



Licensing (Scotland) Act 2005

2005 asp 16

PART 9

MISCELLANEOUS AND GENERAL

General

142 Guidance

- (1) The Scottish Ministers may issue guidance to Licensing Boards as to the exercise of their functions under this Act.
- (2) The Scottish Ministers may modify any guidance issued by them under subsection (1).
- (3) Each Licensing Board must, in the exercise of their functions under this Act, have regard to any guidance issued to them under subsection (1).
- (4) Where a Licensing Board decides not to follow any guidance issued under subsection (1), the Board must give the Scottish Ministers notice of the decision together with a statement of the reasons for it.
- (5) The first guidance to Licensing Boards under subsection (1) is not to be issued by the Scottish Ministers unless a draft of the guidance has been laid before, and approved by resolution of, the Scottish Parliament.
- (6) The Scottish Ministers must lay any subsequent guidance issued by them under subsection (1) before the Parliament.

143 Crown application

- (1) This Act binds the Crown.
- (2) No contravention by the Crown of any provision made by virtue of this Act makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

- (3) However, any provision made by virtue of this Act applies to persons in the public service of the Crown as it applies to other persons.

144 Modification of enactments

Schedule 6, which modifies enactments, has effect.

145 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.

146 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
 - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (b) different provision for different purposes.
- (3) An order under section 145 may modify any enactment (including this Act), instrument or document.
- (4) A statutory instrument containing an order or regulations under this Act except—
 - (a) an order under section 65(4), 123(6) or 150(2),
 - (b) regulations under section 27(2) or 139(3), and
 - (c) where subsection (5) applies, an order under section 145,
 is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No—
 - (a) order under section 65(4) or 123(6),
 - (b) regulations under section 27(2) or 139(3), or
 - (c) order under section 145 containing provisions which add to, replace or omit any part of the text of an Act,
 is to be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by resolution of, the Parliament.

147 Interpretation

- (1) In this Act—

“alcoholic drink” means a drink consisting of or containing alcohol,

“applicant”, in relation to any application under this Act, means the person making the application,

“appropriate chief constable” means, in relation to a Licensing Board, the chief constable for the police area in which the area of the Board is situated,

“area” means—

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

- (a) in relation to a council, the local government area for which the council is constituted,
- (b) in relation to a Licensing Board or Local Licensing Forum, the council area or, as the case may be, licensing division for which the Board or Forum is established,

“capacity”, in relation to licensed premises, means—

- (a) in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption on the premises (or, as the case may be, that part), the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time, and
- (b) in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption off the premises (or, as the case may be, that part), the amount of space in the premises (or, as the case may be, that part) given over to the display of alcohol for sale,

“child” means a person under the age of 16,

“community council” has the same meaning as in Part IV of the Local Government (Scotland) Act 1973 (c. 65),

“council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),

“licensed premises” means premises in respect of which a premises licence or occasional licence has effect,

“liqueur confectionery” means confectionery which—

- (a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) 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 purposes of consumption,

“premises” means any place and includes a vehicle, vessel or moveable structure,

“prescribed” means prescribed by regulations made by the Scottish Ministers,

“railway vehicle” means a railway vehicle within the meaning of section 83 of the Railways Act 1993 (c. 43) that is used in the provision of a railway service within the meaning of section 82 of that Act (excluding the wider meaning of “railway” given by section 81(2) of that Act),

“relevant council” means, in relation to a Licensing Board or Local Licensing Forum, the council—

- (a) for whose area the Board or Forum is established, or
- (b) in the case of a Board or Forum established for a licensing division, for the area of which the division forms part,

“sell”, in relation to alcohol, includes barter and expose to or offer for sale, and related expressions such as “sale” are to be construed accordingly,

“senior police officer” means a constable of or above the rank of superintendent,

“strength”, in relation to alcohol, is to be determined in accordance with section 2 of the Alcoholic Liquor Duties Act 1979 (c. 4),

“subject premises” means, in relation to any application under this Act, the premises to which the application relates,

“vehicle” means a vehicle intended or adapted for use on roads,

“vessel” includes a ship, boat, raft or other apparatus constructed or adapted for floating on water,

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“young person” means a person aged 16 or 17.

- (2) In this Act, references to selling alcohol or other goods to trade are references to selling the alcohol or goods to a person for the purposes of the person’s trade; and related expressions are to be construed accordingly.
- (3) For the purposes of this Act, a person is, in relation to a partnership, a company, a club or other body (whether incorporated or unincorporated), a connected person if the person—
- (a) in the case of a partnership, is a partner,
 - (b) in the case of a company—
 - (i) is a director, or
 - (ii) has control of the company,
 - (c) in the case of a club, is an office bearer of the club,
 - (d) in any other case, is concerned in the management or control of the body.
- (4) For the purposes of subsection (3)(b)(ii) and this subsection, a person is taken to have control of a company if—
- (a) any of the directors of the company, or of any other company having control of the company, is accustomed to act in accordance with the person’s directions or instructions, or
 - (b) the person is entitled to exercise, or to control the exercise of, at least one third of the voting power at any general meeting of the company or of any other company having control of the company.

148 Index of defined expressions

The expressions in the left-hand column of the table are defined or otherwise explained by the provisions of this Act specified in the right-hand column.

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appropriate chief constable	section 147(1)
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capacity (in relation to licensed premises)	section 147(1)
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crime prevention objective	section 4(2)

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

<i>Expression</i>	<i>Interpretation provision</i>
emergency closure order	section 97(4)
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<i>Expression</i>	<i>Interpretation provision</i>
railway vehicle	section 147(1)
relevant council	section 147(1)
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senior police officer	section 147(1)
strength (of alcohol)	section 147(1)
subject premises	section 147(1)
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variation (of a premises licence)	section 29(5)
minor variation (of such a licence)	section 29(6)
vehicle	section 147(1)
vessel	section 147(1)
young person	section 147(1)

149 Repeals

The enactments mentioned in the first column in schedule 7 are repealed to the extent specified in the second column.

150 Short title and commencement

- (1) This Act may be cited as the Licensing (Scotland) Act 2005.
- (2) This Act (other than this section and sections 145 to 148) comes into force on such day as the Scottish Ministers may by order appoint.