

# **AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015**

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## **EXPLANATORY NOTES**

### **STRUCTURE AND SUMMARY OF THE ACT**

#### **Part 2 – Alcohol Licensing**

##### **Fit and proper person test**

137. The Act introduces a ‘fit and proper person test’ into the processes for obtaining, reviewing transferring and potentially revoking licences under the 2005 Act by virtue of sections 43 to 48. In each of these sections, the fit and proper test is considered with regard to the licensing objectives. It also makes some associated changes to the handling of information relating to relevant offences and foreign offences.

##### ***Section 43 – Premises licence application: ground for refusal***

138. **Section 43** amends section 22 of the 2005 Act with regard to objections and representations in relation to premises licences applications. Section 43 clarifies that an objection to or representation concerning a premises licence application may include any information that the person submitting the objection or representation considers relevant to consideration of any of the grounds for refusal, including information in relation to the applicant, a connected person in relation to the applicant, or any person who would be an interested party in relation to the premises if the application were to be granted.
139. **Section 43** also amends section 23 of the 2005 Act in relation to the grounds of refusal for a premises licence application. Section 43 provides that it is a ground for refusal at a hearing when determining premises licence applications in section 23 of the 2005 Act, if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a premises licence. An amendment is also made to section 23(8) so that, where the Licensing Board refuses a licence on the fit and proper person ground, the Board must state the licensing objective that the ground relates to.
140. **Section 43** also amends section 23(6) of the 2005 Act in relation to determination of premises licence applications. Section 43 clarifies that any conviction notice supplied by the Chief Constable and any antisocial behaviour report by the chief constable supplied to the Board, is relevant to the specific consideration of the new fit and proper test as well as to consideration of the existing ground for refusal that the granting of the application would be inconsistent with one or more of the licensing objectives.

##### ***Section 44 – Application to transfer premises licence: ground for refusal***

141. **Section 44** amends section 33 of the 2005 Act in relation to grounds for refusal for an application to transfer a premises licence. Section 44 provides that it is a ground for refusal at a hearing when determining applications to transfer premises licences under

section 33 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence.

142. This section also expands the information that can be provided to the Licensing Board by the Chief Constable upon receiving notice of a transfer of a premises licence. This includes information in relation to the transferee, a connected person in relation to the licence holder or an interested party in relation to the licensed premises, if the application for the transfer were to be granted. If information is provided, the Licensing Board must hold a hearing to determine the application.

### ***Section 45 – Ground for review of premises licence***

143. **Section 45** makes amendments with regards to review of a premises licence (both on an application by a third party for a review and on a proposal for a review initiated by the Licensing Board itself). Section 45 provides that it is a ground for review of a premises licence, if having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence. If a review is based on this ground, the review application or proposal must include a summary of the information on which the applicant or the Board based its view that the alleged ground applies.
144. **Section 45** clarifies that any person who makes a premises licence review application may include in the application any information that the person considers relevant to the Licensing Board's consideration of the alleged ground of review, including information related to the licence holder, connected persons in relation to the licence holder or an interested party in relation to the licensed premises.
145. **Section 45** also amends section 37 of the 2005 Act in relation to a review of a premises licence on the Licensing Board's initiative. Section 45 clarifies that the Licensing Board's review proposal may include information that the Board considers relevant to its consideration of the alleged ground of review, in relation to the licence holder, connected persons in relation to the licence holder or interested parties in relation to the licenced premises.
146. If at the review hearing the Licensing Board is satisfied that the fit and proper person ground for review is established, the Board must revoke the licence. Thereafter the Board must provide notification of its determination to the licence holder and where the decision is taken in connection with a premises licence review application, the applicant.
147. **Section 45** also amends section 39 of the 2005 Act to provide that a revocation of a licence will take effect 28 days after the Board makes its decision. This provides a short period of grace in which action may be taken to render the premises licence acceptable to the Licensing Board, for example by varying the licence to remove a premises manager or by transferring the premises licence to a new licence holder.
148. **Section 45** also inserts a new section 39B into the 2005 Act, which provides that, where a Licensing Board has revoked a premises licence on the grounds that the licence holder is not a fit and proper person, then the Board must recall the revocation if a relevant application is made within the 28 day period, and the Board ultimately grants the relevant application. The period of 28 days may be extended by the Board pending determination of a relevant application. Such relevant applications would be applications for transfer of the licence, or for a premises licence variation that the Board considers would remove the ground on which the licence had been revoked. A decision to revoke the licence is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff principal.

***Section 46 - Personal licence applications and renewals: ground for refusal***

149. **Section 46** makes amendments to sections 73, 74 and 78 of the 2005 Act in relation to personal licence applications and renewals. Section 46 provides that it is a ground for refusal at a hearing when determining a personal licence application or personal licence renewal application under section 74 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence.
150. Subsection (2) provides that on giving a notice under subsection (3)(a) or (b) of section 73 of the 2005 Act, the Chief Constable may also provide to the Licensing Board any information in relation to the applicant that the Chief Constable considers may be relevant to consideration of the application by the Board.
151. **Section 46** also inserts a new section 73A into the 2005 Act to provide that where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board's area. A Licensing Standards Officer may, within 21 days of the date of receipt of this notice, respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration of the application by the Board. If information is supplied to the Board by the Chief Constable or by a Licensing Standards Officer, the Board may hold a hearing.

***Section 47 – Personal licence holders: procedure on receipt of notice of conviction***

152. Section 83 of the 2005 Act provides the procedure that a Licensing Board must follow where they receive notice of a conviction (or otherwise become aware of a conviction) of a personal licence holder. The Board must notify the Chief Constable of the conviction and, where the existence of the conviction is confirmed by the Chief Constable, the Board must hold a hearing to review the licence.
153. **Section 47** of the Act amends section 83 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

***Section 48 – Personal licence holders: conduct inconsistent with the licensing objectives***

154. Section 84 of the 2005 Act provides the procedure that a Licensing Board must follow when, in the course of reviewing a premises licence under section 38 of the 2005 Act, they find that a personal licence holder was acting on the premises in a manner not consistent with the licensing objectives. Where the Licensing Board makes such a finding a hearing must be held where the Board can revoke, suspend or endorse the licence if they believe it necessary to do so.
155. **Section 48** of the Act amends section 84 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.