



# Licensing (Scotland) Act 2005

## 2005 asp 16

### PART 9

#### MISCELLANEOUS AND GENERAL

##### *Excluded and exempt premises*

#### **123 Excluded premises**

- (1) No premises licence or occasional licence has effect to authorise the sale of alcohol on excluded premises.
- (2) For the purposes of this Act, “excluded premises” means—
  - (a) premises on land—
    - (i) acquired or appropriated by a special roads authority, and
    - (ii) for the time being used,  
for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class 1 (with or without other classes),  
and
  - (b) subject to subsection (5), premises used as a garage or which form part of premises which are so used.
- (3) For the purposes of subsection (2)(a)—
  - (a) “special road” and “special roads authority” have the same meanings as in the Roads (Scotland) Act 1984 (c. 54), and
  - (b) “class 1” means class 1 in Schedule 3 to that Act, as varied from time to time by an order under section 8 of that Act, but, if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in this section to traffic of class 1 so as to take account of the additional class.
- (4) For the purposes of subsection (2)(b), premises are used as a garage if they are used for one or more of the following—
  - (a) the sale by retail of petrol or derv,
  - (b) the sale of motor vehicles, or

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- (c) the maintenance of motor vehicles.
- (5) Despite subsection (2)(b), premises used for the sale by retail of petrol or derv or which form part of premises so used are not excluded premises if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of—
  - (a) petrol or derv, or
  - (b) groceries (where the premises are, or are to be, used also for the sale by retail of groceries).
- (6) The Scottish Ministers may by order amend the definition of “excluded premises” in subsection (2) so as to include or exclude premises of such description as may be specified in the order.

## 124 Exempt premises

- (1) Each of the following are exempt premises for the purposes of this Act—
  - (a) an examination station at an airport designated for the purposes of this section in an order made by the Scottish Ministers,
  - (b) an approved wharf at a port or hoverport so designated,
  - (c) an aircraft, a hovercraft or a railway vehicle while engaged on a journey,
  - (d) a vessel while engaged on—
    - (i) an international journey, or
    - (ii) a journey (other than an international journey) forming part of a ferry service, and
  - (e) premises which are occupied (whether indefinitely or temporarily) for the purposes of the armed forces of the Crown, except while being used for other purposes.
- (2) The Scottish Ministers may make an order under subsection (1) designating an airport, port or hoverport for the purposes of this section only if it appears to them to be one at which there is a substantial amount of international passenger traffic.
- (3) For the purpose of subsection (1), the period during which an aircraft, hovercraft, railway vehicle or vessel is engaged in a journey includes—
  - (a) any period ending with its departure when preparations are being made for the journey, and
  - (b) any period after its arrival at its destination when it continues to be occupied by those (or any of those) who made the journey (or any part of it).
- (4) In this section—
  - “approved wharf” has the meaning given in section 20A of the Customs and Excise Management Act 1979 (c. 2),
  - “examination station” has the meaning given in section 22A of that Act,
  - “ferry service” means a service the principal purpose of which is the transport of passengers or goods over water,
  - “international journey” means a journey with—
    - (a) a point of departure,
    - (b) a destination, or
    - (c) at least one port of call,
 outside the United Kingdom, and includes any part of such a journey.

*Special provision for certain clubs*

**125 Special provisions for certain clubs**

- (1) The provisions of this Act mentioned in subsection (2) do not apply in relation to premises which are used wholly or mainly for the purposes of any club of such description as may be prescribed.
- (2) Those provisions are—
  - (a) section 7 (assessments of overprovision),
  - (b) section 20(4)(g) (requirement for operating plan to contain information as to the premises manager),
  - (c) section 23(5)(e) (ground of refusal of premises licence application relating to overprovision),
  - (d) section 26(2)(a)(ii) (requirement for name and address of premises manager to be specified in premises licence),
  - (e) section 30(5)(d) (ground of refusal of premises licence variation application relating to overprovision),
  - (f) in schedule 3—
    - (i) paragraph 4 (requirement for there to be a premises manager for licensed premises), and
    - (ii) paragraph 5 (requirement for sales of alcohol under premises licence to be authorised by a personal licence holder), and
  - (g) in schedule 4, paragraph 4 (requirement for sales of alcohol under certain occasional licences to be authorised by a personal licence holder).
- (3) Different descriptions of clubs may be prescribed under subsection (1) in relation to different provisions specified in subsection (2).
- (4) The Scottish Ministers may by regulations provide for this Act to apply in relation to—
  - (a) clubs of such descriptions as may be prescribed in the regulations, or
  - (b) premises used wholly or mainly for the purposes of such clubs,subject to such further modifications as may be so prescribed.
- (5) Regulations under subsection (1) or (4) may prescribe a description of club by reference to—
  - (a) requirements as to the constitution of the club, including, in particular, requirements as to—
    - (i) membership of the club, and
    - (ii) the rules of the club, and
  - (b) such other factors as the Scottish Ministers consider appropriate.

*Vessels, vehicles and moveable structures*

**126 Vessels, vehicles and moveable structures**

- (1) A vessel which is not permanently moored or berthed is to be treated for the purposes of this Act as premises situated in the place where it is usually moored or berthed.
- (2) Where a vehicle or moveable structure which is not permanently situated in any place is, or is to be, used for the sale of alcohol while parked at or set in any place—

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- (a) it is to be treated for the purposes of this Act as premises situated at that place, and
  - (b) each such place at which it is, or is to be, so used is to be treated as separate premises.
- (3) The following provisions of Part 3 (which relate to the provision of certificates as to planning, building standards and food hygiene and to notifications of applications) do not apply in relation to premises (other than exempt premises) consisting of a vessel, namely—
- (a) section 20(2)(b)(iii),
  - (b) section 21(1)(a) and (e),
  - (c) section 29(4) (so far as it applies section 21(1)(a) and (e)),
  - (d) section 45(10)(a),
  - (e) section 46(2)(d), and
  - (f) section 50.
- (4) This Act applies in relation to premises consisting of a vehicle or other moveable structure which is, or is to be, used for the sale of alcohol while not parked or permanently situated in any place (referred to in this section as “moving premises”) subject to the modifications in subsections (5) to (9).
- (5) Section 18 does not apply and instead, in Part 3 and this section, “appropriate Licensing Board” means in relation to moving premises or a premises licence or occasional licence issued in respect of such premises—
- (a) the Licensing Board in whose area the premises are used or to be used for the sale of alcohol, or
  - (b) where the premises are used or to be used in the area of more than one Licensing Board—
    - (i) the Board in whose area they are used or to be used to the greater or greatest extent, or
    - (ii) if neither or none of those Boards falls within sub-paragraph (i), such of those Boards as is, in the application for a premises licence or, as the case may be, occasional licence in respect of the premises, nominated as the appropriate Licensing Board in respect of the premises.
- (6) The following provisions of Part 3 do not apply in relation to moving premises, namely—
- (a) section 20(2)(b)(iii),
  - (b) section 21(1)(a), (b), and (e),
  - (c) section 29(4) (so far as it applies section 21(1)(a), (b) and (e)),
  - (d) section 45(10)(a),
  - (e) section 46(2)(d), and
  - (f) section 50.
- (7) Section 21(1) applies in relation to moving premises as if for paragraph (c) there were substituted—
- “(c) the relevant council,”.
- (8) References to the locality in which premises are situated are, in relation to moving premises, to be taken as references to the area of the appropriate Licensing Board.

- (9) For the purposes of Part 4, moving premises are to be treated as premises situated within the area of the appropriate Licensing Board.
- (10) The Scottish Ministers may by regulations provide for this Act to apply in relation to vessels, vehicles and moveable structures subject to such further modifications as they consider necessary or expedient.

## **127 Power to prohibit sale of alcohol on trains**

- (1) A sheriff may—
  - (a) on the application of a senior police officer, and
  - (b) if satisfied that it is necessary to do so to prevent disorder,make an order under subsection (2).
- (2) That is an order prohibiting, during such period as may be specified in the order, the sale of alcohol on any railway vehicle—
  - (a) at such station or stations within the sheriff’s sheriffdom as may be so specified, or
  - (b) whilst travelling between such stations as may be so specified, at least one of which is in that sheriffdom.
- (3) An order under subsection (2) has no effect in relation to any railway vehicle unless a copy of it has been given by a senior police officer to the train operator (or each train operator) responsible for the vehicle.
- (4) A person who knowingly—
  - (a) sells or attempts to sell alcohol in breach of an order under subsection (2), or
  - (b) allows the sale of alcohol in breach of such an order,commits an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to—
  - (a) a fine not exceeding £20,000,
  - (b) imprisonment for a term not exceeding 3 months, or
  - (c) both.
- (6) In this section—
  - “station” has the meaning given in section 83 of the Railways Act 1993, and
  - “train operator” means a person authorised by a licence under section 8 of that Act to operate railway assets (within the meaning of section 6 of that Act).

## **128 Power to prohibit sale of alcohol on ferries**

- (1) This section applies to any vessel which is exempt premises by virtue of section 124(1)(d)(ii) (vessels engaged in ferry services).
- (2) A sheriff may—
  - (a) on the application of a senior police officer, and
  - (b) if satisfied that it is necessary to do so to prevent disorder,make an order under subsection (3).

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- (3) That is an order prohibiting, during such period as may be specified, the sale of alcohol on any vessel to which this section applies while engaged on—
- (a) any journey to or from a specified place within the sheriff’s sheriffdom, or
  - (b) a specified journey to or from such a place.
- (4) An order under subsection (3) has no effect in relation to any vessel unless a copy of it has been given by a senior police officer to the operator of the vessel.
- (5) A person who knowingly—
- (a) sells or attempts to sell alcohol in breach of an order under subsection (3), or
  - (b) allows the sale of alcohol in breach of such an order,
- commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to—
- (a) a fine not exceeding £20,000,
  - (b) imprisonment for a term not exceeding 3 months, or
  - (c) both.
- (7) Subsection (3) of section 124, so far as applying to a vessel, applies for the purposes of subsection (3) of this section as it applies for the purpose of subsection (1) of that section.
- (8) In this section, “specified” means, in relation to an order under subsection (3), specified in the order.

*Relevant and foreign offences*

**129 Relevant offences and foreign offences**

- (1) In this Act, “relevant offence” means—
- (a) such offence, or
  - (b) an offence of such description,
- as may be prescribed.
- (2) In this Act, “foreign offence” means any offence—
- (a) under the law of any place other than Scotland, and
  - (b) which is similar in nature to any relevant offence.
- (3) Regulations under subsection (1) may provide, in relation to any offence or description of offence prescribed in them, that a person is to be treated, for the purposes of such provisions of this Act as may be specified in the regulations, as having been convicted of the offence only if the person—
- (a) accumulates such number of separate convictions for the offence, or
  - (b) is convicted of committing the offence on such number of separate occasions,
- as may be so specified.
- (4) For the purposes of this Act, a conviction for a relevant offence or a foreign offence is to be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974 (c. 53).

### **130 Effect of appeal against conviction for relevant or foreign offence**

- (1) The fact that any conviction of any person for a relevant offence or foreign offence is subject to appeal does not affect the taking of any action by a Licensing Board which the Board is entitled or required to take in connection with the conviction by virtue of any provision of this Act.
- (2) The Licensing Board may, however, postpone the taking of the action for such period as the Board considers appropriate pending the appeal.
- (3) Where the conviction is overturned on appeal—
  - (a) any action taken by the Licensing Board in reliance on the conviction is to be treated as having no effect, and
  - (b) accordingly, the Licensing Board must take such steps as are necessary to return any applicant or licence holder adversely affected by the action to the position the applicant or licence holder would have been in had the action not been taken.
- (4) A conviction is subject to appeal for the purposes of subsection (1) if—
  - (a) the period during which an appeal may be taken against the conviction has not yet expired, or
  - (b) an appeal is taken against the conviction and the appeal has not yet been determined.

### *Appeals*

### **131 Appeals**

- (1) A decision of a Licensing Board specified in the left-hand column of schedule 5 may be appealed by the person specified in the right-hand column of that schedule.
- (2) An appeal under this section is to be made by way of stated case, at the instance of the appellant, to—
  - (a) where the decision appealed is specified in Part 1 of schedule 5, the sheriff principal, or
  - (b) where the decision appealed is specified in Part 2 of that schedule, the sheriff, of the appropriate sheriffdom.
- (3) The grounds on which a Licensing Board's decision may be appealed under this section are—
  - (a) that, in reaching the decision, the Licensing Board—
    - (i) erred in law,
    - (ii) based their decision on an incorrect material fact,
    - (iii) acted contrary to natural justice, or
    - (iv) exercised their discretion in an unreasonable manner, or
  - (b) where the decision is to take any of the steps mentioned in subsection (4), that the step taken is disproportionate in all the circumstances.
- (4) Those steps are—
  - (a) at a review hearing in respect of a premise licence—
    - (i) issuing a written warning to the licence holder,
    - (ii) revoking or suspending the licence, or

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- (iii) making a variation of the licence, or
  - (b) making an order revoking, suspending or endorsing a personal licence.
- (5) Where the sheriff principal or, as the case may be, sheriff upholds an appeal against a Licensing Board's decision under this section, the sheriff principal or sheriff may—
  - (a) remit the case back to the Licensing Board for reconsideration of the decision,
  - (b) reverse the decision, or
  - (c) make, in substitution for the decision, such other decision as the sheriff principal or sheriff considers appropriate, being a decision of such nature as the Licensing Board could have made.
- (6) In this section, “the appropriate sheriffdom” means the sheriffdom in which the principal office of the Licensing Board whose decision is being appealed is situated.

### **132 Appeals: supplementary provision**

- (1) A Licensing Board whose decision is appealed under section 131 may be a party to the appeal.
- (2) In considering the appeal, the sheriff principal or, as the case may be, sheriff may hear evidence.
- (3) On determining the appeal, the sheriff principal or sheriff may make such ancillary order (including an order as to the expenses of the appeal) as the sheriff principal or sheriff thinks fit.
- (4) A sheriff principal may authorise, whether generally or specifically, any other sheriff of the sheriff principal's sheriffdom to consider and determine an appeal made to the sheriff principal under section 131(2)(a).
- (5) In this section and section 131, references to a sheriff principal include references to any sheriff authorised under subsection (4).
- (6) Any party to an appeal under section 131 may appeal to the Court of Session on a point of law against the sheriff principal's or sheriff's decision on the appeal.
- (7) A decision of a Licensing Board which is appealed under section 131 continues to have effect despite the appeal, subject to subsection (8).
- (8) Where an appeal is taken against a decision of a Licensing Board to suspend or revoke a premises licence, the sheriff principal may—
  - (a) on the application of the appellant, and
  - (b) if satisfied on the balance of convenience that it is appropriate to do so, recall the suspension or revocation pending determination of the appeal.
- (9) Further provision as to the procedure in any appeal under section 131, including in particular provision as to the times by which such an appeal is to be made or determined, may be prescribed by Act of Sederunt.



*Procedures, forms etc.*

**133 Hearings**

- (1) Where a Licensing Board is to hold a hearing under any provision of this Act, the hearing must be held at a meeting of the Board.
- (2) The Scottish Ministers may by regulations make provision as to the procedure to be followed at or in connection with any hearing to be held by a Licensing Board under this Act.
- (3) Regulations under subsection (2) may, in particular, make provision—
  - (a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,
  - (b) about the rules of evidence which are to apply for the purposes of the hearing,
  - (c) about the representation of any party at the hearing,
  - (d) as to the times by which any step in the procedure must be taken, and
  - (e) as to liability for expenses.

**134 Form etc. of applications, proposals, and notices**

- (1) The Scottish Ministers may by regulations prescribe—
  - (a) the form of any application, proposal or notice under this Act,
  - (b) the manner in which it is to be made or given,
  - (c) the time by which it is to be made or given,
  - (d) requirements as to the publicising of the making or giving of the application, proposal or notice,
  - (e) the information to be contained in it (in addition to any required to be contained in it by virtue of any other provision of this Act), and
  - (f) the documents which are to accompany it (in addition to any required to accompany it by virtue of any other provision this Act).
- (2) Regulations under subsection (1) may provide that any application, proposal or notice made or given under this Act may be treated as not made or given if any requirement prescribed in the regulations in relation to it is not complied with.

**135 Power to relieve failure to comply with rules and other requirements**

- (1) A Licensing Board may relieve any applicant or other party to proceedings before the Board of any failure to comply with any procedural provision if—
  - (a) the failure is due to mistake, oversight or other excusable cause, and
  - (b) the Board considers it appropriate in all the circumstance to relieve the failure.
- (2) Where a Board exercises the power under subsection (1), the Board may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.
- (3) In subsection (1), “procedural provision” means—
  - (a) any requirement of regulations under—
    - (i) section 133(2),
    - (ii) section 134(1), or

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- (iii) paragraph 12(4) of schedule 1,
- (b) any requirement of rules under paragraph 12(5) of that schedule, and
- (c) any other requirement imposed by virtue of this Act as respects the procedure to be followed in connection with applications made to, or other proceedings before, a Licensing Board.

### **136 Fees**

- (1) The Scottish Ministers may by regulations make provision for the charging of fees by Licensing Boards—
  - (a) in respect of applications under this Act, and
  - (b) otherwise in respect of the performance of functions by Licensing Boards, councils and Licensing Standards Officers under this Act.
- (2) Regulations under subsection (1) may, in particular—
  - (a) specify fees or provide for them to be determined by reference to such factors as may be specified in or determined under the regulations,
  - (b) provide for annual or other recurring fees,
  - (c) provide for the remission or repayment of fees in such circumstances as may be specified in or determined under the regulations.
- (3) Before making any regulations under subsection (1) (other than regulations consolidating other regulations), the Scottish Ministers must consult—
  - (a) such body or bodies as appear to them to be representative of the interests of—
    - (i) Licensing Boards,
    - (ii) councils, and
    - (iii) those likely to be affected by the regulations, and
  - (b) such other persons (if any) as they think appropriate.
- (4) Where regulations under subsection (1) provide for a fee to be charged in respect of any application made to a Licensing Board under this Act, the Board need not consider the application unless and until the fee is paid.
- (5) Any fee chargeable by a Licensing Board under any regulations made under subsection (1) is to be paid to the clerk of the Board.
- (6) The clerk of a Licensing Board must pay any sums received under subsection (5) to the relevant council.

### *Miscellaneous*

### **137 Inspection of premises before grant of licence etc.**

- (1) In this section, “relevant proposal or application” means—
  - (a) a premises licence application,
  - (b) a premises licence variation application,
  - (c) a premises licence review proposal or application,
  - (d) an application under section 47(2) for a temporary premises licence,
  - (e) an occasional licence application, or
  - (f) an extended hours application.

- (2) Any of the persons specified in subsection (3) may, at any reasonable time before the determination of a relevant proposal or application, enter the premises to which the proposal or application relates for the purposes of assessing—
  - (a) in the case of an application such as is mentioned in paragraph (a), (b), (d), (e) or (f) of subsection (1), the likely effect of the grant of the application on the licensing objectives, or
  - (b) in the case of a proposal or application such as is mentioned in paragraph (c) of that subsection, the effect which the selling of alcohol in accordance with the premises licence is having on those objectives.
- (3) The persons referred to in subsection (2) are—
  - (a) a constable, and
  - (b) a Licensing Standards Officer for the council area in which the premises are situated.
- (4) A person exercising the power conferred by subsection (2) may if necessary use reasonable force.
- (5) A person who intentionally obstructs a person exercising the power conferred by subsection (2) commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **138 Police powers of entry**

- (1) A constable may at any time enter and inspect any licensed premises.
- (2) A constable may—
  - (a) if the condition in subsection (3) is satisfied, and
  - (b) subject to subsection (4),at any time enter and inspect any premises (other than licensed premises) on which food or drink is sold for consumption on the premises.
- (3) The condition referred to in subsection (2)(a) is that the constable has reasonable grounds for believing that alcohol is being sold on the premises in breach of section 1(1).
- (4) A constable below the rank of inspector may exercise the power conferred by subsection (2) only—
  - (a) if the constable has obtained written authority to do so from a justice of the peace or a constable of or above the rank of inspector,
  - (b) within the period of 8 days beginning with the date on which such authority is obtained, and
  - (c) at such time or times as is specified in the authority.
- (5) A person who intentionally obstructs a constable exercising a power conferred by this section commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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### **139 Remote sales of alcohol**

- (1) This section applies where, in connection with any sale of alcohol, the premises from which the alcohol is despatched for delivery in pursuance of the sale is not the same as those where the order for the alcohol is taken.
- (2) Where the premises from which the alcohol is despatched are in Scotland, the sale of the alcohol is, for the purposes of this Act, to be treated as taking place on those premises.
- (3) The Scottish Ministers may by regulations make such provision as they consider appropriate for the purpose of regulating the taking of orders in Scotland for sales of alcohol in circumstances where—
  - (a) the premises from which the alcohol is despatched for delivery in pursuance of the sales are not in Scotland, but
  - (b) the place to which the alcohol is delivered is in Scotland.
- (4) Regulations under subsection (3) may, in particular—
  - (a) modify any provision of this Act,
  - (b) apply any such provision with modifications, or
  - (c) disapply any such provision.

### **140 Presumption as to liquid contents of containers**

- (1) This section applies for the purpose of any trial in proceedings for an alleged offence under any provision of this Act.
- (2) Where—
  - (a) liquid is found in a container (whether open or sealed), and
  - (b) there is on the container a description of the liquid contents of the container, the liquid found is to be presumed to be liquid of that description.
- (3) Where an open container is found which—
  - (a) contains—
    - (i) no liquid, or
    - (ii) an amount of liquid insufficient to allow analysis of it,
  - (b) was sealed at the time it was sold or supplied, and
  - (c) has on it a description of the liquid contents of the container, the container is to be presumed to have contained, at the time it was sold or supplied, liquid of that description.
- (4) At the trial, any party to the proceedings may rebut the presumption mentioned in subsection (2) or (3) by proving that, at the time of its sale or supply, the liquid in the container was not of the description on the container.
- (5) However, a party may lead evidence for the purpose of rebutting the presumption only if the party has, not less than 7 days before the date of the trial, given notice of the intention to do so to the other parties.

### **141 Offences by bodies corporate etc.**

- (1) Where—

- (a) an offence under this Act has been committed by—
  - (i) a body corporate,
  - (ii) a Scottish partnership, or
  - (iii) an unincorporated association other than a Scottish partnership, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant person, or
  - (ii) a person purporting to act in the capacity of a relevant person,

that person, as well as the body corporate, partnership or, as the case may be, unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) In subsection (1), “relevant person” means—
- (a) in relation to a body corporate other than a council, a director, manager, secretary, member or other similar officer of the body,
  - (b) in relation to a council, an officer or member of the council,
  - (c) in relation to a Scottish partnership, a partner, and
  - (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

### *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.

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- (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—

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

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

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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.

<i>Expression</i>	<i>Interpretation provision</i>
alcohol	section 2
alcoholic drink	section 147(1)
applicant	section 147(1)
appropriate chief constable	section 147(1)
area	section 147(1)
capacity (in relation to licensed premises)	section 147(1)
certified copy (of premises licence or summary)	section 55
child	section 147(1)
closure order	section 97(3)
community council	section 147(1)
connected person	section 147(3)
council	section 147(1)
crime prevention objective	section 4(2)



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<i>Expression</i>	<i>Interpretation provision</i>
emergency closure order	section 97(4)
excluded premises	section 123(2)
exclusion order	section 94(6)
exempt premises	section 124
expiry date (of a personal licence)	section 77(7)
extended hours application	section 68(3)
foreign offence	section 129(2)
layout plan	section 20(2)(b)(ii)
licensed hours	section 62(1)
licensed premises	section 147(1)
licensing objectives	section 4(1)
licensing policy statement	section 6(1)
licensing qualification	section 91(1)
licensing register	section 9(1)
liqueur confectionery	section 147(1)
locality	section 7(2)
operating plan	section 20(4)
occasional licence	section 56(1)
occasional licence application	section 56(4)
off-sales hours	section 62(2)(a)(ii)
on-sales hours	section 62(2)(a)(i)
personal licence	section 71
personal licence application	section 72(2)
personal licence renewal application	section 78(4)
premises	section 147(1)
premises licence	section 17
premises licence application	section 20(3)
premises licence review application	section 36(2)
premises licence review proposal	section 37(2)
premises licence variation application	section 29(3)
premises manager	section 19(1)
prescribed	section 147(1)
provisional premises licence	section 45(5)
provisional premises licence application	section 45(2)

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

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<i>Expression</i>	<i>Interpretation provision</i>
railway vehicle	section 147(1)
relevant council	section 147(1)
relevant offence	section 129(1)
review hearing	section 38(2)
sell (and related expressions)	section 147(1)
selling to trade	section 147(2)
senior police officer	section 147(1)
strength (of alcohol)	section 147(1)
subject premises	section 147(1)
supplementary licensing policy statement	section 6(2)
temporary premises licence	section 47(4)
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.