

AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 2 – Alcohol Licensing

Transfer of premises licences

Section 49 – Transfer of premises licences

156. *Section 49* amends the transfer provisions at section 33 of the 2005 Act to provide that it is the transferee that commences the transfer procedure in all circumstances. This also includes amendments to the procedures for the transfer of premises licences. Section 33A is inserted into the 2005 Act to make further provision in relation to the new transfer procedure. Section 34 (transfer on application of person other than the licence holder) of the 2005 Act is repealed as it is no longer necessary in light of the amendments to section 33. The appeal provisions at Part 1 of schedule 5 to the 2005 Act are also amended.
157. *Section 49* amends section 33 of the 2005 Act to allow for any person, other than an individual under 18, to apply to the appropriate Licensing Board for the transfer of a premises licence to that person.
158. Subsection (2) inserts a new section 33(1A) into the 2005 Act to provide that the application must specify the date on which the transfer is to take effect, be accompanied by the original premises licence, or a statement of reasons for failure to produce the licence, and a written statement signed by the current holder of the premises licence consenting to the transfer to the transferee, or if that is not practical a statement of the reasons for failure to provide the written consent of the current holder of the premises licence. It is envisaged that the statement of reasons for failure to provide written consent could cover instances where the current premises licence holder is not available, such as instances of death, insolvency, dissolution and incapacity.
159. Subsection (2) also provides that the current requirement to provide the Chief Constable with a copy of the application in section 33(4) of the 2005 Act is amended, such that no copy need be provided if the Board refuse the application under section 33(8A).
160. Subsection (2) also inserts section 33(8)(za) into the 2005 Act. The effect is that, if the written consent of the current licence holder is provided and the other requirements of section 33(8) of the 2005 Act are met (i.e. the transferee has no relevant conviction and there is no recommendation from the chief constable for refusal), then the transfer application must be granted. Thereafter, a new subsection 33(8A) is inserted providing that, where an application is not accompanied by a consent statement from the original licence holder, it must be refused unless the Board agrees to dispense with the requirement for a consent statement under the new section 33A(4).

*These notes relate to the Air Weapons and Licensing (Scotland)
Act 2015 (asp 10) which received Royal Assent on 4 August 2015*

161. Subsection (4) inserts a new section 33A into the 2005 Act, which make further provision for the procedures to be followed for applications to transfer a premises licence. Subsection (2) of the new section 33A requires the Board to take all reasonable steps to notify the original premises licence holder of the application. It is envisaged that this would allow the original premises licence holder to flag up where the holder's consent had been faked, or the holder would otherwise not be in agreement with the transfer.
162. Where a notice of consent by the original premises licence holder has not been provided, subsection (4) of the new section 33A provides that the Board may dispense with the requirement if it is satisfied that the transferee has taken all reasonable steps to contact the original premises licence holder to obtain written consent, but has received no response. Where the Board decides not to dispense with the requirement for a letter of consent, subsection (5) of the new section 33A provides that it must notify the transferee and provide its reasons for that decision.
163. Subsection (6) of the new section 33A provides that where it has been decided to dispense with the requirement for a letter of consent, the Board must hold a hearing to determine the transfer application.
164. Subsection (7) of the new section 33A provides that, where an application is granted, the transfer is to take place on the date specified by the transferee, or where this date has passed, such date as the Board may determine.
165. [Section 49\(6\)](#) of the Act amends Part 1 of schedule 5 to the 2005 Act, on appeals to the sheriff principal, to reflect the new transfer procedure. The right of appeal against a refusal to grant a premises transfer application is amended by subsection (6)(b) to extend to either the applicant (transferee) or the premises licence holder. Subsection (6)(c) provides that the right of appeal against the granting of a premises licence transfer application is provided to the original holder of the premises licence. Subsection (6)(c) also provides that the right of appeal against the Board's refusal to dispense with the requirement for a consent statement, as per the new section 33A(4), is provided to the applicant (transferee) for a premises licence transfer.