

LICENSING (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 7 – Control of Order

Section 94 – Exclusion orders

193. The Licensed Premises (Exclusion of Certain Persons) Act 1980 provides for the criminal courts to make an exclusion order against a person found guilty of an offence committed on licensed premises (other than an off-licence). This section replaces the 1980 Act which is repealed in its entirety by the Act.
194. This section applies where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises (other than premises which have only an occasional licence). It also introduces a new civil procedure for a premises licence holder to apply through the civil courts for an exclusion order.
195. Subsection (2) provides a power for the criminal court, when convicting the person of the violent offence, to make an exclusion order against the person.
196. Further to the powers provided for criminal courts in subsection (2), subsection (3) provides an additional power under which the holder of the premises licence for the premises concerned may, by summary application to the sheriff made within 6 weeks of the conviction, seek an exclusion order against the person. Subsections (4) and (5) set out the conditions that must be considered by the sheriff and if he is satisfied that they are met then he may grant the exclusion order.
197. An exclusion order prohibits the person convicted from entering the licensed premises concerned without the consent of the premises licence holder or someone authorised by the licence holder to give consent. An exclusion order made by the criminal courts can also exclude the person from other licensed premises.
198. Subsection (7) provides that an exclusion order may have effect for a maximum of 2 years.

Section 95 – Breach of exclusion order

199. This section makes it an offence for a person subject to an exclusion order to breach that order and sets out in subsection (2) what sanctions may be taken against them.
200. Subsection (3) provides a discretionary power for the court to vary or terminate the exclusion order.
201. Subsections (4) and (5) provide a power for an authorised person (defined in subsection (6)), or a constable to remove the person breaching the exclusion order from the licensed premises.

Section 96 – Exclusion orders: supplementary provision

202. This section provides that an exclusion order may still be made where an absolute discharge is given under section 246(3) of the Criminal Procedure (Scotland) Act 1995.
203. Subsection (3) places a duty on the clerk of the court or the sheriff clerk to send a copy of the exclusion order to the premises licence holder.

Section 97 – Closure orders

204. Subsection (1) provides a power for Licensing Boards, on application from a senior police officer, by order to close any licensed premises if disorder is imminent and closure is necessary for public safety.
205. Subsection (2) provides a power for a senior police officer to make an order to authorise immediate closure of licensed premises under the same conditions but only if the risk to public safety is such that immediate closure is necessary. An order made by senior police officer is referred to as an “emergency closure order” and has effect for no more than 24 hours.

Section 98 – Termination of closure orders

206. This section places a duty on the appropriate senior police office to terminate any closure order (including emergency closure orders) where it is no longer necessary for public safety. The premises licence holder can also apply to the Licensing Board for termination of a closure order.

Section 99 – Extension of emergency closure order

207. This section provides a power for a senior police officer to extend the duration of an emergency exclusion order if the conditions set out in subsection (2) are met.
208. Subsection (3) provides that extensions to closure orders made under this section cannot come into force unless the appropriate constable has notified a responsible person in relation to the premises.

Section 100 – Regulations as to closure orders

209. This section gives the Scottish Ministers a power by regulation to make further provision as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders.