

## **Licensing (Scotland) Act 2005**

### **Frequently Asked Questions for Members' Clubs in Scotland**

The law is changing for those who sell alcohol as a new Licensing Act passed by the Scottish Parliament in December 2005 comes into force. The new Act means that there will be a new system of premises licences for premises on which alcohol is sold, and a requirement for a personal licence. Applications for these new licenses will need to be made to the Licensing Board.

#### **The Licensing Objectives**

The Act complements the wider policies of the Scottish Government. This includes measures to tackle antisocial behaviour, and the programme of work set out under the Plan for Action on Alcohol Abuse, which seeks to tackle under age drinking, binge drinking, and the wider problems associated with alcohol misuse.

The Act establishes a national policy framework within which Licensing Boards will take local decisions. Local flexibility will be balanced with a clear national framework within which Licensing Boards will operate. This will ensure an appropriate level of consistency across Scotland on the implementation of licensing policy.

The Act sets out 5 high level "licensing objectives." These represent the principles on which the Scottish licensing system will be based, and providing Licensing Board with a solid foundation on which to build their own local policies. These objectives are not ranked in order of importance. Licensing Boards should give each objective equal weighting and all must be paramount considerations at all times. These 5 objectives are:

- Preventing crime and disorder;
- Securing public safety;
- Preventing public nuisance;
- Protecting and improving public health; and
- Protecting children from harm.

In addition to complementing the Executive's wider agenda these 5 objectives aim to improve the environment for social drinking to one which is safe and welcoming for all.

#### **Aim of the new legislation**

- Simplify and modernise the existing legislation ( the Licensing (Scotland) Act 1976
- Balance the rights of the majority of people who drink responsibly against the need to protect local communities from nuisance and crime associated with misuse of alcohol
- Provide strong monitoring and enforcement powers;
- Establish a more inclusive system for all those with an interest;
- Support responsible members of the licensed trade: and
- Allow local flexibility balanced with consistency of decision making

#### **How will Clubs be affected by the new Act ?**

##### Q. How are clubs to be treated?

- They will be brought within the licensing system. However, those clubs which meet the criteria set out in the Licensing (Clubs) (Scotland) Regulations 2007 (SSI/2007/76) will be exempt from a number of the requirements of the Act.
- The following link will take you to the regulations  
[http://www.opsi.gov.uk/legislation/scotland/ssi2007/pdf/ssi\\_20070076\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2007/pdf/ssi_20070076_en.pdf)

- Clubs, however, will be subject to all the other statutory requirements of the Act

Q. What are the provisions of the Act that those clubs would be exempt from?

- These are set out in section 125 of the Act. They are: -
  - (a) section 7 (assessments of overprovision),
  - (b) section 20(4)(g) (requirement for operating plan to contain information as to the premises manager),
  - (c) section 23(5)(e) (ground of refusal of premises licence application relating to overprovision),
  - (d) section 26(2)(a)(ii) (requirement for name and address of premises manager to be specified in premises licence),
  - (e) section 30(5)(d) (ground of refusal of premises licence variation application relating to overprovision),
  - (f) in schedule 3-
    - (i) paragraph 4 (requirement for there to be a premises manager for licensed premises), and
    - (ii) paragraph 5 (requirement for sales of alcohol under premises licence to be authorised by a personal licence holder), and
  - (g) in schedule 4, paragraph 4 (requirement for sales of alcohol under certain occasional licences to be authorised by a personal licence holder).

Q. When do these regulations come into force?

They come into force at the start of the transition period on 1 February 2008.

Q. Who will be licence holders?

- Premises - club itself or the committee
- Personal - premises manager or member of club committee or club – doesn't matter.

Q. Are clubs required to have a personal licence holder on site?

- No. Clubs which are designated under the Licensing (Clubs) (Scotland) Regulations 2007 are exempt from the mandatory condition set out in paragraph (5) of schedule 3 to the Act which require alcohol sales to be authorised by a personal licence holder.
- They are also exempt from the same requirement in respect of occasional licences set out in paragraph (4) of schedule 4 to the Act.

Q. Will clubs be subject to the mandatory training requirements set by the Act

- Yes, clubs are subject to the mandatory licence conditions set out in schedule 3 of the Act relating to staff in license premises
- With regard to personal licence holders, section 74 (3) of the Act requires that a person must hold a licensing qualification to be eligible to apply for a personal licence
- Awarding bodies are currently developing their proposed qualifications. Only those qualifications accredited by the Scottish Qualifications Authority will be acceptable.

Q. How quickly do staff need to be trained?.

- All staff working in licensed premises including clubs must be trained by 1 September 2009. Any new staff after this date must be trained before they can sell or serve alcohol. Therefore, we would advise licensees to consider their training requirements now.

Q. Who can train staff?

- A qualified trainer or a Personal Licence Holder.
- While clubs do not require a personal licence holder they may wish to consider a member of the club gaining a personal licence to train those who will be serving alcohol.

Q. Under the new Act, what is the duration of the premises licences. Do we have to re-apply every year?.

There is no requirement to re-apply annually for a premises licence. The licence application is a one off and although there will be an annual fee, should circumstances remain the same, there is no requirement to submit a brand new/fresh application. The licence will take effect on such date as the licensing board issuing it determines and, would only cease to have effect on the occurrence of:

- the premises licence being revoked under any provisions of the Act;
- the premises in respect of which the licence was issued ceases to be used for the sale of alcohol
- the appropriate Licensing Board receives notification from the premises licence holder.

Q. What is the cost for the various types of licences under the new Act?.

- The level of fees that will be charged under the provisions of the Licensing (Scotland) Act 2005 are presently with Parliament.
- The fee levels will be set by the local authority who will be constrained by maximum fee ceilings.
- It is expected that clubs will fall within category 1 with the maximum application fee being £200 and the maximum annual fee being £180

Q. What role will the police undertake to enforce the new laws?

- Police constables may at any time enter and inspect any licensed premises, this is a change from the present position for clubs where previously the police could only enter on the invitation of the members or if they had a warrant.
- The enforcement of the new licensing laws, will be carried out by Licensing Support Officers (LSO). Councils are required by the Act to appoint at least one LSO for the purpose of determining whether the activities being carried out in any licensed premises are being done so in accordance with the new Act. LSO have powers to enter the premises at any time to inspect the premises and or any substances, articles or documents found on site as the officer thinks necessary.

Q. What are the arrangements for children?

- Clubs will be subject to all the statutory requirements of the Act with regard to children, except the provision of Baby changing facilities.
- The Act requires licensees to apply for child access. If there is a wish to allow children into the premises and bar area, this would have to be stated on the operating plan when applying for the premises licence.

Q. Who has access to club?

- Similar rules as at present
- Events for public must be covered in operating plan

Q. Will clubs be able to apply for occasional licences

- Yes. The regulations amend the Act to specifically allow this subject to the statutory restriction on the maximum number of such licences in any one year.
- During the period the occasional licence has effect, any licence conditions applied to the premises licence in respect of the premises would not apply.

Q. What about guests, will they be able to buy alcohol?

- Yes. However, other than when an occasional licence has effect, a guests must only be allowed on the premises at the invitation of a member of that club; or is a member of another club similarly designated under the regulations;
- Furthermore, the name and address of the guest, the name of the member signing them in and the date in question must be recorded in a book kept on the premises.

Q. Are there any changes in the new Laws regarding signing in of guest at clubs?

- Generally, the position is still the same with guests being signed in by a bona-fide member of the club, who is responsible for the person he/she has signed in.

Q. What happens if a club is hosting a wedding reception, do all guests still need to be signed in one by one or can arrangements be made in advance to allow quick entry to the club?

- Clubs can consider whether they wish to apply for an occasional licence, which would avoid the requirement for guests to be signed in.
- If clubs were reluctant to apply for an occasional licence for this purpose, the club would need to ensure that all guests are signed into the club. Please remember, an LSO could visit at any time and could ask to see the visitors book.

Q. If a club wishes to host an event(e.g. boxing match) that involves tickets being sold to non members, how do signing arrangements work under these circumstances?.

- Again, clubs may wish to consider whether to apply for an occasional licence.
- Unless an occasional licence has been granted, the legislation requires all non members are signed into the club.

Q. When does the new licensing legislation come fully into effect?.

- The new Act comes fully into effect on 1 September 2009.
- It is worth noting that transitional arrangements commence on 1 February 2008.
- Transitional arrangements allow a phased approach to deal with new licensing applications under the new Act.
- Licensing Boards are required to write to all existing licensees to advise them when they should submit their new licensing applications. However we recommend that you contact your Local Licensing Board and check.

Q. Can anyone object to a licensing application that has been lodged with a licensing board for consideration?

- Yes, when a premises licence application is made to a Licensing Board, any person by notice to the Licensing Board can object to the application and also make representations to the Board concerning the licensing application. It is also possible at any time for a person/persons to raise an objection over an existing premises licence.

**Further information and a downloadable comprehensive briefing pack are available at [www.infoscotland.com/licensingact](http://www.infoscotland.com/licensingact).**

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