

AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 2 – Alcohol Licensing

Miscellaneous

Section 54 – Meaning of “alcohol”: inclusion of angostura bitters

178. This provision amends section 2 of the 2005 Act to include angostura bitters within the definition of “alcohol”. Angostura bitters were exempt from Excise and were excluded from the 2005 Act definition of alcohol. However, they are now liable for Excise duty and have been brought into the definition of alcohol.

Section 55 – Overprovision

179. *Section 55* amends section 7 of the 2005 Act which deals with the duty of Licensing Boards to assess overprovision, and provides that where a Board determines the “localities” for the purposes of the Act then it may determine that the whole of the Board’s area is a single locality.
180. *Section 7* is further amended so that the Licensing Board may have regard to such matters as the Board considers appropriate, including the licensed hours of licensed premises in the locality, when assessing if there is overprovision.
181. Amendments are also made to allow these wider factors to be taken into account at:
- section 23(5)(e) of the 2005 Act (refusal of a premises licence on grounds of overprovision), and
 - section 30(5)(d) of the 2005 Act (refusal to vary premises licence on grounds of overprovision).
182. These amendments remove specific reference to numbers and capacity when considering whether there would be overprovision as a ground for refusal, when a Board is determining a premises licence application or an application for a premises licence variation.
183. Removing these references means that Licensing Boards can refuse an application if they consider that there would be overprovision if the application was granted. Their consideration of overprovision would not be confined to considering only numbers and capacity but could take account of other factors too.

Section 56 – Duties of Licensing Boards to produce annual reports

184. This provision inserts sections 9A and 9B into the 2005 Act, requiring Licensing Boards to produce an annual report on the exercise of their functions, summary of decisions

made by the Board and information about the number of licences held under the Act.; and an annual financial report on their alcohol licensing activities.

185. Section 9A(1), (2) place a duty on Licensing Boards to prepare and publish an annual report on the exercise of their functions no later than three months after the end of the financial year. This report should contain a statement explaining how the Board has had regard to the licensing objectives, their licensing policy statement, and any supplementary licensing policy statement in the exercise of their functions under the 2005 Act during the financial year.
186. Section 9A(3) provides that a report under this section may include such other information about the exercise of the Licensing Board's functions under the 2005 Act as the Board consider appropriate.
187. Section 9A(4) provides that at the request of the Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section.
188. Section 9A(5) provides that a Licensing Board may, if they consider it appropriate, prepare and publish a combined report containing the information required under section 9A and also section 9B (Annual financial report). A combined report must be published not later than 3 months after the end of the financial year in question.
189. Section 9A(6) gives the Scottish Ministers an order making power to make further provision about reports under this section, including provision about the form and content of reports; and the publication of reports.
190. Section 9B(1), (2) and (3) place a duty on Licensing Boards to prepare and publish an annual financial report no later than three months after the end of the financial year. It should contain details of relevant income received by the Licensing Board during the financial year; details of relevant expenditure incurred in respect of the Board's area during the year; and an explanation of how the amounts in the report were calculated. The Board is required to break down its figures into the component sources of relevant income and expenditure. Relevant income for example would be premises licence application fees, personal licence fees or fees charged in respect of an application to vary a premises licence and relevant expenditure would for example be the salary cost of a Licensing Standards Officer in respect of his duties under the alcohol licensing regime or the costs for the Board in administering the alcohol licensing regime
191. Section 9B(4) provides that at the request of the Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section. Subsection (5) gives the Scottish Ministers an order making power to make further provision about reports under this section, including provision about the form and content of reports; further details on what constitutes relevant income and relevant expenditure; and the publication of reports.

Section 57 – Licensing Standards Officers: general function in relation to personal licences

192. **Section 57** amends section 14(1) of the 2005 Act which deals with general functions of Licensing Standards Officers. This provision makes it clear that Licensing Standards Officers have a new general function of being able to provide information to Licensing Boards about the conduct of personal licence holders or applicants for a personal licence which is inconsistent with the licensing objectives.

Section 58 – Powers of Licensing Standards Officers

193. **Section 58** inserts section 84B into the 2005 Act to provide Licensing Standards Officers with a specific power to report conduct of a personal licence holder, who is or

was working in licensed premises in their area, which is inconsistent with the licensing objectives, to the relevant Licensing Board.

194. Where a Licensing Board receives such a report from a Licensing Standards Officer the Board may hold a hearing, but is under no obligation to do so.

Section 59 – Interested parties

195. This provision amends section 40A of the 2005 Act (connected persons and interested parties: licence holder's duty to notify changes,) to remove the references to interested parties, including within the section title. It also removes a requirement to notify changes of interested parties. The licence holder now only requires to provide notification in respect of connected persons.
196. It also amends the definition of an interested party at section 147(5) of the 2005 Act by permitting that a premises manager can be an interested party. This has the effect of allowing the premises manager to be subject to vicarious liability for offences under s141B.

Section 60 – Personal licences: grant, duration and renewal

197. This provision amends section 74 of the 2005 Act regarding the determination of a personal licence application. Section 74(3) provides conditions which must be met before an application can be granted. This provision amends section 74(3)(c) which currently states a personal licence cannot be granted if one has been revoked in the last five years. This provision amends section 74(3)(c) to provide that the provision is not applicable to persons who have had a personal licence revoked under section 87(3) of the 2005 Act. Accordingly, if a personal licence is revoked under section 87(3) the person will no longer have to wait for five years to elapse before applying for a new personal licence.
198. This provision also amends section 77(8) of the 2005 Act to increase the length of time prior to the expiry date of a personal licence that the relevant Licensing Board must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed. The period of time is increased to nine months before the expiry date of a personal licence.
199. The provision amends section 78 of the 2005 Act to increase the length of the time period in which a personal licence holder may apply to the relevant Licensing Board for renewal of the licence, as well as to increase the length of the period provided for the Licensing Board's consideration of this application. The period of time to submit an application under section 78(1) is now within the nine months period beginning 12 months before the expiry date of the licence.
200. The provision also amends Section 78(5) of the 2005 Act to remove the requirement that an applicant for renewal of a personal licence must not already hold a personal licence.
201. Finally section 84A of the 2005 Act is amended to provide that if a Chief Constable reports conduct inconsistent with the licensing objectives to the relevant Licensing Board, the whole of section 84(8) now applies in relation to an order made under subsection (2) of this section as opposed to only section 84(8)(a). This means that the Board making the order must now notify the order to the licence holder, the Board who gave the original notice and the Board who issued the licence, if these are different Boards.

Section 61 – Processing and deemed grant of applications

202. **Section 61** inserts a requirement for Licensing Boards to issue an acknowledgement for relevant applications, where the application meets the requirements. The requirements for an application form are those imposed under the 2005 Act or any other relevant enactment in respect of the type of application.

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

203. The acknowledgement must amongst other things inform the applicant of the timescale within which the application must be decided. The acknowledgement must be issued as soon as is practicable.
204. Where an application does not meet the requirements, the Licensing Board must give notice to the applicant that they are treating the application as incomplete and as not having been made, along with their reasons.
205. A Licensing Board must determine accepted applications within nine months of the date of receipt, as recorded in the letter of acknowledgement. This period of nine months can be extended, once, by applying to the sheriff. The sheriff may extend the period for determining the application only if it appears to the sheriff that there is a good reason for doing so. The applicant is entitled to be a party to proceedings to consider such an extension. It is not intended that Boards should needlessly delay consideration because of this time limit.
206. The Licensing Board is not required to issue an acknowledgement where it would clearly not be appropriate to do so, however this would not alter the requirement to determine an application within nine months unless an extension has been granted by the sheriff. A Board may for example decide to grant a minor variation under subsection 30(2) of the 2005 Act without first issuing an acknowledgement.
207. If the Licensing Board fails to determine the application in this period then the licence will be deemed to have been granted and the Licensing Board must issue the licence to the applicant as soon as practicable. The Licensing Board must apply the relevant mandatory conditions, under schedule 3, or 4, including, where applicable, the Late Opening Premises Conditions, as set out in The Licensing Conditions (Late Opening Premises)(Scotland) Regulations 2007, but at time of issue, may not apply pool conditions or local conditions to a licence granted in this way.

Section 62 – Form etc. of communications under the 2005 Act

208. **Section 62** expands the order making power provided at section 134 of the 2005 Act in relation to the form etc. of applications, proposals and notices to also include other communications. This means, for example, that the Scottish Ministers may make regulations expressly facilitating the use of email or other internet based systems for any type of application, notice, proposal or communication required under the 2005 Act.