

# **THE LICENSING (SCOTLAND) ACT 2005**

## **An Introduction**

**By**

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## *About Scott Blair*

*Scott worked as a solicitor in private practice before becoming an advocate in 2000. He specialises in public law. He has been instructed in cases in the European Court of Human Rights, Judicial Committee of the Privy Council, House of Lords, both the Inner and Outer House of the Court of Session, the High Court of Justiciary at first instance and on appeal, the Sheriff Court and before various tribunals, licensing boards and local authority regulatory committees. He was recently appointed as a part time Immigration Judge of the Asylum and Immigration Tribunal and is a Legal Convener of the Mental Health Tribunal for Scotland. He is widely published in the public law field.*

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*In his licensing practice Scott appears for both applicants and objectors before Licensing Boards and local authority committees in a range of areas including liquor licensing, betting and gaming and cases under the Civic Government (Scotland) Act 1982. He has experience of hearings involving the suspension of licences.*

*His clients include First Quench Retailing Limited, Belhaven Breweries Ltd, Belhaven Pubs, Festival Inns Ltd, Mitchells & Butlers plc, Spirit Group plc, the Scottish Beer and Pub Association, Punch Taverns, Coral (Scotland) Ltd and Tote. He also acts for a range of smaller operators and also Licensing Boards.*

*He has also been heavily involved in the litigation arising out of the controversial test purchasing scheme operated by the police in Fife in relation to sales of alcohol to under age test purchasers in off sales premises.*

*In his licensing practice, he acted for the Scottish Beer and Pub Association in their recent successful challenge to the policy of the City of Glasgow Licensing Board to seriously restrict the use of traditional glassware in licensed premises. He is currently involved in advising leading members of the licensed trade on the implications of and legality of Board policies made under the Licensing (Scotland) Act 2005.*

*He has appeared many times in the Sheriff Court in licensing appeals in both unreported and reported cases. His Court of Session licensing cases include Smith v. North Lanarkshire Licensing Board, 2005 SLT 544 (liquor licensing- successful*

*appeal against suspension of licence); Catscratch Ltd (No2) v. City of Glasgow Licensing Board, 2002 SLT 503 (liquor licensing and human rights-fair hearing and peaceful possession rights under ECHR applied to licensing boards); Spirit Group plc and Mitchells and Butlers Limited v. City of Aberdeen Licensing Board, 2005 SLT 13 (liquor licensing-attempt to impose minimum pricing on sale of alcohol unlawful); London and Edinburgh Inns Ltd v. North Ayrshire Licensing Board, 2004 SLT 848 (liquor licensing-consideration of effect of transfer of licence). He recently acted in the first test purchasing appeals under the 2005 Act-BP Express Shopping Ltd v. West Fife Divisional Licensing Board [2007] 37 SLLP 29 ; Alldays Stores Ltd v. Central Fife Divisional Licensing Board [2007] 37 SLLP 34.*

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## INTRODUCTION

These Notes are detailed but they are not, and are not meant to be, a comprehensive description of the 2005 Act. 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.

The whole Act is covered in this paper save that I have not reproduced Schedules 1, 2, 4, 6 or 7. I will not have anything like the time to go through all of it in the time available but will try to concentrate on the key provisions. I have not reproduced the Regulations made under the Act nor have I referred to all of them.

The Act is in effect as at **5am on 1 September 2009**. From 1 February 2008 we entered a period of transition from the Licensing (Scotland) Act 1976 to the new Act. I will deal with transition as a separate issue.

## THE ACT

The Act is in 9 Parts. These are:

- Part 1 - Core provisions
- Part 2 - Licensing bodies and officers
- Part 3 - Premises licences
- Part 4 - Occasional licences
- Part 5 - Licensed hours
- Part 6 - Personal licences
- Part 7 - Control of order
- Part 8 - Offences
- Part 9 - Miscellaneous and general

The main legislation which currently governs licensing in Scotland is the 1976 Act as amended and the Licensed Premises (Exclusion of Certain Persons) Act 1980. The 2005 Act repeals this legislation.

The Act adopts most, but not all of the recommendations of the Committee chaired by Sheriff Principal Nicholson. It is also influenced by the [English] Licensing Act 2003, although there are some real differences as well.

There is a mass of regulations, final and draft, surrounding the Act. I cannot cover them all, not least because some are still in draft form. More will be

issued as well.

For reasons of ease of presentation and understanding I may deal with the Parts of the Act in a different order from which they appear.

I will look at the philosophy of the new Act, the new personnel of licensing, premises and personal licences, the hours of opening.

I will then look at occasional licences and appeals and judicial review.

Having set the general scene in some detail, I will look at transition from the 1976 Act to the 2005 Act.

If time allows I might look at public order and offences under the Act and some of the miscellaneous provisions.

## **CORE PROVISIONS**

### **Sections 1 to 3**

These establish that a licence is required to sell alcohol unless the premises are exempt as defined by section 124, provide a definition of the term alcohol and also make provision for certain supplies of alcohol to be treated as sales of alcohol for the purposes of this Act. Two types of supply are covered.

The first is supplies by clubs to their members. Members own the stock. Even so the Act ensures that the supplies are treated as sales so that the club still needs a premises licence.

The second type of supply is one in which the alcohol is supplied in pursuance of a right under contract such as an "all inclusive" where the price paid for a stay at a hotel or resort includes unlimited supplies of drink. This will still require a premises licence. This could also cover arrangements under which alcohol is supplied in exchange for a voucher or token which is bought elsewhere.

## **THE LICENSING OBJECTIVES**

### **Section 4 - The licensing objectives**

This section establishes 5 high level "licensing objectives" that represent the values on which the Scottish licensing system should be based. They also establish the means against which everyone can measure the system.

This is the core philosophical underpinning of the Act. The 1976 Act was criticised by judges for lacking a clear and coherent philosophy. The 2005 Act attempts to remedy that. Get to know them, they drive the Act. You need to constantly assess in what way a proposal by a client meets or is inconsistent with an objective. Remember that inconsistency with a licensing objective is a ground for refusing an application for a premises licence.

The licensing objectives are as follows:

*(1) For the purposes of this Act, the licensing objectives are—*

- (a) preventing crime and disorder,*
- (b) securing public safety,*
- (c) preventing public nuisance,*
- (d) protecting and improving public health, and*
- (e) protecting children from harm.*

*(2) In this Act, references to the “crime prevention objective” are references to the licensing objective mentioned in subsection (1)(a).*

Item (d) was added at a fairly late stage.

The [English] Licensing Act 2003 which is in many ways similar to the 2005 Act has all of these objectives apart from (d).

What does (d) mean in the context of the sale of alcohol? Some of the objectives have been criticised as too vague and liable to generate substantial caselaw: “The Nicholson Report: Consultation Responses [2004] 27 SLLP 27”). Nicholson also referred to “principles” rather than objectives.

## **PART 2 - LICENSING BODIES AND OFFICERS**

### **Section 5 - Licensing Boards**

Licensing Boards were introduced by the 1976 Act and section 5 retains them. There will continue to be a Board for each council area or licensing divisions with a Board for each division. The Boards will continue to be made up of councillors elected by the local authority.

Subject to the transitional arrangements quarterly meetings will go under the 2005 Act. Boards will meet as and when required to determine applications although clearly it is anticipated that Boards will still operate a meeting system-they just will not have the quarterly structure.

For the first time Board procedure is to be regulated to a substantial degree by regulations in the Licensing Board (Scotland) Procedure Regulations 2007.

These Regulations make provision as to various procedural matters under the Licensing. Whilst the Act will be fully operational with effect from 1st September 2009. These Regulations come into force on 1st February 2008, the date as from which it will be possible to lodge a licence application under the Act.

Some people still consider that Boards conflict with human rights principles. Can a Board be an objective decision maker when an objection is made by a local authority from which the members of the Board are drawn? See for example **Blusins Ltd v. Dundee City Licensing Board, 2001 SLT 176** where it was unfair of Board members who sat on finance committee to hear objection from local authority to licence holder who was in rates arrears). In **Alcock v. Aberdeenshire Licensing Board, Banff Sheriff Court, 10 November 2004, Sheriff Savage**, Article 6 ECHR was not breached when a local authority sought to have a hotel licence suspended on environmental health grounds.

### **Section 6 - Statements of licensing policy**

*Statements of licensing policy*

*(1) Every Licensing Board must, before the beginning of each 3 year period, publish a statement of their policy with respect to the exercise of their functions under this Act during that period (referred to in this Act as a*

*“licensing policy statement”*).

*(2) A Licensing Board may, during a 3 year period, publish a supplementary statement of their policy with respect to the exercise of their functions during the remainder of that period (referred to in this Act as a “supplementary licensing policy statement”).*

*(3) In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must—*

*(a) ensure that the policy stated in the statement seeks to promote the licensing objectives, and*

*(b) consult—*

*(i) the Local Licensing Forum for the Board’s area,*

*(ii) if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative, and*

*(iii) such other persons as the Board thinks appropriate.*

*(4) In exercising their functions under this Act during each 3 year period, a Licensing Board must have regard to the licensing policy statement, and any supplementary licensing policy statement, published by the Board in relation to that period.*

*(5) At the request of a Licensing Board—*

*(a) the appropriate chief constable, or*

*(b) the relevant council,*

*must provide to the Board such statistical or other information as the Board may reasonably require for the purpose of preparing a licensing policy statement or supplementary licensing policy statement.*

*(6) On publishing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must—*

*(a) make copies of the statement available for public inspection free of*

*charge, and*

*(b) publicise—*

*(i) the fact that the statement has been published, and*

*(ii) the arrangements for making copies available for public inspection in pursuance of paragraph (a).*

*(7) In this section, “3 year period” means—*

*(a) the period of 3 years beginning with such day as the Scottish Ministers may by order appoint, and*

*(b) each subsequent period of 3 years.*

Boards are under a statutory duty to publish what is to be known as a "licensing policy statement" for their area for a 3-year period.

This statement should offer guidance and clarity on the policy on which Boards would base their decisions in implementing their functions under the Act. This is particularly important for a system which is likely to have quite a high degree of local flexibility in terms of the discretion given to Boards. Some Boards, such as for Glasgow are enormously long -longer than the Act! Others like the Highland policy are, in my view at least, commendably brief.

It is likely that policies will be amenable to judicial review if they offend the principles of administrative law-see **Mitchells and Butlers Retail Limited and others v. City of Aberdeen Licensing Board, 2005 SLT 13 (price control policy)**.

Policies under the English Act of 2003 have been challenged successfully-see **British Beer & Pub Association v. Canterbury City Council [2004] EWHC Admin 1318**.

Although it is important to note that the structure of the 2003 Act is different and that had a material bearing on what the High Court decided. Effectively in that case policy on risk assessments which purported to lay down binding requirements as to how premises should be managed were held to be *ultra vires* in part because they appeared to be mandatory in form and so extended what they Act required.

On general principles of administrative law that was unlawful. Wording and not substance seems to have been what mattered. A number of Scottish Boards require applicants to consider making risk assessments as part of their application and to be able to demonstrate to the Board that they have done so.

Boards have power to issue a supplementary statement within that 3-year period. It is intended that this supplementary power would cover new or unanticipated issues. The Boards are also under a duty when preparing their policy statements to ensure that the statements promote the 5 licensing objectives and to consult on their proposed policy statements with prescribed persons listed in paragraph.

## **Section 7 - Duty to assess overprovision**

### *Duty to assess overprovision*

*(1) Each licensing policy statement published by a Licensing Board must, in particular, include a statement as to the extent to which the Board considers there to be overprovision of—*

*(a) licensed premises, or*

*(b) licensed premises of a particular description,*

*in any locality within the Board's area.*

*(2) It is for the Licensing Board to determine the "localities" within the Board's area for the purposes of this Act.*

*(3) In considering whether there is overprovision for the purposes of subsection (1) in any locality, the Board must—*

*(a) have regard to the number and capacity of licensed premises in the locality, and*

*(b) consult the persons specified in subsection (4).*

*(4) Those persons are—*

*(a) the appropriate chief constable,*

*(b) such persons as appear to the Board to be representative of the interests of—*

*(i) holders of premises licences in respect of premises within the locality,*

*(ii) persons resident in the locality, and*

*(c) such other persons as the Board thinks fit.*

*(5) In this section, references to “licensed premises” do not include references to any premises in respect of which an occasional licence has effect.*

There is now a duty on Boards to make an up front and pro-active assessment of overprovision of licensed premises in their area as part of their policy statements. This is a new duty. Note though that as Boards do not yet have the date it will be at least a year before they begin to implement this duty.

Boards determine what amounts to a "locality" for this purpose. This is a flexible concept to reflect the varying issues which may apply in different areas. Boards will have a wide discretion here and the old debates about where boundaries should be drawn will continue under the 2005 Act. The section has its genesis in concern over a perceived proliferation in licensed premises especially off sales.

Premises which have only an occasional licence are to be left out of the assessment of overprovision.

The consideration of capacities is novel. Overprovision will be part of the policy Boards will require to formulate.

Under the old law capacity was irrelevant. All that had to be done was count the number of licences in the locality-**Caledonian Nightclubs Ltd v. City of Glasgow Licensing Board, 1996 SLT 451.**

These more subtle provisions will allow Boards to take into account distinct types of operations and their impacts on communities –e.g. corner shop with off sales v. supermarket arguments. They will also allow consideration of the facilities on offer unlike the old law- **Caledonian Nightclubs Ltd v. City of Glasgow Licensing Board, 1996 SLT 451; Chung v. Wigtown District**

## **Licensing Board, 1993 SLT 1118.**

It is likely that the wide discretion under the old law as to what is a locality and what is over provision will still apply under the new law. For examples see **Caledonian Nightclubs Ltd** and **Lazerdale v. City of Glasgow Licensing Board, 1996 SLT 451.**

### **Section 8 - Applicants attempting to influence Board members**

It remains an offence -canvassing under the 1976 Act-for anyone who has submitted an application under the Act to attempt to influence in their favour a member of the Licensing Board at any time.

### **Section 9 - Licensing Board's duty to keep a public register**

There is a duty on Boards to keep a licensing register containing prescribed licensing information set out in subsection (1)(a) to (c).

### **Section 10 - Local Licensing Forums**

This puts on a statutory footing the practice in some Boards of having a local forum. There is a duty on each council to establish a Local Licensing Forum for its area. As a minimum be at least one formal annual meeting between the Board and the local Forum.

### **Section 11 - General functions of Local Licensing Forums**

The role of the Forum is to provide comment on the Board's general policy approach. It has no role on individual licence applications.

### **Section 12 - Licensing Boards' duties in relation to Local Licensing Forums**

Boards must have regard to the Forums' advice and to give reasons why they have followed a different approach from that suggested by the Forum.

### **Section 13 - Licensing Standards Officers**

Again an innovation. Think of them as civil licensing police who work for the Boards. They have teeth!

Local authorities must appoint one or more officers to be known as Licensing Standards Officers ("LSOs"). Their general functions are those set out in section 14 of the Act. This is a new role.

#### **Section 14 - General functions of Licensing Standards Officers**

LSOs do not act as policemen with regard to licensing, but they will liaise with the police and other relevant officials such as environmental health officers in ensuring the licensing objectives are adhered to and that solutions are found to problems involving licensed premises which avoid more formal action before Boards such as review proceedings-on which more later.

LSOs will provide advice and guidance for licensees and also for the community. They can try to mediate. They can issue written warnings to a licence holder and also refer to the Licensing Board for review.

#### **Section 15 -Powers of entry and inspection**

LSOs have power to enter and inspect licensed premises to establish compliance with the premises licence and the Act. It is an offence to obstruct an LSO.

#### **Section 16 - Training of Licensing Standards Officers**

Scottish Ministers must prescribe mandatory training requirements with which LSOs must comply.

## **PREMISES LICENCES**

### **Section 17 - Premises licence**

#### *Premises licence*

*In this Act, “premises licence”, in relation to any premises, means a licence issued by a Licensing Board under section 26(1) or 47(2) authorising the sale of alcohol on the premises.*

This section introduces the new premises licence. This replaces the seven different types of licences under the current legislation. The Act provides that anyone wishing to sell alcohol on any premises, subject to the exceptions set out in the Act, has to hold a premises licence.

So no more public house, entertainment, restaurant licence etc-just a licence for the premises. There can only be one premises licence for the premises.

The idea behind the premises licence is that the licence should fit the premises and not the other way round. We all know of problems under the old law where “entertainment premises” would off be little more than pubs with little entertainment on offer. Equally a large department store with an in store restaurant selling alcohol but which also sold alcohol in the food and wine section would need a public house licence to operate. The view was that the law had failed to keep step with the ways in which alcohol has increasingly come to be sold. Not all have welcomed the change. Some operators see this “level playing field” which “at a stroke causes mass over provision of outlets competing for the same trade”-see the views of the director of Castle Leisure Paul Smith at [2005] 30 SLLP 7. Even Sheriff Principal Nicholson expressed concern over this at [2005] 31 SLLP 33.

Some of these concerns have been allayed by special conditions for late opening premises ( of which more anon ) : “Nightclubs victory in fight for conditions” [2006] 32 SLLP 4, but once granted a premises licence will last for perpetuity, no more three yearly renewals (!), unless ended in one of the ways provided for under the Act. The down or the up side is that the new system offers a literally endless spectrum of licensing opportunities. Greater flexibility but also arguably far greater control.

### **Section 18 - Meaning of "appropriate Licensing Board"**

The "appropriate Licensing Board" for any premises is the Board in whose

area the premises are situated (or are mainly situated). If the premises sit on two or more areas equally, then an applicant can in fact choose one of the Boards in question to act as the relevant Board.

## **Section 19 - Meaning of "premises manager"**

### *Premises manager*

*(1) In this Act, "premises manager", in relation to any licensed premises in respect of which a premises licence has effect, means the individual for the time being specified as such in the premises licence.*

*(2) An individual may not, at any one time, be the premises manager of more than one licensed premises; and, accordingly, if an individual who is the premises manager of licensed premises is subsequently specified in the premises licence of other licensed premises as the premises manager of those other premises, the subsequent specification is of no effect.*

This section introduces the concept of the "premises manager". Each premises licence will have to specify the premises manager for the premises. Under transition there is no need to specify him or her until the Act commences on 1 September 2009.

A person can only be the designated premises manager for one licensed premises at any one time.

The premises manager specified in the premises licence must also be a personal licence holder but there can in fact be more than one personal licence holder working in the same premises. The issue of whether there must always be a personal licence holder on the premises when alcohol is sold is not free from doubt. It is likely that the point will require to be litigated.

## **Section 20 - Application for premises licence**

### *Application for premises licence*

*(1) Any person, other than an individual under the age of 18, may apply to the appropriate Licensing Board for a premises licence in respect of any premises.*

*(2) An application under subsection (1) must—*

*(a) contain a description of the subject premises, and*

*(b) be accompanied by—*

*(i) an operating plan for the subject premises,*

*(ii) a plan (referred to in this Act as a “layout plan”), in the prescribed form, of the subject premises, and*

*(iii) the certificates required by section 50(1).*

*(3) An application under subsection (1) which complies with subsection (2) is referred to in this Act as a “premises licence application”.*

*(4) An “operating plan” in relation to any premises is a document in the prescribed form containing—*

*(a) a description of the activities to be carried on in the premises,*

*(b) a statement of the times during which it is proposed that alcohol be sold on the premises,*

*(c) a statement as to whether the alcohol is to be sold for consumption on the premises, off the premises or both,*

*(d) 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,*

*(e) 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, in particular—*

*(i) the ages of children or young persons to be allowed entry,*

*(ii) the times at which they are to be allowed entry, and*

*(iii) the parts of the premises to which they are to be allowed entry,*

*(f) information as to the proposed capacity of the premises,*

*(g) prescribed information about the individual who is to be the premises manager, and*

*(h) such other information in relation to the premises and the activities to be carried on there as may be prescribed.*

(5) Where alcohol is to be sold both for consumption on and for consumption off any premises, the operating plan for the premises may, under subsection (4)(b), state different times for—

(a) the sale of alcohol for consumption on the premises, and

(b) the sale of alcohol for consumption off the premises.

Section 21 along with the Premises Licence (Scotland) Regulations 2007 SSI/452 (in effect 1 February 2008) provide the meat of what you need to do to get your application together.

It can be seen that putting together an application is not quite as simple as the 1976 Act-if that was simple!

Bear in mind that a lot of Boards are now also looking for (i) more detail in the premises layout plan than prescribed in the Regulations and (ii) some Boards expect applicants to lodge risk assessments as well, the implication being that failure to do so will drop the application down the ladder of the likelihood of grant. There could be issues of *vires* here depending what form the policy on risk assessment takes as demonstrated by the *Canterbury* case.

Any person can apply for a premises licence. If an individual wants a licence, he or she will need to be 18 or over.

The application for a premises licence must be accompanied by a draft of the applicant's proposed operating plan and a layout plan for the premises. These plans will (or should) give an express indication of the times when the premises will open and of the activities in the premises.

Applications must be accompanied by certain certificates relating to planning; building control and food hygiene (see section 50 of the Act). These replace section 23 certificates under the 1976 Act.

The form and content of operating plans are set out in the Licensing (Scotland) Procedure Regulations 2005.

There are express requirements on the content of operating plans, including the opening hours, other activities in addition to the sale of alcohol and access by children.

Premises may still continue to sell alcohol on an on and off sales basis and that the times during which alcohol is in fact to be sold may differ between these.

Now to unpack this. You will see that a lot of information is going to be needed to support an application. A balance between too much or too little will have to be struck.

Please remember what you put in your operating plan will in turn define what is licensed in your premises if the Board grants the licence. Any licensed premises cannot operate but for the terms of the operating plan.

So it is really important to get it right from the outset and get clear instructions from the client from the outset. Any later change to the operating plan would require to proceed by way of variation under section 29(5). A variation may not be permitted.

**Description of activities, what does that mean?** Basically if something takes place on premises regularly or irregularly it should be listed. The description of activities should be done in such a way as to maximise coverage.

Remember “activities” in this sense is not limited to activities relating to the sale of alcohol. “Quiz nights”, “live bands” and so on seem obvious enough but remember it could also include in a restaurant “sale of meals” or in an off sales which is also a general store “sale of general groceries.”

Also note that activities may not necessarily relate to the times when alcohol is sold. So an off sales which opens at 6am as a newsagent but starts selling alcohol at 10 am would still need to mention this earlier activity. Pubs that sell breakfasts before the start of their hours for the sale of alcohol will need to specify this.

Times when alcohol will be sold. There is separate provision in the operating plan for on and off sales times. Once the times are set by the plan they cannot be varied unless a variation application is granted.

Care should be taken to include special events within the scope of the operating plan to avoid the need for occasional extensions. There is a word

for the way here as on one view attempts to get “regular” hours not currently enjoyed could take the premises out of the “like for like” scope of the transitional provisions, on which more later.

**Children.** No more Children’s Certificates, no more complex rules about what is a bar area and whether a child was approaching it or in it. The operating plan will now define where and when children can be in licensed premises. So you need to think of beer gardens, play areas, hotel bedrooms, dining areas and the like. The “rules” relating to children will be contained in the operating plan. No need to mention provision for children though where the only sales allowed are off sales-which some might find odd!

Care will need to be taken in hotels as to where children will be permitted to ensure entry to most public areas and areas for residents only.

**Capacity.** A Hot potato, how big is the capacity of a hotel? Applicants cannot rely on guesswork. They will have to engage relevant professional advice and also engage in meaningful discussions with officials such as the building control officer and firemaster.

The Guidance to Licensing Boards from the Scottish Executive lays down two methods for calculating capacity based on building standards practice. The methods depend on whether the premises are on or off sales. These are only proposals though:

1. For off sales the maximum linear measure in metres of the frontage used to display alcohol including off shelf and seasonal promotions. How that works now with the new restrictions on storage areas is unclear.
2. For on sales please look at the Building (Scotland) Regulations 2004 assessment methods in the related technical handbook.

However there are problems with this. Gleneagles Hotel for example has, I understand a possible technical capacity of 20,000 people. However how many people might be there at any one time? How “fair” is such an assessment method?

Regulation 5(5) requires off sales in lay out plans to indicate height and width of storage areas. Will Boards use these in preference to the linear approach to assess capacity?

Capacity will also be hugely relevant to the issue of overprovision.

**Premises Manager.** Details of this will need to go into the operating plan although these details are not needed in a conversion application under transition but they must still be given to the Board no later than 1 September 2009-see Licensing (Transitional and Savings Provisions) (Scotland) Order 2007.

## **Section 21 - Notification of application**

### *Notification of application*

*(1) Where a Licensing Board receives a premises licence application, the Board must give notice of the application to—*

*(a) each person having a notifiable interest in neighbouring land,*

*(b) any community council within whose area the premises are situated,*

*(c) the council within whose area the premises are situated (except where the council is the applicant),*

*(d) the appropriate chief constable, and*

*(e) the enforcing authority within the meaning of section 61 of the Fire (Scotland) Act 2005 (asp 5) in respect of the premises.*

*(2) A notice under subsection (1) must be accompanied by a copy of the application.*

*(3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (1)(d), respond to the notice by giving the Licensing Board—*

*(a) one or other of the notices mentioned in subsection (4), and*

*(b) a report detailing—*

*(i) all cases of antisocial behaviour identified within the relevant period by constables as having taken place on, or in the vicinity of, the premises, and*

*(ii) all complaints or other representations made within the relevant period to constables concerning antisocial behaviour on, or in the vicinity of, the premises.*

*(4) Those notices are—*

*(a) a notice stating that neither—*

*(i) the applicant, nor*

*(ii) in the cases where the applicant is neither an individual nor a council, or where the application is in respect of premises which are to be used wholly or mainly for the purposes of a club, any connected person,*

*has been convicted of any relevant offence or foreign offence, or*

*(b) a notice specifying any convictions of—*

*(i) the applicant, or*

*(ii) in any of the cases mentioned in paragraph (a)(ii), any connected person,*

*for a relevant offence or a foreign offence.*

*(5) Where the appropriate chief constable—*

*(a) proposes to give a notice under subsection (4)(b), and*

*(b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application be refused,*

*the chief constable may include in the notice a recommendation to that effect.*

*(6) In this section—*

- “antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),*
- “neighbouring land” and, in relation to that expression, “notifiable interest” have such meanings as may be prescribed for the purposes of this section, and*
- “relevant period” means the period of one year ending with the date on which the appropriate chief constable receives*

*notice under subsection (1)(d).*

This section places a new duty on Boards to notify those persons specified of all applications they receive for premises licences. This is a change from what was previously provided for in the 1976 Act. The section is augmented now by the Licensing (Procedure) (Scotland) Regulations 2007. These define what is a notifiable interest in terms of what is land-see Regulations 3 and 4. Basically 4 metres from the boundary of the application site has a notifiable interest. The Regulations should however be read.

Until 31 August 2009 the notification deadline is 42 days from receipt of the application. Thereafter under Regulation 8 it becomes 21 days. The period starts when the application is received or in a conversion case the deadline date for the conversion application-Regulation 6.

Boards must notify the Chief Constable of all applications for premises licences. In turn that officer must Subsection respond to the Board with certain notices within 21 days.

There is further provision on the size of the notice, display and defacement and replacement of it.

From 1 February to 1 September 2009 the chief constable gets a copy application, operating and layout plan or information as to where the plan may be viewed on a website. Other persons who are required to get notice get the copy application but no more.

From after 1 September 2009, persons with a notifiable interest in neighbouring land get a copy of the application and the community council, chief constable and fire authority get that but also the layout plan ( or relevant website )and the operating plan.

Section 129 provides for "Relevant offences" to be set out in regulations which in turn are now defined by the Licensing (Relevant Offence)(Scotland) Regulations 2007.

“Foreign offences" are defined as offences under the laws of countries other than Scotland which correspond to relevant offences.

Section 147(2) defines who is a "connected person" in relation to a company, partnership or club. This tries to ensure that suitable checks are carried out on the persons in control of these bodies as well as the bodies themselves.

The chief constable must also within 21 days of notification of a new application, submit a report to the Board on antisocial behaviour which has taken place on or in just even in the vicinity of the premises and all also all complaints about such anti social behaviour.

The latter is new. It places on a statutory footing the practice in some Boards of seeking information from police about the area in which premises lies. Presumably if a Board is going to make something of such a report there would need to be a causal connection between anti-social behaviour and the grant of a new licence. So for example material on general criminal activity such as crime statistics might not be relevant absent a link to the premises in question –**Pagliocca v. Glasgow District Licensing Board, 1995 SLT 180**. There is real concern over whether the police will be able to produce such a report within 21 days.

**Clubs** Members Clubs do not need to produce a constitution and rules ( like the 1976 Act system ) but they do need to indicate that they conform to the Licensing (Clubs)(Scotland) Regulations 2007.

## **Section 22 - Objections and representations**

### *Objections and representations*

*(1) Where a premises licence application is made to a Licensing Board, any person may, by notice to the Licensing Board—*

*(a) object to the application on any ground relevant to one of the grounds for refusal specified in section 23(5), or*

*(b) make representations to the Board concerning the application, including, in particular, representations—*

*(i) in support of the application,*

*(ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or*

*(iii) as to conditions which the person considers should be imposed.*

*(2) The appropriate chief constable may, under subsection (1)(a), object to a premises licence application only on the ground that—*

*(a) the chief constable has reason to believe that—*

*(i) the applicant, or*

*(ii) in the cases where the applicant is neither an individual nor a council or where the application is in respect of premises which are to be used wholly or mainly for the purposes of a club, any connected person,*

*is involved in serious organised crime, and*

*(b) by reason of that involvement, the chief constable considers that it is necessary for the purposes of the crime prevention objective that the application be refused.*

*(3) Where a Licensing Board receives a notice of objection or representation under subsection (1) relating to any premises licence application made to the Board, the Board must—*

*(a) give a copy of the notice to the applicant in such manner and by such time as may be prescribed, and*

*(b) have regard to the objection or representation in determining the application,*

*unless the Board rejects the notice under subsection (4).*

*(4) A Licensing Board may reject a notice of objection or representation received by the Board under subsection (1) if the Board considers the objection or representation is frivolous or vexatious.*

*(5) Where a Licensing Board rejects a notice of objection or representation under subsection (4), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.*

*(6) In any proceedings by a Licensing Board for the recovery of expenses under subsection (5), a copy of any minute of proceedings of the Licensing Board—*

*(a) recording the Board's rejection of the notice and the grounds for the rejection, and*

*(b) certified by the clerk of the Board to be a true copy,*

*is sufficient evidence of the rejection and of the establishment of the ground for rejection.*

This section is far wider than the provisions in the 1976 Act relating to persons who have a statutory right to make objections and representations in relation to applications for premises licences.

Any person may object or make representations provided that is not considered by the Board to be vexatious or frivolous.

A “real and material interest” test for title to object was floated by rejected.

The chief constable has a right to object to an application on the grounds that the applicant or a connected person is involved in serious organised crime. Note the dropping of the fit and proper test from the 1976 Act. Objection can only be on grounds of “serious organised crime”. The police are not happy with this along with many Boards. I have heard it suggested that the police are winning support for their campaign to have it brought back and to remove the apparent restriction on their right to object. Others maintain that “fit and proper” was far too vague.

On the last point there is an argument that if the Chief Constable is catered for in a specific way under section 22(2) then he cannot be included in the words “any person” in section 22(1). That view is not shared by Sheriff Principal Nicholson.

Note also the wider scope of objection and representation. There can be representations in support of an application or for modification of it.

### **Section 23 - Determination of premises licence applications**

*Determination of premises licence application*

*(1) A premises licence application received by a Licensing Board is to be determined in accordance with this section.*

*(2) The Licensing Board must hold a hearing for the purpose of considering and determining the application.*

*(3) In considering and determining the application, the Board must take account of the documents accompanying the application under section*

20(2)(b).

*(4) The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and—*

*(a) if none of them applies, the Board must grant the application, or*

*(b) if any of them applies, the Board must refuse the application.*

*(5) The grounds for refusal are—*

*(a) that the subject premises are excluded premises,*

*(b) that the application must be refused under section 25(2), 64(2) or 65(3),*

*(c) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,*

*(d) that, having regard to—*

*(i) the nature of the activities proposed to be carried on in the subject premises,*

*(ii) the location, character and condition of the premises, and*

*(iii) the persons likely to frequent the premises,*

*the Board considers that the premises are unsuitable for use for the sale of alcohol,*

*(e) that, having regard to the number and capacity of—*

*(i) licensed premises, or*

*(ii) licensed premises of the same or similar description as the subject premises,*

*in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality.*

*(6) In considering, for the purposes of the ground for refusal specified in subsection (5)(c), whether the granting of the application would be*

*inconsistent—*

*(a) with the crime prevention objective, the Licensing Board must, in particular, take into account—*

*(i) any conviction notice of which is given by the appropriate chief constable under subsection (4)(b) of section 21,*

*(ii) any recommendation of the chief constable included in the notice under subsection (5) of that section, and*

*(b) with any licensing objective, the Licensing Board must take into account any report made by the appropriate chief constable under subsection (3)(b) of section 21.*

*(7) Where the Licensing Board considers that—*

*(a) they would refuse the application as made, but*

*(b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,*

*the Board must, if the applicant accepts the proposed modification, grant the application as modified.*

*(8) Where the Licensing Board refuses the application—*

*(a) the Board must specify the ground for refusal, and*

*(b) if the ground for refusal is that specified in subsection (5)(c), the Board must specify the licensing objective or objectives in question.*

*(9) In subsection (5)(e), references to “licensed premises” do not include licensed premises in respect of which an occasional licence has effect.*

This section sets out the procedure that Boards must adopt when they receive an application for a premises licence. It also sets out the grounds on which a Licensing Board may refuse a premises licence application.

Those grounds are set out in paragraphs (a) to (e). One of the grounds relates to consistency with the licensing objectives. It will be interesting to see how these work in practice. Would an application for a site near a school expose

children to harm? How can health be used as the basis for refusal? Public nuisance and public safety are fair enough and are familiar but there still requires there to be a proper evidential basis for such a finding-**Risky Business Ltd v. City of Glasgow Licensing Board, 2000 SLT 923** and “local knowledge” would not be enough-**GA Estate Agency v. City of Glasgow Licensing Board [2000] 15 SLLP 22.**

The Board must pay particular attention to any convictions for relevant or foreign offences of which they have been notified by the Chief Constable and any recommendation from that officer. As under the old law the existence of convictions does not preclude the board from granting the licence.

Most of these grounds are familiar, some are new. A lot of the case law under the 1976 Act will remain relevant under the 2005 Act.

Excluded premises are broadly speaking petrol filling stations or garages subject to the limited discretion of Boards to grant such applications. There is therefore, confirming a long line of decisions approved finally in the Inner House, ample scope for refusing such an application. One oddity-overprovision refers to “licensed premises” and they are defined by section 147 as premises in which a licence has effect. However no licence under the 2005 Act will have effect until 1 September 2009-see Ferguson flags up transition overprovision problems [2007] 36 SLLP 17. However this may have been clarified more recently. Boards in transition are able to look at 1976 Act licences which are in effect but excluding premises where a premises licence application has been refused **and also** premises in respect of which a premises licence has been issued-see Article 22 of the Licensing (Transitional and Savings Provisions)(Scotland) Order 2007.

So in transition is Board entitled to have regard to 1976 Act licences in considering overprovision. There are good arguments against that.

Overprovision will remain a difficult ground. It is highly discretionary and therefore very difficult to appeal. At the same time Boards now have more factors to consider. It is no longer just a numbers game. Boards will need to consider the nature of existing premises and not just their number. Is it really sensible to assess overprovision on a nightclub application by reference to the existence of neighbouring restaurants which sell wine and beer with meals. Are they really appealing to the same market in terms of (over)

provision?

Note too the ability of Boards to suggest modifications under section 23(5).

Section 25(2) refers to an (incompetent) repeat application. Section 64(2) and 65(3) relate to “24 hour opening” and to the use of premises as an offsales where the permitted hours exceed those for off sales, of which more later.

### **Section 24 - Applicant's duty to notify Licensing Board of convictions**

Anyone applying for a premises licence must notify the Board of any convictions obtained whilst the application is pending.

### **Section 25 - Further application after refusal of premises licence application**

Where a Board has refused an application for a premises licence, note that a further application for the same premises cannot be made within one year of that refusal. There will no doubt be debates if the “premises” are the “same.”

Boards can at the point of the refusal disregard the one year limit, or where the limit has not been waived, consider granting a new application within one year if there has been a material change of circumstances. This is the equivalent of the section 14 direction under the 1976 Act. Forget this at your peril!

### **Section 26 - Issue of licence and summary**

Boards must issue the applicant with a licence and a summary of the licence.

### **Section 27 - Conditions of premises licence**

*Conditions of premises licence*

*(1) Except to the extent that schedule 3 provides otherwise, every premises licence is subject to the conditions specified in that schedule.*

*(2) The Scottish Ministers may by regulations modify schedule 3 so as—*

*(a) to add such further conditions as they consider necessary or expedient for the purposes of any of the licensing objectives, or*

*(b) to extend the application of any condition specified in the schedule.*

*(3) The Scottish Ministers must by regulations prescribe further conditions which*

*Licensing Boards must impose on the granting by them of premises licences falling within subsection (4).*

*(4) A premises licence falls within this subsection if the operating plan for the premises to which the licence relates specifies that the premises will, on any occasion, be open for a continuous period beginning on one day and ending after 1am on the following day.*

*(5) The Scottish Ministers may by regulations prescribe further conditions as conditions which Licensing Boards may, at their discretion, impose on the granting by them of premises licences.*

*(6) Without prejudice to subsection (5), where a Licensing Board grants a premises licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of subsection (1) or (3)) as they consider necessary or expedient for the purposes of any of the licensing objectives.*

*(7) A Licensing Board may not impose a condition under subsection (6) which—*

*(a) is inconsistent with any condition—*

*(i) to which the premises licence is subject by virtue of subsection (1), or*

*(ii) prescribed under subsection (5),*

*(b) would have the effect of making any such condition more onerous or more restrictive, or*

*(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.*

*(8) The conditions which may be—*

*(a) added under subsection (2)(a),*

*(b) prescribed under subsection (5), or*

*(c) imposed under subsection (6),*

*include, in particular, conditions of the kind described in subsection (9).*

*(9) Those are conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with—*

*(a) the sale of alcohol on the premises in respect of which a premises licence has effect, or*

*(b) any other activity carried on in such premises.*

*(10) Where, under any provision of this Act, a Licensing Board has power to make a*

*variation of the conditions to which a premises licence is subject, the power may not be exercised so as to have the effect of imposing a condition which the Board could not have imposed under this section on the granting of the licence.*

All premises licences are subject to the mandatory conditions in schedule 3 to this Act, unless schedule 3 provides to the contrary. The aim is national consistency. It also heralds a new approach to licensing in Scotland. With very limited exceptions under the 1976 Act the Board could not impose a condition on a licence. Section 18A on raves was an exception as was section 101 on entertainment premises. Sometimes attempts would be made to impose conditions by way of Board bye law. Sometimes by undertakings. The latter were unenforceable and could also have been unlawful. Conditions could be applied to the regular extension of permitted hours under section 64.

### **Now conditions will be the bread and butter of Boards!**

Section 27 is the most important of the provisions on conditions. I will look at all of them but for present purposes not that there are mandatory conditions under section 27; “late opening conditions”; “pool conditions” and “local conditions.”

Subsections (2) and (5) provide a power for the Scottish Ministers to set out such further national mandatory or discretionary conditions to be attached to premises licences as they think are needed for the purposes of the five licensing objectives established by this Act. These discretionary conditions are “pool conditions” as Boards can pick and choose which conditions they will apply from this additional “pool”.

In relation to Off Sales Justice Minister Kenny MacAskill MSP is seeking to extend multi-buy alcohol offers in off sales by extending paragraph 8(2) (b) of Schedule 3 of the Act to off sales. Currently Schedule 3 on irresponsible promotions only applies to on sales. However he is seeking to extend the provisions via pool conditions to off sales. He is reported as having said that other deep discounting practices will also be targeted-see “We will stamp out irresponsible promotions in off sales” [2007] 37 SLLP 3.

These will be set out in regulations. There are at least two sets already-The Licensing (Mandatory Conditions) (Scotland) Regulations 2007 and the Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007. The

latter imposes conditions on the display of alcohol in off-sales.

The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 deals with conditions for adult entertainment premises or other late night entertainment premises. These are appended to this paper. The conditions are quite onerous. If the premises open beyond 1am then they are caught, all such premises must have a first aider on duty.

If the premises also has a capacity of 250 or higher and also provides live or recorded music above 85 decibels, facilities for dancing, adult entertainment or when fully occupied, is likely to have more persons standing than seated then all of the late opening conditions apply-a personal licence holder must be there at all times, there must be written policies regarding evacuation and drug misuse, there must be working CCTV, there must be “persons responsible for the checking on the safety or well being of persons using any toilet facilities on the premises”, and there must be Security Industry Authority licensed personnel at every entrance after 1am.

Subsections (3) and (4) place a duty on Scottish Ministers to set out by regulations additional mandatory licence conditions for all premises open after 1.00am.

Subsection (6) provides a power for Licensing Boards to impose additional licence conditions to those ones to which the licence may be subject by virtue of subsections (1) to (3).

This power could be used in circumstances where additional conditions were needed for the purposes of any of the five licensing objectives established by the Act and where some other form of activity not covered by schedule 3 was being undertaken on the premises.

However, under subsection (7) a Board may only impose additional licence conditions which do not run counter to the effect of national conditions, and which do not attempt to alter or add to those conditions to make them more onerous or restrictive. This is an interesting one mainly because it is arguable that many Board policies do just that! Some policies appear to concern themselves with matters which do extend these conditions. Other policies appear to concern themselves with matters which are already covered by

Subsections (8) and (9) make clear the types of conditions which can be prescribed by Scottish Ministers and imposed by Licensing Boards. These can cover both the sale of alcohol and any other activity carried out on the premises.

Subsection (10) provides a limitation on Boards' powers under any provision of this Act to vary the conditions of a premises licence to only those conditions provided for by this section.

If this was not enough the Guidance to Licensing Boards suggests a whole raft of other conditions they might wish to impose as local conditions. Boards are of course free to make up their own conditions subject only to the constraints of the Act and no doubt common law principles of administrative law.

Schedule 3 is clearly very important and I want to spend some time on it. It provides:

*“SCHEDULE 3 PREMISES LICENCES: MANDATORY CONDITIONS*

*Interpretation*

*1 In this schedule, “the premises” means, in relation to any premises licence, the premises specified in the licence.*

*Compliance with the operating plan*

*2 (1) Alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence.*

*(2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63(2).*

*3 Any other activity to be carried on in the premises is to be carried on only in accordance with the operating plan contained in the licence.*

*The premises manager*

*4 (1) Alcohol is not to be sold on the premises at any time when—*

*(a) there is no premises manager in respect of the premises,*

*(b) the premises manager does not hold a personal licence,*

*(c) the personal licence held by the premises manager is suspended, or*

*(d) the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises.*

*(2) In sub-paragraph (1), “appropriate licensing qualification” in relation to any licensed premises means any licensing qualification prescribed as such in relation to licensed premises of that description in regulations under section 91(2)(d).*

*(3) Nothing in sub-paragraph (1) or paragraph 5 is to be read as requiring the premises manager to be present on the premises at the time any sale of alcohol is made.*

#### *Authorisation of sales of alcohol*

*5 Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by—*

*(a) the premises manager, or*

*(b) another person who holds a personal licence.*

#### *Training of staff*

*6 (1) No person (other than a person who holds a personal licence) is to work in the premises in the capacity mentioned in sub-paragraph (2) unless that person has complied with such requirements as to the training of staff as may be prescribed for the purposes of this paragraph.*

*(2) That is a capacity (whether paid or unpaid) which involves the person—*

*(a) making sales of alcohol, or*

*(b) where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person.*

*(3) Regulations under sub-paragraph (1) prescribing training requirements may, in particular—*

*(a) provide for the accreditation by the Scottish Ministers of—*

*(i) courses of training, and*

*(ii) persons providing such courses,*

*for the purposes of the regulations,*

*(b) prescribe different training requirements in relation to different descriptions of persons,*

*(c) require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualification as may be prescribed in the regulations, and*

*(d) require training to be undergone again at such intervals as may be prescribed in the regulations.*

#### *Pricing of alcohol*

*7 Where the price at which any alcohol sold on the premises is varied—*

*(a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and*

*(b) no further variation of the price at which that or any other alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.*

#### *Irresponsible drinks promotions*

*8 (1) An irresponsible drinks promotion must not be carried on in or in connection with the premises.*

*(2) Subject to sub-paragraph (3), a drinks promotion is irresponsible if it—*

*(a) relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18,*

*(b) 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),*

*(c) involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink,*

*(d) involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),*

*(e) 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,*

*(f) is based on the strength of any alcohol,*

*(g) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or*

*(h) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.*

*(3) Paragraphs (b) to (d) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.*

*(4) The Scottish Ministers may by regulations modify sub-paragraph (2) or (3) so as to—*

*(a) add further descriptions of drinks promotions,*

*(b) modify any of the descriptions of drinks promotions for the time being listed in it, or*

*(c) extend or restrict the application of any of those descriptions of drinks promotions.*

*(5) In this paragraph, “drinks promotion” means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.*

#### *Provision of non-alcoholic drinks*

*9 (1) The conditions specified in this paragraph apply only to the extent that the premises licence authorises the sale of alcohol for consumption on the premises.*

*(2) Tap water fit for drinking must be provided free of charge on request.*

*(3) Other non-alcoholic drinks must be available for purchase at a reasonable price.*

#### *Payment of annual or recurring fees*

*10 (1) The condition specified in sub-paragraph (2) applies only in relation to a premises licence in respect of which an annual or other recurring fee is*

*to be paid by virtue of regulations under section 136(1).*

*(2) The fee must be paid as required by the regulations.*

**What does it all mean? Well potentially a lot.**

**More than one personal licence holder?** The battle is already raging over whether paragraph 5 of Schedule 3 requires a personal licence holder to be on the premises at all times. My own view is that is not right but some Boards take the opposite view. In the first edition of SLLP for 2008 the Depute Clerk to the Glasgow Board has confirmed that it is the view of the Glasgow Board (and police) that there is a such a requirement. Their policy seems to suggest it is. The English police under their 2003 Act think this is a requirement as well.

If they are right then there are huge cost implications here as remember each personal licence holder must be trained before they can become a personal licence holder and training means a recognised qualification.

What does general authorisation mean?

**A duty to trade?** Does paragraph 2 create a duty to trade? In other words is a licensee in breach of the operating plan just because they close early on a quiet day? What about small country hotels who might need to do that to keep open at all? I do not read paragraph 2 as creating such a duty. There are opposing views and the Guidance from the Scottish Executive at pages 24 and 25 seems to suggest that there is a duty to trade. The contrary view stems from the fact that under the 1976 Act section 54(5) had a specific provision to the effect that there was no duty to trade. It seems to me that provision was not needed anyway and I do not see why the absence of a similar provision in the 2005 Act makes a difference.

**Irresponsible promotions.** Likely to be another hot potato, especially along with the 72 hour rule on price reduction-no more “Happy Hours”.

**Non-Alcoholic drinks at a reasonable price.** What? Remember breach of a condition can lead to loss of the licence.

**And the list just got longer.** The Licensing (Mandatory Conditions No 2) (Scotland) Regulations just added a new paragraph 13 to Schedule 3. They

provide that alcohol which is for sale off the premises must be displayed in one or both of:

1. A single area of the premises agreed between the Board and the holder of the licence; or
2. A single area of the premises which is inaccessible to the public.

In the case of an “agreed” area, a product other than alcohol may only be displayed if it is a non-alcoholic drink or packaged with, and may be purchased only along with the alcohol.

So what does this mean?

Well first of all these areas are going to have to be marked out on the layout plan and Boards will need to make a decision on whether the layout is acceptable.

Note though that in a pub which offers off sales the purchase of a bottle of wine which in fact is consumed on the premises is not caught by these provisions. They only apply where the premises operate on an off sales only basis.

There will be no exceptions for seasonal displays or special occasions.

Well no more cheese placed next to wine, barbecue foods next to beer, or for those of a more romantic leaning, chocolates next to champagne. Unless the food is packaged along with the alcohol e.g. the cheese and port sets you see at Christmas in a box.

It also means that the alcohol cannot now be displayed at different points around the store. I am sure you all know the type of arrangement at supermarkets where slabs of beer or wine promotion greet you as you enter intending to only buy bread and milk....Well no more of that. It all has to be in the one place.

Thinking? The Government thinks the public need to be reminded that alcohol is not an ordinary commodity. There is already talk of separate till points for alcohol as the next move. Presumably the idea is that in the average busy supermarket who can be bothered standing in two queues, one for food and one for alcohol?

The Licensing (Mandatory Conditions) (Scotland) Regulations have added

two more conditions to Schedule 3. One is the requirement (a new paragraph 11) to display an A4 sign advising that either persons under 18 are not permitted on the premises or if they are which areas they are restricted to. In the new paragraph 12 baby changing facilities for persons of either gender must be provided on sales premises where children under five are to be admitted. It does not apply to Clubs.

So far the Scottish Government has not been keen to adopt minimum pricing in terms of the conditions which could be imposed on a licence. It does however appear that the 2005 Act could allow attempts to be made to introduce minimum pricing.

Issue is whether the exercise of such power would offend competition law?

The Perth and Kinross Board introduced a policy which survived OFT scrutiny in 2002. Their policy is reflected in paragraph 8(2) (b).

The SBPA regard this as “linear pricing.” So if a single measure cost £1.50 a double would be £3.00. However the Scottish Government does not see the provision as linear pricing as the aim is to target promotion and not price.

The OFT cleared the legislation of a breach of competition law on the technical basis that the Scottish Parliament when legislating was not an undertaking for the purpose of the Competition Act.

Licensees could agree to minimum pricing and that could be lawful if the Secretary of State made an order under the Competition Act paragraph 3 Schedule 1 if there “exceptional and compelling reasons of public policy.” So far the OFT has not been persuaded that the evidence exists to support a case for an order-their view is that there is no evidence linking higher prices to a reduction in alcohol consumption.

Some of this may cause problems for cross border retailers- “Retailers face cross border headaches” [2007] 37 SLLP 7. Companies like Majestic or Oddbins which operate throughout the UK often offer bottles of Champagne on the basis that one costs say £25 if purchased alone but if you buy two, then they become say £13 each. Paragraph 8(2)(b) will make that unlawful. So UK operations will need to adopt different pricing regimes for different parts of the UK. There is an argument that creates two markets in what is meant to be a single UK market which in turn might breach EC Competition law.

## **Section 28 - Period of effect of premises licence**

### *Period of effect of premises licence*

*(1) A premises licence—*

*(a) takes effect on such date as the Licensing Board issuing it may determine, and*

*(b) ceases to have effect on the occurrence of any of the events mentioned in subsection (5).*

*(2) However, a premises licence is not to be taken to have ceased to have effect under subsection (1)(b) by virtue of the occurrence of any of the events mentioned in paragraphs (c) to (e) of subsection (5) if, within 28 days of the occurrence of the event, an application for the transfer of the licence is made under section 34(1).*

*(3) If such an application is made but refused, the premises licence ceases to have effect on the refusal.*

*(4) A premises licence does not have effect for any period during which it is suspended by virtue of any provision of this Act.*

*(5) The events referred to in subsection (1)(b) are—*

*(a) the premises licence is revoked under any provision of this Act,*

*(b) the licensed premises in respect of which the licence was issued cease to be used for the sale of alcohol,*

*(c) the premises licence holder, being an individual—*

*(i) dies, or*

*(ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4),*

*(d) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,*

*(e) the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and*

*(f) the appropriate Licensing Board receives from the premises licence holder a notice under subsection (6).*

*(6) That is a notice—*

*(a) accompanied by the premises licence, or where that is not practicable, by a statement of reasons for failure to produce the licence, and*

*(b) stating that the licence holder wishes to surrender the licence.*

*(7) For the purposes of subsection (5)(d)—*

*(a) an individual or partnership becomes insolvent on—*

*(i) the approval of a voluntary arrangement proposed by the individual or partnership,*

*(ii) being adjudged bankrupt,*

*(iii) the individual's or partnership's estate being sequestrated,*

*(iv) entering into a deed of arrangement made for the benefit of creditors, or*

*(v) granting a trust deed for creditors, and*

*(b) a company becomes insolvent on—*

*(i) the approval of a voluntary arrangement proposed by its creditors,*

*(ii) the appointment of an administrator or administrative receiver in respect of it, or*

*(iii) going into liquidation.*

*(8) An expression used in subsection (7) which is also used in the Bankruptcy (Scotland) Act 1985 (c. 66) or the Insolvency Act 1986 (c. 45) has the same meaning in that subsection as it has in that Act*

The 1976 Act required licences to be renewed every 3 years. Premises licences under this Act remain in effect indefinitely as long as the premises in question continue to be used for the purpose or purposes for which the licence was granted. The licence can be revoked if conditions are breached or the licence ceases to have effect if for example the holder dies, or becomes incapable, or insolvent -subject transfer is made under section 34. A licence holder can also surrender the licence.

## **Section 29 - Application to vary premises licence**

*Application to vary premises licence*

*(1) A premises licence holder may apply to the appropriate Licensing Board for a variation of the licence.*

*(2) An application under subsection (1) must be accompanied by—*

- (a) *the premises licence to which the application relates, or*
- (b) *if that is not practicable, a statement of the reasons for failure to produce the licence.*
- (3) *An application under subsection (1) which complies with subsection (2) is referred to in this Act as a “premises licence variation application”.*
- (4) *Sections 21(1) and (2) and 22 apply in relation to a premises licence variation application (other than one in which the only variation sought is a minor variation) as they apply to a premises licence application.*
- (5) *In this Act, “variation”, in relation to a premises licence, means any variation of—*
- (a) *any of the conditions to which the licence is subject (other than those to which the licence is subject by virtue of section 27(1)),*
- (b) *any of the information contained in the operating plan contained in the licence,*
- (c) *the layout plan contained in the licence, or*
- (d) *any other information contained or referred to in the licence,*
- and includes an addition, deletion or other modification.*
- (6) *In this Act, “minor variation” means—*
- (a) *any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,*
- (b) *where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises,*
- (c) *any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and*
- (d) *any other variation of such description as may be prescribed for the purposes of this subsection.*

Premises licence holders can apply to Board for variations to the terms and conditions of the premises licence. The 1976 Act made no provision for variations to licence. The duties on Boards under sections 21 and 22 of the Act also apply to applications for variation.

A "variation" includes any change to the operating plan. Some are classed as "minor variations". These are subject to less formal procedure and must be granted by the Board under section 30(2).

Note the four major elements which amount to a major variation. Even “small” changes which impact on the operating plan would still be a major variation requiring consideration by the Board—such as simple change in capacity which caused a structural reconfiguration. That would change the capacity in the operating plan. So a trap for the unwary!

Minor variations are as described in section 29(6). Note though that whilst under section 29(6) (b) a restriction on access by children is a minor variation an increase in access would presumably amount to a change in the operating plan and so would be a major variation.

### **Section 30 - Determination of application for variation**

*Determination of application for variation*

*(1) A premises licence variation application received by a Licensing Board is to be determined by the Board in accordance with this section.*

*(2) If the variation sought is a minor variation, the Board must grant the application.*

*(3) In any other case, the Licensing Board must hold a hearing for the purpose of considering and determining the application.*

*(4) Where a hearing is held under subsection (3), the Board must consider whether any of the grounds for refusal applies and—*

*(a) if none of them applies, the Board must grant the application,*

*(b) if any of them applies, the Board must refuse the application.*

*(5) The grounds for refusal are—*

*(a) that the application must be refused under section 32(2), 64(2) or 65(3),*

*(b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,*

*(c) that, having regard to—*

*(i) the nature of the activities carried on or proposed to be carried on in the subject premises,*

*(ii) the location, character and condition of the premises, and*

*(iii) the persons likely to frequent the premises,*

*the Board considers that the premises are unsuitable for use for the sale of alcohol in*

*accordance with the proposed variation,*

*(d) that, having regard to the number and capacity of—*

*(i) licensed premises, or*

*(ii) licensed premises of the same or similar description as the subject premises (taking account of the proposed variation),*

*in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality.*

*(6) Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.*

*(7) Where the Licensing Board refuses the application—*

*(a) the Board must specify the ground for refusal, and*

*(b) if the ground for refusal is that specified in subsection (5)(b), the Board must specify the licensing objective or objectives in question.*

*(8) In subsection (5)(d), references to “licensed premises” do not include references to licensed premises in respect of which an occasional licence has effect.*

This sets out the procedure that Boards must use adopt when considering an application for a variation to a premises licence. Boards must hold a hearing when considering an application for a variation other than for a minor variation. The Board's decision must be based on the statutory grounds for refusal. A Board can make its own further variations to the licence conditions where it grants the variation.

### **Section 31 - Variation to substitute new premises manager**

*Variation to substitute new premises manager*

*(1) This section applies in relation to a premises licence variation application where—*

*(a) the variation sought is the substitution of another individual as the premises manager, and*

*(b) the applicant requests in the application that the variation should have immediate effect.*

*(2) Where this section applies, the premises licence to which the application relates has effect during the application period as if it were varied as proposed in the application.*

- (3) *In subsection (2), “the application period” means the period—*
- (a) *beginning when the application is received by the Licensing Board, and*
  - (b) *ending—*
    - (i) *when the variation takes effect, or*
    - (ii) *if the application is withdrawn before it is determined, when it is withdrawn.*

Licensed premises cannot operate without a premises manager being in position on which see paragraph 4 of schedule 3. Where there is a change of premises manager and before the new premises manager can act, their name needs to be out on the licence. This section aims to ensure that changes of premises manager can take effect quickly with minimum delay and disruption.

### **Section 32 - Further application after refusal of application for variation**

*Further application after refusal of application for variation*

(1) *Subsection (2) applies where a Licensing Board has refused a premises licence variation application (such a refusal being referred to in this section as the “earlier refusal”).*

(2) *Subject to subsection (3), the Board must refuse any subsequent premises licence variation application—*

(a) *in respect of the same premises licence, and*

(b) *seeking the same variation,*

*made before the expiry of the period of one year beginning with the date of the earlier refusal.*

(3) *Subsection (2) does not apply in relation to any subsequent application made during that period if—*

(a) *at the time of the earlier refusal, the Board directed that the subsection would not apply to any subsequent application, or*

(b) *the Board is satisfied that there has been a material change of circumstances since the earlier refusal.*

A premises licence holder who has had an application for a variation refused cannot re-apply within a year unless the Board directs otherwise.

### **Section 33 - Transfer on application of licence holder**

#### *Transfer on application of licence holder*

*(1) A premises licence holder may apply to the appropriate Licensing Board for the transfer of the licence to such person as is specified in the application (such person being referred to in this section as the “transferee”).*

*(2) The transferee may not be an individual under the age of 18.*

*(3) An application under subsection (1) must be accompanied by—*

*(a) the premises licence to which the application relates, or*

*(b) if that is not practicable, a statement of the reasons for failure to produce the licence.*

*(4) Where a Licensing Board receives an application under subsection (1), the Board must give notice of it, together with a copy of the application, to the appropriate chief constable.*

*(5) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (4), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (6).*

*(6) Those notices are—*

*(a) a notice stating that neither—*

*(i) the transferee, nor*

*(ii) where the transferee is neither an individual nor a council, any connected person,*

*has been convicted of any relevant offence or foreign offence, or*

*(b) a notice specifying any convictions of—*

*(i) the transferee, and*

*(ii) where the transferee is neither an individual nor a council, any connected person,*

*for a relevant offence or a foreign offence.*

*(7) Where the appropriate chief constable—*

*(a) proposes to give a notice under subsection (6)(b), and*

*(b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application for*

*transfer of the licence to the transferee be refused,*

*the chief constable may include in the notice a recommendation to that effect.*

*(8) Where the Licensing Board receives a notice under subsection (6)(a) in relation to an application under subsection (1), the Board must grant the application.*

*(9) Where the Licensing Board receives a notice under subsection (6)(b) in relation to an application under subsection (1), the Board must hold a hearing for the purpose of considering and determining the application.*

*(10) Where a hearing is held under subsection (9), the Licensing Board must, having regard to the chief constable's notice—*

*(a) if satisfied that it is necessary to do so for the purposes of the crime prevention objective, refuse the application, or*

*(b) if not so satisfied, grant the application.*

The holder of a premises licence may apply for the transfer of the licence to another person. Procedure as prescribed must be followed as set out. Note the apparent oddity that transfer applications are to be made by the existing holder of the premises licence. The determination of the transfer application is similar to a grant of a premises licence. The Board cannot refuse on the grounds of the licensing objectives save on the ground of crime prevention if there is a relevant conviction.

### **Section 34 - Transfer on application of person other than licence holder**

*Transfer on application of person other than licence holder*

*(1) A person other than—*

*(a) the holder of a premises licence, or*

*(b) an individual under the age of 18,*

*(being a person of a prescribed description) may, within 28 days of the occurrence of any of the events specified in subsection (3), apply to the appropriate Licensing Board for the transfer to that person of the licence.*

*(2) An application under subsection (1) must be accompanied by—*

*(a) the premises licence to which the application relates, or*

*(b) if that is not practicable, a statement of the reasons for failure to produce the licence.*

*(3) The events referred to in subsection (1) are—*

*(a) the premises licence holder, being an individual—*

*(i) dies, or*

*(ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4),*

*(b) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,*

*(c) the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and*

*(d) the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person.*

*(4) Subsections (4) to (10) of section 33 apply for the purposes of an application under subsection (1) of this section as they apply for the purposes of an application under subsection (1) of that section, but as if references in them to the transferee were references to the applicant in relation to the application under subsection (1) of this section.*

*(5) Subsections (7) and (8) of section 28 apply for the purposes of subsection (3)(b) of this section as they apply for the purposes of subsection (5)(d) of that section.*

This allows an application for a transfer of a premises licence to be made by the proposed transferee rather than the existing licence holder.

This is the transfer route likely to be used by most practitioners in a typical purchase of licensed premises. Even so the 28 day period for it to be lodged within 28 days of the transfer event does not appear to take account of the usual conveyancing practice of settlement and transfer of licence on the same day.

The transferee may however only make such an application in circumstances where the licence holder has died, become insolvent or incapable or the business is being sold or transferred.

A transferee will be able to apply under this section only if the transferee has a defined connection to the licence holder or the premises.

### **Section 35 - Variation on transfer**

This useful section allows persons applying for transfer of a premises licence also to apply at the same time for a variation to the terms and conditions of the premises licence. Note that the provisions in sections 29 and 30 relating to applications and determinations of variation applications will apply to applications for variations under this section.

Where the person seeking the transfer makes it clear that this is the case, the Board must determine the application for variation prior to determining the application for transfer. If the variation is refused there is no need to proceed with the transfer application. The variation being determined before the transfer, it follows that where for example a buyer wants longer hours before finalising a purchase, failure to obtain a variation if made part of the missives would allow the buyer to pull out.

### **Section 36 - Application for review of premises licence**

*Application for review of premises licence*

*(1) Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review.*

*(2) An application under subsection (1) is referred to in this Act as a “premises licence review application”.*

*(3) The grounds for review referred to in subsection (1) are—*

*(a) that one or more of the conditions to which the premises licence is subject has been breached, or*

*(b) any other ground relevant to one or more of the licensing objectives.*

*(4) A Licensing Standards Officer may make a premises licence review application on the ground specified in subsection (3)(a) only if—*

*(a) in relation to the alleged ground for review, the Officer or any other Licensing Standards Officer has issued to the licence holder a notice under section 14(2)(a)(i), and*

*(b) the licence holder has failed to take the action specified in the notice to the satisfaction of the Officer.*

*(5) A premises licence review application must specify the alleged ground for review, including in particular—*

*(a) where the ground is that specified in subsection (3)(a), the condition or conditions alleged to have been breached,*

*(b) where the ground is that specified in subsection (3)(b), the licensing objective or objectives to which the alleged ground of review relates.*

*(6) The Licensing Board may reject a premises licence review application if the Board considers the application—*

*(a) is vexatious or frivolous, or*

*(b) does not disclose any matter relevant to any ground for review.*

*(7) Where the Licensing Board rejects a premises licence review application under subsection (6), the Board—*

*(a) must give notice of the decision, and the reasons for it, to the applicant, and*

*(b) where it is rejected on the ground that it is frivolous or vexatious, may recover from the applicant any expenses incurred by the Board in considering the application.*

*(8) In any proceedings by a Licensing Board for the recovery of expenses under subsection (7)(b), a copy of any minute of proceedings of the Licensing Board—*

*(a) recording the Board's rejection of the application and the grounds for rejection, and*

*(b) certified by the clerk of the Board to be a true copy,*

*is sufficient evidence of the rejection and of the establishment of the grounds for rejection.*

Boards can review a premises licence on the application of any person. The grounds for such a review are breach of the licence conditions or any other ground relevant to one of the licensing objectives.

This is the broad equivalent of suspension of a licence under section 31 of the 1976 Act. However unlike a section 31 hearing “any person” can request a review hearing.

An LSO can only apply for a review on the ground that there has been a breach of licence conditions if the LSO has issued a written warning about the breach. This reflects the idea that a review hearing should be the last step in the sanctions process.

## **Section 37 - Review of premises licence on Licensing Board's initiative**

### *Review of premises licence on Licensing Board's initiative*

*(1) The appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect may, on their own initiative, propose to review the licence on any of the grounds for review.*

*(2) A proposal under subsection (1) is referred to in this Act as a “premises licence review proposal”.*

*(3) The grounds for review referred to in subsection (1) are those specified in subsection 36(3).*

*(4) A premises licence review proposal must specify the alleged ground for review, including in particular—*

*(a) where the ground is that specified in subsection 36(3)(a), the condition or conditions alleged to have been breached,*

*(b) where the ground is that specified in subsection 36(3)(b), the licensing objective or objectives to which the alleged ground of review relates.*

Boards can initiate reviews of premises licences themselves—quite unlike section 31 where the Board has no such power. The grounds for review are the same as those for applications under section 36. Where a Board proposes to initiate review the Board must provide a written report setting out the grounds for review.

## **Section 38 - Review hearing**

### *Review hearing*

*(1) Where a Licensing Board—*

*(a) makes a premises licence review proposal, or*

*(b) receives a premises licence review application,*

*the Board must hold a hearing for the purposes of considering and determining the proposal or application unless, in the case of a premises licence review application, the Board has rejected the application under subsection 36(6).*

*(2) A hearing under subsection (1) is referred to in this Act as a “review hearing”.*

*(3) Where a review hearing is to be held, the Licensing Board must—*

*(a) in the case of a premises licence review application, give notice of the hearing to the applicant, and*

*(b) give notice of the hearing and a copy of the premises licence review proposal or*

*application to—*

*(i) the licence holder, and*

*(ii) any Licensing Standards Officer for the area in which the premises concerned are situated, unless, in the case of a premises licence review application, the applicant is such an Officer.*

*(4) Where a Licensing Standards Officer receives under subsection (3)(b)(ii) a copy of a premises licence review proposal or application—*

*(a) the Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the proposal or application, and*

*(b) the Licensing Board must take the report into account at the hearing.*

*(5) The Licensing Board may, for the purposes of the review hearing—*

*(a) obtain further information from such persons, and in such manner, as the Board thinks fit, and*

*(b) take the information into account.*

*(6) In particular, the Board may—*

*(a) request—*

*(i) the attendance at the review hearing of any person for the purpose of providing information, and*

*(ii) the production at the review hearing by any person of any documents in that person's possession or under that person's control, and*

*(b) take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review proposal or application under consideration.*

Boards must hold a review hearing to consider and decide an application for a review of a premises licence made under section 36 or a review proposal under section 37.

The Board does not need to hold a review hearing if it considers the application is frivolous or vexatious or if it is not relevant to any of the available grounds for review.

The LSO must provide a report to the Board. The Board must have regard to the report. Boards can request information and also the attendance at the

hearing of any person and also the production of documents.

### **Section 39 - Licensing Board's powers on review**

*Licensing Board's powers on review*

*(1) At a review hearing in relation to any premises licence, the Licensing Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review proposal or application considered at the hearing) take such of the steps mentioned in subsection (2) as the Board considers necessary or appropriate for the purposes of any of the licensing objectives.*

*(2) Those steps are—*

*(a) to issue a written warning to the licence holder,*

*(b) to make a variation of the licence,*

*(c) to suspend the licence for such period as the Board may determine,*

*(d) to revoke the licence.*

*(3) On making a variation under subsection (2)(b), the Board may provide for the variation to apply only for such period as they may determine.*

The Board can issue a written warning, vary the licence, suspend it or revoke it. The Board can provide for a variation to apply only for a limited period of time.

The idea behind this is that under the 1976 Act, all a Board could do was suspend or not suspend (for up to a year at most), a somewhat blunt sanction. Here the Board have more options. This ties in with the ground of appeal to the Sheriff Court on proportionality. A Board should seek to ensure that the sanction they impose is proportionate.

### **Section 40 - Review of Licensing Board's decision to vary or suspend licence**

*Review of Licensing Board's decision to vary or suspend licence*

*Where a Licensing Board has made a variation under subsection (2)(b) of section 39 or suspended the licence under subsection (2)(c) of that section, the Board may—*

*(a) on the application of the licence holder, and*

*(b) if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary, revoke the variation or suspension.*

A licence holder can apply to the Board to have any variation of their premises licence or the suspension of their premises licence removed.

#### **Section 41 - Duty to notify court of premises licence**

Premises licence holders who are charged with relevant offences must notify the court of the fact that they hold a premises licence.

#### **Section 42 - Court's duty to notify Licensing Board of convictions**

Where a premises licence holder is convicted of a relevant offence by a court in Scotland the court is required to give notice of the conviction to the Board.

#### **Section 43 - Licence holder's duty to notify Licensing Board of convictions**

Where a premises licence holder or a "connected person" is convicted of a relevant offence in Scotland or a foreign offence then the licence holder no later than one month after the date of the conviction, has to notify the Board of the conviction. Failure to comply is an offence.

#### **Section 44 - Procedure where Licensing Board receives notice of conviction**

Where a Board receives notice of conviction under section 42 or 43 the Board must give the Chief Constable notice of it. This process could in itself lead to a review hearing.

#### **Section 45 - Provisional premises licence**

*Provisional premises licence*

*(1) A premises licence application may be made in relation to any premises despite the fact that, at the time the application is made, the premises are yet to be, or are in the course of being, constructed or converted for use as licensed premises.*

*(2) A premises licence application in respect of any such premises is referred to in this Act as a "provisional premises licence application".*

*(3) A premises licence issued in respect of any such premises does not take effect unless and until it is confirmed by the Licensing Board which issued it in accordance with section 46.*

*(4) If a premises licence issued in respect of any such premises is not confirmed before the end of the provisional period, then at the end of that period the licence is treated as revoked.*

*(5) A premises licence—*

*(a) to which subsection (3) applies, and*

*(b) which has not been confirmed in accordance with section 46,*

*is referred to in this Act as a “provisional premises licence”.*

*(6) The provisional period, in relation to a provisional premises licence, is the period of 2 years beginning with the date of issue of the licence.*

*(7) On the application of the holder of a provisional premises licence made before the expiry of the provisional period, the Licensing Board which issued the licence may, if satisfied as to the matter mentioned in subsection (8), extend the provisional period by such period as the Board considers appropriate.*

*(8) That matter is that—*

*(a) completion of the construction or conversion of the premises to which the licence relates has been delayed, and*

*(b) the delay has been caused by factors outwith the premises licence holder’s control.*

*(9) Where the provisional period in relation to any provisional premises licence has been extended under subsection (7), references in this section and section 46 to the provisional period are to that period as so extended.*

*(10) Section 20 has effect in relation to a provisional premises licence application as if—*

*(a) in subsection (2)(b), for sub-paragraph (iii) there were substituted—*

*“(iii) the certificate required by section 50(2),”, and*

*(b) in subsection (4), paragraph (g) were omitted.*

*(11) In this section, “construct” and “convert” have the same meanings as they have for the purposes of the Building (Scotland) Act 2003 (asp 8).*

A premises licence application can be made in relation to premises which are being constructed or converted for use as licensed premises.

Note that under section 45 the old 1976 Act distinction between full and outline provisional (or site only) licences goes. Not too that 2005 Act provisional licences last two years unlike the 1976 Act, with one year.

A provisional premises licence has no effect until it is confirmed. The licence has to be confirmed within 2 years otherwise it will automatically be

revoked. The 2 year period can be extended if the construction or conversion work is delayed for reasons which are outwith the licence holder's control. Confirmation is in effect the equivalent of the joint affirmation/finalisation procedure under the 1976 Act and is needed to transform a provisional premises licence into a full premises licence under the procedure in section 46.

## **Section 46 - Confirmation of provisional premises licence**

### *Confirmation of provisional premises licence*

*(1) The holder of a provisional premises licence may, at any time before the expiry of the provisional period in relation to the licence, apply to the Licensing Board which issued the licence for confirmation of the licence.*

*(2) An application under subsection (1) must be accompanied by—*

*(a) the provisional premises licence,*

*(b) the operating plan for the premises to which the licence relates,*

*(c) the layout plan for the premises, and*

*(d) the certificates required by section 50(3).*

*(3) The operating plan referred to in subsection (2)(b) must, in particular and without prejudice to subsection (4) of section 20, contain a statement of the information specified in paragraph (g) of subsection (4) of that section.*

*(4) Where a Licensing Board which issued a provisional premises licence receives an application under subsection (1) in respect of the licence, the Board must, if satisfied as to the matters mentioned in subsection (5), confirm the licence.*

*(5) Those matters are that—*

*(a) since the provisional premises licence was issued, or*

*(b) if, since that time, an application for a variation of the licence has been granted under section 30, since the last such application was granted,*

*there has been no variation (other than a minor variation) made to the operating plan or layout plan for the premises to which the licence relates.*

*(6) Where a Licensing Board confirms a provisional premises licence under subsection (4), the Board may, for the purpose specified in subsection (7), make a variation of the conditions to which the licence is subject.*

*(7) That purpose is ensuring consistency with any licensing policy statement or supplementary licensing policy statement published since the licence was issued.*

This sets up procedure for the confirmation of provisional premises licences. The licence holder has to apply for confirmation to the Board before the end of the 2 year period beginning when the licence was issued.

## **Section 47 - Temporary premises licence**

### *Temporary premises licence*

*(1) This section applies where any licensed premises (other than premises in respect of which a provisional premises licence or occasional licence has effect) are undergoing, or are to undergo, reconstruction or conversion (referred to in this section as the “principal premises”).*

*(2) The appropriate Licensing Board in relation to the principal premises may—*

*(a) on the application of the holder of the premises licence in respect of the premises, and*

*(b) if satisfied as to the matters mentioned in subsection (3),*

*issue to the applicant a premises licence in respect of such other premises within the Licensing Board’s area as are specified in the application (such premises being referred to in this section as the “temporary premises”).*

*(3) The matters referred to in subsection (2)(b) are—*

*(a) that the temporary premises are suitable for use for the sale of alcohol, and*

*(b) that it is necessary to grant the application to enable the applicant to carry on business pending reconstruction or conversion of the principal premises.*

*(4) A premises licence issued under subsection (2) is referred to in this Act as a “temporary premises licence”.*

*(5) A temporary premises licence—*

*(a) has effect for such period of not more than 2 years beginning with the date of its issue as the Licensing Board may determine, and*

*(b) is subject to the same conditions as those to which the premises licence in respect of the principal premises is subject at the time the temporary premises licence is issued, with such exceptions or variations (if any) as the Licensing Board considers appropriate.*

*(6) The Licensing Board may, on the application of the holder of a temporary premises licence, extend the period during which it has effect for such further period of not more than 12 months as they may determine.*

*(7) In this section—*

- “conversion” has the same meaning as it has for the purposes of the Building (Scotland) Act 2003 (asp 8), and
- “reconstruction” includes alteration, re-erection and extension.

This caters for the case where premises which have a premises licence are undergoing reconstruction or conversion work. The licence holder may want to move into temporary premises pending completion of the work. Note the maximum duration of temporary premises licences and that the licence conditions which were attached to the original application for the premises licence would apply to the temporary premises licence, subject to contrary decision of the Board.

### **Section 48 - Notification of change of name or address**

*Notification of change of name or address*

*(1) A premises licence holder must, not later than one month after the occurrence of any change in—*

*(a) the licence holder’s name or address, or*

*(b) the name or address of the premises manager specified in the licence,*

*give the appropriate Licensing Board notice of the change.*

*(2) A notice under subsection (1) must be accompanied by the premises licence or, if that is not practicable, by a statement of the reasons for the failure to produce the licence.*

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

*(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.*

Note the duty on the holder of a premises licence to notify the Board of any change of name or address of the premises licence holder or of the premises manager.

### **Section 49 - Licensing Board's duty to update premises licence**

This section requires the Board to make the changes to the information in the licence when it receives the notices of change of name or address or when it varies, transfers, confirms or reviews a premises licence.

## **Section 50 - Certificates as to planning, building standards and food hygiene**

This section provides for the production of certificates evidencing compliance with planning, building control and food hygiene legislation in relation to premises. The requirements differ depending on whether the application is for a full premises licence, a provisional premises licence or confirmation of a premises licence.

## **Section 51 - Notification of determinations**

Boards have a duty to notify its decisions on applications for premises licences, applications for variations of a premises licence, transfer applications, reviews, applications for a temporary licence, and applications for provisional premises to the applicant and other specified persons. Boards must give reasons for these decisions if asked.

## **Section 52 - Duty to keep, display and produce premises licence**

A premises licence holder is under a duty to ensure that the premises licence or a certified copy is held on the premises to which it relates either by the licence holder or by the premises manager.

## **Section 53 - Theft, loss etc. of premises licence or summary**

A premises licence holder may apply to the Board for a copy of a premises licence or a summary if the licence or summary has been lost, stolen, damaged or destroyed.

## **Section 54 - Dismissal, resignation, death etc. of premises manager**

This deals with the case circumstances where the premises manager stops working at the premises, or becomes incapable of acting or dies or where the personal licence held by the premises manager is revoked or suspended.

There is a duty on the premises licence holder to inform the Board of such circumstances within 7 days. If an application to substitute a new premises manager is made within 6 weeks of the loss of the premises manager, then the lack of a premises manager in the interim does not matter. Exceed that period and the licence will cease to have effect.

## **Section 55 - Certified copies**

This section provides a definition of what is meant by the term "certified copy" used in the Act.

## **CLUBS**

A word about Clubs. These have always been a special case in licensing law. Under the 2005 Act they will need a premises licence but section 125 will preserve their special character.

This section deals with clubs. Part VII of the Licensing (Scotland) 1976 Act regulates clubs by virtue of registration granted by a sheriff. This system was first introduced by the Licensing (Scotland) Act 1903. That system is repealed by the Act. Instead, the general licensing regime will apply to clubs as it applies to other premises. No need for a premises manager though and the overprovision ground does not apply.

## **PART 6 - PERSONAL LICENCES**

### **Section 71 - Personal licence**

*Personal licence*

*In this Act, “personal licence”, in relation to an individual, means a licence—*

- (a) issued to the individual by a Licensing Board under section 76(1) of this Act, and*
- (b) authorising the individual to supervise or authorise the sale of alcohol.*

Each premises licence must also name the "premises manager" for the premises. Also recall that in terms of the mandatory conditions in schedule 3, the premises manager will have to hold a personal licence. Other personal licence holders could be employed on the premises to help the premises manager. A personal licence is a permission which allows that person to lawfully supervise and in general authorise the sale of alcohol on the relevant premises.

### **Section 72 - Application for personal licence**

*Application for personal licence*

*(1) Any individual aged 18 years or more may apply for a personal licence to—*

*(a) if the individual is ordinarily resident in the area of any Licensing Board, that Board, or*

*(b) in any other case, any Licensing Board.*

*(2) An application under subsection (1) is referred to in this Act as a “personal licence application”.*

Any individual aged 18 years or more can apply for a personal licence.

### **Section 73 - Notification of application to chief constable**

*Notification of application to chief constable*

*(1) Where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to the appropriate chief constable.*

*(2) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (1), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (3).*

*(3) Those notices are—*

*(a) a notice stating that, as far as the chief constable is aware, the applicant has not been convicted of any relevant offence or foreign offence, or*

*(b) a notice specifying any convictions of the applicant for any such offence.*

*(4) Where the chief constable—*

*(a) proposes to give a notice under subsection (3)(b), and*

*(b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the personal licence application be refused,*

*the chief constable may include in the notice a recommendation to that effect.*

It is important that enable Boards can work out if someone is eligible to hold a licence. To be eligible a person must not have been convicted of any relevant or foreign offence. This is a change from the current test under the 1976 Act of being a "fit and proper person". The Chief Constable has a key role here.

## **Section 74 - Determination of personal licence application**

*Determination of personal licence application*

*(1) A personal licence application received by a Licensing Board is to be determined by the Board in accordance with this section.*

*(2) If—*

*(a) all of the conditions specified in subsection (3) are met in relation to the applicant, and*

*(b) the Board has received from the appropriate chief constable a notice under section 73(3)(a),*

*the Board must grant the application.*

*(3) The conditions referred to in subsection (2)(a) are that—*

*(a) the applicant is aged 18 or over,*

*(b) the applicant possesses a licensing qualification, and*

*(c) no personal licence previously held by the applicant has been revoked within the period of 5 years ending with the day on which the application was received.*

*(4) If any of those conditions is not met in relation to the applicant, the Licensing Board must refuse the application.*

*(5) If—*

*(a) all of those conditions are met in relation to the applicant, and*

*(b) the Board has received from the appropriate chief constable a notice under section 73(3)(b),*

*the Licensing Board must hold a hearing for the purpose of considering and determining the application.*

*(6) At a hearing under subsection (5), the Licensing Board must, after having regard to the chief constable's notice—*

*(a) if satisfied that it is necessary to do so for the purposes of the crime prevention objective, refuse the application, or*

*(b) if not so satisfied, grant the application.*

Where all the conditions set out in subsection (3) are met and there are no convictions then Board must grant the application. If a condition of subsection (3) is not met the application must be refused.

Where subsection (3) has been met, but the Board has received notice from that the applicant has been convicted of a relevant or foreign offence, the Board must hold a hearing. The Board is not bound to refuse the licence because of the existence of an offence.

### **Section 75 - Applicant's duty to notify Licensing Board of convictions**

An applicant for a personal licence to inform the Board of any relevant or foreign offence that they have been convicted of in the period between making their application and it being determined by the Licensing Board.

The Board must suspend consideration of the application and pass the notice of conviction to the Chief Constable who should check and respond. The Board can refuse if so recommended by the Chief Constable.

### **Section 76 - Issue of licence**

This section provides that an individual may hold only one personal licence at a time. How that is to be monitored is not clear. A national database is being discussed to combat rogue multiple personal licence holders.

### **Section 77 - Period of effect of personal licence**

*Period of effect of personal licence*

*(1) A personal licence has effect, subject to the following provisions of this section,*

*during the period of 10 years beginning with the date on which it is issued.*

*(2) That period, and any subsequent extension of it under this subsection, is extended for a further period of 10 years if a personal licence renewal application is granted in respect of the licence.*

*(3) A personal licence does not have effect for any period during which it is suspended by virtue of any provision of this Act.*

*(4) Subsection (3) does not affect the calculation of the period during which a personal licence has effect by virtue of subsection (1) as read with subsection (2).*

*(5) A personal licence ceases to have effect if—*

*(a) the licence is revoked under any provision of this Part, or*

*(b) the Licensing Board which issued the licence receives from the personal licence holder a notice under subsection (6).*

*(6) That is a notice—*

*(a) accompanied by the personal licence or, where that is not practicable, by a statement of reasons for failure to produce the licence, and*

*(b) stating that the licence holder wishes to surrender the licence.*

*(7) The date of expiry of the period during which a personal licence has effect is referred to in this Act as the “expiry date” of the licence.*

*(8) Not later than 3 months before the expiry date of a personal licence, the Licensing Board which issued the licence must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed.*

Personal licences are valid for 10 years with the possibility of renewals for further periods of 10 years. Periods of suspension count towards the 10 year period. The Board must let personal licence holders know when their licences are about to expire.

## **Section 78 - Renewal of personal licence**

### *Renewal of personal licence*

*(1) The holder of a personal licence may, within the period specified in subsection (2), apply to the Licensing Board which issued the licence for renewal of the licence.*

*(2) The period referred to in subsection (1) is the period of 2 months beginning 3 months before the expiry date of the licence.*

*(3) An application under subsection (1) must be accompanied by—*

*(a) the personal licence to which it relates, or*

*(b) if that is not practicable, a statement of the reasons for failure to produce the licence.*

*(4) An application under subsection (1) which complies with subsection (3) is referred to in this Act as a “personal licence renewal application”.*

*(5) Sections 73 and 74 apply to a personal licence renewal application as they apply to a personal licence application.*

*(6) For that purpose, references in those sections to a personal licence application are to be read as if they included reference to a personal licence renewal application.*

Applications for renewal are to be made to the Licensing Board which originally granted the licence.

### **Section 79 - Notification of determinations**

There is a duty on Boards to notify the applicant and Chief Constable of any decision to grant or refuse an application and to give reasons on request.

### **Section 80 - Duty to notify court of personal licence**

Where a personal licence holder is charged with a relevant offence the person must advise the court of the existence of the licence. Anyone who fails to comply with these requirements will be guilty of an offence.

### **Section 81 - Court's duty to notify Licensing Board of convictions**

As with premises licences the clerk to the court must within a specified period specified advise the Board of the conviction.

### **Section 82 - Licence holder's duty to notify Licensing Board of convictions**

As with a premises licence the holder of a personal licence who is convicted of a relevant offence or foreign offence must tell Board which issued the licence and or course if it is different, the Board for the area in which the licence holder is working, of the conviction.

### **Section 83 - Procedure where Licensing Board receives notice of conviction**

*Procedure where Licensing Board receives notice of conviction*

*(1) Subsection (2) applies where the relevant Licensing Board—*

- (a) receives a notice of conviction relating to a personal licence holder, or*
- (b) becomes aware that a personal licence holder was, during the application period, convicted of a relevant offence or a foreign offence.*
- (2) The Licensing Board must give notice of the conviction to the appropriate chief constable.*
- (3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (2), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (4).*
- (4) Those notices are—*
- (a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or a foreign offence, or*
- (b) a notice confirming the existence of the conviction and that it relates to a relevant or a foreign offence.*
- (5) Where the appropriate chief constable—*
- (a) proposes to give a notice under subsection (4)(b), and*
- (b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the licence holder's personal licence should be revoked, suspended or endorsed,*
- the chief constable may include in the notice a recommendation to that effect.*
- (6) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(a), the Licensing Board may not take any further action in relation to the conviction.*
- (7) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(b), the Licensing Board must hold a hearing.*
- (8) At the hearing, the Licensing Board may—*
- (a) having regard to—*
- (i) the conviction, and*
- (ii) any recommendation contained in the chief constable's notice under subsection (5),*
- (b) after giving—*
- (i) the licence holder concerned, and*

*(ii) the appropriate chief constable,*

*an opportunity to be heard, and*

*(c) if satisfied that it is necessary to do so for the purposes of the crime prevention objective,*

*make an order under subsection (9).*

*(9) That order is an order—*

*(a) revoking,*

*(b) suspending for such period, not exceeding 6 months, as the Board considers appropriate, or*

*(c) endorsing,*

*the personal licence held by the licence holder concerned.*

*(10) Where the Licensing Board makes an order under subsection (9), the Board must give—*

*(a) the licence holder concerned,*

*(b) the appropriate chief constable, and*

*(c) if different, the Licensing Board which issued the personal licence,*

*notice of the order and of the reasons for making it.*

*(11) In this section—*

- *“the application period” means, in relation to a personal licence holder, the period—*

*(a) beginning with the date on which the application for the personal licence held by that licence holder was made, and*

*(b) ending with the date on which that application was granted,*

- *“notice of conviction” means a notice under section 81(2) or 82(2), and*

- *“relevant Licensing Board” means, in relation to a personal licence holder—*

(a)  
*if the personal licence holder is working as a premises manager at any licensed premises, the Licensing Board for the area in which those premises are situated,*

(b)  
*in any other case, the Licensing Board which issued the personal licence held by the licence holder.*

When a Board receives notice that a personal licence holder has been convicted of a relevant or foreign offence it can take action. A Board can revoke, suspend or endorse the licence.

## **Section 84 - Conduct inconsistent with the licensing objectives**

*Conduct inconsistent with licensing objectives*

*84 Conduct inconsistent with the licensing objectives*

(1) *This section applies where, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding such as is mentioned in subsection (2) in relation to any personal licence holder who is or was working in the licensed premises in respect of which the premises licence was issued (“the licensed premises concerned”).*

(2) *That finding is a finding that the licence holder concerned, while working as mentioned in subsection (1), acted in a manner which was inconsistent with any of the licensing objectives.*

(3) *The Licensing Board making the finding must—*

(a) *if the licence holder concerned is, at the time of the finding, working in licensed premises (whether the licensed premises concerned or other licensed premises) in that Board’s area, hold a hearing,*

(b) *in any other case, give notice to the relevant Licensing Board of their finding together with a recommendation as to whether the personal licence held by the licence holder concerned should be revoked, suspended or endorsed.*

(4) *In subsection (3)(b), “relevant Licensing Board” means—*

(a) *if the Licensing Board making the finding referred to in subsection (1) has reason to believe that the licence holder concerned is working at licensed premises situated in the area of another Licensing Board, that other Licensing Board,*

(b) *in any other case, the Licensing Board which issued the personal licence held by the licence holder concerned.*

(5) *Where a Licensing Board receives a notice and recommendation under subsection (3)(b), the Board must hold a hearing.*

*(6) At a hearing under subsection (3)(a) or (5), the Licensing Board may—*

*(a) after giving—*

*(i) the licence holder concerned, and*

*(ii) such other persons as they consider appropriate,*

*an opportunity to be heard, and*

*(b) if satisfied that it is necessary to do so for the purposes of any of the licensing objectives,*

*make an order under subsection (7).*

*(7) That is an order—*

*(a) revoking,*

*(b) suspending for such period, not exceeding 6 months, as the Board considers appropriate, or*

*(c) endorsing,*

*the personal licence held by the licence holder concerned.*

*(8) Where the Licensing Board makes an order under subsection (7), the Board must give—*

*(a) the licence holder concerned,*

*(b) where the hearing was held in pursuance of a notice given under subsection (3)(b), the Licensing Board which gave the notice, and*

*(c) if different, the Licensing Board which issued the personal licence,*

*notice of the order and of the reasons for making it.*

Where Boards are reviewing a premises licence under section 38 of the Act, the Board finds that a personal licence holder was acting on the premises in question in a manner that was not consistent with the licensing objectives established by this Act, it can act as follows. The Board holds a hearing and can revoke, suspend or endorse the personal licence holder's licence if it is satisfied that it is necessary to do so for the purposes of any of the licensing objectives.

### **Section 85 - Expiry of endorsements**

This section provides for the expiry of endorsements of a personal licence after 5 years. Subsection (3) permits the personal licence holder whose licence contains an endorsement to apply to the Board on expiry to have it removed.

### **Section 86 - Suspension of licence after multiple endorsements**

This section provides that when a personal licence holder receives 3 endorsements to their licence under sections 83 or 84 of the Act then the Board which issued the licence **must** hold a hearing to consider what action should be taken against the licence holder. There the Board can suspend the licence for as long as 6 months or in very bad cases it can revoke the licence.

### **Section 87 - Licence holder's duty to undertake training**

It mandatory for all personal licence holders to undertake prescribed training every 5 years and to provide the relevant Board with evidence of that. Relevant training is prescribed in Regulations.

### **Section 88 - Notification of change of name or address**

A personal licence must notify the relevant Board of any change of name or address within one month. Failure is an offence.

### **Section 89 - Licensing Board's duty to update licence**

The Board must make the necessary changes to the personal licence.

### **Section 90 - Power to specify which Licensing Board is to exercise functions under this Part**

This gives a general power permitting the Scottish Ministers by way of an order to re-decide which Board is the relevant one to carry out the functions of this Part of the Act.

### **Section 91 - Power to prescribe licensing qualifications.**

This provides a power for the Scottish Ministers to set out in regulations the mandatory requirements for a qualification required to obtain a personal licence.

### **Section 92 - Theft, loss etc. of personal licence**

Personal licence holders to apply to the Board that issued the licence for a

copy of the licence if it has been lost, stolen, damaged or destroyed.

**Section 93 - Licence holder's duty to produce licence**

This section applies where the holder of a personal licence is working on licensed premises. A constable or Licensing Standards Officer may require the holder to produce his or her personal licence. Failure to produce it is an offence.

## LICENSED HOURS

### Section 62 - Licensed hours

#### *Licensed hours*

(1) *In this Act, "licensed hours" means, in relation to licensed premises—*

*(a) in the case of licensed premises in respect of which a premises licence has effect, the period or periods of time specified for the time being in the operating plan contained in the premises licence as those during which alcohol is to be sold on the premises, and*

*(b) in the case of licensed premises in respect of which an occasional licence has effect, the period or periods of time specified in the licence as those during which alcohol may be sold on the premises,*

*and a reference to a period of licensed hours is a reference to any of those periods of time.*

(2) *In this Act—*

*(a) in relation to any premises—*

*(i) "on-sales hours" means licensed hours applying to the sale of alcohol for consumption on the premises,*

*(ii) "off-sales hours" means licensed hours applying to the sale of alcohol for consumption off the premises, and*

*(b) in relation to any licensed premises on which alcohol is sold both for consumption on the premises and for consumption off the premises, references to licensed hours are—*

*(i) in relation to alcohol sold for consumption on the premises, to be read as references to on-sales hours,*

*(ii) in relation to alcohol sold for consumption off the premises, to be read as references to off-sales hours.*

(3) *Subsection (1) is subject to sections 67(6) and 68(5).*

This sets up the new regime of licensing hours on which the new licensing system will be based. This is a move away from the system of "permitted hours" of the 1976 Act.

The Act introduces a more modern approach and gets rid of the practice of giving extensions to hours in favour of clarity up front about acceptable hours. So no more regular extensions! There remains limited scope for

occasional extensions.

Licence holders are required to spell out their hours in their operating plans which are submitted to the Board for approval with their premises licence applications. Applicants need to then know Board policy on hours and be prepared to argue why they need hours “outwith policy.”

Note subsection (2) which defines off sales hours and on sales hours. These apply to hybrid premises and also those which are exclusively on sales or off sales.

I can only stress again the importance of knowing that Boards are expected to outline their policy on hours in their section 6 statements of licensing policy. Read the policy of the Board you are dealing with. Boards have received guidance from the Scottish Government about the particular issues surrounding late opening premises.

Boards will probably only be inclined to give you the hours you have under the 1976 Act. And a word for the wary, look for more and you will lose the “like for like” protection against overprovision.

### **Section 63 - Prohibition of sale, consumption and taking away of alcohol outwith licensed hours**

*Prohibition of sale, consumption and taking away of alcohol outwith licensed hours*

*(1) Subject to subsection (2), a person commits an offence if, outwith licensed hours, the person—*

*(a) sells alcohol, or allows alcohol to be sold, on licensed premises,*

*(b) allows alcohol to be consumed on licensed premises, or*

*(c) allows alcohol to be taken from licensed premises.*

*(2) It is not an offence under subsection (1) for a person to—*

*(a) allow alcohol to be consumed on licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol was sold during that period,*

*(b) allow alcohol to be taken from licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol—*

*(i) was sold during that period, and*

*(ii) is not taken from the premises in an open container,*

*(c) allow alcohol to be consumed on or taken from licensed premises outwith licensed hours if the person consuming or taking the alcohol—*

*(i) resides on the premises, or*

*(ii) is a guest of a person who resides there,*

*(d) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to a person who resides on the premises,*

*(e) allow alcohol to be consumed on licensed premises at a meal at any time within 30 minutes of the end of any period of licensed hours if the alcohol was sold—*

*(i) during that period,*

*(ii) at the same time as the meal, and*

*(iii) for consumption at the meal,*

*(f) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to—*

*(i) a person who is a trader for the purposes of the person's trade, or*

*(ii) a person for supply to or on any premises which are occupied for the purposes of the armed forces of the Crown.*

*(3) It is a defence for a person ("the accused") charged with an offence under subsection (1) of allowing alcohol to be consumed on or taken from any licensed premises outwith licensed hours to prove—*

*(a) that the accused, or an employee or agent of the accused, took all reasonable precautions and exercised all due diligence not to commit the offence, or*

*(b) that there were no lawful and reasonably practicable means by which the accused could prevent the person consuming or taking the alcohol on or from the premises from so doing.*

*(4) A person commits an offence if, having been requested by a responsible person not to do so, the person consumes alcohol on, or takes alcohol from, licensed premises outwith licensed hours.*

*(5) In subsection (4), "responsible person" means—*

*(a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,*

*(b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,*

*(c) in either case, any person who works on the premises in a capacity (whether paid or unpaid) which authorises the person to make the request mentioned in subsection (4).*

*(6) Nothing in this section prevents or restricts—*

*(a) the ordering of alcohol for consumption off licensed premises, or*

*(b) the despatch of alcohol so ordered by the person selling it.*

*(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.*

The provisions in this section are to some extent based on section 54 of the Licensing (Scotland) Act 1976. The provisions here provide that it is an offence to sell alcohol outwith licensed hours or further to allow the sale or consumption, or even just the taking away of alcohol outwith licensed hours. There continue to be exceptions -for example the period of 15 or 30 minutes "drinking-up" time.

Subsection (4) creates a new offence and which replaces that under the 1976 Act of consuming or taking away alcohol outwith licensed hours. Now the consumption or taking away is only an offence if the person was asked not to consume the alcohol or take it away but failed to comply with the request. That seems a bit fairer.

## **Section 64 - 24 hour licences to be granted only in exceptional circumstances**

*24 hour licences to be granted only in exceptional circumstances*

*(1) Subsection (2) applies where, in relation to any premises—*

*(a) an application of any of the following kinds is made to a Licensing Board in respect of the premises, namely—*

*(i) a premises licence application,*

*(ii) a premises licence variation application,*

*(iii) an occasional licence application, or*

*(iv) an extended hours application, and*

*(b) if the application were to be granted, the licensed hours in relation to the premises would be such as to allow alcohol to be sold on the premises during a continuous period of 24 hours or more.*

*(2) The Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.*

The presumption provided here is against 24 hour opening in Scotland for on and off sales. Even under the 1976 Act 24 hour opening was competent but as far as I know it never happened.

Boards are entitled to agree to exceptions to that general presumption but **only** if satisfied that there are exceptional circumstances justifying it. This is a test which will have to be applied on a case by case basis. Guidance will set out national guidelines on the policy that should be adopted by Licensing Boards in relation to circumstances that might merit 24 hour opening.

### **Section 65 - Licensed hours: off-sales**

*Licensed hours: off-sales*

*(1) This section applies where an application specified in subsection (2) is made to a Licensing Board in relation to any premises, but only so far as the application is for—*

*(a) a licence authorising the sale of alcohol for consumption off the premises, or*

*(b) an extension of off-sales hours in relation to the premises.*

*(2) That application is—*

*(a) a premises licence application,*

*(b) a premises licence variation application,*

*(c) an occasional licence application, or*

*(d) an extended hours application.*

*(3) If the off-sales hours proposed in the application are such that alcohol would be sold for consumption off the premises—*

*(a) before 10am,*

*(b) after 10pm, or*

*(c) both,*

*on any day, the Board must refuse the application.*

*(4) The Scottish Ministers may by order substitute other times for the times specified in*

*subsection (3).*

*(5) Where subsection (3) does not apply, in considering whether the granting of the application would be inconsistent with any of the licensing objectives, the Board must, in particular, consider the effect (if any) which the off-sales hours proposed in the application would have on the occurrence of antisocial behaviour.*

*(6) In subsection (5), “antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).*

*(7) This section is without prejudice to the generality of sections 23(4), 30(4), 59(3) and 68(1).*

This section introduces statutory opening hours for off sales premises and is an exception to the general idea that the hours are defined by the operating plan. This was introduced as the result of a very late amendment to the Bill and has been widely criticised as contrary to the whole philosophy of the Act. The hours given are of course less than those currently enjoyed by off sales operators. The perceived effect (or is it real effect?) of how alcohol impacts on communities is behind this limitation.

Where an application is made which would have the effect of permitting the sale of alcohol between the hours of 10.00 pm and 10.00 am on an off sales basis, then the Board must refuse the application.

Note that the Scottish Ministers can change those designated times by an affirmative resolution. They can also make Boards take into account the impact of antisocial behaviour (as defined by the Antisocial Behaviour etc. (Scotland) Act 2004) when they are considering what hours to grant in relation to an off sales.

## **Section 66 - Effect of start and end of British Summer Time**

*Effect of start and end of British Summer Time*

*(1) Subsection (2) applies in relation to any period of licensed hours—*

*(a) during which, or*

*(b) at the end of which,*

*British Summer Time is due to begin or end.*

*(2) The beginning or, as the case may be, ending of British Summer Time is to be disregarded for the purpose of determining the time at which that period of licensed hours ends and, accordingly, the period ends at the time it would have ended had British*

*Summer Time not begun or ended.*

*(3) In this section, “British Summer Time” means the period of summer time for the purposes of the Summer Time Act 1972 (c. 6).*

This deals with the problem in relation to British Summer Time. Local practice varied under the 1976 Act. This section provides that when the year clocks are moved forwards or backwards there will be a standard approach.

### **Section 67 - Power for Licensing Board to grant general extensions of licensed hours.**

*Power for Licensing Board to grant general extensions of licensed hours*

*(1) A Licensing Board may, if they consider it appropriate to do so in connection with a special event of local or national significance, make a determination extending licensed hours by such period as the Board may specify in the determination.*

*(2) A determination under subsection (1) may apply to—*

*(a) the whole of the Licensing Board’s area or only to specified parts of the area,*

*(b) licensed hours generally or only to specified descriptions of licensed hours, and*

*(c) all licensed premises in the Board’s area or only to specified descriptions of such premises.*

*(3) A determination under subsection (1) has effect for such period as the Board may specify in it.*

*(4) Where a Licensing Board makes a determination under subsection (1), the Board must—*

*(a) give notice of the determination to—*

*(i) the appropriate chief constable, and*

*(ii) the holders of premises licences and occasional licences in respect of premises to which the determination applies, and*

*(b) publicise it in such manner as the Board sees fit.*

*(5) Nothing in this section is to be taken as requiring any licensed premises to be open for the sale of alcohol during the period of any extension of licensed hours specified in a determination under subsection (1).*

*(6) Except where the context requires otherwise, references in this Act to “licensed hours” are, in relation to any relevant premises to which a determination under*

*subsection (1) applies, to be taken as references to such hours as extended by the determination.*

*(7) In this section, “specified” means specified in a determination under subsection (1).*

This section gives Boards power to grant general extensions to licensed hours in connection with special events of local or national significance. A welcome provision and could cover say a festive period such as Christmas and New Year or an arts festival. This could apply to the whole of the Board's area or only to specified parts and to licensed hours generally or indeed only to specified descriptions of those hours or even to all relevant premises in the Board's area or only to some premises.

## **Section 68 - Extended hours applications**

*Extended hours applications*

*(1) The appropriate Licensing Board may—*

*(a) on the application of the holder of the premises licence in respect of any licensed premises, and*

*(b) if the Board consider it appropriate to do so in connection with—*

*(i) a special event or occasion to be catered for on the premises, or*

*(ii) a special event of local or national significance,*

*extend the licensed hours in respect of the premises by such period as is specified in the application or such other period as the Board consider appropriate.*

*(2) An extension of licensed hours under subsection (1) has effect for such period as is specified in the application or such other period as the Board consider appropriate; but in either case the period must not exceed one month.*

*(3) An application under subsection (1) is referred to in this Act as an “extended hours application”.*

*(4) A period of licensed hours which is extended under this section may not be further extended under this section.*

*(5) Except where the context requires otherwise, references in this Act to “licensed hours” are, in relation to any period of licensed hours extended under this section, to be taken as references to such hours as so extended.*

*(6) References in this section to “licensed premises” do not include premises in respect of which an occasional licence has effect.*

This section replicates occasional extensions under section 64 of the 1976 Act. Note an occasional extension can only be obtained by the holder of a premises licence and not the holder of an occasional licence.

### **Section 69 - Notification of extended hours application**

*Notification of extended hours application*

*(1) Where a Licensing Board receives an extended hours application, the Board must give notice of it, together with a copy of the application, to—*

*(a) the appropriate chief constable, and*

*(b) any Licensing Standards Officer for the area in which the subject premises are situated.*

*(2) The appropriate chief constable may, within 10 days of receipt of a notice under subsection (1)(a), by notice to the appropriate Licensing Board object to the application if the chief constable considers it necessary to do so for the purposes of the crime prevention objective.*

*(3) A Licensing Standards Officer must, within 10 days of receipt of a notice under subsection (1)(b), prepare and submit to the Licensing Board a report setting out the Officer's comments on the application.*

Boards must notify the Chief Constable and LSOs of all applications received for extensions to licensed hours. The LSO has to respond within 10 days with a report and the Chief Constable can object, again within 10 days.

### **Section 70 - Determination of extended hours application**

*Determination of extended hours application*

*(1) In determining an extended hours application, the Licensing Board must take into account—*

*(a) any notice of objection given by the appropriate Chief Constable under section 69(2), and*

*(b) the Licensing Standards Officer's report under section 69(3).*

*(2) The Board may hold a hearing for the purpose of determining an extended hours application.*

*(3) Where the Board does not hold a hearing for that purpose, the Board must, before determining the application, ensure that the applicant is given an opportunity to comment on any such notice or report as is mentioned in subsection (1).*

*(4) Where a Licensing Board grants or refuses an extended hours application, the Board must give notice of the grant or refusal to—*

*(a) the applicant,*

*(b) the appropriate chief constable, and*

*(c) any Licensing Standards Officer for the area in which the subject premises are situated.*

*(5) A person to whom notice is given under subsection (4) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.*

*(6) Where the clerk of a Licensing Board receives a notice under subsection (5), the Board must issue a statement of the reasons for the grant or refusal of the application to—*

*(a) each person giving the notice, and*

*(b) each other person to whom the Board gave notice under subsection (4).*

*(7) A statement of reasons under subsection (6) must be issued—*

*(a) by such time, and*

*(b) in such form and manner,*

*as may be prescribed.*

The Board must take into account objections from the police and comments from the LSO comments. Boards may hold a hearing to determine the application. Where the Board does not hold a hearing it must ensure that the applicant is given an opportunity to deal with objections or comments.

## **OCCASIONAL LICENCES**

### **Section 56 - Occasional licence**

#### *Occasional licence*

*(1) A Licensing Board may, on the application of any of the persons mentioned in subsection (2) made in relation to any premises (other than licensed premises) within the Board's area, issue to the applicant a licence (referred to in this Act as an "occasional licence") authorising the sale of alcohol on the premises.*

*(2) Those persons are—*

*(a) the holder of a premises licence,*

*(b) the holder of a personal licence, and*

*(c) a representative of any voluntary organisation.*

*(3) An application under subsection (1) must contain details of the information which the applicant proposes should be included in the licence under subsection (7)(b).*

*(4) An application under subsection (1) which complies with subsection (3) is referred to in this Act as an "occasional licence application".*

*(5) An occasional licence has effect for such period of not more than 14 days as the Licensing Board may determine.*

*(6) A Licensing Board may issue under subsection (1) in respect of any one voluntary organisation in any period of 12 months—*

*(a) not more than 4 occasional licences each having effect for a period of 4 days or more, and*

*(b) not more than 12 occasional licences each having effect for a period of less than 4 days,*

*provided that, in any period of 12 months, the total number of days on which occasional licences issued in respect of the organisation have effect does not exceed 56.*

*(7) An occasional licence issued by a Licensing Board under subsection (1) must—*

*(a) be in the prescribed form, and*

*(b) contain the information specified in subsection (8).*

*(8) That information is—*

*(a) the name and address of the holder of the licence,*

*(b) a description of the premises in respect of which it is issued,*

- (c) a description of the activities to be carried on in the premises,*
  - (d) a statement of the period during which the licence has effect,*
  - (e) a statement of the times during which alcohol may be sold on the premises,*
  - (f) a statement as to whether alcohol may be sold for consumption on the premises, off the premises or both,*
  - (g) 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,*
  - (h) 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, in particular—*
    - (i) the ages of the children or young persons to be allowed entry,*
    - (ii) the times at which they are to be allowed entry, and*
    - (iii) the parts of the premises to which they are to be allowed entry,*
  - (i) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found, and*
  - (j) such other information as may be prescribed.*
- (9) Where alcohol is to be sold both for consumption on and for consumption off the premises, the occasional licence for the premises may, under subsection (8)(e), state different times for—*
- (a) the sale of alcohol for consumption on the premises, and*
  - (b) the sale of alcohol for consumption off the premises.*

Boards can grant an occasional licence for premises other than licensed premises to specified persons. For a premises licence holder this would be to authorise the sale of alcohol in the course of catering for an event taking place outwith their licensed premises such as at a wedding reception. Voluntary bodies may also apply for an occasional licence for authorising an event which is connected with their activities. A licence can last for at most 14 days and there are limits to the number on one year that a voluntary organisation can have.

The ability of a personal licence holder to apply is of course a significant shift in policy. Under the 1976 Act an application for such a licence would be tied to the event by virtue of holding a licence for existing premises and supplying alcohol for the event via those premises. Now a personal licence holder can apply without any regulation as to the source of the alcohol.

Note also the Licensing (Clubs)(Scotland) Regulations 2007 SSI 2007/76 entitles clubs to make applications for occasional licences. Clubs will of course often have premises licences but the ability to seek an occasional licence will allow a club to open to the public for the sale of alcohol for up to 56 days per year.

### **Section 57 - Notification of application to chief constable**

Boards must notify the Chief Constable and the LSO all applications for occasional licences and the Chief Constable, within 21 days, must notify the Board if it is in the interests of the crime prevention licensing objective, that it be refused. The LSO within the same period can submit comments.

### **Section 58 - Objections and representations**

*Objections and representations*

*(1) Where an occasional licence application is made to a Licensing Board, any person may by notice to the Licensing Board—*

*(a) object to the application on any ground relevant to one of the grounds for refusal specified in section 59(6), or*

*(b) make representations to the Board concerning the application, including, in particular, representations—*

*(i) in support of the application, or*

*(ii) as to conditions which the person considers should be imposed.*

*(2) Where a Licensing Board receives a notice of objection or representation under subsection (1) relating to any occasional licence application made to the Board, the Board must—*

*(a) give a copy of the notice to the applicant in such manner and by such time as may be prescribed, and*

*(b) have regard to the objection or representation in determining the application,*

*unless the Board rejects the notice under subsection (3).*

*(3) A Licensing Board may reject a notice of objection or representation received by the Board under subsection (1) if the objection or representation is frivolous or vexatious.*

*(4) Where a Licensing Board rejects a notice of objection or representation under subsection (3), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.*

*(5) In any proceedings by a Licensing Board for the recovery of expenses under subsection (4), a copy of any minute of proceedings of the Licensing Board—*

*(a) recording the Board's rejection of the notice and the grounds for rejection, and*

*(b) certified by the clerk of the Board to be a true copy,*

*is sufficient evidence of the rejection and of the establishment of the ground for rejection.*

Objections and representations on any application made to the Board for an occasional licence can be made.

## **Section 59 - Determination of application**

*Determination of application*

*(1) An occasional licence application received by a Licensing Board is to be determined in accordance with this section.*

*(2) If the Board has not received any—*

*(a) notice from the appropriate chief constable under section 57(2),*

*(b) report from a Licensing Standards Officer under section 57(3), or*

*(c) notice of objection or representation under section 58(1),*

*relating to the application, the Board must grant the application.*

*(3) In any other case, the Board must consider whether any of the grounds for refusal applies and—*

*(a) if none of them applies, the Board must grant the application, or*

*(b) if any of them applies, the Board must refuse the application.*

*(4) The Board may hold a hearing for the purposes of determining any application which is to be determined in accordance with subsection (3).*

*(5) Where the Board does not hold a hearing for that purpose, the Board must ensure that, before determining the application, the applicant is given an opportunity to comment on any such notice or report as is referred to in subsection (2).*

*(6) The grounds for refusal are—*

*(a) that the premises to which the application relates are excluded premises,*

*(b) that the application must be refused under section 64(2) or 65(3),*

*(c) that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,*

*(d) that, having regard to—*

*(i) the nature of the activities proposed to be carried on in the premises to which the application relates,*

*(ii) the location, character and condition of the premises, and*

*(iii) the persons likely to frequent the premises,*

*the Board considers that the premises are unsuitable for use for the sale of alcohol.*

*(7) In considering, for the purposes of the ground for refusal specified in subsection (6)(c), whether the granting of the application would be inconsistent with the crime prevention objective, the Licensing Board must, in particular, take into account any notice given by the appropriate chief constable under section 57(2).*

*(8) In determining any application which is to be determined in accordance with subsection (3), the Board must take into account any report from a Licensing Standards Officer under section 57(3).*

The Board's decision must be based on the statutory grounds for refusal. These are the same as the grounds for refusal of a premises licence application but there is no overprovision ground.

## **Section 60 - Conditions of occasional licence**

### *Conditions of occasional licence*

*(1) Except to the extent that schedule 4 provides otherwise, every occasional licence is subject to the conditions specified in that schedule.*

*(2) The Scottish Ministers may by regulations modify schedule 4 so as—*

*(a) to add such further conditions as they consider necessary or expedient for the purposes of any of the licensing objectives, or*

*(b) to extend the application of any condition specified in the schedule.*

*(3) The Scottish Ministers may by regulations prescribe further conditions as conditions which Licensing Boards may, at their discretion, impose on the granting by them of occasional licences.*

*(4) Without prejudice to subsection (3), where a Licensing Board grants an occasional licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of subsection (1)) as*

*they consider necessary or expedient for the purposes of any of the licensing objectives.*

*(5) A Licensing Board may not impose a condition under subsection (4) which—*

*(a) is inconsistent with any condition—*

*(i) to which the occasional licence is subject by virtue of subsection (1), or*

*(ii) prescribed under subsection (3),*

*(b) would have the effect of making any such condition more onerous or more restrictive, or*

*(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.*

*(6) The conditions which may be—*

*(a) added under subsection (2)(a),*

*(b) prescribed under subsection (3), or*

*(c) imposed under subsection (4),*

*include, in particular, conditions of the kind described in subsection (7).*

*(7) Those are conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with—*

*(a) the sale of alcohol on the premises in respect of which an occasional licence has effect, or*

*(b) any other activity carried on in such premises.*

This replicates the conditions regime as it applies to premises licences.

## **Section 61 - Notification of determinations**

Boards are under a duty to notify decisions on applications for occasional licences and to give reasons.

## **TRANSITION**

The following account of the transitional arrangements is taken from the Scottish Executive Guidance Document for Licensing Boards issued under section 142 of the Act.

For the dry detail have a look at The Licensing (Transitional and Savings Provisions)(Scotland) Order 2007 and The Licensing (Appointed Day and Transitional Provisions) (Scotland) Order 2007. These are attached.

Please note there are likely to be changes to the regulations on transition so the following is a guide only.

One recent change is this. Regular extensions and Children's Certificates attaching to existing licences went into transition, but those applying to provisional licences did not. However the Licensing (Transitional and Savings Provisions) (Scotland) Amendment Order 2007 has removed this anomaly. Provision is made for any regular extension of hours or children's certificate to run until the end of the transitional period if that extension or certificate is valid at the beginning of that period or granted during it (Articles 5 to 8).

The same Order makes provision for Boards to allow late objections to be made and also reduces the time, during transition, for which proprietors in the same building need be notified.

It also allows the application of grandfather rights to the holders of provisional licences in respect of by making amendments to Article 19(3) of the earlier Order. Until the amendment the protection of grandfather rights did not apply to provisional grants so such an applicant could not convert on a protected basis his 1976 Act regular extensions into his operating hours under his 2005 Act operating plan. That should provide some comfort to developers.

Note that section 26(2) applications under the 1976 Act for outline provisional grants have not been brought into transition.

All the licences under the new system and the majority of the provisions of the 2005 Act will take effect on a single appointed day following a transition period. The transition period will start on the **1 February 2008** and last for a period of nineteen months until the end of August 2009 with the single

appointment date being **1 September 2009**.

Transition will take place at 0500 on Tuesday 01 September 2009. This avoids the change taking place on a weekend, usually a busy time for many premises and by tying the transition to a specific time when the majority of premises would be expected to be closed it should lessen the confusion of when a premises should be operating under one licence regime and not the other.

During Transition it will be necessary for 1976 Act licences to continue to run until 1 September 2009 when 1976 Act licences will terminate automatically. During this period licences will be deemed to automatically be extended. No new licences will be issued. To promote fairness for licensees and reduce administrative complications, the following will be implemented during transition:

- No 1976 Act renewals - existing licences due to expire during transition and which would require renewal under section 30 of the 1976 Act will be automatically extended to run until the end of the transition period. Any automatic extension should include extending the licensees' children's certificate (Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 section 49).
- 1976 Act regular extensions - such regular (annual) extensions as have been granted under section 64 of the 1976 Act when transition begins should be automatically extended to run until the end of the transition period.
- There will no longer be set Quarterly meetings. The last quarterly meetings will be held in January 2008.
- Boards will be required to use delegated powers/duty to delegate to clerks the remaining business of the 1976 Act, such as licence transfers. However Clerks are required to revert a case to a Board where they consider this to be 'necessary or expedient'.

### **The transfer of Existing Premises licences**

To ensure a controlled flow of applications all existing licensees are required to apply for their new licence during one of the following periods, according to the month of the quarterly Board meeting in which their existing licence is due to expire (the year of expiry being irrelevant):

- March expiries - must apply by the last lodging date of **7 March 2008**

- June expiries - must apply by the last lodging date of **6 June 2008**
- October expiries - must apply by the last lodging date of **3 October 2008**
- January expiries - must apply by the last lodging date of **9 January 2009**

However there is nothing stopping any applicant lodging their application early and applications can be lodged from 1 February 2008 regardless of the expiry date of their existing licence.

Each Board should write to each licensee at the address of the licensed premises advising of the relevant deadline stated above. These 4 dates are the same for all Boards throughout Scotland.

The fee as detailed in regulations enabled by section 136 of the 2005 Act would be due with the application when lodged.

Licensing Boards will have **6 months** to determine a premises licence application during transition. This period would run from each of the 'last lodging dates' as noted above, even if licensees choose to apply earlier than their designated period. A Licensing Board is not required to deal with an application before the appointed determination period, nor are they prevented from receiving or processing an early application.

Should a licence holder fail to apply by the set lodging date, the licence holder loses their 'Grandfather Rights' and the application will be treated as an entirely new application when received.

Any applicant who missed their lodging date would need a new application.

The new application would need to include all the certificates required by an applicant for a new premises licence (building standards, planning and food hygiene certificates, section 50 of the 2005 Act) nor would the premises be exempt from the consequences of any overprovision assessment in section 23(5)(e) of the 2005 Act. If no application is received the licence would run to the end of the transition period and then terminate automatically.

Where there are no objections to an application and the clerk does not foresee any problems with the draft operating plan and layout plan - a list of non-controversial applications should be allowed to be submitted to the

Board and agreed. Some Boards though might choose not to operate in this way and decide to scrutinise every case individually at full Board meetings, however this flexibility is available. Determination itself must still be undertaken by the Board and not delegated.

### **Grandfather Rights**

The following partial 'Grandfather Rights' are applicable to existing 1976 Act licensees as they transfer into the regime of the 2005 Act.

- Exemption from the consequences of the overprovision assessment and from the overprovision ground for refusal of a licence (section 23(5) (e) of the 2005 Act) where there is no change to the size, capacity or activities taking place on the premises.
- Exemption from the need to provide building standards, planning and food hygiene certificates where transfer is on a like for like basis. (Section 50 of the 2005 Act)
- Where transfer is on a like for like basis but the licensing board considers that they would nevertheless be minded to refuse the licence on the grounds of the "location, character or condition of the premises" (section 23(5) (d) of the 2005 Act), but that suitable modifications can be made to address this, the licence must be granted and the licensee given a period of 12 months to make the necessary modifications. If the modifications are not made within this period the licence would be revoked.

No other Grandfather Rights are available and all other aspects of the new legislation would be applied.

### **Garage/Petrol Station Forecourt Shops**

The 'Grandfather Rights' mentioned above do not apply to Garage/Petrol Station Forecourt Shops premises which presently hold a licence, unless the licensing board decides they fall under section 123(5) of the 2005 Act, which allows a premises which serves a wider local function or is a required community resource to continue to hold an alcohol licence. Garage/ Petrol Station Forecourt Shops which do not fall within this definition will no longer be able to sell alcohol from 0500 on 1 September 2009.

### **Personal Licence Applications**

During transition Personal Licence applicants can apply by the following times:

- those disassociated with a premises licence application - at any time

- during transition.
- those associated with a premises licence application i.e. as named premises managers (Schedule 3 paragraph 4 of the 2005 Act), to apply at same time as premises application.
  - where a premises has not identified a premises manager at time of application, it is acceptable to allow this name to be provided at any time prior to a determined date before the end of the transition period. If no name was provided by this date the premises licence will fall.

Unlike the transition of the Licensing Act 2003 there will be no grandfather rights for Personal Licence applicants and all applicants will be required to undertake the relevant training required by regulations under section 91 of the 2005 Act.

### **New Licences**

There will continue to be a need to grant 1976 Act licences during the transition period if an applicant required a provisional licence or wished to operate during transition.

This will be achieved through a 'hybrid' application process.

The outcome of a successful "hybrid" application process would be that:-

(1) Either:

- (a) a current licence is granted which comes into effect immediately to allow the licensed premises to operate or,
- (b) there is a provisional grant of licence in order to allow premises to be completed

and

(2) a new premises licence or provisional premises licence is granted which will not take effect until the appointed day.

The hybrid application process we have outlined sets out to deal with two main issues, firstly the *type* of licence (as set out in Schedule 1 of the 1976 Act) which is to operate during the transitional period and, secondly, the *nature* of the premises to operate as from the appointed day.

### **Submission of "Hybrid" Application**

In order to deal with operation before and after the appointed day, there will be one "hybrid" application form. This will require to set out the type of licence which is being applied for to operate during the transitional period,

for example a public house or a restaurant. In addition to the paperwork required to fulfil the 1976 Act requirements the application should be accompanied by information in relation to the new premises licence to operate as from the appointed day, namely:-

- an operating plan,
- a layout plan and
- a section 48 certificate

In accordance with the new principle for transition that application must be determined within a period of six months. Applications for new businesses during the transitional period should be dealt with by the Board as and when they are received. The six months should run from the date the Board receives the application with appropriate reminder triggers being maintained for the expiry of the determination period.

The final date for a Hybrid application to be lodged will be 28 February 2009. Past this date applications for premises licence under the 2005 Act only will be accepted.

During transition the requirement to publish a list of applications in a newspaper would be suspended, but only where a Licensing Board is able instead to publish such a list on their website.

### **Transfer of Premises Licence**

During the transition period the ability to transfer a premises licence would require that both the 1976 Act regime and the 2005 Act regime run in tandem until the Big Bang date.

The ability to permanently transfer a licence under the 1976 Act regime will be a delegated power for the clerks.

If a premises application had already been granted under the 2005 Act regime in transition and an application for transfer was received in transition this would then follow the 2005 Act regime process for transfer. However if a premises application under the 2005 Act regime was submitted and the premises then changed hands under the transfer provisions of the 1976 Act prior to determination of the 2005 Act application then the application will automatically fall for the premises licence, and be resubmitted by the next lodging date. Grandfather rights will continue as long as the application was

lodged on time. This will not be a substitution but a new application requiring a new fee. Should an application fall in this way there is no requirement to reimburse the original premises licence fee paid.

### **Members' Clubs**

Members' Clubs are authorised to supply alcohol to their members by a certificate of registration granted by a sheriff under Part VII of the 1976 Act. These clubs under the 2005 Act will be required to obtain a premises licence from the licensing board although section 125 of the 2005 Act ensures such clubs maintain their special character.

For transition Members' Club will not need to continue to register during the transition period. Their regular extensions granted by licensing boards under S64(5) of the 1976 Act will also be extended to run until the end of the transition period. The lodging dates by which a Members' Club must apply for a premises licence under the 2005 Act will be set by the local licensing board and that board is required to individually notify Members' Clubs of the lodging date. The determination period will be 6 months and existing Members' Clubs should also enjoy the same Grandfather Rights as other premises when applying for a premises licence.

A new Members' Club wishing to open during transition should be required to apply both to the sheriff and the Licensing Board (i.e. for a 76 Act licence to operate now and, at the same time apply for a premises licence).

### **Seamen's Canteens**

Section 40 to 46 of the 1976 Act makes provisions for Seamen's Canteens. However the 2005 Act has removed the option of special arrangements for Seamen's canteens and in future they will be required to follow the same process in gaining a single premises certificate.

## **CONTROL OF ORDER**

### **Section 94 - Exclusion orders**

The Licensed Premises (Exclusion of Certain Persons) Act 1980 provides for the criminal courts to make an exclusion order against a person found guilty of an offence committed on licensed premises other than in an off licence. This section repeals the 1980 Act.

A criminal court, when convicting the person of the violent offence, can make an exclusion order against the person.

### **Section 95 - Breach of exclusion order**

This section makes it an offence for a person subject to an exclusion order to breach that order. and sets out in subsection (2) what sanctions may be taken against them. An authorised person or a constable can remove them from the licensed premises.

### **Section 96 - Exclusion orders: supplementary provision**

An exclusion order can still be made where an absolute discharge is given under section 246(3) of the Criminal Procedure (Scotland) Act 1995.

### **Section 97 - Closure orders**

On application from a senior police officer, a Board by order can close any licensed premises if disorder is imminent and closure is necessary for public safety. Note that there is also power for a senior police officer to make an order to authorise immediate closure of licensed premises under the same conditions but only if the risk to public safety is such that immediate closure is necessary. Such an "emergency closure order" has effect for no more than 24 hours.

### **Section 98 - Termination of closure orders**

The appropriate senior police office must terminate any closure order where it is no longer necessary for public safety. Note too that the premises licence holder can also apply to the Board for termination.

### **Section 99 - Extension of emergency closure order**

This section gives power for a senior police officer to extend the duration of

an emergency exclusion order if conditions are met.

**Section 100 - Regulations as to closure orders**

This section gives the Scottish Ministers power by regulation to make further provision on the making of closure orders and also extensions to closure orders.

## **OFFENCES**

### **Section 102 - Sale of alcohol to a child or young person.**

*Sale of alcohol to a child or young person*

*(1) A person who sells alcohol to a child or a young person commits an offence.*

*(2) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—*

*(a) the accused believed the child or young person to be aged 18 or over, and*

*(b) either—*

*(i) the accused had taken reasonable steps to establish the child’s or young person’s age, or*

*(ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.*

*(3) For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—*

*(a) the accused was shown any of the documents mentioned in subsection (4), and*

*(b) that document would have convinced a reasonable person.*

*(4) The documents referred to in subsection (3)(a) are any document bearing to be—*

*(a) a passport,*

*(b) a European Union photocard driving licence, or*

*(c) such other document, or a document of such other description, as may be prescribed.*

*(5) A person guilty of an offence under subsection (1) is liable on summary conviction to—*

*(a) a fine not exceeding level 5 on the standard scale,*

*(b) imprisonment for a term not exceeding 3 months, or*

*(c) both.*

It is an offence for anyone to sell alcohol to children or young people anywhere. This broadens the existing offence provided for in section 68 of the 1976 Act which is of course limited to the licence holder or an employee or agent of the licence holder in licensed premises.

It is a defence if the seller believed that the purchaser was 18 or over and either took all reasonable steps to establish the purchaser's age or nobody could reasonably have suspected from the purchaser's appearance that he was under 18.

The seller is deemed to have taken all reasonable steps if he or she had seen evidence of the purchaser's age and that evidence would have convinced a reasonable person. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it, then that defence is not made out.

Even so forgery is still an issue here and some forms of ID can readily be obtained from the internet.

### **Section 103 - Allowing the sale of alcohol to a child or young person**

*Allowing the sale of alcohol to a child or young person*

*(1) Any responsible person who knowingly allows alcohol to be sold to a child or a young person on any relevant premises commits an offence.*

*(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—*

*(a) a fine not exceeding level 5 on the standard scale,*

*(b) imprisonment for a term not exceeding 3 months, or*

*(c) both.*

This section deals separately with "allowing" the sale of alcohol to children or young people.

The key idea here is "responsible person" and this means responsibility for the premises and not the child.

"Knowingly allows" is not clear. In **Noble v. Heatley** 1967 JC 5, it was held by the Appeal Court to mean actual knowledge. The English have imputed knowledge though the doctrine of delegation but we do not and it is possible that this term was lifted from the 2003 Act without account of Scots law.

It applies only to sales on "relevant premises" by "responsible persons". "Relevant premises" are as defined by section 122 and really covers any

premises on which alcohol is lawfully sold. "Responsible person" is also defined in section 122 but it has different meanings in relation to different types of premises and also covers those with some responsibility for sales of alcohol. It clearly includes anyone over 18 who works on the premises and who has authority to prevent the sale.

#### **Section 104 - Sale of liqueur confectionery to a child**

It is an offence to sell liqueur confectionery to a child under 16. It is a defence if the seller believed that the purchaser was 16 or over and if either he or she took all reasonable steps to establish the purchaser's age or if nobody could reasonably have suspected from the purchaser's appearance that he or she was under 16. An accused is deemed to have taken "all reasonable steps" if he or she was shown evidence of the individual's age and that evidence was such that it would have convinced a reasonable person. Note that under section 147 a child means someone under the age of 16. So a 16 or 17 year old can be sold such chocolates.

#### **Section 105 - Purchase of alcohol by or for a child or young person**

*Purchase of alcohol by or for a child or young person*

*(1) A child or young person who buys or attempts to buy alcohol (whether for himself or herself or another person) commits an offence.*

*(2) It is not an offence under subsection (1) for a child or young person to buy or attempt to buy alcohol if the child or young person is authorised to do so by the chief constable for the purpose of determining whether an offence is being committed under section 102.*

*(3) A chief constable may authorise a child or young person to buy or attempt to buy alcohol as mentioned in subsection (2) only if satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of the child or young person.*

*(4) A person other than a child or young person who knowingly buys or attempts to buy alcohol—*

*(a) on behalf of a child or young person, or*

*(b) for consumption on relevant premises by a child or young person,*

*commits an offence.*

*(5) Subsection (4)(b) does not apply to the buying of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.*

*(6) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.*

*(7) A person guilty of an offence under subsection (4) is liable on summary conviction to—*

*(a) a fine not exceeding level 5 on the standard scale,*

*(b) imprisonment for a term not exceeding 3 months, or*

*(c) both.*

It is an offence for a child or young person to buy or attempt to buy alcohol whether or not on licensed premises. Note though that subsection (2) gives the child or young person immunity from committing an offence under this section where the child or young person is taking part in test purchasing authorised by a chief constable.

It is an offence for an adult to act as an agent for a child or young person in purchasing or attempting to purchase alcohol. It is also an offence to buy alcohol for a child or young person to consume on relevant premises. The offence also applies where a member of a club has alcohol supplied to a child or even attempts to do so.

Note though that it is not an offence to buy beer, wine, cider or perry for a person aged 16 or 17 if they consume it with a table meal on relevant premises.

The test purchase provisions do not mean that a licence holder is subject to strict liability. Suspension or other proceedings still require culpability. The two Fife cases decided by the Courts so far were both conceded by the Board ( which concession was endorsed by the Sheriffs to be correct) on the basis that the Board had applied a form of strict liability. However in both cases the Sheriff remitted back-see **BP Express Shopping Ltd v. West Fife Divisional Licensing Board [2007] 37 SLLP 29 ; Alldays Stores Ltd v. Central Fife Divisional Licensing Board [2007] 37 SLLP 34.**

Provided there is no entrapment test purchasing is fair.

Please be aware that test purchasing is not just about off sales. It applies to all licensed premises and has done so since last November. So nightclubs, pubs, restaurants are all fair game. The Scottish Executive has issued a practice guide on test purchasing. The guide can be found at

<http://www.scotland.gov.uk/Publications/2007/10/17094925/0>. Alcohol is not yet included in it as the Fife pilot is still being evaluated. But the guidance in it might be useful meantime.

## **Section 106 - Consumption of alcohol by a child or young person**

*Consumption of alcohol by a child or young person*

*(1) A child or young person who knowingly consumes alcohol on any relevant premises commits an offence.*

*(2) Any responsible person who knowingly allows a child or young person to consume alcohol on any relevant premises commits an offence.*

*(3) Subsections (1) and (2) do not apply to the consumption of beer, wine, cider or perry by a young person along with a meal supplied on relevant premises.*

*(4) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.*

*(5) A person guilty of an offence under subsection (2) is liable on summary conviction to—*

*(a) a fine not exceeding level 5 on the standard scale,*

*(b) imprisonment for a term not exceeding 3 months, or*

*(c) both.*

It is an offence for a child or young person knowingly to consume alcohol on relevant premises. This is a new offence. Under the 1976 Act the offence was only committed when “in a bar”. Here there is no such limitation. Note the further offence in subsections (2) and the disapplication in subsection (3).

## **Section 107 - Unsupervised sale of alcohol by a child or young person**

*Unsupervised sale of alcohol by a child or young person*

*(1) Any responsible person who knowingly allows alcohol to be sold, supplied or served by a child or young person on any relevant premises commits an offence.*

*(2) Subsection (1) does not apply to—*

*(a) any sale by a child or young person of alcohol for consumption off the premises, or*

*(b) any supply or service by a child or young person of alcohol for consumption on the*

*premises along with a meal supplied on relevant premises,*

*if the condition in subsection (3) is satisfied.*

*(3) That condition is that the sale, supply or service is specifically authorised by—*

*(a) a responsible person, or*

*(b) any other person of or over 18 years of age who is authorised by a responsible person for the purposes of this section.*

*(4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.*

It is an offence for a responsible person knowingly to allow a child or young person to sell, supply or serve alcohol, unless the alcohol is for consumption off the premises or is for consumption with a meal and the sale is specifically authorised by someone aged 18 or over. The exceptions allow for example, for persons who are under 18 to work in shops selling alcohol provided they are supervised or in restaurants.

### **Section 108 - Delivery of alcohol by or to a child or young person**

This section relates to off-sales. It is an offence for any responsible person to allow someone under the age of 18 to deliver alcohol from such a premises or to deliver (or allow to be delivered) alcohol to someone under 18., subject to the exemption that the delivery by a child or young person is not an offence where the child or young person delivering or taking delivery works at the relevant premises, or at the place of delivery, in a capacity which includes the delivery of alcohol. There is a defence of all necessary precautions or no reason to doubt the age of the child or young person.

### **Section 109 - Sending a child or young person to obtain alcohol**

It is an offence to send a child or young person to obtain alcohol which is sold for consumption off the premises. The offence is committed whether or not the child or young person is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent. There is no offence where the child or young person works at the premises in question and his or her job involves taking deliveries of alcohol.

### **Section 110 - Duty to display notice**

This section makes it a statutory requirement that there be displayed on all

relevant premises in a prominent place at all times a notice stating that it is an offence for a person under the age of 18 to buy or attempt to buy alcohol on the premises or for a person to buy alcohol on their behalf. The notice must also contain a statement as to the "no proof - no sale" requirement. It is an offence for anyone specified in subsection (5) relating to the premises in question, not to display such a notice.

### **Section 111 - Drunk persons entering or in premises on which alcohol is sold**

It is an offence for a drunk person to attempt to enter any relevant premises and it is an offence for a person when on relevant premises to be drunk and incapable.

### **Section 112 - Obtaining of alcohol by or for a drunk person**

It is an offence for any person to buy or attempt to buy alcohol for someone who is drunk or to help a drunk person to obtain or consume alcohol. This is only an offence where the alcohol is to be consumed on relevant premises.

### **Section 113 - Sale of alcohol to a drunk person**

It is an offence for any responsible person working on relevant premises to sell alcohol to someone who is drunk.

### **Section 114 - Premises manager, staff etc. not to be drunk**

It is an offence for any responsible person (ie the premises manager and anyone else who works on relevant premises) to be drunk on the premises.

### **Section 115 - Disorderly conduct**

It is an offence for any person to behave in a disorderly manner or to annoy others with offensive language on relevant premises.

Note that subsection (2) makes it an offence for any responsible person in relation to relevant premises **to allow** disorderly conduct on the premises. There is a due diligence.

### **Section 116 - Refusal to leave premises**

It is an offence for a disorderly person to refuse to leave relevant premises when asked or for any person to refuse to leave licensed premises at closing time when asked. Authorised persons can use reasonable force to remove them.

### **Section 117 - Offences relating to sale of alcohol to trade**

It is an offence for a person to sell alcohol to trade otherwise than from premises used exclusively for the purpose of selling to trade (whether such sale is solely of alcohol or not).

This will bring “wholesale only” premises and cash and carry warehouses into the licensing system as most of these now allow access by the public and purchase by the public. Under the 1976 Act these premises were outside the system but some had off sales licences just to be on the safe side.

### **Section 118 - Prohibition of sale of alcohol on moving vehicles**

This deals with stretch limousines and the like that provide alcohol. It is an offence for any person to knowingly sell alcohol on any vehicle whilst it is moving unless authorised to do so. "Vehicle" is as defined in section 147 and basically means any road vehicle.

### **Section 119 - Delivery of alcohol from vehicles etc.**

This provision deals with deliveries of alcohol and provides that all such deliveries and carrying of alcohol in vehicles is properly and clearly recorded.

### **Section 120 - Prohibition of late-night deliveries of alcohol**

This relates to off-sales and makes it an offence for anyone who works in these licensed premises to deliver alcohol between 12 midnight and 6 am and it is also an offence for any responsible person to allow such a delivery.

### **Section 121 - Keeping of smuggled goods**

This section makes it an offence knowingly to keep or allow to be kept on any licensed premises any illegally imported goods.

# MISCELLANEOUS AND GENERAL INCLUDING PROCEDURE AT BOARDS AND APPEALS

## Section 123 - Excluded premises

### *Excluded premises*

*(1) No premises licence or occasional licence has effect to authorise the sale of alcohol on excluded premises.*

*(2) For the purposes of this Act, “excluded premises” means—*

*(a) premises on land—*

*(i) acquired or appropriated by a special roads authority, and*

*(ii) for the time being used,*

*for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class 1 (with or without other classes), and*

*(b) subject to subsection (5), premises used as a garage or which form part of premises which are so used.*

*(3) For the purposes of subsection (2)(a)—*

*(a) “special road” and “special roads authority” have the same meanings as in the Roads (Scotland) Act 1984 (c. 54), and*

*(b) “class 1” means class 1 in Schedule 3 to that Act, as varied from time to time by an order under section 8 of that Act, but, if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in this section to traffic of class 1 so as to take account of the additional class.*

*(4) For the purposes of subsection (2)(b), premises are used as a garage if they are used for one or more of the following—*

*(a) the sale by retail of petrol or derv,*

*(b) the sale of motor vehicles, or*

*(c) the maintenance of motor vehicles.*

*(5) Despite subsection (2)(b), premises used for the sale by retail of petrol or derv or which form part of premises so used are not excluded premises if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of—*

*(a) petrol or derv, or*

*(b) groceries (where the premises are, or are to be, used also for the sale by retail of*

*groceries).*

*(6) The Scottish Ministers may by order amend the definition of “excluded premises” in subsection (2) so as to include or exclude premises of such description as may be specified in the order.*

This provides that the premises described in subsection (2) are excluded from the new licensing regime. The sale of alcohol is not permitted in these premises. This is subject to the possible exemption for garage premises which are a principal local source of fuel or groceries.

## **Section 124 - Exempt premises**

*Exempt premises*

*(1) Each of the following are exempt premises for the purposes of this Act—*

*(a) an examination station at an airport designated for the purposes of this section in an order made by the Scottish Ministers,*

*(b) an approved wharf at a port or hoverport so designated,*

*(c) an aircraft, a hovercraft or a railway vehicle while engaged on a journey,*

*(d) a vessel while engaged on—*

*(i) an international journey, or*

*(ii) a journey (other than an international journey) forming part of a ferry service, and*

*(e) premises which are occupied (whether indefinitely or temporarily) for the purposes of the armed forces of the Crown, except while being used for other purposes.*

*(2) The Scottish Ministers may make an order under subsection (1) designating an airport, port or hoverport for the purposes of this section only if it appears to them to be one at which there is a substantial amount of international passenger traffic.*

*(3) For the purpose of subsection (1), the period during which an aircraft, hovercraft, railway vehicle or vessel is engaged in a journey includes—*

*(a) any period ending with its departure when preparations are being made for the journey, and*

*(b) any period after its arrival at its destination when it continues to be occupied by those (or any of those) who made the journey (or any part of it).*

*(4) In this section—*

- “*approved wharf*” has the meaning given in section 20A of the *Customs and Excise Management Act 1979 (c. 2)*,
- “*examination station*” has the meaning given in section 22A of that *Act*,
- “*ferry service*” means a service the principal purpose of which is the transport of passengers or goods over water,
- “*international journey*” means a journey with—
  - (a)  
*a point of departure,*
  - (b)  
*a destination, or*
  - (c)  
*at least one port of call,*

*outside the United Kingdom, and includes any part of such a journey.*

These premises are exempt.

### **Section 125 - Special provisions for certain clubs**

This section deals with clubs. Part VII of the 1976 Act provided for clubs by virtue of registration granted by a sheriff. The licensing regime will apply to clubs as it applies to other premises, subject to the provisions in this section.

The general effect of exemption for clubs is that they do not need a premises manager and overprovision does not apply.

### **Section 126 - Vessels, vehicles and moveable structures**

"Premises" includes vessels, vehicles and other moveable structures. In the case of vessels the "home port" of the vessel is the place where it is situated. It will be the Board for that port that would have power to grant a licence for the vessel.

In the case of vehicles and so on where alcohol is to be sold on or from the vehicle when parked, a licence will be needed for each such place.

This section also makes provision for the licensing of moving vehicles and other moveable structures-these could include “party” limousine type

operations.

### **Section 127 - Power to prohibit sale of alcohol on trains**

There is power to prohibit the sale of alcohol at specified stations or on any train travelling between specified stations for a specified period. An order made under this section may be made by a sheriff when sought by a senior police officer, if the sheriff is satisfied that the order is necessary for the prevention of disorder.

### **Section 128 - Power to prohibit sale of alcohol on ferries**

This section creates a power for the Police, again on application to a sheriff, to prohibit the sale of alcohol on specified vessels which are part of a ferry service.

### **Section 129 - Relevant offences and foreign offences**

This section provides a definition of the term "foreign offence" for the purposes of this Act and provides a power for the Scottish Ministers to set out by way of regulations a list of "relevant offences" for the purposes of this Act as they have done.

Note that subsection (3) allows the persistent commission of a lower level offence and which of itself would not be sufficiently serious to be treated as a "relevant offence".

### **Section 130 - Effect of appeal against conviction for relevant or foreign offence**

The duties placed on Boards under this Act relating to relevant and foreign offences can still be carried even if conviction is subject to appeal. The Board's actions will have no effect if the conviction is overturned on appeal.

### **Section 131 – Appeals**

#### *Appeals*

*(1) A decision of a Licensing Board specified in the left-hand column of schedule 5 may be appealed by the person specified in the right-hand column of that schedule.*

*(2) An appeal under this section is to be made by way of stated case, at the instance of the appellant, to—*

*(a) where the decision appealed is specified in Part 1 of schedule 5, the sheriff principal, or*

*(b) where the decision appealed is specified in Part 2 of that schedule, the sheriff,  
of the appropriate sheriffdom.*

*(3) The grounds on which a Licensing Board's decision may be appealed under this section are—*

*(a) that, in reaching the decision, the Licensing Board—*

*(i) erred in law,*

*(ii) based their decision on an incorrect material fact,*

*(iii) acted contrary to natural justice, or*

*(iv) exercised their discretion in an unreasonable manner, or*

*(b) where the decision is to take any of the steps mentioned in subsection (4), that the step taken is disproportionate in all the circumstances.*

*(4) Those steps are—*

*(a) at a review hearing in respect of a premise licence—*

*(i) issuing a written warning to the licence holder,*

*(ii) revoking or suspending the licence, or*

*(iii) making a variation of the licence, or*

*(b) making an order revoking, suspending or endorsing a personal licence.*

*(5) Where the sheriff principal or, as the case may be, sheriff upholds an appeal against a Licensing Board's decision under this section, the sheriff principal or sheriff may—*

*(a) remit the case back to the Licensing Board for reconsideration of the decision,*

*(b) reverse the decision, or*

*(c) make, in substitution for the decision, such other decision as the sheriff principal or sheriff considers appropriate, being a decision of such nature as the Licensing Board could have made.*

*(6) In this section, "the appropriate sheriffdom" means the sheriffdom in which the principal office of the Licensing Board whose decision is being appealed is situated.*

This provides that any decision of a Board specified in schedule 5 of the Act may be appealed against by way of stated case to either the sheriff or the sheriff principal. Note the further provision.

## **Section 132 - Appeals: supplementary provisions**

*Appeals: supplementary provision*

*(1) A Licensing Board whose decision is appealed under section 131 may be a party to the appeal.*

*(2) In considering the appeal, the sheriff principal or, as the case may be, sheriff may hear evidence.*

*(3) On determining the appeal, the sheriff principal or sheriff may make such ancillary order (including an order as to the expenses of the appeal) as the sheriff principal or sheriff thinks fit.*

*(4) A sheriff principal may authorise, whether generally or specifically, any other sheriff of the sheriff principal's sheriffdom to consider and determine an appeal made to the sheriff principal under section 131(2)(a).*

*(5) In this section and section 131, references to a sheriff principal include references to any sheriff authorised under subsection (4).*

*(6) Any party to an appeal under section 131 may appeal to the Court of Session on a point of law against the sheriff principal's or sheriff's decision on the appeal.*

*(7) A decision of a Licensing Board which is appealed under section 131 continues to have effect despite the appeal, subject to subsection (8).*

*(8) Where an appeal is taken against a decision of a Licensing Board to suspend or revoke a premises licence, the sheriff principal may—*

*(a) on the application of the appellant, and*

*(b) if satisfied on the balance of convenience that it is appropriate to do so,*

*recall the suspension or revocation pending determination of the appeal.*

*(9) Further provision as to the procedure in any appeal under section 131, including in particular provision as to the times by which such an appeal is to be made or determined, may be prescribed by Act of Sederunt.*

This sets out procedural matters relating to appeals made under section 131 and as is usual provides that any further procedural matters that might be needed will be done under Act of Sederunt.

Note subsection (8). This allows the sheriff principal to recall (pending the outcome of the appeal) any decision of the Licensing Board which has

resulted in the suspension or revocation of a premises licence, if he considers it appropriate to do so on the balance of convenience.

I want to deal with these important provisions in some depth.

## Who can appeal and when?

Answer found in section 131 of the 2005 Act. This refers to Schedule 5 to the Act. Schedule 5 sets out in summary forms what can be appealed against and who can appeal it.

### SCHEDULE 5 APPEALS

(introduced by section 131(1))

#### PART 1 APPEALS TO THE SHERIFF PRINCIPAL

Decision	Persons who can appeal
A decision to refuse a premises licence application	The applicant
A decision to refuse a premises licence variation application	The applicant
A decision to refuse an application under section 33(1) or 34(1) for transfer of a premises licence	The applicant
A decision to refuse an application under section 35(1) for a variation of a premises licence	The applicant
A decision under section 39(1) to issue a written warning to a premises licence holder, to make a variation of a premises licence, or to suspend or revoke such a licence	The premises licence holder or, where the decision is taken in connection with a premises licence review application, the applicant
A decision to refuse an application under section 40 to revoke a variation or suspension of a premises licence	The applicant
A decision to refuse an application under section 45(7) to extend the provisional period in relation to a provisional premises licence	The applicant
A decision to refuse an application under section 46(4) to confirm a provisional premises licence	The applicant
A decision to refuse an application under section 47(2) to issue a premises licence for temporary premises	The applicant
A decision to refuse an application under section 47(6) to extend the period for which a temporary premises licence has effect	The applicant
A decision to refuse an occasional licence application	The applicant
A decision to grant an occasional licence application	Any person who has given a notice of objection under section 58(1)
A decision to refuse an extended hours application	The applicant

Putting matters generally, the person seeking a particular licence, a variation

thereof or an occasional licence may appeal to the sheriff principal; those involving the personal licence may be dealt with by the sheriff.

In contrast to the 1976 Act objectors have very limited rights of appeal. Indeed the only statutory rights of appeal given are those to challenge an occasional licence under section 58(1) but note that any person can lodge an application for the review of a premises licence under 36 (1) by application for review of the premises licence will be an applicant for this purpose.

Under the new Act any person has a right to object to an application for a premises application section 22- “any person” unless the Board held that objection was “frivolous or vexatious”. These people need not be directly affected by the operation of the premises itself. On a view allows any crank, temperance or religious body or trade rival to object.

The Chief Constable’s powers to object are (arguably) much curtailed as explained last time round he is not “any person”. He can now object only on the very limited grounds that applicant involved in serious organized crime and that necessary for the purpose of the crime prevention objective that the application be refused.

If an objection is rejected as frivolous or vexatious there is no right of appeal but there is a right of judicial review against that decision.

The power to stigmatise the objection as frivolous or vexatious (and to find the objector liable in the expenses of such objection) should be sparingly used. In practical terms, it may be easier for boards simply to admit it but place little or no weight on it.

All statutory appeals with exception of those refusing a personal application or revoking, suspending or varying a personal licence are to be heard by the Sheriff Principal under section 131(2)(a).

### **One Important Change under the New Act!**

Unlike the old Act and as I am sure you will all know, under the new Act any decision to revoke or to suspend is effective immediately under section 131(7).

That is subject to section 131(8) which provides that where an appeal is taken against a decision of a Board to suspend or revoke a premises licence, the sheriff principal may, on the application of the applicant and, if satisfied on the balance of convenience that it is appropriate to do so, recall the suspension or revocation pending determination of the appeal.

There are real potential difficulties here. In practical terms in many cases, this may be the most important of the appeal provisions where there is a “live licence”, which has been reviewed, revoked or suspended. Consider these problems:

- (a) if premises licences revoked or suspended on a Friday afternoon. Closed at least over the weekend. Catastrophic for a busy city centre pub or club.
- (b) What if the sheriff principal ill or on holiday or otherwise indisposed? A delay even for a week or two may be the death knell for a business – (particularly city centre business where clientele will soon move on).
- (c) The onus on the applicant to persuade the sheriff that the balance of convenience favours interim recall. A sheriff can only order recall “if satisfied”. Presumably the strength or otherwise of the appeal will be a factor to be taken into account in assessing where the balance of convenience may lie (**NWL Ltd v Woods [1979] 3 All ER 614; speech of Lord Fraser**). Nicholson suggested that merely an arguable case that not frivolous would have to be shown? But how is that to be assessed? If there is at that point no statement of reasons? All of us at some time or another have come away from boards after an unsuccessful application or a suspension hearing where aware that the decision was one the board perfectly entitled to make. Only when received the statement of reasons that realised the Board got it completely wrong. May be that if you can show that to close the premises for the period till a likely full hearing would destroy the business that would do? May be necessary to produce accounts? Require very careful consideration.
- (d) Also balance of convenience may favour grant of interim order

where no pressing public reason for closure (cf **Cumbernauld Development Corporation v Marsh 1990 GWD 38/2221** – the pursuers, landlords of the defender’s flat, obtained interim interdict against the use of liquefied petroleum gas where there was danger of an explosion and consequent collapse of a load bearing wall).

- (e) Also if attempted to recall prior to receipt of the statement of reasons, and tried to anticipate the reasons for decision, there may be a temptation (subconsciously even) on the part of the board to adjust the statement of reasons accordingly. (Cf appeals under the **Betting Gaming and Lotteries Acts** where you have to lodge the appeal against refusal before receipt of reasons).
- (f) As yet, no regulations concerning the time limits for requesting and preparing a statement of reasons exist. They must balance the interests of applicant in speedy preparation with the practical demands of doing so, particularly where clerks and Boards likely to be under considerable pressure. Under the old Act had 48 hours to request a statement of reasons, (invariably done at time of decision) and board had to produce these within 3 weeks. The requirement to do so held to be directory rather than mandatory eg **Lamb and Gardiner v Perth and Kinross Perth Sheriff Court, November 1994 unreported**. But where there was an existing licence it remained in force. But now different where the statement of reasons vital for interim recall and not timeously produced? No sanction?
- (g) Also it is not clear whether the Board entitled to be heard at any such interim hearing. If so, might the sheriff ask of the Board’s agent what was the reason for the decision? Very difficult in advance of the preparation of a statement of reasons. Such a hearing before the sheriff may be the day after or even the day of a Board decision. If oral explanation given and the explanation given by the agent for the Board at such hearing differed from what appeared in the statement of reasons, could anything be made of this?
- (h) Not wholly clear if one can appeal against a condition imposed

by the Board as a “pool condition” or a discretionary condition. Arguments either way.

I now turn to the Grounds of Appeal.

- (a) error in law
- (b) based decision on an incorrect material fact
- (c) acted contrary to natural justice
- (d) exercised their discretion in an unreasonable manner
- (e) where the decision is to take any of the steps mentioned in subsection 4 that the step taken is disproportionate in all the circumstances.

Subsection 4 provides that the steps are

- (i) issuing a written warning to the licence holder
  - (ii) revoking or suspending the licence
  - (iii) or making a variation of the licence or
- (b) making an order revoking, suspending or endorsing a personal licence.

Proportionality provisions are completely new to comply with the Human Rights Act. Lord Johnston in **Catscratch (No 2) 2002 SLT 503** where the board had refused a regular extension at a nightclub on the ground of nuisance said:-

*“The concept of rational disproportionality is difficult to understand and thus one is left with the impression that the test to be applied is simply one of common sense, in the sense that, for the act or decision taken to be disproportionate to the aim to be achieved it must be regarded as irrational in the sense of not being based on rational grounds. On the other hand, if the test is simply weighing the act complained of with the aim of it to be achieved on the basis of the sledgehammer-nut approach, the issue is a balancing exercise.”*

That was the approach taken by Sheriff Holligan in **Baird v Glasgow City Council [2003] 25 SLLP 27** where, during a heated exchange, a taxi driver called a bus driver a “dirty bastard”. His driver’s licence was suspended for six months. Sheriff took the view that that was disproportionate and considered whether he should decide himself before sending it back to the

board for a reconsideration of its decision.

A more focussed approach to proportionality and I suggest a better one appears in the Speech of Lord Steyn in **R(Daly) v. Home Secretary** [2001] UKHL 26. He said this, drawing a distinction with old style reasonableness and which I suggest Lord Johnston in fact used.

*"27. The contours of the principle of proportionality are familiar. In de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69 the Privy Council adopted a three stage test. Lord Clyde observed, at p 80, that in determining whether a limitation (by an act, rule or decision) is arbitrary or excessive the court should ask itself:*

*"whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective."*

*Clearly, these criteria are more precise and more sophisticated than the traditional grounds of review. What is the difference for the disposal of concrete cases? Academic public lawyers have in remarkably similar terms elucidated the difference between the traditional grounds of review and the proportionality approach: see Professor Jeffrey Jowell QC, "Beyond the Rule of Law: Towards Constitutional Judicial Review" [2000] PL 671; Craig, *Administrative Law*, 4th ed (1999), 561-563; Professor David Feldman, "Proportionality and the Human Rights Act 1998", essay in *The Principle of Proportionality in the Laws of Europe* (1999), pp 117, 127 et seq. The starting point is that there is an overlap between the traditional grounds of review and the approach of proportionality. Most cases would be decided in the same way whichever approach is adopted. But the intensity of review is somewhat greater under the proportionality approach. Making due allowance for important structural differences between various convention rights, which I do not propose to discuss, a few generalisations are perhaps permissible. I would mention three concrete differences without suggesting that my statement is exhaustive. First, the doctrine of proportionality may require the reviewing court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions. Secondly, the proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations. Thirdly, even the heightened scrutiny test developed in *R v Ministry of Defence, Ex p Smith* [1996] QB 517, 554 is not necessarily appropriate to the protection of human rights. It will be recalled that in *Smith* the Court of Appeal reluctantly felt compelled to reject a limitation on homosexuals in the army. The challenge based on article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the right to respect for private and family life) foundered on the threshold required even by the anxious scrutiny test. The European Court of Human Rights came to the opposite conclusion: *Smith and Grady v United Kingdom* (1999) 29 EHRR 493. The court concluded, at p 543, para 138:*

*"the threshold at which the High Court and the Court of Appeal could find the*

*Ministry of Defence policy irrational was placed so high that it effectively excluded any consideration by the domestic courts of the question of whether the interference with the applicants' rights answered a pressing social need or was proportionate to the national security and public order aims pursued, principles which lie at the heart of the court's analysis of complaints under article 8 of the Convention."*

*In other words, the intensity of the review, in similar cases, is guaranteed by the twin requirements that the limitation of the right was necessary in a democratic society, in the sense of meeting a pressing social need, and the question whether the interference was really proportionate to the legitimate aim being pursued.*

*28. The differences in approach between the traditional grounds of review and the proportionality approach may therefore sometimes yield different results. It is therefore important that cases involving convention rights must be analysed in the correct way. This does not mean that there has been a shift to merits review. On the contrary, as Professor Jowell [2000] PL 671, 681 has pointed out the respective roles of judges and administrators are fundamentally distinct and will remain so. To this extent the general tenor of the observations in Mahmood [2001] 1 WLR 840 are correct. And Laws LJ rightly emphasised in Mahmood, at p 847, para 18, "that the intensity of review in a public law case will depend on the subject matter in hand". That is so even in cases involving Convention rights. In law context is everything."*

Turning to procedure under the 1976 Act one appealed by way of summary application but under the new Act appeal is by way of stated case.

Where there is a stated case is there now more of a need to find facts? Means that where conflict to any material extent on relevant facts need to hear evidence (decision of Sheriff Mitchell in **Hamid v Glasgow Licensing Board July 1999, Glasgow Sheriff Court unreported , cf JAE (Glasgow) Ltd v City of Glasgow Licensing Board 1994 SLT 1164**). How else to decide on *ex parte* statements?

Also how to find facts? Easy where as in a proof or a summary trial there is a single fact finder such as a sheriff or magistrate. But where there are 7-10 fact finders? Will there be a hearing on adjustments?

The Court has power on upholding an appeal to substitute his own decision for that of the board under section 131(5)(c). Given the quasi political, local knowledge type of decision, may be unlikely that will be widely used –it is not under the 1976 Act- but that will depend on the particular decision maker and the facts of the case. May even occasionally be the subject of an agreement between parties as to what is an appropriate alternative disposal, although there are issues over whether such an agreement is competent.

Further appeal to the Court of Session on a point of law only exists under section 132(6). Presumably any order recalling the board's decision continues. But if the full appeal proceeds with the suspension or revocation in place it may be possible to appeal to the Court of Session and seek an interim order ending such a hearing. This may be easier to do so if any stateable ground of appeal and also because the time delay in Inner House proceedings would put even the most robust business under.

If the decision you wish to challenge is not amenable to appeal then judicial review in the Court of Session is the only real option for the party who has the funding available to go there. Lack of appeal rights for objectors may see the increase in judicial review, particularly by trade objectors complaining on overprovision grounds.

### **Section 133 – Hearings**

#### *Hearings*

*(1) Where a Licensing Board is to hold a hearing under any provision of this Act, the hearing must be held at a meeting of the Board.*

*(2) The Scottish Ministers may by regulations make provision as to the procedure to be followed at or in connection with any hearing to be held by a Licensing Board under this Act.*

*(3) Regulations under subsection (2) may, in particular, make provision—*

*(a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,*

*(b) about the rules of evidence which are to apply for the purposes of the hearing,*

*(c) about the representation of any party at the hearing,*

*(d) as to the times by which any step in the procedure must be taken, and*

*(e) as to liability for expenses.*

Any hearing held under the Act must be held at a meeting of the Board. A copy of the Licensing (Procedure) (Scotland) Regulations 2007 is appended. For the first time Board procedure is the subject of this type of regulation-although flexibility will remain to the fore and no doubt local practices will develop.

### **Section 134 - Form etc. of application and notices**

This provides a power for the Scottish Ministers to make regulations to set out the form of documents under the Act.

### **Section 135 - Power to relieve failure to comply with rules and other requirements**

This important section gives power to Boards to waive any procedural failing and thus enable them to deal with applications.

### **Section 136 - Fees**

This gives power for the Scottish Ministers to make regulations to enable fees to be charged by Boards after due consultation. Ultimately, fee income will be paid over to the councils.

### **Section 137 - Inspection of premises before grant of licence etc.**

An LSO and the police to enter premises at any time in those circumstances linked to an application or review and to use reasonable force to do so.

### **Section 138 - Police powers of entry**

A constable has a lawful right of entry to any licensed premises and to any other premises on which the constable has reason to believe alcohol is being sold in breach of section 1(1) of the Act.

### **Section 139 - Remote sales of alcohol**

Where the place of despatch is in Scotland the sale is to be treated as having happened at that place. So a requirement for a premises licence would in an over the phone purchase apply to the warehouse rather than to any call centre.

The law is now clear on internet sales. A premises licence will be needed from the place from where the alcohol is despatched.

### **Section 140 - Presumption as to liquid contents of containers**

This establishes a presumption relating to the contents of a container. For the purposes of a trial for an offence under the Act, any liquid found in a container is to be presumed to be the liquid that the label on the container suggests it is. This section replicates what was previously provided for in the 1976 Act. The presumption can be rebutted but notice of intention to lead evidence to rebut the presumption must be given.

**Section 141 - Offences by bodies corporate etc.**

This provides for certain persons responsible for the management or control of these bodies to share criminal responsibility for offences committed with their consent or connivance or due to their neglect.

**Section 142 - Guidance**

This allows the Scottish Ministers to issue guidance to Boards. Subsection (5) places a duty on the Scottish Ministers to lay a draft of the first set of guidance to Boards before the Parliament and confirms that the guidance would be subject to the affirmative resolution parliamentary procedure.

**Section 143 - Crown application**

The provisions of the Act apply to Crown bodies as they apply to everyone else.

**Section 144 - Modification of enactments**

Creates schedule 6 of the Act which contains modifications of enactments.

**Section 145 - Ancillary provision**

The Scottish Ministers can make ancillary provision in statutory instruments in consequence of this Act.

**Section 146 - Orders and regulations**

This sets out the parliamentary procedure in relation to the making of orders and regulations made by the Scottish Ministers under the provisions of the Act.

**Section 147 - Interpretation**

The usual interpretation section.

**Section 148 - Index of defined expressions**

This provides an index of where definitions of specific terms used throughout the Act can be found.

**Section 149 - Repeals**

This introduces schedule 7 to the Act on repeals.

**Section 150 - Short title and commencement**

Provides for commencement by order.



