

Alcohol etc. (Scotland) Bill

[AS PASSED]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Alcohol etc. (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision regulating the sale of alcohol and licensing of premises on which alcohol is sold and to make provision for the imposition of charges on holders of licences granted under the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982.

5

PART 1

ALCOHOL LICENSING

Pricing of alcohol

A2 Section (*Minimum price of alcohol*): duration of amendments

10

(1) The amendments made by section (*Minimum price of alcohol*) expire at the end of the 6 year period, unless an order is made under subsection (2).

(2) The Scottish Ministers may, after the end of the 5 year period but before the end of the 6 year period, by order made by statutory instrument provide that the amendments are to continue in effect despite subsection (1).

15

(3) The Scottish Ministers may by order made by statutory instrument make such provision (including provision modifying any enactment) as may be necessary or expedient in consequence of the expiry of the amendments by virtue of subsection (1).

(4) An order under subsection (2) or (3) is not to be made unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

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(5) In this section—

“the 5 year period” means the period of 5 years beginning with the day on which section (*Minimum price of alcohol*) comes fully into force, and

“the 6 year period” means the period of 6 years beginning with that day.

2 Minimum price of packages containing more than one alcoholic product

25

(1) The 2005 Act is amended as follows.

(2) In schedule 3 (premises licences), before paragraph 7 insert—

“6B(1) A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale on the premises.

- 5 (2) Sub-paragraph (1) applies—
- (a) only where each of the alcoholic products is for sale on the premises separately, and
 - (b) regardless of whether or not the package also contains any item which is not an alcoholic product.

10 (3) In this paragraph, “alcoholic product” means a product containing alcohol and includes the container in which alcohol is for sale.”.

- (3) In schedule 4 (occasional licences), before paragraph 6 insert—

15 “5B(1) A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale.

- (2) Sub-paragraph (1) applies—
- (a) only where each of the alcoholic products is for sale on the premises separately, and
 - (b) regardless of whether or not the package also contains any item which is not an alcoholic product.
- 20

(3) In this paragraph, “alcoholic product” means a product containing alcohol and includes the container in which alcohol is for sale.”.

2A Off-sales: variation of pricing of alcoholic drinks

- (1) The 2005 Act is amended as follows.

25 (2) In paragraph 7 of schedule 3 (pricing of alcohol: premises licences), after “premises” in both places it occurs insert “for consumption on the premises”.

- (3) After that paragraph insert—

30 “7A Where the price at which any alcohol sold on the premises for consumption off the premises is varied—

- (a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and
 - (b) no further variation in the price at which that alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.”.
- 35

(4) In paragraph 6 of schedule 4 (pricing of alcohol: occasional licences), after “premises” in both places it occurs insert “for consumption on the premises”.

- (5) After that paragraph insert—

40 “6A Where the price at which any alcohol sold on the premises for consumption off the premises is varied—

- (a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and
- (b) no further variation in the price at which that alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.”.

Drinks promotions

3 Off-sales: restriction on supply of alcoholic drinks free of charge or at reduced price

- (1) The 2005 Act is amended as follows.
- (2) In paragraph 8(3) of schedule 3 (premises licences: restriction on certain irresponsible drinks promotions to apply to on-sales only), for “(b) to (d)” substitute “(c) to (e)”.
- (3) In paragraph 7(3) of schedule 4 (occasional licences: restriction on certain irresponsible drinks promotions to apply to on-sales only), for “(b) to (d)” substitute “(c) to (e)”.

4 Off-sales: location of drinks promotions

- (1) Schedule 3 to the 2005 Act (premises licences) is amended as follows.
- (2) In the italic cross heading before paragraph 13 (display of alcohol for consumption off the premises), after “Display” insert “, or promotion of the sale,”.
- (3) In paragraph 13, after sub-paragraph (1) insert—
- “(1ZA) Sub-paragraphs (1A) to (1C) apply where the premises, in so far as they are used for the sale of alcohol, are so used only or primarily for the sale of alcohol for consumption off the premises.
- (1A) Any drinks promotion on the premises may take place only in any one or more of the following—
- (a) an area referred to in sub-paragraph (1)(a) and (b),
- (b) a room on the premises which is used for offering the tasting of any alcohol sold on the premises (for consumption off the premises) and the resulting tasting and is separate from those areas.
- (1B) A drinks promotion in connection with the premises may not take place in the vicinity of the premises.
- (1C) For the purposes of sub-paragraph (1B), the “vicinity” means the area extending 200 metres from the boundary of the premises (as shown on the layout plan).”.
- (4) In that paragraph—
- (a) after sub-paragraph (2)(a) omit “or”,
- (b) after sub-paragraph (2)(b) add—
- “(c) a branded non-alcoholic product, or
- (d) a newspaper, magazine or other publication.”,
- (c) after sub-paragraph (2) insert—

“(2A) Sub-paragraph (2) is without prejudice to sub-paragraph (1A).”.

(5) In that paragraph, after sub-paragraph (3), add—

“(4) In this paragraph—

“branded non-alcoholic product” means a product which does not consist of or contain alcohol and which—

- (a) bears a name or image of, or
- (b) is an image of,

an alcoholic product (namely, a product consisting of or containing alcohol),

“drinks promotion” means any activity which promotes, or seeks to promote, the buying of any alcohol sold on the premises for consumption off the premises but does not include the display of any product which is—

- (a) a branded non-alcoholic product for sale on the premises, or
- (b) a newspaper, magazine or other publication—
 - (i) for sale on the premises, or
 - (ii) if not for sale on the premises, which does not relate only or primarily to alcohol.”.

Age verification policy

5 Requirement for age verification policy

- (1) The 2005 Act is amended as follows.
- (2) In schedule 3 (premises licences), after paragraph 9 insert—

“Age verification policy

9A(1) There must be an age verification policy in relation to the sale of alcohol on the premises.

(2) An “age verification policy” is a policy that steps are to be taken to establish the age of a person attempting to buy alcohol on the premises (“the customer”) if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy).

(3) The condition specified in this paragraph does not apply in relation to any sale of alcohol which takes place on the premises merely by virtue of being treated, by section 139, as taking place on the premises.”.

- (3) In schedule 4 (occasional licences), after paragraph 8 insert—

“Age verification policy

9 (1) There must be an age verification policy in relation to the sale of alcohol on the premises.

(2) An “age verification policy” is a policy that steps are to be taken to establish the age of a person attempting to buy alcohol on the premises (“the customer”) if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy).

- (3) The condition specified in this paragraph does not apply in relation to any sale of alcohol which takes place on the premises merely by virtue of being treated, by section 139, as taking place on the premises.”.

Modification of mandatory conditions

5 **6 Premises licences: modification of mandatory conditions**

- (1) Section 27 of the 2005 Act (conditions of premises licence) is amended as follows.
(2) In subsection (2)(a), for “such further conditions” substitute “, delete or amend a condition”.
(3) In subsection (2)(b), after “condition” insert “for the time being”.

10 **7 Occasional licences: modification of mandatory conditions**

- (1) The 2005 Act is amended as follows.
(1A) In section 60 (conditions of occasional licence)—
 (a) in subsection (2)(a), for “such further conditions” substitute “, delete or amend a condition”, and
15 (b) in subsection (2)(b), after “condition” insert “for the time being”.
(4) In section 146 (orders and regulations)—
 (a) in subsection (4)(b), before “or” insert “, 60(2)”, and
 (b) in subsection (5)(b), before “or” in the first place it occurs insert “, 60(2)”.

Sale of alcohol to under 21s

20 **8A Presumption against prohibition on off-sales to under 21s**

In section 6 of the 2005 Act (statements of licensing policy), after subsection (3) insert—

25 “(3A) A Licensing Board may not, in a licensing policy statement or supplementary licensing policy statement, indicate an intention to introduce (by means of the imposition of conditions on the granting of premises licences or the variation of conditions in premises licences) a prohibition on the sale of alcohol for consumption off licensed premises to persons aged 18 or over but under 21 which applies to—

- 30 (a) all premises in its area which are licensed to sell alcohol for consumption off the premises, or
 (b) premises licensed as mentioned in paragraph (a)—
 (i) in a particular part of its area, or
 (ii) of a particular description.”.

Variation of licence conditions

35 **9 Premises licences: variation of conditions**

- (1) After section 27 of the 2005 Act, insert—

“27A Power of Board to vary premises licence conditions

- (1) A Licensing Board may, in relation to any prescribed matter, make a variation of the conditions to which a premises licence in respect of licensed premises within its area is subject.
- 5 (1A) The Scottish Ministers may not, under subsection (1), prescribe the age at which persons aged 18 or over may purchase alcohol as a matter in respect of which the conditions to which a premises licence is subject may be varied under this section.
- (2) A variation under subsection (1) may apply to—
- 10 (a) all licensed premises,
(b) particular licensed premises,
(c) licensed premises within particular parts of its area, or
(d) licensed premises of a particular description.
- (3) A variation under subsection (1) has effect for such period as the Board may specify in it.
- 15 (4) The Board may make a variation under subsection (1) only where it is satisfied that the variation is necessary or expedient for the purposes of any of the licensing objectives.
- (4A) Before making a variation under subsection (1), the Board must—
- 20 (a) publish, in the prescribed manner, notice of the proposed variation, and
(b) give notice of the proposed variation to—
- (i) the persons mentioned in section 21(1)(b), (c), (ca), (d) and (e), and
(ii) the holders of premises licences in respect of premises to which the proposed variation would apply.
- 25 (4B) A notice under subsection (4A) must state that any person may, by notice to the Licensing Board, make representations to the Board concerning the proposed variation before such date as the Board specifies in the notice under subsection (4A).
- 30 (4C) If the Board receives any representations before the date specified, the Board—
- (a) must hold a hearing in relation to the proposed variation, and
(b) may give such persons who have made representations as the Board considers appropriate an opportunity to be heard at the hearing.
- (5) Where a Licensing Board makes a variation under subsection (1), the Board must—
- 35 (a) amend the premises licence,
(b) within the period of one month, give notice of the variation to—
- (i) the appropriate chief constable, and
(ii) the holders of premises licences in respect of premises to which the variation applies,
- 40

(c) send a copy of the variation to the address of the premises to which the variation applies, and

(d) publicise the variation in such manner as the Board thinks fit.

(6) A variation under subsection (1) does not have effect unless notice under subsection (5)(b)(ii) has been given.

(7) In subsection (1), the power to make a variation of the conditions to which a premises licence is subject includes—

(a) a power to make a revocation of such a variation in the same manner and subject to the same conditions, duties and limitations as the variation, and

(b) a power to make a variation (or a revocation of a variation) of the conditions to which a provisional premises licence is subject.”.

(2) In section 146 (orders and regulations), in subsections (4)(b) and (5)(b), after “27(2)” insert “, 27A(1)”.

Consultation etc. of health boards

9A Consultation etc. of health boards

(1) The 2005 Act is amended as follows.

(2) In section 6 (statements of licensing policy)—

(a) in subsection (3)(b)—

(i) omit the word “and” following sub-paragraph (ii), and

(ii) after that sub-paragraph insert—

“(ia) the relevant health board, and”,

(b) in subsection (5)—

(i) omit the word “or” following paragraph (a), and

(ii) after that paragraph insert—

“(aa) the relevant health board, or”.

(3) In section 7(4) (overprovision), after paragraph (a) insert—

“(aa) the relevant health board,”.

(4) In section 21(1) (notification of application), after paragraph (c) insert—

“(ca) the relevant health board,”.

(5) In section 147(1) (interpretation), at the appropriate places insert—

““Health Board” means a board constituted by an order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c. 29);” and

““relevant health board”, in relation to a Licensing Board, means—

(a) the Health Board for the Licensing Board’s area, or

(b) if the Licensing Board’s area forms part of the area of more than one Health Board, each such Health Board;”.

- (6) In section 148 (index of defined expressions), in the table, at the appropriate place insert—

““relevant health board” section 147(1)”.

- (7) In schedule 2 (local licensing forums), in paragraph 2, after sub-paragraph (3) insert—

“(3A) At least one of the members must be a person nominated by—

- (a) the Health Board for the Forum’s area, or
- (b) if the Forum’s area forms part of the area of more than one Health Board, the Health Board whose area contains the larger or, as the case may be, largest part of the Forum’s area.”.

Chief constables’ reports

9AA Chief constables’ reports to Licensing Boards and Local Licensing Forums

After section 12 of the 2005 Act, insert—

“Chief constables’ reports

12A Chief constables’ reports to Licensing Boards and Local Licensing Forums

- (1) Every chief constable must, as soon as practicable after the end of each financial year, send a report to each Licensing Board whose area falls within the police area of the chief constable setting out—
 - (a) the chief constable’s views about matters relating to policing in connection with the operation of this Act in the Board’s area during that year and the following year, and
 - (b) any steps the chief constable—
 - (i) has taken during that year,
 - (ii) intends to take in the following year,
- (2) The chief constable must also send a copy of the report to the Local Licensing Forum for the Board’s area.
- (3) If a Licensing Board or Local Licensing Forum so requests, the chief constable (or other constable nominated by the chief constable) must attend a meeting of the Board or Forum to discuss the report.”.

Occasional licences

9B Occasional licences: limits on numbers and duration of licences

- (1) The 2005 Act is amended as follows.

- (2) In section 56 (occasional licence), after subsection (6) insert—

“(6A) If the granting of an occasional licence application would result in the occasional licence limit being exceeded, the Board must refuse the application.

(6B) The “occasional licence limit” means—

- (a) in the case of a voluntary organisation, a limit provided for in subsection (6),
- (b) in any other case, such limit as may be prescribed.

(6C) Regulations under subsection (6B)(b) may, in particular—

- (a) limit the number of occasional licences that may have effect in respect of—
 - (i) the same applicant, or
 - (ii) the same premises,in any period of 12 months,
- (b) limit the number of days on which occasional licences may have effect in respect of—
 - (i) the same applicant, or
 - (ii) the same premises,in any period of 12 months,
- (c) limit the number of continuous days on which occasional licences may have effect in respect of the same premises.”.

(3) In section 59 (determination of application)—

- (a) in subsection (2), at the end insert “unless the application must be refused under section 56(6A), 64(2) or 65(3).”, and
- (b) in subsection (6), in paragraph (b), after “section” insert “56(6A).”.

PART 2

LICENCE HOLDERS: SOCIAL RESPONSIBILITY LEVY

10 Licence holders: social responsibility levy

- (1) The Scottish Ministers may by regulations made by statutory instrument make provision for the imposition on relevant licence-holders of charges for the purpose mentioned in subsection (3).
- (2) In this section, “relevant licence-holders” means—
 - (a) holders of premises licences or occasional licences granted under the 2005 Act,
 - (b) holders of street trader’s licences granted under section 39 of the Civic Government (Scotland) Act 1982 (c. 45) (“the 1982 Act”) where the licence authorises the carrying on of a food business within the meaning of section 1(3) of the Food Safety Act 1990 (c. 16),
 - (c) holders of public entertainment licences granted under section 41 of the 1982 Act,
 - (d) holders of late hours catering licences granted under section 42 of the 1982 Act.
- (3) The purpose referred to in subsection (1) is to meet or contribute to expenditure incurred or to be incurred by any local authority—
 - (a) in furtherance of the licensing objectives, and

(b) which the authority, after consulting the relevant health board and appropriate chief constable, considers necessary or desirable with a view to remedying or mitigating any adverse impact on those objectives attributable (directly or indirectly) to the operation of the businesses of relevant licence-holders in the authority's area.

(4) Regulations under subsection (1) may, in particular—

- (a) specify charges or provide for them to be determined under the regulations,
- (b) specify charges, or provide for them to be determined, by reference to such factors or circumstances as may be specified in or determined under the regulations,
- (c) provide for annual or other recurring charges,
- (d) provide for exemptions from charges,
- (da) provide for discounts to charges based on relevant licence-holders' compliance with standards of practice in relation to social responsibility specified in the regulations,
- (e) provide for the remission or repayment of charges,
- (f) provide for the collection and enforcement of charges,
- (g) provide for the charging of interest on overdue charges,
- (h) provide for the payment of charges to be a condition of the licences held by relevant licence-holders,
- (i) make provision about the particular purposes for which income from charges may be applied,
- (j) provide for the accounting for income from charges and the expenditure of that income,
- (k) confer functions on local authorities and Licensing Boards in relation to the determination, administration, collection and enforcement of charges, or in relation to any other matter provided for in the regulations.

(5) In this section and section 11—

“appropriate chief constable”, in relation to a local authority, means the chief constable for the police area in which the area of the authority is situated,

“business”, in relation to a relevant licence-holder, means the business comprising the activity in respect of which the licence-holder's licence was granted,

“Health Board” means a board constituted by an order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29),

“relevant health board”, in relation to a local authority, means—

- (a) the Health Board for the authority's area, or
- (b) if the authority's area forms part of the area of more than one Health Board, each such Health Board,

“Licensing Boards” means the boards continued in existence or established under section 5 of the 2005 Act,

“licensing objectives” means the following objectives—

- (a) preventing crime and disorder,

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

5 **11 Regulations under section 10(1): further provision**

- (1) Regulations under section 10(1) may—
- (a) make different provision for different purposes (including different areas),
 - (b) make such incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,
 - 10 (c) modify—
 - (i) the 2005 Act,
 - (ii) the Civic Government (Scotland) Act 1982 (c.45).
- (2) A statutory instrument containing regulations under section 10(1) must not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Parliament.
- 15 (3) Before laying a draft statutory instrument containing regulations under section 10(1) before the Parliament, the Scottish Ministers must consult—
- (za) Health Boards,
 - (a) such body or bodies as appear to them to be representative of the interests of—
 - 20 (i) Licensing Boards,
 - (ia) chief constables,
 - (ii) local authorities, and
 - (iii) relevant licence-holders (as defined in section 10(2)),
 - (aa) such voluntary organisations—
 - 25 (i) having an interest in health policy,
 - (ii) having an interest in alcohol policy,
 - (iii) representing the interests of children and young people,as they think appropriate, and
 - (b) such other persons (if any) as they think appropriate.
- 30 (4) For the purposes of such a consultation, the Scottish Ministers must—
- (a) lay a copy of the proposed draft regulations before the Parliament,
 - (b) send a copy of the proposed draft regulations to any person to be consulted under subsection (3), and
 - 35 (c) have regard to any representations about the proposed draft regulations that are made to them within 60 days of the date on which the copy of the proposed draft regulations is laid before the Parliament.

- (5) In calculating any period of 60 days for the purposes of subsection (4)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (6) When laying a draft statutory instrument containing regulations under section 10(1) before the Parliament under subsection (2), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—
- (a) the consultation carried out under subsection (3),
 - (b) any representations received as a result of the consultation, and
 - (c) the changes (if any) made to the proposed draft regulations as a result of those representations.

PART 3

GENERAL PROVISIONS

12 Crown application

- (1) The modifications of the 2005 Act made by Part 1 bind the Crown to the extent that Act binds the Crown.
- (2) Part 2 binds the Crown.

13 Interpretation

In this Act, “the 2005 Act” means the Licensing (Scotland) Act 2005 (asp 16).

14 Commencement and short title

- (1) The provisions of this Act, except this section and section 13, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) An order under subsection (1) may—
- (a) make different provision for different purposes,
 - (b) make such transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (3) This Act may be cited as the Alcohol etc. (Scotland) Act 2009.

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[AS PASSED]

An Act of the Scottish Parliament to make provision regulating the sale of alcohol and licensing of premises on which alcohol is sold and to make provision for the imposition of charges on holders of licences granted under the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982.

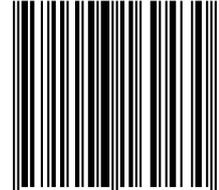
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