



# Licensing (Scotland) Act 2005

## 2005 asp 16

### PART 7

#### CONTROL OF ORDER

##### *Exclusion of violent offenders*

#### **94 Exclusion orders**

- (1) This section applies where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises in respect of which a premises licence has effect (referred to in this section and section 96 as “the licensed premises concerned”).
- (2) The court by or before which the person is convicted of the offence may, in addition to any sentence imposed or other disposal in respect of the offence, make an order prohibiting the person from entering—
  - (a) the licensed premises concerned, and
  - (b) such other licensed premises (if any) as the court may specify in the order, except with the appropriate consent.
- (3) The holder of the premises licence in respect of the licensed premises concerned may, by summary application to the sheriff of the appropriate sheriffdom made no later than 6 weeks after the date of the conviction, seek an order prohibiting the person convicted from entering the licensed premises concerned except with the appropriate consent.
- (4) On such an application, the sheriff, if satisfied that—
  - (a) there is a substantial risk that the person convicted will commit a further violent offence on, or in the immediate vicinity of, the licensed premises concerned, and
  - (b) an order has not been made under subsection (2) in relation to the person in respect of the same conviction,may grant the order sought.
- (5) For the purposes of an application under subsection (3), where the sheriff is satisfied that the person to whom the application relates has been convicted as mentioned in

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subsection (1), it is to be presumed, unless the contrary is proved, that the risk referred to in subsection (4)(a) exists.

- (6) An order under subsection (2) or (4) is referred to in this Act as an “exclusion order”.
- (7) An exclusion order has effect, subject to section 95(3), for such period, being not less than 3 months and not more than 2 years, as is specified in the order.
- (8) In this section—
- “the appropriate consent” means, in relation to any licensed premises, the express consent of—
- (a) the premises licence holder in respect of the premises, or
  - (b) a person authorised by the premises licence holder to give consent for the purposes of this section,
- “the appropriate sheriffdom” means the sheriffdom in which the licensed premises concerned are situated,
- “violent offence” means any offence involving violence or the threat of violence.

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**Modifications etc. (not altering text)**

**C1** Ss. 94-96 modified (1.1.2008) by [Licensing \(Transitional and Saving Provisions\) \(Scotland\) Order 2007 \(S.S.I. 2007/454\)](#), arts. 1, **26(2)(3)**

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**Commencement Information**

**II** S. 94 in force at 1.2.2008 by [S.S.I. 2007/472](#), art. 2, **Sch. 1**

**95 Breach of exclusion order**

- (1) A person who enters licensed premises in breach of an exclusion order commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
- (a) a fine not exceeding level 4 on the standard scale,
  - (b) imprisonment for a term not exceeding one month, or
  - (c) both.
- (3) The court by or before which a person is convicted of an offence under subsection (1) of breaching an exclusion order made under section 94(2) may, if it thinks fit, terminate the exclusion order or vary it so as to delete any licensed premises specified in it.
- (4) Where, in relation to any licensed premises, an authorised person reasonably suspects a person of having entered the premises in breach of an exclusion order, the authorised person may—
- (a) remove the person from the premises, and
  - (b) if necessary for that purpose, use reasonable force.
- (5) A constable must, if—
- (a) asked by an authorised person to assist in exercising a power conferred by subsection (4), and
  - (b) the constable reasonably suspects the person to be removed of having entered the premises in breach of an exclusion order,

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provide the assistance asked for.

(6 In this section, “authorised person” means, in relation to licensed premises, any of the following persons, namely—

- (a) the premises licence holder,
- (b) the premises manager, and
- (c) any other person who—
  - (i) works on the premises, and
  - (ii) is authorised by the premises licence holder or the premises manager for the purposes of this section.

**Modifications etc. (not altering text)**

- C1** Ss. 94-96 modified (1.1.2008) by [Licensing \(Transitional and Saving Provisions\) \(Scotland\) Order 2007 \(S.S.I. 2007/454\)](#), arts. 1, **26(2)(3)**
- C2** S. 95(6) modified (1.1.2008) by [Licensing \(Transitional and Saving Provisions\) \(Scotland\) Order 2007 \(S.S.I. 2007/454\)](#), arts. 1, **26(4)**

**Commencement Information**

- I2** S. 95 in force at 1.2.2008 by [S.S.I. 2007/472](#), art. 2, **Sch. 1**

**96 Exclusion orders: supplementary provision**

(1) References in section 94 to a person's being convicted of an offence are, in the case mentioned in subsection (2), to be read as references to the court's being satisfied that the person committed the offence.

(2) That case is the case where—

- (a) the person is charged with the offence before a court of summary jurisdiction, and
- (b) the court, without proceeding to conviction, discharges the person absolutely under section 246(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46).

[<sup>F1</sup>(2A) For the purposes of section 94, section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (convictions deemed not be convictions where offender placed on probation or discharged absolutely) does not apply to a conviction for a violent offence within the meaning of section 94.]

(3) Where—

- (a) a court or the sheriff makes an exclusion order, or
- (b) a court makes an order terminating or varying an exclusion order,

the clerk of the court or, as the case may be, the sheriff clerk must send a copy of the order to the premises licence holder in respect of the licensed premises concerned.

**Textual Amendments**

- F1** S. 96(2A) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. **24(4)**, **206(1)**; [S.S.I. 2011/178](#), art. 2, Sch.

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**Commencement Information**

- I3** S. 96 in force at 1.2.2008 by [S.S.I. 2007/472](#), art. 2, **Sch. 1**

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) Appointed Day(s) by [S.S.I. 2006/239 art. 2](#) (This S.S.I. is revoked on 25.5.2006 by S.S.I. 2006/286, art. 6)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 33(1)(1A) substituted for s. 33(1)-(3) by [2015 asp 10 s. 49\(2\)\(a\)](#)
- s. 33(8)(za) inserted by [2015 asp 10 s. 49\(2\)\(c\)](#)
- s. 33(8A) inserted by [2015 asp 10 s. 49\(2\)\(d\)](#)
- s. 33A inserted by [2015 asp 10 s. 49\(4\)](#)
- s. 134ZA-134ZC inserted by [2015 asp 10 s. 61\(2\)](#)