



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART III

THE LICENSING (SCOTLAND) ACT 1976

Times of opening

45 Permitted hours

- (1) For section 53 of the Licensing (Scotland) Act 1976 (in this Part of this Act referred to as “the principal Act”) there shall be substituted the following section—

“53 Permitted hours in licensed premises and registered clubs

- (1) Subject to the provisions of this Act, the permitted hours in licensed premises, licensed canteens and registered clubs shall be—
- (a) for days other than Sundays, the period between eleven in the morning and eleven in the evening; and
 - (b) for Sundays, the period between half-past twelve and half-past two in the afternoon and the period between half-past six and eleven in the evening.
- (2) Nothing in this section shall authorise the sale or supply of alcoholic liquor for consumption off the premises, being premises in respect of which a refreshment licence, an entertainment licence, a restricted hotel licence, a restaurant licence or a licence under Part III of this Act is in force.”
- (2) In section 56 of that Act (permitted hours in certain clubs)—
- (a) for subsection (1) there shall be substituted the following subsection—

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- “(1) A registered club may apply to the sheriff for an order providing that during the winter period the permitted hours in the club on Sundays shall not be those set out in section 53 of this Act, but shall instead be the period between half-past twelve and two in the afternoon and the period between four and nine in the evening; and the sheriff shall, if in his opinion the conditions set out in subsection (2) below are satisfied, make the order applied for.”; and
- (b) in subsection (2)(d), for the words “section 53(3)” there shall be substituted the words “section 53”.
- (3) In subsection (2) of section 57 of that Act (extension of permitted hours in the afternoon in certain premises), after “afternoon” there shall be inserted the words “on Sundays”.

46 Sunday opening of licensed premises

- (1) The amendment by section 45 of this Act of section 53 of the principal Act shall not permit the opening for the sale or supply of alcoholic liquor during the permitted hours on a Sunday of premises for which there is in force a public house licence or a refreshment licence unless—
- (a) the grant, provisional grant or renewal of such licence was in response to an application which stated that it was the intention of the applicant that the premises should be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday; or
- (b) before such a licence has been renewed, the licensing board has granted an application for Sunday opening in respect of the premises in accordance with the provisions of Schedule 4 to the principal Act,
- and, subject to subsection (8) below, the said Schedule 4 shall continue to have effect until all such licences in force at the commencement of this Act have been renewed or have ceased to have effect.
- (2) In section 10 of the principal Act (applications for licences)—
- (a) after subsection (3) there shall be added the following subsection—
- “(3A) In the case of an application for the grant, the provisional grant or the renewal of a public house licence or a refreshment licence, the application shall state whether the applicant intends the premises to be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday.”; and
- (b) after subsection (7) there shall be added the following subsection—
- “(8) A notice as mentioned in subsection (2) above and notice under subsection (5) above shall include a statement as to whether the applicant intends the premises to be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday.”.
- (3) In section 12 of that Act (publication of list of applications), at the end of subsection (2), there shall be added the following paragraph—
- “(f) in the case of an application for a public house licence or a refreshment licence, whether the applicant intends the premises to be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday.”.

- (4) In section 17 of that Act (grounds for refusal of application)—
- (a) after subsection (2) there shall be inserted the following subsection—
- “(2A) A licensing board shall refuse to grant or renew a public house or a refreshment licence in respect of the permitted hours on a Sunday if it finds that the opening and use on a Sunday of the premises to which the application relates would cause undue disturbance or public nuisance in the locality, but the refusal of an application on that ground alone shall not prevent the licensing board from granting the application in respect of days other than Sundays.”
- (b) in subsection (4), after the words “transfer the licence” there shall be inserted the words “or to grant the licence in respect of the permitted hours on a Sunday”.
- (5) In section 59 (restaurants in public houses to have permitted hours on Sundays), for the words “an application for Sunday opening has not been granted under Schedule 4 to this Act” there shall be substituted the words “there are no permitted hours on a Sunday”.
- (6) In section 60 (other extensions of permitted hours on Sundays), for the words “an application for Sunday opening has been granted under Schedule 4 to this Act” there shall be substituted the words “there are permitted hours on Sundays in accordance with section 53 of this Act”.
- (7) In section 64 (extensions to permitted hours), for subsection (4) there shall be substituted the following subsections—
- “(4) A licensing board shall not grant an application from the holder of a public house licence for an occasional or regular extension of permitted hours on Sundays except—
- (a) as respects premises to which section 59 of this Act applies and for the purposes of that section; and
- (b) in the case of other premises, as respects any period or periods after half-past two in the afternoon,
- and the board shall refuse to grant such an application if it finds that the extension of permitted hours would cause undue disturbance or public nuisance in the locality.
- (4A) Nothing in subsection (4)
- above shall prevent the granting of an application for an occasional or regular extension of permitted hours on a Saturday for a period which continues into Sunday morning.”
- (8) In Schedule 4 to the principal Act (provision for Sunday opening of premises with a public house or refreshment licence)—
- (a) in paragraph 1, the words “as mentioned in section 53(2) of this Act” shall cease to have effect;
- (b) in paragraph 15, the words “or 12 above” shall cease to have effect;
- (c) after paragraph 15 there shall be inserted the following paragraph—
- “15A If an application for renewal of a public house licence or a refreshment licence includes a statement that the applicant intends that the premises should be open for the sale or supply

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of alcoholic liquor during the permitted hours on a Sunday and if there is currently in force the grant of an application for Sunday opening, that grant shall continue to have effect—

- (a) until the renewal application is granted by the board;
 - (b) if the renewal application is refused by the board, or refused in respect of Sunday opening, until the time within which an appeal may be made has elapsed, or if an appeal has been lodged, until the appeal has been abandoned or determined.”; and
 - (d) paragraphs 12 to 14, 16 and 17 shall cease to have effect.
- (9) Expressions used in this section and in the principal Act shall have the same meaning as in that Act.

47 Regular extensions of permitted hours

- (1) A licensing board shall not grant an application under section 64 of the principal Act for an extension of permitted hours unless it is satisfied by the applicant, taking account of the factors mentioned in subsection (3) of that section—
- (a) that there is a need in the locality in which the premises in respect of which the application is made are situated for a regular extension of the permitted hours; and
 - (b) that such an extension is likely to be of such benefit to the community as a whole as to outweigh any detriment to that locality.
- (2) In determining whether to grant an application for a regular extension to permitted hours in respect of any premises it shall not be a relevant consideration for the licensing board to have regard to whether any application relating to any other premises in its area has, at any time, been granted or refused or the grounds on which any such application has been granted or refused.
- (3) Expressions used in this section and in the principal Act shall have the same meaning as in that Act.

48 Restriction orders

- (1) Section 65 of the principal Act (restriction on the permitted hours) shall be amended in accordance with the following provisions of this section.
- (2) For subsection (1) there shall be substituted the following subsections—

“(1) Where, on a complaint being made to a licensing board by any person mentioned in section 16(1) of this Act in respect of any licensed premises or registered club, the board is satisfied that—

- (a) the sale or supply of alcoholic liquor in the afternoon or in the evening in licensed premises or in a registered club is the cause of undue public nuisance or constitutes a threat to public order or safety; or
- (b) the use of licensed premises is the cause of undue disturbance or public nuisance having regard to the way of life in the locality on a Sunday,

the board may make an order, in this section referred to as an “afternoon restriction order” or “evening restriction order” in the case of the grounds mentioned in paragraph (a) above or as a “Sunday restriction order” in the

case of the grounds mentioned in paragraph (b) above; and, in this section, “restriction order” includes any such order.

- (1A) The effect of an afternoon restriction order is that the permitted hours between half-past two and five in the afternoon shall be reduced by such a time and for such a period as may be specified in the order.
 - (1B) The effect of an evening restriction order is that the permitted hours in the evening shall be reduced by such a time and for such a period as may be specified in the order but no such order shall restrict the permitted hours before ten in the evening.
 - (1C) The effect of a Sunday restriction order is that there shall be no permitted hours on Sunday for such period as may be specified in the order or that the permitted hours on Sunday shall be reduced by such a time and for such a period as may be so specified.”
- (3) At the end of subsection (3) there shall be inserted the words “provided that no restriction order shall be made in respect of premises in respect of which no complaint has been made”.

Children’s certificates

49 Children’s certificates

- (1) The holder of a public house licence or an hotel licence in respect of any premises or an applicant for the grant, provisional grant or renewal of such a licence may apply to the licensing board, in accordance with this section, for the grant of a children’s certificate in respect of the premises or any part or parts of the premises specified in the application for the certificate.
- (2) A licensing board may grant a certificate (in this section and section 50 of this Act referred to as a “children’s certificate”) in respect of any premises or, as the case may be, part or parts of any premises if it is satisfied—
 - (a) that the premises or, as the case may be, the part or parts of the premises constitute an environment in which it is suitable for children to be present; and
 - (b) that there will be available for sale or supply for consumption in the part of the premises in respect of which the certificate is to apply meals and beverages other than alcoholic liquor within the meaning of the principal Act.
- (3) Where a children’s certificate is in force in respect of any part of any premises, notwithstanding section 69 of the principal Act, and, subject to the provisions of this section, it shall be lawful for a person under 14 years of age accompanied by a person of not less than 18 years of age to be present in such part at any time when the premises are open to the public between eleven in the morning and eight in the evening for the purpose of the consumption of a meal sold or supplied on the premises.
- (4) When granting a children’s certificate, the licensing board may attach such conditions to the grant of the certificate, including conditions restricting the hours during which and days on which children may be present in any premises or part of premises to which the certificate relates, as appear to the board to be appropriate.

- (5) There shall be displayed at all times in any premises or part of such premises to which a children's certificate applies a notice of the fact that a children's certificate has been granted in respect of such premises or part.
- (6) Any person who is the holder of a licence in respect of any premises to which or part of which a children's certificate applies or any employee or agent of such a person who contravenes this section or any condition attached to a children's certificate shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) The following provisions of the principal Act shall apply as regards an offence under subsection (6) above—
 - (a) subsections (2) and (3) of section 67, as if an entry relating to that offence appeared respectively in columns 3 and 4 of Schedule 5 to that Act; and
 - (b) section 71.
- (8) Schedule 5 to this Act shall have effect as regards the procedure to be followed for the purposes of an application for a children's certificate.
- (9) A children's certificate shall be valid—
 - (a) where it is granted at the same time as the grant, provisional grant or renewal of a licence, for the period of the licence;
 - (b) where it is granted at any other time, until the end of the period for which the licence to which it relates has effect in pursuance of section 30 of the principal Act.
- (10) Where a licence is transferred in pursuance of section 25 of the principal Act, any children's certificate in respect of the premises or any part of the premises to which the licence relates shall be transferred to the new licence holder subject to the same conditions as were applied to the original grant of the certificate.
- (11) Expressions used in this section and section 50 of this Act and in the principal Act shall have the same meaning as in the principal Act.

50 Suspension of children's certificate

- (1) Where a licensing board considers that the premises or part of the premises to which a children's certificate relates no longer constitute an environment in which it is suitable for children to be present they shall decide whether or not to hold a hearing for the purpose of determining whether to suspend the certificate.
- (2) Where the licensing board decides to hold a hearing as mentioned in subsection (1) above—
 - (a) the clerk of the board shall serve on the holder of the children's certificate, not less than 21 days before the hearing, a notice that the board proposes to hold a hearing, specifying the grounds upon which suspension of the certificate may be made;
 - (b) the clerk of the board shall give notice of the hearing to the chief constable;
 - (c) the chief constable may, not less than 7 days before the hearing, lodge notice with the clerk of the board that he wishes to be heard in support of suspension of the children's certificate specifying the grounds on which he seeks such suspension, and any such notice shall be intimated by the chief constable to the holder of the licence;

- (d) the board shall not order suspension of a children’s certificate without hearing the holder thereof unless, after receiving due notice of the hearing, the holder fails to appear.
- (3) The period of the suspension of a children’s certificate under this section shall be a fixed period not exceeding one year or the unexpired portion of the duration of the certificate, whichever is the less, and the effect of the suspension is that the certificate shall cease to have effect during the period of the suspension.
- (4) Where
 - (a) a children’s certificate has been suspended under this section, or further suspended under this subsection; and
 - (b) it appears to the licensing board that the grounds upon which the suspension or further suspension was made continue to obtain,the licensing board may, not more than one month before the expiry of the period of the suspension or, as the case may be, further suspension, determine that the suspension shall be continued for a further period of not more than one year, and this section shall have effect as regards any such further suspension as it has for the purposes of an initial suspension.

Transfer of licences

51 Transfer of licences

- (1) In section 5 of the principal Act (arrangements for discharge of functions by licensing boards), at the end of subsection (2) there shall be added the following paragraph—
 - “(m) confirming, under section 25(4) of this Act, the transfer of a licence transferred by virtue of subsections (2) or (3) of that section.”
- (2) In subsection (1) of section 25 of that Act (transfer of licences)—
 - (a) after “behalf,” there shall be inserted “temporarily”; and
 - (b) after “or” there shall be inserted the words “to a new or existing”.
- (3) After subsection (1) of that section there shall be added the following subsection—
 - “(1A) Subject to subsection (1C)
below, a temporary transfer made under subsection (1) above shall have effect until the appropriate meeting of the licensing board which shall be—
 - (a) the next meeting of the board; or
 - (b) in the case of a temporary transfer made within the period of six weeks before the first day of the next meeting of the board, the next following meeting of the board.
 - (1B) At an appropriate meeting of the licensing board, within the meaning of subsection (1A) above, and on an application being made for the permanent transfer of the licence, the board shall make a decision on the permanent transfer of the licence.
 - (1C) If the licensing board refuses to make a permanent transfer of a licence under subsection (1B) above, the person to whom the licence had been transferred temporarily may appeal to the sheriff against that refusal and the licence shall have effect until the time within which an appeal may be made has elapsed

or, if an appeal has been lodged, until the appeal has been abandoned or determined.”

(4) For subsection (4) of that section there shall be substituted the following subsections—

“(4) A licence transferred by virtue of subsection (2) or (3) above shall have effect until the next meeting of the licensing board, which, on an application for confirmation of the transfer of the licence, shall consider whether it is satisfied that the person to whom the licence has been transferred is a fit and proper person to be the holder of a licence and—

- (a) if it is so satisfied, it shall confirm the transfer of the licence; and;
- (b) if it is not so satisfied, it shall refuse to confirm the transfer.

(4A) In considering the fitness of the person to whom the licence has been transferred, the licensing board may have regard to any misconduct on his part, whether or not constituting a breach of this Act or any byelaw made thereunder, which in its opinion has a bearing on his fitness to hold a licence.

(4B) If the transfer of a licence has been confirmed under subsection (4)

above, the licence shall have effect, in accordance with subsections (4) and (5) of section 30 of this Act, until the quarterly meeting of the licensing board three years after the meeting at which the licence was originally granted or renewed by a licensing board.

(4C) If a licensing board refuses to confirm the transfer of a licence under subsection (4) above, the person to whom the licence had been transferred may appeal to the sheriff against that refusal and the licence shall have effect until the time within which an appeal may be made has elapsed or, if an appeal has been lodged, until the appeal has been abandoned or determined.”

(5) In section 64 of that Act (occasional and regular extensions of permitted hours), after subsection (3) there shall be inserted the following subsection—

“(3A) Where a licence has been transferred by virtue of section 25 of this Act and an application under subsection (1) above has been granted under subsection (2) or (3) above to the previous holder of the licence, the reference in subsections (2) and (3) above to the person whose application has been granted shall include a reference to the person to whom the licence has been transferred.”

(6) For subsection (7) of that section there shall be substituted the following subsection—

“(7) References in this Act to the permanent transfer of a licence shall be construed as references to the transfer of a licence by virtue of subsection (1B) above.”

Wholesale selling of alcoholic liquor

52 Wholesale selling of alcoholic liquor

(1) After section 90 of the principal Act there shall be inserted the following section—

“90A Wholesale selling of alcoholic liquor

(1) A wholesaler or his employee or agent who barter, sells, or exposes or offers for sale alcoholic liquor shall be guilty of an offence unless—

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- (a) he does so from premises which are used exclusively for wholesale trading (whether solely of alcoholic liquor or not); or
 - (b) he does so from licensed premises, a licensed canteen or a registered club during the hours in respect of which it is lawful to sell alcohol by retail from or in these premises, that canteen or that club.
- (2) A wholesaler or his employee or agent who sells alcoholic liquor to a person under 18 shall be guilty of an offence.
- (3) A wholesaler or his employee or agent who causes or permits a person under 18 to sell alcoholic liquor without that sale having been specifically approved by a person of or over 18 shall be guilty of an offence.
- (4) Section 67 of this Act (penalties for offences) shall apply in respect of offences under this section as if references in that section to a licence-holder were references to a wholesaler.
- (5) Section 71 of this Act (defence of due diligence) shall apply to any person charged with an offence under this section as if the reference in that section to a licence-holder were a reference to a wholesaler.
- (6) In this section—
“licence-holder” includes the holder of a licence under Part III of this Act; and
“wholesale” and “wholesaler”, insofar as they relate to the sale of alcoholic liquor, have the meaning given in section 4(1) of the Alcoholic Liquor Duties Act 1979 in relation to dealing in alcoholic liquor.”
- (2) In Schedule 5 to that Act, after the entry relating to section 90(c) there shall be inserted—

“Section 90A(1)	Dealing wholesale other than from permitted premises	Yes	—	level 5 on the standard scale.
Section 90A(2)	Wholesaler selling liquor to person under 18	Yes	—	level 3 on the standard scale.
Section 90A(3)	Wholesaler permitting person under 18 to sell alcohol without approval	Yes	—	level 1 on the standard scale.”

Observations by Chief Constable

53 Observations by chief constable in relation to applications

- (1) After section 16 of the principal Act (objections in relation to applications), there shall be inserted the following section—

“16A Observations by chief constable in relation to applications

- (1) Without prejudice to section 16 of this Act, in considering an application—
- (a) for the grant (including the provisional grant), renewal or permanent transfer of a licence;
 - (b) the regular extension of permitted hours under section 64 of this Act; or
 - (c) the grant of a children’s certificate under section 49 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,

a licensing board shall have regard to any observations on the application submitted by the chief constable in accordance with the following provisions of this section.

- (2) Where the chief constable intends to submit observations in relation to any application, he shall, not later than seven days before the meeting of the licensing board at which the application is to be considered—
- (a) lodge with the clerk of the board a written notice of his observations; and
 - (b) intimate his observations to the applicant in the manner provided by subsection (3) below,

and observations shall not be entertained by the licensing board unless it is proved or admitted that such observations were intimated to the applicant as aforesaid.

- (3) Observations shall, for the purposes of paragraph (b) of subsection (2) above, be intimated to the applicant—
- (a) by delivering to him a copy of the observations lodged with the licensing board under paragraph (a) of that subsection; or
 - (b) by sending him a copy of the said observations by registered post or by recorded delivery in a letter addressed to him at his proper address; or
 - (c) by leaving a copy of the said observations for him at his proper address;

and, for the purposes of paragraphs (b) and (c) of this subsection, the proper address of an applicant shall be as provided for in subsection (3) of section 16 of this Act.

- (4) Notwithstanding anything in the foregoing provisions of this section, it shall be competent for the licensing board to entertain observations from the chief constable, lodged at any time before the hearing of an application, if the board is satisfied that there is sufficient reason why due notice and intimation of the observations could not be given, and in such a case the chief constable shall cause his observations to be intimated to the applicant before the hearing.

- (5) The licensing board shall have regard to any observations submitted by the chief constable in accordance with this section whether or not they are relevant to one or more grounds on which, by virtue of section 17 of this Act, an application may be refused.”

- (2) In section 31 of that Act (suspension of licences), after subsection (5) there shall be inserted the following subsection—

“(5A) Where the licensing board decides to hold a hearing as mentioned in subsection (4) above in respect of a complaint under this section which was made by a person or body other than the chief constable, the chief constable may, not less than 7 days before the hearing, lodge with the clerk of the board observations in respect of the proposed suspension of the licence, and any such observations shall be intimated by the chief constable to the holder of the licence.”

Supervision of sales by persons over 18

54 Supervision of sales of liquor in off-sale premises by persons 18 or over

(1) After section 97 of the principal Act there shall be inserted the following section—

“97A Supervision of sales of liquor in off-sale premises

A holder of a licence in respect of—

- (a) any off-sale premises; or
- (b) the off-sale part of any other premises,

or any employee or agent of his, who causes or permits a person under 18 to sell on these premises alcoholic liquor without that sale having been specifically approved by the licence holder or by a person of or over 18 acting on his behalf shall be guilty of an offence.”

(2) In section 71 of that Act (defence of due diligence), for the words “or 70” there shall be substituted the words “, 70 or 97A”.

(3) In Schedule 5 to that Act, after the entry relating to section 97(4) there shall be inserted—

“Section 97A	Permitting person under 18 to sell alcohol without approval	Yes	Yes	level 3 on the standard scale.”
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Presumption as to contents of containers

55 Presumption as to contents of containers

(1) In section 127 of the principal Act (presumptions as to the contents of containers) for subsections (2) to (6) there shall be substituted the following subsections—

“(2) Any liquid found in a container (sealed or open) shall, subject to the provisions of this section, be presumed to conform to the description of the liquid on the container.

(3) An open container which is found to contain—

- (a) no liquid; or
- (b) insufficient liquid to permit analysis,

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but which when sold or supplied to a person was sealed shall, subject to the provisions of this section, be presumed to have contained at the time of the sale or supply liquid which conformed to the description of the liquid on the container.

- (4) Subject to subsection (5) below, in any trial of a person for an offence under this Act, he may rebut the presumption mentioned in subsection (2) or (3) above by showing that, at the time of the sale or supply, the liquid in the container did not conform to the description of the liquid on the container.
 - (5) A person shall not be entitled to lead evidence for the purpose of rebutting a presumption as mentioned in subsection (4) above unless, not less than 7 days before the date of the trial, he has given notice to the prosecutor of his intention to do so.”
- (2) Nothing in this section shall apply to the prosecution of any person for an offence committed before the commencement of this section.