



Licensing (Scotland) Act 2005

2005 asp 16

PART 2

LICENSING BODIES AND OFFICERS

Licensing Boards

5 Licensing Boards

- (1) There is to continue to be a Licensing Board for—
 - (a) the area of each council whose area is not, at the time this section comes into force, divided into licensing divisions under section 46(1) of the Local Government etc. (Scotland) Act 1994 (c. 39) (“the 1994 Act”), and
 - (b) each licensing division of such an area which is so divided at that time.
- (2) A council whose area is not so divided at that time may subsequently make a determination that their area is to be divided into divisions for the purposes of this Act.
- (3) Where a council makes such a determination—
 - (a) there is to be a separate Licensing Board for each of the divisions,
 - (b) the Licensing Board for the council’s area is dissolved on the date on which those separate Licensing Boards are elected in accordance with schedule 1, and
 - (c) anything done by the Licensing Board for the council’s area before the Board is dissolved is, to the extent that it has effect at that time, to have effect after that time as if done by such of the separate Licensing Boards as the council may determine.
- (4) A council which has made a determination (whether under subsection (2) or section 46(1) of the 1994 Act) that their area is to be divided into divisions may revoke the determination.
- (5) Where a council revokes such a determination—
 - (a) there is to be a single Licensing Board for the whole of the council’s area,

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- (b) each of the Licensing Boards for the divisions is dissolved on the date on which the single Licensing Board is elected in accordance with schedule 1, and
 - (c) anything done by the Licensing Boards for the divisions before they are dissolved is, to the extent that it has effect at that time, to have effect after that time as if done by the single Licensing Board.
- (6) Subsection (7) applies where a council—
- (a) makes a determination under subsection (2), or
 - (b) revokes such a determination or a determination made under section 46(1) of the 1994 Act.
- (7) The council must, no later than 7 days after the making of the determination or the revocation—
- (a) notify the Scottish Ministers of the determination or revocation, and
 - (b) publicise it in such manner as the council sees fit.
- (8) Schedule 1 makes further provision about the constitution of Licensing Boards, their procedure and other administrative matters relating to them.

6 Statements of licensing policy

- (1) Every Licensing Board must, before the beginning of each 3 year period, publish a statement of their policy with respect to the exercise of their functions under this Act during that period (referred to in this Act as a “licensing policy statement”).
- (2) A Licensing Board may, during a 3 year period, publish a supplementary statement of their policy with respect to the exercise of their functions during the remainder of that period (referred to in this Act as a “supplementary licensing policy statement”).
- (3) In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must—
- (a) ensure that the policy stated in the statement seeks to promote the licensing objectives, and
 - (b) consult—
 - (i) the Local Licensing Forum for the Board’s area,
 - (ii) if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative, and
 - (iii) such other persons as the Board thinks appropriate.
- (4) In exercising their functions under this Act during each 3 year period, a Licensing Board must have regard to the licensing policy statement, and any supplementary licensing policy statement, published by the Board in relation to that period.
- (5) At the request of a Licensing Board—
- (a) the appropriate chief constable, or
 - (b) the relevant council,
- must provide to the Board such statistical or other information as the Board may reasonably require for the purpose of preparing a licensing policy statement or supplementary licensing policy statement.

- (6) On publishing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must—
- (a) make copies of the statement available for public inspection free of charge, and
 - (b) publicise—
 - (i) the fact that the statement has been published, and
 - (ii) the arrangements for making copies available for public inspection in pursuance of paragraph (a).
- (7) In this section, “3 year period” means—
- (a) the period of 3 years beginning with such day as the Scottish Ministers may by order appoint, and
 - (b) each subsequent period of 3 years.

7 Duty to assess overprovision

- (1) Each licensing policy statement published by a Licensing Board must, in particular, include a statement as to the extent to which the Board considers there to be overprovision of—
- (a) licensed premises, or
 - (b) licensed premises of a particular description,
- in any locality within the Board’s area.
- (2) It is for the Licensing Board to determine the “localities” within the Board’s area for the purposes of this Act.
- (3) In considering whether there is overprovision for the purposes of subsection (1) in any locality, the Board must—
- (a) have regard to the number and capacity of licensed premises in the locality, and
 - (b) consult the persons specified in subsection (4).
- (4) Those persons are—
- (a) the appropriate chief constable,
 - (b) such persons as appear to the Board to be representative of the interests of—
 - (i) holders of premises licences in respect of premises within the locality,
 - (ii) persons resident in the locality, and
 - (c) such other persons as the Board thinks fit.
- (5) In this section, references to “licensed premises” do not include references to any premises in respect of which an occasional licence has effect.

8 Applicants attempting to influence Board members

- (1) If a person making an application under this Act to a Licensing Board attempts, at any time before the application is determined by the Board, to influence a member of the Board to support the application, the person commits an offence.
- (2) If, in relation to any application made to, but not yet determined by, a Licensing Board under this Act, proceedings for an offence under subsection (1) are brought against the applicant—

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- (a) the Board must not determine the application until after the proceedings are concluded, and
 - (b) if the applicant is convicted of the offence, the Board may refuse to consider the application.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

9 Licensing Board’s duty to keep a public register

- (1) Each Licensing Board must keep a register (referred to in this Act as a “licensing register”) containing information relating to—
- (a) premises licences, personal licences and occasional licences issued by the Board,
 - (b) the Board’s decisions in relation to applications made to the Board under this Act, and
 - (c) other decisions of the Board relating to the licences mentioned in paragraph (a).
- (2) The Scottish Ministers may by regulations make provision as to—
- (a) matters, in addition to those specified in paragraphs (a) to (c) of subsection (1), in relation to which licensing registers are to contain information,
 - (b) the information which such registers are to contain, and
 - (c) the form and manner in which the registers are to be kept.
- (3) A Licensing Board must make the licensing register kept by the Board available for public inspection at all reasonable times.

Local Licensing Forums

10 Local Licensing Forums

- (1) Each council must establish a Local Licensing Forum for their area.
- (2) However, where the area of a council is divided into licensing divisions, the council may, instead of establishing a Local Licensing Forum for their area, establish separate such Forums for each division.
- (3) Each Licensing Board must hold, at least once in each calendar year, a joint meeting with the Local Licensing Forum for the Board’s area.
- (4) Schedule 2 makes further provision about Local Licensing Forums, including provision about their membership and procedural and other administrative matters in relation to them.

11 General functions of Local Licensing Forums

- (1) Each Local Licensing Forum has the following general functions—
- (a) keeping under review—
 - (i) the operation of this Act in the Forum’s area, and
 - (ii) in particular, the exercise by the relevant Licensing Board or Boards of their functions, and

- (b) giving such advice and making such recommendations to that or any of those Boards in relation to those matters as the Forum considers appropriate.
- (2) Subsection (1) does not enable a Local Licensing Forum to—
- (a) review, or
 - (b) give advice, or make recommendations, in relation to, the exercise by a Licensing Board of their functions in relation to a particular case.
- (3) In this section, section 12 and schedule 2, “relevant Licensing Board”, in relation to a Local Licensing Forum, means—
- (a) the Licensing Board for the Forum’s area, or
 - (b) in the case of a Local Licensing Forum for a council area which is divided into licensing divisions, each of the Licensing Boards for those divisions.

12 Licensing Boards' duties in relation to Local Licensing Forums

- (1) A Licensing Board must—
- (a) in exercising any function, have regard to any advice given, or recommendation made, to them in relation to the function by a Local Licensing Forum, and
 - (b) where the Board decides not to follow the advice or recommendation, give the Forum reasons for the decision.
- (2) At the request of a Local Licensing Forum, a relevant Licensing Board must provide to the Forum copies of such relevant statistical information as the Forum may reasonably require for the purposes of the Forum’s general functions.
- (3) In this section, “relevant statistical information” means, in relation to a Licensing Board, such statistical information as the Board may have obtained under section 6(5).

Licensing Standards Officers

13 Licensing Standards Officers

- (1) Each council must appoint for their area one or more officers to be known as Licensing Standards Officers.
- (2) A person may hold more than one appointment under subsection (1) (so as to be a Licensing Standards Officer for more than one council area).
- (3) A Licensing Standards Officer is to exercise, in relation to the (or each) council area for which the Officer is appointed, the functions conferred on a Licensing Standards Officer by virtue of this Act.
- (4) The number of Licensing Standards Officers for any council area is to be such as the council may determine.
- (5) The Scottish Ministers may by regulations prescribe qualifications and experience required for appointment as a Licensing Standards Officer.
- (6) Where the Scottish Ministers have made regulations under subsection (5), a council must not appoint an individual to be a Licensing Standards Officer unless the individual possesses the qualifications and experience prescribed in the regulations in relation to that appointment.

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- (7) Otherwise, the terms and conditions of appointment of a Licensing Standards Officer appointed by a council under this section are to be such as the council may determine.

14 General functions of Licensing Standards Officers

- (1) A Licensing Standards Officer for a council area has the following general functions—
- (a) providing to interested persons information and guidance concerning the operation of this Act in the area,
 - (b) supervising the compliance by the holders of—
 - (i) premises licences, or
 - (ii) occasional licences,
 in respect of premises in the area with the conditions of their licences and other requirements of this Act,
 - (c) providing mediation services for the purpose of avoiding or resolving disputes or disagreements between—
 - (i) the holders of the licences referred to in paragraph (b), and
 - (ii) any other persons,
 concerning any matter relating to compliance as referred to in that paragraph.
- (2) The function under subsection (1)(b) includes, in particular, power—
- (a) where a Licensing Standards Officer believes that any condition to which a premises licence or occasional licence is subject has been or is being breached—
 - (i) to issue a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and
 - (ii) if, in the case of a premises licence, such a notice is not complied with to the satisfaction of the Officer, to make a premises licence review application in respect of the licence,
 - (b) in relation to a premises licence, to make an application under that section for review of the licence on any other competent ground for review.

15 Powers of entry and inspection

- (1) A Licensing Standards Officer for a council area may, for the purpose of determining whether the activities being carried on in any licensed premises in the area are being carried on in accordance with—
- (a) the premises licence or, as the case may be, occasional licence in respect of the premises, and
 - (b) any other requirements of this Act,
- exercise the powers specified in subsection (2).
- (2) The powers referred to subsection (1) are—
- (a) power to enter the premises at any time for the purpose of exercising the power specified in paragraph (b), and
 - (b) power to carry out such inspection of the premises and of any substances, articles or documents found there as the Officer thinks necessary.
- (3) Where a Licensing Standards Officer exercises either of those powers in relation to any licensed premises, the persons specified in subsection (4) must—

- (a) give the Officer such assistance,
 - (b) provide the Officer with such information, and
 - (c) produce to the Officer such documents,
- as the Officer may reasonably require.
- (4) The persons referred to in subsection (3) are—
- (a) the holder of the premises licence or, as the case may be, occasional licence in respect of the premises,
 - (b) in the case of licensed premises in respect of which a premises licence has effect, the premises manager, and
 - (c) in any case, any person working on the premises at the time the Officer is exercising the power.
- (5) A person who—
- (a) intentionally obstructs a Licensing Standards Officer in the exercise of any power under subsection (2), or
 - (b) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (3),
- 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.

16 Training of Licensing Standards Officers

- (1) A Licensing Standards Officer must comply with such requirements as to the training of Licensing Standards Officers as may be prescribed.
- (2) If a Licensing Standards Officer fails to comply with subsection (1), the (or each) council which appointed the Officer must terminate the Officer's appointment.
- (3) Regulations under subsection (1) prescribing training requirements may, in particular—
- (a) provide for accreditation by the Scottish Ministers of—
 - (i) courses of training, and
 - (ii) persons providing such courses,for the purposes of the regulations,
 - (b) prescribe different requirements in relation to different descriptions of Licensing Standards Officers, and
 - (c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.