7th Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the seventh day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

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**Conditions to which licences under the 1982 Act are to be subject**

Kenny MacAskill

168 In section 121, page 123, leave out lines 2 and 3 and insert—

<(3A) No order may be made under subsection (1) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.>

**Licensing – powers of entry etc. (definition of “authorised civilian employee”)**

Kenny MacAskill

169 In section 122, page 125, line 1, leave out from <5,> to <29> in line 2 and insert <5 and 11>

**Licensing of metal dealers**

Robert Brown

385 Leave out section 123

**Licensing of street trading – food hygiene certificates**

Kenny MacAskill

170 After section 124, insert—

<Licensing of street trading: food hygiene certificates

(1) Section 39 of the 1982 Act (street traders’ licences) is amended as follows.

(2) In subsection (4), for the words from “the requirements” to the end substitute “such requirements as the Scottish Ministers may by order made by statutory instrument specify”.

(3) After subsection (4), insert—

“(5) An order under subsection (4) may specify requirements by reference to provision contained in another enactment.

(6) A statutory instrument containing an order made under subsection (4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”>
Licensing of market operators

Kenny MacAskill

171 In section 125, page 128, line 24, at beginning insert <In>

Kenny MacAskill

172 In section 125, page 128, line 24, leave out from <is> to <In> in line 26 and insert <, in>

Cathie Craigie

2 In section 125, page 128, line 25, leave out subsection (2)

Cathie Craigie

3 In section 125, page 128, line 26, leave out subsection (3)

Cathie Craigie

Supported by: Robert Brown

4 Leave out section 125

Control of lap dancing and other adult entertainment venues

Sandra White

516 After section 127, insert—

<Control of lap dancing and other adult entertainment venues

(1) The 1982 Act is amended as follows.

(2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—

“(ab) adult entertainment venues (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of that section) have effect, while being used as such;”.

(3) The title of Part 3 becomes “Control of sex shops and adult entertainment venues”.

(4) After section 45 insert—

“45A Control of lap dancing and other adult entertainment venues

(1) A local authority may resolve that Schedule 2, as modified for the purposes of this section, is to have effect in their area in relation to adult entertainment venues; and, if they do so resolve, that Schedule (as so modified) has effect from the day specified in the resolution.

(2) The day referred to in subsection (1) must not be before the expiry of the period of one month beginning with the day on which the resolution is passed.

(3) A local authority must, not later than 28 days before the day referred to in subsection (1), publish notice that they have passed a resolution under this section in a newspaper circulating in their area.

(4) The notice is to state the general effect of Schedule 2, as modified for the purposes of this section.
(5) For the purposes of this section, Schedule 2 is modified as follows—

(a) in paragraph 1, sub-paragraphs (b)(ii) (and the word “or” immediately preceding it) and (c) are omitted;

(b) for paragraph 2 substitute—

“2 In this Schedule, “adult entertainment venue” has the same meaning as in section 45A.”;

(c) in paragraph 9—

(i) after sub-paragraph (5)(c) insert—

“(ca) where it is intended to sell alcohol in the adult entertainment venue, an application for the grant, renewal or transfer of a premises licence under Part 3 of the Licensing (Scotland) Act 2005 (asp 16) relating to that venue has been refused;”; and

(ii) after sub-paragraph (6) insert—

“(6A) A local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 (asp 16) is in effect in relation to the adult entertainment venue.”;

(d) in paragraph 25, for “section 45” in each place where those words occur, substitute “section 45A”; and

(e) for “sex shop”, in each place where those words occur, substitute “adult entertainment venue”.

(6) In this section, “adult entertainment venue” means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of providing relevant entertainment before a live audience; and, for the purposes of that definition—

“audience” includes an audience of one;

“display of nudity” means—

(a) in the case of a woman, exposure of her breasts, nipples, pubic area, genitals or anus;

(b) in the case of a man, exposure of his pubic area, genitals or anus;

“relevant entertainment” means—

(a) any live performance; or

(b) any live display of nudity,

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).”
Applications for licences
Kenny MacAskill
173 In section 128, page 129, line 25, at end insert—
   <(   ) in paragraph 2(3)(b), after “application” insert “(other than the date and place of
   birth of any person)”,
   (   ) in paragraph 2(8)(a), after “application” insert “(other than the date and place of
   birth of any person)”,>

Provisions to be considered as part of the Alcohol etc. (Scotland) Bill
Kenny MacAskill
174 Leave out section 129

Kenny MacAskill
182 Leave out section 140

Kenny MacAskill
186 In section 143, page 138, leave out line 33

Premises licence applications
Bill Aitken
460 After section 130, insert—
   <Premises licence applications: crime prevention objective
   In section 23(5) of the 2005 Act (grounds for refusal of premises licence application),
   after paragraph (b), insert—
   “(ba) that the appropriate chief constable has made a recommendation under
   section 21(5) that the application be refused,”.>

George Foulkes
542 After section 132, insert—
   <Premises licence applications: disability compliance statements
   In section 20 of the 2005 Act (application for premises licence), after subsection (4)(f),
   insert—
   “(fa) a statement of compliance with Part 3 of the Disability Discrimination
   Act 1995, including information as to where reasonable adjustments
   have been or will be made to remove barriers to access for disabled
   people,”.>

Kenny MacAskill
176 After section 132, insert—
Premises licence applications: food hygiene certificates

1. Section 50 of the 2005 Act (certificates as to planning, building standards and food hygiene) is amended as follows.

2. In subsection (7), for the words from “the requirements” to the end substitute “such requirements as the Scottish Ministers may, by order, specify.”.

3. After subsection (7), insert—

   “(7A) An order under subsection (7) may specify requirements by reference to provision contained in another enactment.”.

4. In subsection (8)(c), for “the 1990 Act” substitute “section 5 of the Food Safety Act 1990 (c.16)”.

Kenny MacAskill

In schedule 4, page 149, line 11, leave out <22(2) or>

Reviews of premises licences – notification of determinations

Kenny MacAskill

1. After section 131, insert—

   Reviews of premises licences: notification of determinations

   (1) The 2005 Act is amended as follows.

   (2) After section 39 (Licensing Board’s powers on review), insert—

   “39A Notification of determinations

   (1) Where a Licensing Board, at a review hearing—

       (a) decides to take one of the steps mentioned in section 39(2), or

       (b) decides not to take one of those steps,

       the Board must give notice of the decision to each of the persons mentioned in subsection (2).

   (2) The persons referred to in subsection (1) are—

       (a) the holder of the premises licence, and

       (b) where the decision is taken in connection with a premises licence review application, the applicant.

   (3) Where subsection (1)(a) applies, the holder of the premises licence may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.

   (4) Where—

       (a) subsection (1)(a) or (b) applies, and

       (b) the decision is taken in connection with a premises licence review application,

       the applicant may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.
(5) Where the clerk of a Board receives a notice under subsection (3) or (4), the Board must issue a statement of the reasons for the decision to—
   (a) the person giving the notice, and
   (b) any other person to whom the Board gave notice under subsection (1).

(6) A statement of reasons under subsection (5) must be issued—
   (a) by such time, and
   (b) in such form and manner,
   as may be prescribed.”.>

Premises licence – minor variations

Bill Aitken

547 After section 132, insert—

<Premises licence: minor variations

(1) Section 29(6) of the 2005 Act (definition of minor variations to premises licence) is amended as follows.

(2) In paragraph (a), insert at the end “or if the variation relates only to parts of the premises to which the public does not have access”.

(3) After paragraph (c) insert—

“(ca) any reduction in the capacity of the premises,
   (cb) any change in the name by which the business carried on in the premises is to be known or under which it trades,
   (cc) any variation of the layout plan or operating plan required by virtue of any enactment relating to planning, building control, food safety or fire safety.”.>

Premises licence – transfer

Robert Brown

550 After section 132, insert—

<Premises licence: transfer on application of person other than licence holder

(1) Section 34 (transfer on application of person other than licence holder) of the 2005 Act is amended as follows.

(2) In subsection (3)—

   (a) the word “and” immediately preceding paragraph (d) is repealed, and
   (b) after that paragraph insert “, and

   “(e) for any other reason, the business that was (prior to the event in question) carried on in the licensed premises to which the licence relates ceases to be carried on in those premises.”.
(3) In subsection (4), insert at the beginning “Subject to subsection (4A),”.

(4) After that subsection insert—

“(4A) In the case of an application made following the event specified in subsection (3)(e)—

(a) subsection (8) of section 33 applies as if, after the words “the Board must” there were inserted “, if satisfied in all the circumstances that it is reasonable to do so.”, and

(b) subsection (10)(b) of that section applies as if, after the words “if not so satisfied,” there were inserted “but otherwise satisfied that in all the circumstances it is reasonable to do so.”.”

Premises licences – connected persons and interested parties

Kenny MacAskill

After section 132, insert—

Premises licences: connected persons and interested parties

The 2005 Act is amended as follows.

After section 40 insert—

“Connected persons and interested parties

40A Connected persons and interested parties: licence holder’s duty to notify changes

(1) A premises licence holder must, not later than one month after a person becomes or ceases to be—

(a) a connected person in relation to the licence holder, or

(b) an interested party in relation to the licensed premises,

give the appropriate Licensing Board notice of that fact.

(2) A notice under subsection (1) that a person has become a connected person or an interested party must specify—

(a) the name and address of the person, and

(b) if the person is an individual, the person’s date of birth.

(3) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.

(4) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1) commits an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.

In section 48 (notification of change of name or address)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed, and

(ii) after paragraph (b) insert “, or
(c) the name or address of any person who is—
   (i) a connected person in relation to the licence holder, or
   (ii) an interested party in relation to the licensed premises,”,

(b) after subsection (2) insert—
   “(2A) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.”.

(4) In section 147 (interpretation), after subsection (4) insert—
   “(5) For the purposes of this Act, a person is an interested party in relation to licensed premises if the person is not the holder of the premises licence nor the premises manager in respect of the premises but—
   (a) has an interest in the premises as an owner or tenant, or
   (b) has management and control over the premises or the business carried on on the premises.”.

(5) In section 148 (index of defined expressions), in the table, insert at the appropriate place—
   “interested party section 147(5).”.

**Provisional premises licences**

**Robert Brown**

543 After section 132, insert—

<Provisional premises licences

(1) Section 45 (provisional premises licence) of the 2005 Act is amended as follows.

(2) In subsection (6), for “2 years” substitute “5 years”.

(3) In subsection (8), paragraph (b) and the word “and” immediately preceding it are repealed.

(4) In subsection (10), for paragraphs (a) and (b) substitute—
   “(a) for subsection (2) there were substituted—
   “(2) An application under subsection (1) must be accompanied by—
   (a) a plan sufficient to identify the site of the subject premises and give a general indication of their size,
   (b) a document giving a general indication of—
      (i) the anticipated capacity of the premises,
      (ii) the hours during which it is proposed to serve alcohol on the premises,
      (iii) the extent to which it is proposed to allow children or young persons entry to the premises, and
   (c) the certificate required by section 50(2).”, and

(b) subsections (4) and (5) were omitted.”.
(5) After subsection (10) insert—

“(10A) Sections 21 to 32 have effect in relation to any provisional premises licence application and to any provisional premises licence as if references to—

(a) the operating plan were read as references to the document required under section 20(2)(b) (as substituted by subsection (10)(a)), and

(b) the layout plan were read as references to the plan required under section 20(2)(a) (as so substituted).”.

Consumption of alcohol on licensed premises outwith licensed hours

Bill Aitken

548 After section 133, insert—


Consumption of alcohol on licensed premises outwith licensed hours

In section 63(2) of the 2005 Act (exceptions to offence of allowing sale, consumption etc. of alcohol outwith licensed hours), after paragraph (f) insert—

“(g) allow alcohol to be consumed on licensed premises at any time within 45 minutes of the end of any period of licensed hours by—

(i) the premises licence holder,

(ii) the premises manager, or

(iii) any person aged 18 or over who, at the end of that period of licensed hours, was working on the premises.”.

Occasional licences

Kenny MacAskill

539 In section 134, page 134, line 17, leave out from <after> to end of line 22 and insert <in sub-paragraph (4), after “Board” in the second place where it appears insert “or to a member of staff provided under paragraph 8(1)(b)”.>

Extended hours applications – notification period

Kenny MacAskill

449 After section 134, insert—


Extended hours applications: notification period

(1) Section 69 of the 2005 Act (notification of extended hours application) is amended as follows.

(2) After subsection (3), add—

“(4) Subsections (5) and (6) apply where the Licensing Board is satisfied that the application requires to be dealt with quickly.
Subsections (2) and (3) have effect in relation to the application as if the references to the period of 10 days were references to such shorter period of not less than 24 hours as the Board may determine.

Subsection (3) has effect in relation to the application as if for the word “must” there were substituted “may.”

**Personal licence applications**

Kenny MacAskill

In section 136, page 135, line 3, at end insert—

“(ba) the notice does not include a recommendation under section 73(4),”

Kenny MacAskill

In section 136, page 135, leave out lines 22 to 27 and insert—

“(a) hold a hearing for the purposes of considering and determining the application, and

(b) after having regard to the circumstances in which the personal licence previously held expired or, as the case may be, was surrendered—

(i) refuse the application, or

(ii) grant the application.”

Kenny MacAskill

In schedule 4, page 150, leave out lines 18 to 21

**24 hour licensing**

James Kelly

After section 136, insert—

“24 hour licences: refusal, revocation etc. on advice or recommendation of Local Licensing Forum

(1) The 2005 Act is amended as follows.

(2) In section 64 (24 hour licences to be granted only in exceptional circumstances)—

(a) in subsection (1), for “Subsection (2) applies” substitute “Subsections (2) to (4) apply”,

(b) in subsection (2), at the end insert “(the granting of any such application being referred to in this section and section 64A as “24 hour licensing”)”, and

(c) after subsection (2) insert—

“(3) In reaching a decision under subsection (2), the Licensing Board must have regard to any advice given or recommendations made by the Local Licensing Forum for the Board’s area that allowing 24 hour licensing in the area in which the subject premises are situated would be inappropriate or undesirable.”
(4) Where the Local Licensing Forum has not, at the time the application is made, given any advice or made any recommendations about the appropriateness or desirability of allowing 24 hour licensing, the Licensing Board may invite it to do so before reaching a decision under subsection (2).

(3) After that section insert—

“64A Revocation etc. of 24 hour licence on advice or recommendation of Local Licensing Forum

(1) This section applies where—

(a) a Licensing Board has granted, under section 64, an application for 24 hour licensing, and

(b) the Local Licensing Forum for the Board’s area subsequently gives advice or makes recommendations to the Board to the effect that 24 hour licensing in the area in which the subject premises are situated is inappropriate or undesirable.

(2) The Licensing Board—

(a) must have regard to the advice or recommendations of the Local Licensing Forum, and

(b) may either revoke the licence or vary it so as to restrict the licensed hours during which alcohol may be sold on the premises to a continuous period of less than 24 hours.”.
(e) section 118(1),
(f) section 120(2) and (3),
(g) section 121(1),
(h) section 127(4), and
(i) section 128(5).

(3) After section 141 (offences by bodies corporate etc.) insert—

"141A Defence of due diligence for certain offences

(1) It is a defence for a person charged with an offence to which this section applies to prove that the person—

(a) did not know that the offence was being committed, and
(b) exercised all due diligence to prevent the offence being committed.

(2) This section applies to an offence under any of the following provisions of this Act—

section 1(3)(b),
section 103(1),
section 106(2),
section 107(1),
section 118(1),
section 120(2) or (3),
section 121(1),
section 127(4),
section 128(5).

141B Vicarious liability of premises licence holders and interested parties

(1) Subsection (2) applies where, on or in relation to any licensed premises, a person commits an offence to which this section applies while acting as the employee or agent of—

(a) the holder of the premises licence, or
(b) an interested party.

(2) The holder of the premises licence or, as the case may be, the interested party is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) It is a defence for a holder of a premises licence or an interested party charged with an offence to which this section applies by virtue of subsection (2) to prove that the holder of the licence or, as the case may be, the interested party—

(a) did not know that the offence was being committed by the employee or agent, and
(b) exercised all due diligence to prevent the offence being committed.
(4) Proceedings may be taken against the holder of the premises licence or the interested party in respect of the offence whether or not proceedings are also taken against the employee or agent who committed the offence.

(5) This section applies to an offence under any of the following provisions of this Act—

section 1(3),
section 15(5),
section 63(1),
section 97(7),
section 102(1),
section 103(1),
section 106(2),
section 107(1),
section 108(2) or (3),
section 113(1),
section 114,
section 115(2),
section 118(1),
section 119(1),
section 120(2),
section 121(1),
section 138(5).”.

Powers of Licensing Standards Officers

Kenny MacAskill

699 After section 138, insert—

<\Powers of Licensing Standards Officers

(1) Section 15 of the 2005 Act is amended as follows.

(2) The section title becomes “Powers of entry, inspection and seizure”.

(3) In subsection (2)—

(a) the word “and” immediately preceding paragraph (b) is repealed, and

(b) after that paragraph insert—

“(c) power to take copies of, or of an entry in, any document found on the premises, and

(d) power to seize and remove any substances, articles or documents found on the premises.”.

(4) In subsection (3)—
(a) for “either” substitute “any”, and
(b) in paragraph (b), after “information” insert “or explanation”.

(5) After subsection (4) insert—

“(4A) Subsection (3)(c) includes power to require any document which is stored in
electronic form and which is accessible from the premises to be produced in a
form—

(a) in which it is legible, and
(b) in which it can be removed from the premises.

(4B) Nothing in subsection (3) requires a person to produce any document if the
person would be entitled to refuse to produce that document in any proceedings
in any court on the grounds of confidentiality of communications.

(4C) Nothing in subsection (3) requires a person to provide any information or
explanation or produce any document if to do so would incriminate that person
or that person’s spouse or civil partner.”.

(6) After subsection (6) insert—

“(7) The Scottish Ministers may by regulations make further provision about the
procedure to be followed in the exercise of a power under this section.

(8) Where a Licensing Standards Officer seizes any substance, article or document
under subsection (2)(d), the Officer must leave on the premises a notice—

(a) stating what was seized, and
(b) explaining why it was seized.

(9) The Scottish Ministers may by regulations make provision about the treatment
of substances, articles or documents seized under subsection (2)(d).

(10) Regulations under subsection (9) may, in particular, make provision—

(a) about the retention, use, return, disposal or destruction of anything
seized,
(b) about compensation for anything seized.”.>

Corruption in public bodies

Kenny MacAskill

183 Leave out section 142

Orders and regulations – circumstances in which affirmative procedure required

Kenny MacAskill

187 In section 143, page 138, line 33, at end insert—

< ( ) an order under section 146(1) containing provisions which modify any enactment
(including this Act), or>
Incest and related offences

Kenny MacAskill

188 In section 143, page 138, line 34, leave out <146(1) or>

Criminal law – revision

Kenny MacAskill

190 In schedule 5, page 152, line 24, at end insert—

<The Incest and Related Offences (Scotland) Act 1986 (c.36)
The Incest and Related Offences (Scotland) Act 1986 is repealed.>

Breach of undertakings – consequential modification

Kenny MacAskill

191 In schedule 5, page 153, line 3, after <89> insert <, 111>

Kenny MacAskill

193 In schedule 5, page 153, line 12, at end insert—

<The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)
In Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act
1995 (minor and consequential amendments), in paragraph 44, sub-paragraph (2) is
repealed.>

Exercise of functions by stipendiary magistrates

Kenny MacAskill

457 In schedule 5, page 155, line 3, at end insert—

<In section 79 (preliminary pleas and preliminary issues), in subsection (2)(b)(ii), after
“under section” insert “22ZB(3)(b),”.

Exercise of functions by stipendiary magistrates

Kenny MacAskill

695 In schedule 5, page 158, line 32, at end insert—

<In section 74 (appointment of stipendiary magistrates), subsection (6) is repealed.
After section 74 insert—

“74A Exercise of functions by stipendiary magistrates

(1) A stipendiary magistrate may, by reason of holding that office—
(a) exercise the same judicial and signing functions as are exercisable by a JP,
(b) do so in the same manner as a JP (including by using the title of office of JP).

(2) For the purpose of subsection (1)—
(a) the acts of a stipendiary magistrate are valid as if the magistrate were a JP,
(b) it does not matter if an enactment from which a JP derives authority to act in a specific case does not bear to give equivalent authority to a stipendiary magistrate.

(3) However, subsections (1) and (2) are subject to any provision of an enactment which expressly excludes a stipendiary magistrate from acting in a specific case.

(4) This section does not limit any other functions of a stipendiary magistrate (in particular, those exercisable in that capacity only).”.

In section 76 (signing functions)—
(a) in subsection (2), for “signing functions in the same manner as” substitute “the same signing functions as are exercisable by”;
(b) subsection (4) is repealed.>