

ALCOHOL ETC. (SCOTLAND) ACT 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.
3. In these Notes “the 2005 Act” means the [Licensing \(Scotland\) Act 2005 \(asp 16\)](#).

COMMENTS ON SECTIONS

Section 1 – section: duration of amendments

4. This section has no practical effect as it makes provision for the expiry of amendments made by a section that is not contained in the Act.

Section 2 – Minimum price of packages containing more than one alcoholic product

5. [Section 2](#) makes provision in respect of the minimum price of a package containing two or more alcoholic products (for example, a case containing 12 bottles of wine, or a pack containing 6 cans of beer). The price of such packages must be equal to or greater than the sum of the prices at which each product is for sale. This provision only applies where each alcoholic product in the package is available for sale on the premises. This provision means the retailer cannot both sell an alcoholic product individually and offer a discount to the buyer for buying a package containing a multiple of alcoholic products which includes that product.
 - For example, if a bottle of wine is sold at £4, then a retailer would not be able to sell a package of 2 of those bottles for less than £8. If one bottle of wine is sold for £4 and another bottle of wine is sold for £4.50, a retailer would not be able to sell a package of one of each of those bottles for less than £8.50.
 - Similarly, a case of 24 x 440ml cans of beer may not be sold at a price less than the cost of buying 24 of those cans (provided that individual 440ml cans of that beer were available for sale on the premises).
6. Sub-paragraph (3) of inserted paragraph 6B provides that the packaging of the bottles or cans in a case does not make the bottle or can a different product. That is, the product is the bottle or can and its contents, not the case. This means that under sub-paragraph (1), a pre-packed package containing multiples of an alcoholic product is not a separate product but a package to which sub-paragraph (1) may apply.

7. The packaging of the alcohol with non-alcoholic products would not affect the rule. That is, in the above example, a non-alcoholic product could be packaged with the 2 bottles of wine or case of beer without the price having to be raised.
8. [Section 2\(3\)](#) makes the same provision in respect of occasional licences granted under the 2005 Act.

Section 3 – Off-sales: variation of pricing of alcoholic drinks

9. Paragraph 7 of schedule 3 to the 2005 Act imposes a condition in premises licences that prohibits the price for alcohol being varied before the expiry of 72 hours since the price of any alcohol sold on the premises was last varied. Section 3(2) and (3) amends this to provide that in respect of sales of alcohol for consumption off the premises, the 72 hour restriction on varying prices is only maintained in relation to the price of individual products. This means that in relation to off-sales of alcohol, retailers may vary the price of different products at different times provided that the price of each individual product is maintained for at least 72 hours and the price variation takes effect at the beginning of a period of licensed hours.
10. [Section 3\(4\)](#) and [\(5\)](#) makes the same provision in respect of occasional licences granted under the 2005 Act.

Section 4 – Off-sales: restriction on supply of alcoholic drinks free of charge or at reduced price

11. Paragraph 8 of schedule 3 to the 2005 Act imposes mandatory licence conditions prohibiting irresponsible drinks promotions.
12. [Paragraph 8\(2\)\(b\)](#) provides that one of the ways in which a drinks promotion can be irresponsible is if it “involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks).” [Paragraph 8\(2\)\(e\)](#) provides that a drinks promotion is irresponsible if it “encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume.” [Paragraph 8\(2\)\(b\)](#) applies to on-sales of alcohol only. [Paragraph 8\(2\)\(e\)](#) applies to both on-sales and off-sales of alcohol.
13. [Section 4\(2\)](#) extends the application of [paragraph 8\(2\)\(b\)](#) of schedule 3 to off-sales. This means that “quantity discount” and similar promotions would not be permitted for off-sales. Examples of such promotions include:
 - buy one, get one free
 - three for the price of two
 - five for the price of four, cheapest free
 - 3 bottles for £10 (where the total cost of buying the individual products is more than £10)
 - buy six, get 20% off.
14. [Section 4\(2\)](#) also disappplies the application of [paragraph 8\(2\)\(e\)](#) of schedule 3 in respect of off-sales of alcohol. This means that drinks promotions encouraging persons to buy or consume larger measures will only apply to on-sales of alcohol.
15. [Section 4\(3\)](#) makes the same provision in respect of occasional licences granted under the 2005 Act.

Section 5 – Off-sales: location of drinks promotions

16. Paragraph 13 of schedule 3 to the 2005 Act (inserted by the [Licensing \(Mandatory Conditions No. 2\) \(Scotland\) Regulations 2007 \(SSI 2007/546\)](#)) imposes a mandatory

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condition in premises licences restricting the display of alcohol that is for sale for consumption off the premises. Such alcohol can only be displayed in either or both of (1) a single area of the premises agreed between the Licensing Board and the holder of the licence and (2) a single area of the premises which is inaccessible to the public. These areas are known as “alcohol display areas”.

17. **Section 5(3)** inserts new sub-paragraphs into paragraph 13 of schedule 3 of the 2005 Act restricting the location of drinks promotions on the premises and prohibiting certain drinks promotions from taking place in the vicinity of the premises. These restrictions only apply to premises which, to the extent that they are used for the sale of alcohol, are used only or primarily for the sale of alcohol for consumption off the premises. A “drinks promotion” is only a promotion relating to the buying of alcohol for consumption off the premises. As amended, paragraph 13 provides that any drinks promotion undertaken in connection with the premises in respect of off-sales of alcohol on the premises may take place only in the alcohol display areas or in a tasting room. A drinks promotion in the vicinity of the premises will only be prohibited under paragraph 13 if it is “in connection with the premises”. This means that a licence-holder will not breach the licence condition if there is a drinks promotion in the vicinity of the premises that is not in connection with the premises. The “vicinity” means the area extending 200 metres from the boundary of the premises as shown on the layout plan.
18. **Section 5(4) and (5)** amends paragraph 13 to provide that the display of branded non-alcoholic products (products that bear a name or image of an alcoholic product such as football tops, slippers, tea towels etc.) which are not for sale may constitute a drinks promotion and, if so, may only be displayed in alcohol display areas or in a tasting room. Newspapers, magazines and other publications which are not for sale may only constitute a drinks promotion if they relate only or primarily to alcohol. If newspapers, magazines or other publications do constitute a drinks promotion then they may only be displayed in an alcohol display area or a tasting room. Where newspapers, magazines and other publications are for sale then they will not be drinks promotions and so may be displayed anywhere on the premises.

Section 6 – Requirement for age verification policy

19. **Section 6(2)** inserts a new paragraph 9A into schedule 3 to the 2005 Act to impose a further mandatory condition in premises licences. That condition is that there must be an age verification policy in relation to the sale of alcohol on the premises. Many premises already operate “Challenge 21” or “Think 25” policies (where a retailer will ask for age verification from a person who looks under 21 or 25 years of age respectively for the purposes of verifying that the person is at least 18 years of age). This section requires that all premises have an age verification policy with the age set at a minimum of 25. Under this provision, the retailer would still be able to operate an age verification policy that operates at a higher age, for example, 30. The condition does not apply to premises which are, for example, used only to despatch alcohol such as a warehouse used to service internet sales (section 139 of the 2005 Act makes provision in respect of remote sales of alcohol, for example internet sales).
20. **Section 6(3)** makes the same provision in respect of occasional licenses granted under the 2005 Act.

Sections 7 and 8 – Premises licences and occasional licences: modification of mandatory conditions

21. Sections 27(2) and 60(2) of the 2005 Act allow the Scottish Ministers to make regulations adding to or extending the application of the mandatory licence conditions for premises licences in schedule 3 and for occasional licences in schedule 4. Sections 7 and 8 amend these powers to also enable the Scottish Ministers to delete or amend conditions in schedules 3 and 4. In addition, section 8 provides that regulations under section 60(2) relating to mandatory conditions of occasional licences are now to be

subject to the affirmative resolution procedure (as is already the case for regulations under section 27(2) relating to mandatory conditions of premises licences).

Section 9 – Presumption against prohibition on off-sales to under 21s

22. Each Licensing Board is required by section 6 of the 2005 Act to publish a licensing policy statement which is a statement of the policy on how it will carry out its functions. Such a statement must be prepared every three years. A Licensing Board may also publish a supplementary licensing policy statement. Section 9 amends the 2005 Act to prevent Licensing Boards from stating in their licensing policy statement, or supplementary licensing policy statement, that they intend to restrict the sale of alcohol for consumption off the premises to those over 18 but under 21, whether in relation to some or all premises in its area. Section 9 does not prevent Licensing Boards from imposing licence conditions restricting off-sales of alcohol to people aged under 21 but prevents them from including such a policy in their licensing policy statement or supplementary licensing policy statement.

Section 10 – Premises licences: variation of conditions

23. A Licensing Board can only impose conditions in a premises licence when it grants the licence under section 27(6) of the 2005 Act or if it reviews a premises licence under sections 36 to 40 of the 2005 Act. In those circumstances it may only do so on a case by case basis. Section 10 inserts a new section 27A into the 2005 Act which will enable Licensing Boards to vary the conditions of premises licences in respect of all the premises in its area or vary a category or group of licences in respect of matters prescribed by the Scottish Ministers. Examples of the matters that could be prescribed include a requirement for shatter proof glasses in all premises of a particular description, CCTV in all premises in a particular town that sell alcohol for consumption off the premises, or a requirement for a specific number of door staff in city centre establishments. Section 27A(2) prevents Scottish Ministers from prescribing an age over 18 at which persons may purchase alcohol as a matter that a condition imposed under section 27A(1) could relate to. A Licensing Board will only be able to exercise the power in the new section 27A if the Board considers it necessary or expedient for the purposes of any of the licensing objectives (set out in section 4 of the 2005 Act). Licensing Boards will also be restricted to exercising this power in relation to matters to be prescribed in regulations. Such regulations will be subject to the affirmative resolution procedure.
24. Section 27A(6) requires a Licensing Board, before making a variation under section 27A, to publish a notice of any proposed variation in the manner prescribed in regulations made by the Scottish Ministers. The Licensing Board is required to give notice of the proposed variation to premises licence-holders whose licences the proposed variation would apply to and to certain other persons including the local authority, relevant health board and appropriate chief constable. Section 27A(7) requires these notices to state that any persons may make representations to the Licensing Board about the proposed variation and set out the date by which such representations must be made. Section 27A(8) requires that if a Licensing Board receives any representations, then it must hold a hearing in relation to the proposed variation.

Section 11 – Consultation etc. of health boards

25. Each Licensing Board is required by section 6 of the 2005 Act to publish a licensing policy statement which is a statement of the policy on how it will carry out its functions. Such a statement must be prepared every three years. A Licensing Board may choose to publish a supplementary licensing policy statement during the three year period that the licensing policy statement applies. In preparing a licensing policy statement or a supplementary licensing policy statement a Licensing Board must consult with various people.

26. **Section 11(2)** provides that in preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must consult the relevant health board. In addition, when preparing such a statement a Licensing Board may request certain statistical data or other information from the relevant health board and that health board is required to provide that information.
27. **Section 11(3)** amends section 7(4) of the 2005 Act to require a Licensing Board to consult the relevant health board when considering whether there is an overprovision of licensed premises or licensed premises of a particular description within its area. A Licensing Board is required to consider overprovision when preparing a statement on overprovision for inclusion in the Licensing Board's licensing policy statement.
28. **Section 11(4)** amends section 21(1) of the 2005 Act to require Licensing Boards to notify the relevant health board of all premises licence applications. By virtue of section 29(4) of the 2005 Act where an application for a major variation to a premises licence is received, a Licensing Board is required to notify the same people as it would be required to notify of a premises licence application, which will now include the relevant health board.
29. **Section 11(5)** amends section 147 of the 2005 Act to insert a definition of "relevant health board". This is defined as the health board for the Licensing Board's area or, if there is more than one health board for the Licensing Board's area, then each of those health boards.
30. **Section 11(7)** amends schedule 2 to the 2005 Act to require that at least one member of the Local Licensing Forum must be nominated by the health board for the Local Licensing Forum's area. If there is more than one health board in a Local Licensing Forum's area then at least one member of the Local Licensing Forum must be nominated by the health board which covers the larger or largest part of the Local Licensing Forum's area.

Section 12 – Chief constables' reports to Licensing Boards and Local Licensing Forums

31. This section inserts a new section 12A into the 2005 Act. Section 12A imposes a duty on every chief constable to send a report to the Licensing Boards in the chief constable's police area. This report should be sent to the Licensing Board as soon as practicable after the end of the financial year. The report should make comment on the policing issues relating to the 2005 Act in the previous year and the current year, and also set out any steps taken in the previous year, or to be taken in the current year, to prevent the sale or supply of alcohol to those under 18. The chief constable is also required to send a copy of the report sent to the Licensing Board to the Local Licensing Forum for that Board's area (section 12A(2)). Section 12A(3) requires the chief constable, or other constable nominated by the chief constable, to attend a meeting of the Licensing Board or the Local Licensing Forum to discuss the report if the Licensing Board or the Forum requests it.

Section 13 – Occasional licences: limits on numbers and duration of licences

32. Occasional licences are licences which authorise the sale of alcohol. An occasional licence may not exceed a period of 14 days. This section amends sections 56 and 59 of the 2005 Act by providing that Licensing Boards must not grant occasional licences where this would exceed the occasional licence limit. The occasional licence limit for a voluntary organisation will remain the limit already set out in section 56(6) of the 2005 Act. Scottish Ministers may make regulations setting out what is meant by the occasional licence limit in respect of cases other than voluntary organisations. Regulations prescribing the occasional licence limit may include limits on the number of occasional licences that may have effect in respect of the same applicant or the same premises in a 12 month period or may limit the number of continuous days on which

occasional licences may have effect in respect of the same premises. These regulations will be subject to the negative resolution procedure.

Sections 14 and 15 – Licence holders: social responsibility levy

33. **Section 14** gives the Scottish Ministers a power through regulations to impose a charge on certain holders of licences under the 2005 Act and the Civic Government (Scotland) Act 1982. Money raised by the charge will be for local authorities to use in contributing towards the costs of dealing with the adverse effects of the operation of these businesses on the licensing objectives listed in section 14(5), for example extra policing or street cleaning. The regulations may only impose a charge in respect of certain expenditure by local authorities. In determining this expenditure the local authority must consult with the relevant health board and the appropriate chief constable. Section 14(4) sets out matters that may be provided for in the regulations imposing a charge such as collection and enforcement of the charge and discounts and exemptions from the charge.
34. **Section 15(1)** makes further provision about the regulation-making power in section 14(1). Section 15(2) provides that regulations made under section 14(1) are subject to the affirmative resolution procedure. Section 15(3) requires the Scottish Ministers to consult with various persons and bodies prior to draft regulations made under section 14(1) being laid before Parliament. Section 15(4) to (6) sets out the procedure for the making of any regulations under section 14(1). This involves Scottish Ministers laying a copy of the proposed draft regulations before the Parliament, sending a copy to certain persons, allowing 60 days for responses to the regulations and consideration of what is in these responses. The draft regulations laid before the Scottish Parliament must be accompanied by an explanatory document explaining how the position was arrived at.

PARLIAMENTARY HISTORY

35. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings, the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports and other papers.

<i>Proceedings and Reports</i>	<i>Reference</i>
Introduction	
Bill as introduced, 25 November 2009	
SPICe Briefing (SB 10-13) on the Bill, as introduced, published 18 February 2010	
Stage 1	
(a) Health and Sport Committee	
5 th meeting, 10 February 2010	

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<i>Proceedings and Reports</i>	<i>Reference</i>
6 th meeting, 24 February 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-0602.htm#Col2728
7 th meeting, 3 March 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-0702.htm#Col2789
8 th meeting, 10 March 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-0802.htm#Col2851
9 th meeting, 17 March 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-0902.htm#Col2945
10 th meeting, 23 March 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-1002.htm#Col2991
11 th meeting, 24 March 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-1102.htm#Col3030
12 th meeting, 14 April 2010	Item in private
15 th meeting, 5 May 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-1502.htm#Col3085
16 th meeting, 12 May 2010	Item in private
17 th meeting, 18 May 2010	Item in private
18 th meeting, 19 May 2010	Item in private
<i>(b) Subordinate Legislation Committee</i>	
1 st meeting, 12 January 2010	
3 rd meeting, 26 January 2010	
<i>(c) Finance Committee</i>	
29 th meeting, 15 December 2009	http://www.scottish.parliament.uk/s3/committees/finance/or-09/fi09-2902.htm#Col1735
4 th meeting, 9 February 2010	http://www.scottish.parliament.uk/s3/committees/finance/or-10/fi10-0402.htm#Col1871
Stage 1 report (Health and Sport Committee) published on 27 May 2010 (5th Report)	
Subordinate Legislation Committee, 12th Report, 11 February 2010	
Finance Committee 25 March 2010 Report on the Financial Memorandum of the Alcohol etc. (Scotland) Bill	

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<i>Proceedings and Reports</i>	<i>Reference</i>
<i>(d) Consideration by Parliament</i>	
Stage 1 Debate, 10 June 2010	http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-10/sor0610-02.htm#Col27147#Col27147
After Stage 1	
<i>Subordinate Legislation Committee</i>	
20 th meeting, 15 June 2010	
Before Stage 2	
<i>Health and Sport Committee</i>	
24 th meeting, 14 September 2010	
25 th meeting, 15 September 2010	
Stage 2	
<i>Health and Sport Committee</i>	
26 th meeting, 22 September 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-2602.htm#Col3347
27 th meeting, 29 September 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-2702.htm#Col3469
28 th meeting, 5 October 2010	http://www.scottish.parliament.uk/s3/committees/hs/or-10/he10-2802.htm#Col3505
Bill as amended at Stage 2, 6 October 2010	
After Stage 2	
<i>Subordinate Legislation Committee</i>	
29 th meeting, 2 November 2010	Item in private

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<i>Proceedings and Reports</i>	<i>Reference</i>
Subordinate Legislation Committee, 56th Report, 5 November 2010	
SPICe Briefing (SB 10-75) on the Bill (Parliamentary Consideration prior to Stage 3) published 8 November 2010	
Stage 3	
<i>Consideration by Parliament</i>	
Stage 3 Debate, 10 November 2010	
Royal Assent 15 December 2010	Alcohol etc. (Scotland) Act 2010 (asp 18)