



Licensing (Scotland) Act 1976

1976 CHAPTER 66

PART VIII

MISCELLANEOUS, TRANSITIONAL & GENERAL

119 Trading hours for off-sale premises and off-sale parts of public houses and hotels

- (1) The provisions of this Act relating to the permitted hours shall not apply to off-sale premises, but the provisions of this section shall apply.
- (2) On granting or transferring a public house or a hotel licence in respect of any premises a licensing board shall, if the applicant so requests and if the board is satisfied—
 - (a) that a part of the premises (in this section referred to as " the off-sale part ") is structurally adapted for the sale and supply of alcoholic liquor for consumption off the premises ; and
 - (b) that there is no internal communication to which customers have access connecting the off-sale part with a part of the premises used, or intended to be used, for the sale and supply of alcoholic liquor for consumption on the premises, or that any such internal communication is capable of being closed to customers ;

insert in the licence the following conditions—

- (i) a condition that the off-sale part (which shall be specified in the condition) shall not be used for the sale or supply of alcoholic liquor for consumption on the premises ;
- (ii) a condition that any internal communication to which customers have access connecting the off-sale part with a part of the premises used for the sale and supply of alcoholic liquor for consumption on the premises shall be closed to customers during any time when customers are present in any part of the premises ; and
- (iii) a condition that no customers shall be permitted to use any internal communication for the purpose of passing from one part of the premises to another part thereof;

Status: This is the original version (as it was originally enacted).

and, so long as the licence is subject to the said conditions, the provisions of this Act relating to the permitted hours shall not apply to the off-sale part, but the provisions of this section shall apply.

- (3) Off-sale premises and the off-sale part of premises shall not be opened for the serving of customers with alcoholic liquor earlier than eight o'clock in the morning and shall be closed for the serving of customers with such liquor not later than ten o'clock in the evening; and such premises or the off-sale part of premises shall not be opened for the serving of customers with such liquor on Sundays.
- (4) The holder of the licence or his employee or agent shall be guilty of an offence if he contravenes this section or any condition attached to a licence by virtue of subsection (2) above.

120 Liquor in unregistered clubs

- (1) If any person sells or supplies alcoholic liquor in the premises of an unregistered club, or authorises the sale or supply of alcoholic liquor in any such premises, to a member or other person, or if any person pays for alcoholic liquor so sold or supplied, he shall be guilty of an offence.
- (2) If alcoholic liquor is kept in any such premises for sale or supply in those premises, every officer and member of the club shall be guilty of an offence.
- (3) A person shall not be guilty of an offence under subsection (2) above if he proves that the liquor was kept as mentioned in that subsection without his knowledge or consent.
- (4) If a justice of the peace is satisfied by evidence on oath that there are reasonable grounds for believing that alcoholic liquor is being sold or supplied in the premises of an unregistered club or is being kept in any such premises for the purpose of being sold or supplied there, he may by warrant authorise a constable to enter those premises at any time, if need be by force, and to search the premises and seize any documents relating to the business of the club and to take the names and addresses of any persons found in the premises.
- (5) If a justice of the peace is satisfied by evidence on oath that there are reasonable grounds for believing that alcoholic liquor is being kept in the premises of an unregistered club for the purposes of being sold or supplied there, he may by warrant authorise a constable to seize and remove any such liquor which the constable has reasonable grounds for supposing to be in the premises for the purpose of being sold or supplied there, together with the vessels containing the liquor.
- (6) If any of the officers or members of a club from the premises of which any alcoholic liquor has been removed under subsection (5) above is convicted of an offence under subsection (2) above in respect of such liquor or any part thereof, that liquor or such part thereof, as the case may be, and the vessels containing it shall be forfeited and sold and the proceeds thereof paid into the general fund of the district or islands area, as the case may be, in which the said premises are situated.
- (7) If any person found in the premises of a club refuses to give his name and address on being requested to do so by a constable acting under a warrant granted in pursuance of subsection (4) above, or gives a false name or address on being so requested, he shall be guilty of an offence.

121 Sale or supply of alcoholic liquor in certain theatres

A theatre erected before 1st January 1904 shall be treated for the purposes of the sale or supply of alcoholic liquor in the theatre as if an entertainment licence were in force in respect of the theatre.

122 Proof of trafficking in alcoholic liquor without licence

It shall be sufficient evidence that a person was trafficking in any alcoholic liquor in any premises or place without holding a licence in that behalf if it is proved—

- (a) that a person other than the owner or occupier of such premises or place was at the time charged found therein drunk or drinking, or having had drink supplied to him therein; and
- (b) either that such premises are or such place is, by repute, kept for the illegal sale of alcoholic liquor or that at the time charged such premises or place contained drinking utensils and fittings usually found in licensed premises.

123 Alcoholic liquor in confectionery

(1) No provision of this Act as to the sale, supply purchase, delivery or consumption of alcoholic liquor, except subsection (2) below, and no enactment requiring the authority of a wholesaler's excise licence for the sale or supply of alcoholic liquor, shall have effect in relation to alcoholic liquor in confectionery which—

- (a) does not contain alcoholic liquor in a proportion greater than 200 millilitres of liquor (computed as proof spirit) per kilogramme of the confectionery, and
- (b) either consists of separate pieces weighing not more than 50 grammes or is designed to be broken into such pieces for the purpose of consumption.

(2) Alcoholic liquor in confectionery shall not be sold to a person under 16, and if any person knowingly contravenes this subsection he shall be guilty of an offence.

124 Local authority premises

Subsection (6) of section 91 of the Local Government (Scotland) Act 1973 (certificates not to be granted for sale of liquor in premises provided under that section) shall cease to have effect, and a licensing board may grant any licence in respect of such premises.

125 Supply of alcoholic liquor on order by certain officials and others

(1) The holder of a licence in respect of any premises may supply alcoholic liquor from those premises during any time when such supply would, apart from this section, be prohibited by or under this Act, on an order stating why the liquor is required and signed—

- (a) by a constable of or above the rank of inspector or by a constable in charge of a police station ; or
- (b) by the procurator fiscal, or
- (c) by a medical official; or
- (d) in case of sickness, accident or emergency, by a duly qualified medical practitioner.

(2) Any such order shall be a sufficient defence in any prosecution in respect of the supply of the alcoholic liquor to which it relates if within 48 hours after the supply of such

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

liquor the order is sent by post to the procurator fiscal together with a note of the description and quantity of the liquor supplied and the name and address of the person to whom the liquor was supplied.

- (3) The procurator fiscal shall, not later than seven days before the quarterly meeting of any licensing board having jurisdiction in the district for which he acts or any part thereof, transmit to the clerk of such board a list of orders received by him under subsection (2) above during the current quarter, being orders received from persons holding licences from that board, and the said list shall contain a note of the names and designations of all persons signing such orders.

126 Burden of proof in case of drunkenness in licensed premises

If the holder of a licence in respect of any premises is charged with knowingly permitting drunkenness in those premises, and it is proved that any person was drunk in the premises, it shall lie on the holder of the licence to prove that he and the persons employed by him took all reasonable steps to prevent drunkenness in the premises.

127 Presumption as to contents of containers

- (1) For the purposes of any trial in connection with an alleged contravention of any provision of this Act, the following provisions of this section shall apply.
- (2) Any liquid found in a container (sealed or opened) in licensed premises, a registered club or licensed canteen, or in any sealed container found elsewhere shall, subject to the provisions of this section, be presumed to conform to the description of the liquid on the container.
- (3) Where a prosecutor intends to rely on subsection (2) above, he shall give notice of his intention to the accused or his agent at least 14 days before the trial.
- (4) Where an accused or his agent intends to challenge the presumption set out in subsection (2) above, he shall give notice of his intention to the prosecutor at least 7 days before the trial, and if he fails to give such notice he shall not at the trial be entitled to challenge that presumption.
- (5) A notice given under subsection (3) or (4) above shall be in writing and sent by recorded delivery, and the execution of the recorded delivery shall be sufficient evidence of the time of posting of the notice and of its intimation to the addressee.
- (6) Any such notice shall be presumed to have been intimated to the addressee on the day after the date on which it was posted, except that in the case of a notice posted on a Friday or Saturday, it shall be presumed to have been so intimated on the Monday next following.

128 Trial of offences

- (1) The following provisions shall have effect in relation to the trial of offences under this Act—
- (a) all offences shall be tried in a summary manner ;
 - (b) all offences other than those referred to in paragraph (c) below may be tried in the sheriff court or in the district court;
 - (c) the following offences shall be tried only in the sheriff court, that is to say, any offence under section 2, 7(3), 19(1) or section 36(3) of this Act.

- (2) Notwithstanding subsection (1) above, a contravention of any of the provisions of this Act which, if it had been triable on indictment, could competently have been libelled as an additional or alternative charge in the indictment, may be so libelled and may be tried accordingly.

129 Conviction of licence-holder to be transmitted to clerk of licensing board

Where the holder of a licence in respect of any premises is convicted of any offence under this Act in relation to those premises, a certified extract of such conviction shall, within six days after the date of the conviction, be transmitted by the clerk of the court to the clerk of the licensing board within whose jurisdiction such premises are situated.

130 Limitation of actions against sheriffs, etc.

No proceedings against any sheriff, justice of the peace, sheriff clerk, member of a licensing board, clerk of a licensing board, procurator fiscal, constable or other person on account of anything done in the execution of this Act shall lie, unless they are commenced within two months after the cause of such proceedings has arisen.

131 Temperance areas

- (1) Part VIII of the Licensing (Scotland) Act 1959 shall cease to have effect, but notwithstanding that repeal, where immediately before the commencement of this section a limiting resolution or a no-licence resolution was in force in any area, the following provisions of this section shall apply.
- (2) The limiting resolution or no-licence resolution shall continue to apply for a period of three years after the commencement of this section and thereafter until the district or islands council concerned with any area or part thereof otherwise resolve.
- (3) Before making any resolution as mentioned in subsection (2) above, the district or islands council shall consult with the community council or councils for the area concerned.
- (4) Where such a resolution is made in respect of any area, the licensing board for the area may, for a period of five years from the making of the resolution, refuse to grant a licence on the ground that, having regard to the distribution of facilities for the sale and supply of alcoholic liquor in the area, it is inexpedient that the licence applied for should be granted.
- (5) Notwithstanding the provisions of this section, where a limiting resolution or a no-licence resolution is in force in any area, the licensing board for the area may, if the board is satisfied that in the special circumstances of the case a licence is reasonably required, grant restaurant or restricted hotel licences for premises situated in the area, and such licences may be granted in addition to the number which the board may grant while a limiting resolution is in force.
- (6) Expressions used in this section and in Part VIII of the said Act of 1959 have the same meanings in this section as they have in that Part.

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

132 Currency of final licensing certificates

- (1) Notwithstanding anything in section 58 of the Licensing (Scotland) Act 1959, certificates granted by a licensing court at their last general half-yearly meeting in March 1977 shall have effect in accordance with the provisions of this section.
- (2) The chairman of the licensing court at the said meeting shall, in accordance with arrangements made by the licensing court, draw lots in order to determine, in accordance with the provisions of this section, the duration of the certificates granted by the court.
- (3) The licensing court shall divide into nine groups or less the respective durations of the certificates which they grant and in respect of which lots are drawn under subsection (2) above, and the durations of the certificates shall, subject to the provisions of this section, be from 28th May 1977 until the quarterly meeting of the licensing board specified as respects each group in the following table:—

DURATION OF CERTIFICATES

Groups	Quarterly meeting
Group 1	March 1978
Group 2	June 1978
Group 3	October 1978
Group 4	January 1979
Group 5	March 1979
Group 6	June 1979
Group 7	October 1979
Group 8	January 1980
Group 9	March 1980

- (4) As from 1st July 1977, certificates granted in pursuance of this section shall have effect as if they were licences granted under this Act.
- (5) Certificates granted in pursuance of this section shall expire on the first day of the appropriate quarterly meeting mentioned in subsection (3) above if no application is made for the renewal of the licence, and where such an application is made, the certificate shall continue to have effect—
 - (a) until the application for renewal is granted by the licensing board; or
 - (b) if the application for renewal is refused, until the time within which an appeal may be made has elapsed or, if an appeal has been lodged, until the appeal has been abandoned or determined.

133 Betting and gaming licences and permits

- (1) The authority responsible for the grant or renewal of bookmaker's permits, betting agency permits and betting office licences in Scotland under the Betting, Gaming and Lotteries Act 1963 shall be the licensing board for the area concerned, and accordingly for sub-paragraph (b) of paragraph (1) of Schedule 1 to that Act there shall be substituted the following sub-paragraph—

- “(b) in any area in Scotland, the licensing board for that area constituted under section 1 of the Licensins (Scotland) Act 1976.”
- (2) The authority responsible for the grant, renewal, cancellation and transfer of licences in Scotland under the Gaming Act 1968 shall be the licensing board for the area concerned, and accordingly for head (b) of paragraph 1 (1) of Schedule 2 to that Act there shall be substituted the following head—
- “(b) in any area in Scotland.”
- (3) The appropriate authority in Scotland for the purposes of Schedule 9 to the Gaming Act 1968 in relation to public houses and hotels shall be the licensing board for the area concerned, and accordingly for sub-paragraph (c) of paragraph 1 of that Schedule there shall be substituted the following sub-paragraph—
- “(c) in relation to any premises in Scotland in respect of which a public house licence or a hotel licence is for the time being in force, means the licensing board for the area in which the premises are situated ;”
- (4) Subsections (4) and (6) to (8) of section 39 of this Act shall apply in relation to appeals under paragraph 24 of Schedule 1 to the Betting, Gaming and Lotteries Act 1963, paragraph 33 or 34 of Schedule 2 and paragraph 15 of Schedule 9 to the Gaming Act 1968 as they apply in relation to appeals under any provision of this Act, and in his decision on any such appeal under the said Acts of 1963 and 1968 the sheriff may include such order as to the expenses of the appeal as he thinks proper.

134 Notices, etc.

Any notice or document required or authorised to be given or served under this Act may be served by post.

135 Orders

Any power to make an order conferred by any provision of this Act shall include power to make an order varying or revoking any order previously made under that provision.

136 Amendments and repeals

- (1) The enactments mentioned in Schedule 7 to this Act shall have effect subject to the amendments respectively specified in that Schedule, being minor amendments or amendments consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 8 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

137 Expenses

There shall be defrayed out of moneys provided by Parliament any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.

138 Exemptions and savings

- (1) Nothing in this Act shall make unlawful—

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

- (a) trafficking in alcoholic liquor in a canteen held under the authority of a Secretary of State ;
- (b) trafficking in alcoholic liquor in a theatre erected before 1st January 1904;
- (c) trafficking, with passengers in an aircraft, or, subject to section 93 of this Act, in a vessel or railway passenger vehicle, in alcoholic liquor for consumption on board the aircraft or vessel or in the railway passenger vehicle, if the aircraft or vessel is employed for the carriage of passengers and is being flown or navigated from a place in the United Kingdom to another such place or from and to the same place in the United Kingdom on the same day, or, as the case may be, if the railway passenger vehicle is a vehicle in which passengers can be supplied with food.

(2) Nothing in this Act shall—

- (a) affect the right of any person to carry on his business during the pendency of an appeal against the refusal of a licensing board to renew his licence;
- (b) save as expressly provided in this Act, prohibit the sale of alcoholic liquor by a wholesaler; or
- (c) affect any penalties recoverable by or on behalf of the Commissioners, or any laws relating to excise.

139 Interpretation

(1) In this Act, unless the context otherwise requires—

" alcoholic liquor " includes spirits, wine, porter, ale, beer, cider, perry and made-wine, but does not include any liquor which on analysis of a sample thereof at any time is found to be of an original gravity not exceeding 1,016 degrees and to be of a strength not exceeding 2 degrees of proof so long as such a liquor may, under the laws relating to excise, be sold without an excise licence;

" bar " includes any place exclusively or mainly used for the sale and consumption of alcoholic liquor;

" Commissioners " means Commissioners of Customs and Excise;

" constable " means a constable of a police force maintained under the Police (Scotland) Act 1967 ;

" contravene " includes fail to comply with, and " contravention " has a corresponding meaning ;

" development corporation " has the same meaning as in the New Towns (Scotland) Act 1968 ;

" enactment " includes any order, rule, regulation or other instrument made under an Act of Parliament;

" fire authority " has the same meaning as in section 38 of the Fire Services Act 1947 ;

" grant ", in relation to a licence, includes a grant by way of renewal, and " granting " and " application " shall be construed accordingly;

" hawking " means trafficking in or about the streets, highways or other places or in or from any boat or other vessel on the water ;

" hotel " means—

- (a) in towns and the suburbs thereof, a house containing at least four apartments set apart exclusively for the sleeping accommodation of travellers ;

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

(b) in rural districts and populous places not exceeding 1,000 inhabitants according to the census for the time being last taken, a house containing at least two such apartments ;

" licence " means a licence granted under this Act other than under Part III of this Act;

" licence-holder " and " holder of a licence " mean the holder of a licence under this Act other than under Part III of this Act;

" licensed canteen " means a seaman's canteen in respect of which a licence under Part III of this Act is in force;

" licensed premises " means premises in respect of which a licence under this Act is in force other than under Part III of this Act;

" licensing area " means any area for which there is a separate licensing board;

" licensing board " means a licensing board constituted under section 1 of this Act;

" made-wine " means made-wine within the meaning of the Customs and Excise Act 1952 ;

" new licence " means a licence granted in respect of premises for which, at the time of the application for such grant, either no licence was in force or a licence in a form different from the form of licence so granted was in force:

Provided that a licence granted in respect of premises which have been rebuilt after having been destroyed by fire, tempest or other unforeseen cause, and for which, at the time when they were so destroyed, a licence in the same form as the first-mentioned licence was in force, shall be deemed not to be a new licence;

" off-sale premises " means premises in respect of which an off-sale licence under this Act is in force;

" permitted hours " means the hours during which by virtue of this Act alcoholic liquor may be sold, supplied or consumed in licensed premises ;

" prescribed " means prescribed by regulations made under section 37 of this Act;

" public house " includes an inn, ale-house, victualling house or other premises in which alcoholic liquor is sold by retail for consumption either on or off the premises;

" registered club " means a club in respect of which a certificate of registration under Part VII of this Act is in force, and " unregistered club " shall be construed accordingly;

" table meal " means a meal eaten by a person sitting at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table;

" trafficking " means bartering, selling, dealing in, trading in, or exposing or offering for sale, by retail;

" wholesaler's excise licence " means an excise licence to deal wholesale in alcoholic liquor, granted under section 146 of the Customs and Excise Act 1952 ;

" wine " means wine within the meaning of the Customs and Excise Act 1952.

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

- (2) References in this Act to a bar counter in any premises shall not include references to a counter in such premises which is bona fide used, or intended to be used,—
- (a) as a place at which meals are served to persons sitting thereat and at which alcoholic liquor is supplied to persons taking such meals for consumption by such a person while seated at such counter and as an ancillary to his meal; or
 - (b) as a place at which alcoholic liquor is dispensed to the holder of a licence in respect of the premises or any servant or agent of his, but to no other person, and is so dispensed in order that it may be supplied to persons frequenting the premises ; or
 - (c) for both of the purposes mentioned in the two foregoing paragraphs; and for no other purpose.
- (3) For the purposes of this Act, a person shall be treated as residing in any premises, notwithstanding that he occupies sleeping accommodation in a separate building, if he is provided with that accommodation in the course of a business of providing board and lodging for reward at those premises and the building is habitually used for the purpose by way of annex or overflow in connection with those premises and is occupied and managed with those premises.
- (4) Unless the context otherwise requires, any reference in this Act to any other enactment is a reference thereto as amended, extended or applied by or under any other enactment, including this Act.

140 Transitional provisions

- (1) Between the time when sections 8, 53, 57, 58, 60 and 131(5) come into force and 1st July 1977, those provisions shall have effect as if the references to a licensing board and to a licence were references to a licensing court and to a certificate.
- (2) Any order made under section 5 of the Licensing (Scotland) Act 1962 shall continue to have effect as if made under section 56 of this Act, and, where section 6 or 8 of the said Act of 1962 or section 126 of the Licensing (Scotland) Act 1959 applies to any premises, the corresponding provision of this Act, that is to say, section 57 or 58 of this Act, as the case may be, shall apply to those premises.
- (3) Committees for new towns constituted under section 74 of the Licensing (Scotland) Act 1959 shall continue as if constituted under section 47 of this Act.
- (4) A certificate of registration granted in respect of any club under Part XI of the said Act of 1959 shall remain in force for a period of three years from the date of issue and shall have effect as if granted under Part VII of this Act.
- (5) A special permission granted under section 60 of the said Act of 1959 shall have effect in relation to occasions on or after 1st July 1977 as if that Act were still in force.
- (6) Nothing in section 136(2) of this Act shall affect any order, requirement, rule, regulation or byelaw made, direction given or any thing done under any enactment repealed by this Act; but any such order, requirement, rule, regulation, byelaw, direction or thing shall, so far as it has effect immediately before the repeal, continue to have effect, and, so far as it could, have been made, given or done under the corresponding provision of this Act, have effect as if it had been made, given or done under that corresponding provision.

- (7) Any document referring to an enactment repealed by this Act shall be construed as referring to the corresponding provision of this Act.
- (8) The mention of particular matters in this section shall not affect the general application to this Act of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

141 Short title, extent and commencement

- (1) This Act may be cited as the Licensing (Scotland) Act 1976 and extends to Scotland only.
- (2) Sections 131 and 140(1) of this Act and this section shall come into force on the passing of this Act, and the other provisions of this Act shall come into force on the appointed day, being such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed under this subsection for different provisions of this Act or for different purposes, or for the purposes of the same provision in relation to different cases.
- (3) Any reference in this Act to the commencement of any provision thereof shall be construed as a reference to the day when that provision comes into force.