accommodate the requirements of British Summer Time, there will be a uniformity of approach throughout the country as to the effect which this has on closing times.
139. Subsection (2) in effect means that the closing times of those licensed premises which are authorised to open later than the hour when the change takes place, should be determined by reference to the number of hours after midnight when they are authorised to be open rather than by the actual time shown on the clock.

Section 67 – Power for Licensing Board to grant general extensions of licensed hours.

140. This section provides a new power for Licensing Boards to grant general extensions to licensed hours in connection with special events of local or national significance.
141. Subsection (2) provides that this can apply to the whole of the Board's area or only to specified parts; licensed hours generally or only to specified descriptions of those hours; and all relevant premises in the Board's area or only to specified descriptions of such premises.
142. Subsection (4) requires Boards to give notice of any such determinations made under this section to those persons specified.

Section 68 – Extended hours applications

143. This section provides a power for Licensing Boards, on the application of a premises licence holder, to grant extensions (known under the Licensing (Scotland) Act 1976 as "occasional extensions") to licensed hours for the premises to cater for special events or occasions.

Section 69 – Notification of extended hours application

144. This section places a duty on Licensing Boards to notify the appropriate chief constable and LSOs of all applications received for extensions to licensed hours. It requires the LSO to respond within 10 days with a report and empowers the chief constable to object (also within 10 days).

Section 70 – Determination of extended hours application

145. Subsection (1) provides that in determining an application for an extension to hours the Board must take into account any objections from the chief constable and any LSO comments. Subsection (2) provides that the Board may hold a hearing for the purposes of determining any application, but this is not mandatory.
146. Subsection (3) provides that where the Board does not hold a hearing, the Board must ensure that before determining the application, the applicant is given an opportunity to comment on any objections from the Police or adverse comments from the Licensing Standards Officer.