

**The Highland Licensing Board and
the Highland Licensing Forum**

Joint meeting – 8 September 2015

Agenda Item	5
Report No	HLBF/002/15

Air Weapons and Licensing (Scotland) Act 2015

Report by the Clerk to the Licensing Board

Summary

This Report advises of the changes to the Licensing (Scotland) Act 2005 and the steps which will require to be taken by the Licensing Board.

1. Background

- 1.1** The Air Weapons and Licensing (Scotland) Act received royal assent on 4 August 2015.
- 1.2** The purpose of the Act is to protect public safety by creating a new licensing regime for air weapons to be administered by Police Scotland and to improve aspects of locally led alcohol and civic government licensing in order to preserve public order and safety, reduce crime, and to advance public health.
- 1.3** The Act provides new provisions relating to:
- The licensing of Air Weapons which is to be administered by Police Scotland;
 - Alcohol Licensing;
 - Civic Government Licensing relating to Taxis and Private Hire Cars; Metal Dealers, Public Entertainment, Sexual Entertainment Venues, Civic Licensing Standards Officers and electronic communications.

This Report will concentrate on the alcohol licensing provisions.

- 1.4** The only provision of the Act which has been brought into force is the one which allows a person who has had a personal licence revoked because of failure to comply with refresher training requirements to apply for a new licence immediately rather than having to wait 5 years (see paragraph 4.3 below).
- 1.5** All other provisions will come into force on such day as Scottish Ministers may appoint.

2.0 Amendments to Parts 1 and 2 – Core Provisions, Licensing Bodies and Officers

2.1 Section 2 is amended to remove angostura bitters from the definition of alcohol.

2.2 Section 4 (licensing objectives) is amended to add protection of young persons to the fifth licensing objective.

The Board will therefore have to consider whether to amend its Policy Statement to take account of this change.

2.3 Section 6 (statements of policy) is amended to change the period for statements of licensing policy. The period will run from 18 months after the next Council election (which is in May 2017) to 18 months after the following Council election. The Board will be permitted to decide that the currency of the next policy statement will begin earlier – so it can decide to remain with 1 December 2016 for introduction of the next one if so desired.

The Board will require to reach a decision on this.

2.4 Section 7 (overprovision) is amended to allow the Board to treat the whole of its area as a “locality” and to allow (but not require) the Board to have regard not only to the number and capacity of licensed premises in the locality but also such other matters as the Board thinks fit including the licensed hours of premises in the locality.

This may have an impact on the next Policy Statement.

2.5 A new section 9ZA introduces the requirement to prepare and publish an “**annual functions report**” by no later than 3 months after the end of each financial year (31 March). The report must:

- State how, in the exercise of their functions under the Act during the financial year, the Board has had regard to the licensing objectives and their licensing policy statement, including any supplementary policy statement and the Board’s overprovision statement
- Summarise the decisions made by or on behalf of the Board during the financial year and state the number of licences held under the Act in the Board’s area, including number of occasional licences issued during the year.

2.6 A new section 9A introduces the requirement to prepare and publish an “**annual financial report**” by no later than 3 months after the end of each financial year (31 March). The report must include a statement of relevant income received by the Board during the financial year and the amount of

relevant expenditure incurred in the year. An explanation of how the amounts were calculated must be included. Relevant income and relevant expenditure include fees brought in and costs incurred under the 2005 Act and also income received and costs incurred in relation to the “social responsibility levy” from premises licence holders and occasional licence holders. However, no regulations have as yet been made under s14 of the Alcohol etc (Scotland) Act 2010 bringing the social responsibility levy into play.

- 2.7** Section 14 (functions of LSOs) is amended to add the function of providing information to Licensing Boards about any conduct of holders of, or persons applying for, personal licences in the area which is inconsistent with the licensing objectives.

3.0 Amendments re. premises licences

- 3.1** Section 22 (objections and representations) is amended to clarify that persons submitting objections or representations may include any information they consider relevant to any ground of refusal, including information about the applicant, a connected person or an interested party. The Board must have regard to any such information submitted.

- 3.2** Section 23 (determination of premises licence applications) is amended to introduce an additional ground of refusal of premises licence application, where the Board “*consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence*”. The wording of the ground of refusal relating to overprovision is also simplified, removing the requirement to have regard to the number and capacity of premises in the locality.

- 3.3** Section 30 (determination of application for variation) is amended to simplify the wording of the ground of refusal relating to overprovision, removing the requirement to have regard to the number and capacity of premises in the locality. Otherwise, the grounds for refusal remain the same (i.e. no “fit and proper” test has been added for variations).

- 3.4** Section 34 (transfer on application of person other than the licence holder) is **repealed entirely**.

The new transfer provisions may create difficulties for landlords who have allowed their tenants to hold a licence, and may also provide considerable headaches for insolvency practitioners.

- 3.5** Section 33 (transfer on application of licence holder) is renamed “**Application for transfer of premises licence**” and becomes the only method of transfer of a premises licence. Its terms are amended with effect as follows:

- Any person aged 18 or over can apply to have a premises licence transferred to him/her (the “transferee”).
- The application must specify the date on which the transfer is to take effect and must be accompanied by the premises licence (or a statement of reasons for failure to produce the licence) **and** a written statement signed by the current premises licence holder consenting to the transfer of the licence to the transferee (the “**consent statement**”) or a statement of reasons for failure to obtain the licence holder’s signed consent.
- The Board **must refuse** the application if it is not accompanied by the current premises licence holder’s signed consent statement **unless the Board dispenses with the requirement for a consent statement under new section 33A (see below)**.
- The Board must give notice of the application, and a copy of the application, to the Police, unless refusing the application because of the lack of a consent statement.
- Within 21 days of receipt of the notice of application, the Police may, in addition to giving notice of whether or not the transferee or any connected person has been convicted of a relevant or foreign offence, give notice of any other information about the transferee, any connected person or any interested party which the Police consider relevant to consideration of the application.
- The Board **must grant** the application if the Police notice confirms no convictions, if no recommendation to refuse is made by them and if they provide no additional information about the transferee, connected persons interested parties. **Otherwise the Board must hold a hearing.**
- The grounds of refusal of transfers are changed from “*if satisfied that it is necessary to do so for the purposes of any of the licensing objectives*” to “(a) *having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence*” or “(b) *it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives*”.

3.6 A new section 33A is added. This contains further provisions on section 33 transfers with effect as follows:

- The Board must take all reasonable steps to give notice of the s33 application to the current premises licence holder. This duty exists even where a signed consent statement from the licence holder has been submitted with the application.
- If the transferee has not submitted a consent statement from the licence holder, the Board **may dispense** with the requirement for a consent statement if satisfied that the transferee has taken all reasonable steps to contact the licence holder to obtain consent but has received no response. NB. There is no power to dispense with the requirement for a consent statement if the current licence holder is simply refusing to consent to the transfer.
- If the Board dispenses with the requirement for a consent statement, the Board **must hold a hearing** before determining the application.
- If the Board decides not to dispense with the requirement for a consent statement, the Board **must give notice** of the decision to the transferee **and give reasons for the decision**.

The applicant for the transfer has the right to appeal a decision not to dispense with the requirement for a consent statement, as well as a right to appeal a decision to refuse the application.

A licence holder from whom the licence is transferred has the right to appeal the decision to transfer the licence – apparently even if they had signed a consent statement. They may also appeal a decision to refuse a transfer application.

3.7 Section 36 (application for review of premises licence) is amended to add an additional ground of review: *“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”*. The person applying for the review, if relying on this ground, must summarise in their review application the information on which he/she believes that the alleged ground applies is based. They may also include any information they consider is relevant to whatever ground of review is alleged, including information relating to the licence holder, a connected person or an interested party.

3.8 Section 37 (review of premises licence on Board’s initiative) is amended to require the Board, if proposing to review a licence on the “fit and proper person” ground, to include in their review proposal a summary of the information on which their view that the alleged ground applies is based. They

may include in their review proposal any information they consider relevant to the ground of review alleged, including information about the licence holder, a connected person or an interested party.

3.9 Section 39 (Board's powers on review) is amended to add a strict requirement (s39(2A)) that the Board revoke the licence if, at the review hearing, they are satisfied 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. Revocation under this provision takes effect at the end of the period of 28 days beginning with the day on which the Board takes the decision.

3.10 Section 39A (notification of determinations) is amended to add a requirement that the Board give notice to the licence holder and the applicant of any decision to revoke on the basis of the fit and proper test.

3.11 *A lot has been made about the re-introduction of the so called fit and proper person test. However the Board will still have to be satisfied in this regard having regard to the licensing objectives. It remains to be seen if this will make any meaningful difference.*

3.12 New Section 39B is added to require the Board to recall a revocation which was based on the fit and proper test if:

(a) within 28 days beginning with the day on which the Board took the decision to revoke, either a s33 transfer application is received or a premises licence variation application is received which seeks a variation of the licence that the Board considers would remove the ground on which the licence was revoked, and

(b) the Board grants the application

The Board may extend the 28 day period before the revocation takes effect pending determination of the s33 or variation application.

3.13 Section 40A (connected persons and interested parties: licence holder's duty to notify changes) is amended to remove all references to interested parties in the section title and section itself. The licence holder's duty will therefore relate only to connected persons.

3.14 Section 44 (procedure where Board receives notice of conviction relating to the premises licence holder or a connected person) is amended with effect as follows:

- If, having given the Police notice of the conviction, the Board receives from them a notice confirming the conviction and that it relates to a relevant or foreign offence **and** including a recommendation that the licence should be varied, suspended or revoked, the Board must make a premises licence review proposal.

- If the Police confirm the conviction and that it relates to a relevant or foreign offence but do not include a recommendation that the licence be varied, suspended or revoked, the Board may either make a premises licence review proposal or decide to take no action in relation to the conviction.

3.15 Section 48 (notification of change of name or address) is amended to remove the requirement for the premises licence holder to notify the Board of the change in name or address of an interested party in the premises. Notification is therefore required only for changes in name/address of the licence holder, the premises manager and any connected person.

3.16 Section 147(5) is amended to remove the words “nor the premises manager” from the opening words, to clarify that a premises manager is in fact an “interested party” in relation to licenced premises.

4.0 Amendments re. Personal Licences

4.1 Section 73 (notification of application to Police) is amended to allow the Police to include, in their notice confirming convictions or lack of convictions, any information about the applicant they consider relevant.

4.2 New Section 73A is added to require the Board to give notice of personal licence applications to the LSO. The LSO may, within 21 days of receipt of this notice, respond providing any information about the applicant they consider relevant.

4.3 Section 74 (determination of personal licence application) is amended with effect as follows:

The Board **must grant** the application if

- the Police notice confirms no convictions and makes no recommendation to refuse the application **and** neither the Police nor the LSO have provided any further information about the applicant which they consider relevant to the consideration of the application, and
- the following conditions (the “**conditions**”) are met: the applicant is 18 or over, possesses a licensing qualification, does not already hold a personal licence and has not in the previous 5 years had a personal licence revoked (**other than by reason of non-compliance with refresher training requirements under s87**)

The Board **must refuse** the application if any of the above conditions are not met.

If all of the conditions are met, the Board **must hold a hearing** if the Police notice (whether confirming convictions or confirming lack of convictions) includes a recommendation that the application be refused.

If all of the conditions are met and the Police notice confirms convictions but includes no recommendation to refuse, the Board **may hold a hearing**. If the Board does not hold a hearing in these circumstances, the Board must grant the application.

If all of the conditions are met and the Police notice (whether confirming convictions or confirming lack of convictions) includes no recommendation to refuse, but either the Police or the LSO have submitted information about the applicant which they consider relevant to consideration of the application, the Board **may hold a hearing**. If the Board does not hold a hearing in these circumstances, the Board must grant the application.

At a hearing, the Board must have regard to the Police notice **and** to any information about the applicant submitted by the Police or LSO.

The grounds for refusal are amended from *“if satisfied that it is necessary [to refuse] for the purposes of any of the licensing objectives”* to *“(a) that, having regard to the licensing objectives the applicant is not a fit and proper person to be the holder of a personal licence”* or *“(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives”*.

This amendment will allow applications to be considered immediately from former licence holders who had their licence revoked for failing to comply with the refresher training requirements. Without this amendment a wait of 5 years would have been required.

- 4.4** Section 77 (period of effect of personal licence) is amended to require the Board, **not later than 9 months before the expiry date** of a personal licence, to give notice to the personal licence holder that the licence will cease to have effect on the expiry date unless renewed. (This notice period is currently only 3 months before the expiry date).
- 4.5** Section 78 (renewal of personal licence) is amended to apply new s73A (see above) also to renewals. It is also amended to change the period during which the licence holder may apply to renew the licence to **the period of 9 months beginning 12 months before the expiry date of the licence**. (The period is currently the period of 2 months beginning 3 months before the expiry date.)
- 4.6** Section 83 (procedure where Board receives notice of conviction relating to a personal licence holder) is amended with effect as follows:

- If, having given the Police notice of the conviction, the Board receives from them a notice confirming the conviction and that it relates to a relevant or foreign offence **and** the Police include a recommendation that the licence should be revoked, suspended or endorsed, the Board **must hold a hearing**.
- If the Police confirm the conviction and that it relates to a relevant or foreign offence but do not include a recommendation that the licence be revoked, suspended or endorsed, the Board **may either hold a hearing or decide to take no action in relation to the conviction**.
- At a hearing, the Board is **required to revoke the licence** if satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence.
- If the Board is not satisfied that the licence holder is not a fit and proper person, the Board may nonetheless revoke, suspend or endorse the licence if satisfied that it is necessary to do so for the purposes of any of the licensing objectives.

4.7 Section 84 (Board makes a finding at a premises review hearing that a personal licence holder has acted in a manner inconsistent with the licensing objectives) is amended with effect as follows:

- At the hearing on the personal licence, the Board is **required to revoke the licence** if satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence.
- If the Board is not satisfied that the licence holder is not a fit and proper person, the Board may nonetheless revoke, suspend or endorse the licence if satisfied that it is necessary to do so for the purposes of any of the licensing objectives.

4.8 New section 84B introduces power to the LSOs to report to the Board any conduct by a personal licence holder which is inconsistent with the licensing objectives. Where an LSO makes a report to the Board under new section 84B, the Board **may hold a hearing**.

5.0 Amendments to Part 8 – Offences

5.1 New sections 104A and 104B are added creating offences of buying or attempting to buy alcohol on behalf of or for a child or young person or giving alcohol (or otherwise making it available) to a child or young person. In relation to young persons, the offence is qualified in that the person must have

acted “knowingly” – which presumably means they acted in the knowledge that the young person was under 18. For both offences, exceptions are made for supply for consumption other than in a public place and for the purposes of religious worship. For young persons, a further exception is made if they are supplied beer, wine, cider or perry along with a table meal.

- 5.2** Section 129(4) which currently confirms that spent convictions are to be disregarded for the purposes of the Act is repealed.

It is understood, however, that before spent convictions could lawfully be taken automatically into account, additional legislation to exclude the application of the Rehabilitation of Offenders Act 1974 in relation to proceedings in respect of liquor licensing applications will be required. Otherwise, the spent convictions could only be considered if the “interests of justice” test is first satisfied.

6.0 Amendments to processing of applications

- 6.1** A new section 134ZA (Duty to acknowledge applications) is added imposing the following new and additional acknowledgement procedures for all “**relevant applications**”. These are:

- Premises licence and premises licence variation applications
- Transfer of premises licence applications and applications for variation of a premises licence on transfer
- Provisional premises licence applications and applications for confirmation of provisional licences
- Temporary premises licences
- Occasional licence applications
- Extended hours applications
- Personal licence applications and personal licence renewal applications

Confusingly, the duty to acknowledge these applications does not apply “*where the Licensing Board consider it appropriate to determine the application on its merits without first giving an acknowledgement to the applicant*”. No explanation is given as to the circumstances in which this would arise, but it is perhaps meant to cover simpler applications such as occasionals and extended hours.

The duty to acknowledge the application arises only where the Board is first satisfied that the application meets any **prescribed requirements** as to form, content, etc which are imposed by the Act or regulations. This would include the duty in the Fees regulations to pay the fee at the time of lodging the application.

If the prescribed requirements are not met, the Board must give notice to the applicant indicating that they are treating the application as incomplete and stating why.

If the prescribed requirements are met (and the Board does not consider it appropriate to determine the application on its merits without first giving an acknowledgement to the applicant), the Board must, as soon as practicable, give an acknowledgement to the applicant:

- Confirming that the application meets the prescribed requirements
- Listing any documents received in support of the application and the date(s) on which those documents were received
- Informing the applicant of the period for determining the application under section 134ZB (see below).

6.2 A new section 134ZB (period for determining applications) is added giving the Board a period of 9 months in which to determine every relevant application (see above list) This includes an application where the Board has considered it appropriate to determine the application on its merits without giving an acknowledgement to the applicant. For these (unacknowledged) applications, however, although the 9 month period applies, the Board is also directed to determine them “as soon as practicable”.

The 9-month period commences with the date on which the Board receives the application or, where the application did not initially meet the prescribed requirements, the date on which it does meet the prescribed requirements.

The Board may apply to the sheriff for an extension of the 9 month period for determining the application. The sheriff must be satisfied that there is “good reason” to extend the period. He may only extend the period once. The applicant is entitled to be party to the extension application proceedings.

- 6.3** A new section 134ZC (deemed grant of applications) is added to provide that a relevant application (see list above) is deemed to have been granted on the date on which the 9 month determination period expires (or the expiry of any extension to that period granted by the sheriff), if the Board has failed to determine the application before expiry of the relevant determination period.

The deemed grant has effect as if the application had been granted by the Board, but in issuing the licence the Board may only impose the mandatory conditions prescribed by the Act and Regulations.

In applications where the Board would, on granting the application, have had to determine the period during which the licence would have effect, the licence issued following a deemed grant will have effect for the duration of the period stated in the application (subject to any limits imposed by the Act).

7.0 Other consequential amendments

- 7.1**
- There are numerous consequential amendments to references to section and subsection numbers in the Act, to reflect the above changes and additions.
 - There are also various amendments to Schedule 5 (Appeals), again to reflect the above changes and additions.

8.0 Implications for the working of the Board

- 8.1** Apart from the ability to apply for a personal licence immediately following revocation for failure to comply with refresher training requirements, none of the above provisions are in force. The Board, while aware of the proposed changes, has not yet taken any steps to implement the changes and will have to consider to what extent any such steps can be taken in advance of the provisions coming into force.

- 8.2** The views of the Highland Licensing Committee in relation to the licensing of sexual entertainment venues will be made known to the Highland Licensing Board as this will impact on those Premises Licences which include adult entertainment in their Operating Plan.

9.0 Recommendation
9.1 It is recommended that the joint meeting note the Report.

Designation: Clerk to the Licensing Board

Date: 26 August 2015

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