

# **AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015**

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## **EXPLANATORY NOTES**

### **STRUCTURE AND SUMMARY OF THE ACT**

#### **Part 2 – Alcohol Licensing**

133. The provisions in this Part amend the licensing regime for alcohol licensing within the Licensing (Scotland) Act 2005 (“the 2005 Act”).

#### **Licensing objectives**

##### ***Section 41 – Licensing objectives: protecting young persons from harm***

134. **Section 41** amends the licensing objective at section 4(1)(e) of the 2005 Act to include young persons. The term young person is defined at section 147 of the 2005 Act and means a person aged 16 or 17. Under the legislation, Boards must ensure that their decision making is underpinned by the five licensing objectives, including the existing objective ‘to protect children from harm’. This amendment expands this requirement so that Boards must also consider protecting ‘young persons’ from harm.

#### **Statements of licensing policy**

##### ***Section 42 – Statements of licensing policy: licensing policy periods***

135. **Section 42** amends section 6 of the 2005 Act in relation to statements of licensing policy. A statement of licensing policy will generally have effect from 18 months after a local government election until 18 months after the next local government election. For example, the next local government elections are scheduled for May 2017 and May 2021 with the result that, in the usual case, the statements of licensing policy would last November 2018 until November 2022.
136. It is possible for the Licensing Board to decide that a statement of licensing policy should come into effect earlier than it otherwise would, and if they do so, then they must publish the licensing policy statement and publicise the date on which the licensing policy period is to begin.

#### **Fit and proper person test**

137. The Act introduces a ‘fit and proper person test’ into the processes for obtaining, reviewing transferring and potentially revoking licences under the 2005 Act by virtue of sections 43 to 48. In each of these sections, the fit and proper test is considered with regard to the licensing objectives. It also makes some associated changes to the handling of information relating to relevant offences and foreign offences.

***Section 43 – Premises licence application: ground for refusal***

138. **Section 43** amends section 22 of the 2005 Act with regard to objections and representations in relation to premises licences applications. Section 43 clarifies that an objection to or representation concerning a premises licence application may include any information that the person submitting the objection or representation considers relevant to consideration of any of the grounds for refusal, including information in relation to the applicant, a connected person in relation to the applicant, or any person who would be an interested party in relation to the premises if the application were to be granted.
139. **Section 43** also amends section 23 of the 2005 Act in relation to the grounds of refusal for a premises licence application. Section 43 provides that it is a ground for refusal at a hearing when determining premises licence applications in section 23 of the 2005 Act, if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a premises licence. An amendment is also made to section 23(8) so that, where the Licensing Board refuses a licence on the fit and proper person ground, the Board must state the licensing objective that the ground relates to.
140. **Section 43** also amends section 23(6) of the 2005 Act in relation to determination of premises licence applications. Section 43 clarifies that any conviction notice supplied by the Chief Constable and any antisocial behaviour report by the chief constable supplied to the Board, is relevant to the specific consideration of the new fit and proper test as well as to consideration of the existing ground for refusal that the granting of the application would be inconsistent with one or more of the licensing objectives.

***Section 44 – Application to transfer premises licence: ground for refusal***

141. **Section 44** amends section 33 of the 2005 Act in relation to grounds for refusal for an application to transfer a premises licence. Section 44 provides that it is a ground for refusal at a hearing when determining applications to transfer premises licences under section 33 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence.
142. This section also expands the information that can be provided to the Licensing Board by the Chief Constable upon receiving notice of a transfer of a premises licence. This includes information in relation to the transferee, a connected person in relation to the licence holder or an interested party in relation to the licensed premises, if the application for the transfer were to be granted. If information is provided, the Licensing Board must hold a hearing to determine the application.

***Section 45 – Ground for review of premises licence***

143. **Section 45** makes amendments with regards to review of a premises licence (both on an application by a third party for a review and on a proposal for a review initiated by the Licensing Board itself). Section 45 provides that it is a ground for review of a premises licence, if having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence. If a review is based on this ground, the review application or proposal must include a summary of the information on which the applicant or the Board based its view that the alleged ground applies.
144. **Section 45** clarifies that any person who makes a premises licence review application may include in the application any information that the person considers relevant to the Licensing Board's consideration of the alleged ground of review, including information related to the licence holder, connected persons in relation to the licence holder or an interested party in relation to the licensed premises.

145. **Section 45** also amends section 37 of the 2005 Act in relation to a review of a premises licence on the Licensing Board's initiative. Section 45 clarifies that the Licensing Board's review proposal may include information that the Board considers relevant to its consideration of the alleged ground of review, in relation to the licence holder, connected persons in relation to the licence holder or interested parties in relation to the licenced premises.
146. If at the review hearing the Licensing Board is satisfied that the fit and proper person ground for review is established, the Board must revoke the licence. Thereafter the Board must provide notification of its determination to the licence holder and where the decision is taken in connection with a premises licence review application, the applicant.
147. **Section 45** also amends section 39 of the 2005 Act to provide that a revocation of a licence will take effect 28 days after the Board makes its decision. This provides a short period of grace in which action may be taken to render the premises licence acceptable to the Licensing Board, for example by varying the licence to remove a premises manager or by transferring the premises licence to a new licence holder.
148. **Section 45** also inserts a new section 39B into the 2005 Act, which provides that, where a Licensing Board has revoked a premises licence on the grounds that the licence holder is not a fit and proper person, then the Board must recall the revocation if a relevant application is made within the 28 day period, and the Board ultimately grants the relevant application. The period of 28 days may be extended by the Board pending determination of a relevant application. Such relevant applications would be applications for transfer of the licence, or for a premises licence variation that the Board considers would remove the ground on which the licence had been revoked. A decision to revoke the licence is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff principal.

#### ***Section 46 - Personal licence applications and renewals: ground for refusal***

149. **Section 46** makes amendments to sections 73, 74 and 78 of the 2005 Act in relation to personal licence applications and renewals. Section 46 provides that it is a ground for refusal at a hearing when determining a personal licence application or personal licence renewal application under section 74 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence.
150. Subsection (2) provides that on giving a notice under subsection (3)(a) or (b) of section 73 of the 2005 Act, the Chief Constable may also provide to the Licensing Board any information in relation to the applicant that the Chief Constable considers may be relevant to consideration of the application by the Board.
151. **Section 46** also inserts a new section 73A into the 2005 Act to provide that where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board's area. A Licensing Standards Officer may, within 21 days of the date of receipt of this notice, respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration of the application by the Board. If information is supplied to the Board by the Chief Constable or by a Licensing Standards Officer, the Board may hold a hearing.

#### ***Section 47 – Personal licence holders: procedure on receipt of notice of conviction***

152. Section 83 of the 2005 Act provides the procedure that a Licensing Board must follow where they receive notice of a conviction (or otherwise become aware of a conviction) of a personal licence holder. The Board must notify the Chief Constable of the conviction and, where the existence of the conviction is confirmed by the Chief Constable, the Board must hold a hearing to review the licence.

153. **Section 47** of the Act amends section 83 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

***Section 48 – Personal licence holders: conduct inconsistent with the licensing objectives***

154. Section 84 of the 2005 Act provides the procedure that a Licensing Board must follow when, in the course of reviewing a premises licence under section 38 of the 2005 Act, they find that a personal licence holder was acting on the premises in a manner not consistent with the licensing objectives. Where the Licensing Board makes such a finding a hearing must be held where the Board can revoke, suspend or endorse the licence if they believe it necessary to do so.
155. **Section 48** of the Act amends section 84 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

**Transfer of premises licences**

***Section 49 – Transfer of premises licences***

156. **Section 49** amends the transfer provisions at section 33 of the 2005 Act to provide that it is the transferee that commences the transfer procedure in all circumstances. This also includes amendments to the procedures for the transfer of premises licences. Section 33A is inserted into the 2005 Act to make further provision in relation to the new transfer procedure. Section 34 (transfer on application of person other than the licence holder) of the 2005 Act is repealed as it is no longer necessary in light of the amendments to section 33. The appeal provisions at Part 1 of schedule 5 to the 2005 Act are also amended.
157. **Section 49** amends section 33 of the 2005 Act to allow for any person, other than an individual under 18, to apply to the appropriate Licensing Board for the transfer of a premises licence to that person.
158. Subsection (2) inserts a new section 33(1A) into the 2005 Act to provide that the application must specify the date on which the transfer is to take effect, be accompanied by the original premises licence, or a statement of reasons for failure to produce the licence, and a written statement signed by the current holder of the premises licence consenting to the transfer to the transferee, or if that is not practical a statement of the reasons for failure to provide the written consent of the current holder of the premises licence. It is envisaged that the statement of reasons for failure to provide written consent could cover instances where the current premises licence holder is not available, such as instances of death, insolvency, dissolution and incapacity.
159. Subsection (2) also provides that the current requirement to provide the Chief Constable with a copy of the application in section 33(4) of the 2005 Act is amended, such that no copy need be provided if the Board refuse the application under section 33(8A).
160. Subsection (2) also inserts section 33(8)(za) into the 2005 Act. The effect is that, if the written consent of the current licence holder is provided and the other requirements of section 38(8) of the 2005 Act are met (i.e. the transferee has no relevant conviction and there is no recommendation from the chief constable for refusal), then the transfer application must be granted. Thereafter, a new subsection 33(8A) is inserted providing

that, where an application is not accompanied by a consent statement from the original licence holder, it must be refused unless the Board agrees to dispense with the requirement for a consent statement under the new section 33A(4).

161. Subsection (4) inserts a new section 33A into the 2005 Act, which make further provision for the procedures to be followed for applications to transfer a premises licence. Subsection (2) of the new section 33A requires the Board to take all reasonable steps to notify the original premises licence holder of the application. It is envisaged that this would allow the original premises licence holder to flag up where the holder's consent had been faked, or the holder would otherwise not be in agreement with the transfer.
162. Where a notice of consent by the original premises licence holder has not been provided, subsection (4) of the new section 33A provides that the Board may dispense with the requirement if it is satisfied that the transferee has taken all reasonable steps to contact the original premises licence holder to obtain written consent, but has received no response. Where the Board decides not to dispense with the requirement for a letter of consent, subsection (5) of the new section 33A provides that it must notify the transferee and provide its reasons for that decision.
163. Subsection (6) of the new section 33A provides that where it has been decided to dispense with the requirement for a letter of consent, the Board must hold a hearing to determine the transfer application.
164. Subsection (7) of the new section 33A provides that, where an application is granted, the transfer is to take place on the date specified by the transferee, or where this date has passed, such date as the Board may determine.
165. **Section 49(6)** of the Act amends Part 1 of schedule 5 to the 2005 Act, on appeals to the sheriff principal, to reflect the new transfer procedure. The right of appeal against a refusal to grant a premises transfer application is amended by subsection (6)(b) to extend to either the applicant (transferee) or the premises licence holder. Subsection (6)(c) provides that the right of appeal against the granting of a premises licence transfer application is provided to the original holder of the premises licence. Subsection (6)(c) also provides that the right of appeal against the Board's refusal to dispense with the requirement for a consent statement, as per the new section 33A(4), is provided to the applicant (transferee) for a premises licence transfer.

## **Relevant offences and foreign offences**

### ***Section 50 – Premises licences: procedure in relation to relevant offences or foreign offences***

166. **Section 50** amends section 44 of the 2005 Act so that when a Licensing Board receives a notice of conviction in relation to a premises licence holder (or a person connected to the premises licence holder) they must initiate a review of the premises licence and hold a hearing only where the Chief Constable has made a recommendation under section 44(5), namely that having regard to the conviction specified in the notice, it is necessary for the purposes of any of the licensing objectives that the premises licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either make a premises licence review proposal, (and hold a hearing), or decide to take no further action in relation to the conviction.

### ***Section 51 – Personal licences: procedure in relation to relevant offences or foreign offences***

167. **Section 51** amends section 83 of the 2005 Act so that when a Licensing Board receives notice of a conviction in relation to a personal licence they must hold a hearing only where the Chief Constable has made a recommendation under section 83(5), namely that having regard to the conviction specified in the notice it is necessary for the

purposes of any of the licensing objectives that personal licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either hold a hearing, or decide to take no further action in relation to the conviction.

### ***Section 52 – Relevant offences and foreign offences: spent convictions***

168. **Section 52** repeals section 129(4) of the 2005 Act which prohibits any consideration of a conviction for a relevant offence or foreign offence if it is spent for the purposes of the Rehabilitation of Offenders Act 1974. This amendment will make it possible for spent convictions to be brought to and considered by Boards as part of their decision-making.

### **Supply of alcohol to a child or young person**

#### ***Section 53 – Offences of supplying alcohol to a child or young person***

169. Subsection (1) of this provision inserts section 104A into the 2005 Act making it a criminal offence for a person, other than a child or young person, to buy or attempt to buy alcohol for or on behalf of a child or to give or otherwise make available alcohol to a child.
170. It also inserts a new section 104B which makes it a criminal offence for a person, other than a child or young person, to buy, attempt to buy, give or otherwise make alcohol available, to a young person. “Young person” is defined in section 147 of the 2005 Act as a person who is 16 or 17 years of age.
171. It is not an offence under either section however to buy alcohol for, or give alcohol to, a child or young person, a) for consumption other than in a public place or b) for the purposes of religious worship.
172. In addition, it is not an offence under section 104B – if beer, wine, cider or perry is bought, given or made available to the young person along with a meal to be consumed in relevant premises.
173. These exceptions do not apply to the offences of buying alcohol on behalf of a child or young person.
174. There is also a defence to the section 104B offence if the person who bought or gave the alcohol did not know the young person was under 18 years.
175. A person convicted of either offence may receive a fine, not exceeding level 5 on the standard scale, imprisonment for up to three months, or both.
176. In both sections, “public place” is defined as relevant premises, any place to which public have access to at the relevant time (on payment or not), and any place to which the public do not have access but which the child or young person unlawfully gains access to. The term “relevant premises” is defined in section 122 of the 2005 Act.
177. Subsection (2) repeals subsections (4), (5) and (7) of section 105 of the 2005 Act (and consequentially renames that section), as the substance of those subsections is replicated in new sections 104A and 104B.

### **Miscellaneous**

#### ***Section 54 – Meaning of “alcohol”: inclusion of angostura bitters***

178. This provision amends section 2 of the 2005 Act to include angostura bitters within the definition of “alcohol”. Angostura bitters were exempt from Excise and were excluded from the 2005 Act definition of alcohol. However, they are now liable for Excise duty and have been brought into the definition of alcohol.

### **Section 55 – Overprovision**

179. **Section 55** amends section 7 of the 2005 Act which deals with the duty of Licensing Boards to assess overprovision, and provides that where a Board determines the “localities” for the purposes of the Act then it may determine that the whole of the Board’s area is a single locality.
180. **Section 7** is further amended so that the Licensing Board may have regard to such matters as the Board considers appropriate, including the licensed hours of licensed premises in the locality, when assessing if there is overprovision.
181. Amendments are also made to allow these wider factors to be taken into account at:
- section 23(5)(e) of the 2005 Act (refusal of a premises licence on grounds of overprovision), and
  - section 30(5)(d) of the 2005 Act (refusal to vary premises licence on grounds of overprovision).
182. These amendments remove specific reference to numbers and capacity when considering whether there would be overprovision as a ground for refusal, when a Board is determining a premises licence application or an application for a premises licence variation.
183. Removing these references means that Licensing Boards can refuse an application if they consider that there would be overprovision if the application was granted. Their consideration of overprovision would not be confined to considering only numbers and capacity but could take account of other factors too.

### **Section 56 – Duties of Licensing Boards to produce annual reports**

184. This provision inserts sections 9A and 9B into the 2005 Act, requiring Licensing Boards to produce an annual report on the exercise of their functions, summary of decisions made by the Board and information about the number of licences held under the Act.; and an annual financial report on their alcohol licensing activities.
185. Section 9A(1), (2) place a duty on Licensing Boards to prepare and publish an annual report on the exercise of their functions no later than three months after the end of the financial year. This report should contain a statement explaining how the Board has had regard to the licensing objectives, their licensing policy statement, and any supplementary licensing policy statement in the exercise of their functions under the 2005 Act during the financial year.
186. Section 9A(3) provides that a report under this section may include such other information about the exercise of the Licensing Board’s functions under the 2005 Act as the Board consider appropriate.
187. Section 9A(4) provides that at the request of the Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section.
188. Section 9A(5) provides that a Licensing Board may, if they consider it appropriate, prepare and publish a combined report containing the information required under section 9A and also section 9B (Annual financial report). A combined report must be published not later than 3 months after the end of the financial year in question.
189. Section 9A(6) gives the Scottish Ministers an order making power to make further provision about reports under this section, including provision about the form and content of reports; and the publication of reports.
190. Section 9B(1), (2) and (3) place a duty on Licensing Boards to prepare and publish an annual financial report no later than three months after the end of the financial year. It

should contain details of relevant income received by the Licensing Board during the financial year; details of relevant expenditure incurred in respect of the Board's area during the year; and an explanation of how the amounts in the report were calculated. The Board is required to break down its figures into the component sources of relevant income and expenditure. Relevant income for example would be premises licence application fees, personal licence fees or fees charged in respect of an application to vary a premises licence and relevant expenditure would for example be the salary cost of a Licensing Standards Officer in respect of his duties under the alcohol licensing regime or the costs for the Board in administering the alcohol licensing regime

191. Section 9B(4) provides that at the request of the Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section. Subsection (5) gives the Scottish Ministers an order making power to make further provision about reports under this section, including provision about the form and content of reports; further details on what constitutes relevant income and relevant expenditure; and the publication of reports.

### ***Section 57 – Licensing Standards Officers: general function in relation to personal licences***

192. **Section 57** amends section 14(1) of the 2005 Act which deals with general functions of Licensing Standards Officers. This provision makes it clear that Licensing Standards Officers have a new general function of being able to provide information to Licensing Boards about the conduct of personal licence holders or applicants for a personal licence which is inconsistent with the licensing objectives.

### ***Section 58 – Powers of Licensing Standards Officers***

193. **Section 58** inserts section 84B into the 2005 Act to provide Licensing Standards Officers with a specific power to report conduct of a personal licence holder, who is or was working in licensed premises in their area, which is inconsistent with the licensing objectives, to the relevant Licensing Board.
194. Where a Licensing Board receives such a report from a Licensing Standards Officer the Board may hold a hearing, but is under no obligation to do so.

### ***Section 59 – Interested parties***

195. This provision amends section 40A of the 2005 Act (connected persons and interested parties: licence holder's duty to notify changes,) to remove the references to interested parties, including within the section title. It also removes a requirement to notify changes of interested parties. The licence holder now only requires to provide notification in respect of connected persons.
196. It also amends the definition of an interested party at section 147(5) of the 2005 Act by permitting that a premises manager can be an interested party. This has the effect of allowing the premises manager to be subject to vicarious liability for offences under s141B.

### ***Section 60 – Personal licences: grant, duration and renewal***

197. This provision amends section 74 of the 2005 Act regarding the determination of a personal licence application. Section 74(3) provides conditions which must be met before an application can be granted. This provision amends section 74(3)(c) which currently states a personal licence cannot be granted if one has been revoked in the last five years. This provision amends section 74(3)(c) to provide that the provision is not applicable to persons who have had a personal licence revoked under section 87(3) of the 2005 Act. Accordingly, if a personal licence is revoked under section 87(3) the



person will no longer have to wait for five years to elapse before applying for a new personal licence.

198. This provision also amends section 77(8) of the 2005 Act to increase the length of time prior to the expiry date of a personal licence that the relevant Licensing Board must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed. The period of time is increased to nine months before the expiry date of a personal licence.
199. The provision amends section 78 of the 2005 Act to increase the length of the time period in which a personal licence holder may apply to the relevant Licensing Board for renewal of the licence, as well as to increase the length of the period provided for the Licensing Board's consideration of this application. The period of time to submit an application under section 78(1) is now within the nine months period beginning 12 months before the expiry date of the licence.
200. The provision also amends Section 78(5) of the 2005 Act to remove the requirement that an applicant for renewal of a personal licence must not already hold a personal licence.
201. Finally section 84A of the 2005 Act is amended to provide that if a Chief Constable reports conduct inconsistent with the licensing objectives to the relevant Licensing Board, the whole of section 84(8) now applies in relation to an order made under subsection (2) of this section as opposed to only section 84(8)(a). This means that the Board making the order must now notify the order to the licence holder, the Board who gave the original notice and the Board who issued the licence, if these are different Boards.

### ***Section 61 – Processing and deemed grant of applications***

202. **Section 61** inserts a requirement for Licensing Boards to issue an acknowledgement for relevant applications, where the application meets the requirements. The requirements for an application form are those imposed under the 2005 Act or any other relevant enactment in respect of the type of application.
203. The acknowledgement must amongst other things inform the applicant of the timescale within which the application must be decided. The acknowledgement must be issued as soon as is practicable.
204. Where an application does not meet the requirements, the Licensing Board must give notice to the applicant that they are treating the application as incomplete and as not having been made, along with their reasons.
205. A Licensing Board must determine accepted applications within nine months of the date of receipt, as recorded in the letter of acknowledgement. This period of nine months can be extended, once, by applying to the sheriff. The sheriff may extend the period for determining the application only if it appears to the sheriff that there is a good reason for doing so. The applicant is entitled to be a party to proceedings to consider such an extension. It is not intended that Boards should needlessly delay consideration because of this time limit.
206. The Licensing Board is not required to issue an acknowledgement where it would clearly not be appropriate to do so, however this would not alter the requirement to determine an application within nine months unless an extension has been granted by the sheriff. A Board may for example decide to grant a minor variation under subsection 30(2) of the 2005 Act without first issuing an acknowledgement.
207. If the Licensing Board fails to determine the application in this period then the licence will be deemed to have been granted and the Licensing Board must issue the licence to the applicant as soon as practicable. The Licensing Board must apply the relevant mandatory conditions, under schedule 3, or 4, including, where applicable, the Late Opening Premises Conditions, as set out in The Licensing Conditions (Late

*These notes relate to the Air Weapons and Licensing (Scotland)  
Act 2015 (asp 10) which received Royal Assent on 4 August 2015*

Opening Premises)(Scotland) Regulations 2007, but at time of issue, may not apply pool conditions or local conditions to a licence granted in this way.

***Section 62 – Form etc. of communications under the 2005 Act***

208. **Section 62** expands the order making power provided at section 134 of the 2005 Act in relation to the form etc. of applications, proposals and notices to also include other communications. This means, for example, that the Scottish Ministers may make regulations expressly facilitating the use of email or other internet based systems for any type of application, notice, proposal or communication required under the 2005 Act.