Health and Sport Committee

Liquor licensing in Scotland

SUMMARY

- The Licensing (Scotland) Act 2005 created a new liquor licensing system. The Criminal Justice and Licensing (Scotland) Bill as introduced would make minor amendments to the 2005 Act. The Alcohol etc. (Scotland) Bill would introduce more substantive additional provisions.

- The 2005 Act sets out licensing objectives, which form the basis of decisions in relation to liquor licensing. Licensing boards are responsible for setting policy and making decisions. In respect of a number of their functions, they must consult with local licensing forums representing those with an interest in licensing issues. Licensing standards officers are responsible for enforcing the licensing regime in their local authority area.

- The 2005 Act introduced a new system of licences: premises licences for any premises selling alcohol; personal licences for individuals supervising the sale of alcohol; and occasional licences for premises where alcohol will be sold on a temporary basis.

- An application for a premises licence must contain an operating plan detailing how the premises will operate, including the hours during which alcohol will be sold. Anyone can object to the granting of a premises licence, and the chief constable has a specific role in providing reports in relation to criminal activity.

- The 2005 Act introduced national mandatory conditions which apply to all premises and occasional licences. These are used to require training of staff, to control the price of alcohol and to prohibit irresponsible drinks promotions.
CURRENT LEGISLATION

The Licensing (Scotland) Act 2005 (asp 16) was a major overhaul of licensing legislation and came into force fully on 1 September 2009. Between 1 February 2008 and 1 September 2009, the licensing regime was in a transition phase which combined aspects of both the new legislation and the previous Licensing (Scotland) Act 1976 (c. 66).

The **Criminal Justice and Licensing Bill** currently before the Scottish Parliament would, as introduced, make some minor amendments to the 2005 Act. The Bill also contained sections enabling licensing boards to prohibit off-sales to people under the age of 21 and introducing a social responsibility levy. However, in a letter to the Justice Committee on 24 March 2009, the Minister for Parliamentary Business indicated the Scottish Government’s intention to remove these sections from the Bill and include them in a health bill to be introduced at a later stage.

The **Alcohol etc (Scotland) Bill** was introduced in the Parliament on 25 November 2009. It contains the sections regarding off-sales to under 21s and the introduction of a social responsibility levy mentioned above. It also contains provisions in relation to the minimum pricing of alcohol, off-sales promotions, age verification and licensing conditions.

THE LICENSING (SCOTLAND) ACT 2005

The main piece of legislation governing liquor licensing is the 2005 Act. This briefing will focus on explaining the licensing system introduced by the Act and the powers given to local licensing boards and Scottish Ministers.

ADMINISTRATIVE STRUCTURES

The licensing objectives

Section 4 of the 2005 Act lists five licensing objectives. The pursuit of these objectives guides local licensing boards in relation to the policies they set and the decisions they make. Essentially, they provide the framework for decision-making under the 2005 Act. The objectives are:

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health
- protecting children from harm

Licensing boards

Each local authority has at least one licensing board and may make a decision to divide its area into more than one division, each with a separate
licensing board. The licensing board is made up of councillors and is responsible for setting policy and making decisions on liquor licensing issues, including the granting or refusal of licences.

Each licensing board must publish a licensing policy statement every three years detailing how it will exercise its functions. These are commonly available on local authority websites and can be a useful source of information on how licensing operates in that area. Licensing boards must consult with the "local licensing forum" (see below) and other interested parties in the preparation of such statements.

**Overprovision**

The licensing policy statement must contain a statement as to whether there is "overprovision" of licensed premises in any locality within the licensing board’s area. Overprovision can relate to licensed premises generally or a particular type of premises (for instance late night opening premises), and it is up to the licensing board to decide what constitutes a locality for the purposes of the assessment. Overprovision is one of the grounds on which a licensing board can refuse a licence.

The National Licensing Forum (established by the then Scottish Executive to provide guidance on the implementation of the 2005 Act) has produced further draft guidance in relation to overprovision.

**Off-sales to under 21s**

Section 8 of the Alcohol etc. (Scotland) Bill would require licensing boards to include a further statement in their licensing policy statements, similar to the overprovision statement. This "detrimental impact statement" will consider the extent to which off-sales purchasing by people under the age of 21 is having a detrimental impact in any locality or the whole of the licensing board’s area.

**Licensing standards officers**

Each local authority must appoint at least one licensing standards officer, with responsibility for ensuring that licence holders comply with the requirements of their licences, providing general information on licensing issues and helping to resolve disputes in relation to licensing matters. Note that licensing standards officers are responsible for policing the licensing regime in their areas, while licensing boards are responsible for making decisions in relation to licensing matters.

**Local licensing forums**

Each local authority must establish a local licensing forum for its area. Where there is more than one licensing division in the area, the council can choose to establish local licensing forums for each division. Forum membership must,

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as far as possible, be representative of those with an interest in licensing in the area.

The local licensing forum has a number of consultative functions under the 2005 Act. It also has responsibility for reviewing the activities of the licensing board and making recommendations in relation to them. In turn, the licensing board has a duty to consider advice and recommendations made by the local licensing forum and give reasons if these are not followed.

LICENSING REGIME

Under the 1976 Act, seven different types of licence were available depending on what the establishment applying for the licence did (for example, the public house licence and the restaurant licence). Under the 2005 Act, all these licences are replaced by a “premises licence”, required for any establishment selling alcohol. In particular, a premises licence is required for both those selling alcohol for consumption on the premises (“on-sales”, such as pubs and restaurants) and those selling alcohol for consumption off the premises (“off sales” such as local shops and supermarkets).

The 2005 Act also creates the “occasional licence”, for events selling alcohol on a temporary basis in premises which are not already licensed, and the “personal licence”, required by certain people with responsibility for supervising the sale of alcohol.

Premises licences

A premises licence, required by any premises selling alcohol, must specify a premises manager for the premises. The premises manager has certain responsibilities in relation to the selling of alcohol and, in addition, must hold a personal licence (see below).

An application for a premises licence must be accompanied by an “operating plan” describing how the premises will be run, a “lay-out plan” showing the lay-out of the premises and various certificates (planning, building standards and food hygiene).

The operating plan is a key document. It provides the licensing board with the information necessary to understanding what the applicant is proposing and, once a licence is granted, licensing standards officers can enforce its provisions (for example in relation to the hours in which the premises will sell alcohol). Section 20 (4) specifies that an operating plan must contain:

- a description of the activities to be carried on in the premises
- a statement of the times during which it is proposed that alcohol be sold on the premises
- a statement as to whether the alcohol is to be sold for consumption on the premises, off the premises or both
• a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises

• where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including,
  (i) the ages of children or young persons to be allowed entry
  (ii) the times at which they are to be allowed entry
  (iii) to which parts of the premises they are to be allowed entry

• information as to the proposed capacity of the premises

• information about the individual who is to be the premises manager

• other information in relation to the premises and the activities to be carried on there, as may be prescribed

Licensed hours

The 2005 Act removes the concept of permitted hours contained in the 1976 Act and, in theory, it is possible for premises be licensed to sell alcohol for consumption on the premises 24 hours a day. However, section 64 of the 2005 Act makes it clear that 24-hour licences should be granted in exceptional circumstances only. Guidance published by the Scottish Government suggests that licensing boards should treat applications for up to 14 hours as reasonable but may wish to give further consideration to applications for hours beyond 14. Section 65 of the 2005 Act limits the hours in which off-sales can be made to between 10am and 10pm.

Conditions attached to premises licences

One of the innovations of the 2005 Act was to create a system whereby nation-wide mandatory conditions can be attached to premises licences. This enables Scottish Ministers to control, for example, drinks promotions deemed to be irresponsible, at a national level. Section 27 of the 2005 Act sets out how the system of mandatory conditions operates. The mandatory conditions which apply to all premises licences are set out in Schedule 3 to the 2005 Act (and Schedule 4 lists the mandatory conditions which apply to occasional licences). Scottish Ministers are empowered to alter or extend this list of mandatory conditions.

Among other things, the mandatory requirements cover:

• the role and qualifications of the premises manager

• the requirement for a personal licence holder to supervise all sales of alcohol

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• training requirements for staff

• pricing of alcohol – any change to the price that alcohol is to be sold at must be brought in at the beginning of a period of licensed hours and cannot be changed again for 72 hours. This has the effect of preventing “happy hour” type promotions

• irresponsible drinks promotions – certain sorts of promotions are prohibited, such as:
  - supplying alcohol free or at a reduced price on the purchase of other drinks (for example “three for the price of two” type promotions)
  - providing an extra measure of alcohol free or at a reduced price on the purchase of other measures
  - supplying unlimited amounts of alcohol for a flat fee (for example “all you can drink” type promotions)
  - encouraging a person to buy or consume a larger measure of alcohol than they had originally intended (for example “a double for the price of a single” type promotions)

A number of the requirements in relation to irresponsible drinks promotions only apply to the sale of alcohol for consumption on the premises (such as supplying alcohol free or at a reduced price on the purchase of other drinks). However, some apply to both on- and off-sales, including the prohibition on promotions which encourage a person to buy or consumer a larger measure of alcohol than they originally intended. City of Edinburgh Licensing Board has announced its intention to explore the possibility of using this latter restriction to prevent “three for the price of two”-type promotions in off-sales as well as on-sales premises.

The Alcohol etc. (Scotland) Bill currently before the Parliament (section 3) seeks to remove any ambiguity by amending schedule 3 paragraph 8 so that the prohibition on supplying alcohol free or at a reduced price on the purchase of other drinks applies to both on- and off-sales. It also seeks to further control promotional activities in off-sales premises. In addition, the provisions in the Bill which relate to minimum pricing and age verification will be taken forward as additional mandatory licence conditions.

The Scottish Government has brought forward secondary legislation which contains mandatory conditions for late-night opening venues. Conditions include requirements for the presence of a trained first-aider, security staff on the door and a working CCTV system.

**Local conditions**

Licensing boards have, since well before the introduction of the 2005 Act, attached their own conditions to licences. Licensing boards generally have

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3 Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 (SSI 2007/336)
standard conditions which they apply to all licences, or all licences of a certain category (for example, public house licences). They may also apply specific conditions to certain licences (for example, the requirement to screen a sporting event where an extension to licensed hours has been granted for this purpose). The 2005 Act enables local regulation in this manner to continue, although local conditions cannot be inconsistent with – or more onerous than – any of the mandatory conditions.

**Objections to applications for premises licences**

The 2005 Act widens public participation in the licensing process, allowing anyone to object to the granting of a premises licence, or to make representations in relation to appropriate changes to be made, or conditions set, regarding the application. The licensing board is required to notify certain groups, such as neighbouring properties and the community council, when they receive a licence application. The chief constable also has a specific role in the process, with an ability to object to application and a requirement to provide reports in relation to whether the applicant has a criminal record or is involved in serious organised crime.

*Anti-social behaviour reports*

Chief constables are also required to provide “anti-social behaviour reports” in relation to applications for new premises licences. These must detail instances of, and complaints in relation to, anti-social behaviour taking place on or in the vicinity of the premises. An amendment contained in the Criminal Justice and Licensing (Scotland) Bill would require such reports only where specifically requested by the licensing board. The Justice Committee (lead committee in relation to the parliamentary scrutiny of the Bill) was unable to reach consensus on this section⁴.

**Refusal of applications for premises licences**

The 2005 Act requires licensing boards to hold a hearing to determine premises licence applications. The grounds on which a licensing board can refuse an application include (section 23):

- that the licensing board considers that the granting of the application would be inconsistent with one of the licensing objectives
- that, considering the activities proposed, the character of the premises and the people likely to use them, the premises are unsuitable for the sale of alcohol
- that, having regard to the number and capacity of other licensed premises in the locality, the licensing board considers that granting the application would result in overprovision

Where a licensing board refuses an application, it must give written reasons for its decision, which can be appealed to the sheriff court.

**Occasional licences**

Occasional licences are used for unlicensed premises in which it is intended to sell alcohol on a temporary basis (for example, a community hall being used as the venue for a wedding or a marquee at a local fair). An occasional licence can be issued for a maximum period of 14 days.

In addition, voluntary organisations may apply for occasional licences in relation to events which they are holding on their premises. An individual voluntary organisation is limited to four applications for four days or more per year, or 12 applications for less than four days per year (not exceeding a total of 56 days per year).

The process for applying for an occasional licence is broadly similar to that for a premises licence. Details about the premises and the activities proposed (which closely match the requirements of an “operating plan”) must be provided. Anyone can object to an application and the licensing board, in its determination of the application, can reject it on similar grounds to a premises licence. One key difference is that, where a licensing board has not received any objections or adverse reports from the chief constable or licensing standards officer, they must grant the licence.

Occasional licences are subject to mandatory conditions set by Scottish Ministers and contained in Schedule 4 to the 2005 Act. Again, these are broadly similar to the mandatory conditions applied to premises licences and specifically include the same limitations in relation to the pricing of alcohol and the prohibition of irresponsible drinks promotions. Licensing boards can also set additional local conditions which apply to the licence.

**Personal licences**

The 2005 Act introduces the concept of a personal licence, which is held by an individual working in the licensed trade. It allows the individual to authorise or supervise the sale of alcohol. A premises manager (as required by all premises licences) is required to have a personal licence. As all sales of alcohol must be supervised by someone with a personal licence, larger premises (such as supermarkets) may require several members of staff to have a personal licence.

Licensing boards are responsible for issuing personal licences, which last for 10 years. Under section 74, the licensing board must grant a licence where:

- the applicant is 18 or over
- possesses a suitable licensing qualification
- has not had a personal licence revoked in the past 5 years
• a satisfactory report in relation to their criminal record is received from the chief constable

A personal licence holder must inform the licensing board if convicted of a criminal offence. In addition, a licensing board can make a finding that a personal licence holder has engaged in “conduct inconsistent with the licensing objectives”. Where this happens, the licensing board will hold a hearing to consider the licence holder’s continued suitability to hold a personal licence.

FURTHER INFORMATION

The Scottish Government has issued guidance to licensing boards in relation to the exercise of their functions. This provides further information about how the Scottish Government expects aspects of the 2005 Act to operate. Note that this guidance was issued in 2007 and therefore may not reflect the most up-to-date position in all areas.

Abigail Bremner

SPICe Research

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