

## APPENDIX 5- Licensing (Scotland) Act 2005

### Part 3 & Sections 17-28, 45

#### Grant Premises Licence or Provisional Premises Licence

#### LEGAL TEST

The legal test is set out in Section 23 of the Act.

- (1) An application for a premises licence 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 application documents (as listed below)
- (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) [the applicant has been lodged within a period of 12 months of the date of a previous refusal]
  - (ba) that the Licensing Board considers, having regard to the licensing objectives that the applicant is not a fit and proper person to be the holder or a licence.
  - (c) That the Licensing Board considers that the granting of the application would otherwise 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 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 the same or similar description as the subject premises in the locality.

(6) In considering whether either of the grounds for refusal specified in Section 23(5)(ba) and (c) applies, the Licensing Board must in particular take into account –

- (a) any conviction, notice of which is given by the chief constable under Section 21(4)(b), and
- (b) any report given by the chief constable under Section 24A(2) (power of the Board to request the Chief Constable to provide an anti-social behaviour report)

(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, or layout plan, or both) 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 Section 23(5)(ba) or (c), the Board MUST specify the licensing objective or objectives in question.

There are five licensing objectives which underpin the 2005 Act. These are:

- **Preventing crime and disorder**
- **Securing public safety**
- **Preventing public nuisance**
- **Protecting and improving public health, and**
- **Protecting children and young persons from harm.**

The Licensing Boards' policy statement must promote these licensing objectives and sets out how the Board expects applicants to comply with and promote the objectives. The following parts of the policy are relevant to the consideration of applications for premises licences and provisional premises licences:

- Appendices 1 and 2 to the Main Policy Statement
- Supplementary Policy 3 – overprovision
- Supplementary Policy 4 – Operating Hours
- Supplementary Policy 6 – Licence Types and Board Procedures
- Supplementary Policy 7 - private members clubs
- Supplementary Policy 8 - petrol stations.

## **Premises Licence**

1. In terms of Section 17 of the 2005 Act, a premises licence is required to authorise the sale of alcohol on premises.
2. In terms of Section 20 of the 2005 Act, a premises licence application consists of:-
  - (a) an application form
  - (b) a disabled access and facilities statement
  - (c) the appropriate Section 50 certificates (planning, building standards and environmental health)
  - (d) a licensing objectives risk assessment (policy requirement)

(e) layout plans

3. The Boards' current Scheme of Delegation make the following provisions for determination of applications for variation of licence:-

Section 1.5	Determination of a premises licence application	Reserved to the Board
Section 1.8	Determination of a provisional premises licence application	Reserved to the Board
Section 3.3	Determining whether to cite an applicant to a hearing for a premises licence application	Delegated to the Clerk to the Board or any person appointed to assist them

4. In terms of Section 21(3) of the Act the Chief Constable must provide the Board with either –

- a. A notice in terms of Section 21(4)(a) stating that neither the applicant, nor, in the case 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 or foreign offence.
- b. A notice in terms of Section 21(4)(b) of the Act specifying any convictions of the applicant or any relevant connected person for a relevant or foreign offence.

5. Section 22 of the Act provides that 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 (outlined in the legal test above); 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.

Such notices of objection or representation may include any information that the person considers may be relevant to consideration by the Board of any ground for refusal, including, in particular, information in relation to –

- (a) The applicant,
  - (b) Where the applicant is neither an individual nor a council, a connected person in relation to the applicant, or
  - (c) Any person who would be an interested party in relation to the subject premises if the application were to be granted.
6. The Chief Constable, where making a representation concerning a premises licence can give to the Board a report detailing –
- a. any cases of antisocial behaviour identified by constables as having taken place on or in the vicinity of the premises.
  - b. any complaints or other representations made to constables concerning antisocial behaviour on, or in the vicinity of, the premises.
7. 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 (including any information included about the applicant, any connected person or any interested party) in determining the application.
8. A Licensing Board may reject a notice of objection or representation received by the Board if the Board considers the objection or representation to be frivolous or vexatious.
9. A Board may recover any expenses incurred by the Board in rejecting a notice of objection or representation from the person who lodged the notice.

### **Provisional Premises Licence**

10. 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. Such an application is referred to as a “provisional premises licence application”.

11. 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 of the Act.
12. The provisional period, in relation to a provisional premises licence, is the period of 4 years beginning with the date of issue of the licence.
13. 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 undernoted matter, extend the provisional period by such period as the Board considers appropriate. The matter referred to is –
  - (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
14. Where the provisional period in relation to any provisional premises licence has been extended as outlined in paragraph 13 above, references to the provisional period are to the period as so extended.
15. The processing and determination of a provisional premises licence is the same as outlined for a premises licence in paragraphs 1 – 9 of this document.

### **Statutory Guidance**

16. Chapter 8 of the Scottish Government’s Statutory Guidance to Licensing Authorities relates to premises licences. The Board should note that in terms of Section 142(4) of the Act, a Board deciding not to follow this guidance must give Ministers notice of that decision together with a statement of the reasons for it.

## **8. Premises Licence**

### **Introduction**

8.1 This chapter provides information on premises (including provisional and temporary) licences. Part 3 of and schedule 3 to the 2005 Act sets out the legislative framework which underpins premises licences. A number of amendments have been made to Part 3 and Schedule 3 of the 2005 Act and these are covered throughout this chapter.

8.2 The locality within which a premises is (mainly) situated will determine which Licensing Board (“the Board”) will be considered to be the “appropriate Board” – i.e. the Board which will carry out licensing functions in relation to the premises licence. Should the situation arise whereby the premises is located equally between two or more Board areas then the applicant may choose to which Board an application is made. In these, likely rare, circumstances it will be important for the relevant Boards and Licensing Standards Officer to maintain close contact with regard to the licensing of these premises.

### **Meaning of premises licence**

8.3 In the context of the 2005 Act, “premises licence”, in relation to any premises, means a licence issued by a Board under section 26(1) (issue of licence and summary) or 47(2) (temporary licence) authorising the sale of alcohol on the premises.

### **Premises Manager**

8.4 The 2005 Act provides that anyone wishing to sell alcohol on any premises, subject to the exceptions set out in the legislation, must hold a premises licence which requires to contain the name of the premises manager. The premises manager is the person responsible for running that premises. A person can only be the designated premises manager for one licensed premises.

8.5 In terms of the mandatory premises licence conditions set out at Schedule 3 to the 2005 Act, a premises manager is also required to hold a personal licence (see chapter 10 for more information on personal licences). A personal licence also requires the persons to hold a licensing qualification accredited by the Scottish Ministers. It is important that a premises manager has undertaken the appropriate training in terms of the applicable law and how to deal with customers.

8.6 In recognition of the important role carried out by a premises manager in the operation of a licenced premise, section 54 of the 2005 Act deals with circumstances where the premises manager ceases to work at the premises, becomes incapable of acting or dies or where the personal licence held by the premises manager is revoked or suspended.

8.7 The legislation provides for a “period of grace” to allow the premises to continue operating despite not having a premises manager and pending the appointment of a new premises manager. In the situations described above the 2005

Act requires the premises licence holder to inform the Licensing Board of the circumstances within 7 days. Should the notification be made within the 7 day period and an application to substitute a new premises manager is made within 6 weeks of the loss of the premises manager, then the fact that the premises are, in the meantime, operating without a premises manager will be overlooked. If no such application is received by a Board within the required timeframe, it must vary the premises licence to reflect that there is no longer any premises manager named on it. The effect of this would require the premises to stop operating as it has no premises manager.

*Variation to substitute new premises manager*

8.8 As discussed above, licensed premises cannot operate without a premises manager being in post. Where there is a change of premises manager, before the new premises manager can act as such, his or her name needs to be added to the licence. The 2005 Act allows for the proposed new premises manager to take up post pending the granting of an application to vary the premises licence so as add the new premises manager's name to it. This helps to ensure that changes of premises manager can take effect quickly so as to enable businesses to continue to operate with the minimum disruption.

## **Premises licence applications**

*Application and notification of application*

8.9 Under the 2005 Act, any person, which includes corporate (e.g. public limited companies) unincorporated bodies (e.g. a partnership) and statutory bodies (organisations created by an Act of Parliament) as well as individuals, can apply for a premises licence. However, any individual who wants to submit an application must be 18 or over.

8.10 Each premises licence application should be tailored to the type of premises in question by reference to a compulsory draft operating plan and layout plan. The Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act such that after 30 March 2018 an individual applying for a premises/provisional premises licence, for the sale of alcohol for consumption either on or off the premises, also requires to provide a Disabled Access and Facilities Statement (DAFS), along with their application.

8.11 The DAFS must contain information about disabled access to the premises and the facilities and any other provision available to aid the use of the premises by disabled people. The form of the statement is set out in regulations (The Premises Licence (Scotland) Amendment Regulations 2018 SSI 2018 No. 49). Whilst the DAFS does not form part of the licence granted, a Board is unable to progress a licence application until this document is received.

8.12 The purpose of submitting an operating plan and a lay-out plan is to provide a Board and the local community with a clear indication, at the time of the application, of what activities will be undertaken on the premises. The 2005 Act also makes provision for applications to be accompanied by certain certificates evidencing compliance with planning, building control and food hygiene legislation in relation to the premises for which a licence application is being made.



8.13 Licensing Boards publish Statements of Licensing Policy (see Chapter 4) and licence applicants may find it beneficial to review their Board's statement as the statement should, amongst other matters offer guidance and clarity on the policy on which a Licensing Board will base its decisions in implementing their functions – in this instance considering a premises licence application - under the 2005 Act.

8.14 For example, under the promotion of the licensing objections section of its statement of licensing policy, Falkirk Licensing Board comments:

- “While not a requirement of the Act, the Board expects applicants for new and provisional Premises Licences and transfers of Premises Licences to accompany their applications with a written statement tailored to their particular premises setting out how they intend to conform to the 5 licensing objectives, paying particular attention to the locality in which the premises are situated and the activities to be carried out. The Board is of the opinion that a written statement demonstrates an active and thoughtful engagement with the licensing objectives.

8.15 The 2005 Act sets out a number of specific requirements as to the content of the operating plans, including, amongst other matters, the proposed opening hours, a statement as to whether alcohol is being sold for consumption on the premises or off the premises or both. Additionally, the legislation also provides for the form and (further detail on the) content of the operating plans to be set out in regulations - The Premises Licence (Scotland) Regulations 2007 (SSI 2007 No. 452). This instrument prescribes the form and content of the premises licence, the summary premises licence, the application form for a premises and provisional premises licence, the layout plan and operating plan.

8.16 Prior to considering a premises licence application, a Board is required by the 2005 Act to notify certain parties of all applications it receives. The Criminal Justice and Licensing (Scotland) Act 2010 made a number of amendments to the 2005 Act notification provisions. Health Boards within a Licensing Board's area are now amongst the list of parties to be notified of all premises licence applications. Boards are only required to send a copy of the premises licence application along with the notification to the Chief constable.

8.17 Notifying the Chief constable is an important information gathering process for a Board as this procedure is intended to ensure that checks are made for the existence or otherwise of any convictions for relevant or foreign offences that any applicant or those connected with the applicant may have. The legislation sets out timescales by which the Chief constable is required to respond.

#### *Relevant and Foreign Offences*

8.18 Section 129 (relevant and foreign offences) of the 2005 Act provides the Scottish Ministers with a power to prescribe by regulations what offences are to count as a “relevant offence”. The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007/513) specify those offences which are to be relevant offences for the purposes of the 2005 Act (regulation 2 and the Schedule).

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8.19 The Schedule specifies a range of offences which cover violent and sexual offences, other statutory offences (e.g. relating to the misuse of drugs, betting and gambling offences, driving offences amongst others) and other common law offences (e.g. conspiracy to defraud, breach of the peace amongst others). Convictions for a “relevant offence” may result in refusal by a Board to grant a licence or the review of a licence.

8.20 This section also allows the persistent commission of a lower level offence - which would not by itself be sufficiently serious - to amount to a “relevant offence”. The Criminal Justice and Licensing (Scotland) Act 2010 amended section 129 by inserting two new sub-sections. The purpose of these insertions being that where a person has been found guilty of an offence and a probation order or order for absolute discharge has been imposed, the person is treated as having been convicted for the purposes of these provisions of the 2005 Act.

8.21 “Foreign offences” are offences under the laws of countries other than Scotland which correspond to relevant offences. Section 147(2) sets out who is a “connected person” in relation to a company, partnership or club. This ensures that checks are carried out on the persons in control of these bodies as well as the bodies themselves.

8.22 Section 130 (Effect of appeal against conviction for relevant or foreign offence) of the 2005 Act provides that the duties placed on Boards under the 2005 Act relating to relevant and foreign offences may still be carried out if the conviction is subject to appeal but the Board has discretion to postpone any action it has decided to take. It also provides that the Board’s actions will have no effect if the conviction is overturned on appeal.

#### *Objections and representations*

8.23 The 2005 Act provides that any person (whether an individual or a corporate body or unincorporated body) may object or make representations in relation to a premises licence application provided the Board does not consider that the objections or representations are frivolous or vexatious in nature. Argyll and Bute Licensing Board provide an example of what they consider would be a vexatious objection or representation on the Council’s alcohol licensing pages:

- “A theatre has established in an area close to residential housing. Certain performances at the theatre are considered to be particularly noisy by the neighbouring residents. The neighbours consider this to be a nuisance. They may, or may not have complained previously to the theatre owner. They may or may not have complained previously to the Council Environmental Health Department.
- “The owner of the theatre then applies for a licence to establish a theatre bar and sell alcohol. The neighbours notice that there happens to be an ongoing “licence application and decide to make objections/representations relating to the licensing objective of preventing public nuisance. This is designed to place pressure on the theatre owner to reduce noise. In this scenario where the noise constitutes a statutory

nuisance then the appropriate enforcement agency would be the Argyll and Bute Council's Environmental Health Department.

- "The licensing system should not be used as a convenient means of placing pressure on the applicant. The neighbours would no doubt find it difficult to establish a link between the noise and the proposed sale of alcohol. The Argyll and Bute Licensing Board would be entitled to consider the premises suitable for the sale of alcohol and leave enforcement in respect of noise problems to environmental health".

8.24 The Criminal Justice and Licensing (Scotland) Act 2010 made a number of amendments to the objections and representation provisions within the 2005 Act. A new provision was inserted which means that an objection or representation concerning a premises licence application may include any information that the person submitting the objection or representation considers relevant to consideration of any of the grounds for refusal (set out at section 23(5) of the 2005 Act), including information in relation to the applicant, a connected person in relation to the applicant, or any person who would be an interested party in relation to the premises if the application were to be granted.

*Connected persons and interested parties*

8.25 As discussed above the Criminal Justice and Licensing (Scotland) Act 2010 inserted a new section (section 40A) relating to connected persons and interested parties into the 2005 Act. The policy rationale for inserting this new provision, as outlined during the parliamentary passage of what was then the Criminal Justice and Licensing (Scotland) Bill, was to tackle a concern that was highlighted to the Scottish Government by the police. Namely that there was a tier of people and organisations responsible for the operation of licensed premises who cannot be held to account for the operation of licensed premises.

8.26 The premises licence might be held by the property owner, but a tenant might be in control of operating the business on the premises. Alternatively, a management company with no property rights over the premises might be employed by the property owner to exercise management control over the business that is carried on in the premises. Prior to the insertion of section 40A, the police were unable to make representations to licensing boards on the conduct of those groups or to take action against them if offences take place on the premises. There was also no requirement on the part of the licence holder to notify the licensing board of the existence of those groups.

8.27 The new section 40A ensured that:

- the licence holder must notify the existence of those "interested parties" to the licensing board, thus enabling the board to consider the conduct of those parties in determining licence applications or considering whether to review an existing licence.
- that any changes in the details of "connected persons" are notified to licensing boards who will forward the information to the chief constable.

8.28 As a result, the licensing board and the police are kept informed of the details of, for example, the partners of firms and the directors of companies that hold premises licences, which will enable a premises licence to be reviewed if the police or the board have concerns about the conduct of the partners or directors of licence-holding partnerships or companies.

8.29 The Air Weapons and Licensing (Scotland) Act 2015 subsequently amended section 40A to remove the references to interested parties and the requirement to notify changes of interested parties. This was done in response to concerns that had been raised by stakeholders about the practicality of the term interested parties. The licence holder now only requires to provide notification in respect of connected persons.

*Anti-social behaviour reports*

8.30 It is no longer necessary for the chief constable to provide an anti-social behaviour report in respect of every application. Instead, a report will only be required if the Licensing Board requests one (which they may do following public objections or representations concerning a premises) or if the Chief constable chooses to provide one.

8.31 It became clear during the implementation of the 2005 Act, that the 2005 Act procedure was unnecessarily onerous and bureaucratic. Using regulatory powers, Scottish Ministers made transitional modifications that reduced the requirement for the Chief constable to provide a report on antisocial behaviour and the Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act to established a similar situation after transition. This ensured unnecessary costs are not entailed for the production of reports which are not required.

8.32 The anti-social behaviour report should detail all cases of anti-social behaviour identified, by the police, as having taken place on, or in the vicinity of the premises within one year of the date of the request as well as all complaints or other representations made to the police concerning anti-social behaviour on, or in the vicinity of the premises within one year of the date of the request. The Chief constable is required to provide the report within 21 days of receipt of the request.

8.33 If a Licensing Board requests an anti-social behaviour report from the Chief constable then it must suspend consideration of the licence application until it receives the report. On receipt of the report, the Licensing Board must provide the applicant with a copy of the report and then resume consideration of the application and determine it in accordance with section 23 of the 2005 Act.

8.34 On receipt of a notice of objection or representations in relation to a premises licence application, unless the Board considers them to be frivolous or vexatious, it is required to send a copy to the applicant and to consider the information contained therein when determining the licence application.

8.35 It is pleasing to see that many Licensing Boards provide helpful information (on the licensing pages of their respective local authority websites) for those who wish to object to a premises licence application or make representations in favour or against the license application. For example City of Glasgow Council has a page

(Alcohol Licences) on its website which signposts people to a range of information about the alcohol licensing system. One such link is to a page entitled "I'd like guidance on making an objection or representations" where information on the following can be found:

- when can I make an objection?
- what information should an objection or representation against an application contain?
- what information should a representation in support of an application contain?
- what is the deadline for submitting an objection or representation?
- how do I submit my objection or a representation?
- what happens if I submit an objection or representation?

#### *Determination of premises licence application*

8.36 Section 23 of the 2005 Act sets out the procedures a Licensing Board must follow when determining a premises licence application. The Criminal Justice and Licensing (Scotland) Act 2010, the Police and Fire Reform (Scotland) Act 2012 and the Air Weapons and Licensing (Scotland) Act 2015 ("the 2015 Act") have all amended this section.

8.37 Section 23(5) lists the grounds for refusal of a premises licence application. The key amendment (and majority of changes) to this provision since the 2005 Act was implemented, relate to the insertion of a new ground for refusal for a premises licence application by the 2015 Act. When a Licensing Board is determining an application and the Board considers that having regard to the licensing objectives, the applicant is not a fit and proper person to be a holder of a premises licence, then this is a ground for refusal. Where the Board refuses a licence on the fit and proper person ground, or where granting a licence would be inconsistent with one or more of the licensing objectives, the Board must state the licensing objective that the ground relates to.

8.38 In relation to the determination of a premises licence applications, the 2015 Act amends section 23 to clarify that any conviction notice supplied by the chief constable and any antisocial behaviour report by the chief constable supplied to the Board, is relevant to the specific consideration of the new fit and proper test as well as to consideration of the existing ground for refusal that the granting of the application would be inconsistent with one or more of the licensing objectives.

#### *Fit and proper person test*

8.39 The 2005 Act as implemented did not contain a "fit and proper person test" but rather focussed on the use of relevant offences and foreign offences to assess the suitability of new applicants and existing licence holders, as well as providing the ability for people to object based on matters connected to the licensing objectives.

8.40 Subsequent to the implementation of the 2005 Act, a range of stakeholders expressed the view that limiting consideration to relevant offences was unduly constraining to Licensing Boards who may have no choice but to grant licences to applicants that they consider to be a risk to the public.

8.41 This 2015 Act amendment provides greater scope to present information to Boards, and also provides Boards with greater powers to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information including police intelligence and any associations with those deemed to be unsuitable.

*Applicant's duty to notify Licensing Board of convictions*

8.42 The 2005 Act places a duty on anyone applying for a premises licence to notify, no later than one month after the date of the conviction, the Licensing Board of any convictions obtained whilst their application is pending. A person who, without reasonable excuse, fails to do so commits an offence. A person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 (£500) on the standard scale.

8.43 The Licensing Board is required to suspend consideration of the application and give notice of the conviction to the Chief constable.

8.44 Within 21 days of the receipt of a notice from a Licensing Board the Chief constable must respond to the Licensing Board either with:

- (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 foreign offence, or
- (b) a notice confirming the existence of the conviction and that it relates to a relevant or foreign offence.

If the Chief constable proposes to give a notice under subsection (b) above and considers that having regard to the conviction specified in the notice it is necessary for any of the licensing objectives that the application be refused then the Chief constable may include a recommendation to that effect.

8.45 On receipt of this notice from the Chief constable, the Licensing Board must resume their consideration of the licence application and determine it in line with section 23 of the 2005 Act.

*Further application after refusal of premises licence application*

8.46 Under the 2005 Act, where a Licensing Board has refused an application for a premises licence, a subsequent licence in respect of the same premises cannot be made within a year of that refusal. However the 2005 Act permits Licensing Boards, at the time of the initial refusal, to dispense with the one year limit, or where the limit has not been dispensed with, nonetheless to consider granting a re-application within the one year period where there has been a material change of circumstances.

*Issue of licence and summary*

8.47 Section 26(1) of the 2005 Act requires Licensing Boards, where they grant an application for a premises licence, to issue the applicant with a licence and a summary of the licence. Section 26(2) sets out the minimum information which must be contained in the licence (including: the name and address of (i) the holder of the licence, and (ii) the premises manager in respect of the premises to which the licence relates, and the date on which the licence takes effect). The Premises

Licence (Scotland) Regulations 2007 (SSI 2007 No. 452) as amended prescribe the form and content of the premises licence, the summary premises licence and the Disabled Access and Facilities Statement.

*Notification of change of name or address*

8.48 Section 48 of the 2005 Act makes provision for the notification of certain changes to be made to the Licensing Board by the premises licence holder. The Criminal Justice and Licensing (Scotland) Act 2010, the Police and Fire Reform (Scotland) Act 2012 and the Air Weapons and Licensing (Scotland) Act 2015 have made some textual changes to section 48 as enacted.

8.49 Section 48 places a duty on the holder of a premises licence to notify the relevant Licensing Board of any change in:

- the licence holder's name and address,
- the name and address of the premises manager specified in the licence, or
- the name or address of any person who is a connected person in relation to the licence holder.

The premises licence holder must notify any such changes no later than one month after the change has happened. A notification of change must be accompanied by the premises licence unless that is impracticable, in which case a statement of reasons for non-production of the premises licence must be provided.

8.50 This notification process is meant to cover only actual name changes i.e. for example, where the licence holder is a company and changes its name, or the premises manager is a woman who changes her name on marriage. A change in the identity of the premises licence holder is provided for in the provisions on transfer of premises licences. If there is a new premises manager, this must be provided for by seeking a variation of the licence so as to add the new premises manager's name.

8.51 A premises licence holder who fails, without reasonable excuse to notify a Licensing Board commits an offence. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500).

8.52 On receipt of a notification of change of name or address, a Licensing Board must give a copy of the notice to the chief constable.

*Licensing Board's duty to update premises licence*

8.53 The aim of section 49 of the 2005 Act is to ensure that the information contained in a premises licence is kept up to date. A Licensing Board is required to make appropriate changes to the information in a premises licence when it receives the notices of change of name or address and when it varies, transfers, confirms or reviews a premises licence. If necessary a Licensing Board is required to issue a new summary of the licence.

8.54 Following amendments made by the Criminal Justice and Licensing (Scotland) Act 2010 and the Police and Fire Reform Act 2012, where a Licensing Board issues a new summary of the licence then it must send a copy to the chief constable. Where the Licensing Board is not in possession of a premises licence and:



- the licence has ceased to have effect under any provision in the 2005 Act, or
- the Board requires the licence for the purposes of making the changes described above.
- the Licensing Board may require the licence holder to produce the licence to it within 14 days from the date on which the requirement is notified.

8.55 A licence holder who fails, without reasonable excuse, to produce the licence to the Licensing Board within the required timeframe commits an offence. A person found guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 2 on the standard scale (£500).

### **Conditions of premises licences**

#### *Mandatory conditions*

8.56 All premises licences are subject to mandatory conditions set out in schedule 3 of the 2005 Act, unless schedule 3 provides otherwise. The application of these mandatory conditions is intended to ensure national consistency on those matters specified in schedule 3. The national mandatory licence conditions for premises licences issued under the 2005 Act on enactment related to the following areas:

- compliance with the operating plan;
- the premises manager;
- authorisation of sales of alcohol
- training of staff
- pricing of alcohol
- irresponsible drinks promotions
- provision of non-alcoholic drinks
- payment of annual or recurring fees

8.57 A number of amendments have been made to schedule 3 as it was enacted by subordinate and primary legislation. These are briefly set out below.

#### *Licensing (Mandatory Conditions) (Scotland) Regulations 2007 (SSI. 2007/457)*

- added two new mandatory conditions to schedule 3 relating to notices on the admission of under-18s and the provision of baby changing facilities.

#### *Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007 (SSI. 2007/546)*

- amended schedule 3 in two instances: imposed a training requirement ( in relation to the keeping of training records); and imposed restrictions on the areas within premises in which alcohol for consumption off the premises may be displayed.

#### *Licensing (Mandatory Conditions) (Scotland) Regulations 2009 (SSI. 2009/270)*

- amended the mandatory condition which restricts the display of alcohol for consumption off the premises by exempting from these restrictions visitor

attractions that mainly provided information about and promoted the history and attributes of a particular alcoholic drink,

*Alcohol etc (Scotland) Act 2010*

- made a number of amendments to the mandatory condition which restricts the display of alcohol for consumption off the premises; and in relation to the display of branded non-alcoholic products (products that bear a name or image of an alcoholic product such as football tops, slippers, tea towels etc.)
- inserted a new mandatory condition (section 6B) relating to the minimum price of a packages containing more than one alcoholic product.
- amended the pricing of alcohol mandatory condition to provide that that in respect of sales of alcohol for consumption off the premises, the 72 hour restriction on varying prices is only maintained in relation to the price of individual products.
- amended the irresponsible drinks promotion mandatory condition in two ways which resulted in “quantity discount” and similar promotions not being permitted for off-sales; and drinks promotions encouraging persons to buy or consume larger measures only applying to on-sales of alcohol.
- Inserted a new mandatory condition that there must be an age verification policy in relation to the sale of alcohol on the premises. This section requires that all premises have an age verification policy with the age set at a minimum of 25.

*Alcohol Minimum Pricing (Scotland) Act 2012*

- Inserted a new paragraph 6A into schedule 3 and this mandatory condition is that alcohol must not be sold on the premises at a price below its minimum price.

8.58 The current national mandatory licence conditions for premises licences issued under the 2005 Act as amended relate to the following areas:

- compliance with the operating plan;
- the premises manager;
- authorisation of sales of alcohol
- training of staff
- pricing of alcohol
- irresponsible drinks promotions
- provision of non-alcoholic drinks
- age verification policy
- payment of annual or recurring fees
- notices – admission of person under age of 18
- baby changing facilities
- display, or promotion of the sale of alcohol for consumption off the premises

#### *Local conditions*

8.59 The 2005 Act provides a power for Boards to impose additional licence conditions to the mandatory conditions discussed above. 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 2005 Act and where some other form of activity not covered by schedule 3 was being undertaken on the premises. However, the legislation also provides that 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.

8.60 For example, Fife Licensing Board comment in its statement of licensing policy that:

- “On any day when licensed hours extend beyond 2.00 a.m., whether by virtue of the Operating Plan, general extension or extended hours application, in premises used as nightclubs or to which the mandatory late night conditions apply, the Board will consider whether or not to impose the local conditions set out in Appendix 4(a). If applicants consider that any of the conditions should not apply to their premises they should be in a position to demonstrate to the Board why the condition is unnecessary.”

8.61 Examples of the local conditions set out at Appendix 4(a) include:

- “There shall be a 01:15 a.m. curfew with no admittance or re admittance to the premises by the public, patrons or prospective patrons after 01:15 a.m.
- The licence holder shall arrange for litter patrols in the vicinity of the premises at the terminal hour.
- Random searches will be used to check patrons for knives and other potential weapons, particularly when entering the premises”.

8.62 For example in its statement of licensing policy, North Lanarkshire Council states:

- “The Board generally imposes the “local conditions” detailed in Appendix D when it is indicated in an operating plan that children (as defined in the legislation) are to be admitted to licensed premises. The Board, however, consider individual representations and may after considering those representations decide either to delete some of the conditions or indeed add further conditions.

Examples of the local conditions to be found at Appendix D include:

- Children must not be permitted to operate any amusement with prizes or video machines which are in the licensed premises.
- Non-glass drinking vessels must be available for children.
- A minimum of two baby’s high chairs must be provided for very young children.

#### *Variation of conditions*

8.63 Prior to the Alcohol etc (Scotland) Act 2010, a Board could only impose conditions in a premises licence when it granted a licence under section 27(6) of the 2005 Act or if it reviewed a premises licence under sections 36-40 of the 2005 Act. In those circumstances it could only do so on a case by case basis.

8.64 The Alcohol etc (Scotland) Act 2010 inserted a new section 27A into the 2005 Act which enables Boards to vary the conditions of premises licences in respect of all the premises in its area or vary a category or group of licences in respect of matters prescribed by the Scottish Ministers. Examples of the matters that could be prescribed include a requirement for shatter proof glasses in all premises of a particular description, CCTV in all premises in a particular town that sell alcohol for consumption off the premises, or a requirement for a specific number of door staff in city centre establishments.

8.65 A Board is only be able to exercise the power in section 27A if the Board considers it necessary or expedient for the purposes of any of the licensing objectives. Prior to making any such variation, a Board must do a number of things, namely:

- publish a notice of any proposed variation in the manner prescribed in regulations made by the Scottish Ministers.
- give notice of the proposed variation to premises licence-holders whose licences the proposed variation would apply to and to certain other persons including the local authority, relevant health board and the chief constable.
- ensure the notice states that any persons may make representations to the Board about the proposed variation and set out the date by which such representations must be made.
- requires that if a Board receives any representations, then it must hold a hearing in relation to the proposed variation.

#### **Duration of a premises licence**

8.66 Premises licences issued under the 2005 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. However, the licence can be revoked if conditions are breached and the licence also ceases to have effect if the holder dies, becomes incapable, or insolvent unless a transfer is made under section 34. A licence holder may also choose to surrender a licence.

#### **Variation of a premises licence**

8.67 Provision is made within the 2005 Act, for a premises licence holder to apply, to the Board which originally granted the licence, for variations to the terms and conditions of the premises licence. The legislation also explains what is meant by a variation in relation to a premises licence for the purposes of the 2005 Act; namely a variation of:

- any of the conditions to which the licence is subject (other than those to which the licence is subject by schedule 3 (mandatory conditions)),
- any of the information contained in the operating plan contained in the licence,
- the layout plan contained in the licence, or
- any other information contained or referred to in the licence, and includes an addition, deletion or other modification.

8.68 For the purposes of the 2005 Act, a “minor variation” means—

- any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,
- 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,
- 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
- any other variation of such description as may be prescribed for the purposes of this subsection (29(6)).

8.69 The Licensing (Minor Variations) (Scotland) Regulations 2011 (SSI 2011/151) specify a number of variations which are to be treated as minor variations for the purposes of 29(6), namely:

- where the name of the premises is disclosed in the premises licence, any change in that name;
- a temporary or permanent reduction in the licensed hours which does not result in the premises opening any earlier or closing any later than stated in the premises licence and operating plan;
- in relation to the access of children or young persons onto the premises any variation to the operating plan so as to —
  - ⇒ increase the minimum age at which children or young persons may be allowed onto the premises;
  - ⇒ reduce the times at which children or young persons are allowed onto the premises;
  - ⇒ restrict the access of children or young persons to certain parts of the premises;
- any reduction in the capacity of the premises whether resulting from a variation to the layout plan or otherwise;
- any variation resulting in the cessation of the provision of live or recorded music at a decibel level exceeding 85 decibels;
- any variation to provide that, when the premises are fully occupied, more customers are likely to be seated than standing.

*Determination of a variation of a premises licence application*

8.70 If the application is for a minor variation then in line with section 30(2) of the 2005 Act, a Board must grant the application. If the application relates to a major

variation of the premises licence then section 30(3) places a duty on Boards to hold a hearing to consider the application. The legislation also requires that a Board's decision must be based on the statutory grounds for refusal which are set out in subsection 30(5). These are similar to the grounds for refusal of an application for a premises licence discussed above. Boards can also make their own additional variations to the licence conditions where the Boards grants the variation applied for.

*Further application after refusal of application for variation*

8.71 The position here is the same as that outlined above in relation to a premises licence application. In essence, a premises licence holder who has had an application for a variation refused is prevented from re-applying for the same variation within a year of the initial refusal. Section 32(3), however, permits Boards to dispense with the one year limit or, where the limit has not been dispensed with, nonetheless to consider granting a re-application within the one year period where there has been a material change of circumstances.

**Transfer of a premises licence**

8.72 The 2005 Act provides that an application to transfer a premises licence can be submitted to a Licensing Board by either the premises licence holder or the proposed transferee.

*Premises licence holder application*

8.73 Section 33 of the 2005 Act as enacted has been amended by the Criminal Justice and Licensing (Scotland) Act 2010, the Police and Fire Reform (Scotland) Act 2012 and the Air Weapons and Licensing (Scotland) Act 2015. The key amendments are similar to those discussed above under a premises licence application. These relate to a chief constable being able to recommend that an application be refused if this is necessary for the purpose of any of the licensing objectives and the introduction of the "fit and proper" person test as a ground for refusal of an application.

8.74 A premises licence holder may apply to the appropriate Board for the transfer of the licence to the person named in the application - i.e. "the transferee". The transferee cannot be an individual under 18 years of age. On receipt of the application the Board must give notice of it and a copy of the application to the chief constable.

8.75 The steps the chief constable is required to undertake on receipt of this notice are not dissimilar to those undertaken in relation to a premises licence application. In essence, within 21 days the chief constable needs to respond to the Board by way of a notice. The notice either states that the transferee (or where the transferee is neither an individual or council) any connected person has been convicted of any relevant offence or foreign offence or it specifies any convictions for the aforementioned offences.

8.76 If for the purposes of any of the licensing objectives, the chief constable considers that the transfer of the premises application licence should be refused the chief constable may include such a recommendation. As a result of the Air Weapons and Licensing (Scotland) Act 2015 amendments, the chief constable can also

provide any information they consider relevant to the Board's consideration of the application in relation to a transferee, a connected person in relation to the licence holder or an interested party in relation to the licensed premises, if the application for the transfer were to be granted.

8.77 The procedure to be adopted by a Board on receipt of a chief constable's notice depends on the content of that notice. Where:

- the transferee has not been convicted of any relevant or foreign offence;
- the chief constable has not recommended, for the purposes of any of the licensing objectives, that the application be refused; and
- the chief constable has not provided any information in relation to the transferee, where the transferee is neither an individual nor a council, a connected person, or any person who would be an interested party in relation to the licensed premises if the transfer of the licence to the transferee were to be granted

then the Board must grant the application. In all other cases the Board must hold a hearing to consider and determine the application.

8.78 Where a Board is required to hold a hearing then the Board must have regard to the information contained in the chief constable's notice discussed above and if satisfied that a ground for refusal of the application applies, the Board should refuse the application. The grounds for refusal in this instance are:

- that having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence,
- that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.

*Transfer on application of person other than licence holder*

8.79 In terms of section 34 of the 2005 Act, an application for the transfer of a premises licence can be made by the proposed transferee (who cannot be a person under 18 years of age) rather than the premises licence holder. Such applications can only be made following certain events and by certain persons.

8.80 Section 34(3) describes the events as:

- the premises licence holder, being an individual who:
  - (i) dies, or
  - (ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000;
- the premises licence holder, being an individual, a partnership or a company, becomes insolvent,
- the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and
- the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person.

8.81 The License Transfer (Prescribed Persons) (Scotland) Regulations 2007 (SSI 2007 No.34) makes provision as to who may apply to a Board for a transfer of a

premises licence following the occurrence of each of the events listed at paragraph 91. Namely:

- Death: any executor or personal representative of the licence holder;
- Incapacity: (a) any person who has been granted a power of attorney by the licence holder; or  
(b) any person authorised to act on behalf of the licence holder by virtue of the Adults with Incapacity (Scotland) Act 2000;
- Insolvency: any person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 in relation to the licence holder;
- Dissolution: any person responsible for administering the dissolution of the licence holder.
- Transfer of business: any person to whom the business is transferred.

8.82 An application for a transfer of a premises licence under section 34 must be made to the appropriate Board within 28 days of the occurrence of one of the events discussed at paragraph 91. The procedures for dealing with an application made under section are the same as those discussed above for section 33 applications.

8.83 Section 35 makes provision for the scenario where a person applying for the transfer of a premises licence can apply at the same time for a variation to the terms and conditions of the premises licence to transfer of a premises licence also to apply at the same time for a variation to the terms and conditions of the premises licence. The text above in relation to the application to vary a premises licence and the determination of an application for a variation of a premises licence will apply to applications for variations under this section.

8.84 If the proposed transfer of the premises licence depends on a variation being obtained to the licence then the person seeking the transfer is required to make this clear. In such cases a 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.

### **Review of a premises licence**

8.85 Sections 36 to 40 of the 2005 Act make provision for the review of a premises licence. A number of amendments have been made to the 2005 Act as enacted by the Criminal Justice and Licensing (Scotland) Act 2010 and (the majority) by the Air Weapons and Licensing (Scotland) Act 2015.

#### *Application for a review*

8.86 Any person can submit a “premises licence review application” to the relevant Board regarding a licensed premises on any of the ground for review. The Air Weapons and Licensing (Scotland) Act 2015 amended section 36 of the 2005 Act by adding a third ground for review. The grounds of review are:

- (1) are that one or more of the conditions to which the premises licence is subject has been breached, or
- (2) any other ground relevant to one or more of the licensing objectives or



- (3) not a “fit and proper person”

8.87 Depending on which ground for review is noted on the application, certain information must also be provided:

- (1) the condition or conditions alleged to have been breached.
- (2) the licensing objective or objectives to which the alleged ground of review relates.
- (3) a summary of the information on which the applicant's view that the alleged ground applies is based.

8.88 A Licensing Standards Officer (LSO) is only able to 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 and the LSO is not satisfied with the action taken by the licensed premises holder in response to the written warning.

8.89 The Air Weapons and Licensing (Scotland) Act 2015 further amended section 36 to clarify that any person who makes a premises licence review application may include any information in that application that the person considers relevant to the Licensing Board's consideration of the alleged ground of review. This could include information relating to the licence holder, connected persons in relation to the licence holder or an interested party in relation to the licensed premises.

8.90 A Licensing Board may reject a premises licence review application if the Board considers the application:

- is vexatious or frivolous, or
- does not disclose any matter relevant to any ground for review.

If a Licensing Board rejects an application on one of the grounds mentioned above then it must give notice of the decision, and the reason for it to the applicant. Provision is also made for a Board to recover, from the applicant, any expenses incurred by the Board in considering a vexatious or frivolous application.

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

8.91 Section 37 allows for Licensing Boards to initiate reviews of premises licences themselves. The grounds for review are the same as those for applications under section 36 (discussed above). Where a Licensing Board proposes to initiate a review of a premises licence, the Board must provide a written report - known as a review proposal - setting out the grounds that it considers merit such a review of the premises licence. An Air Weapons and Licensing (Scotland) Act 2015 amendment provides that a Board's proposal may include information that the Board considers relevant to its consideration of the alleged ground of review, in relation to the licence holder, connected persons in relation to the licence holder or interested parties in relation to the licenced premises.

#### *Review Hearing*

8.92 Section 38 of the 2005 Act requires a Licensing Board to hold a review hearing and determine an application for a review of a premises licence made under section 36 (or a review proposal under section 37. As discussed above, 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 the grounds for review.

8.93 In terms of notification of a review, the Licensing Board is required:

- in the case of a premises licence review application to give notice of the hearing to the applicant, and
- give notice of the hearing and a copy of the premises licence review proposal or application to the licence holder and any LSO for the area in which the licenced premises are located (unless in the case of a premises licence review the LSO is the applicant)

8.94 As discussed earlier in the guidance, where an LSO receives a copy of a premises licence review proposal or application, the LSO must prepare and submit a report on the proposal or application to the Board before any hearing takes place. The Licensing Board must take account of this report at the hearing. Additionally a Licensing Board is empowered to request information, the attendance at a hearing of any person and the production of documents.

8.95 A Licensing Board has a range of sanctions that it may elect to impose on reviewing a premise licence. These are set out at section 39 of the 2005 Act as amended by the Air Weapons and Licensing (Scotland) Act 2015. These steps are to:

- issue a written warning to the licence holder,
- make a variation of the licence; may only apply for a period decided by the Board,
- suspend the licence for whatever period the Board may decide,
- revoke the licence.

Section 39 also provides that where a Licensing Board is satisfied at a hearing that the licence holder fails the “fit and proper” test then the Licensing Board must revoke the premises licence. Subject to the revocation of a licence being recalled, a revocation takes effect at the end of the period of 28 days beginning with the day the Board made the decision to revoke the premises licence.

8.96 The 2005 Act as enacted has been amended by the Criminal Justice and Licensing (Scotland) Act 2010 and the Air Weapons and Licensing (Scotland) Act 2015 in relation to a Licensing Board giving notice of a decision made at a premises licence review hearing. The 2010 Act inserted a new provision (section 39A Notification of determinations) into the 2005 Act and this provision was subsequently amended by the 2015 Act.

8.97 The rationale for the 2010 Act amendment was to seek to improve the transparency of the premises licence review process provided for in the 2005 Act. It ensures that

- adequate notification of a licensing board's decision following a review hearing is given to the licence holder and to the person who applied for a review.

- when a licensing board takes action against a licence holder following a review hearing, the licence holder is able to request a statement of reasons from the board –as already happened in the case of a premises licence application.
- a statement of reasons can be requested by a person who applies for a review of the licence, whether or not any action is taken by the board following the review hearing.

The 2015 Act textual amendments were a result of the introduction of the fit and proper person test as a ground for refusal.

8.98 The 2005 Act provides (section 40) a mechanism by which a licence holder can apply to the Licensing Board to have any variation of their premises licence or the suspension of their premises licence removed. If the Board feels that the sanction in question is no longer necessary then, in the case of these two sanctions only, it may remove the relevant sanction.

### **Recall of revocation of licence**

8.99 The 2015 Act inserted section 39B which provide for the recall of a revocation of a licence under section 39(2A). This amendment and the amendment which inserted 28 days are linked to the “fit and proper person”, also introduced by the 2015 Act. As noted during the parliamentary passage of the then Air Weapons and Licensing (Scotland) Bill, the bill on introduction had provided for the immediate revocation of a premises licence on the grounds that, having regard to the licensing objectives, the licence holder is not a fit-and-proper person to be the holder of a premises licence.

8.100 Concerns had been raised been raised that without alternative disposals available to it, the board might be reluctant to find that a person is not fit and proper to hold a premises licence. To address these concerns, two amendments were brought forward at Stage 2 of the parliamentary process. One amendment provided that a revocation under the licensing board’s powers of review would take effect at the end of a period of 28 days beginning on the day on which the board makes the decision. The rationale being that this provided a short period of grace in which the licence holder may take action to address the problems that led to the board making the findings.

8.101 The second and related amendment inserted a new section (section 39B) into the 2005 act. This section provides that when a licensing board has taken steps to revoke a premises licence on the ground that the licence holder is not a fit-and-proper person, the board must recall the revocation if the relevant application is made within that 28-day period and the board ultimately grants the relevant application. These provisions enable Boards to take robust action when a licence holder is found not to be a fit-and-proper person and they offer reasonable traders the opportunity to take prompt action to address the board’s concerns and retain their licence.

### **Conviction of licence holders etc. for relevant or foreign offences**

8.102 Relevant and foreign offences are discussed above. A premises licence holder who is charged with relevant offences is required to notify the court of the fact that they hold a premises licence. Failure to do so, within the timescales set out in section 41, and without reasonable excuse means the person is committing an offence. A person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500).

8.103 The notification required under section 41 enables the clerk of the court to comply with the duty imposed on them by section 42 of the 2005 Act – namely to give notice of the conviction to the Licensing Board. The duty only applies if the clerk is aware that the person convicted holds a premises licence.

### **Provisional and temporary premises licences**

#### *Provisional premises licence*

8.104 A premises licence application can be made in relation to premises which are being constructed or converted for use as licensed premises. A premises licence granted for such premises is referred to as a “provisional premises licence”. Section 45 of the 2005 Act modifies certain provisions of the 2005 Act as they apply to applications for provisional premises licences. For example, the name of the premises manager need not be provided on the provisional premises licence application.

8.105 A provisional premises licence has no effect until it is confirmed. The Criminal Justice and Licensing (Scotland) Act 2010 amended the 2005 Act as enacted to increase the 2 year period in which a premises licence must be confirmed to 4 years. If the licence is not confirmed within this period it will be automatically revoked. The 4 year period can be extended if the construction or conversion work is delayed for reasons outwith the licence holder’s control.

8.106 Section 46 of the 2005 Act sets out the procedure for the confirmation of provisional premises licences. The licence holder has to apply for confirmation to the Licensing Board before the end of the 4 year period beginning when the licence was issued. Confirmation would, in practice, be sought when the construction or conversion work is completed and the premises are ready for use.

8.107 Applications for confirmation of provisional premises licence must be accompanied by:

- the provisional premises licence,
- the operating plan for the premises to which the licence relates (which must confirm the name of the premises manager),
- the layout plan for the premises, and
- the certificates required by section 50(3) [i.e. planning, building and food hygiene].

8.108 On receipt of an application, a Licensing Board must confirm the premises licence where, during the period of the provisional licence, there has been no

variation to the operating plan or layout plan (other than a variation approved by the Board already or classed as a minor variation) for the premises to which the licence relates. When confirming a premises licence, the Board may, to ensure consistency with any statement of licensing policy or any supplementary statement of licensing policy published since the licence was issued, vary any licence condition.

#### *Temporary premises licence*

8.109 Section 47 of the 2005 Act covers the scenario where premises which already have a premises licence are undergoing reconstruction or conversion work. It may be that the licence holder wishes to move into temporary premises. The 2005 Act enables the licence holder to apply to the Licensing Board for a premises licence covering the temporary premises, i.e. a temporary premises licence.

8.110 Section 47 as enacted was amended by the Criminal Justice and Licensing (Scotland) Act 2010 and the Police and Fire Reform (Scotland) Act 2012. These amendments require a Licensing Board to send a copy of the temporary premises licence to the Chief constable. The policy rationale here being it is important for the police to be made aware of the licensing conditions attached to each licence in order for the conditions of that licence to be properly enforced.

8.111 A temporary licence has effect for a period, not longer than 2 years beginning with the date of its issue, as a Licensing Board may determine. The temporary premises licence is subject to the same conditions to which the premises licence is subject to at the time the temporary licence is issued, subject to any exceptions or modification which the Licensing Board may provide for.

### **Premises licences – miscellaneous matters**

#### *Duty to keep, display and produce premises licence*

8.112 The 2005 Act provides that 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. A summary of the licence must be displayed prominently on the premises.

8.113 It is an offence to fail to comply with these requirements or to fail to produce the licence or a certified copy to a police constable or a Licensing Standards Officer on request. A person who fails, without reasonable excuse, to comply with a requirement made under section 52 commits an offence. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale.

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

8.114 Provision is made within the 2005 Act for a premises licence holder to apply to the Licensing Board for a copy of a premises licence or a summary if the licence or summary has been lost, stolen, damaged or destroyed. If lost or stolen, the theft or loss must have been reported to the police by the premises licence holder.

8.115 If the relevant Licensing Board is satisfied that the premises licence or summary licence has been lost, stolen, damaged or destroyed, and the licence holder has made the necessary report to the Police then the Licensing Board must

issue to the licence holder a replacement licence or, as the case may be, a replacement summary. The “replacement” document should be in the form in which the document existed immediately before it was lost, stolen, damaged or destroyed, and should be “certified”. by the Licensing Board as a true copy.

#### **Notifications of determinations**

8.116 The 2005 Act places a duty on the Licensing Board 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 (i.e. the Chief constable and in the case of the grant or refusal of a premises licence application any person who gave a notice of objections or representations under section 22 (10) of the 2005 Act.

8.117 It is open to any of the aforementioned parties, within 14 days of receiving notice of the Board’s decision, to ask the clerk of the Licensing Board for a statement of reasons for the grant or refusal of the application. The Licensing (Procedure) (Scotland) Regulations 2007 (SSI 2007/453) sets out the format (at Schedule 4) of the statement of reasons which the clerk of the Board requires to issue within 14 days of the receipt of the request for a statement of reasons. Any statement of reasons issued must be sent to the person who asked for it and any other person to whom the Board gave notice under subsection (1).