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1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Alcohol etc. (Scotland) Bill (introduced in the Scottish Parliament on 25 November 2009) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill as amended at Stage 2. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

4. In these Notes “the 2005 Act” means the Licensing (Scotland) Act 2005 (asp 16).

COMMENTS ON SECTIONS

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. 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 2A – 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 2A(2) and (3) amends this to provide that in respect of sales of alcohol for consumption off the premises, the 72 hour restriction on altering 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 72 hours and the price variation takes effect at the beginning of a period of licensed hours.

10. Section 2A(4) and (5) makes the same provision in respect of occasional licences granted under the 2005 Act.

**Section 3 – 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 3(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 for £10
• buy six, get 20% off

14. Section 3(2) also disapplies 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 3(3) makes the same provision in respect of occasional licences granted under the 2005 Act.

Section 4 – 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 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 4(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 4(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 and the display of newspapers, magazines and other publications 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. Where branded non-alcoholic products and newspapers, magazines and other publications are for sale then they do not constitute a drinks promotion and so may be displayed anywhere in the premises and in the vicinity of the premises, including in alcohol display areas and any tasting room.
Section 5 – Requirement for age verification policy

19. Section 5(2) inserts a new paragraph 9A to 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 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 5(3) makes the same provision in respect of occasional licenses granted under the 2005 Act.

Section 6 and 7 – 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 6 and 7 amend these powers to also enable the Scottish Ministers to delete or amend conditions in schedules 3 and 4. In addition, section 7 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 the case for regulations under section 27(2) relating to mandatory conditions of premises licences.

Section 8A – 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 8A 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 8A does not prevent Licensing Boards from imposing licence conditions restricting off-sales of alcohol to people age under 21 but prevents them from including such a policy in their licensing policy statement or supplementary licensing policy statement.

Section 9 – 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 9 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. An example of this would be where a Licensing Board takes action to
designate an area, or a specific number of licensed premises to require the age of off-sales purchases to be raised to 21. 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 (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.

Section 9A – Consultation etc. of health boards

24. This section makes various amendments to require relevant health boards to be consulted about or involved in various licensing issues.

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 9A(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 9A(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 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 9A(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 9A(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 9A(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 9B – Occasional licences: limits on numbers and duration of licences

31. Occasional licences are licences which authorise the sale of alcohol on the premises. 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 10 and 11 – Licence holders: social responsibility levy

32. Section 10 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, for example extra policing or street cleaning or in furthering the licensing objectives listed in section 10(5). The uses to which the money is put have to be agreed with the relevant health board. Regulations under section 10 will be subject to the affirmative resolution procedure.

33. Section 11 sets out further information concerning the regulations covering the levy and also sets out those bodies that Scottish Ministers must consult with prior to a draft statutory instrument containing regulations being laid before Parliament.
This document relates to the Alcohol etc. (Scotland) Bill as amended at Stage 2 (SP Bill 34A)

ALCOHOL ETC. (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

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