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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2009 No.**

**LICENSING (LIQUOR)**

**The Licensing (Scotland) Act 2005 (Consequential Provisions)  
Order 2009**

*Made* - - - - - 2009

*Coming into force* - - - 5.00 a.m. on 1st September 2009

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 145 and 146(2) and (3) of the Licensing (Scotland) Act 2005<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 146(5) of the Licensing (Scotland) Act 2005, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation, commencement and application**

1.—(1) This Order may be cited as the Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 and comes into force at 5.00 a.m. on 1st September 2009.

(2) Paragraphs 10 and 11 of Schedule 1 apply to offences committed at or after 5.00 a.m. on 1st September 2009.

**Consequential amendments and repeals of enactments**

2.—(1) The enactments listed in Schedule 1 are amended as there specified.

(2) The enactments listed in Schedule 2 are repealed to the extent there specified.

(3) The enactments listed in Schedule 3 are revoked to the extent there specified.

**Modification of relevant byelaws**

3.—(1) The relevant byelaws shall continue to have effect subject to the following amendments:—

(a) references to “alcoholic liquor” shall be read as references to “alcohol” within the meaning given by section 2 (meaning of alcohol) of the Licensing (Scotland) Act 2005;

(b) references to “licensed premises” shall have the same meaning as in section 147(1) (interpretation) of that Act but does not include premises in respect of which there is a provisional premises licence (within the meaning of section 45(5) (provisional premises licence) of that Act);

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(a) 2005 asp 16.

- (c) references to “occasional licence” shall have the same meaning as in section 56(1) (occasional licence) of that Act; and
- (d) references to “licensed canteen”, “registered club” and “occasional permission” shall cease to have effect.

(2) In this article “relevant byelaw” means a byelaw made under sections 201 (byelaws for good rule and government) and 203 (offences against byelaws) of the Local Government (Scotland) Act 1973<sup>(a)</sup> that–

- (a) is in force immediately prior to 5.00 a.m. on 1st September 2009; and
- (b) relates to the consumption of alcoholic liquor in a public place.

A member of the Scottish Executive

St Andrews House,  
Edinburgh

2009

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<sup>(a)</sup> 1973 c.65. Section 201 was amended by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 92(61). Section 203 was amended by sections 289C, 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (c.21).

## PART 1

## Amendment of Public General Acts

*The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951*

1.—(1) The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(a), is amended in accordance with this paragraph.

(2) In subsection (2)(a) of section 14(b) (period of residence protection) for “in” where it first occurs to the end of paragraph (a) substitute “which, by virtue of a premises licence issued under the Licensing (Scotland) Act 2005, are licensed for the sale of alcohol (within the meaning of section 2 of that Act) for consumption on the premises”.

(3) In subsection (3)(a) of section 18(c) (protection of tenure) for “in” where it second occurs to “thereon” substitute “which, by virtue of a premises licence issued under the Licensing (Scotland) Act 2005, are licensed for the sale of alcohol (within the meaning of section 2 of that Act) for consumption on the premises”.

(4) In subsection (6)(a)(ii) of section 38 (application by service man for renewal of tenancy of business premises) for “licensed for the sale of excisable liquor” substitute “which, by virtue of a premises licence granted under the Licensing (Scotland) Act 2005, are licensed for the sale of alcohol (within the meaning of section 2 of that Act)”.

*The Race Relations Act 1976*

2. In the Race Relations Act 1976(d), in Schedule 1A (bodies and other persons subject to general statutory duty)(e) for paragraph 26 substitute—

“26. A licensing board continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005.”.

*The Local Government and Planning (Scotland) Act 1982*

3. In the Local Government and Planning (Scotland) Act 1982(f) in subsection (1)(a)(iii) of section 27 (islands or district council’s functions in relation to the provision of a market) for “alcoholic liquor” substitute “alcohol, within the meaning given by section 2 of the Licensing (Scotland) Act 2005”.

*The Rent (Scotland) Act 1984*

4. In the Rent (Scotland) Act 1984(g) in subsection (1) of section 10 (premises with business use), for “licensed for the sale of excisable liquor for consumption on the premises” substitute “which, by virtue of a premises licence issued under the Licensing (Scotland) Act 2005, are

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(a) 1951 c.65.

(b) Section 14(2) was amended by paragraph 22 of Schedule 6 to the Licensing Act 2003 (c.17).

(c) Section 18 was amended by paragraph 23 of Schedule 6 to the Licensing Act 2003 (c.17).

(d) 1976 c.74.

(e) Schedule 1A was inserted by section 2(2) of, and Schedule 1 to, the Race Relations (Amendment) Act 2000 (c.34).

(f) 1982 c.43.

(g) 1984 c.58.

licensed for the sale of alcohol (within the meaning of section 2 of that Act) for consumption on the premises”.

*The Criminal Law (Consolidation) (Scotland) Act 1995*

5.—(1) The Criminal Law (Consolidation) (Scotland) Act 1995(a), is amended in accordance with this paragraph.

(2) In subsection (1) of section 19 (alcohol on vehicles) for “railway passenger vehicle” substitute “railway vehicle”.

(3) In section 23—

(a) for the definition of “alcohol” substitute ““alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005;”;

(b) for the definition of “railway passenger vehicle” substitute—

““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);”.

*The Criminal Procedure (Scotland) Act 1995*

6. In the Criminal Procedure (Scotland) Act 1995(b) in Schedule 9 (certificates as to proof of certain routine matters) at the end insert—

<p>“ The Licensing (Scotland) Act 2005 (asp 16).</p>	<p>A person authorised to do so by the Scottish Ministers.</p>	<p>In relation to a person identified in the certificate, that on a date specified in that certificate that person held, or as the case may be did not hold, a licence issued under that Act.</p> <p>In relation to a premises licence or occasional licence issued under that Act and held by a person identified in the certificate, the conditions to which that licence is subject.</p>
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*The Employment Rights Act 1996*

7. In the Employment Rights Act 1996(c), in subsection (7) of section 232 (shop workers)(d)—

(a) in sub-paragraph (a) omit “(in Scotland, alcoholic liquor);”;

(b) for “and “alcoholic liquor” has the same meaning as in the Licensing (Scotland) Act 1976” substitute “except that in Scotland “alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005”.

(a) 1995 c.39.

(b) 1995 c.46.

(c) 1996 c.18.

(d) Section 232(7) was amended by section 1 of the Sunday Working (Scotland) Act 2003 (c.18) and by Schedule 6 to the Licensing Act 2003 (c.17).

*The Private Security Industry Act 2001*

**8.**—(1) In the Private Security Industry Act 2001(**a**), paragraph 8 of Schedule 2 (activities subject to additional controls)(**b**) is amended in accordance with this paragraph.

(2) For sub-paragraph (1BA) substitute—

“(1BA) This paragraph applies to activities carried out in relation to premises referred to in sub-paragraph (2)(f) only if they are carried out at or in relation to times when alcohol (within the meaning given by section 2 of the Licensing (Scotland) Act 2005) is being sold or supplied (in terms of section 3 of the Licensing (Scotland) Act 2005) for consumption on the premises.”.

(3) For sub-paragraph (2)(f) substitute—

“(f) any premises within the meaning given to “licensed premises” in section 147(1) of the Licensing (Scotland) Act 2005;”.

(4) In sub-paragraph (3)—

(a) at the end of paragraph (cb) omit “or”;

(b) after paragraph (cb) insert—

“(cc) if the premises are premises to which section 125(1) of the Licensing (Scotland) Act 2005 applies; or”.

*The Housing (Scotland) Act 2001*

**9.** In the Housing (Scotland) Act 2001(**c**) in paragraph 8 of schedule 1 (tenancies which are not Scottish Secure Tenancies) for “excisable liquor” substitute “alcohol (within the meaning of section 2 of the Licensing (Scotland) Act 2005)”.

*The Antisocial Behaviour etc. (Scotland) Act 2004*

**10.** In the Antisocial Behaviour etc. (Scotland) Act 2004(**d**), in section 128 (fixed penalty offences) in Part 1 of the Table for the first two entries substitute—

“

<i>Enactment</i>	<i>Description of offence</i>
Section 115 of the Licensing (Scotland) Act 2005 (asp 16)	Disorderly conduct while drunk in licensed premises and other relevant premises
Section 116 of the Licensing (Scotland) Act 2005 (asp 16)	Refusing to leave licensed and other relevant premises on being requested to do so

”.

*The Breastfeeding etc. (Scotland) Act 2005*

**11.** In the Breastfeeding etc. (Scotland) Act 2005(**e**), in section 1(4) (Offence of preventing or stopping a child from being fed milk) for paragraph (b) of the definition of “licensed premises” substitute—

“(b) the Licensing (Scotland) Act 2005 (asp 16);”.

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(a) 2001 c.12.

(b) Paragraph 8 was amended by paragraph 14(d) of Schedule 15 to the Serious Organised Crime and Police Act 2005 (c.15), S.I. 2006/1831 and S.I. 2007/2201.

(c) 2001 asp 10.

(d) 2004 asp 8.

(e) 2005 asp 1.

*The Gambling Act 2005*

12.—(1) The Gambling Act 2005(a) is amended in accordance with this paragraph.

(2) In subsection (1)(c) of section 2 (licensing authorities) for “constituted under section 1 of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 16)”.

(3) In subsection (6)(c) of section 25 (guidance to local authorities) for “constituted under section 1 of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 16)”.

(4) In section 155 (delegation of functions under Part 8: Scotland)—

(a) for subsection (1) substitute—

“(1) Subject to subsection (2), a licensing authority in Scotland may arrange for the discharge of any of its functions under this Part by—

- (a) any member of the authority,
- (b) any committee established by the authority,
- (c) the clerk of the authority, or
- (d) any member of staff provided under paragraph 8(1)(b) of Schedule 1 to the Licensing (Scotland) Act 2005 (asp 16).”;

(b) in subsection (2)(b) for “person appointed to assist the clerk” substitute “member of staff provided under paragraph 8(1)(b) of schedule 1 to the Licensing (Scotland) Act 2005”;

(c) in subsection (3) for “1976” substitute “2005”.

(5) In section 233 (delegation of functions under Part 9: Scotland)—

(a) for subsection (1) substitute—

“(1) Subject to subsection (2), a licensing authority in Scotland may arrange for the discharge of any of its functions under this Part by—

- (a) any member of the authority,
- (b) any committee established by the authority,
- (c) the clerk of the authority, or
- (d) any member of staff provided under paragraph 8(1)(b) of Schedule 1 to the Licensing (Scotland) Act 2005 (asp 16).”;

(b) in subsection (2) for “person appointed to assist the clerk” substitute “member of staff provided under paragraph 8(1)(b) of schedule 1 to the Licensing (Scotland) Act 2005”;

(c) in subsection (3) for “1976” substitute “2005”.

(6) For subsection (c) of section 277 (alcohol licence) substitute—

“(c) “relevant Scottish licence” means a premises licence issued under the Licensing (Scotland) Act 2005, except where such a licence only applies to the sale of alcohol for consumption off the premises.”.

(7) in section 285 (permits)—

(a) in subsection (1)(a)—

- (i) omit “a certificate of registration under section 105 of the Licensing (Scotland) Act 1976 (certificate of registration in respect of a club) or”;
- (ii) after “licence” insert “and the premises are premises to which section 125(1) of the Licensing (Scotland) Act 2005 applies”;

(b) in subsection (1)(b) after “licence” insert “and the premises are premises to which section 125(1) of the Licensing (Scotland) Act 2005 does not apply”.

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(a) 2005 c.19

(8) In paragraph 41(c) of Schedule 11 (exempt lotteries) for “constituted under section 1 of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 16)”.

## PART 2

### Amendment of statutory instruments

#### *The Controlled Waste Regulations 1992*

**13.** In Schedule 4 (waste to be treated as commercial waste) to the Controlled Waste Regulations 1992(a)–

- (a) omit paragraph 2(b);
- (b) after paragraph 2 insert–

“**2A.** In Scotland, waste from–

- (a) in towns and suburbs, a house containing at least four apartments set apart exclusively for the sleeping accommodation of travellers;
- (b) in rural districts and populous places not exceeding 1,000 inhabitants according to the census for the time being last taken, a house containing at least two such apartments.”.

#### *The Town and Country Planning (Use Classes)(Scotland) Order 1997*

**14.** In the class 7 entry of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997(b), for “licensed for the sale of alcoholic liquor” substitute “where alcohol (within the meaning given by section 2 of the Licensing (Scotland) Act 2005) is sold, pursuant to a premises licence issued under that Act,”.

#### *The Visiting Forces and International Headquarters (Application of Law) Order 1999*

**15.** In Schedule 6 to the Visiting Forces and International Headquarters (Application of Law) Order 1999(c) after the entry relating to the Public Health (Scotland) Act 1897 insert–

“ The Licensing (Scotland) Act 2005 (asp 16)	In sections 63(2)(f) and 124(1)(e) the reference to the armed forces of the Crown shall include a reference to members of a visiting force or military members of a headquarters ”.
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#### *The Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005*

**16.** In Part 1 of Schedule 1 to the Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005(d), for the entry “A licensing board constituted under section 1 of the Licensing (Scotland) Act 1976” substitute “A licensing board continued in existence or established under section 5 of the Licensing (Scotland) Act 2005”.

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(a) S.I. 1992/588.  
(b) S.I. 1997/3061.  
(c) S.I. 1999/1736.  
(d) S.S.I. 2005/565.

*The Prisons and Young Offenders Institutions (Scotland) Rules 2006*

17. In the Prisons and Young Offenders Institutions (Scotland) Rules 2006(a), in rule 5(1) (interpretation) in paragraph (e) of the definition of “prohibited article”(b) for “alcoholic liquor” substitute “alcohol, within the meaning given by section 2 of the Licensing (Scotland) Act 2005”.

*The Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007*

18. In the Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007(c), in Schedule 1 Part 1, for the entry “A licensing board constituted under section 1 of the Licensing (Scotland) Act 1976” substitute “A licensing board continued in existence or established under section 5 of the Licensing (Scotland) Act 2005”.

*The Producer Responsibility Obligations (Packaging Waste) Regulations 2007*

19. In the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(d), in regulation 38 (packaging handled by licensors and pub operating businesses)–

(a) for paragraph (4)(b)(ii) substitute–

“(ii) in Scotland, are used by the tenant for the sale by retail or supply of alcohol for consumption on the premises or both on and off the premises, and in respect of which a premises licence is in force.”.

(b) for paragraph 6 substitute–

“(6) In Scotland, in the definition of pub operating business–

(i) “alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005;

(ii) “premises licence” has the meaning given in section 17 of that Act.”.

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(a) S.S.I. 2006/94.

(b) The definition of prohibited article was amended by S.S.I. 2008/377.

(c) S.S.I. 2007/32.

(d) S.I. 2007/871.



## SCHEDULE 2

Article 2(2)

### Repeals

<i>Enactment</i>	<i>Extent of Repeal</i>
The Inebriates Act 1898 (c.60)	The entire Act insofar as it has effect for Scotland.
The Children and Young Persons (Scotland) Act 1937 (c.37)	In section 110 the definitions of “certificate”, “exciseable liquor”, “permitted hours”, “licensed premises” and “bar”.
The Local Government (Scotland) Act 1966 (c.51)	Section 38.
The Finance Act 1967 (c.54)	Section 5.
The Alcoholic Liquor Duties Act 1979 (c.4)	In section 4(1), in the definition of “registered club”, the words “which is for the time being a registered club within the meaning of the Licensing (Scotland) Act 1976 or”.
The Representation of the People Act 1983 (c.2)	In section 185, in the definition of “Licensing Acts”, the words “the Licensing (Scotland) Act 1976 and” and “Act or”.
	Section 204(8).
The City of Edinburgh District Council Order Confirmation Act 1991 (c.xix)	In section 2 of the Schedule, the definition of “hotel”.
The Licensing (Amendment) (Scotland) Act 1992 (c.18)	The whole Act.
The Deregulation and Contracting Out Act 1994 (c.40)	Section 22.
The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)	In section 19(2), the words “Notwithstanding section 92 of the Licensing (Scotland) Act 1976 (restriction on carriage of alcoholic liquor in crates on contract carriages), but”.
The Criminal Procedure (Scotland) Act 1995 (c.46)	In Schedule 5, the entries relating to sections 74(2) and 76 of the Licensing (Scotland) Act 1976.
	In Schedule 9, the entry relating to the Licensing (Scotland) Act 1976.
The Private Security Industry Act 2001 (c.12)	In paragraph 8(2) of Schedule 2, sub-paragraphs (g), (h), (i) and (j).

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<i>Enactment</i>	<i>Extent of Repeal</i>
The Building (Scotland) Act 2003 (asp 8)	Paragraph 12 of schedule 6.
The Gambling Act 2005 (c.19)	In section 274(2) the words, “a certificate of registration under section 105 of the Licensing (Scotland) Act 1976 (c.66) (certificate of registration in respect of a club) or”.

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## SCHEDULE 3

Article 2(3)

### Revocations

<i>Enactment</i>	<i>Extent of Revocation</i>
The Public Service Vehicles (Operators' Licences) Regulations 1995 (S.I. 1995/2908)	In sub-paragraph 2(h) of the Schedule, the words "section 92 of the Licensing (Scotland) Act 1976 and".
The Visiting Forces and International Headquarters (Application of Law) Order 1999 (S.I. 2005/3048)	In Schedule 6, the entry relating to the Licensing (Scotland) Act 1976.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes amendments to, and repeals provisions in primary legislation and secondary legislation relating to liquor licensing. These amendments are consequential and supplemental to the purposes of, or in connection with the Licensing (Scotland) Act 2005 (asp 16).

Article 2(1) and Schedule 1 set out amendments to primary legislation in Part 1 and secondary legislation in Part 2. Article 2(2) and Schedule 2 set out repeals of primary legislation but only to the extent indicated in that Schedule. Article 2(3) and Schedule 3 set out revocations of statutory instruments but only to the extent indicated in that Schedule.

Article 3 sets out amendments to local authority byelaws relating to the consumption of alcohol in a public place.

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