



# Licensing (Scotland) Act 2005

## 2005 asp 16

### PART 6

#### PERSONAL LICENCES

##### *Introductory*

#### **71 Personal licence**

In this Act, “personal licence”, in relation to an individual, means a licence—

- (a) issued to the individual by a Licensing Board under section 76(1) of this Act, and
- (b) authorising the individual to supervise or authorise the sale of alcohol.

##### *Grant and renewal of personal licence*

#### **72 Application for personal licence**

- (1) Any individual aged 18 years or more may apply for a personal licence to—
  - (a) if the individual is ordinarily resident in the area of any Licensing Board, that Board, or
  - (b) in any other case, any Licensing Board.
- (2) An application under subsection (1) is referred to in this Act as a “personal licence application”.

#### **73 Notification of application to chief constable**

- (1) Where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to the appropriate chief constable.
- (2) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (1), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (3).
- (3) Those notices are—

- (a) a notice stating that, as far as the chief constable is aware, the applicant has not been convicted of any relevant offence or foreign offence, or
  - (b) a notice specifying any convictions of the applicant for any such offence.
- (4) Where the chief constable—
  - (a) proposes to give a notice under subsection (3)(b), and
  - (b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the personal licence application be refused,the chief constable may include in the notice a recommendation to that effect.

#### **74 Determination of personal licence application**

- (1) A personal licence application received by a Licensing Board is to be determined by the Board in accordance with this section.
- (2) If—
  - (a) all of the conditions specified in subsection (3) are met in relation to the applicant, and
  - (b) the Board has received from the appropriate chief constable a notice under section 73(3)(a),the Board must grant the application.
- (3) The conditions referred to in subsection (2)(a) are that—
  - (a) the applicant is aged 18 or over,
  - (b) the applicant possesses a licensing qualification, and
  - (c) no personal licence previously held by the applicant has been revoked within the period of 5 years ending with the day on which the application was received.
- (4) If any of those conditions is not met in relation to the applicant, the Licensing Board must refuse the application.
- (5) If—
  - (a) all of those conditions are met in relation to the applicant, and
  - (b) the Board has received from the appropriate chief constable a notice under section 73(3)(b),the Licensing Board must hold a hearing for the purpose of considering and determining the application.
- (6) At a hearing under subsection (5), the Licensing Board must, after having regard to the chief constable's notice—
  - (a) if satisfied that it is necessary to do so for the purposes of the crime prevention objective, refuse the application, or
  - (b) if not so satisfied, grant the application.

#### **75 Applicant's duty to notify Licensing Board of convictions**

- (1) This section applies where, during the period beginning with the making of a personal licence application and ending with determination of the application, the applicant is convicted of a relevant offence or a foreign offence.

- (2) The applicant must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board to which the personal licence application was made.
- (3) A notice under subsection (2) must specify—
  - (a) the nature of the offence, and
  - (b) the date of the conviction.
- (4) Where the Licensing Board receives a notice under subsection (2) at any time before they have determined the personal licence application, the Board must—
  - (a) suspend consideration of the application, and
  - (b) give notice of the conviction to the appropriate chief constable.
- (5) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (4)(b), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (6).
- (6) Those notices are—
  - (a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant offence or foreign offence, or
  - (b) a notice confirming the existence of the conviction and that it relates to a relevant offence or foreign offence.
- (7) Where the chief constable—
  - (a) proposes to give a notice under subsection (6)(b), and
  - (b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the personal licence application be refused,the chief constable may include in the notice a recommendation to that effect.
- (8) On receipt of the chief constable's notice under subsection (6), the Licensing Board must resume consideration of the personal licence application and determine it in accordance with section 74.
- (9) For that purpose, that section has effect as if—
  - (a) references in it to a notice under section 73(3)(a) included references to a notice under subsection (6)(a) of this section, and
  - (b) references in it to a notice under section 73(3)(b) included references to a notice under subsection (6)(b) of this section.
- (10) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.
- (11) A person guilty of an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **76 Issue of licence**

- (1) Where a Licensing Board grants a personal licence application, the Board must issue a personal licence, in the prescribed form, to the applicant.
- (2) A personal licence issued under subsection (1) must specify—

- (a) the name and address of the individual to whom it is issued,
  - (b) the Licensing Board issuing the licence,
  - (c) the expiry date of the licence,
  - (d) any relevant offence or foreign offence of which the applicant has been convicted, and
  - (e) such other matters as may be prescribed.
- (3) A personal licence is void if, at the time it is issued under subsection (1), the individual to whom it is issued already holds a personal licence.

## **77 Period of effect of personal licence**

- (1) A personal licence has effect, subject to the following provisions of this section, during the period of 10 years beginning with the date on which it is issued.
- (2) That period, and any subsequent extension of it under this subsection, is extended for a further period of 10 years if a personal licence renewal application is granted in respect of the licence.
- (3) A personal licence does not have effect for any period during which it is suspended by virtue of any provision of this Act.
- (4) Subsection (3) does not affect the calculation of the period during which a personal licence has effect by virtue of subsection (1) as read with subsection (2).
- (5) A personal licence ceases to have effect if—
  - (a) the licence is revoked under any provision of this Part, or
  - (b) the Licensing Board which issued the licence receives from the personal licence holder a notice under subsection (6).
- (6) That is a notice—
  - (a) accompanied by the personal licence or, where that is not practicable, by a statement of reasons for failure to produce the licence, and
  - (b) stating that the licence holder wishes to surrender the licence.
- (7) The date of expiry of the period during which a personal licence has effect is referred to in this Act as the “expiry date” of the licence.
- (8) Not later than 3 months before the expiry date of a personal licence, the Licensing Board which issued the licence must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed.

## **78 Renewal of personal licence**

- (1) The holder of a personal licence may, within the period specified in subsection (2), apply to the Licensing Board which issued the licence for renewal of the licence.
- (2) The period referred to in subsection (1) is the period of 2 months beginning 3 months before the expiry date of the licence.
- (3) An application under subsection (1) must be accompanied by—
  - (a) the personal licence to which it relates, or
  - (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

- (4) An application under subsection (1) which complies with subsection (3) is referred to in this Act as a “personal licence renewal application”.
- (5) Sections 73 and 74 apply to a personal licence renewal application as they apply to a personal licence application.
- (6) For that purpose, references in those sections to a personal licence application are to be read as if they included reference to a personal licence renewal application.

## **79 Notification of determinations**

- (1) This section applies where a Licensing Board grants or refuses—
  - (a) a personal licence application, or
  - (b) a personal licence renewal application.
- (2) The Board must give—
  - (a) the applicant, and
  - (b) the appropriate chief constable,notice of the grant or refusal of the application.
- (3) A person to whom notice is given under subsection (2) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.
- (4) Where the clerk of a Licensing Board receives a notice under subsection (3), the Board must issue a statement of the reasons for the grant or refusal of the application to—
  - (a) the person giving the notice, and
  - (b) each other person to whom the Board gave notice under subsection (2).
- (5) A statement of reasons under subsection (4) must be issued—
  - (a) by such time, and
  - (b) in such form and manner,as may be prescribed.

### *Conviction of licence holder for relevant or foreign offence*

## **80 Duty to notify court of personal licence**

- (1) Subsection (2) applies where—
  - (a) a person who holds a personal licence is charged with a relevant offence, or
  - (b) a person charged with a relevant offence is granted a personal licence after the person’s first appearance in court in connection with the offence but before—
    - (i) conviction and sentencing for the offence or acquittal, or
    - (ii) where an appeal is brought against conviction, sentence or acquittal, the disposal of the appeal.
- (2) The person must, no later than the person’s first or, as the case may be, next appearance in court in connection with the offence—
  - (a) produce to the court the personal licence, or
  - (b) if that is not practicable, notify the court of—
    - (i) the existence of the personal licence,

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- (ii) the identity of the Licensing Board which issued the licence, and
- (iii) the reasons why it is not practicable to produce the licence.

- (3) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

## **81 Court's duty to notify Licensing Board of convictions**

- (1) This section applies where the clerk of a court in Scotland by or before which a person is convicted of a relevant offence is aware that the person holds a personal licence.
- (2) The clerk of the court must, as soon as reasonably practicable after the conviction, give notice of the conviction to the Licensing Board which issued the personal licence held by the licence holder.
- (3) Where—
  - (a) a Licensing Board receives a notice under subsection (2) (“the receiving Board”), and
  - (b) that Board has reason to believe that the personal licence holder in respect of whom the notice is given is working in licensed premises situated in the area of another Licensing Board (“the other Board”),the receiving Board must give notice of the conviction to the other Board.

## **82 Licence holder's duty to notify Licensing Board of convictions**

- (1) This section applies where a personal licence holder is convicted of a relevant or foreign offence.
- (2) The licence holder must, no later than one month after the date of the conviction, give notice of the conviction to—
  - (a) the Licensing Board which issued the personal licence held by the licence holder, and
  - (b) if different, the Licensing Board for the area in which are situated any licensed premises in which the licence holder is working.
- (3) A notice of conviction under subsection (2) must—
  - (a) specify—
    - (i) the nature of the offence, and
    - (ii) the date of the conviction, and
  - (b) be accompanied by—
    - (i) the personal licence held by the licence holder, or
    - (ii) if that is not practicable, a statement of the reasons for failure to produce the licence.
- (4) Where—
  - (a) a Licensing Board receives a notice under subsection (2) (“the receiving Board”), and

- (b) that Board has reason to believe that the personal licence holder in respect of whom the notice is given is working in licensed premises situated in the area of another Licensing Board (“the other Board”),

the receiving Board must give notice of the conviction to the other Board.
- (5) A licence holder who fails, without reasonable excuse, to comply with subsection (2) commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **83 Procedure where Licensing Board receives notice of conviction**

- (1) Subsection (2) applies where the relevant Licensing Board—
  - (a) receives a notice of conviction relating to a personal licence holder, or
  - (b) becomes aware that a personal licence holder was, during the application period, convicted of a relevant offence or a foreign offence.
- (2) The Licensing Board must give notice of the conviction to the appropriate chief constable.
- (3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (2), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (4).
- (4) Those notices are—
  - (a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or a foreign offence, or
  - (b) a notice confirming the existence of the conviction and that it relates to a relevant or a foreign offence.
- (5) Where the appropriate chief constable—
  - (a) proposes to give a notice under subsection (4)(b), and
  - (b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the licence holder’s personal licence should be revoked, suspended or endorsed,

the chief constable may include in the notice a recommendation to that effect.
- (6) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(a), the Licensing Board may not take any further action in relation to the conviction.
- (7) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(b), the Licensing Board must hold a hearing.
- (8) At the hearing, the Licensing Board may—
  - (a) having regard to—
    - (i) the conviction, and
    - (ii) any recommendation contained in the chief constable’s notice under subsection (5),
  - (b) after giving—
    - (i) the licence holder concerned, and

- (ii) the appropriate chief constable,
  - an opportunity to be heard, and
  - (c) if satisfied that it is necessary to do so for the purposes of the crime prevention objective,

make an order under subsection (9).
- (9) That order is an order—
  - (a) revoking,
  - (b) suspending for such period, not exceeding 6 months, as the Board considers appropriate, or
  - (c) endorsing,

the personal licence held by the licence holder concerned.
- (10) Where the Licensing Board makes an order under subsection (9), the Board must give—
  - (a) the licence holder concerned,
  - (b) the appropriate chief constable, and
  - (c) if different, the Licensing Board which issued the personal licence,

notice of the order and of the reasons for making it.
- (11) In this section—
  - “the application period” means, in relation to a personal licence holder, the period—
    - (a) beginning with the date on which the application for the personal licence held by that licence holder was made, and
    - (b) ending with the date on which that application was granted,
  - “notice of conviction” means a notice under section 81(2) or 82(2), and
  - “relevant Licensing Board” means, in relation to a personal licence holder—
    - (a) if the personal licence holder is working as a premises manager at any licensed premises, the Licensing Board for the area in which those premises are situated,
    - (b) in any other case, the Licensing Board which issued the personal licence held by the licence holder.

*Conduct inconsistent with licensing objectives*

**84 Conduct inconsistent with the licensing objectives**

- (1) This section applies where, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding such as is mentioned in subsection (2) in relation to any personal licence holder who is or was working in the licensed premises in respect of which the premises licence was issued (“the licensed premises concerned”).
- (2) That finding is a finding that the licence holder concerned, while working as mentioned in subsection (1), acted in a manner which was inconsistent with any of the licensing objectives.
- (3) The Licensing Board making the finding must—



- (a) if the licence holder concerned is, at the time of the finding, working in licensed premises (whether the licensed premises concerned or other licensed premises) in that Board's area, hold a hearing,
  - (b) in any other case, give notice to the relevant Licensing Board of their finding together with a recommendation as to whether the personal licence held by the licence holder concerned should be revoked, suspended or endorsed.
- (4) In subsection (3)(b), “relevant Licensing Board” means—
  - (a) if the Licensing Board making the finding referred to in subsection (1) has reason to believe that the licence holder concerned is working at licensed premises situated in the area of another Licensing Board, that other Licensing Board,
  - (b) in any other case, the Licensing Board which issued the personal licence held by the licence holder concerned.
- (5) Where a Licensing Board receives a notice and recommendation under subsection (3)(b), the Board must hold a hearing.
- (6) At a hearing under subsection (3)(a) or (5), the Licensing Board may—
  - (a) after giving—
    - (i) the licence holder concerned, and
    - (ii) such other persons as they consider appropriate,an opportunity to be heard, and
  - (b) if satisfied that it is necessary to do so for the purposes of any of the licensing objectives,make an order under subsection (7).
- (7) That is an order—
  - (a) revoking,
  - (b) suspending for such period, not exceeding 6 months, as the Board considers appropriate, or
  - (c) endorsing,the personal licence held by the licence holder concerned.
- (8) Where the Licensing Board makes an order under subsection (7), the Board must give—
  - (a) the licence holder concerned,
  - (b) where the hearing was held in pursuance of a notice given under subsection (3)(b), the Licensing Board which gave the notice, and
  - (c) if different, the Licensing Board which issued the personal licence,notice of the order and of the reasons for making it.

### *Endorsements*

## **85 Expiry of endorsements**

- (1) In this section and section 86, “endorsement” means an endorsement made in a personal licence by virtue of an order under—
  - (a) section 83(9)(c), or
  - (b) section 84(7)(c).

- (2) An endorsement expires at the end of the period of 5 years beginning with the date on which the endorsement was made.
- (3) The holder of a personal licence containing an endorsement which has expired under subsection (2) may apply to the Licensing Board which issued the licence for removal of the endorsement.
- (4) An application under subsection (3) must be accompanied by the personal licence to which it relates.
- (5) Where a Licensing Board receives an application under subsection (3) in relation to any personal licence, the Board must amend the licence so as to remove the endorsement from it.
- (6) For the purposes of this Act, any endorsement which has expired under subsection (2) is to be disregarded (whether or not the endorsement has been removed under subsection (5)).

## **86      Suspension of licence after multiple endorsements**

- (1) Where 3 endorsements have been made in any personal licence, the Licensing Board which issued the licence must hold a hearing.
- (2) At the hearing, the Licensing Board may—
  - (a) after giving—
    - (i) the holder of the licence, and
    - (ii) such other persons as the Board considers appropriate, an opportunity to be heard, and
  - (b) if they consider it necessary to do so for the purposes of any of the licensing objectives,make an order under subsection (3).
- (3) That is an order—
  - (a) suspending the licence for such period, not exceeding 6 months, as the Board considers appropriate, or
  - (b) revoking the licence.
- (4) Where the Licensing Board makes an order under subsection (3), the Board must give the licence holder notice of the order and of the reasons for making it.

### *Licence holder's duty to undertake training*

## **87      Licence holder's duty to undertake training**

- (1) The holder of a personal licence must, no later than 3 months after the expiry of—
  - (a) the period of 5 years beginning with the date on which the licence holder's licence was issued, and
  - (b) each subsequent period of 5 years during which the licence has effect,produce to the Licensing Board which issued the licence evidence in the prescribed form of the licence holder's having complied, during that period, with such requirements as to the training of personal licence holders as may be prescribed.

- (2) A Licensing Board must—
- (a) in relation to each personal licence issued by it, and
  - (b) no later than 3 months before the expiry of each period mentioned in subsection (1),
- give to the holder of the licence notice of the requirement imposed by that subsection.
- (3) If a personal licence holder fails to comply with subsection (1), the Licensing Board which issued the licence held by the licence holder must revoke the licence.
- (4) 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 personal licence holder, 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.

#### *Update of licence*

### **88 Notification of change of name or address**

- (1) A personal licence holder must, no later than one month after any change in the licence holder's name or address, give the Licensing Board which issued the licence notice of the change.
- (2) A notice under subsection (1) must be accompanied by the personal licence or, if that is not practicable, by a statement of the reasons for the failure to produce the licence.
- (3) A personal licence holder who fails, without reasonable excuse, to comply with subsection (1) commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **89 Licensing Board's duty to update licence**

- (1) In this section, the "issuing Licensing Board" means, in relation to a personal licence, the Licensing Board which issued the licence.
- (2) Where the issuing Licensing Board grants a personal licence renewal application made in respect of any personal licence, the Board must make the necessary amendment to the expiry date specified in the licence.
- (3) Where a personal licence is suspended by virtue of any provision in this Act, the issuing Licensing Board must amend the licence so as to specify in it—
- (a) the date, and
  - (b) period,

of the suspension.

- (4) Where the issuing Licensing Board receives a notice of conviction in relation to any personal licence holder, the Board must amend the personal licence held by the licence holder so as to specify in it—

- (a) the date of the conviction, and
- (b) the nature of the offence,

unless the Board has already done so by virtue of any previous such notice.

- (5) Where the issuing Licensing Board—

- (a) makes an order under section 83(9)(c) or 84(7)(c) in relation to any personal licence holder, or
- (b) receives notice under section 83(10)(c) or 84(8)(c) of such an order made by another Licensing Board,

the Board must amend the personal licence held by the licence holder so as to include in it a statement that it is endorsed together with the details of the conviction or conduct giving rise to the making of the order.

- (6) Where the issuing Licensing Board receives a notice under section 88(1) from a personal licence holder, the Board must amend the personal licence of the licence holder so that it specifies the licence holder's new name or address.

- (7) Where the issuing Licensing Board receives evidence of training produced by a personal licence holder in accordance with section 87(1), the Board must amend the personal licence held by the licence holder so as to include in it the prescribed details of the training.

- (8) Where the issuing Licensing Board is not in possession of a personal licence and—

- (a) the licence has been revoked under any provision of this Act, or
- (b) the Board requires the licence for the purpose of complying with any duty under this section in relation to the licence,

the Board may require the holder of the licence to produce it to the Board within 14 days from the date on which the requirement is notified.

- (9) A personal licence holder who fails, without reasonable excuse, to comply with a requirement made under subsection (8) commits an offence.

- (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

- (11) In this section, “notice of conviction” means a notice under section 81(2) or 82(2).

### *Miscellaneous*

## **90 Power to specify which Licensing Board is to exercise functions under this Part**

- (1) The Scottish Ministers may by order provide for any function exercisable under this Part by a Licensing Board of a particular description to be exercisable instead by a Licensing Board of such other description as may be specified in the order.

- (2) An order under subsection (1) may—

- (a) modify this Act, and
- (b) make different provision in relation to different functions.

## **91 Power to prescribe licensing qualifications**

- (1) In this Act, “licensing qualification” means—
- (a) such qualification, or
  - (b) a qualification of such description,
- as may be prescribed.
- (2) Regulations under subsection (1) may, in particular—
- (a) prescribe qualifications or descriptions of qualifications by reference to whether they are—
    - (i) accredited, or
    - (ii) awarded by a person who is accredited,for the purposes of this section by the Scottish Ministers in accordance with the regulations,
  - (b) prescribe qualifications or descriptions of qualifications awarded outwith Scotland (as well as qualifications awarded within Scotland),
  - (c) prescribe different qualifications in relation to different licensed premises or licensed premises of different descriptions, and
  - (d) prescribe such qualifications as the appropriate licensing qualifications in relation to those descriptions of licensed premises for the purposes of paragraph 4(2) of schedule 3.

## **92 Theft, loss etc. of personal licence**

- (1) This section applies where the Licensing Board which issued a personal licence receives from the holder of the licence an application for a replacement personal licence.
- (2) If satisfied that—
- (a) the personal licence held by the applicant has been lost, stolen, damaged or destroyed, and
  - (b) where it has been lost or stolen, the applicant has reported the loss or theft to the police,
- the Licensing Board must issue to the applicant a replacement personal licence.
- (3) A replacement personal licence is a copy of the personal licence held by the applicant—
- (a) in the form in which it existed immediately before it was lost, stolen, damaged or destroyed, and
  - (b) certified by the Board to be a true copy.
- (4) In this Act, references to a personal licence include references to a replacement personal licence issued under this section.

## **93 Licence holder’s duty to produce licence**

- (1) This section applies where the holder of a personal licence is working at any licensed premises.
- (2) A constable or Licensing Standards Officer may, at any time when the licence holder is on the licensed premises, require the licence holder to produce the licence for examination.

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

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- (3) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (2) commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.