

LICENSING (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 2 – Licensing Bodies and Officers

Section 5 – Licensing Boards

13. Licensing Boards were introduced by the Licensing (Scotland) Act 1976 and subsection (1) of this section retains them. There will continue to be a Board for each council area or, where a council area has been divided into licensing divisions, a Board for each division. The Boards will continue to be made up of local authority councillors elected by the local authority.
14. Subsection (2) provides that where local authorities consider it appropriate to do so, they may split their area up into licensing divisions in the future.
15. Subsection (3) sets out the consequences of establishing licensing divisions. This includes the requirement that for each of those division areas, a separate Licensing Board would have to be established and that where this occurs the existing Licensing Board for that local authority would be dissolved. The provision of licensing divisions is a continuation of the current procedure under the Licensing (Scotland) Act 1976.
16. Subsection (4) allows for licensing divisions to be merged back into a single area so that there is a single Board for the whole area. Subsection (5) provides for the consequences of such a merging of divisions.

Section 6 – Statements of licensing policy

17. Subsection (1) places a duty on Licensing Boards to publish what is to be known as a “licensing policy statement” for their area for a 3-year period. This statement would offer guidance and clarity on the policy on which Licensing Boards would base their decisions in implementing their functions under the Act. This is particularly important for a system which is likely to have quite a high degree of local flexibility in terms of the discretion given to Licensing Boards.
18. Subsection (2) provides that Boards have a power to issue a supplementary statement within that 3-year period. It is intended that this supplementary power would cover new or unanticipated issues.
19. Subsection (3) places a duty on Boards, when preparing their policy statements to ensure that the statements promote the 5 licensing objectives set out in section 4 and to consult on their proposed policy statements with those persons listed in paragraph (b)(i) to (iii).
20. Subsection (7) allows Scottish Ministers to specify the date by which Boards must prepare their first policy statement under the new regime.

Section 7 – Duty to assess overprovision

21. Subsection (1) places a duty on Licensing Boards to make a pro-active assessment of overprovision of licensed premises in their area as part of their policy statements. There would also be flexibility for Boards to decide, for any locality, whether there was overprovision generally in relation to licensed premises or only in relation to a particular identifiable sector.
22. Subsection (2) provides that Boards would themselves determine what amounts to a “locality” for this purpose. This is as flexible as possible to reflect the very different pressures which may apply in different geographical areas throughout the country.
23. Subsection (3) places a duty on Boards when considering their policy on overprovision to have regard to those matters specified and to consult with those persons listed in subsection (4).
24. Premises which have only an occasional licence are to be left out of the assessment of overprovision.

Section 8 – Applicants attempting to influence Board members

25. This section makes it an offence for anyone who has submitted an application under the Act to attempt to influence in their favour a member of the Licensing Board at any time. Subsection (2) establishes how the Board should proceed where a prosecution for an offence under this section has been brought against an applicant.

Section 9 – Licensing Board’s duty to keep a public register

26. This section places a duty on Licensing Boards to keep a licensing register containing the information set out in subsection (1)(a) to (c). Subsection (2) provides that Scottish Ministers may regulate the type of information required and the form in which it is kept.

Section 10 – Local Licensing Forums

27. Subsection (1) places a duty on each council to establish a Local Licensing Forum for its area. The establishment of these forums is new and should enhance the local Board’s awareness of both the beneficial and detrimental impact of their policies in particular on the local community and on local trade. Where a local authority has split their area into separate licensing divisions, subsection (2) allows for the establishment of a separate Local Licensing Forum for each of those divisions.
28. Subsection (3) provides that there should as a minimum be at least one formal annual meeting between the Board and the local Forum. This is important to ensure that a relationship is established between these bodies.

Section 11 – General functions of Local Licensing Forums

29. This section establishes the general function of Local Licensing Forums. The role of the Local Licensing Forum is to comment on the Board’s general policy approach and not to comment on individual licence applications.

Section 12 – Licensing Boards’ duties in relation to Local Licensing Forums

30. This section establishes duties on Boards to have regard to the Forums’ advice, to provide any statistical information that the Forums may request from them and to present reasons why they have followed a different route from that recommended by the Forum.

Section 13 – Licensing Standards Officers

31. Subsection (1) places a duty on local authorities to appoint one or more officers to be known as Licensing Standards Officers (“LSOs”) whose general statutory functions are those set out in section 14 of the Act. This is a new role. The Civic Government (Scotland) Act 1982 empowers the police and authorised officers of licensing and fire authorities to enter and inspect premises, vehicles or vessels of a licence holder or applicant for a licence. With respect to liquor licensing, however, there is currently no such provision. Subsection (2) further provides that local authorities may share the use of LSOs across their boundaries.

Section 14 – General functions of Licensing Standards Officers

32. Subsection (1) establishes the general functions of Licensing Standards Officers and those are set out in paragraphs (a) to (c). LSOs do not act as policemen with regard to licensing, but they will liaise with the police and other relevant officials such as environmental health officers in ensuring the licensing objectives are adhered to and solutions found to problems involving licensed premises. LSOs will act as a source of advice and guidance for licensees and for the community; mediate between communities and the trade or between any two parties where there is a need to resolve a local problem and develop a local solution and supervise compliance with licence conditions by the relevant licence holders.
33. Subsection (2) sets out in more detail the power of the LSO to deal with a breach of licence conditions by issuing a written warning to the licence holder and making a referral to the Licensing Board for review of the licence.

Section 15 – Powers of entry and inspection

34. Subsections (1) and (2), give LSOs power to enter and inspect licensed premises to establish compliance with the premises or occasional licence and any other requirements of the Act..
35. Subsections (3) and (4) place a duty on licence holders and those managing and working on premises to co-operate with and assist the LSOs in the performance of their functions and to provide any information or documents requested by the LSO.
36. Subsection (5) provides that any person referred to in subsection (4) who fails to assist or who obstructs the Licensing Standards Officer would be guilty of an offence.

Section 16 – Training of Licensing Standards Officers

37. This section allows Scottish Ministers to prescribe mandatory training requirements with which Licensing Standards Officers must comply. In particular, Scottish Ministers will have power to accredit both course content and course providers.