Passage of the

Licensing (Scotland) Bill 2005

SPPB 88

Volume 2
Passage of the
Licensing (Scotland) Bill 2005

SP Bill 37 (Session 2), subsequently 2005 asp 16

SPPB 88

Volume 2: Stages 2 and 3

EDINBURGH: APS GROUP SCOTLAND £60
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Bill (As Passed) (SP Bill 37B)
The Bill will be considered in the following order—

- Sections 1 to 5
- Sections 6 to 10
- Sections 11 to 25
- Sections 26 to 57
- Sections 58 to 139
- Sections 139 and 140
- Schedule 1
- Schedule 2
- Schedule 3
- Schedule 4
- Schedule 5
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

**Section 1**

George Lyon

*6* In section 1, page 1, leave out line 13 and insert—

<(<b> to trade.>)

**Schedule 1**

George Lyon

*7* In schedule 1, page 81, line 14, leave out <in writing>

George Lyon

*8* In schedule 1, page 81, line 35, leave out <in writing to> and insert <to the>

Mr David Davidson

*131* In schedule 1, page 82, leave out lines 33 to 35

George Lyon

*9* In schedule 1, page 84, line 10, leave out <3 members> and insert <one half of the number of members (but in any case not fewer than 3)>

**Section 7**

Mr David Davidson

*132* Leave out section 7
Section 9

Mr David Davidson

In section 9, page 6, line 10, at end insert—

<(  ) The Scottish Ministers must keep a register (referred to in this Act as a “national licensing register”) containing details of all premises and personal licences issued by Licensing Boards.

(  ) The details contained in the national licensing register must include—

(a) details of any relevant or foreign offence of which the premises licence holder or, as the case may be, personal licence holder has been convicted, and

(b) such other details as the Scottish Minister may by regulations specify.

(  ) The Scottish Ministers must make the national licensing register available for public inspection—

(a) at all reasonable times, and

(b) on any website that the Scottish Ministers may maintain on the internet.>

After section 9

Mr David Davidson

After section 9, insert—

<National licensing forum

National licensing forum

Any national licensing forum established by the Scottish Ministers must include within its membership at least one representative of—

(a) a body representing the interests of persons who sell alcohol for consumption on the premises on which it is sold, and

(b) a body representing the interests of persons who sell alcohol for consumption off the premises on which it is sold.>

Schedule 2

George Lyon

In schedule 2, page 85, line 13, leave out <10> and insert <15>

Mr David Davidson

In schedule 2, page 85, line 13, leave out <10> and insert <20>

George Lyon

In schedule 2, page 85, line 14, at end insert—

<(  ) The Scottish Ministers may by order substitute another number for the minimum or maximum number of members for the time being specified in sub-paragraph (1).>
George Lyon
12 In schedule 2, page 86, line 6, at end insert—
<( ) Meetings of a Forum must be held in public.>

Section 13

George Lyon
13 In section 13, page 7, line 15, at end insert—
<( ) A person may hold more than one appointment under subsection (1) (so as to be a Licensing Standards Officer for more than one council area).>

George Lyon
14 In section 13, page 7, line 16, after first <the> insert <(or each)>

Section 15

George Lyon
15 In section 15, page 8, line 23, leave out subsection (2)

Bruce Crawford
136 In section 15, page 8, line 23, leave out subsection (2) and insert—
<(2) A sheriff may on the application of a Licensing Standards Officer issue a warrant authorising a Licensing Standards Officer to exercise the powers specified in subsection (3) in relation to any other premises in the area if the sheriff is satisfied—
(a) that alcohol is being sold on the premises, or
(b) that there are reasonable grounds for believing that alcohol is being sold on the premises.

(2A) A warrant under subsection (2) shall cease to have effect at the end of the period of 28 days beginning with the date of issue.>

George Lyon
16 In section 15, page 8, line 29, leave out <subsections (1) and (2)> and insert <subsection (1)>

Bruce Crawford
137 In section 15, page 8, line 33, leave out <the Officer thinks necessary> and insert <is reasonably necessary to enable the Officer to determine the matters referred to in subsection (1)>

Bruce Crawford
138 In section 15, page 8, line 33, at end insert—
<( ) Entry and inspection under subsection (3) must be conducted at a reasonable hour, unless it appears to the Licensing Standards Officer that complying with this requirement may frustrate the purposes of the inspection.>
In section 15, page 8, line 34, after <any> insert <licensed>

In section 15, page 9, line 1, leave out <in the case of licensed premises,>

In section 15, page 9, line 5, leave out from beginning to <premises,> in line 6

After section 15

After section 15, insert—

<Training of Licensing Standards Officers>

(1) A Licensing Standards Officer must comply with such requirements as to the training of Licensing Standards Officers as may be prescribed.

(2) If a Licensing Standards Officer fails to comply with subsection (1), the (or each) council which appointed the Officer must terminate the Officer’s appointment.

(3) Regulations under subsection (1) prescribing training requirements may, in particular—

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

(i) courses of training, and

(ii) persons providing such courses,

for the purposes of the regulations,

(b) prescribe different requirements in relation to different descriptions of Licensing Standards Officers, and

(c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.>

Section 18

In section 18, page 10, line 4, at end insert—

<(  ) An individual may not, at any one time, be the premises manager of more than one licensed premises; and, accordingly, if an individual who is the premises manager of licensed premises is subsequently specified in the premises licence of other licensed premises as the premises manager of those other premises, the subsequent specification is of no effect.>
Section 19

George Lyon

22 In section 19, page 10, line 24, at end insert—

<( ) a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises,

( ) where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including, in particular—

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

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

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

( ) information as to the proposed capacity of the premises,>

Section 20

George Lyon

23 In section 20, page 10, line 34, after <situated> insert <(except where the council is the applicant)>

George Lyon

24 In section 20, page 10, line 36, leave out from <fire> to end of line and insert <enforcing authority within the meaning of section 61 of the Fire (Scotland) Act 2005 (asp 5) in respect of the premises.>

Paul Martin

139 In section 20, page 11, line 3, at end insert <; and

(b) a report detailing—

(i) all cases of antisocial behaviour identified by police officers in the police area as having taken place on, or in the vicinity of, the premises; and

(ii) all complaints or other representations made to police officers in the police area concerning antisocial behaviour on, or in the vicinity of, the premises.>

George Lyon

25 In section 20, page 11, line 7, leave out <a partnership or a company> and insert <neither an individual nor a council>

Paul Martin

140 In section 20, page 11, line 21, after <section> insert—
“antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8); and>

Section 21

Mr David Davidson

141 In section 21, page 11, line 24, leave out <any> and insert <the appropriate chief constable or any other>

Bruce Crawford

142 In section 21, page 11, line 24, after <any> insert <interested>

George Lyon

26 In section 21, page 11, line 25, leave out <in writing>

George Lyon

27 In section 21, page 11, line 33, at end insert—

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

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

(i) the applicant, or

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

is involved in serious organised crime, and

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

Bruce Crawford

143 In section 21, page 11, line 33, at end insert—

<(  ) For the purposes of this section, a person is an interested person if, in the opinion of the Licensing Board, the person—

(a) lives sufficiently close to the premises to which the application relates to be likely to be affected by the carrying on of the activities described in the operating plan for the premises,

(b) has business interests that might be affected by the carrying on of those activities, or

(c) represents persons who satisfy paragraph (a) or (b).>

George Lyon

28 In section 21, page 12, line 2, after <if> insert <the Board considers>
Section 22

George Lyon

29  In section 22, page 12, line 16, at end insert—
    <(  ) In considering and determining the application, the Board must take account of the
documents accompanying the application under section 19(2)(b).>

George Lyon

30  In section 22, page 12, line 17, leave out subsections (3) and (4) and insert—
    <(  ) 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.>

Mr David Davidson

144  In section 22, page 12, leave out lines 29 to 35

Paul Martin

145  In section 22, page 13, line 2, at end insert—
    <(  ) with any licensing objective, the Licensing Board must take into account any
report made by the appropriate chief constable under subsection (3)(b) of section
20>   

Mr David Davidson

146  In section 22, page 13, line 14, leave out subsection (9)

Schedule 3

Mr David Davidson

147*  In schedule 3, page 87, line 29, leave out paragraph 7

George Lyon

31  In schedule 3, page 87, line 29, leave out paragraph 7 and insert—
    <7  Where the price at which any alcohol sold on the premises is varied—
    (a) the variation (referred to in this paragraph as “the earlier price variation”) may be
brought into effect only at the beginning of a period of licensed hours, and
    (b) no further variation of the price at which that or any other alcohol is sold on the
premises may be brought into effect before the expiry of the period of 72 hours
beginning with the coming into effect of the earlier price variation.>
George Lyon
32 In schedule 3, page 87, leave out lines 35 and 36

George Lyon
33 In schedule 3, page 88, line 1, at beginning insert <Subject to sub-paragraph (3A).>

George Lyon
34 In schedule 3, page 88, line 10, at end insert—

<(  ) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,>

George Lyon
35 In schedule 3, page 88, line 15, at end insert—

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

George Lyon
36 In schedule 3, page 88, line 16, after <(3)> insert <or (3A)>

George Lyon
37 In schedule 3, page 88, line 18, at end insert <, or

<(  ) extend or restrict the application of any of those descriptions of drinks promotions.>

Section 27

George Lyon
38 In section 27, page 16, leave out lines 37 to 39 and insert—

<(  ) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,>

George Lyon
39 In section 27, page 17, line 2, leave out from <change> to <persons> in line 3 and insert <restriction or proposed restriction of the terms on which they are allowed>

Section 28

Mr David Davidson
148 In section 28, page 17, leave out lines 30 to 36
Mr David Davidson

149 In section 28, page 18, line 3, leave out subsection (8)

Section 31

George Lyon

40 In section 31, page 19, line 15, leave out <a partnership or a company> and insert <neither an individual nor a council>

George Lyon

41 In section 31, page 19, line 19, leave out <a partnership or a company> and insert <neither an individual nor a council>

Section 34

Mr David Davidson

150 In section 34, page 21, line 8, leave out <Any> and insert <The appropriate chief constable or any other>

Section 35

George Lyon

42 In section 35, page 22, line 14, leave out <must be made in writing and>

Section 36

Mr David Davidson

151 In section 36, page 23, line 8, leave out <any> and insert <the appropriate chief constable or any other>

Section 41

George Lyon

43 In section 41, page 24, line 31, leave out <a company or a partnership> and insert <neither an individual nor a council>

Section 42

George Lyon

44 In section 42, page 25, line 17, leave out <a partnership or a company> and insert <neither an individual nor a council>
After section 48

George Lyon

45 After section 48, insert—

<Notification of determinations

(1) Where a Licensing Board grants or refuses an application under this Part, the Board must give notice of the grant or refusal to—

(a) the applicant,
(b) the appropriate chief constable, and
(c) in the case of the grant or refusal of a premises licence application, any person who gave a notice of objection or representation under section 21(1) in respect of the application.

(2) A person to whom notice is given under subsection (1) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

(3) Where the clerk to a Licensing Board receives a notice under subsection (2), the Board must issue a statement of the reasons for the grant or refusal of the application to—

(a) the person giving the notice, and
(b) each other person to whom the Board gave notice under subsection (1).

(4) A statement of reasons under subsection (3) must be issued—

(a) by such time, and
(b) in such form and manner,
as may be prescribed.>

Section 51

George Lyon

46 In section 51, page 32, line 1, at end insert—

<( ) the premises manager becomes incapable for any reason of acting as premises manager,>

Section 55

Mr David Davidson

152 In section 55, page 33, line 37, leave out <any> and insert <the appropriate chief constable or any other>

George Lyon

47 In section 55, page 33, line 38, leave out <in writing>
Section 56

George Lyon
48 In section 56, page 34, line 30, leave out <is established> and insert <applies>

George Lyon
49 In section 56, page 34, line 32, leave out <the grounds for refusal is established> and insert <them applies>

George Lyon
50 In section 56, page 34, line 34, leave out <the grounds for refusal is established> and insert <them applies>

Schedule 4

Mr David Davidson
153* In schedule 4, page 89, line 16, leave out paragraph 6

George Lyon
52 In schedule 4, page 89, line 16, leave out paragraph 6 and insert—

<6 Where the price at which any alcohol sold on the premises is varied—

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

George Lyon
53 In schedule 4, page 89, leave out lines 22 and 23

George Lyon
54 In schedule 4, page 89, line 26, at beginning insert <Subject to sub-paragraph (3A),>

George Lyon
55 In schedule 4, page 89, line 35, at end insert—

<(< ) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,>

George Lyon
56 In schedule 4, page 90, line 4, at end insert—

<(3A) Paragraphs (b) to (d) of sub-paragraph (3) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.>
George Lyon

57 In schedule 4, page 90, line 5, after <(3)> insert <or (3A)>

George Lyon

58 In schedule 4, page 90, line 7, at end insert <, or

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

After section 57

George Lyon

51 After section 57, insert—

<Notification of determinations

(1) Where a Licensing Board grants or refuses an occasional licence application, the Board must give notice of the grant or refusal to—

   (a) the applicant,
   (b) the appropriate chief constable, and
   (c) any person who gave a notice of objection or representation under section 55(1) in respect of the application.

(2) A person to whom notice is given under subsection (1) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

(3) Where the clerk to a Licensing Board receives a notice under subsection (2), the Board must issue a statement of the reasons for the grant or refusal of the application to—

   (a) the person giving the notice, and
   (b) each other person to whom the Board gave notice under subsection (1).

(4) A statement of reasons under subsection (3) must be issued—

   (a) by such time, and
   (b) in such form and manner,

   as may be prescribed.>

Section 60

Bruce Crawford

1 In section 60, page 38, line 12, leave out <24> and insert <18>

After section 60

Bruce Crawford

5 After section 60, insert—
<Licensed hours: off-sales>

Where—

(a) an application is made to a Licensing Board for—
   (i) a premises licence in respect of any premises,
   (ii) a variation of such a licence, or
   (iii) an occasional licence in respect of any premises, and

(b) the application states that alcohol is to be sold (for consumption off the premises)—
   (i) before 8 am,
   (ii) after 11 pm, or
   (iii) both,

on any day,

the Licensing Board must refuse the application.>

Section 66

George Lyon

59 In section 66, page 41, line 13, leave out <2> and insert <3>

Section 70

George Lyon

60 In section 70, page 42, line 33, leave out subsections (3) to (5) and insert—

<(2A) A person to whom notice is given under subsection (2) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

(2B) Where the clerk to a Licensing Board receives a notice under subsection (2A), the Board must issue a statement of the reasons for the grant or refusal of the application to—
   (a) the person giving the notice, and
   (b) each other person to whom the Board gave notice under subsection (2).

(2C) A statement of reasons under subsection (2B) must be issued—
   (a) by such time, and
   (b) in such form and manner,

as may be prescribed.>
Section 73

In section 73, page 44, line 35, leave out <3> and insert <4>

Section 86

In section 86, page 53, line 14, leave out <the premises licence holder> and insert <an authorised person>

In section 86, page 53, line 16, leave out <premises licence holder> and insert <authorised person>

In section 86, page 53, line 20, leave out <a premises licence holder> and insert <an authorised person>

In section 86, page 53, line 24, at end insert—

<(  ) In this section, “authorised person” means, in relation to licensed premises, any of the following persons, namely—

(a) the premises licence holder,
(b) the premises manager, and
(c) any other person who—

(i) works on the premises, and
(ii) is authorised by the premises licence holder or the premises manager for the purposes of this section.>

Section 91

In section 91, page 55, line 31, leave out <this Part> and insert <section 88(1)(a) or 89(3)(a)>

In section 91, page 55, line 32, leave out <this Part> and insert <section 88(6), 89(2) or 90(3)>
Section 92

George Lyon

68 In section 92, page 56, line 6, leave out from <, and> to end of line 7

Section 95

George Lyon

69 In section 95, page 57, line 2, leave out <knowingly>

Section 96

Bruce Crawford

2 In section 96, page 57, line 18, at end insert—

<(  ) No offence is committed under subsection (1) if the purchase or attempted purchase of alcohol is authorised by the chief constable for the police area in which the purchase or attempted purchase takes place for the purpose of determining whether section 93 is being complied with.>

Section 99

George Lyon

70 In section 99, page 58, line 21, leave out <knowingly>

George Lyon

71 In section 99, page 58, line 23, leave out <knowingly>

George Lyon

72 In section 99, page 58, line 29, at end insert—

<(4A) It is a defence for a person charged with an offence under subsection (2) or (3)(a) (referred to in this subsection and subsection (4B) as “the accused”) to show that—

(a) the accused believed the child or young person to be aged 18 or over, and

(b) either—

(i) the accused had taken reasonable steps to establish the child’s or young person’s age, or

(ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.

(4B) For the purposes of subsection (4A)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (4C), and

(b) that document would have convinced a reasonable person.
(4C) The documents referred to in subsection (4B)(a) are any document bearing to be—
   (a) a passport,
   (b) a European Union photocard driving licence, or
   (c) such other document, or a document of such other description, as may be
       prescribed.

(4D) It is a defence for a person charged with an offence under subsection (3)(b) (“the
accused”) to prove that the accused took all reasonable precautions and exercised due
diligence not to commit the offence.

George Lyon

73  In section 99, page 58, line 30, leave out subsection (5)

Section 101

George Lyon

74  In section 101, page 59, line 35, leave out <exempt> and insert <other relevant>

George Lyon

75  In section 101, page 59, line 36, leave out from <, and> to end of line 37

Section 107

George Lyon

76  In section 107, page 61, line 25, leave out subsection (3) and insert—

   <(2A) Where a person refuses or fails to leave any relevant premises as mentioned in
   subsection (1) or (2), an authorised person may—
       (a) remove the person from the premises, and
       (b) if necessary for that purpose, use reasonable force.

   (2B) A constable must, if—
       (a) asked by an authorised person to assist in exercising a power conferred by
           subsection (2A), and
       (b) the constable reasonably suspects the person to be removed of having refused or
           failed to leave as mentioned in subsection (1) or (2),
       provide the assistance asked for.>

George Lyon

77  In section 107, page 61, line 28, at end insert—

   <( ) In this section, “authorised person” means, in relation to any relevant premises, any of
   the following persons, namely—
       (a) a responsible person, and
       (b) any other person who—
(i) works on the premises, and
(ii) is authorised by a responsible person for the purposes of this section.

Section 108

**George Lyon**

78 In section 108, page 61, line 31, leave out <wholesaler> and insert <person>

**George Lyon**

79 In section 108, page 61, line 31, leave out <by wholesale> and insert <to trade>

**George Lyon**

80 In section 108, page 61, line 32, leave out <such sales> and insert <the selling of goods (whether solely alcohol or not) to trade>

**George Lyon**

81 In section 108, page 61, line 35, leave out subsection (3)

Section 111

**George Lyon**

82 Leave out section 111

Section 114

**George Lyon**

83 In section 114, page 64, leave out lines 4 and 5 and insert—

<( ) any premises used for the selling of alcohol to trade.>

**George Lyon**

84 In section 114, page 64, line 11, leave out <exempt> and insert <other relevant>

**George Lyon**

85 In section 114, page 64, line 13, leave out from beginning to <wholesaler,>

Section 115

**George Lyon**

86 In section 115, page 64, line 31, at beginning insert <subject to subsection (4A),>
George Lyon
87 In section 115, page 64, line 31, leave out <primarily>

George Lyon
88 In section 115, page 64, line 32, leave out <primarily>

Bruce Crawford
3 In section 115, page 64, line 32, at end insert—
   <(2A) Premises of the type mentioned in subsection (2)(b) are not excluded premises if—
       (a) they are located in a rural area; and
       (b) a likely effect of them being excluded premises would be that the provision of
           amenities in the area surrounding the premises would be significantly reduced.>

George Lyon
89 In section 115, page 65, line 1, leave out <primarily>

George Lyon
90 In section 115, page 65, line 5, at end insert—
   <(4A) Despite subsection (2)(b), premises used for the sale by retail of petrol or derv or which
       form part of premises so used are not excluded premises if persons resident in the
       locality in which the premises are situated are, or are likely to become, reliant to a
       significant extent on the premises as the principal source of—
       (a) petrol or derv, or
       (b) groceries (where the premises are, or are to be, used also for the sale by retail of
           groceries).>

Section 116

George Lyon
91 In section 116, page 65, leave out lines 35 and 36

Section 117

Mr David Davidson
154 In section 117, page 66, leave out line 7

Mr David Davidson
155 In section 117, page 66, leave out lines 10 and 11

Mr David Davidson
156 In section 117, page 66, leave out lines 14 and 15
Section 118

Mr David Davidson

157 In section 118, page 66, line 38, after <vessel> insert <(other than a passenger ferry)>

After section 118

Mr David Davidson

158 After section 118, insert—

<Passenger ferries>

(1) For the purposes of this Act’s application to passenger ferries—

“premises” means all vessels used by a particular operator on a particular route, and

“the appropriate Licensing Board” means the Licensing Board in whose area the headquarters of the operator are situated.

(2) A Licensing Standards Officer may exercise the general function mentioned in section 14(1)(b) and the powers mentioned in section 15 in respect of any passenger ferry for the time being within the Officer’s council area.

(4) Nothing in this Act affects any other enactment or rule of law which permits the master of a passenger ferry to refuse the service of alcohol to any person or persons.>

Section 119

George Lyon

92 In section 119, page 67, leave out lines 30 and 31

George Lyon

93 In section 119, page 67, leave out line 32

After section 119

Mr David Davidson

159 After section 119, insert—

<Sports grounds and sporting events>

Sporting grounds and sporting events

In section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)—

(a) in subsection (1), for “subsection (2)”, substitute “subsections (2) and (2A)”, and

(b) after subsection (2), insert—
“(2A) Sections 19, 20(2), 20(7) and 21(e)(ii) of this Act do not apply to sports grounds or sporting events designated in an order under subsection (1) unless, on the application of a person mentioned in subsection (2B), the Scottish Ministers have confirmed that designation in respect of a date or dates specified in the application.

(2B) Those persons are—

(a) the chief constable for the area in which the sports ground is situated or the sporting event is to be held;

(b) the managers of the sports ground or sporting event in respect of which the application is made.”.

Section 120

George Lyon

94 In section 120, page 68, line 6, at end insert—

<( ) Regulations under subsection (1) may provide, in relation to any offence or description of offence prescribed in them, that a person is to be treated, for the purposes of such provisions of this Act as may be specified in the regulations, as having been convicted of the offence only if the person—

(a) accumulates such number of separate convictions for the offence, or

(b) is convicted of committing the offence on such number of separate occasions, as may be so specified.>

Section 122

George Lyon

95 In section 122, page 68, line 30, leave out subsections (1) and (2) and insert—

<(1) A decision of a Licensing Board specified in the left-hand column of schedule (Appeals) may be appealed by the person specified in the right-hand column of that schedule.>

George Lyon

96 In section 122, page 68, line 38, leave out subsection (3) and insert—

<(3) An appeal under this section is to be made by way of stated case, at the instance of the appellant, to—

(a) where the decision appealed is specified in Part 1 of schedule (Appeals), the sheriff principal, or

(b) where the decision appealed is specified in Part 2 of that schedule, the sheriff, of the appropriate sheriffdom.>

George Lyon

97 In section 122, page 69, line 1, leave out subsection (4)
After schedule 4

George Lyon

98 After schedule 4, insert—

*SCHEDULE
*(introduced by section 122(1))

APPEALS

PART 1

APPEALS TO THE SHERIFF PRINCIPAL

<table>
<thead>
<tr>
<th>Decision</th>
<th>Persons who can appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>A decision to refuse a premises licence application</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse a premises licence variation application</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 31(1) or 32(1) for transfer of a premises licence</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 33(1) for a variation of a premises licence</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision under section 37(1) to issue a written warning to a premises licence holder, to make a variation of a premises licence, or to suspend or revoke such a licence</td>
<td>The premises licence holder or, where the decision is taken in connection with a premises licence review application, the applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 38 to revoke a variation or suspension of a premises licence</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 43(7) to extend the provisional period in relation to a provisional premises licence</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 44(4) to confirm a provisional premises licence</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 45(2) to issue a premises licence for temporary premises</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 45(6) to extend the period for which a temporary premises licence has effect</td>
<td>The applicant</td>
</tr>
</tbody>
</table>
A decision to refuse an occasional licence application | The applicant

A decision to grant an occasional licence application | Any person who has given a notice of objection under section 55(1)

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**PART 2**

**APPEALS TO THE SHERIFF**

<table>
<thead>
<tr>
<th>Decision</th>
<th>Persons who can appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>A decision to refuse a personal licence application</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to make an order under section 74(9), 75(7), or 77(3) revoking, suspending or endorsing a personal licence</td>
<td>The personal licence holder</td>
</tr>
</tbody>
</table>

---

**Section 123**

George Lyon

99 In section 123, page 69, line 38, leave out subsection (4) and insert—

<(
)
A sheriff principal may authorise, whether generally or specifically, any other sheriff of the sheriff principal’s sheriffdom to consider and determine an appeal made to the sheriff principal under section 122(3)(a).>

George Lyon

100 In section 123, page 70, line 6, at end insert <, subject to subsection (7A)>

George Lyon

101 In section 123, page 70, line 6, at end insert—

<(7A) Where an appeal is taken against a decision of a Licensing Board to suspend or revoke a premises licence, the sheriff principal may—
(a) on the application of the appellant, and
(b) if satisfied on the balance of convenience that it is appropriate to do so, recall the suspension or revocation pending determination of the appeal.>
Section 125

George Lyon

102 In section 125, page 70, line 26, after <application> insert <, proposal>

George Lyon

103 In section 125, page 70, line 29, after <application> insert <, proposal>

George Lyon

104 In section 125, page 70, line 35, after <application> insert <, proposal>

Section 127

Paul Martin

160 In section 127, page 71, line 23, at end insert <, and

( ) in respect of the recovery from particular licence holders of sums not exceeding any increase in the cost of providing public services (including policing) which is directly attributable to activities in, or in the vicinity of, or by customers of, or staff employed in, the premises in respect of which the licence is held.>

Bruce Crawford

4 In section 127, page 71, line 23, at end insert—

<( ) Regulations under subsection (1) which make provision for fees to be paid by licensed premises or prospective licensed premises must provide for the level of fees charged to vary between different sizes and types of premises.>

After section 134

George Lyon

105 After section 134, insert—

<Modification of enactments

Schedule (Modification of enactments), which modifies enactments, has effect.>
After schedule 4

George Lyon

106 After schedule 4, insert—

<SCHEDULE
(introduced by section (Modification of enactments))

MODIFICATION OF ENACTMENTS

Children and Young Persons Act 1963 (c.37)
1 In section 37(2)(b)(ii) (restriction on persons under 16 taking part in public performances within licensed premises) of the Children and Young Persons Act 1963, for “1976) or in respect of which a club is registered under that Act” substitute “2005 (asp 00))”.

Countryside (Scotland) Act 1967 (c.86)
2 In section 78(1) (interpretation) of the Countryside (Scotland) Act 1967, in the definition of “refreshments”, for “alcoholic liquor within the meaning of the Licensing (Scotland) Act 1976” substitute “alcohol within the meaning of section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

New Towns (Scotland) Act 1968 (c.16)
3 (1) The New Towns (Scotland) Act 1968 is amended as follows.
   (2) In section 18(2) (disposal of land by development corporations), in the proviso, for “alcoholic liquor” substitute “alcohol”.
   (3) In section 47(1) (interpretation), for the definition of “alcoholic liquor”, substitute the following definition—
   ““alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

Water (Scotland) Act 1980 (c.45)
4 In section 50(1)(b) (power to require supply by meter to certain premises) of the Water (Scotland) Act 1980, for “1976” substitute “2005 (asp 00)”.

Local Government, Planning and Land Act 1980 (c.65)
5 In section 146 (disposal of land by urban development corporation) of the Local Government, Planning and Land Act 1980, for subsection (6) substitute—
   “(6) In this section, “alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00).”.
Civic Government (Scotland) Act 1982 (c.45)

6 (1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 41(2)(f) (exclusion of licensed premises from definition of place of public entertainment)—
   (a) for “1976” substitute “2005 (asp 00)”, and
   (b) for “the permitted” substitute “licensed”.

(3) In section 42(4)(a) (late hours catering licence not required in respect of licensed premises), for “1976” substitute “2005 (asp 00)”.

Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

7 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

(2) In section 22 (presumption as to contents of container), for “Section 127 of the Licensing (Scotland) Act 1976 (presumption as to contents of container)” substitute “Section 131 of the Licensing (Scotland) Act 2005 (asp 00) (presumption as to liquid contents of containers)”.

(3) In section 23 (interpretation of Part II), for the definition of “alcohol”, substitute the following definition—

   “‘alcohol’ has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00);”.

Crime and Punishment (Scotland) Act 1997 (c.48)

8 (1) Section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 is amended as follows.

(2) In subsection (1)—
   (a) in paragraph (b), for “alcoholic liquor, within the meaning of the Licensing (Scotland) Act 1976” substitute “alcohol”, and
   (b) for “that liquor” substitute “the alcohol”.

(3) In subsection (2), for—
   (a) “alcoholic liquor”, and
   (b) “liquor” in each place where that word appears, substitute “alcohol”.

(4) In subsection (6), for “1976” substitute “2005 (asp 00)”.

(5) After subsection (6) insert—

   “(7) In this section, “alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

Scottish Public Services Ombudsman Act 2002 (asp 11)
In paragraph 10 of Part 1 of schedule 2 (authorities not amendable by Order in Council) to the Scottish Public Services Ombudsman Act 2002, for “within the meaning of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.

Freedom of Information (Scotland) Act 2002 (asp 13)

In paragraph 23 of Part 3 of schedule 1 (local government) to the Freedom of Information (Scotland) Act 2002, for “constituted in accordance with the provisions of section 1 of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.

Section 136

George Lyon

107 In section 136, page 75, line 32, leave out from <(except)> to <135> in line 33 and insert <except—

(a) an order under section 115(5) or 140(2),
(b) regulations under section 25(2) or 130(3), and
(c) where subsection (5) applies, an order under section 135,>

George Lyon

108 In section 136, page 75, line 35, after <No> insert—

<(a) order under section 115(5),
(b) regulations under section 25(2) or 130(3), or
(c)>}

George Lyon

109 In section 136, page 75, line 37, after <order> insert <or regulations>

Section 137

George Lyon

110 In section 137, page 76, line 11, at end insert—

<“capacity”, in relation to licensed premises, means—

(a) in relation to licensed premises on which alcohol is sold for consumption on the premises (including any such premises on which alcohol is also sold for consumption off the premises), the maximum number of customers which can be accommodated in the premises at any one time, and
(b) in relation to licensed premises on which alcohol is sold only for consumption off the premises, the amount of space in the premises given over to the display of alcohol for sale,>
George Lyon

111 In section 137, page 76, line 25, at end insert—
<“railway vehicle” means a railway vehicle within the meaning of section 83 of the Railways Act 1993 (c.43) that is used in the provision of a railway service within the meaning of section 82 of that Act (excluding the wider meaning of “railway” given by section 81(2) of that Act),>  

George Lyon

112 In section 137, page 76, line 32, at end insert—
<“senior police officer” means a constable of or above the rank of superintendent,>  

George Lyon

113 In section 137, page 76, leave out lines 40 to 42  

George Lyon

114 In section 137, page 77, line 1, at end insert—
<(1A) In this Act, references to selling alcohol or other goods to trade are references to selling the alcohol or goods to a person for the purposes of the person’s trade; and related expressions are to be construed accordingly.>  

George Lyon

115 In section 137, page 77, line 2, leave out <or a club> and insert <, a club or other body (whether incorporated or unincorporated)>  

George Lyon

116 In section 137, page 77, line 8, at end insert—
<( ) in any other case, is concerned in the management or control of the body.>  

Section 138

George Lyon

117 In section 138, page 77, line 25, at end insert—
<capacity (in relation to licensed premises) section 137(1)>  

George Lyon

118 In section 138, page 78, line 8, at end insert—
<licensed hours section 58(1)>
George Lyon
119 In section 138, page 78, line 10, at end insert—
<licensing policy statement section 6(1)>

Mr David Davidson
161 In section 138, page 78, leave out line 14

George Lyon
120 In section 138, page 79, line 4, at end insert—
<railway vehicle section 137(1)>

George Lyon
121 In section 138, page 79, line 8, at end insert—
<selling to trade section 137(1A)>

George Lyon
122 In section 138, page 79, line 8, at end insert—
<senior police officer section 137(1)>

George Lyon
123 In section 138, page 79, line 10, at end insert—
<supplementary licensing policy statement section 6(2)>

George Lyon
124 In section 138, page 79, leave out lines 16 and 17

Schedule 5

George Lyon
125 In schedule 5, page 90, line 24, at end insert—
<Finance Act 1970 (c.24) Section 6
Local Government (Scotland) Act 1973 Paragraph 36 of Schedule 24 (c.65)
Paragraph 17 of Schedule 25>

George Lyon
126 In schedule 5, page 90, line 26, at end insert—
<Alcoholic Liquor Duties Act 1979 (c.4) Section 77(6)>
George Lyon

In schedule 5, page 90, line 28, at end insert—

<Law Reform (Miscellaneous Provisions) Section 21 (Scotland) Act 1980 (c.55)
Paragraphs 9 to 11 of Schedule 2

Local Government, Planning and Land Act 1980 (c.65)
In section 146(3), the words “or alcoholic liquor”

Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c.23)
Paragraphs 4 and 5 of Schedule 2

Roads (Scotland) Act 1984 (c.54)
Paragraph 77 of Schedule 9

Transport Act 1985 (c.67)
Paragraph 18 of Schedule 7

Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73)
Section 53

Housing (Scotland) Act 1987 (c.26)
Subsection (3) of section 5

Food Safety Act 1990 (c.16)
Paragraph 19 of Schedule 3

Licensing (Low Alcohol Drinks) Act 1990 (c.21)>
The whole Act

George Lyon

In schedule 5, page 90, line 32, at end insert—

<Finance Act 1991 (c.31) In paragraph 1(a) of Schedule 2, the words “or the Licensing (Scotland) Act 1976,”>

George Lyon

In schedule 5, page 91, line 4, leave out <Paragraph> and insert <Paragraphs 23 and>

George Lyon

In schedule 5, page 91, line 4, at end insert—

<The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) In section 19(2), the words from “Notwithstanding” to “but”>

29
Licensing (Scotland) Bill

Groupings of Amendments for Stage 2 (Day 1)

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6, 74, 75, 78, 79, 80, 81, 83, 84, 85, 113, 114, 121, 124

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Duty to assess overprovision
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Quorum of Licensing Boards
9

National licensing register
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National licensing forum: membership
134

Local Licensing Forums: membership and public meetings
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Appointment of Licensing Standards Officers
13, 14

Powers of entry and inspection
15, 136, 16, 137, 138, 17, 18, 19

Training of Licensing Standards Officers
20

Premises manager: single appointment and incapacity
21, 46

Licensed premises: content of operating plan
22

Councils as applicants for premises licence and definition of “connected person”
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24

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139, 140, 145
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Pricing of alcohol
147, 31, 153, 52

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32, 33, 34, 35, 36, 37, 53, 54, 55, 56, 57, 58

Minor variations
38, 39

Notification of determinations and reasons
45, 51, 60

Maximum length of licensed hours
1

Licensed hours: off-sales
5

Level of penalties
59, 61

Powers of removal of persons from premises
62, 63, 64, 65, 76, 77

Closure orders: regulations as to form of applications and notices
66, 67

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68, 93, 112, 122

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2

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Fees: variation according to size of premises
4

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107, 108, 109

Meaning of “capacity”
110, 117

Index of defined expressions
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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

EXTRACT FROM THE MINUTES

24th Meeting, 2005 (Session 2)

Tuesday 20 September 2005

Present:

Bruce Crawford JP (Deputy Convener)
Fergus Ewing
Paul Martin
Bristow Muldoon (Convener)
Tommy Sheridan

David Davidson
Dr Sylvia Jackson
Michael McMahon
Euan Robson

Apologies: Euan Robson

Licensing (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to without division: 6, 7, 8, 9, 135, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 140, 26, 27, 28, 29, 30, 145, 31, 32, 33, 34, 36 and 37

The following amendments were agreed to by division:

11 (For 6, Against 0, Abstentions 3)
22 (For 6, Against 1, Abstentions 2)
139 (For 5, Against 1, Abstentions 3)
35 (For 7, Against 1, Abstentions 0)

The following amendments were disagreed to by division:

131 (For 1, Against 7, Abstentions 0)
133 (For 1, Against 6, Abstentions 1)
134 (For 4, Against 5, Abstentions 0)
141 (For 1, Against 7, Abstentions 0)
142 (For 3, Against 5, Abstentions 0)
147 (For 1, Against 5, Abstentions 2)

Amendment 10 was moved and, with the agreement of the Committee, withdrawn.

Amendments 132, 136, 137, 138, 143, 144 and 146 were not moved.

Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 23, 24 and 25 were agreed to without amendment.

Section 1, schedules 1 and 2, sections 13, 15, 18, 19, 20, 21 and 22 and schedule 3 were agreed to as amended.

The Committee ended consideration for the day, section 25 having been disposed of.
Licensing (Scotland) Bill: Stage 2

14:01

The Convener: Item 2 is stage 2 of the Licensing (Scotland) Bill. I welcome the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, George Lyon, and three officials from the Scottish Executive who will be supporting him.

Members should have copies of the bill, the marshalled list of amendments, which was published on Monday morning, and the groupings. Today’s target is amendments to section 25, which we will not go beyond. I do not expect us to get that far, because I intend to conclude around 4.30, although my decision on when to finish will depend on where we are in a grouping.

Section 1—Prohibition of unlicensed sale of alcohol

The Convener: Amendment 6, in the name of the minister, is grouped with amendments 74, 75, 78 to 81, 83 to 85, 113, 114, 121 and 124.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): Thank you for your introduction. I am happy that I will be working with the committee over the next few weeks on this important bill.

The amendments in the group are technical and aim to move away from the current definition of wholesale transactions that do not need to be covered by a licence. The current definition of “wholesale” focuses solely on the quantity of goods sold in establishing whether a transaction is wholesale. Under the new definition, wholesale sales—which will continue not to need a premises licence—will be trade-to-trade sales without a retail element, which is much more in keeping with modern practice. Accordingly, I commend amendment 6.

I move amendment 6.

The Convener: Do you wish to speak to any of the other amendments in the group?

George Lyon: No, they are all consequential on amendment 6.

Amendment 6 agreed to.

Section 1, as amended, agreed to.

Sections 2 to 5 agreed to.
George Lyon: The amendments in the group are technical. Their purpose is to ensure that the bill allows for all applications, notices and so on to be communicated electronically, in order to reflect more modern ways of working.

I move amendment 7.

Amendment 7 agreed to.

Amendment 8 moved—[George Lyon]—and agreed to.

The Convener: Amendment 131, in the name of David Davidson, is grouped with amendments 132, 144, 146, 148, 149, 154 to 156 and 161.

Mr David Davidson (North East Scotland) (Con): Forgive me if I am a little hesitant; I managed to leave all my notes at home, although the bases for what my amendments seek to do are in the papers. Amendment 131 is consequential on removal of section 7, which would leave decisions on overprovision to licensing boards, without direction from a minister.

Amendment 132’s aim is to set up a national register so that the names of people who have personal licences granted to them would be recorded somewhere. We need a national licence for that—I beg your pardon, I am reading the wrong bit; I jumped a line.

Amendment 132 is to leave out section 7, which will introduce a duty to assess whether there is overprovision. I believe that if we have total restriction there will be restraint of trade. Should a new product come to the market, such as when someone who wants to open a new restaurant seeks a licence, that duty could be restrictive. By removing the duty, it would be left to licensing boards to decide locally the quality and value of any individual application, which I believe is the correct approach. Amendment 131 obviously follows on from amendment 132, although they do not come in order.

Amendment 144 is a consequential amendment on overprovision. Amendments 146, 148, 149, 154, 155 and 156 are also consequential and amendment 161, which would leave out a line, is a consequential amendment based on removal of the duty to assess overprovision.

I move amendment 131.

George Lyon: The amendments in the name of David Davidson seek to remove the ability of licensing boards to protect their communities from the undesirable consequences of there being too many licensed premises. A frequent complaint from constituents and the police is that areas have reached saturation point with licensed premises and boards do not have adequate tools to tackle such situations under the Licensing (Scotland) Act 1976. We do not therefore consider that it should be left to the market to determine on its own how many licensed premises of whatever type there should be. The amendments in the group would remove boards’ ability to make an up-front assessment of overprovision involving the licensed trade, the police and communities. In fact, the amendments go even further; they would remove overprovision as a ground for refusal to grant a licence, which has been available to boards since 1976.

The overprovision assessment, although it is a national policy, has been drafted to ensure sufficient local flexibility. Boards can decide which areas are overprovided for and how to define them. Boards can also decide whether all kinds of premises in the area should be affected or just those that offer certain kinds of activities. Boards will be responsible for gathering evidence to support their decisions.

Do we really want to prevent boards from deciding that in a specific area there are too many off-sales or too many premises offering adult entertainment? The overprovision assessment will allow such decisions to be made without stifling development of other kinds of premises and innovations in the same area. In addition, the overprovision assessment is not a blanket ban; boards’ conclusions on overprovision create a presumption that there is overprovision, but it is still open to an applicant to apply for a licence and to demonstrate that the overprovision assessment should not apply in their particular case. It might be that someone decides to apply for a licence for a particular type of premises or a particular type of operating licence, which might persuade boards to grant the licence. The national licensing forum has produced excellent draft guidance for boards on overprovision, which will be sent to the committee shortly.

On the basis of my arguments, I ask Mr Davidson to seek to withdraw amendment 131 and not to move the other amendments in the group, as I intend to oppose them.

Mr Davidson: The minister said that guidance has been sent to boards on how to deal with overprovision and that, if a person wants to appeal or have another go at setting up premises or a facility, that opportunity will be available. Why is the Executive including the overprovision measure in the bill when the minister and his predecessor have said that although guidance will be given, decisions will ultimately be left to local boards?
The minister supported some of what I said. A limit on the number of premises already exists—that limit is how much people can spend. People should have choice in the marketplace; the market will see off in its own way premises that are no longer attractive. The market has never been interfered with in the past and should not be interfered with in the future. Given the expansion in some of our cities and towns with new estates being built, will there be an arbitrary figure for the number of licensed establishments in—for the sake of argument—south Aberdeenshire, where the population is increasing? The matter is for local boards and individual applicants to negotiate and to deal with within the law. The issues of good behaviour and performance can be dealt with at the renewal stage.

I intend to press amendment 131.

The Convener: The question is, that amendment 131 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Davidson, Mr David (North East Scotland) (Con)

AGAINST
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Sheridan, Tommy (Glasgow) (SSP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 131 disagreed to.

The Convener: Amendment 9, in the name of the minister, is in a group on its own.

George Lyon: Following the committee’s request on the matter, and as announced during the stage 1 debate, we have considered further the acceptable minimum number for a licensing board quorum. Amendment 9 will reintroduce the formulation that was used in the 1976 act—the quorum will be half of the number of members, but not fewer than three, will form a quorum. Are you confident that that will allow sufficiently varied representation in the bigger board areas?

George Lyon: The committee requested that the Executive revisit the issues of board size and board quorums after hearing views from some boards, particularly the Glasgow licensing board, in which I assume Tommy Sheridan has a keen interest. The boards wanted to continue to have up to 20 members—they argued that larger boards are needed to achieve broad local knowledge. However, we argue that the board members do not sit on the boards as councillors, but in a quasi-judicial role, with local knowledge being delivered by licensing standards officers.

We agreed to revisit the issue of quorums to ensure consistency of decision making, but not to allow large and unwieldy boards to continue. Amendment 9 will therefore amend the quorum formula to ensure that, in the larger boards of 10 members, a minimum of 50 per cent of them—that is, five members—will be required in order for the board to take decisions. That addresses some of the concerns that have been raised.

Bruce Crawford (Mid Scotland and Fife) (SNP): My point has been dealt with, so I am happy to leave it.

George Lyon: There is one other point that I should perhaps make. If boards want a greater geographical spread, they have the option of setting up two areas within their boundaries, as Argyll and Bute and other boards have done, to reflect proper representation. The bill allows that to be done.

Tommy Sheridan: Does the Executive envisage being more proactive on the division of boards within areas? Being from Glasgow, I am concerned that there is only one board for the whole city. The bill does not cover the idea of community representation on one board covering the whole of the city. Will the Executive stick its neck out a wee bit and encourage the larger board areas to consider subdivisions to allow more local input?

George Lyon: The answer is no. Ultimately, that is a decision for councils, but in my discussions with Gordon Macdiarmid from Glasgow I pointed out that boards have the option to do that. It is up to the Glasgow board to decide the right way forward for itself.
Amendment 9 agreed to.
Schedule 1, as amended, agreed to.
Section 6 agreed to.

Section 7—Duty to assess overprovision
Amendment 132 not moved.
Section 7 agreed to.
Section 8 agreed to.

Section 9—Licensing Board’s duty to keep a public register

The Convener: Amendment 133, in the name of David Davidson, is in a group on its own.

Mr Davidson: I spoke earlier about amendment 133, although I spoke to it out of turn. Amendment 133 would oblige ministers to keep a register once premises had been given a licence. It is vital that people across the country can check on who has a licence. For example, if someone wants to move to work in a different area and they put on their curriculum vitae that they have a licence, it must be possible to have that checked simply and efficiently.

The minister spoke earlier about using the web and electronic communications where possible. That makes the system cheaper and easier to run, and is part and parcel of amendment 133. The amendment has validity in that if we are to have a national system we must for a variety of reasons have a national database that can be readily accessed.

I move amendment 133.

Bruce Crawford: I have seen the minister’s letter of 12 September, which deals with a national database for licence holders and outlines three options. The minister seems to be coming down in favour of option 1, which is outlined in his paper.

I agree that there is a need for a national licensing register and that such a register should be required. Given that the minister seems to be on his way to accepting that requirement, it will be interesting to hear from him whether David Davidson’s amendment would be sufficient under the law to ensure that there is a requirement on the Scottish Executive to create and maintain a register. I am reasonably supportive of what David wants to achieve, but I want to hear what the minister has to say.

Paul Martin (Glasgow Springburn) (Lab): I intended to make similar points.

Tommy Sheridan: I support the thrust of what David Davidson said. I recall that the police’s evidence to the committee suggested that one of the problems with people who are not the best licence holders is that they simply put the licence in the name of a partner or a relative to avoid being refused at board level. If we had a register that was readily available to be checked, the number of instances of such situations would be reduced. I am not saying that such situations would not arise at all, but a register would certainly undermine the ability of bad licensees to avoid detection. I wait to hear whether the minister has persuasive arguments.

George Lyon: We are fully aware of the concerns that were expressed by the Association of Chief Police Officers in Scotland and the committee, which feel that a central database would be a valuable tool for licensing boards under the new system. As Bruce Crawford rightly pointed out, I have already written to the committee to confirm that I acknowledge the benefits of such a tool and will consider the issue further.

However, amendment 133 is not needed. At this early stage, it is important that options on the approach that we will take are not discarded. Amendment 133 makes no mention of the role that licensing boards will play in maintaining local databases. It would make more sense for boards to input the information that they collect directly on to a central database, but we need to discuss matters with the United Kingdom Government, which is considering whether to establish its own database, before we decide what is the best way forward.

Furthermore, the bill does not preclude Scottish ministers facilitating the setting up of a national central database and under section 81, ministers will be able to regulate data sharing by licensing boards. However, a decision about whether to establish a central database must ultimately take into account the availability of resources. That is not something that should be ignored by the Executive or the committee.

I hope that members accept my firm commitment to consider the matter further and to report back to the committee. I would be grateful if Mr Davidson sought to withdraw amendment 133.

Mr Davidson: The minister has gone a long way towards satisfying me. However, I would like to know why he is still talking about boards having their own databases, which they will have to share, rather than a national database. His comments on that made me slightly uneasy. I am not sure whether that accords with what he said in his letter to the committee, but that is my interpretation of what he has just said. There will obviously be a cost to the proposal, but that is true of any proposal. The most effective way of dealing with cost would be to set up a national resource that would be accessible not just to the police authorities, but to the public. It would be easy to collate and present the relevant information.
I think that the minister has satisfied me and, on that basis, I am prepared to seek to withdraw amendment 133. However, I reserve the right to lodge a similar amendment at stage 3 if the minister does not meet the committee's requirements in the meantime.

The Convener: Mr Davidson has indicated that he is prepared to withdraw amendment 133, so I would prefer not to reopen the debate.

George Lyon: I just want to clarify what I said. My point was that it would make more sense for boards to input the information that they collect directly on to a central database.

The Convener: David Davidson has indicated that he wishes to withdraw amendment 133. Is that agreed?

Tommy Sheridan: No.

The Convener: The question is, that amendment 133 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Sheridan, Tommy (Glasgow) (SSP)

AGAINST
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan ( Roxburgh and Berwickshire) (LD)

ABSTENTIONS
Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 1.

Amendment 133 disagreed to.

Section 9 agreed to.

After section 9

The Convener: Amendment 134, in the name of David Davidson, is in a group on its own.

Mr Davidson: Amendment 134 seeks to make available to the minister of the day a national licensing forum that would firmly and permanently incorporate representatives of both off-sales and on-sales licensed trade. I accept that current members of the licensing forum have the relevant experience and connections, but that situation is not set down in tablets of stone. I want the industry to be a serious partner in the long term. I have seen nothing to suggest that the industry does not want to play a constructive role in dealing with the problems in Scotland and in ensuring that we have a good, robust and fair licensing system that protects the public at large.

I intend to press amendment 134 because the three people in the licensing forum who currently have a connection with an industry body may not necessarily be there for ever and a day. I want future ministers to be tied into ensuring that the off-sales and on-sales interests are part and parcel of the forum and that they are involved in its research and its advice to the minister.

I move amendment 134.

Bruce Crawford: I speak in support of amendment 134. First, I remind members what we agreed about the national licensing forum in the stage 1 report. We noted the progress that had been made on the forum and we said that we might take further evidence from the minister. The committee also welcomed the then deputy minister's commitment to keep the committee informed of progress on the forum over the summer. It was therefore a surprise to me when the Executive made a public announcement during the summer about the make-up and size of the forum. It was therefore a surprise to me when the Executive made a public announcement during the summer about the make-up and size of the forum.

Obviously, there was considerable disquiet in the on-sales licensed trade, because the forum does not include anyone who has substantial experience of operating in that arena; it has a person who has only some relevant experience. Had the minister come back and talked to the committee about the potential composition and size of the forum and kept us informed of progress, we might not have reached the current impasse, which has fractured the good work that the Executive and the various arms of the licensed trade did earlier.

I therefore have considerable sympathy with what David Davidson seeks to achieve. Through amendment 134, he seeks to ensure that voices that are raised about the difficulties of the national licensing board can influence the board's deliberations. The on-sales licensed trade is the biggest part of the licensed trade in Scotland and the forum will be weakened if it does not have a representative from that sector. Amendment 134 would ensure that the forum had a representative from a part of the Scottish economy that is important for tourism and how we greet people who come to our country.

The minister may be able to persuade me that everything is hunky-dory, but I am sure that organisations such as the Scottish Beer and Pub Association and the Scottish Licensed Trade Association will tell us bluntly that they are concerned about how the forum has developed. I support amendment 134.

14:30

Paul Martin: The issue for me is that amendment 134 proposes a specific kind of
membership for the forum. I would welcome a commitment from the minister to allow the forum to evolve. Previous legislation has specified how similar organisations will operate.

If the forum is to become a powerful force, it should be given the opportunity to evolve; it is not for us to be prescriptive. The commitments that I seek from the minister are that the forum be given the opportunity to consider its representation over a reasonable period and that it be allowed to evolve over that period. We appreciate that organisations change over time, but if the bill is too prescriptive it will, in effect, become a straitjacket. I would welcome an amendment that says that we will look at allowing the forum to evolve “within a specified period”. We should let the forum take some of the decisions on representation. We have had representations from all the organisations that should be involved, but the forum’s representation needs to be spread more widely. Other organisations will be interested in being represented.

George Lyon: Amendment 134 asks us to appoint to the national licensing forum at least one representative of a body representing the interests of the on-sales trade and one representative of a body representing the interests of the off-sales trade. It may be helpful and useful to the committee if I set out further details on the national licensing forum.

The purpose of setting up the forum is to establish a national body on which issues concerning the licensing and control of alcohol can be aired and debated by all those with an interest in an effective licensing system in Scotland. The forum has been looking at detailed work on overprovision, training and the development of the LSO role, all of which are important underpinnings of the bill. We expect therefore that health, education, the police and consumer associations as well as representatives of the licensed trade will be actively involved. Representation has to be wider than the trade itself.

That is the background to the setting up of the national licensing forum. It is definitely not meant to be a body on which the trade has any form of privileged position and we do not want to send out a signal to that effect. The trade is well represented on the national forum, but without anyone else being ruled out. Two of the current members are Mr Paul Smith, deputy chairman of the Bar Entertainment and Dance Association, and Mr Scott Landsburgh, chief executive of the Scottish Grocers Federation.

Having served on a leading representative body, I understand the concerns that are out there. It is always important for bodies to be involved and to be seen to be involved. I say to Paul Martin that the national licensing forum, which will run with its current membership for two years, is to be reviewed at the end of that period. If the forum continues in future, there will be an opportunity to look again at its membership when it is reconstituted.

It is important to stress that the national licensing forum and the sub-groups that are dealing with overprovision, training and LSOs are in regular discussion and consultation with the representative bodies in the licensing trade throughout Scotland. Those bodies are having an input on the formulation of the policy content of those three areas. I hope that the committee accepts my assurance that they are not excluded from the process; indeed, they are very much part of and involved in it. They have been consulted in regard to those matters.

I also hope that David Davidson will accept my assurances that the matter will be looked at again. As I said, there will be a further opportunity to look at the membership again when the break comes at the end of the forum’s first two years. On that basis, I hope that he will seek leave to withdraw amendment 134.

The Convener: I invite David Davidson to respond to the debate and to indicate whether he will press or seek leave to withdraw amendment 134.

Mr Davidson: Like the minister, I am a member of the National Farmers Union of Scotland—I think that I know which body he was referring to. It would be strange for a body that gives advice to a minister on agriculture to have no farming representatives within its membership. The situation of the forum is similar.

We have adequately seen that the organisations that represent licensed premises have been constructive, adult and progressive in assisting the minister. Because the bill is targeted at a very large body that is vital to the Scottish economy, it is common courtesy that those organisations should have a place on the forum as of right. At the moment, the minister chooses who sits on the forum and that will apply also in future. I seek to ensure that the essential partners in the process—and I deliberately talk about off-sales as well as on-sales because the evidence has shown that one of the big problems relates to off-sales—have the right to have a representative on the forum. I understand that people retire from business and that it is possible that someone who is on the forum just now might not be there in future. I want to cover that for the longer term to ensure that off-sales and on-sales licensees are involved and are able to speak directly to the minister without having to go through another body.

I am not decrying or talking down anyone who is on the forum; I have a lot of respect for some of
those people. However, I am looking to the future
and I am not convinced by the minister’s
arguments that it will be all right in two years’ time
when someone takes another look at the situation.
We are making legislation just now and it should
be good and pragmatic and not based on the
promises of a minister who might not be in power
or even in the Parliament in years to come. There
might even be a different Government, although I
will not bring that into it at this stage.

I will press amendment 134 because we have to
flag up that the licensed trade in its different forms
has to be involved in giving first-hand advice to the
minister.

The Convener: The question is, that
amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For
4, Against 5, Abstentions 0.

Amendment 134 disagreed to.

Section 10 agreed to.

Schedule 2
LOCAL LICENSING FORUMS

The Convener: Amendment 10 is grouped with
amendments 135, 11 and 12. Amendments 10
and 135 are direct alternatives, so if amendment
10 is agreed to and then amendment 135 is
agreed to, amendment 135 will replace
amendment 10.

George Lyon: Executive amendments 10, 11
and 12 deal with local licensing forums and
address the issues that the committee raised in its
stage 1 report. Local licensing forums are an
essential element of the new licensing system.
They will provide a valuable opportunity for local
representation and local voices to be heard. It is
important that we get the membership structure
right. I want to respond to the committee’s
concerns that the current maximum membership
of 10 might not allow for sufficient local
representation. It is with that in mind that we have
lodged amendment 10, which seeks to increase
the maximum figure for membership to 15.

Amendment 11 would allow ministers to amend
that number in light of experience gained in the
future. In addition, in order that local forums are
seen to be open and transparent, we have lodged
amendment 12, which requires that meetings of
the forums be held in public.

Mr Davidson has lodged an amendment that
seeks to increase local forum numbers further to a
maximum of 20. I am interested to hear what he
will say about that, because I might be minded to
withdraw amendment 10 in favour of his proposal
for 20 members, if he convinces me.

I move amendment 10.

The Convener: There is a challenge for you,
David.

Mr Davidson: I have listened carefully to our
gracious minister. The committee heard a lot of
evidence about the sort of groups and individuals
who might bring good value to the debate in the
local licensing forums. We should consider some
of the forms of representation in the large cities,
for example in relation to youth work and health.
By limiting the number of members to 10, we
would not get an adequate cross-section of an
area to give good advice.

My thinking in lodging amendment 135 was that
if the Executive was going to raise the number to
15, why should we not raise it to 20. That would
ensure that there is a reasonable number of
members. It would not be so many that meetings
could not to be conducted efficiently but would be
enough to allow—possibly as Mr Sheridan has
talked about in the past—community
representation, and so on, to feed in good
information.

I find it strange that the minister is so
prescriptive in limiting the membership. There are
licensing forums out there with very large numbers
involved. I am looking for a reasonable number
that will ensure democratic input as well as
practical input, without getting out of control.

Tommy Sheridan: I support amendment 135
and refer again to the Glasgow experience. From
the evidence that we have received from Glasgow
City Council and from the convener’s
conversations with Councillor Macdiarmid, who is
the current convener of the licensing board, it is
clear that Glasgow City Council intends to have
only one licensing board, which means that
Glasgow will have only one licensing forum. A
membership of 10 would be very small, given the
named agencies that the bill requires to be
represented on the forums, and it would leave a
maximum of three places for community
representatives.

Amendment 135 proposes to increase the forum
membership to 20. I would prefer something even
more prescriptive for the bigger authorities, as that should be the minimum number of people for them to have on their forums. However, a membership of 20 still gives much more room for community representatives from throughout a city such as Glasgow. There are nine defined areas and nine area committees in Glasgow, so the idea of having just three community representatives for the whole city is ridiculous. I strongly support the idea of increasing the membership of local licensing forums to 20 and encouraging the bigger authorities to make that their minimum.

I welcome the Executive’s amendment 12, which seeks to ensure that local licensing forum meetings are held in public. That is a good amendment, but I invite the minister to clarify how that would be determined. What does he mean by saying that the meetings will be held in public? Will notice of them have to be given in specific journals or in other ways? It is fine for meetings to be held in public, but the public need to know that meetings are being held.

Michael McMahon (Hamilton North and Bellshill) (Lab): I am glad that Tommy Sheridan spoke after David Davidson. If the minister was waiting for David to convince him why the membership should be increased to 20, “I’ll see your 15 and raise it to 20,” was not a particularly strong argument.

The evidence from Glasgow on community representation was especially persuasive. As someone who represents Lanarkshire and can see the diversity of local communities in that area, which would want to be represented on as large a body as possible, I think that raising the membership to 20 would be much more conducive to allowing effective community involvement. A figure of 20 allows a bit more flexibility in the system than either 10 or 15 would. I hope that the minister accepts that as an explanation as to why the membership should be 20 and not 15.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I apologise for not being here at the start of the meeting.

The flexibility that amendment 135 would permit could be beneficial in some circumstances. Section 10 states:

“Each council must establish a Local Licensing Forum for their area.”

It goes on to say:

“where the area of a council is divided into licensing divisions, the council may, instead of establishing a Local Licensing Forum for their area, establish separate such Forums for each division.”

In Highland Council, I imagine that the latter would apply, with separate divisions in each area. Indeed, it is hard to see how one forum serving the whole of the Highland Council area could be workable. However, if there were to be only one forum, then, as is often the case with meetings that are held in Inverness, many members of the forum would be physically unable to attend all the meetings. One would expect a certain accretion of people who, because of business or other commitments, would find it difficult to attend every meeting. The bigger a council area was, the more difficult it would be to have meetings attended by all forum members.

Like amendment 10, amendment 135 does not give a mandatory number of members—the number is discretionary. The forum could have up to 20 members, but the power to specify that there should be 20 members would not necessarily be exercised. Indeed, on balance, meetings with 20 people tend to be unwieldy. A maximum of 15 people is desirable—I do not want to reveal any state secrets, but that at least is my experience of the Scottish National Party’s executive, which often involved more than 15 people.

Amendment 135 would allow more flexibility. It may not be sensible to appoint more than 15 members to the forum, but it would be useful to have the power to do so. For that reason, I am inclined to support David Davidson, despite the irony of a Conservative apparently supporting bigger government. Until today, I thought that the Conservatives were committed to the opposite.

Finally, I have a question for the minister. I do not understand what the phrase “for the time being” in amendment 11 means. It seems to be otiose.

14:45

The Convener: I see that the SNP is committed to trying to get its group size down to 15 as quickly as it can to make group meetings more effective.

Paul Martin: We will help the SNP with that.

Bruce Crawford: I am not sure that 29 September is on anybody’s mind.

Fergus Ewing raised an issue that I wanted to talk about among other issues that relate to amendment 11. I think that the committee is predisposed to accept that an upper limit of 20 is right, but if we agree to amendment 11, we will give the power to the minister to change that number by order, which seems a bit perverse. We are arguing in a particular direction, but the minister will have the power to do anything that he wants to do about the maximum or minimum number of members of forums in future. I am all for flexibility, but such flexibility for the minister seems to stretch the envelope a tad.

Like Fergus Ewing, I think that using terminology such as “for the time being” in legislation is
strange. I presume that it means in perpetuity, until the minister decides to act. In those circumstances, the number will no longer be for the time being.

I have grave concerns about amendment 11. If the committee is serious about suggesting an upper limit to the number of members of forums, which does not mean that there must be 20 people on them, but gives the minister the power to change that number in future, that would seem to take away from what we are trying to achieve. Perhaps the minister can persuade me otherwise.

George Lyon: I am not a lawyer, of course, but I have been informed that the phrase “for the time being” in amendment 11 refers to the power to change the number of members, which can obviously be changed more than once.

I am persuaded by the argument that there should be a maximum number of 20 members on a forum, but I will not say who persuaded me. Michael McMahon and Mr Sheridan certainly put forward strong arguments. I intend to seek to withdraw amendment 10 in favour of amendment 135 and to move amendments 11 and 12.

Tommy Sheridan: What about the point that I made about meetings being held in public?

George Lyon: We envisage that meetings will operate on the same principles as those on which community council meetings operate. It will be up to councils to advertise that a meeting is open to the public and to promote the meeting to ensure that members of the public are aware that it is taking place.

Bruce Crawford: The minister—

The Convener: I do not want to reopen the debate.

Bruce Crawford: The minister did not answer my question about whether, once the act is passed, he will have the power to change the number of members on the local licensing forum as and when he sees fit.

The Convener: Obviously, he would have that power, if the order was accepted by the Parliament. The minister does not need to come back in on that point—I think that the member just wanted that point of clarification to be included in the Official Report.

Amendment 10, by agreement, withdrawn.

Amendment 135 moved—[Mr David Davidson]—and agreed to.

Amendment 11 moved—[George Lyon].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.
remove that power. Amendments 16 to 19 are consequential. As we believe that the Executive amendments more fully meet ACPOS’s concerns, I ask Mr Crawford to consider not moving amendment 136.

I move amendment 15.

**Bruce Crawford:** I will speak to amendments 136 to 138. I acknowledge what the minister said about amendment 15, which follows through on concerns that were expressed, as the minister outlined. I am minded not to move amendments 136 to 138, given that LSOs will no longer have the power to act in the way that the amendments would control. That is a sensible course of action for me to take.

**Euan Robson:** I understand that amendment 19 will delete paragraph (c) of subsection (5) so that paragraph (d) becomes paragraph (c). If that is the case, I question the term “any person working on the premises”.

Does that mean people who work in a paid or unpaid capacity? Including unpaid people will be difficult. I have experience of being on licensed premises of the Royal British Legion, for example, when a voluntary coffee morning has taken place and the licensed premises have operated. It would be unreasonable for an unpaid volunteer who was, for example, standing behind a stall to have to co-operate with a licensing standards officer. I realise that you will not be able to consider the matter today, but perhaps you can take it away and think about whether an amendment is needed to ensure that there is no confusion and that a distinction is made between people who are employed on premises and people who work there voluntarily.

**George Lyon:** I will be pleased to consider that matter—

**The Convener:** Minister, I will let you reply to Euan Robson’s comment after everyone else has contributed.

**Mr Davidson:** I thank Bruce Crawford for suggesting that he might not move amendment 136. After all, if it is agreed to, it will put licensing standards officers on a par with HM Customs and Excise and the police. We really do not want to go down that route. I am sure that, given the connections between the LSOs and the police force, the police would give any required support as a matter of routine. I do not want such connections to be undermined. I also suspect that such a move would raise questions about the safety of the individual in question and create a minefield of legal difficulties. As a result, I encourage Bruce Crawford to be firm in not moving his amendments.

**George Lyon:** I am grateful for members’ support for our amendments. I could respond to Bruce Crawford’s comments on amendments 137 and 138, but he appears to be indicating that he will not move them. In that case, I will leave the matter at that, if that is okay with the committee.

**The Convener:** I believe that Mr Robson was seeking a response to his comments.

**George Lyon:** I assure Mr Robson that we will take his comments away and examine them.

Amendment 15 agreed to.

**The Convener:** Bruce, I understand that you do not want to move amendment 136.

**Bruce Crawford:** I am not going to move it, but not for the reasons that David Davidson suggested.

Amendment 136 not moved.

Amendment 16 moved—[George Lyon]—and agreed to.

Amendments 137 and 138 not moved.

Amendments 17 to 19 moved—[George Lyon]—and agreed to.

Section 15, as amended, agreed to.

AFTER SECTION 15

**The Convener:** Amendment 20, in the name of the minister, is in a group on its own.

**George Lyon:** Amendment 20 seeks to give ministers the necessary power to prescribe national training requirements for LSOs and, in particular, to accredit course content or course providers. The amendment mirrors similar provisions in the bill that provide for ministers to prescribe and accredit training for licence holders and staff. That additional power was specifically recommended by the national licensing forum.

I hope that the committee agrees that the training of LSOs will be crucial in providing them with the necessary expertise to carry out their functions. National training requirements will ensure the consistency of the high standards that are expected from officers. As a result, I hope that colleagues will agree to amendment 20.

I move amendment 20.

**Mr Davidson:** Will the minister circulate details of the national licensing forum’s advice on this matter before stage 3 to ensure that the Parliament has the chance to consider it?

**George Lyon:** I assure David Davidson that I will write to him shortly about the national licensing forum’s work. It might take a little longer to receive full details of training provisions for LSOs, because that work is still being developed. As soon as that information is available, I will forward it to members—and before stage 3, if possible.
Amendment 20 agreed to.
Sections 16 and 17 agreed to.

Section 18—Meaning of “premises manager”

15:00

The Convener: Amendment 21, in the name of the minister, is grouped with amendment 46.

George Lyon: Executive amendment 21 provides that no individual may be a premises manager of more than one premises at a time. The amendment ensures that each premises has a person who can be held responsible for its day-to-day running and that that position cannot be held by a manager who runs several premises and is therefore absent for much of the time. Although we do not require the premises manager to be on the premises at all times, we expect that person to be there for a considerable amount of time, because of the responsibilities attached to the position.

Executive amendment 46 is a technical amendment. It ensures that, when a person becomes incapacitated for whatever reason, his appointment as current premises manager ceases. When that happens, the licence holder of the premises is required to notify the fact to the board, after which the licence holder will be given a period of grace to allow the premises to continue operating pending the recruitment of a new manager. I hope that the committee will see fit to support the two amendments.

I move amendment 21.

Bruce Crawford: I would like clarification on whom amendment 21 is intended to capture. I understand what you say about not wanting a premises manager to be in charge of several premises at one time. However, I know of licensees who have a pub next door to an off-licence or who have two pubs in the same street. Even though those are small businesses, would you expect them to have separate premises managers? I understand the reason behind amendment 21, but I am concerned that it is too restrictive. Particularly in small towns in rural parts of Scotland, it may be that the hotelier also owns the grocer’s and feels that having one premises manager is adequate. Under amendment 21, that would not be possible. Is that right? If so, I have some concerns.

Mr Davidson: My point is along similar lines. A country house hotel may have a restaurant, a public bar and a residents bar. Usually, they would all be in one building. However, if they were divided—by a car park, for example—I presume that that would create a new premises. Also, like Bruce Crawford, I can think of people who own more than one premises in an area. Does the minister intend that each premises should have somebody with a personal licence? Will he allow the manager or the owner to be flexible in moving between two or even three premises? I am not certain what the minister is pushing for.

Paul Martin: We have to consider the concerns that members of the public have raised with the committee. It is often difficult for people to identify who is in charge of licensed premises. Our stage 1 report reflects what was said in our public meetings—that people wanted someone to be identifiable as the manager. We cannot have it both ways. We cannot say that one person should be identifiable as the manager but also say that, in rural areas, we have to consider how that would affect a person with two premises. There has to be a person who is identifiable responsible.

Tommy Sheridan: Difficulties arise when we try to have a one-size-fits-all solution. The problems with licensed premises in urban areas are different from the problems in rural areas. That is a fact of life and there is no getting away from it.

I agree with the thrust of what Paul Martin said. The worries that have been expressed in our public sessions and in members’ surgeries are clearly about the running of premises. From the public’s point of view, a well-run premises is a good premises and few complaints will be received. The difficulty is the small minority of premises that are not run properly. Those premises tend not to have a responsible person who can be held to account.

Amendment 21 might mean that, in rural areas, a lot of people will be upgraded to become premises managers. I hope that they will get a consequent increase in their wages, but that might be a matter for another day. The Executive’s amendment is welcome because it further defines that a licensed premises must have a responsible person. That person does not need to be there 24 hours a day—that would be impossible—but they need to be held to account and they need to be available. That is impossible if someone is the manager of three or four premises, so I strongly support the amendment.

Fergus Ewing: It may be that I should know the answers to these questions. If that is the case, I apologise, but I did not understand the meaning of amendment 46. It seeks to amend section 51, which deals with the following events:

“(a) the premises manager ceases to work at the premises,
(b) the premises manager dies, or
(c) the personal licence held by the premises manager is revoked or suspended.”
Section 51 states:

“The premises licence holder must, not later than 7 days after the occurrence of the event, give notice of it to the appropriate Licensing Board.”

Amendment 46 seeks to add the following to the list of events in which that duty to notify the licensing board would exist:

“the premises manager becomes incapable for any reason of acting as premises manager”.

I ask the minister to clarify the circumstances in which incapacity would be held to exist. Do they include physical incapacity, mental incapacity or inability, for whatever reason, to continue to perform the duties of the job? Would personal sequestration constitute incapacity in that regard? As I said, I am just asking questions to which I should know the answers—perhaps they are contained elsewhere in the bill—so that we are clear.

Secondly, if it is not clear at what point incapacity arises, is it correct to impose an obligation to notify the licensing board within seven days? If it is not possible to ascertain when something happens because the date is imprecise, is it impossible to fulfil a duty to act on it within seven days. Finally, is breach of that duty to be a criminal offence? It does not appear so, but I want to be clear about that.

George Lyon: First, on amendment 21, I will deal with the concerns that have been raised about the premises manager and the management of the pub or business. The terminology might be misleading, because the term “premises manager” in the bill refers to the personal licence holder; it does not refer to the manager of the business per se. The intention is to ensure that at each licensed premises there is someone who is designated as the personal licence holder. That person will have undergone training and they have a responsibility to ensure that the other staff have been trained and are aware of their responsibilities under the law.

The term does not refer to the management structure, although the terminology might make people think that—because the person is described as the “premises manager”, someone might think that we are prescribing that there should be a manager in every outlet that is owned by a single organisation. We are trying to ensure that, for each premises that is operated as a licensed establishment, there is a designated person who has undergone the appropriate training. I hope that that clarifies matters for members.

Amendment 46 refers to illness or incapacity that renders the individual incapable of performing his duties as the personal licence holder. It will be up to the owner of the establishment and the premises licence holder to determine at what stage he or she is unable to perform their duties and to report that to the board. Sequestration is not one of the reasons why the personal licence holder might become incapacitated. Not reporting will not be a criminal offence, although clearly there is an obligation under the terms of the licence to ensure that there is a licence holder on the premises who is able to deal with issues as they arise. Clearly, if the licence holder is incapacitated and unable to be around the premises for a significant length of time, that would be a breach of the requirements under the legislation. I hope that that clarifies the points that have been raised in the debate.

Amendment 21 agreed to.

Section 18, as amended, agreed to.

Section 19—Application for premises licence

The Convener: Amendment 22, in the name of the minister, is in a group on its own.

George Lyon: Amendment 22 is intended to clarify our policy on the important issue of access of children to licensed premises. We originally intended to deal with the issue through the Scottish ministers’ powers under section 19 to stipulate by regulations and by guidance what had to go into the operating plan. However, the committee specifically requested that the Executive’s policy on access of children to licensed premises should be dealt with in the bill. The Executive’s policy is clear. It is that we would like licensed premises to allow access to children, but only where access is suitable and appropriate. There is to be no presumption that premises are suitable. The fact is that many on-sales licensed premises are unsuitable for children.

We therefore propose in amendment 22 that applicants who apply for a premises licence must specify in the operating plan their proposals for the access of children. The type of activities to be carried on in the premises in addition to the sale of alcohol will be relevant to the board’s consideration of the issue. Not all entertainment may be suitable for children or for children of a certain age, so the operating plan must detail those activities and the ages of the children. The size of the premises and the times at which children are to be allowed access—it might just be lunch time—are relevant, as is whether an area for children can be segregated off. When the licensing board is armed with that type of detailed information, it can make the kind of informed decision in the best interests of children that all of us want to see being taken. I think that amendment 22 is a carefully balanced measure and hope that the committee is minded to support it.
I move amendment 22.

Mr Davidson: The minister has put his detailed arguments to the committee. The first subsection that he proposes to insert into the bill through amendment 22 states that there should be

"a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises".

How would the applicant know when they lodged the plan whether there would be a quiz night or a music evening, for example? Would there be a notice period? Does the minister intend to work up a system through which licence holders have to issue a public notice that they intend to hold a quiz or whatever? The process does not seem to be fully thought out, unless the detail is somewhere else in the bill. If it is, I have not seen it.

There will be problems if we expect all the ad hoc activities that occur in licensed premises to be flagged up at the beginning of the year. We discussed with the minister's predecessor the fact that the weekend on which events such as a music festival are held might vary from year to year, so the date cannot be stated in advance. There needs to be flexibility and clarity for those who will have to operate under the provisions in the amendment if it is agreed to.

Paul Martin: I seek clarification from the minister about the suitability of premises in respect of facilities for children, such as baby-changing facilities. That issue was raised in our stage 1 report. We made it clear that, if premises were to be accessible to children, there would have to be a requirement to provide such facilities. Can the minister confirm that such a requirement is in the bill or will the matter be addressed at stage 3?

15:15

Bruce Crawford: I understand exactly where David Davidson is coming from. The proposal seems a bit restrictive, although I understand the Executive's intent. Overall, the amendment illustrates where Scotland needs to be at. I will be interested to hear what the minister says in response to David Davidson's points.

Will the minister consider creating an order-making power? I am not usually in favour of ministers taking order-making powers for themselves, but that might allow the section 19 provisions to be amended in future, as Scotland moves on and as we get in a position to develop a more liberal approach, so that children might be accepted more in pubs. We can change the emphasis when Scotland is ready to do so, rather than necessarily introducing primary legislation at the time. I hope that the minister sees where I am coming from.

Fergus Ewing: I seek clarification from the minister on the operating plan. Amendment 22 requires the applicant to include in the plan information about children. I can absolutely see the purpose of including within the operating plan and the application for the premises licence the intentions of the pub or hotel in relation to children. Obviously, we would like children to come into appropriate premises and be part of society, rather than being excluded. We would welcome such a move. We would also welcome premises being encouraged to show their intentions.

However, the wording of the amendment potentially raises an unintended consequence. The amendment says that the operating plan should contain

"a statement as to whether children or young persons are to be allowed entry to the premises and ... in particular ... the ages of children ... the times at which they are to be allowed entry, and ... the parts of the premises to which they are to be allowed entry".

A pub might conclude that, for example, children should be able to attend at lunch time, but not in the evening. That might be included in an operating plan. What happens if an establishment finds that the arrangements are working well and wants to extend the times when children or young people can attend the premises outwith and beyond the hours stated in the operating plan and in accordance with the original intention? Would proprietors in that situation be able to have children in during hours outwith the hours stated in the original operating plan? If the answer is yes, that is the end of the matter, but the full information about the intent of the pub in relation to children might not have been given to the local community.

Could there be an unintended disadvantage to a pub or hotel that had originally said that it would have kids in, but only at lunch time, but that later, perhaps through popular demand, wanted visitors to come in beyond those times? Would that not mean in practice that there is a compulisor for pubs and hotels to say at the outset that they would like children to be able to come in at any time? If proprietors did not do that, they might later be prevented from expanding the hours within which children are allowed to come in.

As with our previous discussion, it might be that I should know the answer to these questions, in which case I will get my apologies in, but I can see an unintended disadvantage resulting from the provision. Hotels and pubs might generally apply for the whole lot, as it were, because they might lose out if they do not.

Euan Robson: I reinforce the point about the operating plan and the statement of times at which "any other activities" in addition to the sale of alcohol may take place. To use an extreme
example, such an activity could be someone turning on the television to watch a football match on a satellite channel. The amendment could be read that way. Clearly, that would be absurd, but a literal interpretation could reach that point. I ask the minister to consider that.

On a more serious level, how can the operating plan predict when a voluntary organisation might book a particular room at a particular time in the course of its normal activities, whether or not on a regular basis? The point was raised by another member and it should be clarified. I have no objection to a general statement of types of activities, but if the plan is too prescriptive, we could end up restricting the activities of clubs such as legions and Burns clubs that we have no intention of restricting. The minister may want to take that point away, rather than speaking about it this afternoon.

Tommy Sheridan: I am compelled to ask the minister to clarify the issue. I am troubled that we are encouraging licensed premises to be more child friendly. I am worried that we are forgetting the type of substance that is being sold on those premises. It is a dangerous substance that we do not want to normalise. We should not make it part and parcel of everybody’s life or bring up children to accept that it is part and parcel of life. I would like to hear from the minister that the Executive recognises that we are talking not about bread and milk, but about a dangerous substance. That must be taken into account when we are thinking about children and normalisation. It should not be taken as read that children should be encouraged to be in licensed premises.

George Lyon: I do not know where to start, so I will start at the beginning. Many of the concerns are about unforeseen consequences and changes to the operating plan after the licence has been applied for. Under the 1976 act, people apply for a new licence every three years. Most businesses probably apply annually for their regular extensions and so are before the licensing board on a regular basis. The big difference under the new system is that people will apply for a one-off licence in perpetuity and will have to set out in their operating plan details of how the premises will operate.

We recognise that an operating plan cannot cover every eventuality, because people cannot predict what is coming down the track. Therefore, we will make provision for minor variations to allow changes to the conditions. If the variations are minor, any changes will be administrative. If they are major, the same full-blown process will apply as applies now, with an application to the board for a major variation. That might result from a change of circumstances, a change of business, a change to allow children in or some other reason. We acknowledge the point, which is why there will be an opportunity to make changes. The bill already provides for variation of premises licences.

If businesses wish to hold one-off events, they will be able to apply for a minor variation to accommodate the circumstance. The aim is to get the balance right in setting down as much as possible in the operating plan. When LSOs or communities raise concerns about the operation of premises, any report-back to the board will be judged on what is in the operating plan. Clearly, there has to be an opportunity to amend the plan. If, for example, a quiz night takes place regularly on a Monday night, that can be set down in the operating plan. If there is a decision at a later date to alter that, the premises can apply to have a variation on the operating plan.

Mr Davidson: May I ask for clarification on that point?

The Convener: I prefer to let the minister respond, because I do not want the debate to go to and fro.

George Lyon: Paul Martin expressed concern about the licence conditions. Those conditions will be set out in the regulations that will be published in due course. If it will help, given some of the issues that have been raised, I can write to the committee to set out the matter in black and white so that members can understand exactly how the system will operate.

The Convener: That will be useful. However, you have not responded to Mr Sheridan’s point.

George Lyon: The fact that alcohol is a substance that can cause damage is a point that I fully recognise. That is why the sale of alcohol is licensed. Tommy Sheridan made an excellent point. The whole point of the bill is that alcohol is a substance that causes considerable harm to many communities and individuals, so we need a licensing regime to control it.

Bruce Crawford: Convener—

The Convener: I do not want you to reopen the debate, Bruce.

Bruce Crawford: Convener, I seek just a point of clarification. Will the minister confirm whether the minor variation process that is provided for in section 27 is intended to capture things such as the installation of a sound system or juke-box, a pool table or a one-armed bandit? Will all that sort of stuff be caught under the minor variation process?

The Convener: I will allow the minister to clarify that. Paul Martin has a point of clarification as well.

Paul Martin: I seek clarification from the minister of the term “in due course”. Will the committee have an input into the guidelines, so
that we can be clear about what will be expected of licensed premises that provide facilities for children? The minister said that there would be guidelines in due course, but we need to know when they will be published and what they will contain. The issue ties into some of the matters that Tommy Sheridan raised—although I would not go to the extreme that he has gone to.

The Convener: Will you clarify those points, minister?

George Lyon: In November next year, all the regulations will be published and they will come before the committee.

The Convener: Will you also clarify for Mr Crawford whether premises will be required to submit a variation to their licences for the installation of facilities such as a juke-box or pool table?

George Lyon: Our intention is that such changes to the layout of premises would be deemed to be a minor variation.

The Convener: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Sheridan, Tommy (Glasgow) (SSP)

Against
Davidson, Mr David (North East Scotland) (Con)

Abstentions
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Amendment 22 agreed to.

Section 19, as amended, agreed to.

Section 20—Notification of application

The Convener: Amendment 23, in the name of the minister, is grouped with amendments 25, 40, 41, 43, 44, 115 and 116.

George Lyon: As currently drafted, section 20(1) places a duty on licensing boards to ensure that an application for a premises licence is notified to the council within whose area the premises are situated. However, in cases in which the applicant is the council, it would be inappropriate to ask councils to notify themselves of their own application. Executive amendment 23 will clarify that matter. In doing so, it will put beyond doubt the fact that a council can be an applicant and, consequently, can hold a premises licence.

Executive amendments 25, 40, 41, 43 and 44 result from the comments that were given to the committee at stage 1 by Sheriff Principal Nicholson, who asked us to clarify references in the bill to ensure that the connected persons provisions will work in cases in which the council is the applicant for a premises licence. The connected persons provisions broaden out the cases in which police can check beyond the applicant to determine whether any connected persons have a conviction. We have decided not to apply those provisions to councils because we think that they will be unnecessary for councils. As well as clarifying that matter, the amendments will also disapply the connected persons provisions to individuals in cases in which the concept of connected persons is problematic. However, we will address the matter through our proposal in a later group of amendments in relation to the police’s ability to raise concerns about individuals with links to serious organised crime.

Executive amendments 115 and 116 seek to amend the definition of “connected person” in section 137. They will define the phrase, in relation to other incorporated or unincorporated bodies, as those persons who have “management or control of the body.”

I hope that the committee will support the amendments.

I move amendment 23.

Amendment 23 agreed to.

15:30

The Convener: Amendment 24, in the name of the minister, is in a group on its own.

George Lyon: Amendment 24 is a small technical amendment that reflects the terminology used in the Fire (Scotland) Act 2005.

I move amendment 24.

Amendment 24 agreed to.

The Convener: Amendment 139, in the name of Paul Martin, is grouped with amendments 140 and 145.

Paul Martin: Amendments 139, 140 and 145 relate to the inconsistency of police reporting to licensing boards, on which we heard a great deal of evidence. Through the amendments, I seek to achieve a consistent approach to police reporting on local activity and on the profiles of individual applicants. I seek to ensure that a recognised format exists for reports so that all activities, not
just those within the premises, but those in the vicinity of the premises—as determined in 1972 legislation—are clearly identified and that there is a consistent approach to reporting activities to licensing boards.

If the minister does not accept the amendments, I seek from him an assurance that a recognised format for reporting activities will be introduced at stage 3. As the previous minister confirmed would happen, I would like that to be negotiated with the relevant police authorities.

I move amendment 139.

Tommy Sheridan: I strongly support the amendments, as they would take on board the soundings that we received from the public in our open sessions. It was obvious that much of the antisocial behaviour that is obviously connected with licensed premises does not take place inside the premises, but in the vicinity, which means that it is not always taken into account when decisions are made on licence applications. One particularly well-known premises in Glasgow—of which Glasgow members will be aware—that has been highlighted in this connection is a place called Bonkers. It took a long time for action to be taken because the behaviour could not be pinned to the premises. The inclusion in reports of activities within the vicinity of premises rather than just in premises is long overdue.

I hope that the minister will clarify for the record whether the measure would also apply to off-licence premises. One of the big issues in local areas is antisocial behaviour around off-licence premises—such behaviour rarely takes place inside the premises, so it can be easy to avoid requests to refuse a licence on that basis. If police reports can refer to behaviour in the vicinity of an off-licence premises, that would make it easier for communities to oppose licences. The inclusion in reports of activities within the vicinity of premises rather than just in premises is long overdue.

I hope that the minister will clarify for the record whether the measure would also apply to off-licence premises. One of the big issues in local areas is antisocial behaviour around off-licence premises—such behaviour rarely takes place inside the premises, so it can be easy to avoid requests to refuse a licence on that basis. If police reports can refer to behaviour in the vicinity of an off-licence premises, that would make it easier for communities to oppose licences. The inclusion in reports of activities within the vicinity of premises rather than just in premises is long overdue.

Fergus Ewing: I welcome the aim behind amendment 139, which would qualify section 20(3). Section 20 deals with the notification of application procedure. The chief constable is entitled to be notified as a statutory consultee, so the chief constable receives the application. Section 20(3) goes on to state that the chief constable must, within 21 days of that notification, respond

"by giving the Licensing Board one or other of the notices mentioned in subsection (4)."

Amendment 139 states that there must be a report within those 21 days.

I wonder whether ACPOS supports such a provision. It occurs to me that 21 days is a short time in which to accomplish all the work that might be involved in some cases to satisfy the dual provisions of the amendment. I know that the police would be supportive in principle of ensuring that the licensing board has relevant information, but I question whether Paul Martin has support for his specific provision from ACPOS or from other representatives of the police and whether 21 days is enough time.

Amendment 139 also talks about cases of antisocial behaviour. Do we know what antisocial behaviour actually is? Is it to be equiparated with a criminal offence? I presume that the definition of antisocial behaviour is wider than that, but does it have a clear statutory definition or is it vague?

According to amendment 139, the second part of the report must set out

"all complaints or other representations".

So the report must contain not only details of complaints but details of other representations. I wonder whether that is a practicable prospect and whether an amendment that allows the police an element of discretion to present the information that they believe to be truly salient and critical might be the way that we all want to go.

I certainly support Paul Martin’s aim, however, and welcome the fact that he lodged amendment 139 for debate today.

Euan Robson: Will the minister say whether “in the vicinity of” is an understood legal term and whether there is any cross-reference to other statutes? For instance, is there a difference between “in the vicinity of” and

"in the immediate vicinity of”?

Bruce Crawford: I, too, welcome what Paul Martin tries to achieve in amendment 139—it is dead right. Too many of our communities in Scotland are under attack and we need to do something to help control the situation.

I am more concerned about the technicalities of the amendment, particularly where it refers to

"all complaints or other representations made to police officers".

That would include every complaint, regardless of how vexatious or accurate, whether it had been proved or whether the police considered it to be so frivolous that it did not matter. If the amendment were passed, they would not have a choice and all complaints would have to be included in the report. That would put the board in a difficult situation because it would not be able to make a
judgment about the nature, strength, level and appropriateness of the complaint.

I hope that, if the minister foresees similar difficulties with the technical aspects of the amendment, he will be prepared to give us a commitment today to consider the amendment and come back with something that would overcome those obvious difficulties.

Mr Davidson: I am totally sympathetic to what Paul Martin is trying to achieve, but there are issues about proof in paragraph (b) of his amendment. Perhaps he can answer my questions in his winding-up comments. Is he looking for a list of all proven offences in an area? That would be fine, because they could all be justified. What about general complaints or if people believed that an area was unruly and it just happened that the premises were in the middle of it all but had nothing to do with the antisocial behaviour?

I am concerned about the burden of proof and the chores that would arise from it. I wonder whether the amendment could be reworded; proven crimes would be easy to deal with as they are a matter of record. The amendment is a bit vague in parts and I wonder whether Paul Martin might give us a bit more information on it.

George Lyon: Amendments 139, 140 and 145 would require the police to submit a report listing antisocial behaviour around the vicinity of premises applying for a new premises licence. I am sympathetic to what Paul Martin is trying to deliver with amendment 139. It is important that licensing boards are as aware as possible of criminality and antisocial behaviour in the vicinity of premises applying for licences and of public concern about such behaviour. Crime prevention is a key objective and opening licensed premises in such vicinities might be pouring oil on fire.

Under the licensing regime in the bill, information such as Paul Martin mentions can go directly to the licensing board. Unlike under the 1976 act, everybody is entitled to object, including neighbours and all those who would be affected directly or indirectly by the opening of the premises.

Nevertheless, I recognise that Paul Martin is making the strong argument that we should consider seriously how to make the amendments fit. Members have raised a number of issues about police workload and the practical impact the amendments would have on police time. I assure the committee that I will engage with ACPOS and Paul Martin in order to come back at stage 3 with proposals to deal with the issue. I support the purpose of the amendments, but think they need more work. I hope that, given that assurance, Paul Martin will consider withdrawing amendment 139 and not moving amendments 140 and 145.

Paul Martin: I want to deal with a number of the fair points that members have made. First, in connection with the definition of “antisocial behaviour”, amendment 140 states:

“antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004.

I have taken seriously the issue of vexatious complaints. The Freedom of Information (Scotland) Act 2002 defines vexatious requests and I hope that the police would be able to use that definition to report whether they consider complaints to be vexatious.

On the point that Fergus Ewing made, when there have been a number of telephone calls about incidents at an off-sales or some other facility, it is up to the police to agree a format to set out how many crimes were detected and how many calls were vexatious. Negotiations on that could take place between ACPOS and others.

I will press the amendments on the basis that I expect the minister to amend them at stage 3. They give us a starting point from which to progress. I expect the minister to return to the matter after negotiations with ACPOS. I understood at stage 1 that he had agreed to negotiate with ACPOS and return with amendments at stage 2. We can start with my amendments; I expect the minister to make further amendments at stage 3.

The Convener: The question is, that amendment 139 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

Against
Robson, Euan (Roxburgh and Berwickshire) (LD)

Abstentions
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 5, Against 1, Abstentions 3.

Amendment 139 agreed to.

Amendment 25 moved—[George Lyon]—and agreed to.
Amendment 140 moved—[Paul Martin]—and agreed to.

Section 20, as amended, agreed to.

Section 21—Objections and representations

The Convener: Amendment 141, in the name of David Davidson, is grouped with amendments 142, 27, 143, 28 and 150 to 152.

Mr Davidson: Amendment 141 seeks to increase the role of the police; to set out more clearly their power to comment and object, if they want to; and to enable them to comment on more than only the relevant offences.

It might be an unintended consequence, but I think that the bill dilutes somewhat the powers of the police. I am keen for chief constables to have a clear role, not a watered-down role. As we heard in the debate on amendments 139 and 140, there are obligations on the police to provide certain evidence and so on, but I think that they should have that power in their own right because, in many ways, they are the custodians of the community. My other amendments in this group are consequential on amendment 141.

I move amendment 141.

Bruce Crawford: The amendments in my name in this group are amendments 142 and 143. I recognise that the committee’s stage 1 report welcomed the proposal to allow anyone to object to a licence application but, having reviewed the evidence on pages 52, 53 and 54 of the report, I have doubts about whether we chose the appropriate route. The Scottish Licensed Trade Association said:

“Unfortunately, we must draw a line somewhere. We would say that that line should correspond with the licensing board’s area of jurisdiction.”—[Official Report, Local Government and Transport Committee, 12 April 2005; c 2269.]

The West Lothian licensing board highlighted a suggestion that objections should be permitted only from persons who live in the board area. That was supported by Glasgow’s licensing board. The Law Society of Scotland said that there could be serious administrative delays if the proposals in the bill relating to objections were enacted as drafted. Sheriff Principal Nicholson, who is one of the main architects behind what we are trying to achieve in the bill, was also of the view that it should not be open to everyone to object. The Scottish Beer and Pub Association argued that

“the right of ‘any person’ to lodge objections as defined in the Bill is too wide”

and the Convention of Scottish Local Authorities argued something similar.

During the evidence-taking process, only Robert Millar, the clerk to the City of Edinburgh Council, and the minister said that objections should come from everyone. If we are to base our legislative process on the evidence available, we have to admit that we have a pretty strong body of evidence that suggests that the objection process should not be as open as it is in the bill.

Amendment 142 would enable “any interested person” to object to or to make representations to the licensing board under section 21, which sets out the procedure for objecting to an application and refers simply to “any person”. I think that that is too broad a category and that its use might result in administrative delays and additional costs. That view was put to us strongly by the Law Society.

The bill as currently drafted would cause all the costs that are associated with the new licensing regime to be absorbed by the licensed trade. I think that we all accept that principle, but I am concerned that some of the administrative burden that might flow from allowing any person to submit an objection will end up being costly for the licensed trade. One of the biggest difficulties that we will have further down the road is the impact of the licence fee on the licensed trade. We will suffer some resistance in that area.

Amendment 143 is an attempt to provide a definition of an interested person for the purposes of making section 21 stack up. It is consequential on amendment 142 and would provide certainty about who an interested person is by focusing on who can raise objections or make representations. Members might recall that, during the evidence sessions, I raised section 158 of the Gambling Act 2005 as an example of a definition of interested persons. I am trying to follow through on that with amendment 143.

I feel quite strongly that I should have raised some of the strong evidence from seven different sources to counter the two pieces of evidence—one of which came from the minister—that said that objections can come from any person.

George Lyon: I am fully aware of the concerns that were raised by ACPOS and by the committee during stage 1 about what is considered to be a limited role for the police in objecting to premises licence applications under the new system. That is reflected in David Davidson’s amendments 141, 150, 151 and 152, and in Executive amendment 27.

I have considered the issues further and my predecessor, Tavish Scott, met ACPOS to discuss its concerns. ACPOS argued that it wants the police to be able to comment if they have intelligence that an individual or persons connected to him is involved in organised crime and they want to be able to bring forward information on an individual’s character and suitability to be a licensee.
I recognise that the police have a key role to play in the new system and that there might be instances when they can provide useful intelligence on the involvement of the applicant, or someone connected with the applicant, in organised criminal activity, such as money laundering. I am therefore content to give the police the right to object to a premises licence application when the chief constable has reason to believe that the applicant or a connected person is involved in serious organised crime. That is in addition to the duty to notify the board of convictions for relevant offences.

I see no benefit in returning to the position where objections can be made on the basis that the applicant is not a fit person to hold a licence, based on subjective police impressions of past behaviour or character and in the absence of convictions. If we are to allow the police to object and bring forward intelligence, even if it is not concrete evidence of convictions, it is important that a boundary is placed around that right. That boundary would be achieved by amendment 27, which would link the intelligence to serious organised crime such as money laundering. We have now extended that by agreeing to Paul Martin’s amendments, so the police will now have a significant role to play in bringing forward evidence of antisocial behaviour complaints about the premises and any offences of which they are aware. All that will give the police a significant role during the initial application for a licence.

Bruce Crawford’s amendments 142 and 143 seek to narrow the definition of who is able to object to and make representation on premises licences by reintroducing the geographical and other restrictions that were imposed under the 1976 act. That would be a major backward step. The committee has recognised the benefit of the Executive’s approach in its stage 1 report. We do not believe that the administrative inconvenience of handling more objections can be set against the benefits to communities of being able to make their views known. Do we really want to return to the position where a school board is unable to comment on a proposal to site an off-licence at the boundary; where objections can be made on the basis that a school board is unable to comment. That is perfectly valid. I note what was said in evidence to the committee about certain people making vexatious comments by rote to every application in Scotland. Dealing with such comments puts a big burden on the licensing authority. We need to ensure free comments by rote to every application in Scotland. There is a chance for that issue to be refined for stages 2 and 3. The minister may have it in mind to come back with further clarifying amendments at stage 3.

There is a lot of sense in what Bruce Crawford says but, like Sylvia Jackson, I am a bit concerned about the tightness and inflexibility of amendment 143. I am in support of people from outwith a licensing board area who are affected by licensed premises being able to comment. That is perfectly valid. I note what was said in evidence to the committee about certain people making vexatious comments by rote to every application in Scotland. Dealing with such comments puts a big burden on the licensing authority. We need to ensure free speech up to a point; it is about getting the balance right. Although I have sympathy for amendment 143, I would prefer Bruce Crawford to bring it back with more beef on the bone—if the committee will forgive another farming pun. I will press amendment 27.

Dr Sylvia Jackson (Stirling) (Lab): I can see what Bruce Crawford is aiming at, but I am a bit worried by the definition in amendment 143: “lives sufficiently close to the premises”.

People who have approached me about noise and so on have not necessarily lived as close as Bruce Crawford seems to be suggesting.

I am also worried about something else. Let us say that this is somebody’s route for going home in the evening. There could be antisocial behaviour or even an attack. I am a bit worried that the definition is not big enough to make it as workable as we would want it to be.

Mr Davidson: The minister seems to be sympathetic to what I am trying to do, and amendments 141 and 27 do not clash much. There is a chance for that issue to be refined for stage 3. The minister may have it in mind to come back with further clarifying amendments at stage 3.

The Convener: The question is, that amendment 141 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Davidson, Mr David (North East Scotland) (Con)

AGAINST
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Rothesay and Bute) (LD)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.
Amendment 141 disagreed to.

Amendment 142 disagreed to.

The Convener: The question is, that amendment 142 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

AGAINST
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan ( Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 142 disagreed to.

Amendments 26 and 27 moved—[George Lyon]—and agreed to.

The Convener: We now come to amendment 143, in the name of Bruce Crawford.

Bruce Crawford: Given the views expressed by other members, I shall try to come back with an improved definition of interested person.

Amendment 143 not moved.

Amendment 28 moved—[George Lyon]—and agreed to.

Section 21, as amended, agreed to.

Amendment 144 not moved.

Amendment 145 moved—[Paul Martin]—and agreed to.

Amendment 146 not moved.

Section 22, as amended, agreed to.

Sections 23 to 25 agreed to.

Schedule 3

Premises Licences: Mandatory Conditions

The Convener: Amendment 147, in the name of David Davidson, is grouped with amendments 31, 153 and 52.

Mr Davidson: I have suggested before that the 48-hour rule will be very damaging to certain parts of the industry. It will also limit the activities of certain groups, such as old-age pensioners. It is not a question, as the previous minister suggested, of advocating binge drinking for pensioners all night long. That is not what I am talking about at all. I am talking about a small social practice that happens in some public houses for perhaps two hours a week. The bill would stop it happening.

We had evidence from the universities that they could not maintain long-term promotions in competition with the nightclubs. The bill does nothing to cut down on the irresponsible sale of drinks in nightclubs. The Executive seems to think that it is all right for a nightclub to hold a promotion for 48 hours as long as it can afford to do so, but that does not seem to be in the spirit of the legislation.

Take the example of restaurants near theatres that encourage people to come for after-theatre supper. They might wish to run a promotion for—for the sake of argument—an hour after a theatre closes in order to encourage people to come in for a meal. However, under paragraph 7(2) of schedule 3, they would not be able to do that. They would have to do it on a 48-hour basis, whether they were open for that particular activity or not.

The provision is not terribly well constructed. It is biased in favour of large businesses that can maintain low costs for a long period. Amendment 153 is consequential on amendment 147.

I move amendment 147.
George Lyon: The need to tackle irresponsible promotions and their associated problems is accepted by almost everyone and is central to the new licensing system’s policy objectives. We recognise that not all alcohol promotions are irresponsible and that the majority of licensees run their businesses responsibly. However, the undesirable health and social consequences of binge and underage drinking, which can be encouraged by irresponsible promotions, must be tackled.

We consider “irresponsible promotions” to be those that actively encourage people to consume in a short period a larger quantity of alcohol than they would otherwise consume. Obviously, that includes happy hours, which are often responsible for the drunken and rowdy behaviour of individuals who attempt to drink as much alcohol as they can at a cheaper price while the period lasts. However, amendments 147 and 153 would allow happy hours to continue, even though most sectors of the licensed trade are happy to see then brought to an end.

Executive amendments 31 and 52 seek to lengthen the period during which prices must be fixed from 48 to 72 hours. I should point out that the committee’s stage 1 report referred favourably to that proposal, which is based on evidence from the Scottish Grocers Federation. Moreover, the amendments require the 72-hour period to begin at the start of a period of licensed hours to prevent any attempts to circumvent the policy.

Under those circumstances, I ask David Davidson to consider withdrawing amendment 147 and not moving amendment 153.

Mr Davidson: The minister’s comments do not draw a line under his definition of “irresponsible promotions”. I am also concerned about how people will be able to introduce new products to the market. If someone seeks to give away—for argument’s sake—a brand-new stout at half price for 72 hours, we need to ask whether such a promotion is sensible and what the manufacturers really want to do.

I am not arguing against putting controls on irresponsible promotions. After all, we have seen how some nightclubs allow people to drink themselves silly for as long as they like and then put them out on the street for the police and the community to deal with. We do not have any issues about controlling such activities. However, I do not believe that the minister has worded the provision carefully enough or has built in enough flexibility to ensure that responsible licence holders can operate a business in competition with others in a way that does not damage members of the public or lead to community breakdown and unrest.

I will press amendment 147.

The Convener: The question is, that amendment 147 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Davidson, Mr David (North East Scotland) (Con)

AGAINST
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

ABSTENTIONS
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 1, Against 5, Abstentions 2.

Amendment 147 disagreed to.

Amendment 31 moved—[George Lyon]—and agreed to.

The Convener: Amendment 32, in the name of the minister, is grouped with amendments 33 to 37 and 53 to 58.

George Lyon: Amendment 35 and consequential amendments 32, 33, 36 and 37 introduce the new policy of extending to off-sales some of the controls on irresponsible on-sales promotions. The committee identified that matter as a key concern and, recognising the consensus of opinion, we agreed to lodge amendments.

We propose to extend to off-sales controls on promotions that

“appeal largely to persons under the age of 18,”

that are

“based on the strength of any alcohol,”

that reward or encourage, or seek

“to reward or encourage, drinking alcohol quickly,”

or that offer

“alcohol as a reward or prize”.

We think that that is a sensible way forward. It does not preclude the extension of more controls to off-sales, or the introduction of further controls, in due course. We intend to monitor the implementation of the new controls and we will adjust them if we need to.

Amendment 34 adds to the list of irresponsible drinks promotions the practice of upselling, which involves, for example, persuading someone who had expressed an intention to order a single measure to upgrade to a double. I am sure that we have all experienced that. The practice is not
adequately caught by paragraph 8(3)(c) of schedule 3, which rules out promotions that are linked to measures of alcohol. The proposed new provision will target upselling specifically. Our amendments 53 to 58 seek to make the same changes to schedule 4 in respect of occasional licences.

Some sectors of the industry have expressed concerns about paragraph 8(3)(c) of schedule 3 and the corresponding paragraph of schedule 4—paragraph 7(3)(c). It has been suggested that the description of irresponsible promotions that is contained in those paragraphs would have the additional result of introducing linear pricing, by which I mean that a double measure of a drink would have to be twice the price of a single measure and so on.

It is clear that that is not our intention. The provisions are directed specifically at promotional activity, not pricing activity. We have chosen to prevent the irresponsible promotions that are listed in schedules 3 and 4 from being carried out on licensed premises, but we have not chosen—and do not intend to dictate—the prices at which any alcohol or measure of alcohol is to be sold.

I move amendment 32.

Bruce Crawford: I understand where the minister is coming from—he is following through on a previous commitment.

Amendment 35 seeks to insert a provision at the end of paragraph 8(3) of schedule 3, at line 15 on page 88. If the amendment is agreed to, paragraphs (b) to (d) of paragraph 8(3) will apply only to on-licence premises. I assume that that is why the minister has included in the amendment the phrase, "alcohol sold for consumption on the premises."

In those circumstances, off-licences would still be free to engage in

"the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks)"

and

"the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink".

Off-licences could also engage in

"the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises)"

although such practice is unusual in off-licences. In other words, it would still be possible to conduct all those activities in an off-licence.

You will not be surprised to hear that representatives of the on-licence trade are upset that the bill will mean that they are not on a level playing field. My question at this stage is whether the Executive has gone far enough in dealing with off-licences. If not, we must consider whether we can support what the Executive seeks to achieve with amendment 35 or whether, by voting against amendment 35, we should encourage it to come up with a more robust set of regulations covering the off-licence trade so that there will be a level playing field for the different types of premises.

I am highly concerned about the issue. The minister will have to persuade me that at stage 3 he will lodge an amendment that will apply the same conditions to off-licences. It would be difficult to vote against the provisions on drinks promotions in licensed premises, as they are good, but the Executive should go further. If it is not prepared to do so, committee members will find it difficult to support the Executive’s position.

16:15

Dr Jackson: I am thinking along the same lines as Bruce Crawford. I do not have a problem with what has been suggested; in fact, I welcome it, because irresponsible promotions and off-sales are big issues for the committee. However, the minister said that there might be further measures and I wonder whether he is thinking about including a provision that will allow him to introduce through subordinate legislation further measures that he has not thought of yet or will not have thought of by the time the bill is passed. Is there a provision in the bill that will allow further measures to be introduced? If there is, I have missed it.

Mr Davidson: Returning to amendment 35, I find it odd that off-licences appear not to be caught by the provision. The committee heard in evidence that off-licences appear to be the basis of most of the social problems with alcohol that we face. If we encourage the continuation of price promotions in off-sales, there will be a distortion of the marketplace. I suggest that, if the minister is not careful, he might find himself in front of the European courts on restraint-of-trade issues.

The minister is sending out the wrong signal by seeming to say that it is okay to go to the off-licence, where alcohol is cheaper. People will take that alcohol home and consume it, possibly in front of children. Today, we need a clear statement from the minister about why the amendment has been framed as it has. Either that, or we will have to go on a course about how to read some of the proposed legislation more carefully.

Fergus Ewing: I have three points to make. First, there should be a level playing field for on-licence and off-licence premises. I find it difficult to understand why there should not be. The minister conceded that the matter might be examined
again later, but that does not explain the anomaly. The committee agreed at stage 1 that we should aim to tackle the problem and we should surely do so across the board. It may be—and it is logically true—that fewer types of activity are possible in off-licences than in an on-sales licensed premises, but nonetheless it will be possible for off-sales premises to indulge in drinks promotions that would be deemed irresponsible in on-sales premises. I am puzzled about that. In the representation that we received from Patrick Browne, who is the chief executive of the Scottish Beer and Pub Association, he argues for a level playing field for all operators. I endorse that.

Secondly, I will address Sylvia Jackson’s point about whether the bill contains a power that will enable the Executive to bring forward similar measures for off-sales premises at a later date if it is advised to do so. I hope that the answer is yes but I fear that it is no. It seems to me that paragraph 8(3)(c) of schedule 3 does not readily allow the bringing forward of subordinate legislation to extend the provisions to off-sales premises. However, no doubt the civil servants have looked at the matter much more closely than I have.

Perhaps the minister will confirm whether it would be necessary to introduce primary legislation later. If so, that would be a great shame, because who knows when there would be time to do that? At the very least, I hope that he will think about adding, if necessary, powers that will allow the provisions to be extended to off-sales premises without the need for primary legislation.

Finally, the minister was careful to answer the industry’s point about linear pricing in relation to paragraph 8(4) of schedule 3 does not readily allow the bringing forward of subordinate legislation to extend the provisions to off-sales premises. However, no doubt the civil servants have looked at the matter much more closely than I have.

I accept that the minister faces challenges in the fact that there is not a level playing field. There are differences in the environments of the off-trade and the on-trade: we have to recognise that. However, the alcohol abuse that the bill is meant to address would just be moved. The issue of antisocial behaviour was touched on earlier. There is absolutely no doubt, in my experience and in what we see through representing our local communities, that there is an element of antisocial behaviour surrounding drinks promotions that take place in local communities. I ask the minister to consider withdrawing amendment 32 with a view to lodging a more detailed amendment at stage 3 that will ensure that there is parity in application of the legislation in the off-trade and the on-trade.

George Lyon: I recognise the committee’s concerns on the matter. In the stage 1 report, the committee acknowledges, right enough, that there are differences between on-sales and off-sales and that sound evidence would be required to justify an intervention in the off-sales market. Members clearly believe that we need more evidence to underpin that, showing the linkage between the purchasing of alcohol at off-sales and drunken and disorderly behaviour, binge drinking and so on. That is more difficult to prove for off-sales than for on-sales, where the drink is purchased for immediate consumption, not to take away to a house.

I recognise that the committee wants us to go further. At the moment, however, we do not have the evidence to go further and to do so would be to risk a challenge. We hope to gather more evidence to allow us to go further and we have the power to extend schedule 3 to take further measures once we have that evidence in front of us.
I hope that members will accept our assurance that we will follow that approach in the coming weeks and months, ensuring that the committee’s recommendation that we go further is considered seriously. We will then decide whether we can actually take further action in this regard.

Fergus Ewing asked about the definition of “drinks promotion”. We have firm legal advice that our definition refers to a drink’s promotion, not to its price. We are therefore confident that it will do the job and will not be linked into linear pricing. Part of the belt-and-braces approach here is what I have said in that regard.

Amendment 32 agreed to.

Amendments 33 and 34 moved—[George Lyon]—and agreed to.

Amendment 35 moved—[George Lyon].

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

AGAINST
Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Amendment 35 agreed to.

Amendments 36 and 37 moved—[George Lyon]—and agreed to.

Schedule 3, as amended, agreed to.
Licensing (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 5   Schedule 1
Sections 6 to 10  Schedule 2
Sections 11 to 25 Schedule 3
Sections 26 to 57 Schedule 4
Sections 58 to 139 Schedule 5
Section 140      Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 27

Mr David Davidson
163 In section 27, page 16, line 34, at end insert <(other than information relating to the premises manager)>

George Lyon
38 In section 27, page 16, leave out lines 37 to 39 and insert—

<( ) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,>

George Lyon
39 In section 27, page 17, line 2, leave out from <change> to <persons> in line 3 and insert <restriction or proposed restriction of the terms on which they are allowed>

Mr David Davidson
164 In section 27, page 17, line 5, leave out from beginning to <manager),> in line 6

Section 28

Mr David Davidson
148 In section 28, page 17, leave out lines 30 to 36

Mr David Davidson
149 In section 28, page 18, line 3, leave out subsection (8)
Section 29

Mr David Davidson

165 Leave out section 29

Section 31

George Lyon

40 In section 31, page 19, line 15, leave out <a partnership or a company> and insert <neither an individual nor a council>

George Lyon

41 In section 31, page 19, line 19, leave out <a partnership or a company> and insert <neither an individual nor a council>

Section 34

Mr David Davidson

150 In section 34, page 21, line 8, leave out <Any> and insert <The appropriate chief constable or any other>

Section 35

George Lyon

42 In section 35, page 22, line 14, leave out <must be made in writing and>

Section 36

Mr David Davidson

151 In section 36, page 23, line 8, leave out <any> and insert <the appropriate chief constable or any other>

Section 41

George Lyon

43 In section 41, page 24, line 31, leave out <a company or a partnership> and insert <neither an individual nor a council>

George Lyon

166 In section 41, page 25, line 11, leave out <3> and insert <4>
Section 42

George Lyon

44 In section 42, page 25, line 17, leave out <a partnership or a company> and insert <neither an individual nor a council>.

Section 43

Mr David Davidson

167 In section 43, page 26, line 38, at end insert—
<( ) Sections 27 to 33 apply in relation to a provisional premises licence as they apply to a premises licence.>

Section 46

Mr David Davidson

168 In section 46, page 28, line 25, at end insert—
<(1A) A premises licence holder must, no later than 7 days after the substitution took effect, notify the appropriate Licensing Board of the substitution of another individual as the premises manager.>

Mr David Davidson

169 In section 46, page 28, line 26, after <(1)> insert <or (1A)>

Mr David Davidson

170 In section 46, page 28, line 29, after <(1)> insert <or (1A)>

After section 48

George Lyon

45 After section 48, insert—

<Notification of determinations>

(1) Where a Licensing Board grants or refuses an application under this Part, the Board must give notice of the grant or refusal to—

(a) the applicant,

(b) the appropriate chief constable, and

(c) in the case of the grant or refusal of a premises licence application, any person who gave a notice of objection or representation under section 21(1) in respect of the application.

(2) A person to whom notice is given under subsection (1) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.
(3) Where the clerk of a Licensing Board receives a notice under subsection (2), the Board must issue a statement of the reasons for the grant or refusal of the application to—
   (a) the person giving the notice, and
   (b) each other person to whom the Board gave notice under subsection (1).
(4) A statement of reasons under subsection (3) must be issued—
   (a) by such time, and
   (b) in such form and manner,
   as may be prescribed.

Section 51

George Lyon

46 In section 51, page 32, line 1, at end insert—
   <( ) the premises manager becomes incapable for any reason of acting as premises manager.>

Section 53

George Lyon

171 In section 53, page 33, line 23, at end insert—
   <( ) a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises,
   ( ) where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including, in particular—
      (i) the ages of the children or young persons to be allowed entry,
      (ii) the times at which they are to be allowed entry, and
      (iii) the parts of the premises to which they are to be allowed entry.>

Section 55

Mr David Davidson

152 In section 55, page 33, line 37, leave out <any> and insert <the appropriate chief constable or any other>

George Lyon

47 In section 55, page 33, line 38, leave out <in writing>
Section 56

George Lyon
48 In section 56, page 34, line 30, leave out <is established> and insert <applies>

George Lyon
49 In section 56, page 34, line 32, leave out <the grounds for refusal is established> and insert <them applies>

George Lyon
50 In section 56, page 34, line 34, leave out <the grounds for refusal is established> and insert <them applies>

George Lyon
172 In section 56, page 35, line 15, leave out subsection (8)

Schedule 4

Mr David Davidson
153 In schedule 4, page 89, line 16, leave out paragraph 6

George Lyon
52 In schedule 4, page 89, line 16, leave out paragraph 6 and insert—

<6 Where the price at which any alcohol sold on the premises is varied—
  (a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and
  (b) no further variation of the price at which that or any other alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.>

George Lyon
53 In schedule 4, page 89, leave out lines 22 and 23

George Lyon
54 In schedule 4, page 89, line 26, at beginning insert <Subject to sub-paragraph (3A),>

George Lyon
55 In schedule 4, page 89, line 35, at end insert—

<(< ) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,>
George Lyon
56 In schedule 4, page 90, line 4, at end insert—

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

George Lyon
57 In schedule 4, page 90, line 5, after <(3)> insert <or (3A)>

George Lyon
58 In schedule 4, page 90, line 7, at end insert <, or

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

After section 57

George Lyon
51 After section 57, insert—

<Notification of determinations

(1) Where a Licensing Board grants or refuses an occasional licence application, the Board must give notice of the grant or refusal to—

(a) the applicant,
(b) the appropriate chief constable, and
(c) any person who gave a notice of objection or representation under section 55(1) in respect of the application.

(2) A person to whom notice is given under subsection (1) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

(3) Where the clerk of a Licensing Board receives a notice under subsection (2), the Board must issue a statement of the reasons for the grant or refusal of the application to—

(a) the person giving the notice, and
(b) each other person to whom the Board gave notice under subsection (1).

(4) A statement of reasons under subsection (3) must be issued—

(a) by such time, and
(b) in such form and manner,

as may be prescribed.>

Section 58

George Lyon
173 In section 58, page 36, line 25, at end insert—
Subsection (1) is subject to section (Power for Licensing Board to grant general extensions of licensed hours)(6).

George Lyon

174 In section 58, page 36, line 26, leave out subsection (2)

Section 60

Bruce Crawford

1 In section 60, page 38, line 12, leave out <24> and insert <18>

After section 60

Bruce Crawford

5 After section 60, insert—

Licensed hours: off-sales

Where—

(a) an application is made to a Licensing Board for—

(i) a premises licence in respect of any premises,
(ii) a variation of such a licence, or
(iii) an occasional licence in respect of any premises, and

(b) the application states that alcohol is to be sold (for consumption off the premises)—

(i) before 8 am,
(ii) after 11 pm, or
(iii) both,

on any day,

the Licensing Board must refuse the application.

After section 61

George Lyon

175 After section 61, insert—

Power for Licensing Board to grant general extensions of licensed hours

(1) A Licensing Board may, if they consider it appropriate to do so in connection with a special event of local or national significance, make a determination extending licensed hours by such period as the Board may specify in the determination.

(2) A determination under subsection (1) may apply to—

(a) the whole of the Licensing Board’s area or only to specified parts of the area,
(b) licensed hours generally or only to specified descriptions of licensed hours, and
(c) all relevant premises in the Board’s area or only to specified descriptions of such premises.

(3) A determination under subsection (1) has effect for such period as the Board may specify in it.

(4) Where a Licensing Board makes a determination under subsection (1), the Board must—

(a) give notice of the determination to—

(i) the appropriate chief constable, and

(ii) the holders of premises licences and occasional licences in respect of premises to which the determination applies, and

(b) publicise it in such manner as the Board sees fit.

(5) Nothing in this section is to be taken as requiring any relevant premises to be open for the sale of alcohol during the period of any extension of licensed hours specified in a determination under subsection (1).

(6) Except where the context requires otherwise, references in this Act to “licensed hours” are, in relation to any relevant premises to which a determination under subsection (1) applies, to be taken as references to such hours as extended by the determination.

(7) In this section—

“relevant premises” means—

(a) licensed premises, and

(b) premises in respect of which an occasional licence has effect, and

“specified” means specified in a determination under subsection (1).>
(b) in such form and manner,
as may be prescribed.>

Section 73

George Lyon

61 In section 73, page 44, line 35, leave out <3> and insert <4>

Section 86

George Lyon

176 In section 86, page 53, line 11, after <(1)> insert <of breaching an exclusion order made under section 85(2)>.

George Lyon

62 In section 86, page 53, line 14, leave out <the premises licence holder> and insert <an authorised person>.

George Lyon

63 In section 86, page 53, line 16, leave out <premises licence holder> and insert <authorised person>.

George Lyon

64 In section 86, page 53, line 20, leave out <a premises licence holder> and insert <an authorised person>.

George Lyon

65 In section 86, page 53, line 24, at end insert—

<( ) In this section, “authorised person” means, in relation to licensed premises, any of the following persons, namely—

(a) the premises licence holder,
(b) the premises manager, and
(c) any other person who—

(i) works on the premises, and
(ii) is authorised by the premises licence holder or the premises manager for the purposes of this section.>

Section 91

George Lyon

66 In section 91, page 55, line 31, leave out <this Part> and insert <section 88(1)(a) or 89(3)(a)>.

George Lyon

66
George Lyon

67 In section 91, page 55, line 32, leave out <this Part> and insert <section 88(6), 89(2) or 90(3)>

Section 92

George Lyon

68 In section 92, page 56, line 6, leave out from <, and> to end of line 7

Section 95

George Lyon

69 In section 95, page 57, line 2, leave out <knowingly>

Section 96

Bruce Crawford

2 In section 96, page 57, line 18, at end insert—

<( ) No offence is committed under subsection (1) if the purchase or attempted purchase of alcohol is authorised by the chief constable for the police area in which the purchase or attempted purchase takes place for the purpose of determining whether section 93 is being complied with.>

Section 99

George Lyon

70 In section 99, page 58, line 21, leave out <knowingly>

Michael McMahon

162 In section 99, page 58, line 23, leave out subsection (3) and insert—

<(3) A responsible person must ensure that alcohol is not delivered to a person if a reasonable person would suspect from the person’s appearance that the person may be aged under 18 unless the responsible person (or a person delivering the alcohol on behalf of the responsible person) is shown proof that the person is aged 18 or over.

(3A) For the purposes of subsection (3), a responsible person (or a person delivering the alcohol on behalf of the responsible person) is shown proof that the person is aged 18 or over if and only if—

(a) shown any document bearing to be—

(i) a passport,

(ii) a European Union photocard driving licence, or

(iii) such other document, or a document of such other description, as may be prescribed,

which shows the person to be aged 18 or over, and
(b) the document would convince a reasonable person.

(3B) Any responsible person who—

(a) delivers the alcohol, or

(b) allows it to be delivered,

in contravention of subsection (3) commits an offence.

(3C) It is a defence for a person charged with an offence under subsection (3B)(b) ("the accused") to prove that the accused took all reasonable precautions and exercised due diligence not to commit the offence.

(3D) Where alcohol is not delivered to a person because of the person’s failure to show proof that the person is aged 18 or over, the responsible person must report the attempt to buy alcohol to a constable.

George Lyon

71 In section 99, page 58, line 23, leave out <knowingly>

George Lyon

72 In section 99, page 58, line 29, at end insert—

<(4A) It is a defence for a person charged with an offence under subsection (2) or (3)(a) (referred to in this subsection and subsection (4B) as “the accused”) to show that—

(a) the accused believed the child or young person to be aged 18 or over, and

(b) either—

(i) the accused had taken reasonable steps to establish the child’s or young person’s age, or

(ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.

(4B) For the purposes of subsection (4A)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (4C), and

(b) that document would have convinced a reasonable person.

(4C) The documents referred to in subsection (4B)(a) are any document bearing to be—

(a) a passport,

(b) a European Union photocard driving licence, or

(c) such other document, or a document of such other description, as may be prescribed.

(4D) It is a defence for a person charged with an offence under subsection (3)(b) ("the accused") to prove that the accused took all reasonable precautions and exercised due diligence not to commit the offence.>

George Lyon

73 In section 99, page 58, line 30, leave out subsection (5)
Section 101

George Lyon

74 In section 101, page 59, line 35, leave out <exempt> and insert <other relevant>

George Lyon

75 In section 101, page 59, line 36, leave out from <, and> to end of line 37

Section 107

George Lyon

76 In section 107, page 61, line 25, leave out subsection (3) and insert—

<(2A) Where a person refuses or fails to leave any relevant premises as mentioned in subsection (1) or (2), an authorised person may—

(a) remove the person from the premises, and

(b) if necessary for that purpose, use reasonable force.

(2B) A constable must, if—

(a) asked by an authorised person to assist in exercising a power conferred by subsection (2A), and

(b) the constable reasonably suspects the person to be removed of having refused or failed to leave as mentioned in subsection (1) or (2),

provide the assistance asked for.>

George Lyon

77 In section 107, page 61, line 28, at end insert—

<( ) In this section, “authorised person” means, in relation to any relevant premises, any of the following persons, namely—

(a) a responsible person, and

(b) any other person who—

(i) works on the premises, and

(ii) is authorised by a responsible person for the purposes of this section.>

Section 108

George Lyon

78 In section 108, page 61, line 31, leave out <wholesaler> and insert <person>

George Lyon

79 In section 108, page 61, line 31, leave out <by wholesale> and insert <to trade>
George Lyon

80 In section 108, page 61, line 32, leave out <such sales> and insert <the selling of goods (whether solely alcohol or not) to trade>

George Lyon

81 In section 108, page 61, line 35, leave out subsection (3)

Section 109

George Lyon

177 In section 109, page 61, line 38, at end insert <, unless the selling of alcohol on or from the vehicle at such a time is expressly authorised by a premises licence or occasional licence in respect of the vehicle>

Section 111

George Lyon

82 Leave out section 111

Section 114

George Lyon

83 In section 114, page 64, leave out lines 4 and 5 and insert—

<(  ) any premises used for the selling of alcohol to trade.>

Michael McMahon

178 In section 114, page 64, line 5, at end insert <, and

(  ) for the purposes of sections 94 and 97, any vehicle (whether moving or not).>

George Lyon

84 In section 114, page 64, line 11, leave out <exempt> and insert <other relevant>

George Lyon

85 In section 114, page 64, line 13, leave out from beginning to <wholesaler,>

Section 115

George Lyon

86 In section 115, page 64, line 31, at beginning insert <subject to subsection (4A),>
George Lyon
87 In section 115, page 64, line 31, leave out <primarily>

George Lyon
88 In section 115, page 64, line 32, leave out <primarily>

Bruce Crawford
3 In section 115, page 64, line 32, at end insert—
<(2A) Premises of the type mentioned in subsection (2)(b) are not excluded premises if—
   (a) they are located in a rural area; and
   (b) a likely effect of them being excluded premises would be that the provision of
       amenities in the area surrounding the premises would be significantly reduced.>

George Lyon
89 In section 115, page 65, line 1, leave out <primarily>

George Lyon
90 In section 115, page 65, line 5, at end insert—
<(4A) Despite subsection (2)(b), premises used for the sale by retail of petrol or derv or which
    form part of premises so used are not excluded premises if persons resident in the
    locality in which the premises are situated are, or are likely to become, reliant to a
    significant extent on the premises as the principal source of—
    (a) petrol or derv, or
    (b) groceries (where the premises are, or are to be, used also for the sale by retail of
        groceries).>

Section 116

George Lyon
91 In section 116, page 65, leave out lines 35 and 36

Section 117

Mr David Davidson
154 In section 117, page 66, leave out line 7

Mr David Davidson
155 In section 117, page 66, leave out lines 10 and 11

Mr David Davidson
156 In section 117, page 66, leave out lines 14 and 15
Mr David Davidson

157 In section 118, page 66, line 38, after <vessel> insert <(other than a passenger ferry)>

George Lyon

179 In section 118, page 67, line 6, at end insert—

<(3) The following provisions of Part 3 (which relate to the provision of certificates as to planning, building standards and food hygiene and to notifications of applications) do not apply in relation to premises (other than exempt premises) consisting of a vessel, namely—

(a) section 19(2)(b)(iii),
(b) section 20(1)(a) and (e),
(c) section 27(4) (so far as it applies section 20(1)(a) and (e)),
(d) section 43(10)(a),
(e) section 44(2)(d), and
(f) section 48.

(4) This Act applies in relation to premises consisting of a vehicle or other moveable structure which is, or is to be, used for the sale of alcohol while not parked or permanently situated in any place (referred to in this section as “moving premises”) subject to the modifications in subsections (5) to (9).

(5) Section 17 does not apply and instead, in Part 3 and this section, “appropriate Licensing Board” means in relation to moving premises or a premises licence or occasional licence issued in respect of such premises—

(a) the Licensing Board in whose area the premises are used or to be used for the sale of alcohol, or
(b) where the premises are used or to be used in the area of more than one Licensing Board—

(i) the Board in whose area they are used or to be used to the greater or greatest extent, or
(ii) if neither or none of those Boards falls within sub-paragraph (i), such of those Boards as is, in the application for a premises licence or, as the case may be, occasional licence in respect of the premises, nominated as the appropriate Licensing Board in respect of the premises.

(6) The following provisions of Part 3 do not apply in relation to moving premises, namely—

(a) section 19(2)(b)(iii),
(b) section 20(1)(a), (b), and (e)
(c) section 27(4) (so far as it applies section 20(1)(a), (b) and (e)),
(d) section 43(10)(a),
(e) section 44(2)(d), and
(f) section 48.

(7) Section 20(1) applies in relation to moving premises as if for paragraph (c) there were substituted—

“(c) the relevant council,”.

(8) References to the locality in which premises are situated are, in relation to moving premises, to be taken as references to the area of the appropriate Licensing Board.

(9) For the purposes of Part 4, moving premises are to be treated as premises situated within the area of the appropriate Licensing Board.

(10) The Scottish Ministers may by regulations provide for this Act to apply in relation to vessels, vehicles and moveable structures subject to such further modifications as they consider necessary or expedient.>

After section 118

Mr David Davidson

After section 118, insert—

<Passenger ferries

(1) For the purposes of this Act’s application to passenger ferries—

“premises” means all vessels used by a particular operator on a particular route, and

“the appropriate Licensing Board” means the Licensing Board in whose area the headquarters of the operator are situated.

(2) A Licensing Standards Officer may exercise the general function mentioned in section 14(1)(b) and the powers mentioned in section 15 in respect of any passenger ferry for the time being within the Officer’s council area.

(4) Nothing in this Act affects any other enactment or rule of law which permits the master of a passenger ferry to refuse the service of alcohol to any person or persons.>

Section 119

George Lyon

In section 119, page 67, leave out lines 30 and 31

George Lyon

In section 119, page 67, leave out line 32

After section 119

Mr David Davidson

After section 119, insert—
Sports grounds and sporting events

In section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)—

(a) in subsection (1), for “subsection (2)”, substitute “subsections (2) and (2A)”, and
(b) after subsection (2), insert—

“(2A) Sections 19, 20(2), 20(7) and 21(e)(ii) of this Act do not apply to sports
grounds or sporting events designated in an order under subsection (1) unless,
on the application of a person mentioned in subsection (2B), the Scottish
Ministers have confirmed that designation in respect of a date or dates
specified in the application.

(2B) Those persons are—

(a) the chief constable for the area in which the sports ground is situated or
the sporting event is to be held;
(b) the managers of the sports ground or sporting event in respect of which
the application is made.”.

Section 120

George Lyon
94 In section 120, page 68, line 6, at end insert—

<( ) Regulations under subsection (1) may provide, in relation to any offence or description
of offence prescribed in them, that a person is to be treated, for the purposes of such
provisions of this Act as may be specified in the regulations, as having been convicted
of the offence only if the person—

(a) accumulates such number of separate convictions for the offence, or
(b) is convicted of committing the offence on such number of separate occasions,
as may be so specified.>

Section 122

George Lyon
95 In section 122, page 68, line 30, leave out subsections (1) and (2) and insert—

<(1) A decision of a Licensing Board specified in the left-hand column of schedule (Appeals)
may be appealed by the person specified in the right-hand column of that schedule.>

George Lyon
96 In section 122, page 68, line 38, leave out subsection (3) and insert—

<(3) An appeal under this section is to be made by way of stated case, at the instance of the
appellant, to—

(a) where the decision appealed is specified in Part 1 of schedule (Appeals), the
sheriff principal, or
(b) where the decision appealed is specified in Part 2 of that schedule, the sheriff,
of the appropriate sheriffdom.>

George Lyon

97 In section 122, page 69, line 1, leave out subsection (4)

After schedule 4

George Lyon

98 After schedule 4, insert—

<SCHEDULE
(introduced by section 122(1))

APPEALS

PART 1

APPEALS TO THE SHERIFF PRINCIPAL

<table>
<thead>
<tr>
<th>Decision</th>
<th>Persons who can appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>A decision to refuse a premises licence application</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse a premises licence variation application</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 31(1) or 32(1) for transfer of a premises licence</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 33(1) for a variation of a premises licence</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision under section 37(1) to issue a written warning to a premises licence holder, to make a variation of a premises licence, or to suspend or revoke such a licence</td>
<td>The premises licence holder or, where the decision is taken in connection with a premises licence review application, the applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 38 to revoke a variation or suspension of a premises licence</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 43(7) to extend the provisional period in relation to a provisional premises licence</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 44(4) to confirm a provisional premises licence</td>
<td>The applicant</td>
</tr>
</tbody>
</table>
### PART 2

**APPEALS TO THE SHERIFF**

<table>
<thead>
<tr>
<th>Decision</th>
<th>Persons who can appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>A decision to refuse an application under section 45(2) to issue a premises licence for temporary premises</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an application under section 45(6) to extend the period for which a temporary premises licence has effect</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to refuse an occasional licence application</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to grant an occasional licence application</td>
<td>Any person who has given a notice of objection under section 55(1)</td>
</tr>
</tbody>
</table>

**Section 123**

**George Lyon**

99 In section 123, page 69, line 38, leave out subsection (4) and insert—

\[( ) A sheriff principal may authorise, whether generally or specifically, any other sheriff of the sheriff principal’s sheriffdom to consider and determine an appeal made to the sheriff principal under section 122(3)(a).\]

**George Lyon**

100 In section 123, page 70, line 6, at end insert <, subject to subsection (7A)>

**George Lyon**

101 In section 123, page 70, line 6, at end insert—

\[<(7A) Where an appeal is taken against a decision of a Licensing Board to suspend or revoke a premises licence, the sheriff principal may—\]

(a) on the application of the appellant, and

(b) if satisfied on the balance of convenience that it is appropriate to do so,
recall the suspension or revocation pending determination of the appeal.

Section 125

George Lyon
102 In section 125, page 70, line 26, after <application> insert <, proposal>

George Lyon
103 In section 125, page 70, line 29, after <application> insert <, proposal>

George Lyon
104 In section 125, page 70, line 35, after <application> insert <, proposal>

Section 127

Paul Martin
160 In section 127, page 71, line 23, at end insert <, and

( ) in respect of the recovery from particular licence holders of sums not exceeding any increase in the cost of providing public services (including policing) which is directly attributable to activities in, or in the vicinity of, or by customers of, or staff employed in, the premises in respect of which the licence is held.

Bruce Crawford
4 In section 127, page 71, line 23, at end insert—

<( ) Regulations under subsection (1) which make provision for fees to be paid by licensed premises or prospective licensed premises must provide for the level of fees charged to vary between different sizes and types of premises.>

After section 134

George Lyon
105 After section 134, insert—

<Modification of enactments

Schedule (Modification of enactments), which modifies enactments, has effect.>

After schedule 4

George Lyon
106 After schedule 4, insert—
SCHEDULE
(introduced by section (Modification of enactments))
MODIFICATION OF ENACTMENTS

Children and Young Persons Act 1963 (c.37)
1 In section 37(2)(b)(ii) (restriction on persons under 16 taking part in public performances within licensed premises) of the Children and Young Persons Act 1963, for “1976” or in respect of which a club is registered under that Act” substitute “2005 (asp 00))”.

Countryside (Scotland) Act 1967 (c.86)
2 In section 78(1) (interpretation) of the Countryside (Scotland) Act 1967, in the definition of “refreshments”, for “alcoholic liquor within the meaning of the Licensing (Scotland) Act 1976” substitute “alcohol within the meaning of section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

New Towns (Scotland) Act 1968 (c.16)
3 (1) The New Towns (Scotland) Act 1968 is amended as follows.
(2) In section 18(2) (disposal of land by development corporations), in the proviso, for “alcoholic liquor” substitute “alcohol”.
(3) In section 47(1) (interpretation), for the definition of “alcoholic liquor”, substitute the following definition—

““alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

Water (Scotland) Act 1980 (c.45)
4 In section 50(1)(b) (power to require supply by meter to certain premises) of the Water (Scotland) Act 1980, for “1976” substitute “2005 (asp 00) 

Local Government, Planning and Land Act 1980 (c.65)
5 In section 146 (disposal of land by urban development corporation) of the Local Government, Planning and Land Act 1980, for subsection (6) substitute—

“(6) In this section, “alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00).”.

Civic Government (Scotland) Act 1982 (c.45)
6 (1) The Civic Government (Scotland) Act 1982 is amended as follows.
(2) In section 41(2)(f) (exclusion of licensed premises from definition of place of public entertainment)—

(a) for “1976” substitute “2005 (asp 00)”, and
(b) for “the permitted” substitute “licensed”.

(3) In section 42(4)(a) (late hours catering licence not required in respect of licensed premises), for “1976” substitute “2005 (asp 00)”.  

Čriminal Law (Consolidation) (Scotland) Act 1995 (c.39)

7 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

(2) In section 22 (presumption as to contents of container), for “Section 127 of the Licensing (Scotland) Act 1976 (presumption as to contents of container)” substitute “Section 131 of the Licensing (Scotland) Act 2005 (asp 00) (presumption as to liquid contents of containers)”.  

(3) In section 23 (interpretation of Part II), for the definition of “alcohol”, substitute the following definition—

““alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00);”.  

Crime and Punishment (Scotland) Act 1997 (c.48)

8 (1) Section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 is amended as follows.

(2) In subsection (1)—

(a) in paragraph (b), for “alcoholic liquor, within the meaning of the Licensing (Scotland) Act 1976” substitute “alcohol”, and  

(b) for “that liquor” substitute “the alcohol”.  

(3) In subsection (2), for—

(a) “alcoholic liquor”, and  

(b) “liquor” in each place where that word appears, substitute “alcohol”.  

(4) In subsection (6), for “1976” substitute “2005 (asp 00)”.  

(5) After subsection (6) insert—

“(7) In this section, “alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.  

Scottish Public Services Ombudsman Act 2002 (asp 11)

9 In paragraph 10 of Part 1 of schedule 2 (authorities not amendable by Order in Council) to the Scottish Public Services Ombudsman Act 2002, for “within the meaning of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.  

22
In paragraph 23 of Part 3 of schedule 1 (local government) to the Freedom of Information (Scotland) Act 2002, for “constituted in accordance with the provisions of section 1 of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.

Section 136

George Lyon

107 In section 136, page 75, line 32, leave out from <(except> to <135)> in line 33 and insert <except—

(a) an order under section 115(5) or 140(2),
(b) regulations under section 25(2) or 130(3), and
(c) where subsection (5) applies, an order under section 135,>

George Lyon

108 In section 136, page 75, line 35, after <No> insert—

<(a) order under section 115(5),
(b) regulations under section 25(2) or 130(3), or
(c)>>

George Lyon

109 In section 136, page 75, line 37, after <order> insert <or regulations>

Section 137

George Lyon

110 In section 137, page 76, line 11, at end insert—

<“capacity”, in relation to licensed premises, means—

(a) in relation to licensed premises on which alcohol is sold for consumption on the premises (including any such premises on which alcohol is also sold for consumption off the premises), the maximum number of customers which can be accommodated in the premises at any one time, and
(b) in relation to licensed premises on which alcohol is sold only for consumption off the premises, the amount of space in the premises given over to the display of alcohol for sale,>

George Lyon

111 In section 137, page 76, line 25, at end insert—
<“railway vehicle” means a railway vehicle within the meaning of section 83 of the Railways Act 1993 (c.43) that is used in the provision of a railway service within the meaning of section 82 of that Act (excluding the wider meaning of “railway” given by section 81(2) of that Act),>

George Lyon

112 In section 137, page 76, line 32, at end insert—
<“senior police officer” means a constable of or above the rank of superintendent,>

George Lyon

113 In section 137, page 76, leave out lines 40 to 42

George Lyon

114 In section 137, page 77, line 1, at end insert—
<1(A) In this Act, references to selling alcohol or other goods to trade are references to selling the alcohol or goods to a person for the purposes of the person’s trade; and related expressions are to be construed accordingly,>

George Lyon

115 In section 137, page 77, line 2, leave out <or a club> and insert <, a club or other body (whether incorporated or unincorporated)>

George Lyon

116 In section 137, page 77, line 8, at end insert—
<(. ) in any other case, is concerned in the management or control of the body,>

Section 138

George Lyon

117 In section 138, page 77, line 25, at end insert—
<capacity (in relation to licensed premises) section 137(1)>

George Lyon

118 In section 138, page 78, line 8, at end insert—
<licensed hours section 58(1)>

George Lyon

119 In section 138, page 78, line 10, at end insert—
<licensing policy statement section 6(1)>
Mr David Davidson

161 In section 138, page 78, leave out line 14

George Lyon

120 In section 138, page 79, line 4, at end insert—

<railway vehicle section 137(1)>

George Lyon

121 In section 138, page 79, line 8, at end insert—

<selling to trade section 137(1A)>

George Lyon

122 In section 138, page 79, line 8, at end insert—

<senior police officer section 137(1)>

George Lyon

123 In section 138, page 79, line 10, at end insert—

<supplementary licensing policy statement section 6(2)>

George Lyon

124 In section 138, page 79, leave out lines 16 and 17

Schedule 5

George Lyon

125 In schedule 5, page 90, line 24, at end insert—

<Finance Act 1970 (c.24) Section 6

Local Government (Scotland) Act 1973 Paragraph 36 of Schedule 24

(c.65) Paragraph 17 of Schedule 25>

George Lyon

126 In schedule 5, page 90, line 26, at end insert—

<Alcoholic Liquor Duties Act 1979 Section 77(6)
(c.4)> Paragraphs 9 to 11 of Schedule 2

(c.55)
Local Government, Planning and Land Act 1980 (c.65)  In section 146(3), the words “or alcoholic liquor”

Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c.23)  Paragraphs 4 and 5 of Schedule 2

Roads (Scotland) Act 1984 (c.54)  Paragraph 77 of Schedule 9

Transport Act 1985 (c.67)  Paragraph 18 of Schedule 7

Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73)  Section 53

Housing (Scotland) Act 1987 (c.26)  Subsection (3) of section 5

Food Safety Act 1990 (c.16)  Paragraph 19 of Schedule 3

Licensing (Low Alcohol Drinks) Act 1990 (c.21)  The whole Act

George Lyon

128  In schedule 5, page 90, line 32, at end insert—

<Finance Act 1991 (c.31)  In paragraph 1(a) of Schedule 2, the words “or the Licensing (Scotland) Act 1976,”>

George Lyon

129  In schedule 5, page 91, line 4, leave out <Paragraph> and insert <Paragraphs 23 and>

George Lyon

130  In schedule 5, page 91, line 4, at end insert—

<The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)  In section 19(2), the words from “Notwithstanding” to “but”>

George Lyon
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Minor variations
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Level of penalties
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Provisional premises licences: variations and transfers
167

Notification of determinations and reasons
45, 172, 51, 60

Information to be contained in occasional licence
171

Extension of licensed hours
173, 174, 175

Maximum length of licensed hours
1

Licensed hours: off-sales
5

Termination or variation of exclusion orders
176

Powers of removal of persons from premises
62, 63, 64, 65, 76, 77

Closure orders: regulations as to form of applications and notices
66, 67

Definition of “senior police officer”
68, 93, 112, 122

Offences relating to children
69, 70, 162, 71, 72, 73

Test purchasing
2
Vessels, vehicles and moveable structures
177, 178, 179

Carriage of alcohol on PSVs
82

Excluded premises: petrol stations
86, 87, 88, 3, 89, 90

Trains and trams
91, 92, 111, 120

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Relevant offences: persistent offenders
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Appeals
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Fees: ability to recover increased costs
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105, 106, 125, 126, 127, 128, 129, 130

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Note: the following amendments have already been debated—

With 131 – 148, 149, 154, 155, 156, 161
With 23 – 40, 41, 43, 44, 115, 116
With 141 – 150, 151, 152
With 7 – 42, 47, 102, 103, 104
With 21 – 46
With 29 – 48, 49, 50
With 147 – 153, 52
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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

EXTRACT FROM THE MINUTES

25th Meeting, 2005 (Session 2)

Tuesday 27 September 2005

Present:

Mr Andrew Arbuckle  
Bruce Crawford JP (Deputy Convener)  
David Davidson  
Fergus Ewing  
Dr Sylvia Jackson  
Paul Martin  
Michael McMahon  
Bristow Muldoon (Convener)  
Tommy Sheridan

Licensing (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to without division: 38, 39, 40, 41, 42, 43, 44, 45, 46, 171, 47, 48, 49, 50, 172, 52, 53, 54, 55, 56, 57, 58, 51, 173, 174, 175, 59, 60, 61, 176, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 177, 82, 83, 84, and 85

The following amendment was agreed to by division:

5 (For 4, Against 3, Abstentions 2)

The following amendments were disagreed to by division:

163 (For 1, Against 8, Abstentions 0)  
148 (For 1, Against 8, Abstentions 0)  
168 (For 1, Against 8, Abstentions 0)  
1 (For 4, Against 5, Abstentions 0)

Amendments 167 and 2 were moved and, with the agreement of the Committee, withdrawn.

Amendments 164, 149, 165, 150, 151, 169, 170, 152, 153, 162 and 178 were not moved.

Sections 26, 28, 29, 30, 32, 33, 34, 36, 37, 38, 39, 40, 43, 44, 45, 46, 47, 48, 49, 50, 52, 54, 57, 59, 60, 62, 63, 64, 65, 67, 68, 69, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 93, 94, 96, 97, 98, 100, 102, 103, 104, 105, 106, 110, 112 and 113 were agreed to without amendment.

Sections 27, 31, 35, 41, 42, 51, 53, 55, 56, schedule 4, sections 58, 61, 66, 70, 73, 86, 91, 92, 95, 99, 101, 107, 108, 109 and 114 were agreed to as amended.

The Committee ended consideration for the day, section 114 having been disposed of.
14:30

The Convener: In our stage 2 consideration of the Licensing (Scotland) Bill today, we will go no further than section 114. I aim for a finish time of approximately 4.30 pm, but that will depend on exactly how much progress we make. Members should have with them a copy of the bill, the marshalled list and the grouping of amendments. I welcome the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, George Lyon, and the Scottish Executive officials who are supporting him. If the minister is ready, we will go straight to consideration of amendments.

Section 26 agreed to.

Section 27—Application to vary premises licence

The Convener: Amendment 163, in the name of David Davidson, is grouped with amendments 164, 165 and 168 to 170.

Mr Davidson: The amendments would remove the requirement that a change in the manager of a premises should be classed as a variation, given the associated cost, time and bureaucracy that would be involved. We believe that it would be adequate for someone to hold a personal licence, with all the requirements that that involves. The board should not have to reconsider the application as if it were a complete variation of a premises licence; it should be adequate for the board to be notified that a new premises manager had taken over the running of the premises and to amend their records accordingly.

We seek to cut down the amount of bureaucracy that the bill still seems to require—I suspect through an oversight—and to simplify the procedure, enabling boards to intervene should they require to, but without incurring the huge costs associated with the variation of a premises licence. Through the amendments that the minister has lodged, we know that he shares that ideal and spirit. We are trying to be constructive; we are not trying to weaken the bill. We want to make the procedure easier and more cost effective, while still granting the security that is required.

I move amendment 163.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): I share David Davidson’s objective, but I hope that he will see that, as I will explain, we have already taken cognisance of it and provided for it in the bill.
The amendments seek to ensure that a change in the premises manager does not require a variation of the premises licence under section 27. Instead, David Davidson seeks to make such a change an issue that needs to be notified to the board within seven days under section 46. I am aware that one or two licensing board clerks have taken the view that the requirement that a change in premises manager should be treated as a variation is too onerous, as managers may change frequently.

However, I am also aware that the issue has been misunderstood. It might be helpful if I explained further the effects. The amendments would require a change in the premises manager to be notified to the board. That would require filling in a form with the notification details and sending it to the board accompanied by the premises licence. The board would then update the licence and send it back. That is essentially what David Davidson proposes.

The bill as it stands classifies a change in premises manager as a minor, not a major, variation. That is perhaps where there is some misunderstanding. It would require filling in a form with the details and sending it to the board accompanied by the premises licence. On receipt of the form, the board would automatically grant the application. It would then update the licence and send it back.

As I hope the committee and Mr Davidson will see, the minor variation procedure, by which the board would automatically grant the application, is essentially a notification procedure. His amendments, therefore, would produce no practical difference at all. I appreciate that he is concerned to reduce bureaucracy and I share that aim, but I hope that he will accept that that has already been more than adequately catered for. Therefore, I ask him to withdraw amendment 163 and not to move the others in the group.

Mr Davidson: The minister mentioned that one or two clerks, who are skilled in these matters, have taken a view that the wording of the bill is inadequate and open to varied interpretation. Some of the trade bodies that approached me expressed extreme concern about that and their legal advisers have suggested to them that the amendments needed to be made to the bill.

The question for the minister is why the trade, the lawyers and the licensing clerks have come to the view that the wording of the bill is inadequate for the purpose. If the wording were clear, none of them would have raised the issue. However, they saw fit to raise it with the civil servants and with the minister, so I wish to press the amendment.

The Convener: The question is, that amendment 163 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Davidson, Mr David (North East Scotland) (Con)

Against
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 163 disagreed to.

The Convener: Amendment 38, in the name of the minister, is grouped with amendment 39.

George Lyon: The bill provides for different procedures on the variations to a premises licence, depending on whether the variation is a minor variation, which I spoke about earlier, or a major variation. Minor variations are simply notified to the board and automatically approved. The bill defines what are to be minor variations; all other variations are, by default, major variations. However, Sheriff Principal Nicholson expressed concern that the definition of minor variation in the bill was not precise enough and could allow some alterations to be approved that were not in essence minor.

Our policy has always been to provide a simple procedure for licensees to make small changes to their premises layout—moving shelves or adding optics, for example—which could be approved with as little bureaucracy as possible. Such changes are of little interest to the public and have no effect on the licensing objectives. However, it is important that changes in business activities, which should, of course, be major variations, cannot be disguised or passed off as minor variations, thereby bypassing the full scrutiny of a licensing board.

Amendment 38 introduces a new definition of a minor variation on changes to the layout of a premises. It would allow changes to layout plans to be treated as minor if they do not result in inconsistency with the operating plan, which is central to the licence. That formulation would allow licensees sufficient flexibility while preventing abuse.

Amendment 39 adjusts the definition of a minor variation on access by children, allowing a proposed reduction—I stress that it is a reduction only—in the amount of access allowed to children to be classed as merely a minor variation. A proposed increase in access by children would still
require a full determination procedure by the board and would be treated as a major variation.

I move amendment 38.

Fergus Ewing: I can see the logic of replacing the definition in section 27(6)(a) by that in amendment 38—indeed, one could say that the logic is robust. However, might that lead to application of the law of unintended consequences? As I remarked last week, the practice might develop that the operating plan would be framed on as broad a basis as possible so that it would be difficult to say that any particular change would be inconsistent with it. If the minister accepts that that is a risk—as a former legal practitioner, I can certainly see that those who frame operating plans might be advised to take that approach—is he concerned that the outcome might not be what the Executive intends?

George Lyon: That point has been well taken. I assure Fergus Ewing that we are aware that there might be a temptation to go for as broad an operating plan as possible. We have lodged amendments to deal with that and I will deal with those when we come to them, if that is okay with the committee.

The Convener: I should not really have let you come in there, minister, because other members want to speak.

Mr Davidson: I came across a situation recently in which somebody had reconstructed a barn restaurant premises and realised afterwards that it would have been far more sensible to have switched the location of the food and bar areas—two open areas with a slight partition between them. Is the minister saying that that sort of thing would be dealt with as a minor variation or would that be a complete change? The original application would clearly have stated that one area was primarily a restaurant and the other was primarily a drinking area.

George Lyon: Cases will be dealt with individually, but I expect that a change of that magnitude would be deemed a major variation.

Amendment 38 agreed to.

Amendment 39 moved—[George Lyon]—and agreed to.

Amendment 164 not moved.

Section 27, as amended, agreed to.

Section 28—Determination of application for variation

Amendment 148 moved—[Mr David Davidson].

The Convener: The question is, that amendment 148 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)

Crawford, Bruce (Mid Scotland and Fife) (SNP)

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

Jackson, Dr Sylvia (Stirling) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)

McMahon, Michael (Hamilton North and Bellshill) (Lab)

Muldoon, Bristow (Livingston) (Lab)

Sheridan, Tommy (Glasgow) (SSP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 148 disagreed to.

Amendment 149 not moved.

Section 28 agreed to.

Section 29—Variation to substitute new premises manager

Amendment 165 not moved.

Section 29 agreed to.

Section 30 agreed to.

Section 31—Transfer on application of licence holder

Amendments 40 and 41 moved—[George Lyon]—and agreed to.

Section 31, as amended, agreed to.

Sections 32 and 33 agreed to.

Section 34—Application for review of premises licence

Amendment 150 not moved.

Section 34 agreed to.

Section 35—Review of premises licence on Licensing Board’s initiative

Amendment 42 moved—[George Lyon]—and agreed to.

Section 35, as amended, agreed to.

Section 36—Review hearing

Amendment 151 not moved.

Section 36 agreed to.

Sections 37 to 40 agreed to.
Section 41—Licence holder’s duty to notify Licensing Board of convictions

Amendment 43 moved—[George Lyon]—and agreed to.

14:45

The Convener: Amendment 166, in the name of the minister, is grouped with amendments 59 and 61.

George Lyon: The amendments in the group increase fine levels for the failure of a holder of a premises licence or a personal licence and an applicant for a personal licence to notify the licensing board of a conviction for a relevant offence. We consider that both sets of fine levels have been set too low with regard to the seriousness of a failure to notify a conviction.

At the time of an application for a personal or a premises licence, notification is, of course, given to the chief constable, who will inform the board at that time of any relevant offences. Once the application has been determined, the holder is under an obligation under section 41, in relation to a premises licence holder, or section 73, in relation to a personal licence holder, to notify the board of any relevant convictions.

Section 66 caters for the period in between for personal licence applicants and ensures that there are no gaps. There is currently no equivalent to section 66 for premises licence applications, so we intend to lodge an amendment at stage 3 to ensure consistency of approach.

Sections 41 and 73 relate to premises and personal licence holders, who currently attract a fine at level 3 on the standard scale. The amendments provide for the fine to be increased to level 4. An offence by a licence holder is considered to be more serious than one by an applicant, because the period for which the licence is held is either 10 years for a personal licence or in perpetuity for a premises licence, whereas the period of an application is only a few weeks. In practice, that means a fine under section 66 of £1,000 and under sections 41 and 73 of £2,500.

I move amendment 166.

Amendment 166 agreed to.

Section 41, as amended, agreed to.

Section 42—Procedure where Licensing Board receives notice of conviction

Amendment 44 moved—[George Lyon]—and agreed to.

Section 42, as amended, agreed to.

Section 43—Provisional premises licence

The Convener: Amendment 167, in the name of David Davidson, is in a group on its own.

Mr Davidson: When a provisional premises licence is granted, no mechanism exists for it to be transferred or for a major variation to be made without the whole process having to start again from scratch. The aim of amendment 167 is to save time, money and lawyers’ fees where a development is started and subsequently changed in design or layout or when ownership has to be transferred because the company is bought out or sold on, for example.

A safeguard is that a provisional licence cannot come into force unless it is confirmed under section 44, but section 44(5) excludes any changes “other than a minor variation”.

No variation other than a minor variation will be able to be made, hence the need for amendment 167. The point is technical.

I move amendment 167.

George Lyon: Amendment 167 is unnecessary. A provisional premises licence is a type of premises licence. Accordingly, references in sections 27 to 33 to a premises licence already cover a provisional premises licence. That means that a provisional premises licence may be varied or transferred if required. With that clarification, I hope that David Davidson will withdraw his amendment, as the bill caters for the matter.

Mr Davidson: I am a little puzzled by the minister’s comment. If he assures me that everybody out there believes that to be the position and that the Executive will apply that interpretation, I will be happy to withdraw the amendment and to reserve my right to do something at stage 3. That depends on the minister’s assurance.

The Convener: I do not want to reopen the debate. The minister has made his contribution. It is up to you to decide whether to press or withdraw the amendment.

Mr Davidson: I reserve my right to lodge an amendment later and ask to withdraw amendment 167.

Amendment 167, by agreement, withdrawn.

Section 43 agreed to.

Sections 44 and 45 agreed to.

Section 46—Notification of change of name or address

The Convener: Do you wish to move amendment 168, David?
Mr Davidson: I do, given what I said earlier. I move amendment 168.

The Convener: The question is, that amendment 168 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Davidson, Mr David (North East Scotland) (Con)

AGAINST
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 168 disagreed to.

Amendments 169 and 170 not moved.

Section 46 agreed to.

Sections 47 and 48 agreed to.

After section 48

The Convener: Amendment 45, in the name of the minister, is grouped with amendments 172, 51 and 60.

George Lyon: The amendments will ensure that boards must give notice of all their key decisions to applicants and to the chief constable and—in relation to premises licence and occasional licence applications—to any person who objected or made representations. Furthermore, boards will be required to give a statement of reasons for their decisions, but only if asked to do so.

By requiring licensing boards to give notice of their key decisions and to provide a statement of reasons for such decisions if asked to do so, Executive amendments 45, 51, 60 and 172 will present applicants with a fair and open procedure.

The provisions cover decisions on the following types of applications: applications for a premises licence; applications for variations of a premises licence; transfer applications; reviews; applications for a temporary licence; applications for a provisional premises licence; applications for occasional licences; applications for personal licences; and personal licence renewals.

I move amendment 45.

Tommy Sheridan (Glasgow) (SSP): When a person who has objected wants to receive notice under the bill of the reason why a licence was granted, will that person have to ask in writing for reasons or will other forms of contact be acceptable? Is that prescribed? Moreover, when people complain about the granting of licences or licence extensions, they often complain that they have not been kept informed of developments. I know that amendment 45 seeks to overcome that, but how would people find out about boards' decisions?

Bruce Crawford: I seek clarification on section 48—the fact that the new section that amendment 45 seeks to insert will come after section 48 gives me a chance to do that. Section 48 says that a premises licence application must be accompanied by a planning certificate and a building standards certificate, but the people who are involved in the running of Caledonian MacBrayne could not possibly produce such certificates in order to get a premises licence. In other words, the bill would mean that Caledonian MacBrayne would not be able to get licences for its ships. I apologise for raising the issue, but now is probably the most relevant point at which to seek to have it addressed.

The Convener: I think that Bruce Crawford is aware that his point is a bit broader than the subject of amendment 45 but, if the minister is prepared to address it, I am prepared to allow him to do so.

George Lyon: Any objector can request a statement of reasons for a board's decision. That will be supplied in writing or by e-mail, depending on the request. As Bruce Crawford rightly pointed out, it would be difficult for a Caledonian MacBrayne vessel or, indeed, a party limousine to meet the requirement under section 48 to obtain a planning certificate and a building standards certificate. We will deal with that issue later in the bill's consideration.

Amendment 45 agreed to.

Sections 49 and 50 agreed to.

Section 51—Dismissal, resignation, death etc of premises manager

Amendment 46 moved—[George Lyon—and agreed to.

Section 51, as amended, agreed to.

Section 52 agreed to.

Section 53—Occasional licence

The Convener: Amendment 171, in the name of the minister, is in a group on its own.

George Lyon: Amendment 171 is consequential to amendment 22, which was dealt with last week. It seeks to bring occasional licence applications into line with premises licence applications by
setting out the minimum information to be contained in the draft operating plan for occasional licence applications. It will ensure that applicants must specify their proposals on access by children. However, to avoid unnecessary bureaucracy for occasional licence applicants, who may be representatives of voluntary associations, we do not propose to require those applicants to provide the information on capacity that is required for premises licence applications. In practice, we would expect that information to be made available to a board if it requested it, which it might do for larger events, for example.

I move amendment 171.

Mr Davidson: I have a question for the minister. In the round, I accept what he has said, but will he confirm that amendment 171 will still allow for the holding of wedding receptions and so on? We do not want to make the system too complicated or too rigid because, when people respond to a wedding invitation, they often do not relate how many children they intend to bring with them or what age the children will be, for example. An element of discretion must be involved. The issue could apply not just to an application for an occasional licence by someone who wished to serve alcohol in a tent in a garden, but to an application for a premises that was used regularly as a ballroom facility.

Tommy Sheridan: For the record, I invite the minister to elaborate on what he meant when he said that providing information on capacity in an occasional licence application would involve excess bureaucracy. We do not want to be killjoys by preventing people from having wedding parties or other forms of celebration, but he will know that tragedies are more likely to happen at occasional, irregular events at which building regulations and other requirements have not been as strictly observed as normal. Is he confident that there will not be problems if occasional licences are sought for premises that are far too small or inadequate for a particular event? I know that he hopes that the boards will deal such eventualities, but, for the record, does he have any instruction on that?

15:00

George Lyon: The point about licensed premises when there is a wedding will be dealt with in subsequent amendments. In relation to Mr Sheridan’s point, I say that the issue is about getting the balance right. As he well knows, many voluntary bodies rely on being able to hold one fundraising occasion a year. In my constituency, the local football team has one event a year to raise the bulk of the moneys to ensure that the kids can play football for the year and travel to away games.

We must get the balance right and not put onerous requirements on such bodies to supply the information on capacity. In some instances, those bodies would need to go to the councils and building control to find out the relevant information. Clearly, if boards have concerns, they can request the information before they grant a licence.

I hope that we have got the balance right so as to enable such occasional events to take place in support of good and worthy causes that we would all support. If there are concerns, the licensing board will have the right to step in and request further information. I hope that Mr Sheridan will accept my reassurances on that matter.

Amendment 171 agreed to.

Section 53, as amended, agreed to.

Section 54 agreed to.

Section 55—Objections and representations
Amendment 152 not moved.

Amendment 47 moved—[George Lyon]—and agreed to.

Section 55, as amended, agreed to.

Section 56—Determination of application
Amendments 48 to 50 and 172 moved—[George Lyon]—and agreed to.

Section 56, as amended, agreed to.

Section 57 agreed to.

Schedule 4

Occasional licences: mandatory conditions
Amendment 153 not moved.

Amendments 52 to 58 moved—[George Lyon]—and agreed to.

Schedule 4, as amended, agreed to.

After section 57

Amendment 51 moved—[George Lyon]—and agreed to.

Section 58—Licensed hours

The Convener: Amendment 173, in the name of the minister, is grouped with amendments 174 and 175.

George Lyon: These amendments bring us back to an issue that was raised in the previous debate. There has been much discussion about occasional extensions of licensed hours under the new system. Occasional extensions are a feature of the Licensing (Scotland) Act 1976, which allows licensing boards to grant ad hoc additional
opening hours to individual licensees for unforeseen special events, such as wedding receptions. In addition, many boards currently offer general dispensations to licensees of an additional hour or two of opening time to cater for special events of wider interest, such as hogmanay, the tall ships race and Christmas.

In its stage 1 report, the committee asked us “to provide for a system of occasional extensions in certain tightly-defined circumstances”.

We are content to do so, but this is a difficult issue and I hope that the committee will appreciate that it is important to have a system that works in practice. We have lodged amendments to implement part of that policy and we intend to deliver the rest of them at stage 3.

Executive amendment 175 seeks to introduce a power for boards to make general dispensations on licensed hours in relation to special events of national or local significance, including Christmas and new year. The power is drafted to provide flexibility for boards in deciding how it should be applied.

We will lodge an additional amendment at stage 3 that will allow individual licensees to make applications for extensions of hours for specified occasions. Such applications would be dealt with by a simplified procedure involving notification to the chief constable, who may choose to object, and to the licensing standards officer, requesting any comments. The board would be given power to delegate the decision-making process and the decision would be appealable. Amendment 173 is consequential to amendment 175.

Amendment 174 would delete section 58(2), which provides that a licensee need not open during all of his licensed hours. That addresses an issue that was raised in the committee this afternoon, of which we were also made aware by the trade: that it is likely that some licensees will use a standard operating plan that has been drawn up by their advisers to apply for the widest range of activities possible and for the maximum hours available, whether or not the licensees have any intention of using them.

From the point of view of licence holders and their advisers, such an approach would presumably have two advantages. First, it would reduce the need for future licence variation applications. Secondly, it would block the market to competitors, particularly in areas that are considered by licensing boards to be overprovided for. To prevent that practice, we need to require, in general, that licensees must open for their licensed hours. That means removing the provision carried forward from the 1976 act that stated that that was not necessary.

Our understanding is that the provision in the 1976 act was intended to prevent a breach of a licence occurring when a licensee had to close premises for personal circumstances, such as holidays or illness. Paragraphs 2 and 3 of schedule 3 already require licensees to abide by their operating plans. The removal of section 58(2) would require licensees to operate in accordance with their operating plan with respect to abiding by their opening hours as well. The purpose of removing the provision is to prevent licensed premises from applying for licensed hours that they do not intend to use.

Let me clarify what I mean by “abiding by their opening hours”. Operating plans have been introduced to provide a flexible licensing regime. They are intended to give boards as clear an idea as possible of how the premises are to be run. They should not, however, be read prescriptively like a conveyancing document, but rather as a business plan. In deciding whether there has been a breach, the board must ask whether the licensee is abiding by the business plan. The board has to take a commonsense approach. When, for example, it is asking whether the licensee is abiding by the opening hours, the board must make allowance for holidays, sickness, bereavements and other normal business factors before calling any breach of the operating plan.

I move amendment 173.

Amendment 173 agreed to.

Amendment 174 moved—[George Lyon]—and agreed to.

Section 58, as amended, agreed to.

Section 59 agreed to.

Section 60—24 hour licences to be granted only in exceptional circumstances

The Convener: Amendment 1, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: Amendment 1 attempts to follow through a recommendation that the committee made on page 65 of its stage 1 report on the bill. The report states:

“The Committee is not yet convinced that 24 hour drinking is required in Scotland, even in exceptional circumstances … the Committee considers that 18 hours is a more appropriate cut-off point than the 24 hour limit set out in the Bill.”

Why did we come to that conclusion? The exceptional circumstances test in section 60 would be triggered only at the 24-hour mark. As Sheriff Principal Gordon Nicholson said in his written submission, the test

“would not be triggered at all if an applicant were to stipulate an opening period of 23 hours and 59 minutes; but such a period would be likely to be seen as being just as
objectionable as a period of precisely 24 hours. Consequently, if this provision is to remain, I would respectfully suggest that the trigger point should be a number of hours just beyond what might normally be regarded as acceptable—say, 18 hours or something around that figure.”

Alcohol Focus Scotland also expressed concern that the test is not robust enough. It stated:

“We can see no circumstances where 24-hour drinking is in the public interest”,

even “in the case of festivals or other special events”.

Alcohol Focus Scotland is entitled to its view on that particular issue, but it also stated:

“We are also concerned the wording that such licences ‘be granted only in exceptional circumstances’ may not prove sufficient. One only has to look at the existing legislation to find examples of measures that were intended to be ‘exceptional’ but have in practice become routine.”

So there are two arguments. The first is the important point that, for opening periods of 23 hours and 59 minutes, the exceptional circumstances rule would not kick in. Therefore, we need a bit of room. As the committee came to its conclusion for good reasons, I hope that members will support amendment 1.

I move amendment 1.

Tommy Sheridan: I, too, remember Sheriff Principal Nicholson’s comments, as I was struck by the point that he made. However, I wonder whether the minister will accept the point or whether Sheriff Principal Nicholson has misinterpreted section 60.

All committee members expressed concern at the suggestion that an application to open for 23 hours and 59 minutes would not spark off the rule about exceptional circumstances. Amendment 1 allows us to state for the record that the changes we are making to licensing law are not about introducing 24-hour drinking. There has been a lot of publicity about the fact that that will happen, so it is important that the committee is on record as saying that that is not what we expect to happen. Amendment 1 would help to tighten the provision further and, I hope, allow the rule about exceptional circumstances to be used in relation to applications for a much shorter timeframe. I strongly support the amendment.

Mr Davidson: My colleagues in Westminster certainly support a maximum of 18 hours. In the research that I have done—not physically, but from my desk—I have not come across any licensed establishments that are open for more than 17.5 hours, although some could be. The proposed change would not affect the marketplace, as hours could still be varied over a 24-hour period. I support amendment 1.

Michael McMahon (Hamilton North and Bellshill) (Lab): David Davidson touched on the issue on which I seek clarification from the minister. I agree with Bruce Crawford that 18 hours would be sufficient—all members agreed on that.

I would like to hear the minister confirm whether we are talking about the same thing, in that a 24-hour period for opening is not the same as an 18-hour provision for opening. The flexibility that he is talking about is for premises to be open for 18 hours within any 24-hour period. It is a matter of interpretation. If the minister interprets it that way, both sides are right.

We said in our report that we were concerned about a premises being open for 18 hours, but if the minister tells us that the bill allows for a 24-hour period in which a premises can be open for 18 hours, we are in different territory. I would like the minister to clarify that for me. If he can do that, amendment 1 is not necessary and we can still hold to what we said in our report about not wanting licensing boards to grant a specific premises permission to be open any more than 18 hours.

15:15

Fergus Ewing: Section 60 applies where, if the application were granted, the licensed hours for the premises would allow the sale of alcohol during a continuous period of 24 hours. Unless that provision is amended, it seems to me that the establishment could be open for a continuous block of 24 hours—and the wording of section 60 goes on to say “or more”. I found that slightly puzzling, because as far as I know there are 24 hours in a day, not 25 or 26, but presumably that phrase refers to something else. Perhaps the minister can explain why the phrase “or more” is there and what it means.

The point that I really want to ask the minister about is this. Bruce Crawford referred to paragraph 306 of the stage 1 report, which expressed the concerns that we received from Alcohol Focus Scotland. I do not think that he alluded to the other part of Alcohol Focus Scotland’s evidence referred to in our report, which said that it was concerned that “exceptional circumstances” might “in practice become routine”. At the moment, the minister might say that the safeguard is that such licences would be granted only in “exceptional circumstances”, but there is a widespread feeling that that phrase could be interpreted in such a way as to allow extensions to be granted routinely. Perhaps I have missed it, but I have not seen any definition of “exceptional circumstances”.

That may be something the minister will need to look at if he is not prepared to accept amendment 1, but I certainly think that 18 hours out of 24 is enough. It is difficult to see why you would want premises open after 4 am or whether it would help anybody in the premises if they had been there for goodness knows how many hours until 4 am. I just cannot see the point of that, so I hope that the minister will accept amendment 1.

Paul Martin (Glasgow Springburn) (Lab): My question follows on from Fergus Ewing's comments. I would like the minister to ensure that we do not have 24-hour drinking and I seek assurances on that issue specifically. But this is also an issue for the board, because there are opportunities for individuals who want to involve themselves in 24-hour drinking to do that even if premises are prevented from remaining open continuously.

In Glasgow, for example, there are premises where, if you put your mind to it, you could find yourself involved in 48-hour drinking. I stress that I am not talking from personal experience. We must be clear about the need for the board to take specific decisions and to take local intelligence about how premises operate into account. I seek assurances not only that we can deal with 24-hour drinking but that local boards will have the opportunity to take decisions to ensure that individuals cannot continue drinking for many hours.

The Convener: As Bruce Crawford said, the committee raised this issue in its report and it is an issue of particular concern. There are two sides to the matter. The first is premises being open for more than 18 hours. It does not appear to me that there are many premises in Scotland, if any, that have a desire to open for longer. Except in exceptional circumstances, I do not know why we would want to open up the opportunity for longer opening hours.

The other side to the matter is the one Paul Martin raised. The minister's predecessor, Tavish Scott, travelled around Glasgow and saw some of the problems and disruption that can be caused in the centre of Glasgow. The problems are not unique to Glasgow and occur in many other towns and cities in Scotland. The issue that Paul Martin raised is that if people could move from one premises to another, thus being able to continue to drink into the early hours of the morning, that could lead to greater problems in our city centres—problems of antisocial behaviour, problems for the police to deal with and the problems that are debated in the media today, of people putting themselves at risk of harm from such behaviour.

I ask the minister to tell us how the bill, as it is currently worded, would deal with those issues. If he is not minded to support Mr Crawford's amendment, I ask him to explain clearly why.

George Lyon: Paul Martin made the point that current operating hours under the Licensing (Scotland) Act 1976 permit someone in Edinburgh or Glasgow to buy alcohol 24 hours a day. Among my visits to hostleries in Edinburgh, I have visited the Scotsman bar in the High Street. It opens at 6 o'clock in the morning to cater for shift workers who finish at that time. The bar is open from 6 o'clock in the morning until 11 o'clock at night. Under the existing provisions, it is possible to buy alcohol 24 hours a day, but that is a completely separate point from an establishment being open for 24 hours a day—we need to draw that distinction up front.

I also state from the start that the Executive is firmly against 24-hour drinking. We are wholly opposed to it. Misinterpretation of the proposed new system by the media and others has led to fears that the bill would promote 24-hour drinking. We believe that that is not the case. There is a presumption against 24-hour drinking in the bill, which should help to allay those fears. The bill ensures that 24-hour opening is granted only in exceptional circumstances, as committee members have said.

In response to the committee's concerns, I clarify that we intend exceptional circumstances to refer only to special events; the provision will not apply to applications from, for example, a supermarket or other shop that sells food 24 hours a day. In addition to ensuring that that is clearly spelled out, we intend to set out in the statutory guidance to licensing boards. We stress that the boards must have regard to the guidance that we will issue on the presumption against 24-hour licensing.

On the basis of evidence that was given to the committee by Alcohol Focus Scotland, Mr Crawford considers that the provisions set out in the bill should apply to applications for premises to open for more than 18, rather than 24, hours. That view was also supported by Sheriff Principal Nicholson, although it was not a recommendation of the Nicholson committee. AFS's arguments are based on an assumption that supermarkets will want to sell alcohol for 24 hours a day and on an incomplete understanding of the differences between the position in Scotland and the position in England and Wales.

The policy in England and Wales is that 24-hour opening is acceptable. There is no presumption against 24-hour opening in the legislation for England and Wales. The guidance is explicit:

“With regard to shops, stores and supermarkets, the Government strongly recommends that statements of licensing policy should indicate that the norm will be for
such premises to be free to provide sales of alcohol ... at any times when the retail outlet is open for shopping".

That is not and has never been the policy in Scotland. Our guidance will make it crystal clear that the approach that has been taken south of the border is not the one that we are taking up here and that we are firmly against 24-hour opening.

I ask the committee to consider the issues in the context of the bill's overall framework. The point of abolishing national opening hours is to allow longer or shorter opening hours to be agreed that favour local circumstances and local communities. The local licensing board will take the decision whether to have longer or shorter opening hours and whether to grant an application that, for example, seeks an opening time of 23 hours 59 minutes. I imagine that every board will turn down such applications.

Hours are agreed as part of the operating plan and are subject to national and local licence conditions. Boards might decide to allow longer opening hours only in conjunction with other measures such as closed circuit television or other appropriate restrictions. In response to concerns that Paul Martin and Michael McMahon expressed about antisocial behaviour linked to the opening hours and licensing conditions of premises, if the boards receive complaints from the local community, the boards will have the power, first, to issue a warning and then to vary conditions and shorten premises' hours. They also have the ultimate sanction of removing licences from premises that are causing problems.

In summary, I assure members that boards will be required not to grant applications for 24-hour opening and will receive guidance on that matter and that they will have powers to deal with specific problems with licensing hours. Communities will have the right to complain formally to boards if they believe that the hours that have been granted are causing problems and that premises are open too late. As I have pointed out, boards will then have the power to issue a warning and then to restrict hours in response to the community's needs. If that does not deal with the complaint, the boards can withdraw the licence completely.

New licensing standards officers will be able to monitor the premises and highlight any difficulties. If communities raise concerns about the opening hours that have been granted in the original licence, licensing standards officers will be able to take those concerns back to the board and ask it to review the licence.

Anyone, including the police, has the right to complain about the opening hours for a particular premises and any such complaints will result in a review of the licence. When boards review a licence, they can reduce the opening hours and, ultimately, withdraw the licence.

AFS and the committee are also understandably concerned about the health problems caused by alcohol. Although the bill goes a very long way towards meeting those health concerns, it is not the sole answer to Scotland's drinking disease and should not be treated as such.

Hours should be based on local circumstances, the needs of local communities and local decision making backed up by the very extensive range of powers and controls that we seek to give boards to deal with communities' complaints and concerns. As I have made clear, we believe that boards should have the power to decide on licence applications and the hours that have been requested and to address any problems that might arise by reducing opening hours or withdrawing licences.

I hope that my assurances that we will issue strong guidance to boards and that boards will have strong powers to deal with these matters go some way to meet the committee's concerns and that members agree that fixing a lower and arbitrary limit on the maximum trading day is not the answer. As I have pointed out, boards will have the ultimate responsibility of setting hours for individual premises and, if there is a problem, reducing those hours.

In light of those comments, I ask Mr Crawford to withdraw amendment 1.

The Convener: I invite Bruce Crawford to respond to the debate and to indicate whether he wishes to press amendment 1.

Bruce Crawford: I will certainly press amendment 1. Although the minister's lengthy answer covered a lot of ground, he moved off the main issue to other areas that, although important, just camouflaged the real argument.

For a start, how is the reference to 18 hours in my amendment any more arbitrary than the reference to 24 hours in the bill? It just happens to be a number. The minister could have chosen to make the length of a licence 30 hours or more.

The minister also said that he would issue other guidance on special events. I wish that that guidance had been issued earlier; after all, in our report, we requested the Executive to provide, ahead of stage 2, further evidence on why this cut-off point was selected. Now the minister has introduced a new category of "special events" for which we have no definition.

Paul Martin's point about 24-hour drinking is entirely right and the minister dealt with that appropriately: yes, one can have 24-hour drinking. However, that is totally different from 24-hour
drinking in a single establishment: one can move around to seek other opportunities if one wishes.

David Davidson is right to say that no one in the trade wants to be open for more than 17 hours. If one speaks to those in the trade they will say that 17 hours is the maximum they want to be open for. The market is not demanding an exceptional rule around the 24-hour mark.

15:30

The minister said that there is a presumption against 24-hour drinking, but that is not a presumption against 23 hours and 59 minutes drinking. We are drawing a heck of a fine line on where presumption falls. The minister has not gone as far as Sheriff Principal Gordon Nicholson. I accept that the Nicholson report said something different, but in his personal evidence to the committee the sheriff himself said something quite specific to us about 24-hour drinking.

Minister, you said that local boards might not want to accept licence applications for opening times of 23 hours and 59 minutes, but it is more of a hope than a conviction because we do not know what local boards will do. If you were so convinced that local boards would turn down such applications, why did you not tighten the hours down to 18, as then it would not matter?

If the minister had said that he might be prepared to lodge an amendment to grant a licence beyond 18 hours in exceptional circumstances, I think the committee would have come to a consensus, but he has not lodged such an amendment. He has not convinced me in any way, shape or form that the committee should change the opinion it formed on the basis of the evidence it heard. Therefore, I intend to press my amendment and hope that members will come to the same conclusion as I have.

Dr Jackson: May I ask a question?

The Convener: I do not want to reopen the debate.

Dr Jackson: We have heard new evidence.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Sheridan, Tommy (Glasgow) (SSP)

Against
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 1 disagreed to.

Section 60 agreed to.

After section 60

The Convener: Amendment 5, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: On this occasion, I cannot cite weighty tomes from the committee to back up my argument. However, judging from the voting, it would not have made any difference anyway.

We have received evidence on ensuring that off-licence premises—whether they are the local grocer or, more likely, the supermarket—could not sell alcohol between 11pm and 8am. As it stands, the bill could mean that alcohol could be sold at all hours of the day and night from off-sales stores and supermarkets.

All the statistics show that alcohol misuse is on the rise, not just among young adults but, more alarmingly, among young people and children. I do not want to repeat all the depressing statistics, but some of them are important enough to bear repeating. One in 30 deaths in Scotland is alcohol related; there has been a 13 per cent increase in the number of patients admitted to general hospitals; and there was an upward trend in the prevalence of underage drinking between 1998 and 2001, with the largest increase being among girls aged 15. The Executive’s figures show that the cost of alcohol misuse has risen from £1.07 billion to about £1.13 billion in 2002-03. No one can dispute that Scotland has, unfortunately, a bevvy culture.

That is where we are, although I do not like it and I wish that we could move on. However, we are not ready to move to possible 24-hour alcohol sales, whether they take place in the premises of small individual operators or in supermarkets. I will cite three main reasons for that argument. First, we need to recognise that some off-licences—albeit not all, as we have some good operators—act as focal points for antisocial behaviour in many communities. To communities that are affected by that scourge, the bill must send out the message that they will have some respite because we will guarantee that local off-licences will not open between 11 o’clock at night and 8 o’clock in the morning. There is no reason why licensing boards could not be more restrictive than that—it is arguable that they should be more restrictive—but communities would have some respite that was guaranteed on the face of the bill.
The second reason concerns what might happen when people spill out from pubs and clubs into the streets of Scotland’s cities and towns. When our pubs and clubs empty, the last thing that we need is for individuals to be able to access off-licence premises so that they can consume even more alcohol. Our police have a big enough job in trying to deal with the situation at the moment.

Thirdly, the evidence that we received from the Scottish Grocers Federation explains the real impact that the bill would have on the market. The federation’s letter of 20 May states:

“The Scottish Grocers’ Federation represents just under 2,600 licensed convenience stores throughout the length and breadth of Scotland... A lot of these stores form the hub of the local community and in most cases their very existence depends upon the fact that they possess an off-sales liquor license.”

If we grant the opportunity for 24-hour opening—under the bill, a period of 23 hours and 59 minutes would not be deemed exceptional—local boards will grant that opportunity to supermarkets, which will then be able to sell these products for 23 hours and 59 minutes each day. What will that mean for the market? Either the market will grow, with more people drinking alcohol and alcohol abuse becoming more prevalent, or the market will move from the 2,600 grocers to the supermarkets, with the result that the supermarkets will be the gainer and Scotland’s grocers will be the losers. Given that reality, we are in danger of requiring small off-licence holders to extend their opening hours to offset the trade that they have lost and which has been gobbled up by the supermarkets. That would be unsatisfactory and we should not allow it to happen.

There are good reasons for the bill not to be allowed to proceed as it is. Amendment 5 deals with an issue that is significant in Scotland. We ain’t ready for the move that the bill suggests; I wish we were ready, but we just ain’t. Given the potential impact on Scotland’s health and on crime levels, and given the potential either for the market to move away from the small grocers or for an increase in consumption, with the inevitable consequences that that would have for health, the bill as it stands is not acceptable.

I move amendment 5.

Michael McMahon: Just as in our debate on amendment 1, the issue in this debate should not be whether we find it acceptable that certain premises should open at particular times of the day. We need to be as flexible as we can to take account of particular circumstances.

Having done shift work in a factory, I know that guys who have done a 12-hour night shift in a welding shop might want to pick up a couple of cans of beer on the way home. Bruce Crawford would not allow them to do that, because amendment 5 would mean that the off-licence could not open until 8 o’clock. If someone’s shift finished at 6, he would not be able to have a couple of beers afterwards. We need that type of flexibility. Practical experience teaches that.

If we were to be as prescriptive as Bruce Crawford wants to be in restricting off-licence opening hours, we would be telling an awful lot of people, “You have no choice, as we have decided that you are not allowed to do this, despite your lifestyle and circumstances.” We should not impinge on people’s lifestyles in that way.

I agree that excessive drinking or drinking for long periods of time is a bad thing. I also agree that giving licences to premises that cause problems in communities is a bad thing. However, that is not the case in every circumstance. Some people are able to drink reasonably at different times of the day. Amendment 5 would tell people, “We know better than you, so we will take charge of the lifestyle that you may or may not have.” That is a very dangerous road to go down. There must be a degree of flexibility in the system, and we must trust local licensing boards to take account of local communities’ circumstances and to be aware that people have lifestyles that do not always match what we would consider to be acceptable.

Tommy Sheridan: An omelette has never been made without an egg being cracked. There is a difficulty with what we are discussing. People talk about the need to curb or discourage excess drinking in Scotland and to recognise the social costs of drinking, but whenever a measure is proposed that may restrict the availability of alcohol in any way, there is talk about personal freedom and more flexibility, which Michael McMahon has talked about. The idea that we will put restrictions on shift workers who want to have a wee drink after a long shift is nonsense. Shift workers will not be restricted before their shift, in the couple of days at the weekend or whenever, from buying alcohol to put in the fridge for drinking when they get home.

Bruce Crawford’s timescales are, if anything, too flexible—perhaps I will return to that matter at stage 3. Refusing a licence to an off-licence to sell alcohol after 11 pm involves too long a timescale. Off-licences should be restricted even more, so that they can sell alcohol only until around 9 pm because, in many communities in housing estates throughout Scotland, they become congregation points for groups that are intent on buying as much bevvy as possible, particularly if cheap offers are on the table. People in such groups want to consume that bevvy as quickly as possible and to hang about the area. They can be difficult to deal with at that time of night, but if the bill...
stated an earlier time after which alcohol could not be sold, that might make it easier for the groups to be moved on and for behaviour to be nipped in the bud before it gets out of control.

If the committee wants to discourage more general alcohol abuse, it must try, at least, to give some direction. If that is interpreted as nanny statism, so be it—actually, I have always thought that nannies are good. We should reject the idea that we should not try to restrict the sale of a dangerous drug—we should try to do so. I would prefer a shorter selling period at night, until 9 pm. However, I am prepared to vote for what is on offer at the moment and perhaps to lodge an amendment at stage 3.

Mr Davidson: A number of issues were raised last week by the minister, who appeared to refuse to curb promotions or to attempt to deal with them in off-sales. What Michael McMahon said was more about personal responsibility than freedom, but the two go hand in hand—freedom comes with responsibility. Most long-term health or public disorder problems seem to relate to the way in which underage people get hold of alcohol or to promotions with excessively reduced prices. Responsibility goes out of the window, and that underage people get hold of alcohol or to disorder problems seem to relate to the way in which responsible.

On my way back from Hungary the other morning, I drove past an all-night supermarket, which was wide open. I could not believe the number of people who were in it at almost 4 o'clock in the morning. Many of them were shift workers—there can be no argument about that, as there is no other reason for people to go out shopping with cars and vehicles at that time of the morning. I accept what Tommy Sheridan said. If people want to plan their week and do their shopping at the weekend, they can do so, but surely the amendment would not reduce the under-age acquisition of alcohol—which is a major problem—in any way. People can stock up on alcohol and store it in a garage or in somebody's garden shed. If they are going to go out and misbehave, they will do so whether they get alcohol from an off-licence or already have stocks at hand. Underage drinkers have told me that they often manage to accumulate a stash, as they call it, and then go to a park or somewhere to demolish it. Amendment 5 does not capture the essence of what we were trying to say in the stage 1 report.

15:45

Dr Jackson: The thing that worries me most is that Bruce Crawford is using the same argument that he used for amendment 1. He seems to assume that 23 hours and 59 minutes will be the norm, and that people and boards will think that that is okay. As the minister said, a lot will depend on the statutory guidance that will be issued. In order to give reassurance, I ask that we be given the guidance as soon as possible. This question shows that I do not understand the process as well as I should, but will that guidance be mentioned in the bill, the policy memorandum and the explanatory note? Given that there are to be community representatives on forums and boards, they should have easy access to information on the statutory guidance.

Paul Martin: Tommy Sheridan and Bruce Crawford made the point that a start has to be made to the process of tackling alcohol abuse, but we must make the right start, not just start for the sake of it. On the face of it, Bruce Crawford's proposal seems like a good idea, because it aims to reduce the opportunities for people to access alcohol. However, there is no evidence to prove that, so it might not make a difference. His proposal also does not address Tommy Sheridan's point that people could stock up on alcohol to access it at other times. We need detailed evidence to show that reducing opening hours will make a difference. As Michael McMahon said, it is a balancing act. There are people who are entitled to alcohol at certain times who are responsible, but that has to be balanced against antisocial behaviour. I would go further than 9 o'clock in some housing schemes in Glasgow, because some licence holders clearly are not responsible.

Bruce Crawford's proposal is not backed by evidence to show that the hours that he specifies would make a difference. Our report mentioned the principle of reducing hours, but at no time did we specify the hours. Bruce Crawford is being disingenuous by saying that we are not supporting the stage 1 report.

Bruce Crawford: I did not say that.

Paul Martin: You did. You said in your last contribution that we are not supporting the stage 1 report. We support the principle of examining opening hours and not having 24-hour alcohol abuse. We need to look at ways in which we can go forward.

Mr Arbuckle: The heading of section 60 is:

"24 hour licences to be granted only in exceptional circumstances".

That puts it fairly. It is down to local licensing boards. As section 60(2) states, the board "must refuse the application unless ... there are exceptional circumstances".

Surely that gives the flexibility that is needed for people who shop at different times and so on. Members who speak in favour of amendment 5 are trying to deal with society's alcohol problem, but it will not be cured by fiddling about with the number of hours that premises are open.
The Convener: I have some sympathy with Bruce Crawford's amendment 5, because I have great fears that if we go down the road of making off-licences available into the early hours of the morning in many of our towns and cities, antisocial behaviour will be exacerbated. That is a different issue from the total amount of alcohol consumption in Scotland.

I am not necessarily suggesting that there would be a huge difference one way or the other in the total amount of alcohol consumed if we agree to Bruce Crawford's amendment; I think that amendment 5 raises the issue of antisocial behaviour in our towns and cities. It would concern me if people who have already consumed an amount of alcohol were to come out of a nightclub at 2 or 3 o'clock in the morning and have the opportunity to purchase more alcohol to consume in the streets. That might put greater pressure on our public services and communities.

My concern about the guidelines is, simply, that they are only guidelines; they give the boards the flexibility to make differing decisions. I am concerned by the fact that boards across Scotland have made decisions that have not been consistent and have not always been in the best interests of their communities. What reassurance can the minister give that some curb can be placed on the availability of off-licences so that our towns and cities do not become even greater havens of antisocial behaviour than they already are?

Tommy Sheridan: Convener—

The Convener: The minister has the opportunity to respond to the debate at this point.

Tommy Sheridan: I would just like to make a small point.

The Convener: Every member of the committee has had the opportunity to contribute to the debate; it is for the minister and Bruce Crawford, as the mover of the amendment, to respond to what has been said.

George Lyon: The committee is clearly concerned about this issue. The argument comes down to the same question that was raised in the previous discussion: should we trust local boards to respond to the needs of their communities or should we impose decisions from the centre?

Michael McMahon and Paul Martin raised the key issue, which is to do with concerns about antisocial behaviour versus the accessibility of off-licences to those who work unusual shifts. Clearly, neither you nor I are best placed to decide what the right operating hours are for a particular area; the local boards have the democratic right to do that and the knowledge of the local circumstances that enables them to come to the right decision on the operating hours for each establishment in their area. The right way forward is to allow the board to use its powers to make those decisions. As I said, they have tough powers to shut down premises.

Another suggestion that is made frequently—it was raised by a member during this debate—is that a lot of boards do what they feel like and ignore local communities. That is why we have given communities the right to object, no matter whether they are within or outwith the locus. They will be represented on the licensing forums, where they will be able to make known their views on the operating hours that are pursued in their areas by the boards. Even after the licence has been granted, if the community believes that antisocial behaviour problems have arisen as a result, they have the right to object again to the board and to demand that the board reconsider the licence. The police and the LSO have that right as well.

That provides a safeguard, which I hope will reassure those who think that the boards will not reflect local needs or respond to the needs of communities. We have given communities the power to come back at virtually any stage in the three months following the granting of the licence and say that, because their fears about the granting of the licence have come true, they want the licence to be reviewed and action to be taken. Further, if the board reviews the licence and decides to take no action, the communities have the right to appeal that decision. We have put in place a lot of safeguards that will ensure that, if there are problems in an area as a result of off-sales or on-sales, boards and communities have the power to deal with them.

The main questions are whether we trust local boards to make decisions and whether we have given powers to communities to ensure that their views are taken into account. I believe that the issue of antisocial behaviour versus accessibility for shift workers has been dealt with properly by the framework that we have drawn up. Even if the board makes the wrong decision in the first instance, we have given communities the right to make complaints and force a review of the licence.

Our approach means that Bruce Crawford's amendment 5 is unnecessary. We should not prescribe from the centre out; we should allow boards and communities to work together to decide what is appropriate for their area. Where there are problems, we have given them powers to take action to sort them out. I hope that the committee, having been given those assurances, will support the view that amendment 5 is not necessary and I ask Bruce Crawford to consider withdrawing it.

Bruce Crawford: All in all, this has been a good debate. The issues have been properly aired by all committee members. I ask Paul Martin to accept
that I was not being disingenuous—I was trying to put forward a genuinely held point of view. Apart from that point, the debate was reasonable.

I agree with Michael McMahon that there has to be flexibility and that we must help people to go about their normal lives. However, Tommy Sheridan dealt with the issue of someone who wants to have alcohol to drink when they come home from work. What do they do at the moment? They ensure that they have it in their fridge at home so that it is ready for them when they get in. The issue is a bit of a smokescreen. We have to make a decision as politicians. Do we allow flexibility to impact on the greater good? The core hours of closing that I suggest are for the greater good, even though people will be denied some flexibility. We must make the decision. We must come down on one side of the fence or the other.

Tommy Sheridan asked whether the amendment should have been more restrictive. I made the point that the local licensing board can, if it wishes, be more restrictive than I have suggested. I have suggested core closing hours, not core opening hours. Local boards could be more restrictive if they so wished, but the amendment would ensure that between the hours of 11 o'clock at night and 8 o'clock in the morning they could not allow an off-licence, whether it is a supermarket or a local grocer, to sell alcohol.

In response to Sylvia Jackson, I point out that I said clearly that the bill states that 24-hour licences will be granted only in exceptional circumstances. However, that does not apply to licences for 23 hours and 59 minutes. Nothing in the bill states that 23 hours and 59 minutes will not be normal. The minister might say that that will not be the case, but there is no such provision in the bill. The local licensing boards will interpret the regulations. I have not read in the bill any definition of what will be considered normal, so 12 hours will be as normal as 23 hours and 59 minutes. The guidance that will come from the minister might deal with that point, but it has not yet been issued. That is a weakness in the Executive’s position.

Paul Martin is right that no evidence is available on either side. The only evidence is what we know from our backgrounds and the information that we get in our communities and constituencies as we go about our jobs as MSPs. I think that I know that what I am saying is what people want, but other members might have a different perspective. It comes down to members’ judgment as politicians, because the Executive has not produced hard evidence. I do not like to be in that position, but in such circumstances we have to go with our knowledge and experience.

The minister says that local boards should have a say, and nobody disagrees with that. However, the convener’s point is right—to give protection to communities that sometimes feel as if they are under attack from antisocial behaviour, we have no option in the circumstances but to go for the core hours that I propose.

I am astonished by David Davidson’s position. In effect, he is saying that he is all for the supermarkets—they are the ones who will use the facility—being open for 24 hours a day. There may not be much antisocial behaviour around the supermarkets, but that would impact on the 2,600 grocers and other small traders who operate in Scotland. That could have only two effects: either the market would get bigger and the supermarkets would sell even more alcohol to the community, or the market would move from the small operators to the supermarkets, which would put the small operators under considerable pressure. Mark my words, under that pressure they will apply to extend their opening hours. That is inevitable.

Are we saying that the 2,600 small grocers that the Scottish Grocers Federation represents are wrong? The federation’s evidence says:

“Finally, you should be aware that south of the border all superstores which currently trade 24 hours”—

superstores in Scotland will be unable to do that other than in exceptional circumstances, but they might be able to open for 23 hours and 59 minutes—

“are pushing the boundaries of licensing trading hours to the limits.”

The federation has said from day one that it does not want the potential for 24-hour licensing. However, out-of-town superstores could be allowed to open for 23 hours and 59 minutes in non-exceptional circumstances. The system could at the same time inhibit local shops from opening beyond a time that is specified by a local licensing board. Issues relate not only to health and antisocial behaviour on our streets in cities and towns, but to the potential impact on small businesses. I urge the committee not to agree with the minister. I value the debate, which has been good, but my points outweigh the minister’s.

16:00

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
AGAINST
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)

ABSTENTIONS
Davidson, Mr David (North East Scotland) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 2.
Amendment 5 agreed to.
Section 61 agreed to.

After section 61
Amendment 175 moved—[George Lyon]—and agreed to.
Sections 62 to 65 agreed to.

Section 66—Applicant’s duty to notify Licensing Board of convictions
Amendment 59 moved—[George Lyon]—and agreed to.
Section 66, as amended, agreed to.
Sections 67 to 69 agreed to.

Section 70—Notification of determinations
Amendment 60 moved—[George Lyon]—and agreed to.
Section 70, as amended, agreed to.
Sections 71 and 72 agreed to.

Section 73—Licence holder’s duty to notify Licensing Board of convictions
Amendment 61 moved—[George Lyon]—and agreed to.
Section 73, as amended, agreed to.
Sections 74 to 85 agreed to.

Section 86—Breach of exclusion order
The Convener: Amendment 176, in the name of the minister, is grouped with amendments 63 to 65, 76 and 77.

George Lyon: The amendments in this group seek to adjust sections 86 and 107 to allow certain persons physically to remove from premises persons who are there in breach of an exclusion order or who are being disorderly.

Section 86 deals with persons who enter premises in breach of an exclusion order. As drafted, the section provides that a premises licence holder who has applied for an exclusion order may use reasonable force to remove a person who has entered the premises in breach of that order. However, the premises licence holder will not always be present on the premises and we therefore consider it necessary to extend the power to the premises manager or to any other person authorised by either the premises licence holder or the premises manager.

I stress at this stage that I consider it absolutely essential that those who run premises where alcohol is sold have a clear and unequivocal statutory power and duty to evict disorderly and potentially violent persons to stop them becoming a menace both to other customers and to themselves. I remind the committee that, in the case of a section 85 exclusion order, the sheriff has already satisfied himself that if the person concerned is not made to stay away from the licensed premises, there is a substantial risk of a violent offence being committed. In those circumstances, the manager or authorised person must be allowed to act immediately because waiting for the police to come may not be an option. That is why amendments 62 to 65 are necessary.

Section 107 deals with disorderly persons and those who, on request, refuse to leave premises where alcohol is sold—that includes unlicensed premises such as trains. Our amendments 76 and 77 make it clear that, like persons who are subject to exclusion orders, disorderly persons can be physically removed by the management or authorised persons. That is, again, a necessary statutory right and it will protect the public. Of course, any force that is used must be reasonable, as at common law.

I move amendment 62.

Mr Davidson: Where will the guidance come from to help members of staff to decide whether to call the police? I have asked that question before but I still have some concerns and I would like the minister to address the point clearly. Police forces are a little concerned about the application—as opposed to the spirit—of the minister’s proposal. I would like the minister to put the answer on the record.
The Convener: Minister, will you respond to that?

George Lyon: This is already the situation under the 1976 act. Licensees and their staff have been working closely with the police for many years on how to evict drunks and deal with such matters and it is not for us to be prescriptive in that area. Clearly, the staff concerned will have to decide whether they can handle the problem by escorting the individual from the premises. If they do not feel confident enough to do so because the person is violent or aggressive, staff will have to decide whether to call the police. Ultimately, it is for the individual member of staff to make that decision in each individual situation.

Mr Davidson: May I ask a further question, for clarification?

The Convener: I would prefer it if you did not, because I do not want to create a precedent for the reopening of debates. You made your point and the minister responded. You need to make your mind up on that basis.

Amendment 62 agreed to.

Amendments 63 to 65 moved—[George Lyon]—and agreed to.

Section 86, as amended, agreed to.

Sections 87 to 90 agreed to.

Section 91—Regulations as to closure orders

The Convener: Amendment 66, in the name of the minister, is grouped with amendment 67.

George Lyon: Amendments 66 and 67 are technical amendments that were suggested by the Subordinate Legislation Committee. They specify the sections to which section 91 is to apply.

I move amendment 66.

Amendment 66 agreed to.

Amendment 67 moved—[George Lyon]—and agreed to.

Section 91, as amended, agreed to.

Sections 92 to 94 agreed to.

Section 95—Sale of liqueur confectionery to a child

The Convener: Amendment 69, in the name of the minister, is grouped with amendments 70, 162 and 71 to 73. If amendment 162 is agreed to, amendment 71 will be pre-empted.

George Lyon: With these Executive amendments, we hope that we have addressed the concerns about the delivery of alcohol to children that were raised by the committee, in particular by Michael McMahon, in the stage 1 report. It is difficult to come up with a workable, practical solution to the problem of children making use of dial-a-drink services to obtain deliveries of alcohol. We have discussed the issues at length with the Association of Chief Police Officers in Scotland and we feel that we have found the right balance to ensure that, in cases where alcohol is delivered, children are adequately protected.

Executive amendment 73 removes the exemption to the offence of delivering alcohol to a child or young person that allows the delivery provided it is made to a home or work address. Therefore, it will be an offence to deliver alcohol or allow it to be delivered to a child or young person in all circumstances.

Executive amendment 72 introduces a new provision that establishes defences against offences committed under section 99(2) or section 99(3), which cover allowing deliveries to or by a child. Deliveries to a child and allowing deliveries by a child attract a defence based on the no-proof, no-sale policy, under which a person must take reasonable steps to ascertain age based on a request for the acceptable national types of proof.

Allowing a delivery to a child, for example, by an employee, attracts a defence based on taking reasonable precautions and exercising due diligence. This is necessary since an employer is unlikely to be present to request proof of age. Making the availability of a defence dependent on the actions or inactions, or belief, of a person over whom an employer may have no control might also have European convention on human rights implications. Executive amendments 69, 70 and 71 are consequential to the establishment of the new defences.
Michael McMahon's amendment 162 seeks to achieve the same policy as Executive amendment 72. Michael championed this issue throughout stage 1. However, there is a technical problem with amendment 162, because it does not make the necessary distinctions between the available defences. In addition, it attempts to impose a requirement that where alcohol is not delivered to a person because of that person's failure to show proof that he is aged 18 or over, the attempt to buy alcohol must be reported to a constable.

We took soundings from senior police officers on this matter and they have concerns about the practicalities of the proposed procedure. The fact that we are adopting a no-proof, no-sale policy in relation to the sale of alcohol throughout the bill is, we believe, sufficient.

With those assurances, I ask Michael McMahon to consider not moving amendment 162.

I move amendment 69.

Michael McMahon: As the minister said, amendment 162 addresses an issue that the police brought to my attention initially, although I was certainly aware of it in my community. I do not want to bang on about it, because members have heard me address it at length, but I am pleased that the minister has picked up on it. The Nicholson report did not address the issue. It is a new phenomenon, which is affecting communities in my constituency and beyond. My intention was to have the matter addressed and the minister has given me the assurances that I require that the Executive has heard what I said and has addressed the concerns that I hoped would be addressed. It has done so in a more technical manner than I suggested, so I am prepared to accept the minister's assurances and to not move amendment 162.

16:15

The Convener: Michael McMahon deserves to be commended for bringing the issue to the committee's attention, given that the ministerial team has been persuaded that there is a loophole in the law that should be closed. Well done, Michael—the issue might not otherwise have been addressed during the passage of the bill.

George Lyon: I concur and pay tribute to Michael McMahon for having raised the issue, which had initially been overlooked. We have now responded to the campaign that he has been running on the issue.

Amendment 69 agreed to.

Section 95, as amended, agreed to.

Section 96—Purchase of alcohol by or for a child or young person

The Convener: Amendment 2, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: We have discussed the issue of test purchasing of alcohol by young people. If I recall correctly, we noted that the police find it difficult to find evidence of licensees illegally supplying alcohol to persons aged under 18. Test-purchasing pilots have been happening but, given the way in which the bill is drafted, they could bring the test purchaser into conflict with the law and might even bring the chief constable into conflict with the law. I lodged amendment 2 in an attempt to tease out the issue and to make test purchasing legal so that we can begin to catch out some of the rogues who are involved in selling alcohol knowingly to under-18s. I am sure that the minister will be able to tell me whether there are technical difficulties with the amendment. I recognise that I am no legal expert, but at least I may have opened up a channel and the minister could lodge his own amendment to ensure that test purchasing does not put the person involved in helping the police or the police themselves in any difficulty.

I move amendment 2.

Paul Martin: I support the principle of what Bruce Crawford is trying to deliver. There is an issue about people who provide alcohol to young people outside licensed premises, which the police might be able to find creative ways to tackle. I consider myself extreme in my views of the measures that I think we should take to deal with alcohol and antisocial behaviour and want to consider every creative solution, but I cannot stress enough the importance of ensuring that we protect children in the process of test purchasing of alcohol, because it is different from test purchasing of tobacco. Young people are put in situations where there could be antisocial behaviour and their safety could be at risk during the operations. We need to put in place strategies to ensure that the protection of youngsters is considered. Involving young people in the test purchasing of alcohol is serious, so the proviso must be that they will be protected.

Mr Davidson: Perhaps Mr Crawford should have differentiated between on-sales and off-sales. It seems that off-sales present a particular problem, which is not clear in amendment 2.

The Convener: Like Paul Martin, I agree with the aim of amendment 2. I suspect that the Lord Advocate might have concerns about Bruce Crawford's proposal, because there might be problems with how young people who are involved in test purchasing can be protected. However, the committee wants to see progress on Mr
Crawford’s aim of detecting underage sales more effectively. Even if the minister is not supportive of Mr Crawford’s amendment, I hope that he will reassure us that the Executive is trying to resolve the problem and to ensure that alcohol sales to underage people are more easily detected in future.

George Lyon: Since I took over my current portfolio, I have been keen to ensure that we introduce some form of test purchasing to underpin the no-proof, no-sale policy in the legislation, which is essential if we are to tackle underage drinking properly.

Quite rightly, the Lord Advocate has concerns about the welfare of any child involved in test purchasing, because they would be committing a criminal offence. There is also concern about children testifying in cases in which licensees might lose their licence as a result of actions taken. The Lord Advocate was concerned to ensure that the welfare of the child would not be compromised.

I am pleased to say that the Lord Advocate has indicated that he is now content, in principle, to allow the test purchasing of alcohol by children for the purpose of law enforcement. However, he considers that there are still some outstanding concerns about welfare that do not arise in relation to other goods. Bruce Crawford’s amendment 2 requires further consideration to ensure that the welfare of children who are used in test-purchasing exercises is paramount. I invite him to withdraw his amendment on the basis that full proposals will be announced before stage 3 and the Executive will lodge an appropriate amendment at stage 3. The wider child welfare issues will be taken into account in drafting any such amendment.

I hope that Bruce Crawford and the rest of the committee accept my assurance that we now have the green light from the Lord Advocate to make progress on the matter. However, it is important that we get the balance right between ensuring that test purchasing goes ahead and properly looking after children’s welfare in the process that we design.

Bruce Crawford: I will not press amendment 2. Paul Martin and the convener are absolutely on the money with their points about the welfare of children. I am greatly heartened that the Executive and the Lord Advocate have been working hard together to find a solution to the problem. I look forward to seeing that solution at stage 3.

I say to David Davidson that I do not know how many pubs he has been in recently, but perhaps he should visit the pub more often to see how many underage people are buying alcohol.

Amendment 2, by agreement, withdrawn.
applying for the licence for the party vehicle, the operators will not have to include certain notification requirements such as building warrants, for example, on receipt of a licence application. Moreover, there will no longer be a requirement to produce planning, building control and food hygiene certificates.

Given that further developments might take place in this area, it is also sensible for Scottish ministers to take a power to modify the provisions relating to vessels, vehicles and other moveable structures should that prove necessary in the future. The Executive has today lodged further amendments in relation to vessels, including ferries. Those amendments will be debated next week.

Amendment 178, in the name of Michael McMahon, attempts to do the same as the Executive amendments. It seeks to add vehicles to the definition of relevant premises for the intended purpose of making it an offence to allow the sale of alcohol to a child or young person from a vehicle or to allow a child or young person to consume alcohol from a vehicle. However, the amendment is not needed, because those offences apply automatically to vehicles that are subject to a premises licence. With that assurance, I hope that Michael McMahon will not move his amendment. We are both trying to tackle the same problem and I congratulate him on bringing the issue to our attention.

I move amendment 177.

Michael McMahon: I will repeat what I said about amendment 162: my intention in lodging amendment 178 was to ensure that an issue that I had brought to the committee was addressed. I am glad that the minister’s assurances will achieve what I set out to achieve. Given the minister’s assurances, I will be more than happy not to move amendment 178.

16:30

Bruce Crawford: I heard what the minister said about the amendments in relation to ferries that he will lodge for next week, but I would like to be sure about them. Under section 118, moveable structures that are to be used for the sale of alcohol will be required to go to a licensing board in the area. However, a ferry does not necessarily have one board area; it may go through a number of board areas as it does its work. I assume that the amendments that the minister will produce next week will deal with that issue so that ferries will not be encumbered in that respect. Obviously, some ferries depart from and arrive in numerous licensing board areas. I seek an assurance that the amendments next week will deal with that issue.

Mr Davidson: I remind Bruce Crawford that that is exactly the issue with which my amendment 158, which we will consider next week, seeks to deal. Earlier, I forgot to ask the minister about trains, planes and coaches. An issue has been raised by some rail companies that have vehicles that travel across the United Kingdom, through areas where different rules apply. Will the minister accept that companies that have moveable vehicles that sell alcohol to the public need a single point of contact that is responsible for dealing with them? The cross-border issue has been raised several times recently. Although the bill is separate from the UK legislation, we must ensure that it conforms to cross-border agreements. I hope that the minister will deal with that issue adequately.

The Convener: It is my understanding that the ability to sell alcohol on railway vehicles has in the past been covered by UK railways legislation. Perhaps that is not the case—I am sure that I will soon be enlightened. I ask the minister to clarify, either today or in advance of our further consideration of the bill, what the situation will be for railway vehicles, particularly those that cross the border between Scotland and England, but also for those that move between licensing board areas within Scotland.

George Lyon: Trains will be exempt from the need to have a premises licence. The reason why vessels are mentioned in amendment 179 is to remove certain notification requirements for them. The amendments that we produce next week will differentiate between the so-called party vessels—which are basically used for booze cruises—that ply up and down the Clyde and other areas, and regular ferry services. For the regular services, we will take the same approach that we have taken for trains: they will be exempt. However, we will reserve powers to ministers to take action if there is a problem on a particular route. The proposal is that ferries will be in the same category as trains, provided that they are regular ferry services that sail between two nominated points.

Amendment 177 agreed to.

Section 109, as amended, agreed to.

Section 110 agreed to.

The Convener: Given that we are very close to the target point that I set, I propose that we just carry on until we reach that point. It should take us only a few more minutes.

Section 111—Carriage of alcohol on public service vehicles

The Convener: Amendment 82, in the name of the minister, is grouped on its own.
George Lyon: The committee raised some concerns about section 111 in its stage 1 report. Section 111 limits the quantity of alcohol that can be carried on a public service vehicle such as a coach. The committee was concerned that, in many cases, the application of the section could be quite harsh, as it does not make a distinction between alcohol that is being carried in the passenger compartment of a bus and alcohol that is being carried in the boot of, for example, a tour bus that is visiting a distillery.

The original intention of the provision was to control the carriage of alcohol on football supporters’ buses. However, since the 1976 act was passed, additional legislation has been introduced to deal with that problem. Under the Criminal Law (Consolidation) (Scotland) Act 1995, it is an offence for persons to be in possession of alcohol on PSVs or trains that are conveying passengers to and from designated sporting events. The Association of Chief Police Officers in Scotland has been consulted on the removal of the provision from the bill and is content with that. In the light of that, I would be grateful for the committee’s agreement to the amendment.

I move amendment 82.

Amendment 82 agreed to.

Sections 112 and 113 agreed to.

Section 114—Interpretation of Part 8

Amendment 83 moved—[George Lyon]—and agreed to.

Amendment 178 not moved.

Amendments 84 and 85 moved—[George Lyon]—and agreed to.

Section 114, as amended, agreed to.

The Convener: We agreed to go no further than section 114 today. Stage 2 of the Licensing (Scotland) Bill will resume at our next meeting, which is on Monday 3 October at 2 pm. The meeting will take place on Monday because of the Carnegie events in the Parliament on Tuesday. The target point for the end of consideration at that meeting will be published in the Business Bulletin tomorrow, but it is likely to be the end of the bill. As a result, members will have to lodge any further amendments by Wednesday lunch time in order to allow for publication, so that other members can consider the amendments. The deadline for any further amendments will, therefore, be noon tomorrow. I thank all members, including the minister, for their attendance and contributions to today’s proceedings.

Meeting closed at 16:38.
Licensing (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 5
- Sections 6 to 10
- Sections 11 to 25
- Sections 26 to 57
- Sections 58 to 139
- Section 140

- Schedule 1
- Schedule 2
- Schedule 3
- Schedule 4
- Schedule 5
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

**Section 115**

*George Lyon*

86 In section 115, page 64, line 31, at beginning insert <subject to subsection (4A),>

*George Lyon*

87 In section 115, page 64, line 31, leave out <primarily>

*George Lyon*

88 In section 115, page 64, line 32, leave out <primarily>

*Bruce Crawford*

3 In section 115, page 64, line 32, at end insert—

<(2A) Premises of the type mentioned in subsection (2)(b) are not excluded premises if—
(a) they are located in a rural area; and
(b) a likely effect of them being excluded premises would be that the provision of
amenities in the area surrounding the premises would be significantly reduced.>

*George Lyon*

89 In section 115, page 65, line 1, leave out <primarily>

*George Lyon*

90 In section 115, page 65, line 5, at end insert—

<(4A) Despite subsection (2)(b), premises used for the sale by retail of petrol or deriv or which
form part of premises so used are not excluded premises if persons resident in the
locality in which the premises are situated are, or are likely to become, reliant to a
significant extent on the premises as the principal source of—>
(a) petrol or derv, or
(b) groceries (where the premises are, or are to be, used also for the sale by retail of groceries).

Section 116

George Lyon

180 In section 116, page 65, line 15, after <journey,> insert <or
(ii) a journey (other than an international journey) forming part of a ferry service,>

George Lyon

181 In section 116, page 65, line 16, after <occupied> insert <(whether indefinitely or temporarily)>

George Lyon

182 In section 116, page 65, line 16, at end insert <, except while being used for other purposes.>

George Lyon

183 In section 116, page 65, line 29, at end insert—
<“ferry service” means a service the principal purpose of which is the transport of passengers or goods over water,>

George Lyon

184 In section 116, page 65, leave out lines 30 to 34 and insert—
<“international journey” means a journey with—
(a) a point of departure,
(b) a destination, or
(c) at least one port of call,
outside the United Kingdom, and includes any part of such a journey.>

George Lyon

91 In section 116, page 65, leave out lines 35 and 36

After section 116

Bruce Crawford

186 After section 116, insert—
<Special provisions for existing licensed premises

Special provisions for existing licensed premises

(1) This section applies in relation to an application for a premises licence—
(a) made in respect of premises in respect of which, at the date on which this Act comes into force, a licence (including the provisional grant of a licence) has been granted under the Licensing (Scotland) Act 1976, and

(b) where—
   
   (i) the times during which it is proposed that alcohol be sold on the premises are the same as the existing permitted hours (including any extensions) in respect of the premises, or

   (ii) the number of hours in a day during which it is proposed that alcohol be sold on the premises does not exceed the number of hours (including any extensions) during which alcohol may be sold under the existing licence.

(2) Where this section applies—

(a) section 19(2)(b)(iii) does not apply,

(b) section 22 applies as if—

   (i) for subsections (3) to (5) of that section, there was substituted—

   “(3) Unless the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives, the Board must grant the application.”,

   (ii) the reference in subsection (6) to subsection (5)(b) was to subsection (3) (as inserted by sub-paragraph (i) of this paragraph), and

   (ii) subsections (8) and (9) did not exist, and

(c) section 48 does not apply.

Section 117

Mr David Davidson
154 In section 117, page 66, leave out line 7

Mr David Davidson
155 In section 117, page 66, leave out lines 10 and 11

Mr David Davidson
156 In section 117, page 66, leave out lines 14 and 15

Section 118

Mr David Davidson
157 In section 118, page 66, line 38, after <vessel> insert <(other than a passenger ferry)>
The following provisions of Part 3 (which relate to the provision of certificates as to planning, building standards and food hygiene and to notifications of applications) do not apply in relation to premises (other than exempt premises) consisting of a vessel, namely—

(a) section 19(2)(b)(iii),
(b) section 20(1)(a) and (c),
(c) section 27(4) (so far as it applies section 20(1)(a) and (e)),
(d) section 43(10)(a),
(e) section 44(2)(d), and
(f) section 48.

(4) This Act applies in relation to premises consisting of a vehicle or other moveable structure which is, or is to be, used for the sale of alcohol while not parked or permanently situated in any place (referred to in this section as “moving premises”) subject to the modifications in subsections (5) to (9).

(5) Section 17 does not apply and instead, in Part 3 and this section, “appropriate Licensing Board” means in relation to moving premises or a premises licence or occasional licence issued in respect of such premises—

(a) the Licensing Board in whose area the premises are used or to be used for the sale of alcohol, or
(b) where the premises are used or to be used in the area of more than one Licensing Board—

(i) the Board in whose area they are used or to be used to the greater or greatest extent, or
(ii) if neither or none of those Boards falls within sub-paragraph (i), such of those Boards as is, in the application for a premises licence or, as the case may be, occasional licence in respect of the premises, nominated as the appropriate Licensing Board in respect of the premises.

(6) The following provisions of Part 3 do not apply in relation to moving premises, namely—

(a) section 19(2)(b)(iii),
(b) section 20(1)(a), (b), and (e)
(c) section 27(4) (so far as it applies section 20(1)(a), (b) and (e)),
(d) section 43(10)(a),
(e) section 44(2)(d), and
(f) section 48.

(7) Section 20(1) applies in relation to moving premises as if for paragraph (c) there were substituted—

“(c) the relevant council.”.

(8) References to the locality in which premises are situated are, in relation to moving premises, to be taken as references to the area of the appropriate Licensing Board.

(9) For the purposes of Part 4, moving premises are to be treated as premises situated within the area of the appropriate Licensing Board.
(10) The Scottish Ministers may by regulations provide for this Act to apply in relation to vessels, vehicles and moveable structures subject to such further modifications as they consider necessary or expedient.

After section 118

Mr David Davidson

After section 118, insert—

<Passenger ferries

(1) For the purposes of this Act’s application to passenger ferries—
    “premises” means all vessels used by a particular operator on a particular route, and
    “the appropriate Licensing Board” means the Licensing Board in whose area the headquarters of the operator are situated.

(2) A Licensing Standards Officer may exercise the general function mentioned in section 14(1)(b) and the powers mentioned in section 15 in respect of any passenger ferry for the time being within the Officer’s council area.

(3) Nothing in this Act affects any other enactment or rule of law which permits the master of a passenger ferry to refuse the service of alcohol to any person or persons.>

Section 119

George Lyon

In section 119, page 67, leave out lines 30 and 31

George Lyon

In section 119, page 67, leave out line 32

After section 119

George Lyon

After section 119, insert—

<Power to prohibit sale of alcohol on ferries

(1) This section applies to any vessel which is exempt premises by virtue of section 116(1)(d)(ii) (vessels engaged in ferry services).

(2) A sheriff may—
    (a) on the application of a senior police officer, and
    (b) if satisfied that it is necessary to do so to prevent disorder, make an order under subsection (3).

(3) That is an order prohibiting, during such period as may be specified, the sale of alcohol on any vessel to which this section applies while engaged on—
(a) any journey to or from a specified place within the sheriff’s sheriffdom, or
(b) a specified journey to or from such a place.

(4) An order under subsection (3) has no effect in relation to any vessel unless a copy of it has been given by a senior police officer to the operator of the vessel.

(5) A person who knowingly—
(a) sells or attempts to sell alcohol in breach of an order under subsection (3), or
(b) allows the sale of alcohol in breach of such an order, commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to—
(a) a fine not exceeding £20,000,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.

(7) Subsection (3) of section 116, so far as applying to a vessel, applies for the purposes of subsection (3) of this section as it applies for the purpose of subsection (1) of that section.

(8) In this section, “specified” means, in relation to an order under subsection (3), specified in the order.

Mr David Davidson

After section 119, insert—

<Sports grounds and sporting events

Sporting grounds and sporting events
In section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)—
(a) in subsection (1), for “subsection (2)”, substitute “subsections (2) and (2A)”, and
(b) after subsection (2), insert—
“(2A) Sections 19, 20(2), 20(7) and 21(e)(ii) of this Act do not apply to sports grounds or sporting events designated in an order under subsection (1) unless, on the application of a person mentioned in subsection (2B), the Scottish Ministers have confirmed that designation in respect of a date or dates specified in the application.

(2B) Those persons are—
(a) the chief constable for the area in which the sports ground is situated or the sporting event is to be held;
(b) the managers of the sports ground or sporting event in respect of which the application is made.”.>

Section 120

George Lyon

In section 120, page 68, line 6, at end insert—
Regulations under subsection (1) may provide, in relation to any offence or description of offence prescribed in them, that a person is to be treated, for the purposes of such provisions of this Act as may be specified in the regulations, as having been convicted of the offence only if the person—

(a) accumulates such number of separate convictions for the offence, or

(b) is convicted of committing the offence on such number of separate occasions, as may be so specified.

Section 122

George Lyon

95 In section 122, page 68, line 30, leave out subsections (1) and (2) and insert—

<(1) A decision of a Licensing Board specified in the left-hand column of schedule (Appeals) may be appealed by the person specified in the right-hand column of that schedule.>

George Lyon

96 In section 122, page 68, line 38, leave out subsection (3) and insert—

<(3) An appeal under this section is to be made by way of stated case, at the instance of the appellant, to—

(a) where the decision appealed is specified in Part 1 of schedule (Appeals), the sheriff principal, or

(b) where the decision appealed is specified in Part 2 of that schedule, the sheriff, of the appropriate sheriffdom.>

George Lyon

97 In section 122, page 69, line 1, leave out subsection (4)

After schedule 4

George Lyon

98 After schedule 4, insert—

<SCHEDULE
(introduced by section 122(1))

APPEALS

PART 1

APPEALS TO THE SHERIFF PRINCIPAL

<table>
<thead>
<tr>
<th>Decision</th>
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<td>A decision to refuse a premises licence application</td>
<td>The applicant</td>
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<th>Variation Application</th>
<th>Decisions</th>
<th>Persons who can appeal</th>
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<tr>
<td>A decision to refuse an application under section 31(1) or 32(1) for transfer of a</td>
<td>The applicant</td>
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<tr>
<td>premises licence</td>
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<tr>
<td>A decision to refuse an application under section 33(1) for a variation of a premises</td>
<td>The applicant</td>
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<tr>
<td>licence</td>
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<tr>
<td>A decision under section 37(1) to issue a written warning to a premises licence holder,</td>
<td>The premises licence holder or, where the decision is taken in connection with a premises licence review application, the applicant</td>
<td></td>
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<tr>
<td>to make a variation of a premises licence, or to suspend or revoke such a licence</td>
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<tr>
<td>A decision to refuse an application under section 38 to revoke a variation or suspension of a premises licence</td>
<td>The applicant</td>
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<tr>
<td>A decision to refuse an application under section 43(7) to extend the provisional period in relation to a provisional premises licence</td>
<td>The applicant</td>
<td></td>
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<tr>
<td>A decision to refuse an application under section 44(4) to confirm a provisional premises licence</td>
<td>The applicant</td>
<td></td>
</tr>
<tr>
<td>A decision to refuse an application under section 45(2) to issue a premises licence for temporary premises</td>
<td>The applicant</td>
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<tr>
<td>A decision to refuse an application under section 45(6) to extend the period for which a temporary premises licence has effect</td>
<td>The applicant</td>
<td></td>
</tr>
<tr>
<td>A decision to refuse an occasional licence application</td>
<td>The applicant</td>
<td></td>
</tr>
<tr>
<td>A decision to grant an occasional licence application</td>
<td>Any person who has given a notice of objection under section 55(1)</td>
<td></td>
</tr>
</tbody>
</table>

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**PART 2**

APPEALS TO THE SHERIFF

<table>
<thead>
<tr>
<th>Decision</th>
<th>Persons who can appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>A decision to refuse a personal licence application</td>
<td>The applicant</td>
</tr>
<tr>
<td>A decision to make an order under section 116</td>
<td>The personal licence holder</td>
</tr>
</tbody>
</table>
74(9), 75(7), or 77(3) revoking, suspending or endorsing a personal licence

Section 123

George Lyon
99 In section 123, page 69, line 38, leave out subsection (4) and insert—

<(  ) A sheriff principal may authorise, whether generally or specifically, any other sheriff of the sheriff principal’s sheriffdom to consider and determine an appeal made to the sheriff principal under section 122(3)(a).>.

George Lyon
100 In section 123, page 70, line 6, at end insert <, subject to subsection (7A)>.

George Lyon
101 In section 123, page 70, line 6, at end insert—

<(7A) Where an appeal is taken against a decision of a Licensing Board to suspend or revoke a premises licence, the sheriff principal may—

(a) on the application of the appellant, and

(b) if satisfied on the balance of convenience that it is appropriate to do so, recall the suspension or revocation pending determination of the appeal.>.

Section 125

George Lyon
102 In section 125, page 70, line 26, after <application> insert <, proposal>.

George Lyon
103 In section 125, page 70, line 29, after <application> insert <, proposal>.

George Lyon
104 In section 125, page 70, line 35, after <application> insert <, proposal>.

Section 127

Paul Martin
160 In section 127, page 71, line 23, at end insert <, and
in respect of the recovery from particular licence holders of sums not exceeding any increase in the cost of providing public services (including policing) which is directly attributable to activities in, or in the vicinity of, or by customers of, or staff employed in, the premises in respect of which the licence is held.

Bruce Crawford

4 In section 127, page 71, line 23, at end insert—

<( ) Regulations under subsection (1) which make provision for fees to be paid by licensed premises or prospective licensed premises must provide for the level of fees charged to vary between different sizes and types of premises.>

After section 134

George Lyon

105 After section 134, insert—

<Modification of enactments

Schedule (Modification of enactments), which modifies enactments, has effect.>

After schedule 4

George Lyon

106 After schedule 4, insert—

<SCHEDULE

(introduced by section (Modification of enactments))

MODIFICATION OF ENACTMENTS

Children and Young Persons Act 1963 (c.37)

1 In section 37(2)(b)(ii) (restriction on persons under 16 taking part in public performances within licensed premises) of the Children and Young Persons Act 1963, for “1976) or in respect of which a club is registered under that Act” substitute “2005 (asp 00))”.

Countryside (Scotland) Act 1967 (c.86)

2 In section 78(1) (interpretation) of the Countryside (Scotland) Act 1967, in the definition of “refreshments”, for “alcoholic liquor within the meaning of the Licensing (Scotland) Act 1976” substitute “alcohol within the meaning of section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

New Towns (Scotland) Act 1968 (c.16)

3 (1) The New Towns (Scotland) Act 1968 is amended as follows.

(2) In section 18(2) (disposal of land by development corporations), in the proviso, for “alcoholic liquor” substitute “alcohol”.

118
(3) In section 47(1) (interpretation), for the definition of “alcoholic liquor”, substitute the following definition—

““alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

Water (Scotland) Act 1980 (c.45)

4 In section 50(1)(b) (power to require supply by meter to certain premises) of the Water (Scotland) Act 1980, for “1976” substitute “2005 (asp 00)”.

Local Government, Planning and Land Act 1980 (c.65)

5 In section 146 (disposal of land by urban development corporation) of the Local Government, Planning and Land Act 1980, for subsection (6) substitute—

“(6) In this section, “alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00).”.

Civic Government (Scotland) Act 1982 (c.45)

6 (1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 41(2)(f) (exclusion of licensed premises from definition of place of public entertainment)—

(a) for “1976” substitute “2005 (asp 00)”, and

(b) for “the permitted” substitute “licensed”.

(3) In section 42(4)(a) (late hours catering licence not required in respect of licensed premises), for “1976” substitute “2005 (asp 00)”.  

Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

7 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

(2) In section 22 (presumption as to contents of container), for “Section 127 of the Licensing (Scotland) Act 1976 (presumption as to contents of container)” substitute “Section 131 of the Licensing (Scotland) Act 2005 (asp 00) (presumption as to liquid contents of containers)”.  

(3) In section 23 (interpretation of Part II), for the definition of “alcohol”, substitute the following definition—

““alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00);”.

Crime and Punishment (Scotland) Act 1997 (c.48)

8 (1) Section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 is amended as follows.

(2) In subsection (1)—
(a) in paragraph (b), for “alcoholic liquor, within the meaning of the Licensing (Scotland) Act 1976” substitute “alcohol”, and
(b) for “that liquor” substitute “the alcohol”.

(3) In subsection (2), for—
   (a) “alcoholic liquor”, and
   (b) “liquor” in each place where that word appears,
substitute “alcohol”.

(4) In subsection (6), for “1976” substitute “2005 (asp 00)”.

(5) After subsection (6) insert—
   “(7) In this section, “alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

9  In paragraph 10 of Part 1 of schedule 2 (authorities not amendable by Order in Council) to the Scottish Public Services Ombudsman Act 2002, for “within the meaning of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.

Freedom of Information (Scotland) Act 2002 (asp 13)

10 In paragraph 23 of Part 3 of schedule 1 (local government) to the Freedom of Information (Scotland) Act 2002, for “constituted in accordance with the provisions of section 1 of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.

Section 136

George Lyon

107 In section 136, page 75, line 32, leave out from <(except> to <135)> in line 33 and insert <except—

(a) an order under section 115(5) or 140(2),
(b) regulations under section 25(2) or 130(3), and
(c) where subsection (5) applies, an order under section 135,>

George Lyon

108 In section 136, page 75, line 35, after <No> insert—

<(<a) order under section 115(5),
(b) regulations under section 25(2) or 130(3), or
(c)>
In section 136, page 75, line 37, after <order> insert <or regulations>

Section 137

In section 137, page 76, line 11, at end insert—

<“capacity”, in relation to licensed premises, means—

(a) in relation to licensed premises on which alcohol is sold for consumption
on the premises (including any such premises on which alcohol is also sold
for consumption off the premises), the maximum number of customers
which can be accommodated in the premises at any one time, and

(b) in relation to licensed premises on which alcohol is sold only for
consumption off the premises, the amount of space in the premises given
over to the display of alcohol for sale,>

In section 137, page 76, line 11, at end insert—

<“capacity”, in relation to licensed premises, means—

(a) in relation to licensed premises on which alcohol is sold for consumption
on the premises (including any such premises on which alcohol is also sold
for consumption off the premises) and taking account of—

(i) the nature and extent of the likely sale of alcohol in the premises,

(ii) any views about the premises which may be expressed to the
Licensing Board by the enforcing authority under section 61 of the
Fire (Scotland) Act 2005 (asp 5), and

(iii) the provisions contained in fire safety regulations,
the maximum number of customers which can be accommodated in the
premises at any one time, and

(b) in relation to licensed premises on which alcohol is sold only for
consumption off the premises, and taking account of—

(i) the nature and extent of the likely sale of alcohol in the premises,

(ii) any views about the premises which may be expressed to the
Licensing Board by the enforcing authority under section 61 of the
Fire (Scotland) Act 2005 (asp 5), and

(iii) the provisions contained in fire safety regulations,
the amount of space in the premises given over to the display of alcohol for
sale,>

In section 137, page 76, line 25, at end insert—

George Lyon

109 In section 136, page 75, line 37, after <order> insert <or regulations>

Section 137

George Lyon

110 In section 137, page 76, line 11, at end insert—

<“capacity”, in relation to licensed premises, means—

(a) in relation to licensed premises on which alcohol is sold for consumption
on the premises (including any such premises on which alcohol is also sold
for consumption off the premises), the maximum number of customers
which can be accommodated in the premises at any one time, and

(b) in relation to licensed premises on which alcohol is sold only for
consumption off the premises, the amount of space in the premises given
over to the display of alcohol for sale,>

Mr Andrew Arbuckle

187 In section 137, page 76, line 11, at end insert—

<“capacity”, in relation to licensed premises, means—

(a) in relation to licensed premises on which alcohol is sold for consumption
on the premises (including any such premises on which alcohol is also sold
for consumption off the premises) and taking account of—

(i) the nature and extent of the likely sale of alcohol in the premises,

(ii) any views about the premises which may be expressed to the
Licensing Board by the enforcing authority under section 61 of the
Fire (Scotland) Act 2005 (asp 5), and

(iii) the provisions contained in fire safety regulations,
the maximum number of customers which can be accommodated in the
premises at any one time, and

(b) in relation to licensed premises on which alcohol is sold only for
consumption off the premises, and taking account of—

(i) the nature and extent of the likely sale of alcohol in the premises,

(ii) any views about the premises which may be expressed to the
Licensing Board by the enforcing authority under section 61 of the
Fire (Scotland) Act 2005 (asp 5), and

(iii) the provisions contained in fire safety regulations,
the amount of space in the premises given over to the display of alcohol for
sale,>

George Lyon

111 In section 137, page 76, line 25, at end insert—
<“railway vehicle” means a railway vehicle within the meaning of section 83 of the Railways Act 1993 (c.43) that is used in the provision of a railway service within the meaning of section 82 of that Act (excluding the wider meaning of “railway” given by section 81(2) of that Act).> 

George Lyon  
112 In section 137, page 76, line 32, at end insert—
<“senior police officer” means a constable of or above the rank of superintendent.>

George Lyon  
113 In section 137, page 76, leave out lines 40 to 42

George Lyon  
114 In section 137, page 77, line 1, at end insert—
<(1A) In this Act, references to selling alcohol or other goods to trade are references to selling the alcohol or goods to a person for the purposes of the person’s trade; and related expressions are to be construed accordingly.>

George Lyon  
115 In section 137, page 77, line 2, leave out <or a club> and insert <a club or other body (whether incorporated or unincorporated)>

George Lyon  
116 In section 137, page 77, line 8, at end insert—
<(. .) in any other case, is concerned in the management or control of the body.>

Section 138

George Lyon  
117 In section 138, page 77, line 25, at end insert—
<capacity (in relation to licensed premises) section 137(1)>

George Lyon  
118 In section 138, page 78, line 8, at end insert—
<licensed hours section 58(1)>

George Lyon  
119 In section 138, page 78, line 10, at end insert—
<licensing policy statement section 6(1)>
Mr David Davidson
161 In section 138, page 78, leave out line 14

George Lyon
120 In section 138, page 79, line 4, at end insert—
<railway vehicle section 137(1)> 

George Lyon
121 In section 138, page 79, line 8, at end insert—
<selling to trade section 137(1A)> 

George Lyon
122 In section 138, page 79, line 8, at end insert—
<senior police officer section 137(1)> 

George Lyon
123 In section 138, page 79, line 10, at end insert—
<supplementary licensing policy statement section 6(2)> 

George Lyon
124 In section 138, page 79, leave out lines 16 and 17

Schedule 5

George Lyon
125 In schedule 5, page 90, line 24, at end insert—
<Finance Act 1970 (c.24) Section 6>
Local Government (Scotland) Act 1973 Paragraph 36 of Schedule 24 (c.65)
Paragraph 17 of Schedule 25> 

George Lyon
126 In schedule 5, page 90, line 26, at end insert—
<Alcoholic Liquor Duties Act 1979 Section 77(6) (c.4)> 

George Lyon
127 In schedule 5, page 90, line 28, at end insert—
<Law Reform (Miscellaneous Provisions) Section 21 (Scotland) Act 1980 (c.55) 
Paragraphs 9 to 11 of Schedule 2>
Local Government, Planning and Land Act 1980 (c.65)  
In section 146(3), the words “or alcoholic liquor”

Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c.23)  
Paragraphs 4 and 5 of Schedule 2

Roads (Scotland) Act 1984 (c.54)  
Paragraph 77 of Schedule 9

Transport Act 1985 (c.67)  
Paragraph 18 of Schedule 7

Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73)  
Section 53

Housing (Scotland) Act 1987 (c.26)  
Subsection (3) of section 5

Food Safety Act 1990 (c.16)  
Paragraph 19 of Schedule 3

Licensing (Low Alcohol Drinks) Act 1990 (c.21)  
The whole Act

George Lyon

128 In schedule 5, page 90, line 32, at end insert—

<Finance Act 1991 (c.31) In paragraph 1(a) of Schedule 2, the words “or the Licensing (Scotland) Act 1976,”>

George Lyon

129 In schedule 5, page 91, line 4, leave out <Paragraph> and insert <Paragraphs 23 and>

George Lyon

130 In schedule 5, page 91, line 4, at end insert—

<The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) In section 19(2), the words from “Notwithstanding” to “but”>
Excluded premises: petrol stations
86, 87, 88, 3, 89, 90

Ferry services
180, 183, 157, 158, 185

Exempt premises: premises occupied for the purposes of the armed forces of the Crown
181, 182

Meaning of “international journey”
184

Trains and trams
91, 92, 111, 120

Special provisions for existing licensed premises
186

Sports grounds and sporting events
159

Relevant offences: persistent offenders
94

Appeals
95, 96, 97, 98, 99, 100, 101

Fees: ability to recover increased costs
160

Fees: variation according to size of premises
4

Consequential modifications and repeals
105, 106, 125, 126, 127, 128, 129, 130

Orders and regulations: procedure
107, 108, 109

Meaning of “capacity”
110, 187, 117
Index of defined expressions
118, 119, 123

Note: the following amendments have already been debated—

With 131 – 154, 155, 156, 161
With 177 – 179
With 68 – 93, 112, 122
With 7 – 102, 103, 104
With 6 – 113, 114, 121, 124
With 23 – 115, 116
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

EXTRACT FROM THE MINUTES

26th Meeting, 2005 (Session 2)

Monday 3 October 2005

Present:

Mr Andrew Arbuckle
David Davidson
Dr Sylvia Jackson
Michael McMahon
Bruce Crawford JP (Deputy Convener)
Fergus Ewing
Paul Martin
Bristow Muldoon (Convener)

Apologies: Tommy Sheridan

Licensing (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 3).

The following amendments were agreed to without division: 86, 87, 88, 89, 90, 180, 181, 182, 183, 184, 91, 179, 92, 93, 185, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129 and 130

The following amendment was agreed to by division:

160 (For 4, Against 4, Abstentions 0; amendment agreed to on casting vote)

The following amendments were disagreed to by division:

159 (For 1, Against 7, Abstentions 0)
4 (For 3, Against 5, Abstentions 0)

Amendment 186 was moved and, with the agreement of the Committee, withdrawn.

Amendments 3, 154, 155, 156, 157, 158, 187 and 161 were not moved.

Sections 115, 116, 118, 119, 120, 122, 123, 125, 127, 136, 137 and 138 and schedule 5 were agreed to as amended.

Sections 117, 121, 124, 126, 128, 129, 130, 131, 132, 133, 134, 135, 139, 140 and the long title were agreed to without amendment.

The Committee completed Stage 2 consideration of the Bill.
Licensing (Scotland) Bill: Stage 2

14:11

The Convener: Agenda item 2 is further consideration of the Licensing (Scotland) Bill. Members should have with them their copies of the bill, the latest marshalled list of amendments, which was published on Friday morning, and the groupings of amendments. I remind members that we hope to complete our stage 2 consideration of the bill today.

Section 115—Excluded premises

The Convener: Amendment 86, in the name of the minister, is grouped with amendments 87, 88, 3, 89 and 90.

George Lyon: The committee raised some concerns over how rural petrol stations would be dealt with under the new licensing system. The committee did not wish to see such petrol stations being penalised unduly if they doubled as the only local shop. We made a commitment at stage 1 to re-examine the issue to ensure that our policy is absolutely clear in the bill, and we have lodged a series of Executive amendments that will do just that. I am confident that the amendments address the committee’s concerns.

Executive amendment 90 will provide that premises, or parts of premises, that are used as a garage will be able to apply for an alcohol licence under the new system if the local community is, or is likely to become, reliant on the premises as a principal source of either fuel or groceries. Amendment 90 will ensure that the vital existence of rural petrol stations is not compromised, and it will protect local amenities. However, its effect will not be limited to rural areas, because there might be cases in urban or other areas in which the community is reliant on the local shop. Licensing boards will determine whether applications for premises licences for petrol station forecourt shops fall within the exemption. Amendments 86 to 89 are consequential.

Opposition amendment 3, which was lodged by Bruce Crawford, is not needed. It seeks to achieve largely the same purpose as the Executive amendments. The only difference that I wish to point out between Mr Crawford’s amendment and ours is that his is more confined to rural areas, whereas ours can also apply to urban situations in which a petrol station is the only shop in an area. I ask Bruce Crawford not to move amendment 3, given the assurance that Executive amendment 90 not only addresses his concerns but goes slightly further to address issues around petrol stations in urban areas that provide the only local amenity.

I move amendment 86.
Bruce Crawford: The minister uses words such as “his”, “ours” and “Opposition” in relation to the amendments. I thought that we were trying to get together to make the bill work for everyone. Nevertheless, I accept entirely the minister’s points. What he said about the difference between rural and urban locations was correct. My amendment 3, as members can tell from its number, was lodged a good time before the Executive’s amendments in an effort to flush out exactly the position that we now find ourselves in. I am glad that we have reached that position.

Might the minister consider, at stage 3, introducing to proposed section 115(4A) a further paragraph (c) that would enable him to introduce categories of premises other than those that sell groceries, petrol or derv? There might come a time when another venture, which we do not know about at present, in a rural or urban area, is dependent on sales of petrol for its survival. I hate to think that we would need to introduce primary legislation to deal with that. It might be useful to have a catch-all regulation that the minister could use to deal with such unforeseen situations.

14:15

Mr David Davidson (North East Scotland) (Con): Earlier, the minister talked about objections from the local community. Perhaps he could define exactly what he meant by that so that it is quantifiable and we can get a better understanding of what is intended by his amendments.

George Lyon: The amendments are designed to ensure that petrol stations that also sell groceries and provide other amenities can retain a licence that defines them as the sole source of groceries and petrol in that vicinity. I am not sure exactly what Mr Davidson is referring to.

Mr Davidson: If I may return—

The Convener: Just one thing, so we do not—

Mr Davidson: I am totally supportive—

The Convener: Wait a minute. Before any of you jump in, you should wait until you are asked by the convener. David, you may speak now.

Mr Davidson: The minister made a point about the absence of local objections and I wanted him to explain what he meant by that. What sort of number was he talking about? Would the objections be the routine ones that relate to licence applications or would they be something slightly different?

George Lyon: To ensure that there is no dubiety, I state that the provision is intended to be a routine measure that the licensing boards can use to determine whether there is a local need for the particular licence application. We are trying to set out the circumstances in which the boards would determine that position.

The Convener: Do you want to respond to the points that were made by Mr Crawford about the possibility of adding paragraph (c) to proposed section 115(4A) at stage 3?

George Lyon: I would be willing to consider that issue before stage 3.

Amendment 86 agreed to.

Amendments 87 and 88 moved—[George Lyon]—and agreed to.

Amendment 3 not moved.

Amendments 89 and 90 moved—[George Lyon]—and agreed to.

Section 115, as amended, agreed to.

Section 116—Exempt premises

The Convener: Amendment 180, in the name of the minister, is grouped with amendments 183, 157, 158 and 185.

George Lyon: The committee’s report noted the concerns of the ferry operators about their proposed inclusion in the new licensing regime. The subject is of great interest to me. Last week, at the committee’s request, I set out our proposed policy for ferries. Executive amendments 180, 183 and 185 will deliver that policy. We propose to exempt any vessel that is engaged on a journey that forms part of a ferry service from the requirement to hold a premises licence. That is set out in amendment 180.

Amendment 183, which is consequential, will insert a definition of ferry service that is based on the transport of goods or passengers. The amendments will ensure that party vessels or booze cruises will still require a licence. We see the case for exempting lifeline ferry services, but we do not see a case for exempting vessels that serve a purely social purpose. Those vessels must be licensed.

Executive amendment 185 will allow the police to apply to a sheriff to prohibit the sale of alcohol on ferries when there is a likelihood of disorder. Similar provisions exist for trains. The amendment will ensure that the police can take action to prevent the sale of alcohol on problem routes or on single problem journeys.

David Davidson’s amendments 157 and 158 take the alternative approach of modifying the system in its application to passenger ferries, rather than exempting ferries entirely. There are three points to be made in relation to amendments 157 and 158. First, the definition of premises does not appear to allow sufficient flexibility to cover the common scenario whereby a particular vessel is
not always used on the same route. Secondly, basing the definition of a board on the location of the premises of the operator does not work if the operator is a foreign company. Even when the operator’s headquarters are in Scotland, the licensing board in whose area the headquarters are based might not be the most appropriate. Thirdly, the bill does not prevent anyone, including a ship’s master, from refusing a sale of alcohol, thus subsection (3) of the proposed new section in amendment 158 is superfluous. Given that the Executive amendments in the group seek to exempt ferry services completely, I ask Mr Davidson not to move his amendments.

I move amendment 180.

Mr Davidson: I appreciate the minister’s points. However, he misunderstands subsection (1) in amendment 158, which states:

“‘premises’ means all vessels used by a particular operator on a particular route”.

That addresses the minister’s first point. I did that because, as the minister well knows, Caledonian MacBrayne rotates its vessels and the controls are geared to a particular route as opposed to the vessel on that route. We are at cross-purposes.

I accept part of what the minister said about the location of an operator’s headquarters, but I do not know of any ferry company that does not have an operational base as opposed to a company registered office. Again, we are splitting hairs.

Could you remind me of your third point?

George Lyon: The bill does not prevent anyone, including a ship’s master, from refusing a sale of alcohol.

Mr Davidson: I seek an assurance that due recognition was given to the Maritime and Coastguard Agency’s international rules on the right of a ship’s master to decide on their own account, without any reference to licensing laws, whether a bar should be open or closed and who should be served and who should not. If I have that assurance from the minister, I will not move amendment 158.

George Lyon: I give Mr Davidson the reassurance that he seeks. I would be pleased if he did not move his amendments in favour of the amendments in my name.

Amendment 180 agreed to.

The Convener: Do you have any remarks on amendment 182?

George Lyon: It is a technical, consequential amendment.

Amendment 181 agreed to.

Amendments 182 and 183 moved—[George Lyon]—and agreed to.

The Convener: Amendment 184, in the name of the minister, is in a group on its own.

George Lyon: Executive amendment 184 is a technical amendment to clarify the definition of an international journey. It will ensure that cruise ships that travel to and from Scotland need not be licensed and that, provided that the journey has an international element, ships with more than one stop in Scotland are not unintentionally caught by the licensing system.

I move amendment 184.

Amendment 184 agreed to.

The Convener: Amendment 91, in the name of the minister, is grouped with amendments 92, 111 and 120.

George Lyon: Executive amendments 91, 92, 111 and 120 are technical. They will introduce a tighter definition of a railway vehicle to remove any doubt about the treatment of underground trains and trams. Underground trains will be treated in the same way as trains are and defined as exempt premises. Trams will not be exempt and will be capable of being licensed should that ever be required for any reason.

I move amendment 91.

Amendment 91 agreed to.

Section 116, as amended, agreed to.

After section 116

The Convener: Amendment 186, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: We took extensive evidence from a range of witnesses about the arrangements for transition from the current licensing regime to the new system under the bill. I am sure that committee members have seen the correspondence that was received in the recess from the Scottish Beer and Pub Association, the British Hospitality Association in Scotland and the Scottish Grocers Federation.
Their members, who represent 10,000 of the 17,000 commercially licensed premises, seek reassurance on the various issues that are covered in amendment 186.

Amendment 186 would create a presumption that a currently licensed premises would be entitled to a licence under the new regime with the same trading hours and conditions that relate to those hours as it currently enjoys, subject to the licensing board’s approval—I stress that—and provided that the board is satisfied that the continuing operation of the premises contradicts none of the licensing bill principles.

I am sure that members remember that we heard a fair bit of evidence at stage 1 on concerns about licensed premises simply moving automatically into the new regime. I shared those concerns, but amendment 186 would not provide for that and would allow objections to and the expression of views on a new licence. The amendment would reassure the vast majority of well-run licensed premises, provided that no issues are outstanding, that they should have some continuity of trading into the new regime.

A few weeks ago, the minister made an announcement that I am not sure gave the trade—and particularly the pub industry—the assurances that it seeks. I hope that he will clarify some issues in responding to my amendment. I understand that in a series of meetings with the licensed trade in the past couple of months, the minister has said that he expects a currently licensed premises that operates without problem to be able to retain its hours, subject to it reapplying for its licence. I believe that he confirmed that publicly in response to a question at the national licensing conference in Dundee a few weeks ago. I seek to put some of that on the record, because it is important. I will make up my mind whether to press amendment 186 on the basis of what the minister says.

While I am sure that the minister will not wish to pre-empt decisions by the new licensing boards, which will not be elected and appointed until 2007, it would be helpful to the trade if the minister put on record the Executive’s intentions in relation to the continuity of trade by premises in the transition to the new regime. I am not trying to paint the minister into a corner, but he should reassure the trade, including John Murphy, the landlord of the Scotsman’s Lounge, whom I know well, and whose establishment the minister mentioned last week. Alternatively, if the minister gave public reassurances to a licensing conference, I am sure that that would be acceptable. The 17,000 licensees would welcome the minister putting his view on the parliamentary record, if that is possible. I look forward with anticipation to what the minister will say.

I move amendment 186.

Mr Davidson: I listened to what Bruce Crawford said. I have picked up from the minister and his predecessor an inclination to allow currently well-run establishments to proceed, although not to have a further opening hours advantage. In other words, they will be able to open for the total number of hours for which they open at present as a maximum. We need continuity—the trade in its various forms has been quite agitated about that. Bruce Crawford’s amendment 186 would allow for objections to weed out poor or bad premises; it would not create a two-tier licensing system; and it would not mean automatic transfer. Given that, I would like to hear what the minister has to say to clarify the issue. The trade has been exercised about the issue, which, I believe, is why amendment 186 was lodged.

George Lyon: I am happy to respond to the concerns, as the issue is important and is causing some concern to the industry. I will start by placing the issue in context. We must be clear that, under the proposed new system, premises licences will be granted in perpetuity and three-year licence renewals and annual renewals of extensions of hours will be abolished. If we are to grant someone the right to retain a licence, potentially for their lifetime, it is absolutely right and fundamental that the granting of the licence is a full and proper determination process.

The committee’s stage 1 report states that there should be no automatic transfer of licences to the new system, a view that I very much support. Grandfather rights should not be granted wholesale in Scotland, as that would result in a two-tier system. Amendment 186 seeks to provide grandfather rights to existing licensees who retain their existing opening hours or who plan to open for the same number of hours in a day. The amendment would remove the need for such premises to present planning, building standards or food hygiene certificates; it would remove the grounds for refusal that relate to overprovision or the character, location and condition of the premises; and it would remove the need for a board to specify reasons for a licence refusal.

I wrote to the committee on 17 August setting out our proposal for handling the transition and our conclusions on grandfather rights. We have already recognised three of the points that are included in amendment 186. First, we accept that existing licensees should be exempt from the need to present certificates; secondly, we accept that they should be exempt from the overprovision assessment and the overprovision ground for refusal; and, finally, we have offered a concession so that, if a board considers that it would be minded to refuse the licence on the grounds of the location, character or condition of the premises but
thinks that suitable modifications can be made to address those concerns, the licence must be granted and the licensee given a period of 12 months in which to make the necessary modifications. Those measures followed considerable discussion with the licensed trade associations and met the key concerns that were expressed to us. I hope that Mr Crawford and Mr Davidson will accept that the measures go a significant way to reassure the trade on the continuity issue. Our announcement has been welcomed by the Scottish Licensed Trade Association.

Mr Crawford ignores the fact that existing licences are granted on a three-year basis, which means that licensees have to apply for a renewal every three years, and that, at present, extensions of hours are granted on a 12-month basis. He also ignores the fact that licensing boards want to consider licensed hours proactively due to the open-ended nature of the premises licence under the bill.

Mr Crawford’s amendment 186 would allow concessions for people who are maintaining the same hours but who may be completely changing the activities that they plan to carry out, and for circumstances in which the board may have a legitimate reason for concluding that the premises are not suitable. Another concern is that, by allowing exemptions for those who plan to open for the same number of hours in a day but at different times, amendment 186 fails to recognise that that might lead to a consequent change in the nature of the premises and their suitability for the sale of alcohol and in their clientele. Why should the premises be granted exemptions from consideration of those issues?

I believe that our proposals on grandfather rights provide the right balance. They provide some reassurance to the licensed trade through the concessions that have been offered, but they also recognise that maintaining the same hours should not entitle people to any special rights under the new system. In view of the reassurances that I have given Mr Crawford, I ask him to consider withdrawing amendment 186.

Bruce Crawford: Amendment 186 was always of a probing nature, as I am sure the minister is aware, and was lodged to enable us to get some of the issues on the record. I am not sure that the minister’s reassurances go as far as I would have liked them to go, and I am not sure that the trade will think that they do, but I recognise the difficulties that the minister has painted with regard to amendment 186. It is worth emphasising, however, that I do not think that amendment 186 would have created any automatic transfer for all premises—the committee had concerns about that matter previously—and that it would have allowed objections and consideration by the board when there were outstanding issues. Moreover, it would not have created a two-tier licensing system. I do not agree with some of the criticisms that were made.

I hope that the minister will take up my suggestion that he clarify the matter even further at a future event involving the licensed trade, so that people can be persuaded that what the minister suggests is reasonable. I wish that the minister had gone a wee bit further and had said more about the rights of individuals in carrying forward and about the circumstances in which they might be able to keep their current hours. However, I recognise that amendment 186 was a probing amendment, so I seek leave to withdraw it.

Amendment 186, by agreement, withdrawn.

Section 117—Special provisions for certain clubs
Amendments 154 to 156 not moved.
Section 117 agreed to.

Section 118—Vessels, vehicles and moveable structures
Amendment 157 not moved.
Amendment 179 moved—[George Lyon]—and agreed to.
Section 118, as amended, agreed to.

After section 118
Amendment 158 not moved.

Section 119—Power to prohibit sale of alcohol on trains
Amendments 92 and 93 moved—[George Lyon]—and agreed to.
Section 119, as amended, agreed to.

After section 119
Amendment 185 moved—[George Lyon]—and agreed to.

The Convener: Amendment 159, in the name of David Davidson, is in a group on its own.

Mr Davidson: Amendment 159 would make it possible to lift the ban on the sale of alcohol at sports grounds in Scotland while still allowing the police or the ground authority to enforce such a ban in certain situations—in others words, the amendment would introduce flexibility.

It has been proven that certain matches and occasions cause difficulties with unrest either inside or outside the stadium. The intention is not
to introduce a blanket lifting of the ban. However, I believe that the Scottish economy has been somewhat damaged by the overrigidity of the blanket ban. I am thinking in particular of the rugby league finals that have been held in Scotland. Traditionally, alcohol has been on sale at such events and there have never been any problems of which I am aware, other than the usual problems outside grounds that are associated with any activity.

If amendment 159 is agreed to, we would have pilot schemes. The control of the police force would be maintained. No ground management would want to do anything that would damage the interests of their sport or the ground or risk the safety of individuals inside it. The police report that there are few problems with rugby internationals in England, although there are problems with certain football matches—the same could be said for shinty matches when they get over the top on occasion.

The cross-party group on sports supports the aim to seek leeway to trial pilot schemes. My concern is broader than that, however. I want to allow us to have control over what goes on. We should not have a blanket ban; we should take a local approach, leaving it to the discretion of the police force and ground authorities to determine the appropriateness of lifting the ban.

I move amendment 159.

The Convener: I am sure that many members would agree that Maggie Thatcher’s Government caused much damage to the Scottish economy. I am not sure that the ban on alcohol sales at sports grounds would be top of the list of reasons for that.

Michael McMahon (Hamilton North and Bellshill) (Lab): I, too, was at the cross-party group’s discussion at which representatives of a football club argued that it was time to loosen the chains, if you like. I was not convinced by the argument that I heard then and I am not convinced by the one that I have heard from David Davidson today.

I do not think that amendment 159 is necessary. Under the current legislation, a sporting event can be granted an exemption. Therefore, the events that David Davidson mentioned are already covered; all cases are considered on their merits. The idea that the economy was damaged because for 90 minutes the supporters of two English rugby league teams who had travelled to Edinburgh could not get a drink inside Murrayfield takes the argument a bit far. Edinburgh benefited from hosting the event and I do not think that there was any loss to the economy because the supporters were required to sit in their seats and not drink alcohol for the 90-odd minutes of the game.

The issue is wider than that. The bill is aimed at addressing problems in our society. The measure proposed in the amendment would be a Trojan horse that would cause difficulties in areas with social problems. I know that we would rather that this was not the case, but our football grounds are not ready for the ban on alcohol sales to be lifted. If we agreed to the amendment, every football club would want the ban to be lifted and I do not think that every football ground is capable of allowing supporters to drink alcohol and watch football. That is a sad indictment of Scottish society, but it is the reality. Given the additional problem of sectarianism in our football grounds, the measure would cause real problems. Amendment 159 is out of kilter with what the bill aims to address.

It is not appropriate to agree to an amendment that would allow the return of the problems that we saw in the 1950s, 1960s and 1970s. It was those problems that led to the requirement for legislation to prevent the drinking of alcohol in sports grounds. We have not eradicated those social problems and I do not think that we can wish them away just because one or two proprietors of sports grounds want to make a bit more money from hosting events. That would be the wrong move. The amendment is out of step with the bill’s aims.

14:45

Bruce Crawford: I can see where David Davidson is coming from, but I am not sure that the bill is the right place to do what he suggests. If we are to lift the ban on the sale of alcohol in sports grounds, we will need a lot more evidence than we have at present. Except in passing, we did not take any evidence on the issue at stage 1—at least, none that I recall. I have always believed that we should try to introduce legislation based on evidence, but in this case we do not have that.

It is time for the Executive to review the whole process in relation not just to football grounds, but to other sporting venues. There may be a case for the ban to be lifted, but it has not been made yet. I do not accept Michael McMahon’s presumption that football grounds are not ready for the ban to be lifted. That might be the case, but I find it difficult to understand why alcohol is freely available at English football grounds while it is not available at Scottish ones. I do not think that the difference in culture is that big.

The only way in which we will get underneath the issue is for the Executive to carry out a proper review to examine the matter as a whole, to consider experience from other countries and to apply it to the situation in Scotland. If appropriate, the Executive could then introduce legislation. The minister should perhaps consider giving himself
some powers by regulation under the bill, which would avoid the need for primary legislation later.

At this stage, the committee has not seen substantial amounts of evidence on the pros and cons of the proposal. On that basis, it would be wrong for the committee to agree to the amendment. It might have merit, but before we decide we need a much wider review of the matter by the Executive, with a proper consultation process. If the Local Government and Transport Committee is the appropriate place, we will then consider the evidence and make decisions, but now is not the right time to do that.

Paul Martin (Glasgow Springburn) (Lab): Bruce Crawford touched on a couple of issues, including evidence. Michael McMahon and I were having a dispute about when the Rangers and Celtic pitch invasion happened. I think that it was in 1981.

The Convener: It was in 1980.

Paul Martin: That incident—and others that took place during those years—led to where we are now. Scottish football found itself in an appalling situation, which is why we banned alcohol in sports grounds. The alcohol abuse that took place at that time meant that families could not enjoy football in the way that they can now. For me, that is the main issue. The football clubs have tailored themselves effectively. A number of small clubs, such as Livingston, are to be commended for the hard work that they have put into creating a family environment. That environment would be dismantled by the introduction of en masse alcohol opportunities.

David Davidson’s point about the economy is false. If we said to the clubs, “Yes, let the supporters consume alcohol,” that would have an effect outside the clubs. For example, it would have an effect on pubs that use football as their source of income.

The proposal has no real support other than from the clubs. I would not mind if the clubs were simply concerned about the needs of their supporters, but it is no coincidence that the clubs have promoted the proposal at a time when they face serious economic challenges. The clubs are concerned not so much about their supporters as about their profits. The main priority for the Parliament should be to deliver for the people of Scotland, not for the football clubs of Scotland.

We should err on the side of caution. As Michael McMahon pointed out, we already have the opportunity to make rare exemptions from the rule, but I would like such exemptions to remain rare rather than to become the norm.

The Convener: Before the minister responds to the debate, I will just observe that when Murrayfield hosted the recent Heineken cup final European rugby match, which I attended, alcohol was available on the premises. Perhaps the minister can explain how, for such major unique sporting events, exemptions are possible.

George Lyon: Many arguments have already been made against amendment 159, but I will add one or two more to clarify the issue and to reassure the committee.

As Paul Martin indicated, controls at certain sporting events were introduced in 1980 for reasons of public order and safety. Among other things, the controls prevent drink from being consumed in any shape or fashion at designated sporting grounds for designated events. Designation of both the sporting ground and the event is by ministers, who can change the designation—as they did in 2004—by laying an order before the Parliament.

The control measures include restrictions not just on alcohol, but on controlled substances such as fireworks or flares and controlled containers such as bottles. In focusing purely on alcohol, amendment 159 overlooks the fact that the existing control measures for sporting events are designed as an integrated package. They cover alcohol, fireworks, flares and bottles, all of which we know to be issues of great concern at sporting events.

Let me also take the opportunity to remind the committee that the controls are limited and specific. The alcohol controls, which were first imposed under the Criminal Justice (Scotland) Act 1980, do not apply to non-designated events at designated grounds, such as rugby league matches at Murrayfield, non-international rugby union matches at Murrayfield and American football matches at Hampden. As the convener pointed out, alcohol was allowed to be served during the Heineken cup final, which was not a designated event because it was a European rugby union club competition.

Local licensing boards also have discretion to allow the sale of alcohol inside designated sports grounds for non-designated events if they think that is the right thing to do. Police advice to licensing boards now routinely includes an assessment of the risk to public order and safety, which is made for each event or category of event. An example of that approach was the decision to allow the sale of alcohol at Murrayfield during last year’s BT cup finals day.

In conclusion, given that ministers can by order change the designation of sports grounds and sporting events—the most recent change was made in 2004—the current legal position is not rigid and we do not need the extra powers that amendment 159 would provide. Even if ministers
decided that pilot projects should be carried out, powers exist under current legislation for them to do that. The committee can be reassured that we have sufficient flexibility if we were to decide to go down that road in future. However, given the arguments that committee members have advanced, I believe that we are right to hold to the current position of preventing alcohol from being sold at designated grounds and designated sporting events.

**Mr Davidson:** I will take the speakers in order. I whole-heartedly agree with Bruce Crawford that primary legislation might be needed in future. I support his view that the Executive should conduct a review of the matter if it is felt that the bill is not the appropriate piece of legislation to deal with the issue.

Others have talked about alternative activities such as cricket, rugby league or whatever. I have never spoken in the committee only about football. A much wider interpretation of sport and sporting events is involved.

It was said that the committee has not taken evidence. However, when I raised the issue previously, the committee did not want to take evidence, which is why we are discussing the amendment today.

Paul Martin mentioned the family approach and the potential damage to outside hostels. Currently, people get fairly well stoked up, as is said, before they go to a match, as Grampian police can testify. The onus is therefore on the police and the authorities to ensure that anyone who is in a poor state does not enter the ground. That control already exists. As far as the effect on outside pubs is concerned, that is simply the law of the marketplace and I have no difficulty with that.

The minister mentioned designation. Proposed new subsection (2B) of section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995, which amendment 159 would introduce, clearly refers to “the chief constable for the area” and “the managers of the sports ground”.

I want real decentralisation, or devolution, if you will, away from the minister—who would no doubt retain a power of final resort—in order to allow local people, with the licensing board, to make decisions on controls and to look for exemptions where risks can be reduced or where they can be held to be fair. I totally agree with what everybody has said about risks to the public, but I do not want to leave things to the whim of ministers; rather, I seek to give powers to chief constables and managers of sports grounds to deal with local issues. As I have said previously, no one would do anything foolish, but it would be helpful if the bill allowed at least for a pilot scheme to be operated.

Someone mentioned losses. A loss of £20 million has been confirmed by a number of authorities, but allowing for family-based activities is a restraint in itself. Bruce Crawford has said that we need to make public houses and restaurants more family friendly in order to help to change the culture. I believe that condensing drinking patterns to pre-match and post-match drinking and not spreading it encourages the overuse of alcohol and means that people come to grounds inflamed, possibly about religious divides or whatever. I want to press the amendment if only to put the matter on the record.

**The Convener:** The question is, that amendment 159 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Davidson, Mr David (North East Scotland) (Con)

**AGAINST**

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)

**The Convener:** The result of the division is: For 1, Against 7, Abstentions 0.

**Amendment 159 disagreed to.**

**Section 120—Relevant offences and foreign offences**

**The Convener:** Amendment 94, in the name of the minister, is in a group on its own.

**George Lyon:** The bill already allows ministers to prescribe offences that are to be relevant offences for the purposes of the new licensing regime. Amendment 94 will go one step further and allow the persistent commission of a lower-level offence—which would not by itself be sufficiently serious—to amount to a relevant offence. Convictions for a relevant offence may result in the board refusing to grant a licence or the review of a licence. A review may, of course, ultimately lead to loss of the licence.

One use to which the regulation-making power is intended to be put is to make additional links between the bill and the Smoking, Health and Social Care (Scotland) Act 2005. Section 1 of that act makes it an offence for a person with management and control of no-smoking premises knowingly to permit others to smoke. There is a
further offence under section 3 for such a person to fail to display warning notices.

We consider that people with management and control will include the premises licence holder. It is our intention that the offences under sections 1 and 3 of the Smoking, Health and Social Care (Scotland) Act 2005 should be relevant offences for the purposes of the bill for both personal and premises licence holders.

It is right and proper that a licensee should face consequences in relation to his licence for smoking offences. However, we do not feel that it would be appropriate to initiate the potentially fairly serious consequences for licensees over a single commission of a lower-level offence. We intend instead that regulations will specify that lower-level offences, including the smoking offences, must be committed on three occasions before being treated as relevant offences. Amendment 94 ensures that the general concept of persistent commission of offences is recognised in the bill and can be used when we are drafting regulations.

I move amendment 94.

15:00

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Given what the minister has said about the specific offences that he intends to create, would it not be better, in light of the importance of the matter and the desirability of clarity when any criminal offence is created, for those offences to be created in the bill rather than through subordinate legislation later on? Given the lack of any facility to amend subordinate legislation and the limitations, with which we have all become familiar, on our capacity to scrutinise it when it is introduced, is there not a strong case for reconsidering the issue, particularly in relation to the most important offences, which ought to be brought forward for proper debate at stage 3?

George Lyon: I have two points to make in response to Mr Ewing’s concerns. First, we are not creating offences; we are just providing a linkage between the two pieces of legislation. Secondly, members can accept or reject subordinate legislation, so the Parliament can give its views if members are unhappy with the regulations that are introduced.

Amendment 94 agreed to.

Section 120, as amended, agreed to.

Section 121 agreed to.

Section 122—Appeals

The Convener: Amendment 95, in the name of the minister, is grouped with amendments 96 to 101.

George Lyon: My predecessor, Tavish Scott, explained to the committee at stage 1 that the appeals provisions had not been fully worked up when the bill was introduced. That was because we were still in consultation with the sheriffs principal about how those provisions should operate. We have subsequently agreed with the sheriffs principal a procedure that will deliver what Sheriff Principal Nicholson had in mind in his report.

Sheriff Principal Nicholson’s primary concerns were the following. First, he was keen to ensure that appeals should be made to a senior judge. Our amendments provide that all appealable decisions relating to premises’ licences are made to the sheriff principal rather than to a sheriff. As amendment 96 makes clear, only appeals relating to personal licences would go to a sheriff.

Secondly, Sheriff Principal Nicholson felt that, when a licensing board’s decision to suspend or revoke a premises’ licence is being appealed, there should be a procedure for the recall of that suspension or revocation while the appeal is being determined. Amendment 101 and consequential amendments 97 and 100 deliver that judicial safeguard against premises being closed until an appeal is heard.

Finally, Sheriff Principal Nicholson’s policy was that only substantive decisions, not procedural ones, should be appealable. Amendments 95 and 98 deliver that, by setting out a user-friendly list containing a schedule of all decisions of the board that may be appealable and of who may appeal them. That list now contains two sets of rights of appeal that are not currently contained in the bill. One allows a personal licence holder or an applicant for a personal licence to appeal against the refusal of a personal licence or other order in relation to a personal licence. The other allows both applicants for and objectors to an occasional licence to appeal against the granting or refusal of an occasional licence application. That is necessary because, for occasional licences, there is no right of review, which would not be appropriate given the fleeting nature of the occasional licence.

Rights of appeal are being given to objectors at the review of a premises licence rather than at the initial application stage. We recognise the importance of rights of appeal, but we believe that that is the appropriate time for such rights to be available. As soon as the premises in question are up and running, any person can, if there are any problems, apply for the review of the licence, including an objector to the original application. If the objector is overruled at the review hearing, they have the right to appeal the decision in the courts all the way to the House of Lords if they wish.
I remind the committee that, under the bill, we are greatly extending the right to object to a licence application in the first place. Under the Licensing (Scotland) Act 1976, only a very restricted range of people may object to a licence application. Given that the bill allows any person to object and to make a licence review application once the premises is up and running, we are now offering a much wider right of appeal at a different stage of the process.

I hope that the committee will agree that the amendments will deliver a fair and well-balanced appeals process.

I move amendment 95.

Amendment 95 agreed to.

Amendments 96 and 97 moved—[George Lyon]—and agreed to.

Section 122, as amended, agreed to.

After schedule 4

Amendment 98 moved—[George Lyon]—and agreed to.

Section 123— Appeals: supplementary provision

Amendments 99 to 101 moved—[George Lyon]—and agreed to.

Section 123, as amended, agreed to.

Section 124 agreed to.

Section 125— Form etc. of application and notices

Amendments 102 to 104 moved—[George Lyon]—and agreed to.

Section 125, as amended, agreed to.

Section 126 agreed to.

Section 127— Fees

The Convener: Amendment 160, in the name of Paul Martin, is in a group on its own.

Paul Martin: I want to clarify a couple of points about amendment 160. I am not proposing a blanket approach to the recovery of costs. Amendment 160 would give licensing authorities the opportunity to recover the public service costs attached to a licence if, for example, there were an application to extend it to cover a longer period. The police authorities are mentioned in the amendment, but there would also be an opportunity to recover the costs of closed-circuit television, which is required in a number of licensing authority areas, and council service costs.

I respond to the arguments against the proposal by saying that there has been a lot of public support for it, such as from people at our meetings in Glasgow who have suffered as a result of an increase in licensed premises’ activities. There is a strong feeling that there should be an opportunity for the licensing authorities to recover costs. I also understand that a number of police authorities support the opportunity that would be available to the licensing authorities. I stress that the measure would be available if the licensing authority felt that there was going to be an increase in police activity as a result of applications being accepted.

There has been a suggestion that the antisocial behaviour element of the police’s duties would be involved. The police would be carrying out their role as a result of a licence application. That would relate not just to antisocial behaviour, but to patrolling outside a number of licensed premises whose applications might be accepted.

I move amendment 160.

Fergus Ewing: I have listened carefully to what Paul Martin has said, but I am not persuaded that we should support his proposal, for the following reasons. First, licensed premises already pay a substantial sum for policing, particularly through non-domestic rates and through public general taxation. Singling them out for extra charges is, in principle, not to be supported. Business rates are very heavy for licensed premises and I am pretty sure that most licence holders would already say, and argue with force, that they pay their taxes, they pay their way and they pay for policing.

Secondly, if the amendment were passed, it is not clear how it would be possible to measure any increase in the cost of providing public services. That concept would be immeasurable and subjective, almost by definition. Any system of taxes should be the opposite: clear and ascertainable.

Thirdly, there might be a case for businesses—perhaps all businesses—to make a contribution towards the cost of providing CCTV. I am aware from cases in my constituency that informal arrangements can be considered. However, I do not see why public houses should be singled out to pay for it, rather than the generality of businesses in city centres or town centres, all of which would have an interest in benefiting from the provision of CCTV.

For those reasons, I am not inclined to support amendment 160.

Mr Davidson: I raised earlier the issue of proof that a certain problem has emanated from a public house and is not just something that has appeared in the street outside it. I cite as an example a non-licensed premises in Aberdeenshire that attracts a large element of young people who are very
disturbing of the peace. They frighten people to death outside a particular chip shop, close to a village hall. Some of the young people there are under the influence of alcohol. Because it is a small town, the police cannot be there all hours to cover the situation.

Turning to the thinking behind amendment 160, it is difficult to say whether the fault lies with the off-licence or public house that might have served the young people with alcohol or whether it lies with the chip shop outside which there is a constant problem, which can extend to fires in bus shelters, vehicle fires and so on. There is a similar problem by a video shop in another area. It is brightly lit, has a sort of balcony and seems to be a gathering point.

The real issue is that, quite apart from the fact that establishments collect revenue for the Chancellor of the Exchequer, they pay their way. There is evidence that, where town centre partnerships get involved with CCTV schemes, they are managed very well. They tend to be well funded by all the local shopkeepers. It is not a case of treating the problem as if it exists only in the area immediately outside the pub in question; other people have an interest in law and order.

If a public house or restaurant is continually the cause of problems, the powers for it to be got at by the licensing board are already present in the bill and in existing legislation. It is an issue for the management of those premises. That relates to a point Tommy Sheridan raised previously and with which I have some sympathy. Will there be proper training for doormen? Will they be licensed? Will they be under control? Will they become heavy-handed to ensure that any problems happen off the premises rather than on the premises? I do not want them to take the place of the police. I am a bit concerned about what exactly Paul Martin’s amendment would do that cannot be done already.

15:15

Bruce Crawford: Paul Martin is right to say that we took informal evidence. Paragraphs 364, 365 and 366 of the committee’s stage 1 report deal with the informal evidence that we took during our visit to Glasgow. The view was expressed to us that in certain circumstances it might be appropriate for licensees to contribute directly to the increased costs of cleansing and policing where problems were directly attributable to the existence of licensed premises. The report states:

“The Committee recognised that it had taken no formal evidence on this matter, and that there could be a number of potential difficulties, for example, in seeking to impose an additional levy on businesses which already pay non-domestic rates.”

Paul Martin mentioned that some police authorities favour the idea. I would like to know which they are, because that would be additional evidence that we could bring to bear in the argument. I cannot remember whether we took informal evidence from the police at our session in Glasgow—my memory fails me. I cannot remember any of the policemen who gave the committee evidence at stage 1 suggesting the idea. It would be useful to hear from Paul Martin who those people are.

Fergus Ewing dealt with the amendment’s potential impact on businesses from a business rates perspective. Evidence that we received in an e-mail this morning suggests that the licensed trade in Scotland pays about £50 million a year in business rates. Goodness knows how many more millions of pounds it gives to the Chancellor of the Exchequer in excise duties each year. A considerable amount of tax revenue is raised from the licensed trade.

The more compelling argument is that when antisocial behaviour outside or inside a premises causes difficulties on the streets, we would effectively legitimise that activity by putting up CCTV cameras or introducing other measures. CCTV cameras can make a contribution to dealing with the problem, but the amendment would almost legitimise such criminal activity by implying that the problem can be overcome by putting up CCTV cameras.

The way to address the problem is to deal with it through the bill and the new licensing regime. If necessary, the premises can be shut down. That is what we should do with these places. We should not enable them to bring in other measures as that could legitimise the antisocial behaviour. I understand where Paul Martin is coming from and that that is not his intent, but there is the potential to look at the amendment in that way. We should bring something to bear through the new licensing regime that either brings those places to book or closes them down. That would be the proper way to deal with them.

Whether a CCTV system that covers a wider area can make a contribution is an entirely different matter. David Davidson dealt with the issue. I recall that when I was the leader of Perth and Kinross Council we were one of the first areas in Scotland to have CCTV in the city centre to deal with those matters. A partnership approach was taken and the private sector, the police and the local authority brought money to the table to deal with a problem in a specific area. That approach works and there is nothing wrong with it, but legislation is not required to make that happen: it requires only will and it does not focus on specific premises.
I say to Paul Martin that it might be possible to introduce another amendment at stage 3 that deals with his concerns and does not effectively say that the process is a charter—I do not want to use words that are inappropriate—that legitimises some criminal activity. The committee recognised that if practical ways could be found to get round the problem, that would be fair enough, but we must deal with those points first.

Michael McMahon: I take on board a few of the points that members have made. There are issues about an additional burden being placed on those who already pay business rates, but there is a fundamental difference for licensed premises in that respect as, unlike other businesses, their rates are assessed on turnover. Some successful businesses will pay a substantial amount of money but that is because they are successful. If their success allows them to ignore what happens outside their premises, what Paul Martin asks for is not a burden that we should flinch from asking them to bear.

If licensed premises make money and are successful, they have to recognise that they are part of a community and that they provide a service that is unlike that provided by other businesses. Given that they have an impact on wider society, we can ask them to pay a bit more if they do not provide that service responsibly.

David Davidson talked about the difficulty of stewarding and costs. In my experience—I have witnessed this—stewards are paid by the premises to look after the premises. They do not get involved in incidents in the street because they are not paid to intervene in such incidents. It is their responsibility to get a troublemaker off the premises—that is where their responsibility ends. That exemplifies why Paul Martin is right to raise the issue. Once the problem is over the doorstep, the publicans do not want to know. They are not prepared to pay that bit extra—although the problem just goes outside.

We passed the Antisocial Behaviour etc (Scotland) Act 2004 to address antisocial behaviour on streets, such as outside chip shops. The point is that public houses are a different type of premises, so we have to address them differently, which Paul Martin is trying to do. During consideration of the bill, a superintendent told me that the police would like a lot of the measures in it because they would like as many tools in the toolbox as possible. That is not to say that they will always use those tools, but if the tools exist they have the option of using them.

Paul Martin might not have drafted amendment 160 as tightly as we would like, so if it is agreed to I ask the minister to make alterations to it at stage 3 to address some of the concerns that members have raised. If we agree to the amendment, we will give the bill added teeth. The amendment sends out a strong signal and I will certainly support it.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): Although I see the purpose of amendment 160, I also foresee the practical difficulties that other members have mentioned. If there is a problem in an area with three licensed premises, do we charge them all extra pro rata? How is that decided? A troublemaker might have staggered from a fourth premises some distance away. I do not see how the amendment can work in practice. The point that Michael McMahon raised is more interesting. If pubs are exporting their problems on to the street, there is perhaps room for identifying and dealing with that in a slightly different way from that suggested in amendment 160. I will not support amendment 160, because it will not deal properly with the problem.

Dr Sylvia Jackson (Stirling) (Lab): Bruce Crawford is right: an establishment should be closed down if it is causing a problem. However, it is inevitable that there will be police activity before such an establishment is closed down. I have had letters and visits from constituents about licensed premises and antisocial behaviour. People ask me to get more police activity. If that abates the antisocial behaviour, albeit for only a limited time, it is worth it. I agree that perhaps amendment 160 is not exactly what we want at the moment, but it contains the gist of it.

The Convener: I have a couple of comments to make before I invite the minister to contribute. It is right that if a premises regularly does not behave in the way that we would expect of it, we would wish to see its licence removed.

It seems to me that the principle that Paul Martin seeks to introduce in amendment 160 is that the misbehaviour of a premises’ customers need not require the licence to be removed. He proposes a way of reducing the impact on society of adverse activities in premises without immediately seeking to impose that sanction. The principle that Paul Martin seeks to introduce is valid.

The normal activities of most businesses do not have a major impact on policing and other public services. However, in the football business, which we debated earlier, there is the potential for antisocial behaviour and occasional criminal activity at football grounds on match days. Because of that, policing is required at football grounds on those days, for which football clubs must pay. If we applied to the football business Bruce Crawford’s argument that we should close down premises where customers misbehave, we would have to close down large parts of our football industry. The principle that Paul Martin seeks to introduce is similar to the one that applies in football and it is worthy of further consideration.
On members’ arguments regarding chip shops and other premises, I am convinced that people who commit antisocial behaviour in the middle of our towns and cities every weekend do not do so on the basis of the over consumption of chips. That particular argument is ridiculous. Many of the members who introduced alternative arguments into the debate are the same people who opposed the introduction of dispersal powers as part of the Antisocial Behaviour etc (Scotland) Act 2004. Measures exist to deal with antisocial behaviour that is not particularly associated with licensed premises but takes place in a particular location. Local authorities and the police can use such measures.

I do not know whether my colleague Paul Martin intends to press his amendment 160, but the principle that underlies it is valid. I will wait to see what he decides to do after the minister responds to the debate.

George Lyon: I, too, have sympathy with the concerns that lie behind amendment 160, but I stress that our proposals for a new licensing system deal with the issues and concerns, which Paul Martin has consistently raised, about problems in Glasgow and other parts of the country. The new system will emphasise a partnership approach with the licensed trade, with mediation at a local level to solve problems. When problems arise that result in increased policing or other public service costs, such as for litter collection, the licensing standards officer will give the licensee involved an opportunity to sort the problem out themselves in the first instance. If intervention at that level does not work, the enforcement regime will kick in.

Licensees will not be able to ignore problems outside their establishments, as they currently can under the 1976 act. Either unilaterally or further to a complaint from the police or anyone else, licensing boards will review a licence and may apply a wide range of sanctions, including revocation of the licence. That means that a board will shut a place down if a licensee will not deal with problems that arise outside their establishments.

I have a good deal of sympathy with the reasoning behind amendment 160, but a number of practical difficulties could arise from its proposals—and members have referred to them. For example, how would we identify which establishment should have an extra charge placed on it? I wonder whether there would be a disincentive to calling the police out to deal with problems if a licensee had to pay for a call-out. How would we establish the extra costs that a particular police force would incur on such occasions? Licensing conditions for some establishments would require them to install their own CCTV systems.

I am willing to examine the matter further, to see whether there is a way to overcome the practical difficulties. With that assurance, I ask Paul Martin to consider withdrawing amendment 160. I guarantee to come back at stage 3 on the matter, after looking at it in further detail.

15:30

Paul Martin: The debate has been fair. I will deal with the points that members have raised. The issue that Bruce Crawford mentioned was similar to that raised by the Scottish Beer and Pub Association in evidence to us. I see the issue as one of capacity. At present, applications that councils are considering will increase the requirement for police authorities to attend premises. The issue is not about existing antisocial behaviour; it is that an increase in the activities of licence holders will result in an increase in the policing cost for an area.

My point is similar to the one that Sylvia Jackson raised—the aim is to prevent antisocial behaviour. Additional applications, particularly in Glasgow, will result in additional requirements for the services of police authorities. I see amendment 160 as enabling us to prevent antisocial behaviour. The aim is not necessarily to deal with premises that are consistently linked to antisocial behaviour. Similarly, the aim of closed-circuit television systems is to prevent antisocial behaviour—their existence can have that effect. If premises want to increase their activities to become superpubs—we are seeing evidence of them throughout Scotland—licensing authorities should be given the power to require them to pick up the related costs. The public often argue that even though we have business taxes, local council tax payers should not pay for the costs that arise from the additional activities of premises that go from an ordinary pub to a superpub. The matter is a people’s issue.

I accept that we need to highlight premises that cause problems, but the anecdotal evidence is that any police officer would be able to highlight the problem premises in their area. There are well-publicised cases of premises that have caused problems over the years but have not been closed down, because that is not the way in which licensing authorities react to complaints. They do not simply decide to close premises; as Sylvia Jackson said, they are required to police the problem to a particular stage. However, during that time, members of the public suffer.

Amendment 160 is an enablement to deter operators who do not want to ensure that their premises are properly policed. Bruce Crawford is right that we should close down premises that cause problems, but the premises that we are talking about will not always be those that cause
problems. If the number of licence applications in the system is to increase, we must ensure that premises are policed properly. To enable us to do so, we must put in place a measure under which the licence holder must pick up the cost for that.

Some public organisations contribute to policing costs—a housing association in my constituency contributes towards the overtime costs of police officers. Therefore, I do not see why superpubs and nightclubs cannot do the same. I will press amendment 160 on the basis that negotiations could take place before stage 3 to ensure that the bill deals with the concerns that members have raised.

The Convener: The question is, that amendment 160 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahan, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)

AGAINST
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

On that basis, I must cast my casting vote, which I do in favour of amendment 160.

Amendment 160 agreed to.

Bruce Crawford: On a point of order, convener. The convention for dealing with tied votes in committee might be different from that in the chamber but, in the chamber, the Presiding Officer casts his vote for the status quo. What has just happened does not maintain the status quo.

The Convener: I have convened a number of stage 2 proceedings and I have consulted on this matter. To my knowledge, there is no guidance on how committee conveners are required to use their casting vote. It is down to the convener’s judgment.

Bruce Crawford: I accept that there is no guidance in that respect, but I asked about the convention.

The Convener: I believe that no such convention applies to parliamentary committees.

Fergus Ewing: On a point of order, convener. I do not doubt what you have said because, after all, you have been a convener for a long time. However, some members take a different view from you on the matter. They might well be incorrect, but I wonder whether we can seek guidance from the Presiding Officer’s office to clarify the position on this important issue and whether you can report back at the next meeting on the result of that exercise.

The Convener: I do not know whether we need to seek guidance from the Presiding Officer, but I can certainly seek out the guidance for conveners and make it available to the committee. My understanding is that conveners on different committees have taken different approaches to such situations and that the vote is cast at the convener’s discretion.

Amendment 4, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: First, let me say that I accept the convener’s response to my point of order.

We took a lot of evidence on fees and I want to remind members what we said about the matter. It is one of the bill’s most difficult issues, and our approach to it will influence whether the licensing trade accepts the legislation. We can try to take a pragmatic view of all the evidence that we have taken but if, further down the track, licensed premises find it difficult to pay fees, all our good work could well be unravelling.

I believe that the provision in amendment 4 would bring us closer to the committee’s agreed position. In our stage 1 report, we deal with fees from pages 56 to 59 and say:

“The Executive has expressed support for the principle of graduated fees set at different levels for different categories of premises.”

The minister will probably say that he wants to introduce a process to address that principle—indeed, I hope he does—but I want the bill to require the Executive to do so. The Executive will introduce regulations later, but the principle must be established.

In evidence, the Scottish Licensed Trade Association said:

“One thing is for sure: it is going to be difficult to come up with something that pleases everybody.”

However, any regulations on fees that the Executive introduces will have to please as many people as possible. The Executive will not be able to please everyone—I acknowledge that—and although the committee is able to sit here and discuss principles with the minister, the Executive itself will have to get down to the nitty-gritty.

The SLTA went on to say:

“When we examine the potential cost of liquor licensing standards officers and so on, we can see the costs mounting up. The fair approach would be to base fees on the ability to pay, so bigger places would pay more than smaller places.”—[Official Report, Local Government and Transport Committee, 12 April 2005; c 2282.]
Of course, the issue might not be size, but turnover. The fact that premises are bigger does not necessarily mean that it should have to pay more.

The Scottish Beer and Pub Association said:

“It is important that when the new regime is put in place, we try to keep costs to a minimum.”—[Official Report, Local Government and Transport Committee, 19 April 2005; c 2355.]

That is true. The association then made it clear that it does not want gold-plating. Furthermore, the Federation of Small Businesses complained to the committee that

“It is obvious that the costs to a licensing board will increase significantly merely by employing licensing standards officers”

and then highlighted what would happen if a board’s increased costs were

“passed on to businesses through the fee system”.— [Official Report, Local Government and Transport Committee, 3 May 2005; c 2452.]

Obviously, that is a very important issue for the federation.

The Scottish Grocers Federation argued that licences should be structured in such a way that licensed premises will be banded according to their rateable value. That is another option, but it all comes back to the same principle: the system should be graduated and based on ability to pay, either through the rates or based on the site. It is for the Executive to come up with the detail. Today I am trying to establish the principle.

Finally, the committee said that it

“considers that there should not be a flat licence fee rate: fees should take account of different types and sizes of licensed premises. In the view of the Committee, a new variable fees regime should be flexible enough to take account of the many different types of licensed premises.”

I agree. We cannot be prescriptive today about what the system should be. However, we can say that, in principle, the system should be based on that premise.

Amendment 4 suggests that regulations

“must provide for the level of fees charged to vary between different sizes and types of premises.”

I have used that wording intentionally, as it gives the minister as much flexibility as he needs. If he wants to lodge a further amendment at stage 3 to add another category, so be it.

I have tried not to be prescriptive about the type of fee regime—it is proper that that be done by the Executive through regulations. Instead, I have tried to establish the principle that the level of fees must be based on the size and type of premises. I hope that that explains why I lodged amendment 4. The amendment is constructive and I hope that committee members will support it. As we decided in respect of the previous amendment, if the minister does not like it, he can always lodge another at stage 3.

I move amendment 4.

Mr Davidson: I am very appreciative of what Bruce Crawford is doing. He is not laying out a format and structure for fees, which is the job of the Executive. He is saying that, on the face of the bill, there should be recognition of the different overheads that apply to different establishments. Members who represent Glasgow, in particular, have commented that the size of premises is related to their cost to the public purse. It should be recognised that in some smaller and suburban areas there may be only one establishment that is an old, large building with small throughput. The situation is similar in rural areas. Rural hoteliers made the same argument about the fees structure for the former area tourist boards.

It is important that the minister should be pushed into coming back with an amendment at stage 3 that deals with the issue. A flat-rate fee would be tremendously unfair. Many other fees are charged on the basis of a mixture of premises size, rateable value and throughput. It is important to say that that principle should be established. I support Bruce Crawford’s amendment 4.

George Lyon: I assure Bruce Crawford that I am very much seized by the concerns that he has expressed. Amendment 4 seeks to introduce graduated fees by reference both to size and type of premises. Unfortunately, it would not give us the flexibility that he desires, because it would limit the graduation of fees to the size and type of premises, which would exclude turnover and rates. Other people would like those conditions to be taken into consideration.

As the committee knows, a comprehensive fee review was recently undertaken by the Scottish Executive. We expect a final report on the review shortly, which will be provided to the committee before the stage 3 debate on 16 November. Part of the remit of the fee review was to examine carefully the options for graduating the fees that will be charged for premises licences. Mr Crawford’s amendment is limited to one option for that graduated approach and could undermine the work of the fee review by closing off other options. The bill already clearly provides ministers with powers to deliver graduated fees under section 127(2)(a).

I am content to assure the committee that our firm intention is that fees for premises licences will be graduated. The committee will see the proposals before stage 3. With that assurance, I hope that Bruce Crawford will consider seeking to withdraw his amendment.
15:45

Bruce Crawford: The minister described a reasonable position. I acknowledged that rates were not a consideration in my amendment, which is perhaps a weakness. My amendment was drawn up early—it is amendment 4.

My concern is that that might be this minister’s intention, but I do not know how many ministers will follow him. Ministers tend to change a bit, just as we have had I do not know how many members from the Liberal party on this committee. Ministers tend to move on. The bill has had a long gestation period, as we have seen. We started the process with the Nicholson committee in nineteen-ninety-whatever and we have not reached the end yet.

I appreciate what the minister said, but my concern is that if the bill is not more definitive and things change—the minister might move on and we would have another minister—by the time the fees are in place, we might not be in the comfort zone that we are in at the moment. I would prefer that the minister lodge a stage 3 amendment that will add elements to give him the flexibility that he requires. In the circumstances, it would do no harm for the committee to agree to the principle and put it in the bill, which would allow the minister in his reasonable way to lodge a stage 3 amendment. Agreement to the amendment would put the committee in the driving seat.

I respect fully the minister’s intention, but I will press the amendment.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

Against
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 4 disagreed to.

Section 127, as amended, agreed to.

Sections 128 to 134 agreed to.

George Lyon: Executive amendments 105, 106 and 125 to 130 are technical. They will ensure that the necessary consequential amendments and repeals of other acts are made as a result of implementation of the bill.

I move amendment 105.

Amendment 105 agreed to.

After schedule 4

Amendment 106 moved—[George Lyon]—and agreed to.

Section 135 agreed to.

Section 136—Orders and regulations

The Convener: Amendment 107, in the name of the minister, is grouped with amendments 108 and 109.

George Lyon: Executive amendments 107 to 109 are technical. They were lodged following recommendations by the Subordinate Legislation Committee, which I am happy to take on board. Executive amendment 107 lists orders and regulations that will not be subject to the negative procedure. They are orders under section 115(5) relating to the definition of excluded premises; commencement orders under section 140(2); regulations under section 25(2) relating to the extension of the mandatory licence conditions in schedule 3; and regulations under section 130(3) relating to remote sales of alcohol.

Amendment 108 provides that orders and regulations, other than commencement orders, will be subject to the affirmative procedure. Commencement orders will, as usual, not be subject to any form of parliamentary procedure. Amendment 109 is consequential.

I move amendment 107.

The Convener: Is that another victory for the Subordinate Legislation Committee, Sylvia?

Dr Jackson: Yes.

Amendment 107 agreed to.

Amendments 108 and 109 moved—[George Lyon]—and agreed to.

Section 136, as amended, agreed to.

Section 137—Interpretation

The Convener: Amendment 110, in the name of the minister, is grouped with amendments 187 and 117.

George Lyon: Section 7(3) of the bill requires licensing boards, as part of their overprovision assessment, to have regard to the number and capacity of licensed premises in a locality. Section
19(4), as amended during stage 2, will require applicants for a premises licence to state the capacity of their premises in their operating plan.

Amendment 110 provides the necessary definitions. For on-sales establishments, capacity will be the maximum number of customers that can be accommodated in the premises at any one time. For off-sales, it will be the amount of space in the premises given over to display of alcohol for sale. That will take account of the volume of alcohol on display and will catch not just shelving but other three-dimensional floor space display areas. Amendment 117 is consequential.

Amendment 187, which was lodged by Andrew Arbuckle, would put a duty on enforcing authorities under the Fire (Scotland) Act 2005 to advise on capacity. In most cases, the enforcing authorities will be the fire and rescue authority or joint fire and rescue board. Amendment 187 does not recognise the role of building standards officers in setting building capacities. However, it is unnecessary to make references here to either fire authorities or building control. Both will already be made aware of applications through section 20 of the bill and can be consulted on overprovision assessments under section 7(4). Amendment 187 also requires boards to consider the nature and extent of the likely sale of alcohol on the premises, but the overprovision assessment and consideration of operating plans should take those issues into account in any case. I ask Andrew Arbuckle not to move amendment 187.

I move amendment 110.

**Mr Arbuckle:** I lodged amendment 187 because concerns had been expressed within the trade about the definition of capacity, and I have suggested that fire regulations would serve to provide a uniform standard. I take on board what the minister has said, but I am still concerned that his proposal relates to the maximum number of customers who can be accommodated in the premises, and I do not know whether that links into the building control standards or the Fire (Scotland) Act 2005 for the definition of the number of people who may be allowed in the premises at any one time.

**Mr Davidson:** Amendment 110, in the name of the minister, leaves me, like Andrew Arbuckle, a bit confused about how someone can actually define a maximum number or how any action could be taken. Are we talking about the number of people who can be wedged in, or is it common sense to suggest that space for movement is needed? I do not think that the minister has defined very cleverly what is in his amendment. I am not convinced about what the minister is seeking to achieve with paragraph (b) of amendment 110, on off-sales premises, because there is no measure relating to the strength of alcohol on sale or—as he is apparently quite happy to allow pricing promotions—to whether pricing is a factor. Do people who run retail establishments not have the freedom to lay out products as they wish?

I understand the purpose behind Andrew Arbuckle’s amendment 187 but I do not think it covers all the elements that it should, because it consists of just a single line. Perhaps it should have included subsections on other aspects, as the minister said, such as planning and building regulations. Fire regulations are important because of the safety considerations that are involved.

I would like the minister to come back to us at stage 3 with something a bit more detailed that names all the regulations that would apply and which does so in a manner that people can understand.

Boards might have difficulty, as might the police, in deciding whether premises are full or not. Most pubs are not full except on perhaps two or three nights a week. However, what is the definition of full? This is legislation that we are talking about, so we have to have clear definitions.

**Fergus Ewing:** It seems from what the minister said that capacity has been defined because of section 7(3), which deals with the duty to assess overprovision. Section 7(3) states:

“In considering whether there is overprovision ... the Board must—

(a) have regard to the number and capacity of licensed premises in the locality”.

Given that a board must have regard to something, it makes sense to define that something. So far, so good.

The definition seems to be that the capacity of licensed premises on which alcohol is sold should be the maximum. Should it not be the average? Why must a board have regard to the maximum? Will not that lead to distortion of the actuality? When we look at capacity, we are not talking about licensed premises that are likely to be jam-packed and full to capacity all the time.

I do not quite understand the part of amendment 110 that is in parenthesis that seeks to define capacity in relation to licensed premises, although that is probably a failure on my part. I do not quite understand what

“(including any such premises on which alcohol is also sold for consumption off the premises)”

actually means. It comes after the words

“in relation to licensed premises on which alcohol is sold for consumption on the premises”.

Does that mean a pub in which there is also off-sales? Perhaps I have just fathomed its meaning.
My second point is about paragraph (b) of amendment 110, which deals with off-sales. Capacity is defined as

"the amount of space in the premises given over to the display of alcohol for sale".

Does that include shelf and floor space? In most off-sales not only is one greeted with shelves replete with multiformious alcoholic beverages, but ones sees the floor jam-packed with large stacks of cans and cheap offers. Is it assumed that capacity is defined by reference to the amount of space that is set out in the operating plan? That is likely to vary from time to time and from circumstance to circumstance.

Are you asking the boards to consider the right figures? Would it be sensible to amend the provision at stage 3 to make it clear that boards can have regard in their deliberations not to the maxima but to the average, and to what is happening rather than to what could happen?

Bruce Crawford: After both paragraphs I have written down the words "as detailed in the operating plan". I do not know why those words have not been added to the amendments. They might appear somewhere else in the bill and so not be required, but it seems to be a sensible starting point for any examination of what is the maximum in an off-licence or an on-licence. There might be good reasons why those words have not been included. It might be to do with variation; if there was a minor variation, the licensee would not have to go for a change in the operating plan, but if there was a major variation they would. Why were those words, or something like them, not added?

16:00

Dr Jackson: As I understand it—maybe the minister will comment—section 137 is about interpretation, meaning and definition. It strikes me that it would be stretching things to expect the term "capacity" to cover all the requirements of Andrew Arbuckle’s amendment 187. I am thinking particularly about proposed subparagraph (b)(i), which would be inserted by amendment 187. It uses the words

"the nature and extent of the likely sale of alcohol in the premises".

That is important: should it be included somewhere in section 137 on interpretation? Is it needed at all? Andrew Arbuckle is trying to say that it is an important issue, but I do not think that the definition of capacity is necessary.

George Lyon: I will try to answer all the points. Andrew Arbuckle asked from where the definition of capacity—especially maximum capacity—would come. Building control uses a formula for that, which can tell you the maximum capacity of any building. That is why we have relied on that being put into an operating plan. The maximum has been included because the trade requested it; it said that maxima should be put into the operating plans when they are presented to the licensing boards as part of the licence application.

Fergus Ewing made points on paragraphs (a) and (b) of amendment 187. Paragraph (a) is for premises that have off-sales and on-sales and (b) is for premises that have off-sales. Mr Ewing also raised another point about off-sales. The total volume of the shelf space and floor space is included. Members will know from walking around supermarkets or any off-sales premises that they use a mixture of both.

Bruce Crawford states quite categorically that capacity is required as part of the operating plan when it is submitted with the licence application, so the prospective licensee would have to go to building control and the capacity will go into the operating plan in application for the licence. Sylvia Jackson is quite right that the information in amendment 187 would not be needed for the operating plan or in deciding what capacity is. It is right to say that capacity is about definitions and that it is linked to the over provision assessments that all boards will be required to make when drawing up their policy statements.

I hope that that clarifies all the points that have been raised.

Bruce Crawford: Do licensed premises currently require to go to building control people to seek that information? Where does it say that in the bill?

George Lyon: Currently, that information does not have to be offered up because there is in the 1976 act no requirement to assess overprovision.

Fergus Ewing: Is it worth considering whether the licensing board should have discretion to consider average numbers instead of the maximum?

George Lyon: We need to use the maximum; to do otherwise will not work in granting occasional licences. If the board has to calculate overprovision, it has to know the capacity of establishments.

Amendment 110 agreed to.

The Convener: Does Andrew Arbuckle wish to move amendment 187?

Mr Arbuckle: If the minister can give me an assurance that he will clarify some of the points that are raised by my amendment—

The Convener: It is sufficient to say just "Not moved".
Mr Arbuckle: Okay. If I have an assurance from the minister in due course—

The Convener: You may not make a speech at this point. You must either move or not move the amendment.

Amendment 187 not moved.

Amendments 111 to 116 moved—[George Lyon]—and agreed to.

Section 137, as amended, agreed to.

Section 138—Index of defined expressions

Amendment 117 moved—[George Lyon]—and agreed to.

The Convener: Amendment 118, in the name of the minister, is grouped with amendments 119 and 123.

George Lyon: Amendments 118, 119 and 123 are technical amendments. In order to be as helpful as possible to the reader of the bill, the amendments will add “licensed hours”, “licensing policy statement” and “supplementary licensing policy statement” to the list of defined expressions.

I move amendment 118.

Amendment 118 agreed to.

Amendment 119 moved—[George Lyon]—and agreed to.

Amendment 161 not moved.

Amendments 120 to 124 moved—[George Lyon]—and agreed to.

Section 138, as amended, agreed to.

Section 139 agreed to.

Schedule 5

Repeals

Amendments 125 to 130 moved—[George Lyon]—and agreed to.

Schedule 5, as amended, agreed to.

Section 140 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Tomorrow, an amended version of the bill will be published and the Business Bulletin will inform members that stage 3 amendments can now be lodged. I thank not only committee members but the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, George Lyon, and his officials for their contribution to our stage 2 debates.

I will allow members a two-minute break before we proceed to agenda item 3.

16:08

Meeting suspended.
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Licensing (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold; and for connected purposes.

PART 1

CORE PROVISIONS

1 Prohibition of unlicensed sale of alcohol

(1) Alcohol is not to be sold on any premises except under and in accordance with—
(a) a premises licence, or
(b) an occasional licence,

granted under this Act in respect of the premises.

(2) Subsection (1) does not apply to the selling of alcohol—
(a) on exempt premises, or
(b) to trade.

(3) A person who—
(a) sells alcohol, or
(b) knowingly allows alcohol to be sold,
in breach of subsection (1) commits an offence.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to—
(a) a fine not exceeding £20,000,
(b) imprisonment for a term not exceeding 6 months, or
(c) both.

2 Meaning of “alcohol”

(1) In this Act, “alcohol”—
Licensing (Scotland) Bill
Part 1—Core provisions

(a) means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but
(b) does not include—
   (i) alcohol which is of a strength of 0.5% or less at the time of its sale,
   (ii) perfume,
   (iii) any flavouring essence recognised by the Commissioners of Customs and Excise as not being intended for consumption as or with dutiable alcoholic liquor,
   (iv) the aromatic flavouring essence commonly known as angostura bitters,
   (v) alcohol which is, or is included in, a medicinal product,
   (vi) denatured alcohol,
   (vii) methyl alcohol,
   (viii) naphtha, or
   (ix) alcohol contained in liqueur confectionery.

(2) In this section—
“beer”, “cider”, “denatured alcohol”, “dutiable alcoholic liquor” and “wine” have the same meanings as in the Alcoholic Liquor Duties Act 1979 (c.4), and “medicinal product” has the same meaning as in section 130 of the Medicines Act 1968 (c.67).

3 Certain supplies of alcohol to be treated as sales

(1) A supply of alcohol which is not otherwise a sale of the alcohol is, in the circumstances described in subsection (2) or (3), to be treated for the purposes of this Act as if it were a sale of the alcohol.

(2) The first set of circumstances is where the supply is by or on behalf of a club to, or to the order of, a member of the club.

(3) The second set of circumstances is where the supply is made to, or to the order of, a person pursuant to a right acquired by the person under a contract.

4 The licensing objectives

(1) For the purposes of this Act, the licensing objectives are—
   (a) preventing crime and disorder,
   (b) securing public safety,
   (c) preventing public nuisance,
   (d) protecting and improving public health, and
   (e) protecting children from harm.

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

(1) There is to continue to be a Licensing Board for—

(a) the area of each council whose area is not, at the time this section comes into force, divided into licensing divisions under section 46(1) of the Local Government etc. (Scotland) Act 1994 (c.39) (‘the 1994 Act’), and

(b) each licensing division of such an area which is so divided at that time.

(2) A council whose area is not so divided at that time may subsequently make a determination that their area is to be divided into divisions for the purposes of this Act.

(3) Where a council makes such a determination—

(a) there is to be a separate Licensing Board for each of the divisions,

(b) the Licensing Board for the council’s area is dissolved on the date on which those separate Licensing Boards are elected in accordance with schedule 1, and

(c) anything done by the Licensing Board for the council’s area before the Board is dissolved is, to the extent that it has effect at that time, to have effect after that time as if done by such of the separate Licensing Boards as the council may determine.

(4) A council which has made a determination (whether under subsection (2) or section 46(1) of the 1994 Act) that their area is to be divided into divisions may revoke the determination.

(5) Where a council revokes such a determination—

(a) there is to be a single Licensing Board for the whole of the council’s area,

(b) each of the Licensing Boards for the divisions is dissolved on the date on which the single Licensing Board is elected in accordance with schedule 1, and

(c) anything done by the Licensing Boards for the divisions before they are dissolved is, to the extent that it has effect at that time, to have effect after that time as if done by the single Licensing Board.

(6) Subsection (7) applies where a council—

(a) makes a determination under subsection (2), or

(b) revokes such a determination or a determination made under section 46(1) of the 1994 Act.

(7) The council must, no later than 7 days after the making of the determination or the revocation—

(a) notify the Scottish Ministers of the determination or revocation, and

(b) publicise it in such manner as the council sees fit.

(8) Schedule 1 makes further provision about the constitution of Licensing Boards, their procedure and other administrative matters relating to them.
6 Statements of licensing policy

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

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

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

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

(b) consult—

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

(ii) if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(5) of schedule 2, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative, and

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

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

(5) At the request of a Licensing Board—

(a) the appropriate chief constable, or

(b) the relevant council,

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

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

(a) make copies of the statement available for public inspection free of charge, and

(b) publicise—

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

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

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

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

(b) each subsequent period of 3 years.
7  **Duty to assess overprovision**

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

(a) licensed premises, or

(b) licensed premises of a particular description,

in any locality within the Board’s area.

(2) It is for the Licensing Board to determine the “localities” within the Board’s area for the purposes of this Act.

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

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

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

(4) Those persons are—

(a) the appropriate chief constable,

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

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

(ii) persons resident in the locality, and

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

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

8  **Applicants attempting to influence Board members**

(1) If a person making an application under this Act to a Licensing Board attempts, at any time before the application is determined by the Board, to influence a member of the Board to support the application, the person commits an offence.

(2) If, in relation to any application made to, but not yet determined by, a Licensing Board under this Act, proceedings for an offence under subsection (1) are brought against the applicant—

(a) the Board must not determine the application until after the proceedings are concluded, and

(b) if the applicant is convicted of the offence, the Board may refuse to consider the application.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

9  **Licensing Board’s duty to keep a public register**

(1) Each Licensing Board must keep a register (referred to in this Act as a “licensing register”) containing information relating to—

(a) premises licences, personal licences and occasional licences issued by the Board,
(b) the Board’s decisions in relation to applications made to the Board under this Act, and
(c) other decisions of the Board relating to the licences mentioned in paragraph (a).

(2) The Scottish Ministers may by regulations make provision as to—
(a) matters, in addition to those specified in paragraphs (a) to (c) of subsection (1), in relation to which licensing registers are to contain information,
(b) the information which such registers are to contain, and
(c) the form and manner in which the registers are to be kept.

(3) A Licensing Board must make the licensing register kept by the Board available for public inspection at all reasonable times.

Local Licensing Forums

10 Local Licensing Forums

(1) Each council must establish a Local Licensing Forum for their area.

(2) However, where the area of a council is divided into licensing divisions, the council may, instead of establishing a Local Licensing Forum for their area, establish separate such Forums for each division.

(3) Each Licensing Board must hold, at least once in each calendar year, a joint meeting with the Local Licensing Forum for the Board’s area.

(4) Schedule 2 makes further provision about Local Licensing Forums, including provision about their membership and procedural and other administrative matters in relation to them.

11 General functions of Local Licensing Forums

(1) Each Local Licensing Forum has the following general functions—
(a) keeping under review—
(i) the operation of this Act in the Forum’s area, and,
(ii) in particular, the exercise by the relevant Licensing Board or Boards of their functions, and
(b) giving such advice and making such recommendations to that or any of those Boards in relation to those matters as the Forum considers appropriate.

(2) Subsection (1) does not enable a Local Licensing Forum to—
(a) review, or
(b) give advice, or make recommendations, in relation to, the exercise by a Licensing Board of their functions in relation to a particular case.

(3) In this section, section 12 and schedule 2, “relevant Licensing Board”, in relation to a Local Licensing Forum, means—
(a) the Licensing Board for the Forum’s area, or
(b) in the case of a Local Licensing Forum for a council area which is divided into licensing divisions, each of the Licensing Boards for those divisions.
12 Licensing Boards’ duties in relation to Local Licensing Forums
   (1) A Licensing Board must—
      (a) in exercising any function, have regard to any advice given, or recommendation made, to them in relation to the function by a Local Licensing Forum, and
      (b) where the Board decides not to follow the advice or recommendation, give the Forum reasons for the decision.
   (2) At the request of a Local Licensing Forum, a relevant Licensing Board must provide to the Forum copies of such relevant statistical information as the Forum may reasonably require for the purposes of the Forum’s general functions.
   (3) In this section, “relevant statistical information” means, in relation to a Licensing Board, such statistical information as the Board may have obtained under section 6(5).

13 Licensing Standards Officers
   (1) Each council must appoint for their area one or more officers to be known as Licensing Standards Officers.
   (1A) A person may hold more than one appointment under subsection (1) (so as to be a Licensing Standards Officer for more than one council area).
   (2) A Licensing Standards Officer is to exercise, in relation to the (or each) council area for which the Officer is appointed, the functions conferred on a Licensing Standards Officer by virtue of this Act.
   (3) The number of Licensing Standards Officers for any council area is to be such as the council may determine.
   (4) The Scottish Ministers may by regulations prescribe qualifications and experience required for appointment as a Licensing Standards Officer.
   (5) Where the Scottish Ministers have made regulations under subsection (4), a council must not appoint an individual to be a Licensing Standards Officer unless the individual possesses the qualifications and experience prescribed in the regulations in relation to that appointment.
   (6) Otherwise, the terms and conditions of appointment of a Licensing Standards Officer appointed by a council under this section are to be such as the council may determine.

14 General functions of Licensing Standards Officers
   (1) A Licensing Standards Officer for a council area has the following general functions—
      (a) providing to interested persons information and guidance concerning the operation of this Act in the area,
      (b) supervising the compliance by the holders of—
         (i) premises licences, or
         (ii) occasional licences,
      in respect of premises in the area with the conditions of their licences and other requirements of this Act,
(c) providing mediation services for the purpose of avoiding or resolving disputes or disagreements between—

(i) the holders of the licences referred to in paragraph (b), and

(ii) any other persons,

concerning any matter relating to compliance as referred to in that paragraph.

(2) The function under subsection (1)(b) includes, in particular, power—

(a) where a Licensing Standards Officer believes that any condition to which a premises licence or occasional licence is subject has been or is being breached—

(i) to issue a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and

(ii) if, in the case of a premises licence, such a notice is not complied with to the satisfaction of the Officer, to make a premises licence review application in respect of the licence,

(b) in relation to a premises licence, to make an application under that section for review of the licence on any other competent ground for review.

15 Powers of entry and inspection

(1) A Licensing Standards Officer for a council area may, for the purpose of determining whether the activities being carried on in any licensed premises in the area are being carried on in accordance with—

(a) the premises licence or, as the case may be, occasional licence in respect of the premises,

(b) the licensing objectives, and

(c) any other requirements of this Act,

exercise the powers specified in subsection (3).

(3) The powers referred to subsection (1) are—

(a) power to enter the premises at any time for the purpose of exercising the power specified in paragraph (b), and

(b) power to carry out such inspection of the premises and of any substances, articles or documents found there as the Officer thinks necessary.

(4) Where a Licensing Standards Officer exercises either of those powers in relation to any licensed premises, the persons specified in subsection (5) must—

(a) give the Officer such assistance,

(b) provide the Officer with such information, and

(c) produce to the Officer such documents,

as the Officer may reasonably require.

(5) The persons referred to in subsection (4) are—

(a) the holder of the premises licence or, as the case may be, occasional licence in respect of the premises,

(b) in the case of licensed premises in respect of which a premises licence has effect, the premises manager, and
(d) in any case, any person working on the premises at the time the Officer is exercising the power.

(6) A person who—
(a) intentionally obstructs a Licensing Standards Officer in the exercise of any power under subsection (3), or
(b) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (4), commits an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

15A Training of Licensing Standards Officers

(1) A Licensing Standards Officer must comply with such requirements as to the training of Licensing Standards Officers as may be prescribed.

(2) If a Licensing Standards Officer fails to comply with subsection (1), the (or each) council which appointed the Officer must terminate the Officer’s appointment.

(3) Regulations under subsection (1) prescribing training requirements may, in particular—
(a) provide for accreditation by the Scottish Ministers of—
(i) courses of training, and
(ii) persons providing such courses,
for the purposes of the regulations,
(b) prescribe different requirements in relation to different descriptions of Licensing Standards Officers, and
(c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.

PART 3
PREMISES LICENCES

Introductory

16 Premises licence

In this Act, “premises licence”, in relation to any premises, means a licence issued by a Licensing Board under section 24(1) or 45(2) authorising the sale of alcohol on the premises.

17 Meaning of “appropriate Licensing Board”

(1) In this Part, “the appropriate Licensing Board” means, in relation to any premises or premises licence issued in respect of any premises—
(a) the Licensing Board in whose area the premises are situated, or
(b) where the premises are situated in the area of more than one Licensing Board—
(i) the Board in whose area the greater or greatest part of the premises is situated, or
(ii) if neither or none of those Boards falls within sub-paragraph (i), such of the Boards as is nominated in accordance with subsection (2).

(2) In a case falling within subsection (1)(b)(ii), the applicant for a premises licence in respect of the premises must nominate one of the Licensing Boards to be the Licensing Board for the purposes of the application of this Part in relation to the premises.

18 Premises manager

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

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

Premises licence applications

19 Application for premises licence

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

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

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

(b) be accompanied by—

(i) an operating plan for the subject premises,

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

(iii) the certificates required by section 48(1).

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

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

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

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

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

(ca) a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises,
(cb) where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including, in particular—

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

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

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

(cc) information as to the proposed capacity of the premises,

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

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

20 Notification of application

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

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

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

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

(d) the appropriate chief constable, and

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

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

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

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

(b) a report detailing—

(i) all cases of antisocial behaviour identified by police officers in the police area as having taken place on, or in the vicinity of, the premises, and

(ii) all complaints or other representations made to police officers in the police area concerning antisocial behaviour on, or in the vicinity of, the premises.

(4) Those notices are—

(a) a notice stating that neither—

(i) the applicant, nor

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

(b) a notice specifying any convictions of—
Part 3—Premises licences

(i) the applicant, or
(ii) in any of the cases mentioned in paragraph (a)(ii), any connected person, for a relevant offence or a foreign offence.

(5) Where the appropriate chief constable—

(a) proposes to give a notice under subsection (4)(b), and
(b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application be refused,

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

(6) In this section—

“antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), and

“neighbouring land” and, in relation to that expression, “notifiable interest” have such meanings as may be prescribed for the purposes of this section.

21 Objections and representations

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

(a) object to the application on any ground relevant to one of the grounds for refusal specified in section 22(5), or
(b) make representations to the Board concerning the application, including, in particular, representations—

(i) in support of the application,
(ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
(iii) as to conditions which the person considers should be imposed.

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

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

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

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

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

(a) give a copy of the notice to the applicant in such manner and by such time as may be prescribed, and
A Licensing Board may reject a notice of objection or representation received by the Board under subsection (1) if the Board considers the objection or representation is frivolous or vexatious.

Where a Licensing Board rejects a notice of observation or representation under subsection (3), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

In any proceedings by a Licensing Board for the recovery of expenses under subsection (4), a copy of any minute of proceedings of the Licensing Board—

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

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

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

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**Determination of premises licence application**

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

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

(2A) In considering and determining the application, the Board must take account of the documents accompanying the application under section 19(2)(b).

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

(c) that, having regard to—

(i) the nature of the activities 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,

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

(i) licensed premises, or

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

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

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

(i) any conviction notice of which is given by the appropriate chief constable under subsection (4)(b) of section 20,

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

(b) with any licensing objective, the Licensing Board must take into account any report made by the appropriate chief constable under subsection (3)(b) of section 20.

(7) Where the Licensing Board considers that—

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

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

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

(8) Where the Licensing Board refuses the application—

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

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

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

23 Further application after refusal of premises licence application

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

(2) Subject to subsection (3), the Board must refuse any subsequent premises licence application in respect of the same premises made before the expiry of the period of one year beginning with the date of the earlier refusal.

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

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

(b) the Board is satisfied that there has been a material change of circumstances since the earlier refusal.
24 Issue of licence and summary

(1) Where a Licensing Board grants a premises licence application, the Board must issue to the applicant—

(a) a premises licence—

(i) in the prescribed form, and

(ii) containing the information and documents specified in subsection (2), and

(b) a summary of the licence in the prescribed form.

(2) The information and documents referred to in subsection (1)(a)(ii) are—

(a) 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,

(b) a description of the premises in respect of which the licence is issued,

(c) the date on which the licence takes effect,

(d) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found,

(e) the operating plan and layout plan in respect of the premises to which the licence relates, and

(f) such other information as may be prescribed.

25 Conditions of premises licence

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

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

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

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

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

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

(5) A Licensing Board may not impose a condition under subsection (4) which—

(a) is inconsistent with any condition—

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

(ii) prescribed under subsection (3),
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(6) The conditions which may be—

(a) added under subsection (2)(a),
(b) prescribed under subsection (3), or
(c) imposed under subsection (4),
include, in particular, conditions of the kind described in subsection (7).

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

(a) the sale of alcohol on the premises in respect of which a premises licence has effect, or
(b) any other activity carried on in such premises.

(8) Where, under any provision of this Act, a Licensing Board has power to make a variation of the conditions to which a premises licence is subject, the power may not be exercised so as to have the effect of imposing a condition which the Board could not have imposed under this section on the granting of the licence.

Duration of premises licence

Period of effect of premises licence

(1) A premises licence—

(a) takes effect on such date as the Licensing Board issuing it may determine, and
(b) ceases to have effect on the occurrence of any of the events mentioned in subsection (5).

(2) However, a premises licence is not to be taken to have ceased to have effect under subsection (1)(b) by virtue of the occurrence of any of the events mentioned in paragraphs (c) to (e) of subsection (5) if, within 28 days of the occurrence of the event, an application for the transfer of the licence is made under section 32(1).

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

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

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

(a) the premises licence is revoked under any provision of this Act,
(b) the licensed premises in respect of which the licence was issued cease to be used for the sale of alcohol,
(c) the premises licence holder, being an individual—

(i) dies, or
(ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4),
(d) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,

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

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

(6) That is a notice—

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

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

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

(a) an individual or partnership becomes insolvent on—

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

(ii) being adjudged bankrupt,

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

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

(v) granting a trust deed for creditors, and

(b) a company becomes insolvent on—

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

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

(iii) going into liquidation.

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

Variation of premises licence

27 Application to vary premises licence

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

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

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

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

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

(4) Sections 20(1) and (2) and 21 apply in relation to a premises licence variation application (other than one in which the only variation sought is a minor variation) as they apply to a premises licence application.
(5) In this Act, “variation”, in relation to a premises licence, means any variation of—
   (a) any of the conditions to which the licence is subject (other than those to which the licence is subject by virtue of section 25(1)),
   (b) any of the information contained in the operating plan contained in the licence,
   (c) the layout plan contained in the licence, or
   (d) any other information contained or referred to in the licence,
and includes an addition, deletion or other modification.

(6) In this Act, “minor variation” means—
   (a) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,
   (b) where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises,
   (c) any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and
   (d) any other variation of such description as may be prescribed for the purposes of this subsection.

28 Determination of application for variation

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

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

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

(4) Where a hearing is held under subsection (3)—
   (a) if none of the grounds for refusal is established, the Board must grant the application,
   (b) if any of the grounds for refusal is established, the Board must refuse the application.

(5) The grounds for refusal are—
   (a) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
   (b) that, having regard to—
      (i) the nature of the activities carried on or proposed to be carried on in the subject premises,
      (ii) the location, character and condition of the premises, and
      (iii) the persons likely to frequent the premises,
   the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation,
   (c) that, having regard to the number and capacity of—
(i) licensed premises, or
(ii) licensed premises of the same or similar description as the subject premises
(taking account of the proposed variation),

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

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

(7) Where the Licensing Board refuses the application—

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

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

29 Variation to substitute new premises manager

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

(a) the variation sought is the substitution of another individual as the premises
manager, and
(b) the applicant requests in the application that the variation should have immediate
effect.

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

(3) In subsection (2), “the application period” means the period—

(a) beginning when the application is received by the Licensing Board, and
(b) ending—

(i) when the variation takes effect, or
(ii) if the application is withdrawn before it is determined, when it is withdrawn.

30 Further application after refusal of application for variation

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

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

(a) in respect of the same premises licence, and
(b) seeking the same variation,

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

(3) Subsection (2) does not apply in relation to any subsequent application made during that
period if—
(a) at the time of the earlier refusal, the Board directed that the subsection would not apply to any subsequent application, or
(b) the Board is satisfied that there has been a material change of circumstances since the earlier refusal.

Transfer of premises licence

31 Transfer on application of licence holder

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

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

(3) An application under subsection (1) must be accompanied by—
(a) the premises licence to which the application relates, or
(b) if that is not practicable, a statement of the reasons for failure to produce the licence.

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

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

(6) Those notices are—
(a) a notice stating that neither—
(i) the transferee, nor
(ii) where the transferee is neither an individual nor a council, any connected person,
has been convicted of any relevant offence or foreign offence, or
(b) a notice specifying any convictions of—
(i) the transferee, and
(ii) where the transferee is neither an individual nor a council, any connected person,
for a relevant offence or a foreign offence.

(7) Where the appropriate chief constable—
(a) proposes to give a notice under subsection (6)(b), and
(b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application for transfer of the licence to the transferee be refused,
the chief constable may include in the notice a recommendation to that effect.

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

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

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

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

32 Transfer on application of person other than licence holder

(1) A person other than—

(a) the holder of a premises licence, or

(b) an individual under the age of 18,

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

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

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

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

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

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

(i) dies, or

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

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

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

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

(4) Subsections (4) to (10) of section 31 apply for the purposes of an application under subsection (1) of this section as they apply for the purposes of an application under subsection (1) of that section, but as if references in them to the transferee were references to the applicant in relation to the application under subsection (1) of this section.

(5) Subsections (7) and (8) of section 26 apply for the purposes of subsection (3)(b) of this section as they apply for the purposes of subsection (5)(d) of that section.
Variation on transfer

(1) A person making an application to a Licensing Board under section 31(1) or 32(1) for transfer of a premises licence may also make an application to the Board for a variation of the licence.

(2) Sections 27 and 28 apply in relation to an application under subsection (1) for a variation as they apply to a premises licence variation application.

(3) Where—
   (a) an application is made under subsection (1), and
   (b) the applicant intimates to the Licensing Board that the application under section 31(1) or 32(1) for transfer of the premises licence is contingent on the grant of the application under subsection (1),

the Licensing Board must determine the application under subsection (1) before determining the application for the transfer of the licence.

(4) In such a case, if the Licensing Board refuses the application under subsection (1), the application for the transfer of the licence falls.

(5) In any other case where an application under subsection (1) is made—
   (a) the Licensing Board must first determine the application for transfer of the licence before determining the application under subsection (1), and
   (b) if the application for the transfer of the licence is refused, the application under subsection (1) falls.

Review of premises licence

Application for review of premises licence

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

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

(3) The grounds for review referred to in subsection (1) are—
   (a) that one or more of the conditions to which the premises licence is subject has been breached, or
   (b) any other ground relevant to one or more of the licensing objectives.

(4) A Licensing Standards Officer may make a premises licence review application on the ground specified in subsection (3)(a) only if—
   (a) in relation to the alleged ground for review, the Officer or any other Licensing Standards Officer has issued to the licence holder a notice under section 14(2)(a)(i), and
   (b) the licence holder has failed to take the action specified in the notice to the satisfaction of the Officer.

(5) A premises licence review application must specify the alleged ground for review, including in particular—
(a) where the ground is that specified in subsection (3)(a), the condition or conditions alleged to have been breached,

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

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

(a) is vexatious or frivolous, or

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

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

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

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

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

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

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

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

35 Review of premises licence on Licensing Board’s initiative

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

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

(3) The grounds for review referred to in subsection (1) are those specified in subsection 34(3).

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

(a) where the ground is that specified in subsection 34(3)(a), the condition or conditions alleged to have been breached,

(b) where the ground is that specified in subsection 34(3)(b), the licensing objective or objectives to which the alleged ground of review relates.

36 Review hearing

(1) Where a Licensing Board—

(a) makes a premises licence review proposal, or

(b) receives a premises licence review application,
the Board must hold a hearing for the purposes of considering and determining the proposal or application unless, in the case of a premises licence review application, the Board has rejected the application under subsection 34(6).

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

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

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

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

(i) the licence holder, and

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

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

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

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

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

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

(b) take the information into account.

(6) In particular, the Board may—

(a) request—

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

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

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

37 Licensing Board’s powers on review

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

(2) Those steps are—

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

(b) to make a variation of the licence,

(c) to suspend the licence for such period as the Board may determine,
(d) to revoke the licence.

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

38 Review of Licensing Board’s decision to vary or suspend licence

Where a Licensing Board has made a variation under subsection (2)(b) of section 37 or suspended the licence under subsection (2)(c) of that section, the Board may—

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

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

revoke the variation or suspension.

Conviction of licence holder etc. for relevant or foreign offence

39 Duty to notify court of premises licence

(1) Subsection (2) applies where—

(a) a person who holds a premises licence is charged with a relevant offence, or

(b) a person charged with a relevant offence is granted a premises licence after the person’s first appearance in court in connection with the offence but before—

(i) conviction and sentencing for the offence or acquittal, or

(ii) where an appeal is brought against conviction, sentence or acquittal, the disposal of the appeal.

(2) The person must, not later than the person’s first appearance or, as the case may be, next appearance in court in connection with the offence—

(a) produce to the court the premises licence, or

(b) if that is not practicable, notify the court of—

(i) the existence of the premises licence,

(ii) the identity of the Licensing Board which issued it, and

(iii) the reasons why it is not practicable to produce the licence.

(3) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

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

40 Court’s duty to notify Licensing Board of convictions

(1) This section applies where the clerk of a court in Scotland by or before which a person is convicted of a relevant offence is aware that the person holds a premises licence.

(2) The clerk of the court must, as soon as reasonably practicable after the conviction, give notice of the conviction to the Licensing Board which issued the premises licence held by the person convicted.
41 **Licence holder’s duty to notify Licensing Board of convictions**

(1) This section applies where any of the persons specified in subsection (2)—

(a) is convicted of a relevant offence by or before a court in Scotland, or
(b) is convicted of a foreign offence.

(2) Those persons are—

(a) the holder of a premises licence, and
(b) where—

   (i) the holder of such a licence is neither an individual nor a council, or
   (ii) the premises in respect of which such a licence is held are used wholly or mainly for the purposes of a club,

any connected person.

(3) The holder of the premises licence must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board which issued the premises licence held by the licence holder.

(4) A notice of conviction under subsection (3) must—

(a) specify—

   (i) the nature of the offence, and
   (ii) the date of conviction, and

(b) be accompanied by—

   (i) the premises licence held by the licence holder, or
   (ii) if that is not practicable, a statement of the reasons for failure to produce the licence.

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

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

42 **Procedure where Licensing Board receives notice of conviction**

(1) This section applies where the Licensing Board which issued a premises licence receives a notice of conviction relating to—

(a) the holder of the licence, or
(b) where—

   (i) the holder of the licence is neither an individual nor a council, or
   (ii) the premises in respect of which the licence is held are used wholly or mainly for the purposes of a club,

a connected person.

(2) The Licensing Board must give notice of the conviction to the appropriate chief constable.
(3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (2), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (4).

(4) Those notices are—

(a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence, or

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

(5) Where the chief constable—

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

(b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the premises licence should be varied, suspended or revoked,

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

(6) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(a), the Licensing Board may not take any further action in relation to the conviction.

(7) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(b), the Licensing Board must make a premises licence review proposal in respect of the premises licence.

(8) In this section, “notice of conviction” means a notice under section 40(2) or 41(3).

Premises under construction or conversion

43 Provisional premises licence

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

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

(3) A premises licence issued in respect of any such premises does not take effect unless and until it is confirmed by the Licensing Board which issued it in accordance with section 44.

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

(5) A premises licence—

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

(b) which has not been confirmed in accordance with section 44,

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

(6) The provisional period, in relation to a provisional premises licence, is the period of 2 years beginning with the date of issue of the licence.
On the application of the holder of a provisional premises licence made before the expiry of the provisional period, the Licensing Board which issued the licence may, if satisfied as to the matter mentioned in subsection (8), extend the provisional period by such period as the Board considers appropriate.

That matter is that—

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

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

Where the provisional period in relation to any provisional premises licence has been extended under subsection (7), references in this section and section 44 to the provisional period are to that period as so extended.

Section 19 has effect in relation to a provisional premises licence application as if—

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

“(iii) the certificate required by section 48(2),”, and

(b) in subsection (4), paragraph (d) were omitted.

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

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

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

(a) the provisional premises licence,

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

(c) the layout plan for the premises, and

(d) the certificates required by section 48(3).

The operating plan referred to in subsection (2)(b) must, in particular and without prejudice to subsection (4) of section 19, contain a statement of the information specified in paragraph (d) of subsection (4) of that section.

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

Those matters are that—

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

(b) if, since that time, an application for a variation of the licence has been granted under section 28, since the last such application was granted,

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

Where a Licensing Board confirms a provisional premises licence under subsection (4), the Board may, for the purpose specified in subsection (7), make a variation of the conditions to which the licence is subject.
(7) That purpose is ensuring consistency with any licensing policy statement or supplementary licensing policy statement published since the licence was issued.

45 Temporary premises licence

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

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

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

(b) if satisfied as to the matters mentioned in subsection (3), issue to the applicant a premises licence in respect of such other premises within the Licensing Board’s area as are specified in the application (such premises being referred to in this section as the “temporary premises”).

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

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

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

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

(5) A temporary premises licence—

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

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

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

(7) In this section—

“conversion” has the same meaning as it has for the purposes of the Building (Scotland) Act 2003 (asp 8), and

“reconstruction” includes alteration, re-erection and extension.

46 Notification of change of name or address

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

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

(b) the name or address of the premises manager specified in the licence,
give the appropriate Licensing Board notice of the change.

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

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

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

47 Licensing Board’s duty to update premises licence

(1) Subsection (2) applies where a Licensing Board—

(a) receives a notice under section 46(1) in relation to a premises licence,

(b) grants a premises licence variation application or otherwise makes a variation of a premises licence,

(c) grants an application under section 31(1) or 32(1) for the transfer of a premises licence,

(d) in relation to a provisional premises licence, grants—

(i) an application under section 43(7) for an extension of the provisional period, or

(ii) an application under section 44(1) for confirmation of the licence,

(e) in relation to a temporary premises licence, grants an application under section 45(6) for an extension of the period during which the licence has effect, or

(f) on reviewing a premises licence, takes any of the steps referred to in section 37(1).

(2) The Board must make any necessary amendments to the licence and, if necessary, issue a new summary of the licence.

(3) Where a Licensing Board is not in possession of a premises licence and—

(a) the licence has ceased to have effect under any provision of this Act, or

(b) the Board requires the licence for the purpose of complying with the duty under subsection (2),

the Board may require the licence holder to produce the licence to the Board within 14 days from the date on which the requirement is notified.

(4) A licence holder who, without reasonable excuse, fails to comply with a requirement made under subsection (3), commits an offence.

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

Miscellaneous

48 Certificates as to planning, building standards and food hygiene

(1) A premises licence application (other than a provisional premises licence application) must be accompanied by—

(a) a planning certificate,
(b) a building standards certificate, and
(c) if food is to be supplied on the premises, a food hygiene certificate,
in respect of the subject premises.

(2) A provisional premises licences application must be accompanied by a provisional planning certificate in respect of the subject premises.

(3) An application under section 44(1) in respect of any premises must be accompanied by—
(a) if the provisional planning certificate which accompanied the provisional premises licence application in respect of the subject premises consisted of outline planning permission, a planning certificate,
(b) a building standards certificate, and
(c) if food is to be supplied on the premises, a food hygiene certificate,
in respect of the subject premises.

(4) A planning certificate is a certificate signed on behalf of the appropriate authority and stating—
(a) that planning permission under the Town and Country Planning (Scotland) Act 1997 (c.8) (referred to in this section as “the 1997 Act”) in respect of any development of the subject premises in connection with their proposed use as licensed premises has been obtained, or
(b) that no such planning permission is required.

(5) A provisional planning certificate is a certificate signed on behalf of the appropriate authority and stating—
(a) that planning permission or outline planning permission under the 1997 Act has been obtained in respect of the construction or conversion of the subject premises, or
(b) that no such planning permission is required.

(6) A building standards certificate is a certificate signed on behalf of the appropriate authority and stating—
(a) that a completion certificate has been accepted under section 18 of the Building (Scotland) Act 2003 (asp 8) (referred to in this section as “the 2003 Act”) in respect of any construction or conversion of the subject premises in connection with their proposed use as licensed premises,
(b) that permission for the temporary occupation or use of the premises has been granted under section 21(3) of the 2003 Act, or
(c) that no such completion certificate or permission is required.

(7) A food hygiene certificate is a certificate signed on behalf of the appropriate authority and stating that the subject premises comply with the requirements of regulations made under section 16 of the Food Safety Act 1990 (c.16) (referred to in this section as “the 1990 Act”) relating to construction, layout, drainage, ventilation, lighting and water supply or concerned with the provision of sanitary and washing facilities.

(8) In this section—
“appropriate authority” means—
(a) in relation to a planning certificate or provisional planning certificate, the planning authority (within the meaning of the 1997 Act) for the area in which the subject premises are situated,
(b) in relation to a building standards certificate, the council for that area,
(c) in relation to a food hygiene certificate, the food authority (within the meaning of the 1990 Act) for that area,
“construction” and “conversion” have the same meanings as they have in the 2003 Act,
“development” has the same meaning as it has in the 1997 Act.

48A Notification of determinations

(1) Where a Licensing Board grants or refuses an application under this Part, the Board must give notice of the grant or refusal to—
   (a) the applicant,
   (b) the appropriate chief constable, and
   (c) in the case of the grant or refusal of a premises licence application, any person who gave a notice of objection or representation under section 21(1) in respect of the application.

(2) A person to whom notice is given under subsection (1) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

(3) Where the clerk of a Licensing Board receives a notice under subsection (2), the Board must issue a statement of the reasons for the grant or refusal of the application to—
   (a) the person giving the notice, and
   (b) each other person to whom the Board gave notice under subsection (1).

(4) A statement of reasons under subsection (3) must be issued—
   (a) by such time, and
   (b) in such form and manner,
as may be prescribed.

49 Duty to keep, display and produce premises licence

(1) A premises licence holder must secure that the premises licence, or a certified copy of it, is kept at the premises in respect of which it is issued in the custody or under the control of—
   (a) the licence holder, or
   (b) the premises manager.

(2) A premises licence holder must secure that the summary of the licence, or a certified copy of the summary, is prominently displayed on the premises so as to be capable of being read by anyone frequenting the premises.

(3) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1) or (2) commits an offence.
(4) Any of the persons specified in subsection (5) may require the person in whose custody or under whose control a premises licence (or a certified copy of it) is kept by virtue of subsection (1) to produce the licence (or certified copy) for inspection.

(5) The persons referred to in subsection (4) are—

(a) a constable, and

(b) a Licensing Standards Officer for the council area in which the premises are situated.

(6) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (4) commits an offence.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

50 Theft, loss etc. of premises licence or summary

(1) This section applies where the appropriate Licensing Board receives from a premises licence holder an application for a replacement premises licence or a replacement summary.

(2) If satisfied that—

(a) the premises licence held by the licence holder or, as the case may be, the summary of it has been lost, stolen, damaged or destroyed, and

(b) where it has been lost or stolen, the licence holder has reported the loss or theft to the police,

the Licensing Board must issue to the licence holder a replacement licence or, as the case may be, a replacement summary.

(3) A replacement licence or a replacement summary is a copy of the licence or summary—

(a) in the form in which it existed immediately before it was lost, stolen, damaged or destroyed, and

(b) certified by the Board to be a true copy.

(4) In this Act, references to—

(a) a premises licence include references to a replacement premises licence,

(b) a summary of a premises licence include references to a replacement summary,

issued under this section.

51 Dismissal, resignation, death etc. of premises manager

(1) This section applies where any of the events specified in subsection (2) occurs in relation to any licensed premises in respect of which a premises licence has effect.

(2) Those events are—

(a) the premises manager ceases to work at the premises,

(aa) the premises manager becomes incapable for any reason of acting as premises manager,

(b) the premises manager dies, or

(c) the personal licence held by the premises manager is revoked or suspended.
(3) The premises licence holder must, not later than 7 days after the occurrence of the event, give notice of it to the appropriate Licensing Board.

(4) Subsection (5) applies if—

(a) subsection (3) is complied with, and

(b) within the period of 6 weeks beginning with the day on which the event occurs, a premises licence variation application is made seeking a variation of the premises licence in respect of the premises so as to substitute another individual as the premises manager.

(5) Any breach of the conditions specified in paragraphs 4 and 5 of schedule 3 in the period beginning with the occurrence of the event and ending with the receipt by the Licensing Board of the application referred to in subsection (4)(b) is, so far as it is attributable to the occurrence of the event, to be disregarded.

(6) If no such application as is mentioned in paragraph (b) of subsection (4) is made within the period mentioned in that paragraph, then, at the end of that period, the Licensing Board must vary the premises licence so that there is no longer any premises manager specified in it.

52 Certified copies

Any reference in this Part to a certified copy of a premises licence or of a summary of such a licence is a reference to a copy of the licence or summary certified to be a true copy by—

(a) the Licensing Board,

(b) a solicitor or notary public, or

(c) a person of a prescribed description.

53 Occasional licence

(1) A Licensing Board may, on the application of any of the persons mentioned in subsection (2) made in relation to any premises (other than licensed premises) within the Board’s area, issue to the applicant a licence (referred to in this Act as an “occasional licence”) authorising the sale of alcohol on the premises.

(2) Those persons are—

(a) the holder of a premises licence,

(b) the holder of a personal licence, and

(c) a representative of any voluntary organisation.

(3) An application under subsection (1) must contain details of the information which the applicant proposes should be included in the licence under subsection (7)(b).

(4) An application under subsection (1) which complies with subsection (3) is referred to in this Act as an “occasional licence application”.

(5) An occasional licence has effect for such period of not more than 14 days as the Licensing Board may determine.
(6) A Licensing Board may issue under subsection (1) in respect of any one voluntary organisation in any period of 12 months—
   (a) not more than 4 occasional licences each having effect for a period of 4 days or more, and
   (b) not more than 12 occasional licences each having effect for a period of less than 4 days,

provided that, in any period of 12 months, the total number of days on which occasional licences issued in respect of the organisation have effect does not exceed 56.

(7) An occasional licence issued by a Licensing Board under subsection (1) must—
   (a) be in the prescribed form, and
   (b) contain the information specified in subsection (8).

(8) That information is—
   (a) the name and address of the holder of the licence,
   (b) a description of the premises in respect of which it is issued,
   (c) a description of the activities to be carried on in the premises,
   (d) a statement of the period during which the licence has effect,
   (e) a statement of the times during which alcohol may be sold on the premises,
   (f) a statement as to whether alcohol may be sold for consumption on the premises, off the premises or both,
   (fa) a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises,
   (fb) where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including, in particular—
      (i) the ages of the children or young persons to be allowed entry,
      (ii) the times at which they are to be allowed entry, and
      (iii) the parts of the premises to which they are to be allowed entry,
   (g) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found, and
   (h) such other information as may be prescribed.

54 Notification of application to chief constable

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

(2) If the chief constable considers that it is necessary for the purposes of the crime prevention objective that the application be refused, the chief constable may, by notice to the Licensing Board given within 21 days of the date of receipt of the notice under subsection (1), make a recommendation to that effect.
55 **Objections and representations**

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

(a) object to the application on any ground relevant to one of the grounds for refusal specified in section 56(6), or

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

(i) in support of the application, or

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

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

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

(b) have regard to the objection or representation in determining the application, unless the Board rejects the notice under subsection (3).

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

(4) Where a Licensing Board rejects a notice of objection or representation under subsection (3), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

(5) In any proceedings by a Licensing Board for the recovery of expenses under subsection (4), a copy of any minute of proceedings of the Licensing Board—

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

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

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

56 **Determination of application**

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

(2) If the Board has not received any—

(a) notice from the appropriate chief constable under section 54(2), or

(b) notice of objection or representation under section 55(1),

relating to the application, the Board must grant the application.

(3) In any other case, the Board must consider whether any of the grounds for refusal applies and—

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

(b) if any of them applies, the Board must refuse the application.
(4) The Board may hold a hearing for the purposes of determining any application which is to be determined in accordance with subsection (3).

(5) Where the Board does not hold a hearing for that purpose, the Board must ensure that, before determining the application, the applicant is given an opportunity to comment on any such notice as is referred to in subsection (2).

(6) The grounds for refusal are—

(a) that the premises to which the application relates are excluded premises,

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

(c) that, having regard to—

(i) the nature of the activities proposed to be carried on in the premises to which the application relates,

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

(iii) the persons likely to frequent the premises,

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

(7) In considering, for the purposes of the ground for refusal specified in subsection (6)(b), whether the granting of the application would be inconsistent with the crime prevention objective, the Licensing Board must, in particular, take into account any notice given by the appropriate chief constable under section 54(2).

57 Conditions of occasional licence

(1) Except to the extent that schedule 4 provides otherwise, every occasional licence is subject to the conditions specified in that schedule.

(2) The Scottish Ministers may by regulations modify schedule 4 so as—

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

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

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

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

(5) A Licensing Board may not impose a condition under subsection (4) which—

(a) is inconsistent with any condition—

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

(ii) prescribed under subsection (3),

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

(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.
(6) The conditions which may be—
   (a) added under subsection (2)(a),
   (b) prescribed under subsection (3), or
   (c) imposed under subsection (4),
include, in particular, conditions of the kind described in subsection (7).

(7) Those are conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with—
   (a) the sale of alcohol on the premises in respect of which an occasional licence has effect, or
   (b) any other activity carried on in such premises.

### Part 5A

#### Notification of determinations

(1) Where a Licensing Board grants or refuses an occasional licence application, the Board must give notice of the grant or refusal to—
   (a) the applicant,
   (b) the appropriate chief constable, and
   (c) any person who gave a notice of objection or representation under section 55(1) in respect of the application.

(2) A person to whom notice is given under subsection (1) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

(3) Where the clerk of a Licensing Board receives a notice under subsection (2), the Board must issue a statement of the reasons for the grant or refusal of the application to—
   (a) the person giving the notice, and
   (b) each other person to whom the Board gave notice under subsection (1).

(4) A statement of reasons under subsection (3) must be issued—
   (a) by such time, and
   (b) in such form and manner,
as may be prescribed.

### Part 5

#### Licensed hours

(1) In this Act, “licensed hours” means, in relation to licensed premises—
   (a) in the case of licensed premises in respect of which a premises licence has effect, the period or periods of time specified for the time being in the operating plan contained in the premises licence as those during which alcohol is to be sold on the premises, and
Part 5—Licensed hours

(1A) Subsection (1) is subject to section 61A(6).

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

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

(a) sells alcohol, or allows alcohol to be sold, on licensed premises,
(b) allows alcohol to be consumed on licensed premises, or
(c) allows alcohol to be taken from licensed premises.

(2) It is not an offence under subsection (1) for a person to—

(a) allow alcohol to be consumed on licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol was sold during that period,
(b) allow alcohol to be taken from licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol—
   (i) was sold during that period, and
   (ii) is not taken from the premises in an open container,
(c) allow alcohol to be consumed on or taken from licensed premises outwith licensed hours if the person consuming or taking the alcohol—
   (i) resides on the premises, or
   (ii) is a guest of a person who resides there,
(d) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to a person who resides on the premises,
(e) allow alcohol to be consumed on licensed premises at a meal at any time within 30 minutes of the end of any period of licensed hours if the alcohol was sold—
   (i) during that period,
   (ii) at the same time as the meal, and
   (iii) for consumption at the meal,
(f) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to—
   (i) a person who is a trader for the purposes of the person’s trade, or
   (ii) a person for supply to or on any premises which are occupied for the purposes of the armed forces of the Crown.

(3) It is a defence for a person (“the accused”) charged with an offence under subsection (1) of allowing alcohol to be consumed on or taken from any licensed premises outwith licensed hours to prove—
(a) that the accused, or an employee or agent of the accused, took all reasonable precautions and exercised all due diligence not to commit the offence, or
(b) that there were no lawful and reasonably practicable means by which the accused could prevent the person consuming or taking the alcohol on or from the premises from so doing.

(4) A person commits an offence if, having been requested by a responsible person not to do so, the person consumes alcohol on, or takes alcohol from, licensed premises outwith licensed hours.

(5) In subsection (4), “responsible person” means—

(a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,
(b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,
(c) in either case, any person who works on the premises in a capacity (whether paid or unpaid) which authorises the person to make the request mentioned in subsection (4).

(6) Nothing in this section prevents or restricts—

(a) the ordering of alcohol for consumption off licensed premises, or
(b) the despatch of alcohol so ordered by the person selling it.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

24 hour licences to be granted only in exceptional circumstances

(1) Subsection (2) applies where, in relation to any premises—

(a) an application is made to a Licensing Board for—

(i) a premises licence in respect of the premises,
(ii) a variation of such a licence, or
(iii) an occasional licence in respect of the premises, and
(b) if the application were to be granted, the licensed hours in relation to the premises would be such as to allow alcohol to be sold on the premises during a continuous period of 24 hours or more.

(2) The Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.

Licensed hours: off-sales

Where—

(a) an application is made to a Licensing Board for—

(i) a premises licence in respect of any premises,
(ii) a variation of such a licence, or
(iii) an occasional licence in respect of any premises, and
(b) the application states that alcohol is to be sold (for consumption off the premises)—
   (i) before 8 am,
   (ii) after 11 pm, or
   (iii) both,
the Licensing Board must refuse the application.

61 Effect of start and end of British Summer Time

(1) Subsection (2) applies in relation to any period of licensed hours—
   (a) during which, or
   (b) at the end of which,
British Summer Time is due to begin or end.

(2) The beginning or, as the case may be, ending of British Summer Time is to be disregarded for the purpose of determining the time at which that period of licensed hours ends and, accordingly, the period ends at the time it would have ended had British Summer Time not begun or ended.

(3) In this section, “British Summer Time” means the period of summer time for the purposes of the Summer Time Act 1972 (c.6).

61A Power for Licensing Board to grant general extensions of licensed hours

(1) A Licensing Board may, if they consider it appropriate to do so in connection with a special event of local or national significance, make a determination extending licensed hours by such period as the Board may specify in the determination.

(2) A determination under subsection (1) may apply to—
   (a) the whole of the Licensing Board’s area or only to specified parts of the area,
   (b) licensed hours generally or only to specified descriptions of licensed hours, and
   (c) all relevant premises in the Board’s area or only to specified descriptions of such premises.

(3) A determination under subsection (1) has effect for such period as the Board may specify in it.

(4) Where a Licensing Board makes a determination under subsection (1), the Board must—
   (a) give notice of the determination to—
      (i) the appropriate chief constable, and
      (ii) the holders of premises licences and occasional licences in respect of premises to which the determination applies, and
   (b) publicise it in such manner as the Board sees fit.

(5) Nothing in this section is to be taken as requiring any relevant premises to be open for the sale of alcohol during the period of any extension of licensed hours specified in a determination under subsection (1).
(6) Except where the context requires otherwise, references in this Act to “licensed hours” are, in relation to any relevant premises to which a determination under subsection (1) applies, to be taken as references to such hours as extended by the determination.

(7) In this section—

“relevant premises” means—

(a) licensed premises, and

(b) premises in respect of which an occasional licence has effect, and

“specified” means specified in a determination under subsection (1).

PART 6

PERSONAL LICENCES

Introductory

62 Personal licence

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

(a) issued to the individual by a Licensing Board under section 67(1) of this Act, and

(b) authorising the individual to supervise or authorise the sale of alcohol.

Grant and renewal of personal licence

63 Application for personal licence

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

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

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

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

64 Notification of application to chief constable

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

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

(3) Those notices are—

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

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

(4) Where the chief constable—

(a) proposes to give a notice under subsection (3)(b), and
(b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the personal licence application be refused,

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

5 65 Determination of personal licence application

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

(2) If—

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

(b) the Board has received from the appropriate chief constable a notice under section 64(3)(a),

the Board must grant the application.

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

(a) the applicant is aged 18 or over,

(b) the applicant possesses a licensing qualification, and

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

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

(5) If—

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

(b) the Board has received from the appropriate chief constable a notice under section 64(3)(b),

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

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

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

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

66 Applicant’s duty to notify Licensing Board of convictions

(1) This section applies where, during the period beginning with the making of a personal licence application and ending with determination of the application, the applicant is convicted of a relevant offence or a foreign offence.

(2) The applicant must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board to which the personal licence application was made.

(3) A notice under subsection (2) must specify—
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(a) the nature of the offence, and
(b) the date of the conviction.

(4) Where the Licensing Board receives a notice under subsection (2) at any time before they have determined the personal licence application, the Board must—
(a) suspend consideration of the application, and
(b) give notice of the conviction to the appropriate chief constable.

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

(6) Those notices are—
(a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant offence or foreign offence, or
(b) a notice confirming the existence of the conviction and that it relates to a relevant offence or foreign offence.

(7) Where the chief constable—
(a) proposes to give a notice under subsection (6)(b), and
(b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the personal licence application be refused,
the chief constable may include in the notice a recommendation to that effect.

(8) On receipt of the chief constable’s notice under subsection (6), the Licensing Board must resume consideration of the personal licence application and determine it in accordance with section 65.

(9) For that purpose, that section has effect as if—
(a) references in it to a notice under section 64(3)(a) included references to a notice under subsection (6)(a) of this section, and
(b) references in it to a notice under section 64(3)(b) included references to a notice under subsection (6)(b) of this section.

(10) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

(11) A person guilty of an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Issue of licence

(1) Where a Licensing Board grants a personal licence application, the Board must issue a personal licence, in the prescribed form, to the applicant.

(2) A personal licence issued under subsection (1) must specify—
(a) the name and address of the individual to whom it is issued,
(b) the Licensing Board issuing the licence,
(c) the expiry date of the licence,
(d) any relevant offence or foreign offence of which the applicant has been convicted, and
(e) such other matters as may be prescribed.

(3) A personal licence is void if, at the time it is issued under subsection (1), the individual to whom it is issued already holds a personal licence.

68 Period of effect of personal licence

(1) A personal licence has effect, subject to the following provisions of this section, during the period of 10 years beginning with the date on which it is issued.

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

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

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

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

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

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

(6) That is a notice—

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

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

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

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

69 Renewal of personal licence

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

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

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

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

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

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

(5) Sections 64 and 65 apply to a personal licence renewal application as they apply to a personal licence application.

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

### Notification of determinations

(1) This section applies where a Licensing Board grants or refuses—
   
   (a) a personal licence application, or
   
   (b) a personal licence renewal application.

(2) The Board must give—
   
   (a) the applicant, and
   
   (b) the appropriate chief constable,
   
   notice of the grant or refusal of the application.

(2A) A person to whom notice is given under subsection (2) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

(2B) Where the clerk of a Licensing Board receives a notice under subsection (2A), the Board must issue a statement of the reasons for the grant or refusal of the application to—
   
   (a) the person giving the notice, and
   
   (b) each other person to whom the Board gave notice under subsection (2).

(2C) A statement of reasons under subsection (2B) must be issued—
   
   (a) by such time, and
   
   (b) in such form and manner,
   
   as may be prescribed.

#### Conviction of licence holder for relevant or foreign offence

### Duty to notify court of personal licence

(1) Subsection (2) applies where—
   
   (a) a person who holds a personal licence is charged with a relevant offence, or
   
   (b) a person charged with a relevant offence is granted a personal licence after the person’s first appearance in court in connection with the offence but before—
      
      (i) conviction and sentencing for the offence or acquittal, or
      
      (ii) where an appeal is brought against conviction, sentence or acquittal, the disposal of the appeal.

(2) The person must, no later than the person’s first or, as the case may be, next appearance in court in connection with the offence—
   
   (a) produce to the court the personal licence, or
   
   (b) if that is not practicable, notify the court of—
      
      (i) the existence of the personal licence,
(ii) the identity of the Licensing Board which issued the licence, and
(iii) the reasons why it is not practicable to produce the licence.

(3) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

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

72 Court’s duty to notify Licensing Board of convictions

(1) This section applies where the clerk of a court in Scotland by or before which a person is convicted of a relevant offence is aware that the person holds a personal licence.

(2) The clerk of the court must, as soon as reasonably practicable after the conviction, give notice of the conviction to the Licensing Board which issued the personal licence held by the licence holder.

(3) Where—
   (a) a Licensing Board receives a notice under subsection (2) (“the receiving Board”), and
   (b) that Board has reason to believe that the personal licence holder in respect of whom the notice is given is working in licensed premises situated in the area of another Licensing Board (“the other Board”),

the receiving Board must give notice of the conviction to the other Board.

73 Licence holder’s duty to notify Licensing Board of convictions

(1) This section applies where a personal licence holder—
   (a) is convicted of a relevant offence by or before a court in Scotland, or
   (b) is convicted of a foreign offence.

(2) The licence holder must, no later than one month after the date of the conviction, give notice of the conviction to—
   (a) the Licensing Board which issued the personal licence held by the licence holder, and
   (b) if different, the Licensing Board for the area in which are situated any licensed premises in which the licence holder is working.

(3) A notice of conviction under subsection (2) must—
   (a) specify—
      (i) the nature of the offence, and
      (ii) the date of the conviction, and
   (b) be accompanied by—
      (i) the personal licence held by the licence holder, or
      (ii) if that is not practicable, a statement of the reasons for failure to produce the licence.

(4) Where—
(a) a Licensing Board receives a notice under subsection (2) (“the receiving Board”), and
(b) that Board has reason to believe that the personal licence holder in respect of whom the notice is given is working in licensed premises situated in the area of another Licensing Board (“the other Board”),

the receiving Board must give notice of the conviction to the other Board.

(5) A licence holder who fails, without reasonable excuse, to comply with subsection (2) commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

74 Procedure where Licensing Board receives notice of conviction

(1) Subsection (2) applies where the relevant Licensing Board—
(a) receives a notice of conviction relating to a personal licence holder, or
(b) becomes aware that a personal licence holder was, during the application period, convicted of a relevant offence or a foreign offence.

(2) The Licensing Board must give notice of the conviction to the appropriate chief constable.

(3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (2), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (4).

(4) Those notices are—
(a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or a foreign offence, or
(b) a notice confirming the existence of the conviction and that it relates to a relevant or a foreign offence.

(5) Where the appropriate chief constable—
(a) proposes to give a notice under subsection (4)(b), and
(b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the licence holder’s personal licence should be revoked, suspended or endorsed,

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

(6) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(a), the Licensing Board may not take any further action in relation to the conviction.

(7) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(b), the Licensing Board must hold a hearing.

(8) At the hearing, the Licensing Board may—
(a) having regard to—
(i) the conviction, and
(ii) any recommendation contained in the chief constable’s notice under subsection (5),

(b) after giving—

(i) the licence holder concerned, and

(ii) the appropriate chief constable,

an opportunity to be heard, and

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

make an order under subsection (9).

That order is an order—

(a) revoking,

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

(c) endorsing,

the personal licence held by the licence holder concerned.

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

(a) the licence holder concerned,

(b) the appropriate chief constable, and

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

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

In this section—

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

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

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

“notice of conviction” means a notice under section 72(2) or 73(2), and

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

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

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

Conduct inconsistent with licensing objectives

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

(3) The Licensing Board making the finding must—

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

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

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

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

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

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

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

(a) after giving—

(i) the licence holder concerned, and

(ii) such other persons as they consider appropriate,

an opportunity to be heard, and

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

make an order under subsection (7).

(7) That is an order—

(a) revoking,

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

(c) endorsing,

the personal licence held by the licence holder concerned.

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

(a) the licence holder concerned,

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

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

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

76 Expiry of endorsements

(1) In this section and section 77, “endorsement” means an endorsement made in a personal licence by virtue of an order under—

(a) section 74(9)(c), or
(b) section 75(7)(c).

(2) An endorsement expires at the end of the period of 5 years beginning with the date on which the endorsement was made.

(3) The holder of a personal licence containing an endorsement which has expired under subsection (2) may apply to the Licensing Board which issued the licence for removal of the endorsement.

(4) An application under subsection (3) must be accompanied by the personal licence to which it relates.

(5) Where a Licensing Board receives an application under subsection (3) in relation to any personal licence, the Board must amend the licence so as to remove the endorsement from it.

(6) For the purposes of this Act, any endorsement which has expired under subsection (2) is to be disregarded (whether or not the endorsement has been removed under subsection (5)).

77 Suspension of licence after multiple endorsements

(1) Where 3 endorsements have been made in any personal licence, the Licensing Board which issued the licence must hold a hearing.

(2) At the hearing, the Licensing Board may—

(a) after giving—

(i) the holder of the licence, and
(ii) such other persons as the Board considers appropriate,

an opportunity to be heard, and

(b) if they consider it necessary to do so for the purposes of any of the licensing objectives,

make an order under subsection (3).

(3) That is an order—

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

(b) revoking the licence.

(4) Where the Licensing Board makes an order under subsection (3), the Board must give the licence holder notice of the order and of the reasons for making it.
Licence holder’s duty to undertake training

78 Licence holder’s duty to undertake training

(1) The holder of a personal licence must, no later than 3 months after the expiry of—

(a) the period of 5 years beginning with the date on which the licence holder’s licence was issued, and

(b) each subsequent period of 5 years during which the licence has effect,
produce to the Licensing Board which issued the licence evidence in the prescribed form of the licence holder’s having complied, during that period, with such requirements as to the training of personal licence holders as may be prescribed.

(2) A Licensing Board must—

(a) in relation to each personal licence issued by it, and

(b) no later than 3 months before the expiry of each period mentioned in subsection (1),
give to the holder of the licence notice of the requirement imposed by that subsection.

(3) If a personal licence holder fails to comply with subsection (1), the Licensing Board which issued the licence held by the licence holder must revoke the licence.

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

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

(i) courses of training, and

(ii) persons providing such courses,

for the purposes of the regulations,

(b) prescribe different requirements in relation to different descriptions of personal licence holder, and

(c) require that any person providing training or any particular description of training
in accordance with the regulations holds such qualification as may be prescribed
in the regulations.

Update of licence

79 Notification of change of name or address

(1) A personal licence holder must, no later than one month after any change in the licence holder’s name or address, give the Licensing Board which issued the licence notice of the change.

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

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

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
Licensing Board’s duty to update licence

(1) In this section, the “issuing Licensing Board” means, in relation to a personal licence, the Licensing Board which issued the licence.

(2) Where the issuing Licensing Board grants a personal licence renewal application made in respect of any personal licence, the Board must make the necessary amendment to the expiry date specified in the licence.

(3) Where a personal licence is suspended by virtue of any provision in this Act, the issuing Licensing Board must amend the licence so as to specify in it—

(a) the date, and
(b) period,

of the suspension.

(4) Where the issuing Licensing Board receives a notice of conviction in relation to any personal licence holder, the Board must amend the personal licence held by the licence holder so as to specify in it—

(a) the date of the conviction, and
(b) the nature of the offence,

unless the Board has already done so by virtue of any previous such notice.

(5) Where the issuing Licensing Board—

(a) makes an order under section 74(9)(c) or 75(7)(c) in relation to any personal licence holder, or
(b) receives notice under section 74(10)(c) or 75(8)(c) of such an order made by another Licensing Board,

the Board must amend the personal licence held by the licence holder so as to include in it a statement that it is endorsed together with the details of the conviction or conduct giving rise to the making of the order.

(6) Where the issuing Licensing Board receives a notice under section 79(1) from a personal licence holder, the Board must amend the personal licence of the licence holder so that it specifies the licence holder’s new name or address.

(7) Where the issuing Licensing Board receives evidence of training produced by a personal licence holder in accordance with section 78(1), the Board must amend the personal licence held by the licence holder so as to include in it the prescribed details of the training.

(8) Where the issuing Licensing Board is not in possession of a personal licence and—

(a) the licence has been revoked under any provision of this Act, or
(b) the Board requires the licence for the purpose of complying with any duty under this section in relation to the licence,

the Board may require the holder of the licence to produce it to the Board within 14 days from the date on which the requirement is notified.

(9) A personal licence holder who fails, without reasonable excuse, to comply with a requirement made under subsection (8) commits an offence.

(10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
(11) In this section, “notice of conviction” means a notice under section 72(2) or 73(2).

Miscellaneous

81 Power to specify which Licensing Board is to exercise functions under this Part

(1) The Scottish Ministers may by order provide for any function exercisable under this Part by a Licensing Board of a particular description to be exercisable instead by a Licensing Board of such other description as may be specified in the order.

(2) An order under subsection (1) may—

(a) modify this Act, and

(b) make different provision in relation to different functions.

82 Power to prescribe licensing qualifications

(1) In this Act, “licensing qualification” means—

(a) such qualification, or

(b) a qualification of such description, as may be prescribed.

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

(a) prescribe qualifications or descriptions of qualifications by reference to whether they are—

(i) accredited, or

(ii) awarded by a person who is accredited, for the purposes of this section by the Scottish Ministers in accordance with the regulations,

(b) prescribe qualifications or descriptions of qualifications awarded outwith Scotland (as well as qualifications awarded within Scotland),

(c) prescribe different qualifications in relation to different licensed premises or licensed premises of different descriptions, and

(d) prescribe such qualifications as the appropriate licensing qualifications in relation to those descriptions of licensed premises for the purposes of paragraph 4(2) of schedule 3.

83 Theft, loss etc. of personal licence

(1) This section applies where the Licensing Board which issued a personal licence receives from the holder of the licence an application for a replacement personal licence.

(2) If satisfied that—

(a) the personal licence held by the applicant has been lost, stolen, damaged or destroyed, and

(b) where it has been lost or stolen, the applicant has reported the loss or theft to the police,

the Licensing Board must issue to the applicant a replacement personal licence.
Part 7—Control of order

Exclusion of violent offenders

84 Licence holder’s duty to produce licence

(1) This section applies where the holder of a personal licence is working at any licensed premises.

(2) A constable or Licensing Standards Officer may, at any time when the licence holder is on the licensed premises, require the licence holder to produce the licence for examination.

(3) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (2) commits an offence.

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

Part 7

Control of order

85 Exclusion orders

(1) This section applies where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises in respect of which a premises licence has effect (referred to in this section and section 87 as “the licensed premises concerned”).

(2) The court by or before which the person is convicted of the offence may, in addition to any sentence imposed or other disposal in respect of the offence, make an order prohibiting the person from entering—

(a) the licensed premises concerned, and

(b) such other licensed premises (if any) as the court may specify in the order,

except with the appropriate consent.

(3) The holder of the premises licence in respect of the licensed premises concerned may, by summary application to the sheriff of the appropriate sheriffdom made no later than 6 weeks after the date of the conviction, seek an order prohibiting the person convicted from entering the licensed premises concerned except with the appropriate consent.

(4) On such an application, the sheriff, if satisfied that—

(a) there is a substantial risk that the person convicted will commit a further violent offence on, or in the immediate vicinity of, the licensed premises concerned, and

(b) an order has not been made under subsection (2) in relation to the person in respect of the same conviction,
may grant the order sought.

(5) For the purposes of an application under subsection (3), where the sheriff is satisfied that the person to whom the application relates has been convicted as mentioned in subsection (1), it is to be presumed, unless the contrary is proved, that the risk referred to in subsection (4)(a) exists.

(6) An order under subsection (2) or (4) is referred to in this Act as an “exclusion order”.

(7) An exclusion order has effect, subject to section 86(3), for such period, being not less than 3 months and not more than 2 years, as is specified in the order.

(8) In this section—

“the appropriate consent” means, in relation to any licensed premises, the express consent of—

(a) the premises licence holder in respect of the premises, or

(b) a person authorised by the premises licence holder to give consent for the purposes of this section,

“the appropriate sheriffdom” means the sheriffdom in which the licensed premises concerned are situated,

“violent offence” means any offence involving violence or the threat of violence.

86 Breach of exclusion order

(1) A person who enters licensed premises in breach of an exclusion order commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—

(a) a fine not exceeding level 4 on the standard scale,

(b) imprisonment for a term not exceeding one month, or

(c) both.

(3) The court by or before which a person is convicted of an offence under subsection (1) of breaching an exclusion order made under section 85(2) may, if it thinks fit, terminate the exclusion order or vary it so as to delete any licensed premises specified in it.

(4) Where, in relation to any licensed premises, an authorised person reasonably suspects a person of having entered the premises in breach of an exclusion order, the authorised person may—

(a) remove the person from the premises, and

(b) if necessary for that purpose, use reasonable force.

(5) A constable must, if—

(a) asked by an authorised person to assist in exercising a power conferred by subsection (4), and

(b) the constable reasonably suspects the person to be removed of having entered the premises in breach of an exclusion order,

provide the assistance asked for.

(6) In this section, “authorised person” means, in relation to licensed premises, any of the following persons, namely—
(a) the premises licence holder,
(b) the premises manager, and
(c) any other person who—
   (i) works on the premises, and
   (ii) is authorised by the premises licence holder or the premises manager for
the purposes of this section.

87 Exclusion orders: supplementary provision

(1) References in section 85 to a person’s being convicted of an offence are, in the case
mentioned in subsection (2), to be read as references to the court’s being satisfied that
the person committed the offence.

(2) That case is the case where—
   (a) the person is charged with the offence before a court of summary jurisdiction, and
   (b) the court, without proceeding to conviction, discharges the person absolutely
under section 246(3) of the Criminal Procedure (Scotland) Act 1995 (c.46).

(3) Where—
   (a) a court or the sheriff makes an exclusion order, or
   (b) a court makes an order terminating or varying an exclusion order,
the clerk of the court or, as the case may be, the sheriff clerk must send a copy of the
order to the premises licence holder in respect of the licensed premises concerned.

Closure of premises

88 Closure orders

(1) A Licensing Board may—
   (a) on the application of a senior police officer relating to any licensed premises
situated within the Board’s area, and
   (b) if satisfied that, by reason of the likelihood of disorder on, or in the vicinity of the
premises, closure of the premises is necessary in the interests of public safety,
make a closure order in relation to the premises.

(2) A senior police officer may, if the officer reasonably believes that—
   (a) there is, or is likely imminently to be, disorder on, or in the vicinity of, any
licensed premises,
   (b) closure of the premises is necessary in the interests of public safety, and
   (c) the risk to public safety is such that it is necessary to do so immediately and
without making an application under subsection (1),
make a closure order in relation to the premises.

(3) A closure order is an order requiring the licensed premises to which it relates to be
closed for such period, beginning with the coming into force of the order, as may be
specified in the order.
(4) A closure order made by a senior police officer under subsection (2) is referred to as an “emergency closure order”.

(5) The period of closure specified in an emergency closure order must not exceed 24 hours.

(6) A closure order comes into force in relation to any licensed premises to which it relates when a constable gives notice of it to a responsible person.

(7) Any responsible person who allows any licensed premises to be open in breach of a closure order commits an offence.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to—
   (a) a fine not exceeding £20,000,
   (b) imprisonment for a term not exceeding 3 months, or
   (c) both.

89 Termination of closure orders

(1) A senior police officer must terminate a closure order (whether or not an emergency closure order) relating to any licensed premises if the officer is satisfied that it is no longer necessary in the interests of public safety for the premises to be closed.

(2) Where a senior police officer terminates a closure order relating to any licensed premises, the officer must ensure that notice of the termination is given by a constable to—
   (a) a responsible person, and
   (b) in the case of a closure order made by a Licensing Board, the Board.

(3) A Licensing Board may—
   (a) on the application of the holder of the premises licence or, as the case may be, occasional licence in respect of any licensed premises to which a closure order made by the Board relates, and
   (b) if satisfied that it is no longer necessary in the interests of public safety for the premises to be closed,
   terminate the closure order.

90 Extension of emergency closure order

(1) Where an emergency closure order is in effect in respect of any licensed premises, a senior police officer may—
   (a) before the expiry of the period during which the order has effect (referred to in this section as the “original closure period”), and
   (b) if the officer reasonably believes that the conditions mentioned in subsection (2) are met in relation to the premises,

extend the original closure period for a further period not exceeding 24 hours.

(2) The conditions referred to in subsection (1)(b) are—
   (a) that there continues to be, or is likely to continue to be, disorder on, or in the vicinity of, the premises,
(b) that extending the original closure period is necessary in the interests of public safety, and
(c) the risk to public safety continues to be such that it is necessary to extend the original closure period immediately and without making an application under section 88(1).

(3) An extension under subsection (1) has no effect in relation to any licensed premises unless a constable has, before expiry of the original closure period, given notice of the extension to a responsible person.

91 Regulations as to closure orders
The Scottish Ministers may by regulations make further provision as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders including, in particular, provision—
(a) as to the form and manner in which—
   (i) any application under section 88(1)(a) or 89(3)(a) is to be made,
   (ii) any notice under section 88(6), 89(2) or 90(3) is to be given,
(b) as to the form of closure orders,
(c) for the holding of hearings by Licensing Boards before making closure orders or extensions to them.

92 Interpretation of sections 88 to 91
In sections 88 to 91 “responsible person” means—
(a) in the case of premises in respect of which a premises licence has effect—
   (i) the premises licence holder, or
   (ii) the premises manager,
(b) in the case of premises in respect of which an occasional licence has effect, the person who holds the occasional licence, and
(c) in either case, any person working at the premises in a capacity (whether paid or unpaid) which authorises the person to close the premises.

PART 8
Offences

93 Sale of alcohol to a child or young person
(1) A person who sells alcohol to a child or a young person commits an offence.
(2) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—
   (a) the accused believed the child or young person to be aged 18 or over, and
   (b) either—
(i) the accused had taken reasonable steps to establish the child’s or young person’s age, or
(ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.

(3) For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—
(a) the accused was shown any of the documents mentioned in subsection (4), and
(b) that document would have convinced a reasonable person.

(4) The documents referred to in subsection (3)(a) are any document bearing to be—
(a) a passport,
(b) a European Union photocard driving licence, or
(c) such other document, or a document of such other description, as may be prescribed.

(5) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

94 Allowing the sale of alcohol to a child or young person

(1) Any responsible person who knowingly allows alcohol to be sold to a child or a young person on any relevant premises commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

95 Sale of liqueur confectionery to a child

(1) A person who sells liqueur confectionery to a child commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—
(a) the accused believed the child to be aged 16 or over, and
(b) either—
(i) the accused had taken reasonable steps to establish the child’s age, or
(ii) no reasonable person could have suspected from the child’s appearance that the child was aged under 16.

(3) For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s age if and only if—
(a) the accused was shown evidence of the child’s age, and
(b) that evidence would have convinced a reasonable person.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

96 Purchase of alcohol by or for a child or young person

(1) A child or young person who buys or attempts to buy alcohol (whether for himself or herself or another person) commits an offence.
(2) A person other than a child or young person who knowingly buys or attempts to buy alcohol—
   (a) on behalf of a child or young person, or
   (b) for consumption on relevant premises by a child or young person,
   commits an offence.

(3) Subsection (2)(b) does not apply to the buying of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.

(4) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(5) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

97 Consumption of alcohol by a child or young person

(1) A child or young person who knowingly consumes alcohol on any relevant premises commits an offence.

(2) Any responsible person who knowingly allows a child or young person to consume alcohol on any relevant premises commits an offence.

(3) Subsections (1) and (2) do not apply to the consumption of beer, wine, cider or perry by a young person along with a meal supplied on relevant premises.

(4) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

98 Unsupervised sale of alcohol by a child or young person

(1) Any responsible person who knowingly allows alcohol to be sold, supplied or served by a child or young person on any relevant premises commits an offence.

(2) Subsection (1) does not apply to—
   (a) any sale by a child or young person of alcohol for consumption off the premises, or
   (b) any supply or service by a child or young person of alcohol for consumption on the premises along with a meal supplied on relevant premises,
   if the condition in subsection (3) is satisfied.

(3) That condition is that the sale, supply or service is specifically authorised by—
   (a) a responsible person, or
   (b) any other person of or over 18 years of age who is authorised by a responsible person for the purposes of this section.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.
Delivery of alcohol by or to a child or young person

(1) This section applies where alcohol is sold on any relevant premises for consumption off the premises.

(2) Any responsible person who allows the alcohol to be delivered by a child or young person commits an offence.

(3) Any responsible person who—
   (a) delivers the alcohol, or
   (b) allows it to be delivered,

to a child or young person commits an offence.

(4) Subsections (2) and (3) do not apply to the delivery of the alcohol by or to a child or young person who works on the relevant premises or at the place where the delivery is made in a capacity (whether paid or unpaid) which involves the delivery of alcohol.

(4A) It is a defence for a person charged with an offence under subsection (2) or (3)(a) (referred to in this subsection and subsection (4B) as “the accused”) to show that—
   (a) the accused believed the child or young person to be aged 18 or over, and
   (b) either—
      (i) the accused had taken reasonable steps to establish the child’s or young person’s age, or
      (ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.

(4B) For the purposes of subsection (4A)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—
   (a) the accused was shown any of the documents mentioned in subsection (4C), and
   (b) that document would have convinced a reasonable person.

(4C) The documents referred to in subsection (4B)(a) are any document bearing to be—
   (a) a passport,
   (b) a European Union photocard driving licence, or
   (c) such other document, or a document of such other description, as may be prescribed.

(4D) It is a defence for a person charged with an offence under subsection (3)(b) (“the accused”) to prove that the accused took all reasonable precautions and exercised due diligence not to commit the offence.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Sending a child or young person to obtain alcohol

(1) Any person who knowingly sends a child or young person to obtain alcohol sold or to be sold on any relevant premises for consumption off the premises commits an offence.

(2) It is immaterial for the purposes of subsection (1) whether the child or young person is sent to obtain the alcohol from the relevant premises where it is sold or from some other place from which it is to be delivered.
(3) Subsection (1) does not apply where the child or young person works on the relevant premises or at the place where the alcohol is to be delivered in a capacity (whether paid or unpaid) which involves the delivery of alcohol.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

101 Duty to display notice

(1) This section applies in relation to any relevant premises.

(2) The notice mentioned in subsection (3) must be displayed—

(a) at all times,

(b) at each place on the premises where sales of alcohol are made, and

(c) in a position where it is readily visible to any person seeking to buy alcohol.

(3) That is a notice in the prescribed form and of the prescribed dimensions containing the following statements, namely—

“It is an offence for a person under the age of 18 to buy or attempt to buy alcohol on these premises.

It is also an offence for any other person to buy or attempt to buy alcohol on these premises for a person under the age of 18.

Where there is doubt as to whether a person attempting to buy alcohol on these premises is aged 18 or over, alcohol will not be sold to the person except on production of evidence showing the person to be 18 or over.”.

(4) If the requirement in subsection (2) is not met in relation to any premises, the person specified in subsection (5) commits an offence.

(5) That person is, in relation to any relevant premises—

(a) in the case of licensed premises—

(i) the premises licence holder, and

(ii) the premises manager,

(b) in the case of premises in respect of which an occasional licence has effect, the holder of the licence, and

(c) in the case of other relevant premises, the person having the management and control of the premises.

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

Drunkenness and disorderly conduct

102 Drunk persons entering or in premises on which alcohol is sold

(1) A person who, while drunk, attempts to enter any relevant premises (other than premises on which the person resides) commits an offence.

(2) A person commits an offence if the person, while drunk—

(a) is on any relevant premises, and
(b) is incapable of taking care of himself or herself.

(3) A constable may arrest without warrant any person committing an offence under this section.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

103 Obtaining of alcohol by or for a drunk person

(1) A person who, on any relevant premises, obtains or attempts to obtain alcohol for consumption on the premises by a person who is drunk commits an offence.

(2) A person who, on any relevant premises, helps a person who is drunk to obtain or consume alcohol on the premises commits an offence.

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

104 Sale of alcohol to a drunk person

(1) Any responsible person who, on any relevant premises, sells alcohol to a person who is drunk commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

105 Premises manager, staff etc. not to be drunk

(1) Any responsible person in relation to any relevant premises who is drunk while on the premises commits an offence.

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

106 Disorderly conduct

(1) A person on relevant premises who, while drunk—

(a) behaves in a disorderly manner, or

(b) uses obscene or indecent language to the annoyance of any person, commits an offence.

(2) Any responsible person in relation any relevant premises who allows—

(a) a breach of the peace,

(b) drunkenness, or

(c) other disorderly conduct,

to take place on the premises commits an offence.

(3) It is a defence for a person charged with an offence under subsection (2) (‘the accused’) to prove—

(a) that the accused, or an employee or agent of the accused, took all reasonable precautions and exercised due diligence not to commit the offence, or
(b) that there were no lawful and reasonably practicable means by which the accused could prevent the conduct giving rise to the offence.

(4) A person guilty of an offence under subsection (1)(a) is liable on summary conviction to—

(a) a fine not exceeding level 3 on the standard scale,

(b) imprisonment for a term not exceeding 60 days, or

(c) both.

(5) A person guilty of an offence under subsection (1)(b) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

107 Refusal to leave premises

(1) A person on any relevant premises who—

(a) behaves in a disorderly manner, and

(b) refuses or fails to leave the premises on being asked to do so by a responsible person or a constable,

commits an offence.

(2) A person on any relevant premises who, after the end of any period of licensed hours, refuses or fails to leave the premises on being asked to do so by a responsible person or a constable commits an offence.

(2A) Where a person refuses or fails to leave any relevant premises as mentioned in subsection (1) or (2), an authorised person may—

(a) remove the person from the premises, and

(b) if necessary for that purpose, use reasonable force.

(2B) A constable must, if—

(a) asked by an authorised person to assist in exercising a power conferred by subsection (2A), and

(b) the constable reasonably suspects the person to be removed of having refused or failed to leave as mentioned in subsection (1) or (2),

provide the assistance asked for.

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

(5) In this section, “authorised person” means, in relation to any relevant premises, any of the following persons, namely—

(a) a responsible person, and

(b) any other person who—

(i) works on the premises, and

(ii) is authorised by a responsible person for the purposes of this section.
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Miscellaneous offences

108 Offences relating to sale of alcohol to trade

(1) A person who sells alcohol to trade otherwise than from premises which are used exclusively for the purpose of the selling of goods (whether solely alcohol or not) to trade commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

109 Prohibition of unauthorised sale of alcohol on moving vehicles

(1) A person who knowingly sells alcohol on or from a vehicle at a time when the vehicle is not parked (whether permanently or temporarily) commits an offence, unless the selling of alcohol on or from the vehicle at such a time is expressly authorised by a premises licence or occasional licence in respect of the vehicle.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
   (a) a fine not exceeding £20,000,
   (b) imprisonment for a term not exceeding 3 months, or
   (c) both.

110 Delivery of alcohol from vehicles etc.

(1) A person who, pursuant to a sale of alcohol by that person, delivers the alcohol from a vehicle or receptacle without the information mentioned in subsection (2) having been entered, before the despatch of the alcohol, in—
   (a) a day book kept on the premises from which the alcohol is despatched, and
   (b) a delivery book or invoice carried by the person delivering the alcohol, commits an offence.

(2) The information referred to in subsection (1) is—
   (a) the quantity, description and price of the alcohol, and
   (b) the name and address of the person to whom it is to be delivered.

(3) A person who carries in a vehicle or receptacle in use for the delivery of alcohol pursuant to a sale of the alcohol by that person any alcohol the quantity, description and price of which was not entered as mentioned in subsection (1) commits an offence.

(4) A person who, pursuant to a sale of alcohol, delivers the alcohol to an address not entered as mentioned in subsection (1) commits an offence.

(5) A person who refuses to allow a constable or a Licensing Standards Officer to examine—
   (a) any vehicle or receptacle in use for the delivery of alcohol, or
   (b) any—
      (i) day book kept as mentioned in subsection (1)(a), or
      (ii) delivery book or invoice carried as mentioned in subsection (1)(b), commits an offence.
A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

In this section, “alcohol” does not include any alcohol being delivered to a trader for the purposes of that person’s trade.

112 Prohibition of late-night deliveries of alcohol

(1) This section applies where alcohol is sold on any relevant premises for consumption off the premises.

(2) A responsible person commits an offence if the person knowingly delivers the alcohol to any premises (other than licensed premises) between the hours of midnight and 6am.

(3) A responsible person who knowingly allows the alcohol to be so delivered commits an offence.

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

113 Keeping of smuggled goods

(1) Any responsible person who knowingly keeps or allows to be kept on licensed premises any goods which—

(a) have been imported without any duty payable on their importation having been paid, or

(b) have otherwise been unlawfully imported,

commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The court by or before which a person is convicted of an offence under subsection (1) may order the goods in question to be—

(a) forfeited, and

(b) destroyed or otherwise dealt with in such manner as the court may order.

Interpretation of Part

114 Interpretation of Part 8

(1) This section has effect for the purpose of the interpretation of this Part.

(2) “Relevant premises” means—

(a) any licensed premises,

(b) any exempt premises on which alcohol is sold, and

(c) any premises used for the selling of alcohol to trade.

(3) “Responsible person” means, in relation to relevant premises—

(a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,
(b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,
(c) in the case of other relevant premises, the person having management and control of the premises, and
(e) in any of those cases, any person aged 18 or over who works on the premises in a capacity (whether paid or unpaid) which—

(i) authorises the person to sell alcohol, or
(ii) in relation to any offence under this Part of allowing something to be done, authorises the person to prevent the doing of the thing.

PART 9
MISCELLANEOUS AND GENERAL

Excluded and exempt premises

115 Excluded premises

(1) No premises licence or occasional licence has effect to authorise the sale of alcohol on excluded premises.

(2) For the purposes of this Act, “excluded premises” means—

(a) premises on land—

(i) acquired or appropriated by a special roads authority, and

(ii) for the time being used,

for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class 1 (with or without other classes), and

(b) subject to subsection (4A), premises used as a garage or which form part of premises which are so used.

(3) For the purposes of subsection (2)(a)—

(a) “special road” and “special roads authority” have the same meanings as in the Roads (Scotland) Act 1984 (c.54), and

(b) “class 1” means class 1 in Schedule 3 to that Act, as varied from time to time by an order under section 8 of that Act, but, if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in this section to traffic of class 1 so as to take account of the additional class.

(4) For the purposes of subsection (2)(b), premises are used as a garage if they are used for one or more of the following—

(a) the sale by retail of petrol or derv,

(b) the sale of motor vehicles, or

(c) the maintenance of motor vehicles.

(4A) Despite subsection (2)(b), premises used for the sale by retail of petrol or derv or which form part of premises so used are not excluded premises if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of—
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(a) petrol or derv, or
(b) groceries (where the premises are, or are to be, used also for the sale by retail of groceries).

(5) The Scottish Ministers may by order amend the definition of “excluded premises” in subsection (2) so as to include or exclude premises of such description as may be specified in the order.

116 Exempt premises

(1) Each of the following are exempt premises for the purposes of this Act—

(a) an examination station at an airport designated for the purposes of this section in an order made by the Scottish Ministers,
(b) an approved wharf at a port or hoverport so designated,
(c) an aircraft, a hovercraft or a railway vehicle while engaged on a journey,
(d) a vessel while engaged on—
(i) an international journey, or
(ii) a journey (other than an international journey) forming part of a ferry service, and
(e) premises which are occupied (whether indefinitely or temporarily) for the purposes of the armed forces of the Crown, except while being used for other purposes.

(2) The Scottish Ministers may make an order under subsection (1) designating an airport, port or hoverport for the purposes of this section only if it appears to them to be one at which there is a substantial amount of international passenger traffic.

(3) For the purpose of subsection (1), the period during which an aircraft, hovercraft, railway vehicle or vessel is engaged in a journey includes—

(a) any period ending with its departure when preparations are being made for the journey, and
(b) any period after its arrival at its destination when it continues to be occupied by those (or any of those) who made the journey (or any part of it).

(4) In this section—

“approved wharf” has the meaning given in section 20A of the Customs and Excise Management Act 1979 (c.2),
“examination station” has the meaning given in section 22A of that Act,
“ferry service” means a service the principal purpose of which is the transport of passengers or goods over water,
“international journey” means a journey with—
(a) a point of departure,
(b) a destination, or
(c) at least one port of call,
outside the United Kingdom, and includes any part of such a journey.
Special provisions for certain clubs

117 Special provisions for certain clubs

(1) The provisions of this Act mentioned in subsection (2) do not apply in relation to premises which are used wholly or mainly for the purposes of any club of such description as may be prescribed.

(2) Those provisions are—

(a) section 7 (assessments of overprovision),
(b) section 19(4)(d) (requirement for operating plan to contain information as to the premises manager),
(c) section 22(5)(d) (ground of refusal of premises licence application relating to overprovision),
(d) section 24(2)(a)(ii) (requirement for name and address of premises manager to be specified in premises licence),
(e) section 28(5)(c) (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).

(3) Different descriptions of clubs may be prescribed under subsection (1) in relation to different provisions specified in subsection (2).

(4) The Scottish Ministers may by regulations provide for this Act to apply in relation to—

(a) clubs of such descriptions as may be prescribed in the regulations, or
(b) premises used wholly or mainly for the purposes of such clubs, subject to such further modifications as may be so prescribed.

(5) Regulations under subsection (1) or (4) may prescribe a description of club by reference to—

(a) requirements as to the constitution of the club, including, in particular, requirements as to—
   (i) membership of the club, and
   (ii) the rules of the club, and
(b) such other factors as the Scottish Ministers consider appropriate.

Vessels, vehicles and moveable structures

118 Vessels, vehicles and moveable structures

(1) A vessel which is not permanently moored or berthed is to be treated for the purposes of this Act as premises situated in the place where it is usually moored or berthed.
(2) Where a vehicle or moveable structure which is not permanently situated in any place is, or is to be, used for the sale of alcohol while parked at or set in any place—

(a) it is to be treated for the purposes of this Act as premises situated at that place, and

(b) each such place at which it is, or is to be, so used is to be treated as separate premises.

(3) The following provisions of Part 3 (which relate to the provision of certificates as to planning, building standards and food hygiene and to notifications of applications) do not apply in relation to premises (other than exempt premises) consisting of a vessel, namely—

(a) section 19(2)(b)(iii),

(b) section 20(1)(a) and (e),

(c) section 27(4) (so far as it applies section 20(1)(a) and (e)),

(d) section 43(10)(a),

(e) section 44(2)(d), and

(f) section 48.

(4) This Act applies in relation to premises consisting of a vehicle or other moveable structure which is, or is to be, used for the sale of alcohol while not parked or permanently situated in any place (referred to in this section as “moving premises”) subject to the modifications in subsections (5) to (9).

(5) Section 17 does not apply and instead, in Part 3 and this section, “appropriate Licensing Board” means in relation to moving premises or a premises licence or occasional licence issued in respect of such premises—

(a) the Licensing Board in whose area the premises are used or to be used for the sale of alcohol, or

(b) where the premises are used or to be used in the area of more than one Licensing Board—

(i) the Board in whose area they are used or to be used to the greater or greatest extent, or

(ii) if neither or none of those Boards falls within sub-paragraph (i), such of those Boards as is, in the application for a premises licence or, as the case may be, occasional licence in respect of the premises, nominated as the appropriate Licensing Board in respect of the premises.

(6) The following provisions of Part 3 do not apply in relation to moving premises, namely—

(a) section 19(2)(b)(iii),

(b) section 20(1)(a), (b), and (e)

(c) section 27(4) (so far as it applies section 20(1)(a), (b) and (e)),

(d) section 43(10)(a),

(e) section 44(2)(d), and

(f) section 48.
(7) Section 20(1) applies in relation to moving premises as if for paragraph (c) there were substituted—

“(c) the relevant council.”.

(8) References to the locality in which premises are situated are, in relation to moving premises, to be taken as references to the area of the appropriate Licensing Board.

(9) For the purposes of Part 4, moving premises are to be treated as premises situated within the area of the appropriate Licensing Board.

(10) The Scottish Ministers may by regulations provide for this Act to apply in relation to vessels, vehicles and moveable structures subject to such further modifications as they consider necessary or expedient.

119 **Power to prohibit sale of alcohol on trains**

(1) A sheriff may—

(a) on the application of a senior police officer, and

(b) if satisfied that it is necessary to do so to prevent disorder,

make an order under subsection (2).

(2) That is an order prohibiting, during such period as may be specified in the order, the sale of alcohol on any railway vehicle—

(a) at such station or stations within the sheriff’s sheriffdom as may be so specified, or

(b) whilst travelling between such stations as may be so specified, at least one of which is in that sheriffdom.

(3) An order under subsection (2) has no effect in relation to any railway vehicle unless a copy of it has been given by a senior police officer to the train operator (or each train operator) responsible for the vehicle.

(4) A person who knowingly—

(a) sells or attempts to sell alcohol in breach of an order under subsection (2), or

(b) allows the sale of alcohol in breach of such an order,

commits an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to—

(a) a fine not exceeding £20,000,

(b) imprisonment for a term not exceeding 3 months, or

(c) both.

(6) In this section—

“station” has the meaning given in section 83 of the Railways Act 1993, and

“train operator” means a person authorised by a licence under section 8 of that Act to operate railway assets (within the meaning of section 6 of that Act).
119A  **Power to prohibit sale of alcohol on ferries**

(1) This section applies to any vessel which is exempt premises by virtue of section 116(1)(d)(ii) (vessels engaged in ferry services).

(2) A sheriff may—

(a) on the application of a senior police officer, and
(b) if satisfied that it is necessary to do so to prevent disorder, make an order under subsection (3).

(3) That is an order prohibiting, during such period as may be specified, the sale of alcohol on any vessel to which this section applies while engaged on—

(a) any journey to or from a specified place within the sheriff’s sheriffdom, or
(b) a specified journey to or from such a place.

(4) An order under subsection (3) has no effect in relation to any vessel unless a copy of it has been given by a senior police officer to the operator of the vessel.

(5) A person who knowingly—

(a) sells or attempts to sell alcohol in breach of an order under subsection (3), or
(b) allows the sale of alcohol in breach of such an order, commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to—

(a) a fine not exceeding £20,000,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.

(7) Subsection (3) of section 116, so far as applying to a vessel, applies for the purposes of subsection (3) of this section as it applies for the purpose of subsection (1) of that section.

(8) In this section, “specified” means, in relation to an order under subsection (3), specified in the order.

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**Relevant and foreign offences**

120  **Relevant offences and foreign offences**

(1) In this Act, “relevant offence” means—

(a) such offence, or
(b) an offence of such description, as may be prescribed.

(2) In this Act, “foreign offence” means any offence—

(a) under the law of any place other than Scotland, and
(b) which is similar in nature to any relevant offence.

(2A) Regulations under subsection (1) may provide, in relation to any offence or description of offence prescribed in them, that a person is to be treated, for the purposes of such
provisions of this Act as may be specified in the regulations, as having been convicted of the offence only if the person—

(a) accumulates such number of separate convictions for the offence, or
(b) is convicted of committing the offence on such number of separate occasions,
as may be so specified.

(3) For the purposes of this Act, a conviction for a relevant offence or a foreign offence is to be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974 (c.53).

121 Effect of appeal against conviction for relevant or foreign offence

(1) The fact that any conviction of any person for a relevant offence or foreign offence is subject to appeal does not affect the taking of any action by a Licensing Board which the Board is entitled or required to take in connection with the conviction by virtue of any provision of this Act.

(2) The Licensing Board may, however, postpone the taking of the action for such period as the Board considers appropriate pending the appeal.

(3) Where the conviction is overturned on appeal—

(a) any action taken by the Licensing Board in reliance on the conviction is to be treated as having no effect, and
(b) accordingly, the Licensing Board must take such steps as are necessary to return any applicant or licence holder adversely affected by the action to the position the applicant or licence holder would have been in had the action not been taken.

(4) A conviction is subject to appeal for the purposes of subsection (1) if—

(a) the period during which an appeal may be taken against the conviction has not yet expired, or
(b) an appeal is taken against the conviction and the appeal has not yet been determined.

Appeals

122 Appeals

(1) A decision of a Licensing Board specified in the left-hand column of schedule 4A may be appealed by the person specified in the right-hand column of that schedule.

(3) An appeal under this section is to be made by way of stated case, at the instance of the appellant, to—

(a) where the decision appealed is specified in Part 1 of schedule 4A, the sheriff principal, or
(b) where the decision appealed is specified in Part 2 of that schedule, the sheriff, of the appropriate sheriffdom.

(5) The grounds on which a Licensing Board’s decision may be appealed under this section are—

(a) that, in reaching the decision, the Licensing Board—
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(i) erred in law,
(ii) based their decision on an incorrect material fact,
(iii) acted contrary to natural justice, or
(iv) exercised their discretion in an unreasonable manner, or

(b) where the decision is to take any of the steps mentioned in subsection (6), that the step taken is disproportionate in all the circumstances.

(6) Those steps are—

(a) at a review hearing in respect of a premise licence—
   (i) issuing a written warning to the licence holder,
   (ii) revoking or suspending the licence, or
   (iii) making a variation of the licence, or
(b) making an order revoking, suspending or endorsing a personal licence.

(7) Where the sheriff principal or, as the case may be, sheriff upholds an appeal against a Licensing Board’s decision under this section, the sheriff principal or sheriff may—

(a) remit the case back to the Licensing Board for reconsideration of the decision,
(b) reverse the decision, or
(c) make, in substitution for the decision, such other decision as the sheriff principal or sheriff considers appropriate, being a decision of such nature as the Licensing Board could have made.

(8) In this section, “the appropriate sheriffdom” means the sheriffdom in which the principal office of the Licensing Board whose decision is being appealed is situated.

123 Appeals: supplementary provision

(1) A Licensing Board whose decision is appealed under section 122 may be a party to the appeal.

(2) In considering the appeal, the sheriff principal or, as the case may be, sheriff may hear evidence.

(3) On determining the appeal, the sheriff principal or sheriff may make such ancillary order (including an order as to the expenses of the appeal) as the sheriff principal or sheriff thinks fit.

(4) A sheriff principal may authorise, whether generally or specifically, any other sheriff of the sheriff principal’s sheriffdom to consider and determine an appeal made to the sheriff principal under section 122(3)(a).

(5) In this section and section 122, references to a sheriff principal include references to any sheriff authorised under subsection (4).

(6) Any party to an appeal under section 122 may appeal to the Court of Session on a point of law against the sheriff principal’s or sheriff’s decision on the appeal.

(7) A decision of a Licensing Board which is appealed under section 122 continues to have effect despite the appeal, subject to subsection (7A).

(7A) Where an appeal is taken against a decision of a Licensing Board to suspend or revoke a premises licence, the sheriff principal may—
(a) on the application of the appellant, and
(b) if satisfied on the balance of convenience that it is appropriate to do so,
recall the suspension or revocation pending determination of the appeal.

(8) Further provision as to the procedure in any appeal under section 122, including in
particular provision as to the times by which such an appeal is to be made or
determined, may be prescribed by Act of Sederunt.

Procedures, forms etc.

124 Hearings

(1) Where a Licensing Board is to hold a hearing under any provision of this Act, the
hearing must be held at a meeting of the Board.

(2) The Scottish Ministers may by regulations make provision as to the procedure to be
followed at or in connection with any hearing to be held by a Licensing Board under this
Act.

(3) Regulations under subsection (2) may, in particular, make provision—
(a) for notice of the hearing to be given to such persons as may be prescribed in the
regulations,
(b) about the rules of evidence which are to apply for the purposes of the hearing,
(c) about the representation of any party at the hearing,
(d) as to the times by which any step in the procedure must be taken, and
(e) as to liability for expenses.

125 Form etc. of applications, proposals, and notices

(1) The Scottish Ministers may by regulations prescribe—
(a) the form of any application, proposal or notice under this Act,
(b) the manner in which it is to be made or given,
(c) the time by which it is to be made or given,
(d) requirements as to the publicising of the making or giving of the application,
proposal or notice,
(e) the information to be contained in it (in addition to any required to be contained in
it by virtue of any other provision of this Act), and
(f) the documents which are to accompany it (in addition to any required to
accompany it by virtue of any other provision this Act).

(2) Regulations under subsection (1) may provide that any application, proposal or notice
made or given under this Act may be treated as not made or given if any requirement
prescribed in the regulations in relation to it is not complied with.

126 Power to relieve failure to comply with rules and other requirements

(1) A Licensing Board may relieve any applicant or other party to proceedings before the
Board of any failure to comply with any procedural provision if—
(a) the failure is due to mistake, oversight or other excusable cause, and
(b) the Board considers it appropriate in all the circumstances to relieve the failure.

(2) Where a Board exercises the power under subsection (1), the Board may make such
order as appears necessary or expedient to enable the proceedings to continue as if the
failure had not occurred.

(3) In subsection (1), “procedural provision” means—
(a) any requirement of regulations under—
   (i) section 124(2),
   (ii) section 125(1), or
   (iii) paragraph 12(4) of schedule 1,
(b) any requirement of rules under paragraph 12(5) of that schedule, and
(c) any other requirement imposed by virtue of this Act as respects the procedure to
   be followed in connection with applications made to, or other proceedings before,
   a Licensing Board.

127 Fees

(1) The Scottish Ministers may by regulations make provision for the charging of fees by
Licensing Boards—
   (a) in respect of applications under this Act,
   (b) otherwise in respect of the performance of functions by Licensing Boards,
       councils and Licensing Standards Officers under this Act, and
   (c) in respect of the recovery from particular licence holders of sums not exceeding
       any increase in the cost of providing public services (including policing) which is
       directly attributable to activities in, or in the vicinity of, or by customers of, or
       staff employed in, the premises in respect of which the licence is held.

(2) Regulations under subsection (1) may, in particular—
   (a) specify fees or provide for them to be determined by reference to such factors as
       may be specified in or determined under the regulations,
   (b) provide for annual or other recurring fees,
   (c) provide for the remission or repayment of fees in such circumstances as may be
       specified in or determined under the regulations.

(3) Before making any regulations under subsection (1) (other than regulations
consolidating other regulations), the Scottish Ministers must consult—
   (a) such body or bodies as appear to them to be representative of the interests of—
      (i) Licensing Boards,
      (ii) councils, and
      (iii) those likely to be affected by the regulations, and
   (b) such other persons (if any) as they think appropriate.

(4) Where regulations under subsection (1) provide for a fee to be charged in respect of any
application made to a Licensing Board under this Act, the Board need not consider the
application unless and until the fee is paid.
(5) Any fee chargeable by a Licensing Board under any regulations made under subsection (1) is to be paid to the clerk of the Board.

(6) The clerk of a Licensing Board must pay any sums received under subsection (5) to the relevant council.

Miscellaneous

128 Inspection of premises before grant of licence etc.

(1) In this section, “relevant proposal or application” means—

(a) a premises licence application,

(b) a premises licence variation application,

(c) a premises licence review proposal or application,

(d) an application under section 45(2) for a temporary premises licence, or

(e) an application under section 53(1) for an occasional licence.

(2) Any of the persons specified in subsection (3) may, at any reasonable time before the determination of a relevant proposal or application, enter the premises to which the proposal or application relates for the purposes of assessing—

(a) in the case of an application such as is mentioned in paragraph (a), (b), (d) or (e) of subsection (1), the likely effect of the grant of the application on the licensing objectives, or

(b) in the case of a proposal or application such as is mentioned in paragraph (c) of that subsection, the effect which the selling of alcohol in accordance with the premises licence is having on those objectives.

(3) The persons referred to in subsection (2) are—

(a) a constable, and

(b) a Licensing Standards Officer for the council area in which the premises are situated.

(4) A person exercising the power conferred by subsection (2) may if necessary use reasonable force.

(5) A person who intentionally obstructs a person exercising the power conferred by subsection (2) commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

129 Police powers of entry

(1) A constable may at any time enter and inspect any licensed premises.

(2) A constable may—

(a) if the condition in subsection (3) is satisfied, and

(b) subject to subsection (4),

at any time enter and inspect any premises (other than licensed premises) on which food or drink is sold for consumption on the premises.
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(3) The condition referred to in subsection (2)(a) is that the constable has reasonable grounds for believing that alcohol is being sold on the premises in breach of section 1(1).

(4) A constable below the rank of inspector may exercise the power conferred by subsection (2) only—

(a) if the constable has obtained written authority to do so from a justice of the peace or a constable of or above the rank of inspector,

(b) within the period of 8 days beginning with the date on which such authority is obtained, and

(c) at such time or times as is specified in the authority.

(5) A person who intentionally obstructs a constable exercising a power conferred by this section commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

130 Remote sales of alcohol

(1) This section applies where, in connection with any sale of alcohol, the premises from which the alcohol is despatched for delivery in pursuance of the sale is not the same as those where the order for the alcohol is taken.

(2) Where the premises from which the alcohol is despatched are in Scotland, the sale of the alcohol is, for the purposes of this Act, to be treated as taking place on those premises.

(3) The Scottish Ministers may by regulations make such provision as they consider appropriate for the purpose of regulating the taking of orders in Scotland for sales of alcohol in circumstances where—

(a) the premises from which the alcohol is despatched for delivery in pursuance of the sales are not in Scotland, but

(b) the place to which the alcohol is delivered is in Scotland.

(4) Regulations under subsection (3) may, in particular—

(a) modify any provision of this Act,

(b) apply any such provision with modifications, or

(c) disapply any such provision.

131 Presumption as to liquid contents of containers

(1) This section applies for the purpose of any trial in proceedings for an alleged offence under any provision of this Act.

(2) Where—

(a) liquid is found in a container (whether open or sealed), and

(b) there is on the container a description of the liquid contents of the container, the liquid found is to be presumed to be liquid of that description.

(3) Where an open container is found which—

(a) contains—
(i) no liquid, or
(ii) an amount of liquid insufficient to allow analysis of it,

(b) was sealed at the time it was sold or supplied, and
(c) has on it a description of the liquid contents of the container,

the container is to be presumed to have contained, at the time it was sold or supplied, liquid of that description.

(4) At the trial, any party to the proceedings may rebut the presumption mentioned in subsection (2) or (3) by proving that, at the time of its sale or supply, the liquid in the container was not of the description on the container.

(5) However, a party may lead evidence for the purpose of rebutting the presumption only if the party has, not less than 7 days before the date of the trial, given notice of the intention to do so to the other parties.

### 132 Offences by bodies corporate etc.

(1) Where—

(a) an offence under this Act has been committed by—

(i) a body corporate,
(ii) a Scottish partnership, or
(iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(i) a relevant person, or
(ii) a person purporting to act in the capacity of a relevant person,

that person, as well as the body corporate, partnership or, as the case may be, unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant person” means—

(a) in relation to a body corporate other than a council, a director, manager, secretary, member or other similar officer of the body,

(b) in relation to a council, an officer or member of the council,

(c) in relation to a Scottish partnership, a partner, and

(d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

### General

#### 133 Guidance

(1) The Scottish Ministers may issue guidance to Licensing Boards as to the exercise of their functions under this Act.

(2) The Scottish Ministers may modify any guidance issued by them under subsection (1).
(3) Each Licensing Board must, in the exercise of their functions under this Act, have regard to any guidance issued to them under subsection (1).

(4) Where a Licensing Board decides not to follow any guidance issued under subsection (1), the Board must give the Scottish Ministers notice of the decision together with a statement of the reasons for it.

(5) The first guidance to Licensing Boards under subsection (1) is not to be issued by the Scottish Ministers unless a draft of the guidance has been laid before, and approved by resolution of, the Scottish Parliament.

(6) The Scottish Ministers must lay any subsequent guidance issued by them under subsection (1) before the Parliament.

134 Crown application

(1) This Act binds the Crown.

(2) No contravention by the Crown of any provision made by virtue of this Act makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) However, any provision made by virtue of this Act applies to persons in the public service of the Crown as it applies to other persons.

134A Modification of enactments

Schedule 4B, which modifies enactments, has effect.

135 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.

136 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.

(2) Any such power includes power to make—

(a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,

(b) different provision for different purposes.

(3) An order under section 135 may modify any enactment (including this Act), instrument or document.

(4) A statutory instrument containing an order or regulations under this Act except—

(a) an order under section 115(5) or 140(2),

(b) regulations under section 25(2) or 130(3), and

(c) where subsection (5) applies, an order under section 135, is subject to annulment in pursuance of a resolution of the Scottish Parliament.
(5) No—
   (a) order under section 115(5),
   (b) regulations under section 25(2) or 130(3), or
   (c) order under section 135 containing provisions which add to, replace or omit any
       part of the text of an Act,

      is to be made unless a draft of the statutory instrument containing the order or
      regulations has been laid before, and approved by resolution of, the Parliament.

137 Interpretation

(1) In this Act—

   “alcoholic drink” means a drink consisting of or containing alcohol,

   “applicant”, in relation to any application under this Act, means the person
   making the application,

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

   “area” means—
   (a) in relation to a council, the local government area for which the council is
       constituted,
   (b) in relation to a Licensing Board or Local Licensing Forum, the council area
       or, as the case may be, licensing division for which the Board or Forum is
       established,

   “capacity”, in relation to licensed premises, means—
   (a) in relation to licensed premises on which alcohol is sold for consumption
       on the premises (including any such premises on which alcohol is also sold
       for consumption off the premises), the maximum number of customers
       which can be accommodated in the premises at any one time, and
   (b) in relation to licensed premises on which alcohol is sold only for
       consumption off the premises, the amount of space in the premises given
       over to the display of alcohol for sale,

   “child” means a person under the age of 16,

   “community council” has the same meaning as in Part IV of the Local
   Government (Scotland) Act 1973 (c.65),

   “council” means a council constituted under section 2 of the Local Government
   etc. (Scotland) Act 1994 (c.39),

   “licensed premises” means premises in respect of which a premises licence or
   occasional licence has effect,

   “liqueur confectionery” means confectionery which—
   (a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a
       strength not exceeding 57%) per kilogramme of the confectionery, and
   (b) either consists of separate pieces weighing not more than 50 grammes or is
       designed to be broken into such pieces for the purposes of consumption,

   “premises” means any place and includes a vehicle, vessel or moveable structure,
“prescribed” means prescribed by regulations made by the Scottish Ministers,

“railway vehicle” means a railway vehicle within the meaning of section 83 of the Railways Act 1993 (c.43) that is used in the provision of a railway service within the meaning of section 82 of that Act (excluding the wider meaning of “railway” given by section 81(2) of that Act),

“relevant council” means, in relation to a Licensing Board or Local Licensing Forum, the council—

(a) for whose area the Board or Forum is established, or

(b) in the case of a Board or Forum established for a licensing division, for the area of which the division forms part,

“sell”, in relation to alcohol, includes barter and expose to or offer for sale, and related expressions such as “sale” are to be construed accordingly,

“senior police officer” means a constable of or above the rank of superintendent,

“strength”, in relation to alcohol, is to be determined in accordance with section 2 of the Alcoholic Liquor Duties Act 1979 (c.4),

“subject premises” means, in relation to any application under this Act, the premises to which the application relates,

“vehicle” means a vehicle intended or adapted for use on roads,

“vessel” includes a ship, boat, raft or other apparatus constructed or adapted for floating on water,

“young person” means a person aged 16 or 17.

(1A) In this Act, references to selling alcohol or other goods to trade are references to selling the alcohol or goods to a person for the purposes of the person’s trade; and related expressions are to be construed accordingly.

(2) For the purposes of this Act, a person is, in relation to a partnership, a company, a club or other body (whether incorporated or unincorporated), a connected person if the person—

(a) in the case of a partnership, is a partner,

(b) in the case of a company—

(i) is a director, or

(ii) has control of the company,

(c) in the case of a club, is an office bearer of the club,

(d) in any other case, is concerned in the management or control of the body.

(3) For the purposes of subsection (2)(b)(ii) and this subsection, a person is taken to have control of a company if—

(a) any of the directors of the company, or of any other company having control of the company, is accustomed to act in accordance with the person’s directions or instructions, or

(b) the person is entitled to exercise, or to control the exercise of, at least one third of the voting power at any general meeting of the company or of any other company having control of the company.
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139 **Repeals**

The enactments mentioned in the first column in schedule 5 are repealed to the extent specified in the second column.

140 **Short title and commencement**

(1) This Act may be cited as the Licensing (Scotland) Act 2005.

(2) This Act (other than this section and sections 135 to 138) comes into force on such day as the Scottish Ministers may by order appoint.
SCHEDULE 1
(introduced by section 5(8))

LICENSES AND ENFORCEMENT

Membership

1. (1) A Licensing Board is to consist of such number (being not fewer than 5 and not more than 10) of members as may be determined by the relevant council.

(2) The members of a Licensing Board are to be elected by the relevant council from among their councillors.

(3) In the case of a Licensing Board for a licensing division, not less than one third of the total number of members of the Board must be councillors for wards within the division.

Election of members

2. (1) Each council must, at their first meeting after each ordinary election of the council, hold an election of members to—

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

(b) if that area is divided into licensing divisions, each of the Licensing Boards for those divisions.

(2) Where a council makes a determination under section 5(2) to divide their area into divisions, the council must—

(a) at the meeting at which that determination is made, or

(b) at the first meeting of the council after that meeting,

hold an election of members to the Licensing Board for each division.

(3) Where, under section 5(4), a council revokes a determination dividing their area into divisions, the council must—

(a) at the meeting at which the determination is revoked, or

(b) at the first meeting of the council after that meeting,

hold an election of members to the single Licensing Board for the council’s area.

(4) Where there is a vacancy in the membership of a Licensing Board, the relevant council must, at their first meeting after the vacancy arises, hold an election to fill the vacancy.

Disqualification from membership

3. (1) A councillor is disqualified from election as, and from being, a member of a Licensing Board if the councillor is—

(a) a premises licence holder,

(b) an employee of a premises licence holder and works as such in licensed premises,

(c) whether alone or in partnership with another person, engaged in the business of producing or selling alcohol,

(d) a director or other officer of a company so engaged, or

(e) an employee of any person so engaged and works as such in that business.
(2) A councillor who knowingly acts or purports to act as a member of a Licensing Board at a time when the councillor is disqualified from being such a member by virtue of sub-paragraph (1) commits an offence.

(3) A person guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Tenure of office etc.

4 (1) A member of a Licensing Board—

(a) holds office as such, subject to the following provisions of this paragraph and to paragraph 11(4), during the period—

(i) beginning on the day after the member’s election, and

(ii) ending on the day on which the next election of members of the Board is held in accordance with paragraph 2(1),

(b) is eligible for re-election as a member,

(c) may, at any time, resign by giving notice to the clerk of the Board, and

(d) ceases to hold office—

(i) on ceasing to be a councillor of the relevant council, or

(ii) on becoming disqualified from being a member of a Licensing Board.

(2) The clerk must give the relevant council a copy of any notice received under sub-paragraph (1)(c).

Removal of members from office

5 The relevant council may remove a member from office if the member is unfit by reason of mental or physical inability.

Convener

6 (1) A Licensing Board must, at their first meeting after each election of members of the Board held in accordance with paragraph 2(1), (2) or (3), elect one of their members as convener of the Board.

(2) Where there is a vacancy in the office of convener, the Board must, at their first meeting after the vacancy arises, elect one of their members to fill the vacancy.

(3) The convener of a Licensing Board—

(a) holds office as such for the period—

(i) beginning on the day after the convener’s election, and

(ii) ending with the day on which the next election of a convener is held in accordance with sub-paragraph (1),

(b) is eligible for re-election as convener of the Board,

(c) may, at any time, resign by giving notice to the clerk of the Board, and

(d) ceases to hold office on ceasing to be a member of the Board.
(4) The clerk must give the relevant council a copy of any notice received under sub-paragraph (3)(c).

(5) If the convener is for any reason unable to chair any meeting of the Board, the Board must, at the meeting, elect another of their members to chair that meeting.

(6) If, at any meeting of the Board, there is an equality in the votes of members on any matter, the member chairing the meeting has a casting vote.

Removal of convener

7 (1) The convener of a Licensing Board may be removed from office by the Board.

(2) A decision of a Board to remove the convener is valid only if the number of members voting in favour of the decision exceeds one half of the total number of members of the Board.

Administrative support

8 (1) In relation to each Licensing Board, the relevant council must—

(a) appoint, on such terms and conditions as they may determine, a clerk of the Board, and

(b) provide the Board and the clerk, or ensure they are provided, with such other staff, property and services as are required for their purposes.

(2) A clerk appointed under sub-paragraph (1)(a) must be an advocate or solicitor.

Committees

9 A Licensing Board may establish committees for or in connection with the exercise of any of their functions.

Delegation of functions

10 (1) A Licensing Board may authorise (whether generally or specifically)—

(a) any member of the Board,

(b) any committee established by the Board,

(c) the clerk of the Board, or

(d) any member of staff provided under paragraph 8(1)(b),

to exercise on behalf of the Board any of the Board’s functions under this Act, other than the functions mentioned in sub-paragraph (2).

(2) Those functions are—

(a) determining the Board’s policy for the purposes of a licensing policy statement or supplementary licensing policy statement,

(b) determining, for the purposes of any such statement, whether there is overprovision of licensed premises, or licensed premises of any particular description, in any locality,

(c) determining a premises licence application,
(d) determining a premises licence variation application where the variation sought is not a minor variation,

(e) determining an application for the transfer of a premises licence where the applicant has been convicted of a relevant offence or a foreign offence,

(f) determining—
   (i) a personal licence application, or
   (ii) a personal licence renewal application,

   where the applicant has been convicted of a relevant offence or a foreign offence,

(g) conducting a hearing under this Act (including taking any of the steps mentioned in sub-paragraph (3) at, or as result of, the hearing),

(h) making a closure order,

(i) refusing an application for confirmation of a provisional premises licence.

(3) The steps referred in sub-paragraph (2)(g) are—

   (a) at a review hearing in respect of a premises licence—
   (i) issuing a written warning to the licence holder,
   (ii) revoking or suspending the licence, or
   (iii) making a variation of the licence, or

   (b) making an order revoking, suspending or endorsing a personal licence.

(4) A Licensing Board may, under sub-paragraph (1), delegate to the clerk of the Board the function of granting an occasional licence application only where there is no notice of objection or representations in relation to the application, or no notice from the appropriate chief constable recommending refusal of the application.

Training of members

11 (1) Each member of a Licensing Board must, no later than one month after the expiry of each 3 month period, produce to the clerk of the Board evidence that the member has, during the period, complied with such requirements as to the training of members of Licensing Boards as may be prescribed.

(2) In sub-paragraph (1), “3 month period” means, in relation to a member of a Licensing Board—

   (a) the period of 3 months beginning on the day on which the member is elected, and
   (b) if the member is re-elected, the period of 3 months beginning with the day on which the member is re-elected.

(3) A member of a Licensing Board must not take part in any proceedings of the Board until the member has produced the evidence required by sub-paragraph (1).

(4) If a member of a Licensing Board fails to comply with sub-paragraph (1), the member ceases to hold office as a member of the Board.

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

   (a) provide for accreditation by the Scottish Ministers of—
(i) courses of training, and
(ii) persons providing such courses,
for the purposes of the regulations,
(b) prescribe different requirements in relation to different descriptions of members, and
(c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.

Proceedings

12 (1) The quorum for a meeting of a Licensing Board is one half of the number of members (but in any case not fewer than 3).

(2) Subject to sub-paragraph (3), meetings of a Licensing Board must be held in public.

(3) The members of a Licensing Board may, before the Board decides any matter, conduct their deliberations on the matter in private.

(4) The Scottish Ministers may by regulations make further provision about the proceedings of Licensing Boards including, in particular, provision as to—

(a) the times by which applications to a Board under this Act, and other business to be considered by a Board, are to be determined or considered,

(b) the publicising of meetings of a Board, and

(c) public access to any agenda and record of, and other information concerning, a meeting of a Board.

(5) Subject to—

(a) the other provisions of this paragraph, and

(b) any regulations made under sub-paragraph (4),

the arrangements for meetings of a Licensing Board, and other matters relating to proceedings of the Board, are to be such as the Board may by rules provide.

(6) A Licensing Board must ensure that any rules made by them under sub-paragraph (5) are published.

Validity of proceedings

13 The proceedings of a Licensing Board are not affected by—

(a) any vacancy in the membership of the Board,

(b) any defect in the election of any member of the Board, or

(c) the disqualification of any councillor from being a member of the Board.
Transitional and transitory provision

14 (1) Until the end of the day of the first election of members of a Licensing Board in accordance with paragraph 2(1), the members of the Board are to continue to be those who were, immediately before the coming into force of section 5, the members of the Board established under section 1 of the Licensing (Scotland) Act 1976 (c.66) for the same area or, as the case may be, division.

(2) Paragraph 4(1)(a) does not apply to a person who is a member of a Licensing Board by virtue of sub-paragraph (1) of this paragraph.

(3) In the application of paragraph 11 to such a person—

(a) sub-paragraph (1) has effect as if for “each 3 month period” there were substituted “such period as the Scottish Ministers may direct”, and

(b) sub-paragraph (2) is treated as if it were omitted.

SCHEDULE 2
(introduced by section 10(4))

LOCAL LICENSING FORUMS

Introductory

1 In this schedule, “Forum” means a Local Licensing Forum established under section 10.

Membership

2 (1) A Forum is to consist of such number (being not fewer than 5 and not more than 20) of members as the relevant council may determine.

(1A) The Scottish Ministers may by order substitute another number for the minimum or maximum number of members for the time being specified in sub-paragraph (1).

(2) At least one of the members must be a Licensing Standards Officer for the council’s area.

(3) The other members are to be individuals appointed by the relevant council on such terms and conditions as the relevant council may determine.

(4) In appointing members of a Forum, the relevant council must seek to ensure so far as possible that the membership of the Forum is representative of the interests of persons or descriptions of persons who have an interest which is relevant to the Forum’s general functions.

(5) Those persons include—

(a) holders of premises licences and personal licences,

(b) the chief constable for the police area in which the Forum’s area is situated,

(c) persons having functions relating to health, education or social work,

(d) young people,

(e) persons resident within the Forum’s area.
Convener

3 (1) At their first meeting in each calendar year, a Forum must elect one of the members of the Forum to be the convener of the Forum.

(2) The convener holds office, on such terms and conditions as the relevant council may determine, until the next election under sub-paragraph (1).

(3) Meetings of the Forum are to be chaired by the convener.

(4) If the office of convener is vacant or the convener is for any reason unable to act, a meeting of the Forum may be chaired by any other member present.

Administrative support

4 A council must provide each Forum established by them, or ensure each such Forum is provided, with such staff, property and services as the council considers are required for the Forum’s purposes.

Meetings and proceedings

5 (1) Each Forum must, in each calendar year, hold at least 4 meetings.

(1A) Meetings of a Forum must be held in public.

(2) Otherwise, the arrangements for meetings of a Forum and other matters relating to proceedings of the Forum, are to be such as the Forum may determine.

(3) The proceedings of a Forum are not affected by—

(a) any vacancy in the membership of the Forum, or

(b) any defect in the appointment of a member of the Forum.

SCHEDULE 3
(introduced by section 25(1))

PREMISES LICENCES: MANDATORY CONDITIONS

Interpretation

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

Compliance with the operating plan

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

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

The premises manager

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

(a) there is no premises manager in respect of the premises,
Licensing (Scotland) Bill
Schedule 3—Premises licences: mandatory conditions

(b) the premises manager does not hold a personal licence,
(c) the personal licence held by the premises manager is suspended, or
(d) the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises.

In sub-paragraph (1), “appropriate licensing qualification” in relation to any licensed premises means any licensing qualification prescribed as such in relation to licensed premises of that description in regulations under section 82(2)(d).

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

Authorisation of sales of alcohol

5 Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by—
(a) the premises manager, or
(b) another person who holds a personal licence.

Training of staff

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

(2) That is a capacity (whether paid or unpaid) which involves the person—
(a) making sales of alcohol, or
(b) where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person.

(3) Regulations under sub-paragraph (1) prescribing training requirements may, in particular—
(a) provide for the accreditation by the Scottish Ministers of—
(i) courses of training, and
(ii) persons providing such courses,
for the purposes of the regulations,
(b) prescribe different training requirements in relation to different descriptions of persons,
(c) require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualification as may be prescribed in the regulations, and
(d) require training to be undergone again at such intervals as may be prescribed in the regulations.

Pricing of alcohol

7 Where the price at which any alcohol sold on the premises is varied—
(a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and

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

Irresponsible drinks promotions

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

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

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

(b) involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks),

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

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

(da) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,

(e) is based on the strength of any alcohol,

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

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

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

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

(a) add further descriptions of drinks promotions,

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

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

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

Provision of non-alcoholic drinks

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

(2) Tap water fit for drinking must be provided free of charge on request.
(3) Other non-alcoholic drinks must be available for purchase at a reasonable price.

Payment of annual or recurring fees

10 (1) The condition specified in sub-paragraph (2) applies only in relation to a premises licence in respect of which an annual or other recurring fee is to be paid by virtue of regulations under section 127(1).

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

SCHEDULE 4
(introduced by section 57(1))

OCCASIONAL LICENCES: MANDATORY CONDITIONS

Interpretation

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

Compliance with licence

2 Alcohol may be sold on the premises only in accordance with the terms of the licence.

3 Any other activity to be carried on in the premises may be carried on only in accordance with the description of the activity contained in the licence.

Authorisation of sales of alcohol

4 (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to the holder of a premises licence or personal licence.

(2) Every sale of alcohol made on the premises to which the licence relates must be authorised (whether generally or specifically) by the holder of a personal licence.

Voluntary organisations

5 (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to a representative of a voluntary organisation.

(2) Alcohol may be sold on the premises only at an event taking place on the premises in connection with the voluntary organisation’s activities.

Pricing of alcohol

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

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

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

7 (2) An irresponsible drinks promotion must not be carried on in or in connection with the premises.

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

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

(b) involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks),

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

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

(da) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,

(e) is based on the strength of any alcohol,

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

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

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

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

(a) add further descriptions of drinks promotions,

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

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

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

Provision of non-alcoholic drinks

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

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

(3) Other non-alcoholic drinks must be available for purchase at a reasonable price.
### Schedule 4A

*Appeals to the sheriff principal*

#### Part 1

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**Schedule 4B—Modification of enactments**

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### SCHEDULE 4B

*(introduced by section 134A)*

#### Modification of enactments

**Children and Young Persons Act 1963 (c.37)**

1. In section 37(2)(b)(ii) (restriction on persons under 16 taking part in public performances within licensed premises) of the Children and Young Persons Act 1963, for “1976) or in respect of which a club is registered under that Act” substitute “2005 (asp 00))”.

**Countryside (Scotland) Act 1967 (c.86)**

2. In section 78(1) (interpretation) of the Countryside (Scotland) Act 1967, in the definition of “refreshments”, for “alcoholic liquor within the meaning of the Licensing (Scotland) Act 1976” substitute “alcohol within the meaning of section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

**New Towns (Scotland) Act 1968 (c.16)**

3. (1) The New Towns (Scotland) Act 1968 is amended as follows.

   (2) In section 18(2) (disposal of land by development corporations), in the proviso, for “alcoholic liquor” substitute “alcohol”.

   (3) In section 47(1) (interpretation), for the definition of “alcoholic liquor”, substitute the following definition—

   ““alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.
Water (Scotland) Act 1980 (c.45)

4 In section 50(1)(b) (power to require supply by meter to certain premises) of the Water (Scotland) Act 1980, for “1976” substitute “2005 (asp 00)”.

Local Government, Planning and Land Act 1980 (c.65)

5 In section 146 (disposal of land by urban development corporation) of the Local Government, Planning and Land Act 1980, for subsection (6) substitute—

“(6) In this section, “alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00).”.

Civic Government (Scotland) Act 1982 (c.45)

6 (1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 41(2)(f) (exclusion of licensed premises from definition of place of public entertainment)—

(a) for “1976” substitute “2005 (asp 00)”, and
(b) for “the permitted” substitute “licensed”.

(3) In section 42(4)(a) (late hours catering licence not required in respect of licensed premises), for “1976” substitute “2005 (asp 00)”.

Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

7 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

(2) In section 22 (presumption as to contents of container), for “Section 127 of the Licensing (Scotland) Act 1976 (presumption as to contents of container)” substitute “Section 131 of the Licensing (Scotland) Act 2005 (asp 00) (presumption as to liquid contents of containers)”.

(3) In section 23 (interpretation of Part II), for the definition of “alcohol”, substitute the following definition—

““alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00);”.

Crime and Punishment (Scotland) Act 1997 (c.48)

8 (1) Section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 is amended as follows.

(2) In subsection (1)—

(a) in paragraph (b), for “alcoholic liquor, within the meaning of the Licensing (Scotland) Act 1976” substitute “alcohol”, and
(b) for “that liquor” substitute “the alcohol”.

(3) In subsection (2), for—

(a) “alcoholic liquor”, and
(b) “liquor” in each place where that word appears,
substitute “alcohol”.

(4) In subsection (6), for “1976” substitute “2005 (asp 00)”.

(5) After subsection (6) insert—

“(7) In this section, “alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

**Scottish Public Services Ombudsman Act 2002 (asp 11)**

9 In paragraph 10 of Part 1 of schedule 2 (authorities not amendable by Order in Council) to the Scottish Public Services Ombudsman Act 2002, for “within the meaning of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.

**Freedom of Information (Scotland) Act 2002 (asp 13)**

10 In paragraph 23 of Part 3 of schedule 1 (local government) to the Freedom of Information (Scotland) Act 2002, for “constituted in accordance with the provisions of section 1 of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.

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### SCHEDULE 5

(introduced by section 139)

#### REPEALS

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Licensing (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold; and for connected purposes.

Introduced by: Mr Tom McCabe
On: 28 February 2005
Supported by: Tavish Scott
Bill type: Executive Bill
This document relates to the Licensing (Scotland) Bill as amended at Stage 2 (SP Bill 37A)

LICENSING (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS
1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Licensing (Scotland) Bill as amended at Stage 2.

INTRODUCTION
2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL
4. The Bill is in 9 Parts.

5. These are:
   • Part 1 – Core provisions
   • Part 2 – Licensing bodies and officers
   • Part 3 – Premises licences
   • Part 4 – Occasional licences
   • Part 5 – Licensed hours
   • Part 6 – Personal licences
   • Part 7 – Control of order
   • Part 8 - Offences
Commentary explaining the changes introduced by each Part is provided below. The main legislation which currently governs licensing in Scotland is the Licensing (Scotland) Act 1976 (c.66) as amended and the Licensed Premises (Exclusion of Certain Persons) Act 1980 (c.32). The Bill repeals this legislation.

COMMENTARY ON PARTS

PART 1 – CORE PROVISIONS

Section 1 – Prohibition of unlicensed sale of alcohol

7. This Bill makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold. Section 1 establishes that a licence is required to sell alcohol unless the premises are exempt as defined in section 116.

Section 2 – Meaning of “alcohol”

8. This section provides an interpretation of the term “alcohol” for the purposes of this Bill.

Section 3 – Certain supplies of alcohol to be treated as sales

9. This section provides for certain supplies of alcohol to be treated as sales of alcohol for the purposes of this Bill. This ensures that those supplies would come under the provisions of the new licensing regime. 2 types of supply are covered.

10. The first is supplies by clubs to their members. Members’ clubs are owned by their members. So the members own the stock. They do not need to sell the alcohol to themselves. But this provision ensures that the supplies are treated as sales so that the club still needs a premises licence.

11. The second type of supply is where the alcohol is supplied in pursuance of a contractual right. For example, some hotels or resorts may offer “all inclusive” packages under which the price paid for the stay at the hotel or resort includes unlimited supplies of “free” drink. This provision ensures that the supply of alcohol under such packages is treated as a sale so that the hotel or resort, or at least the bar in the hotel or resort, requires a premises licence.

12. The second set of circumstances might also cover arrangements whereby alcohol is supplied at a bar in exchange for a voucher or token which is bought elsewhere. The supply at the bar will be treated as a sale so that the bar needs a premises licence.

Section 4 – The licensing objectives

13. This section establishes 5 high level “licensing objectives” that represent the values on which the Scottish licensing system would be based, the parameters against which everyone
would measure the elements of that system and the solid foundation which local authority Licensing Boards must have regard to in carrying out their functions under the Bill.

PART 2 – LICENSING BODIES AND OFFICERS

Section 5 – Licensing Boards

14. Licensing Boards were introduced by the Licensing (Scotland) Act 1976 and subsection (1) of this section retains them. There will continue to be a Board for each council area or, where a council area has been divided into licensing divisions, a Board for each division. The Boards will continue to be made up of local authority councillors and appointed by the local authority.

15. Subsection (2) provides that where local authorities consider it appropriate to do so, they may split their area up into licensing divisions in the future.

16. Subsection (3) sets out the consequences of establishing licensing divisions. This includes the requirement that for each of those division areas, a separate Licensing Board would have to be established and that where this occurs the existing Licensing Board for that local authority would be dissolved. The provision of licensing divisions is a continuation of the current procedure under the Licensing (Scotland) Act 1976.

17. Subsection (4) allows for licensing divisions to be merged back into a single area so that there is a single Board for the whole area. Subsection (5) provides for the consequences of such a merging of divisions.

Section 6 – Statements of licensing policy

18. Subsection (1) places a duty on Licensing Boards to publish what is to be known as a “licensing policy statement” for their area for a 3-year period. This statement would offer guidance and clarity on the policy on which Licensing Boards would base their decisions in implementing their functions under the Bill. This is particularly important for a system which is likely to have quite a high degree of local flexibility in terms of the discretion given to Licensing Boards.

19. Subsection (2) provides that Boards have a power to issue a supplementary statement within that 3-year period. It is intended that this supplementary power would cover new or unanticipated issues.

20. Subsection (3) places a duty on Boards, when preparing their policy statements to ensure that the statements promote the 5 licensing objectives set out in section 4 and to consult on their proposed policy statements with those persons listed in paragraph (b)(i) to (iii).

21. Subsection (7) allows Scottish Ministers to specify the date by which Boards must prepare their first policy statement under the new regime.
Section 7 – Duty to assess overprovision

22. Subsection (1) places a duty on Licensing Boards to make a pro-active assessment of local provision of licensed premises in their area as part of their policy statements. There would also be flexibility for Boards to decide, for any locality, whether there was overprovision generally in relation to licensed premises or only in relation to a particular identifiable sector.

23. Subsection (2) provides that Boards would themselves determine what amounts to a “locality” for this purpose. This is as flexible as possible to reflect the very different pressures which may apply in different geographical areas throughout the country.

24. Subsection (3) places a duty on Boards when considering their policy on overprovision to have regard to those matters specified and to consult with those persons listed in subsection (4).

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

Section 8 – Applicants attempting to influence Board members

26. This section provides that it would be an offence for anyone who has submitted an application under the Bill to attempt to influence in their favour a member of the Licensing Board at any time. Subsection (2) establishes how the Board should proceed where a prosecution for an offence under this section has been brought against an applicant.

Section 9 – Licensing Board’s duty to keep a public register

27. This section places a duty on Licensing Boards to keep a licensing register containing the information set out in subsection (1)(a) to (c). Subsection (2) provides that Scottish Ministers may regulate the type of information required and the form in which it is kept.

Section 10 – Local Licensing Forums

28. Subsection (1) places a duty on each council to establish a Local Licensing Forum for its area. The establishment of these forums is new and should enhance the local Board’s awareness of both the beneficial and detrimental impact of their policies in particular on the local community and on local trade. Where a local authority has split their area into separate licensing divisions, subsection (2) allows for the establishment of a separate Local Licensing Forum for each of those divisions.

29. Subsection (3) provides that there should as a minimum be at least one formal annual meeting between the Board and the local Forum. This is important to ensure that a relationship is established between these bodies.
Section 11 – General functions of Local Licensing Forums

30. This section establishes the general function of Local Licensing Forums. The role of the Local Licensing Forum is to comment on the Board’s general policy approach and not to comment on individual licence applications.

Section 12 – Licensing Boards’ duties in relation to Local Licensing Forums

31. This section establishes duties on Boards to have regard to the Forums’ advice, to provide any statistical information that the Forums may request from them and to present reasons why they have followed a different route from that recommended by the Forum.

Section 13 – Licensing Standards Officers

32. Subsection (1) places a duty on local authorities to appoint one or more officers to be known as Licensing Standards Officers (“LSOs”) whose general statutory functions are those set out in section 14 of the Bill. This is a new role. The Civic Government (Scotland) Act 1982 empowers the police and authorised officers of licensing and fire authorities to enter and inspect premises, vehicles or vessels of a licence holder or applicant for a licence. With respect to liquor licensing, however, there is currently no such provision. Subsection (1A) further provides that local authorities may share the use of LSOs across their boundaries.

Section 14 – General functions of Licensing Standards Officers

33. Subsection (1) establishes the general functions of Licensing Standards Officers and those are set out in paragraphs (a) to (c). LSOs would not act as policemen with regard to licensing but they would liaise with the police and other relevant officials such as environmental health officers in ensuring the licensing objectives are adhered to and solutions found to problems involving licensed premises. LSOs would act as a source of advice and guidance for licensees and for the community; mediate between communities and the trade or between any two parties where there is a need to resolve a local problem and develop a local solution and supervise compliance with licence conditions by the relevant licence holders.

34. Subsection (2) sets out in more detail the power of the LSO to deal with a breach of licence conditions by issuing a written warning to the licence holder and making a referral to the Licensing Board for review of the licence.

Section 15 – Powers of entry and inspection

35. Subsections (1), (2) and (3) give LSOs power to enter and inspect licensed premises to establish compliance with the licensing objectives.

36. Subsections (4) and (5) place a duty on licence holders and those managing and working on premises to co-operate with and assist the LSOs in the performance of their functions and to provide any information or documents requested by the LSO.
37. Subsection (6) provides that any person referred to in subsection (4) who fails to assist or who obstructs the Licensing Standards Officer would be guilty of an offence.

Section 15A – Training of Licensing Standards Officers

38. This section allows Ministers to prescribe mandatory training requirements with which Licensing Standards Officers must comply. In particular, Ministers would have power to accredit both course content and course providers.

PART 3 – PREMISES LICENCES

Section 16 – Premises licence

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

Section 17 – Meaning of “appropriate Licensing Board”

40. This section provides that for the purposes of premises licences, the “appropriate Licensing Board” for any premises is the Board in whose area the premises are situated (or mainly situated). If premises straddle two or more areas equally, applicants can nominate one of the Licensing Boards in question to act as the relevant Licensing Board. The effect of this section is to identify the Board which will carry out licensing functions in relation to premises licences.

Section 18 – Premises manager

41. This section introduces the term “premises manager”. Each premises licence will have to specify the premises manager for the premises. Subsection (2) ensures that a person can only be the designated premises manager for one licensed premises.

Section 19 – Application for premises licence

42. Under subsection (1) any person, which includes corporate and unincorporated bodies and statutory bodies as well as individuals, can apply for a premises licence. However, if an individual wants a licence, he or she will need to be 18 or over. Under subsection (2) the application for a premises licence must be accompanied by a draft of the applicant’s proposed operating plan and a layout plan for the premises. These plans would provide Licensing Boards and local communities with a clear indication of what activities would be undertaken on a premises at the time of the licence application. Applications would also have to be accompanied by certain certificates relating to planning, building control and food hygiene (see section 48 of the Bill).

43. Subsection (4) provides that the form and content of operating plans would be set out in regulations. However, this subsection lists a number of specific requirements as to the content of operating plans, including the proposed opening hours, any other activities in addition to the sale of alcohol and the position with regards to allowing the entry of children to a licensed premises.
Section 20 – Notification of application

44. This section places a duty on Licensing Boards to notify those persons specified in subsection (1) (a) to (e) of all applications they receive for premises licences. This is a new duty and a change from what was previously provided for in the Licensing (Scotland) Act 1976.

45. Licensing Boards must notify the chief constable of all applications for premises licences. Subsection (3) places a duty on the chief constable to respond to the Licensing Board by giving certain notices within a period of 21 days. 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. “Relevant offences” will be listed in regulations under section 120. “Foreign offences” are offences under the laws of countries other than Scotland which correspond to relevant offences. Section 137(2) and (3) makes provision identifying “connected persons” in relation to companies, partnerships and clubs. This ensures that checks are done on the persons in control of these bodies as well as the bodies themselves.

46. Subsection (3) further provides that the chief constable must, when they are notified of a new premises application, submit a report to the Licensing Board regarding antisocial behaviour which has taken place on or in the vicinity of the premises and all complaints about such behaviour.

Section 21 – Objections and representations

47. This section widens the current provisions in the Licensing (Scotland) Act 1976 relating to those persons who would have a statutory right to make objections and representations in relation to applications for premises licences. Any person (whether an individual or a corporate or unincorporated body) may object or make representations provided that, as noted in section 21(3), this is not considered by the Board to be vexatious or frivolous.

48. Subsection (1A) allows the chief constable, in whose area an application for a premises licence has been made, a limited right to object to an application on the grounds that the applicant or a connected person is involved in serious organised crime. The chief constable may then, for the purposes of the crime prevention licensing objective, recommend refusal of the application.

Section 22 – Determination of premises licence application

49. This section sets out the procedure that Licensing Boards must adopt when they receive an application for a premises licence. It provides both for the circumstances where a Licensing Board proposes to grant a premises licence and where they propose to refuse a premises licence.

50. Subsection (5) set out the grounds on which a Licensing Board may refuse a premises licence application. Those grounds are set out in paragraphs (a) to (d). One of the grounds relates to consistency with the licensing objectives. When considering the impact on the crime prevention objective in particular, the Board must pay particular attention to any convictions for relevant or foreign offences of which they have been notified by the chief constable and any
recommendation as to refusal the chief constable may have given. However, the existence of convictions does not per se prevent the Board granting the licence.

Section 23 – Further application after refusal of premises licence application

51. This section provides in effect that, where a Licensing Board has refused an application for a premises licence, a subsequent application in respect of the same premises cannot be made within one year of the initial refusal.

52. However, the Licensing Board can, at the time of the initial refusal, dispense with the one year limit so allowing another application within that time. Even if the Board does not dispense with the limit, an applicant will be able to re-apply within the one year period if they can show that there has been a material change of circumstances since the initial refusal.

Section 24 – Issue of licence and summary

53. This section 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. The section also makes provision as to the form and content of the licence and summary. Subsection (2) sets out the minimum information which must be contained in the licence.

Section 25 – Conditions of premises licence

54. This section provides that all premises licences will be subject to those mandatory conditions set out in schedule 3 to this Bill, unless schedule 3 provides otherwise. The application of these mandatory conditions is intended to ensure national consistency on those matters specified in schedule 3.

55. Subsections (2) and (3) provide a power for the Scottish Ministers to set out such further national mandatory or discretionary conditions to be attached to premises licences as they think are needed for the purposes of the five licensing objectives established by this Bill.

56. Subsection (4) provides a power for Licensing Boards to impose additional licence conditions to those ones to which the licence may be subject by virtue of subsections (1) to (3). This power could be used in circumstances where additional conditions were needed for the purposes of any of the five licensing objectives established by the Bill and where some other form of activity not covered by schedule 3 was being undertaken on the premises. However, under subsection (5) 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.

57. Subsections (6) and (7) make clear the types of conditions which can be prescribed by Scottish Ministers and imposed by Licensing Boards. These can cover both the sale of alcohol and other activity carried out on the premises.
58. Subsection (8) provides a limitation on Licensing Boards’ powers under any provision of this Bill to vary the conditions of a premises licence to only those conditions provided for by this section.

Section 26 – Period of effect of premises licence

59. This section establishes the maximum duration for any premises licence issued under the Bill. The Licensing (Scotland) Act 1976 required licences to be renewed every 3 years. Premises licences under this Bill would generally continue in effect indefinitely as long as the premises in question continued to be used for the purpose or purposes for which the licence was granted. However, the licence could be revoked if conditions are breached and the licence also ceases if the holder dies, becomes incapable or insolvent unless a transfer is made under section 31. A licence holder may also choose to voluntarily surrender a licence.

60. Subsection (2) covers the situation where there is an application for a transfer of the premises licence made in any the circumstances provided for in subsection (5) i.e. where a licence would otherwise lapse as a result of death, bankruptcy, insolvency or incapacity.

61. Subsection (7) makes provisions for determining when licence holders become insolvent.

Section 27 – Application to vary premises licence

62. This section permits premises licence holders to apply to the Licensing Board which originally granted the licence for variations to the terms and conditions of the premises licence. There is currently no process for variations to be made to a licence under the Licensing (Scotland) Act 1976. Subsection (2) provides that all applications must be accompanied by the paper version of the premises licence, where practicable.

63. Subsection (4) provides that the duty placed on Licensing Boards under sections 20 and 21 of the Bill would apply to applications under this section for variations to premises licences. This would ensure that all those persons who had a statutory right to be notified, were notified of the proposed variation and that any person could make representations and objections to the variation.

64. Subsection (5) explains what a “variation” could cover. It includes any change to the operating plan. Subsection (6) provides for certain variations to be classed as “minor”. This is to enable those to be dealt with less formally.

Section 28 – Determination of application for variation

65. This section establishes the procedure that Licensing Boards must adopt when they are considering an application for a variation to a premises licence applied for under section 27 of the Bill.

66. Subsection (3) places a duty on Licensing Boards to hold a hearing when considering an application for all applications for a variation to premises licences, other than a minor variation, where subsection (2) places a duty on Licensing Boards to grant that application.
67. Subsections (4) and (5) provide that the Licensing Board’s decision must be based on the statutory grounds for refusal which are set out in subsection (5). These are similar to the grounds for refusal of an application for a licence.

68. Subsection (6) provides a power for Licensing Boards to make their own additional variations to the licence conditions where it grants the variation applied for.

Section 29 – Variation to substitute new premises manager

69. This section deals with a change of premises manager in relation to any premises. Licensed premises cannot operate without a premises manager being in post (see paragraph 4 of schedule 3). 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. This section 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 ensure that changes of premises manager can take effect quickly so as to enable businesses to continue to operate with the minimum disruption.

Section 30 – Further application after refusal of application for variation

70. This section in effect prevents a premises licence holder who has had an application for a variation refused re-applying for the same variation within a year of the initial refusal.

71. Subsection (3), however, permits Licensing Boards to dispense with the one year limit or, where the limit has not been dispensed with, nonetheless to consider a re-application within the one year period where circumstances have changed.

Section 31 – Transfer on application of licence holder

72. Subsection (1) provides that the holder of a premises licence may apply for the transfer of the licence to another person.

73. Subsection (4) provides that the Licensing Board must notify the application to the chief constable for their area and subsection (5) provides that the chief constable must respond within 21 days with the notice required by subsection (6). The statutory content of these notices are set out in subsection (6) and cover relevant and foreign offences.

74. Subsection (7) establishes that where the chief constable notifies the Licensing Board that the person(s) to whom the licence is proposed to be transferred (or a connected person) has been convicted of a relevant or foreign offence then the chief constable may also make a recommendation for refusal of the transfer application.

75. Subsections (8), (9) and (10) establish the procedure that Licensing Boards must adopt on receipt of the chief constable’s notice. Where the notice reports that no conviction is found the transfer must be granted. Where the notice reports a conviction the Board is under a duty to hold a hearing but the only ground on which the transfer application may be refused is that it is
necessary to do so for the purposes of the crime prevention objective. Otherwise the application must be granted.

Section 32 – Transfer on application of person other than licence holder

76. This section allows for an application to be made for a transfer of a premises licence by the proposed transferee rather than the licence holder. Subsection (4) provides that all the procedure set out in section 31 applies to applications for transfer of a premises licence under this section.

77. The transferee may make an application within 28 days only in circumstances where the licence holder has died, become insolvent or incapable or the business is being sold or transferred. Where a sale or transfer is being made the transferee and transferor are, therefore, given the option of choosing who is to apply for the transfer (either under sections 31 or section 32).

78. A transferee will be able to apply under this section only if the transferee has a prescribed connection to the licence holder or the premises. For example, regulations under subsection (1) may prescribe that only the licence holder’s executor may apply under this section for transfer of the licence in circumstances where the licence holder has died.

Section 33 – Variation on transfer

79. This section allows persons applying for transfer of a premises licence also to apply at the same time for a variation to the terms and conditions of the premises licence. The provisions in sections 27 and 28 relating to applications and determinations of variation applications will apply to applications for variations under this section.

80. Subsection (3) caters for the case where a proposed transfer may depend on a variation being obtained to the licence. Where the person seeking the transfer makes it clear that this is the case, the Board must determine the application for variation prior to determining the application for transfer. If the variation is refused there is no need to proceed with the transfer application.

Section 34 – Application for review of premises licence

81. This section provides a power for Licensing Boards to review a premises licence on the application of any person. The grounds on which such a review would be undertaken are set out in subsection (3). These include breach of the licence conditions or any other ground relevant to one of the licensing objectives.

82. A Licensing Standards Officer can apply for a review on the ground that there has been a breach of licence conditions only if the Officer has issued a written warning about the breach.

83. Subsection (5) places a duty on persons applying for a review of a premises licence to set out the grounds that they feel merit the review.
Section 35 – Review of premises licence on Licensing Board’s initiative

84. This section provides a power for Licensing Boards to initiate reviews of premises licences themselves. The grounds for review are the same as those for applications under section 34. Where a Licensing Board proposes to initiate a review of a premises licence, the Board must provide a written report (to be known as a review proposal) setting out the grounds that they feel merit such a review of the premises licence.

Section 36 – Review hearing

85. This section places a duty on the Licensing Board to hold a hearing (known as a “review hearing” for the purposes of this Bill) to consider and determine an application for a review of a premises licence made under section 34 or a review proposal under section 35. The Board does not need to hold a review hearing on an application for review if it considers the application is frivolous or vexatious or if it is not relevant to the grounds for review. Subsection (4) places a duty on Licensing Standards Officers to provide a report to the Board and provides a reciprocal duty on Boards to have regard to the report. Subsections (5) and (6) permit Boards to request information, the attendance at a hearing of any person and the production of documents.

Section 37 – Licensing Board’s powers on review

86. This section provides the range of sanctions that a Licensing Board may impose on reviewing a premises licence. The Board can issue a written warning, vary the licence, suspend it or revoke it. The Board can provide for a variation to apply only for a limited period of time.

Section 38 – Review of Licensing Board’s decision to vary or suspend licence

87. This section provides 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 they may remove the relevant sanction. This power applies only to variation or suspension of a premises licence following review.

Section 39 – Duty to notify court of premises licence

88. This section requires premises licence holders who are charged with relevant offences to notify the court of the fact that they hold a premises licence. This will enable the courts to become aware of cases to which the duty in section 40 will apply.

Section 40 – Court’s duty to notify Licensing Board of convictions

89. Where a premises licence holder is convicted of a relevant offence by a court in Scotland, the clerk of court will, under this section, be required 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. In most cases, they will be made aware of that fact under section 39.
Section 41 – Licence holder’s duty to notify Licensing Board of convictions

90. Where a premises licence holder (or in the case of a company, partnership or club, a “connected person” – see section 137(2)) is convicted of a relevant offence in Scotland or a foreign offence then the licence holder must, no later than one month after the date of the conviction, notify the Licensing Board of the conviction. If the licence holder does not comply he or she would be guilty of an offence. The duty is imposed on the licence holder even where it is a connected person who has the conviction. This is because it is the licence holder who has the primary responsibility.

91. Subsection (4) specifies the mandatory requirements for such notices under subsection (3).

Section 42 – Procedure where Licensing Board receives notice of conviction

92. Where a Licensing Board receives notice of a conviction given under section 40 or 41 the Board must give the appropriate chief constable notice of it. The chief constable must then check the conviction and respond, within 21 days, either confirming the existence of the conviction and that it is for a relevant or foreign offence or stating that the chief constable is unable to confirm the conviction or that it does not relate to a relevant or foreign offence. Where the conviction is confirmed, the chief constable can make a recommendation that the premises licence be varied, revoked or suspended, if that is considered necessary for the purpose of the crime prevention objective.

93. Subsection (7) places a duty on the Licensing Board to initiate a review of the premises licence should they receive notification from the chief constable confirming the existence of a conviction.

Section 43 – Provisional premises licence

94. This section makes it clear that a premises licence application can be made in relation to premises which are being constructed or converted for use as licensed premises. A premise licence granted for such premises is referred to as a “provisional premises licence”. The section modifies certain provisions of the Bill as they apply to applications for provisional premises licences.

95. Subsection (3) provides that a provisional premises licence has no effect until confirmed under subsection (4). The licence has to be confirmed within 2 years otherwise it will automatically be revoked. The 2 year period can be extended if the construction or conversion work is delayed for reasons outwith the licence holder’s control.

96. Subsection (10) modifies section 19 (which sets out requirements as to applications for premises licences) of the Bill as it applies to applications for provisional premises licences. Paragraph (a) establishes that different certificates as to planning, building control and food hygiene are to be provided and paragraph (b) establishes that the name of the premises manager need not be provided on application.
Section 44 – Confirmation of provisional premises licence

97. This section sets out the procedure for confirmation of provisional premises licences. The licence holder has to apply for confirmation to the Licensing Board before the end of the 2 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.

98. Subsection (2) sets out the mandatory requirements for applications for confirmation of provisional premises licences.

99. Subsection (3) makes it clear that the operating plan accompanying the application must confirm the name of the proposed premises manager.

100. Subsection (4) requires the Licensing Board to confirm the premises licence where the statutory conditions are met. Subsection (5) sets out those conditions – i.e. that during the period of the provisional licence there had 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).

101. Subsection (6) provides that when confirming a premises licence under this section, a Licensing Board may vary any licence condition. However, this could only be done for the purpose set out in subsection (7).

Section 45 – Temporary premises licence

102. This section caters for the circumstances where premises which already have a premises licence are undergoing reconstruction or conversion work. The licence holder may want to move into temporary premises pending completion of the work. This section allows the licence holder to apply to the Licensing Board for a premises licence covering the temporary premises. Such a licence is referred to as a “temporary premises licence”.

103. Subsections (5) and (6) confirm the maximum duration of temporary premises licences issued under this section and establish that those licence conditions which were attached to the original application for the premises licence would apply to the temporary premises licence, subject to any exceptions or modification which the Licensing Board may provide for.

Section 46 – Notification of change of name or address

104. This section places a duty on the holder of a premises licence to notify the Licensing Board of any change of name or address of the premises licence holder or of the premises manager. This 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. A notification of a change of the licence holder's name or address or that of the premises manager under this section must be accompanied by the premises licence (unless that is impracticable, when a statement must be provided).
Section 47 – Licensing Board’s duty to update premises licence

105. This section is intended to ensure that the information contained in the premises licence is kept up-to-date. Subsection (1) requires the Licensing Board to make the appropriate changes to the information in the licence when they receive the notices of change of name or address and when they vary, transfer, confirm or review a premises licence. This ensures that there is always an accurate record of the licence.

106. In most cases the Licensing Board will have been sent the appropriate licence, but subsections (3) and (4) provide that the Board may require a holder to produce their licence within 14 days. Subsection (5) provides that failure to do so without reasonable excuse will be an offence.

Section 48 – Certificates as to planning, building standards and food hygiene

107. This section sets out the requirements as to the production of certificates evidencing compliance with planning, building control and food hygiene legislation in relation to premises in relation to which a licence application is made. Different requirements are imposed according to whether the application is for a full premises licence, a provisional premises licence or confirmation of a premises licence.

Section 48A – Notification of determinations

108. This section 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.

109. Subsection (3) requires Boards to give reasons for these decisions, but only if asked.

Section 49 – Duty to keep, display and produce premises licence

110. This section 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. It would be an offence to fail to comply with these requirements or to fail to produce the licence or a certified copy to a constable or a Licensing Standards Officer on request.

Section 50 – Theft, loss etc. of premises licence or summary

111. Subsection (1) provides that a premises licence holder may 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. The Licensing Board must then issue a replacement licence or summary. The Bill applies in relation to a replacement and summary in the same way as it applies to the originals.
112. Subsection (3) establishes that a replacement licence or summary is to be certified as a true copy by the Licensing Board.

Section 51 – Dismissal, resignation, death etc. of premises manager

113. This section 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. It gives a “period of grace” to allow the premises to continue operating despite not having a premises manager and pending the recruitment of a new one.

114. Subsection (3) places a duty on the premises licence holder to inform the Licensing Board of such circumstances within 7 days.

115. Subsection (4) and (5) provide that should this notification be done within the 7 day period and an application to substitute a new premises 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.

116. Subsection (6) provides that should there not be an application to a transfer of the premises licence under subsection (4) then the Licensing Board must vary the licence to reflect the fact that there is no longer any premises manager named on it. The period of grace will have ended and the premises would have stop operating as they would have no premises manager.

Section 52 – Certified copies

117. This section provides an interpretation of what is meant by the term “certified copy” used throughout this Part of the Bill.

PART 4 – OCCASIONAL LICENCES

Section 53 – Occasional licence

118. Subsection (1) provides a power for Licensing Boards to grant an occasional licence for premises other than licensed premises to those persons specified in subsection (2). For a premises licence holder this would be to authorise the sale of alcohol in the course of catering for an event taking place outwith their licensed premises. A typical example of where this might arise would be the provision of catering, including the sale of alcohol, at a wedding reception or other social event held on private property. Voluntary organisations may also apply for an occasional licence authorising the sale of alcohol at an event connected with the organisation’s activities.

119. Subsection (5) sets out a maximum duration of 14 days for each occasional licence. Subsection (6) confirms the limits on the number of occasional licences that Licensing Boards can issue within a year to a voluntary organisation.
120. Subsection (7) provides a power for the Scottish Ministers to set out in regulations the form of occasional licences and subsection (8) sets out the mandatory content of occasional licences in paragraphs (a) to (h).

Section 54 – Notification of application to chief constable

121. This section places a duty on Licensing Boards to notify the chief constable of all applications for occasional licences under section 53 and for the chief constable to notify the Board within 21 days of whether, in the interests of the crime prevention licensing objective, the application should be refused.

Section 55 – Objections and representations

122. This section allows for any person to make objections and representations to Licensing Boards in connection with any application made to the Board for an occasional licence under section 53.

123. Subsection (2) places a duty on Licensing Boards to give the applicant notice of any objections or representations received and to take account of them in determining the application.

124. Subsection (3) permits Licensing Boards to reject any frivolous or vexatious objection or representation made to them. Subsection (4) permits Licensing Boards to recover costs from the person in question. Subsection (5) establishes the matters that would be considered acceptable evidence in any proceedings by a Licensing Board for recovery of costs under subsection (4).

Section 56 – Determination of application

125. This section sets out the procedure that Licensing Boards must adopt to determine an application under section 53 for an occasional licence. It provides both for the circumstances where a Licensing Board proposes to grant a licence and where they propose to refuse such a licence.

126. Subsection (3) provides that the Board’s decision must be based on the statutory grounds for refusal. These are set out in subsection (6). They are similar to the grounds for refusal of a premises licence application except that there is no “overprovision” ground. Subsection (7) provides that, when considering refusal on the ground that the application is inconsistent with the crime prevention objective, Licensing Boards must take into account and any recommendation for refusal made by the chief constable.

Section 57 – Conditions of occasional licence

127. This section makes provision as to the conditions to which occasional licences may be subject. It replicates section 25 in relation to premises licences.
Section 57A – Notification of determinations

128. This section places a duty on the Licensing Board to notify its decisions on applications for occasional licences. Subsection (3) requires the Board, on request, to provide reasons for its decisions.

PART 5 – LICENSED HOURS

Section 58 – Licensed hours

129. This section establishes the new regime of licensing hours on which the licensing system will be based. This is a move away from the current system of “permitted hours”. The Bill introduces a more modern approach and gets rid of the practice of giving extensions to hours in favour of clarity up front about acceptable hours. Licence holders would be required to specify their hours in their operating plans submitted to the Licensing Board for approval along with their premises licence applications and drawn up with regard to the Board's published policy statement, which would set out the Boards general approach to policy on licensing hours for their area. The hours for occasional licences would, similarly, be set out in the application for the licence and incorporated into the licence if granted.

Section 59 – Prohibition of sale, consumption and taking away of alcohol outwith licensed hours

130. The provisions in this section are to some extent based on section 54 of the Licensing (Scotland) Act 1976. The provisions here provide that it is an offence to sell alcohol outwith licensed hours or to allow the sale, consumption, or taking away of alcohol outwith licensed hours. Subsection (2) sets out a number of exceptions which cover, amongst other things, the period of 15 or 30 minutes “drinking-up” time.

131. Subsection (4) is a new offence which replaces the current offence of consuming or taking away alcohol outwith licensed hours. The consumption or taking away is now only an offence if the person was asked not to consume the alcohol or take it away but failed to comply with the request.

Section 60 – 24 hour licences to be granted only in exceptional circumstances

132. The presumption provided here is against 24 hour opening in Scotland for on and off sales. However, subsection (2) provides that Boards would be entitled to agree exceptions to that presumption but only if satisfied that there are exceptional circumstances justifying it. This is a test which would have to be applied on a case by case basis. Guidance will set out national guidelines on the policy that should be adopted by Licensing Boards in relation to circumstances that might merit 24 hour opening. Boards would be required to set out their policy on licensing hours for their area in their policy statements.

Section 60A – Licensed hours: off-sales

133. This section introduces statutory opening hours for off sales premises. Where an application is made for a premises licence, a variation to the licence or an occasional licence for
the sale of alcohol between the hours of 11.00 pm and 8.00 am for consumption off the premises, then the Board must refuse the application.

**Section 61 – Effect of start and end of British Summer Time**

134. This addresses an existing problem in relation to British Summer Time. The changing of the clock makes it difficult to fix on a uniform approach to whether the hours after midnight ought to be determined by the number of hours of extension granted in the licence application or by reference to the actual time on the clock. The Bill provides that under the new licensing system the times would be determined by the number of hours authorised at the time the licence was granted. Accordingly this section provides that at the times of the year when clocks are moved forwards or backwards to accommodate the requirements of British Summer Time, there would be a uniformity of approach throughout the country as to the effect which this has on closing times.

135. Subsection (2) in effect means that in those licensed premises which are authorised to open later than the hour when the change takes place, their closing time should be determined by reference to the number of hours after midnight when they are authorised to be open rather than by the actual time shown on the clock.

**Section 61A – Power for Licensing Board to grant general extensions of licensed hours.**

136. This section provides a new power for Licensing Boards to grant general extensions to licensed hours in connection with special events of local or national significance.

137. Subsection (2) provides that this can apply to the whole of the Board’s area or only to specified parts; licensed hours generally or only to specified descriptions of those hours; and all relevant premises in the Board’s area or only to specified descriptions of such premises.

138. Subsection (4) requires Boards to give notice of any such determinations made under this section to those persons specified.

**PART 6 – PERSONAL LICENCES**

**Section 62 – Personal licence**

139. This section provides for the new personal licence. Each premises licence must name the “premises manager” for the premises. The application for the licence will have to contain information as to the proposed premises manager. In terms of the mandatory conditions in schedule 3, the premises manager will have to hold a personal licence. Other personal licence holders could be employed on the premises to help the premises manager out. A personal licence would permit that person to supervise and authorise sales of alcohol on the premises.

**Section 63 – Application for personal licence**

140. This section sets who can apply for a personal licence. This is any individual aged 18 years or more.
Section 64 – Notification of application to chief constable

141. This section places a duty on Licensing Boards to notify the chief constable of all applications received for personal licences. This is a key element of the new licensing system in that, when considering granting personal licences, it is important that an effective system is in place to enable Boards to ascertain whether or not someone is a suitable person to hold a licence. In that respect, to be eligible for a personal license a person must not have been convicted of any relevant or foreign offence. This is a change from the current test under the 1976 Act of being a “fit and proper person”.

142. Subsections (2) and (3) provide that the chief constable should respond, within 21 days, with information as to whether or not the applicant has any convictions for a relevant or foreign offence.

143. Subsection (4) provides that where a chief constable finds that an applicant has a conviction for a relevant or foreign offence then he may recommend to the Licensing Board that the personal licence application in question should be refused, if he thinks it necessary to do so for the purposes of the crime prevention objective.

Section 65 – Determination of personal licence application

144. This section sets out the procedure that Licensing Boards must undertake when considering personal licence applications, and following receipt of the chief constable’s response under section 64.

145. Subsection (2) provides that where all the conditions set out in subsection (3) are met, and there are no convictions, then the Licensing Board must grant the personal licence to the relevant person. If a condition of subsection (3) is not met the application must be refused. The conditions in subsection (3) require the applicant to be 18 or over, to hold a licensing qualification and not to have forfeited a personal licence within the preceding 5 years.

146. Subsection (5) provides that, in the circumstances where all the conditions in subsection (3) have been met, but the Licensing Board has received notice from the chief constable that the applicant has been convicted of a relevant or foreign offence, then the Board must hold a hearing so that the licence application can be considered in light of the details in the notice received from the chief constable. The circumstances thereafter under which the Boards should consider granting or refusing the licence application are set out in subsection (6). The Board therefore is not bound to refuse the licence just because of the existence of a relevant or foreign offence.

Section 66 – Applicant’s duty to notify Licensing Board of convictions

147. This section places a duty on the applicant for a personal licence to inform the Licensing Board to whom they have made the application of any relevant or foreign offence that they have been convicted of in the period between making their application and it being determined by the Licensing Board.
148. Subsection (2) provides the time limit within which the applicant must notify the Licensing Board with the information set out in subsection (3).

149. The Licensing Board must suspend consideration of the application and, in the meantime, pass the notice of conviction to the chief constable. The chief constable must, within 21 days, check the conviction and whether it relates to a relevant offence or foreign offence and respond accordingly to the Licensing Board. Subsection (6) sets out the mandatory requirement for such notices to be given by chief constables.

150. Where chief constable confirms the existence of the conviction and that it is for a relevant or foreign offence, the chief constable may recommend to the Licensing Board that, in the interests of the crime prevention licensing objective, the licence application should be refused.

151. The Licensing Board must resume consideration of the application on receipt of the chief constable’s response and determine it in accordance with section 65.

Section 67 – Issue of licence

152. This section provides for the issue of a licence by the Licensing Board on the granting of an application. Subsection (2) sets out the minimum content of the personal licence. Subsection (3) ensures that an individual may hold one personal licence at a time.

Section 68 – Period of effect of personal licence

153. Personal licences will be valid for 10 years with the possibility of renewals for further periods of 10 years. Subsection (4) ensures that periods of suspension count towards the 10 year period. The Licensing Board must let personal licence holders know when their licences are about to expire.

Section 69 – Renewal of personal licence

154. This section sets out the steps an individual must take to apply for the renewal of a personal licence. Applications for renewal are to be made to the Licensing Board which originally granted the licence. Subsection (2) provides that applications for renewal can only be lodged within a two-month period beginning three months before the licence’s expiry. Subsection (5) provides that the procedure outlined under sections 64 and 65 applies to renewals as it does to the grant of the personal licences.

Section 70 – Notification of determinations

155. This section places a duty on Licensing Boards to notify the applicant and appropriate chief constable of any decision to grant or refuse an application. Subsections (2A - 2C) require the Board to provide reasons on request for its decisions.
Section 71 – Duty to notify court of personal licence

156. Where someone who holds a personal licence is charged with a relevant offence the person must, under this section, notify the court of the existence of the licence and produce the licence to the court. Anyone who fails to comply with these requirements would be guilty of an offence. This notification will help the courts identify those cases to which section 72 applies.

Section 72 – Court’s duty to notify Licensing Board of convictions

157. This section sets out the obligations of the court to the relevant Licensing Board where a personal licence holder is convicted of a relevant offence. The clerk to the court must notify the relevant Licensing Board within the time period specified the nature of the conviction.

158. Subsection (3) provides that where the Licensing Board receives notice from the courts, but the personal licence holder in question is working in another Board’s area, then the Licensing Board which received the notice must provide that other Licensing Board with the required information.

Section 73 – Licence holder’s duty to notify Licensing Board of convictions

159. This section requires that, where the holder of a personal licence is convicted of a relevant offence or foreign offence, the holder must, within one month, notify the Licensing Board which issued the licence and, if different, the Board for the area in which the licence holder is working, of the conviction. Where a Licensing Board receives a notice under this section and has reason to believe that the licence holder is working in the area of another Board, the receiving Board must notify that other Board of the conviction.

160. Subsection (3) sets out the mandatory requirements for the content of such notices of conviction and what information must accompany those notices.

161. Subsection (5) provides that failure to comply with this section is an offence.

Section 74 – Procedure where Licensing Board receives notice of conviction

162. This section sets out the procedure to be followed when a Licensing Board receives notice that a personal licence holder has been convicted of a relevant or foreign offence. It is primarily for the Licensing Board for the area in which the licence holder is working to take action under this section. But if the licence holder is not working in any licensed premises then it will be for the Licensing Board which issued the personal licence to take action.

163. Under this section, the Licensing Board must notify the appropriate chief constable of the conviction. The chief constable must check the conviction and whether it is for a relevant or foreign offence and must reply accordingly within 21 days. Where the conviction is confirmed and it is for a relevant or foreign offence, the chief constable may recommend revocation, suspension or endorsement of the licence.

164. If the chief constable confirms the conviction the Licensing Board must hold a hearing.
165. Subsections (8) and (9) provide a power for Licensing Boards, should they decide to take action against the personal licence holder to revoke, suspend or endorse the licence. When making such an order they must give notice of this, and their reasons for making it, to those persons listed in subsection (10)(a) to (c).

Section 75 – Conduct inconsistent with the licensing objectives

166. This section provides the procedure that Licensing Boards must adopt when, in the course of reviewing a premises licence under section 36 of the Bill, the Board finds that a personal licence holder was acting on the premises in question in a manner that was not consistent with the licensing objectives established by this Bill.

167. Subsections (3) to (5) provide that if the situation in subsection (1) applies then a hearing must be held by the Licensing Board for the area in which the personal licence holder is working or, if the licence holder is not working, by the Licensing Board which issued the personal licence. There is provision requiring the Licensing Board making the finding to notify the Licensing Board which is to hold the hearing, if it is different.

168. Subsections (6) and (7) provides a power for the Licensing Board holding the hearing to revoke, suspend or endorse the personal licence holder’s licence if satisfied that it is necessary to do so for the purposes of any of the licensing objectives.

169. Subsection (8) places a duty on the Licensing Board to give notice of the making of an order to those persons listed in paragraphs (a) to (c).

Section 76 – Expiry of endorsements

170. This section provides for the expiry of endorsements of a personal licence after 5 years. An endorsement for this purpose is an endorsement made in pursuance of an order endorsing the licence made by a Licensing Board.

171. Subsection (3) permits the personal licence holder who has an endorsement on their licence to apply to the relevant Licensing Board, once the endorsement has expired, to have it removed. Where a Licensing Board receives such an application they must remove the endorsement if it has expired.

172. An expired endorsement is to be disregarded whether or not is has been removed from the licence.

Section 77 – Suspension of licence after multiple endorsements

173. This section provides that when a personal licence holder receives 3 endorsements to their licence under sections 74 or 75 of the Bill the Licensing Board which issued the licence must hold a hearing to consider what action should be taken against the licence holder.
174. Subsection (3) provides sanctions that could be taken against the personal licence. These are suspension of the licence for up to 6 months or revocation of the licence.

**Section 78 – Licence holder’s duty to undertake training**

175. This section makes it mandatory for all personal licence holders to undertake prescribed training every 5 years and to provide the relevant Licensing Board with evidence that they have undertaken this training. Should a personal licence holder fail to undertake the necessary training they would have their personal licence revoked.

176. Subsection (2) places a duty on Licensing Boards to inform personal licence holders of this requirement within the time period specified in this subsection.

177. Subsections (1) and (4) provide a power for the Scottish Ministers to set out the details of the required training in regulations.

**Section 79 – Notification of change of name or address**

178. This section provides that the holder of a personal licence must notify the relevant Licensing Board of any change of name or address within one month and must enclose the information specified in subsection (2) with such notice. Failure to do so would be an offence.

**Section 80 – Licensing Board’s duty to update licence**

179. Where certain changes have been made to the terms or effect of a personal licence, (for example, where it has been renewed, suspended or a change of details has been notified), the Licensing Board must make the necessary amendments to the licence.

180. The Licensing Board may require the personal licence holder to present the licence for amendment within 14 days. Failure by the licence holder to comply with this obligation, without reasonable excuse, is an offence.

**Section 81 – Power to specify which Licensing Board is to exercise functions under this Part**

181. This is a general power permitting the Scottish Ministers by way of an order to re-determine which Licensing Board is the relevant one to carry out the functions of this Part of the Bill.

**Section 82 – Power to prescribe licensing qualifications**

182. This section provides power for the Scottish Ministers to set out in regulations the mandatory requirement for qualifications required to obtain a personal licence. Different qualifications could be prescribed in relation to different types of licensed premises. Someone could act as the premises manager for a particular type of licensed premises only if they hold the appropriate qualification prescribed for that type of premises (see paragraph 4(1)(d) of schedule 3).
Section 83 – Theft, loss etc. of personal licence

183. This section permits personal licence holders to apply to the Licensing Board that issued the licence for a copy of the licence if it has been lost, stolen, damaged or destroyed. Where a Licensing Board receives such an application they would be under a duty to issue a replacement if the conditions set out in subsection (2) are met. If the licence was lost or stolen, this must be reported to the police before a copy would be issued. The Bill applies to a copy in the same way as it applies to the original.

Section 84 – Licence holder’s duty to produce licence

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

PART 7 – CONTROL OF ORDER

Section 85 – Exclusion orders

185. The Licensed Premises (Exclusion of Certain Persons) Act 1980 provides for the criminal courts to make an exclusion order against a person found guilty of an offence committed on licensed premises (other than an off-licence). This section replaces the 1980 Act which is repealed in its entirety by the Bill.

186. This section applies where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises (other than premises which have only an occasional licence). It also introduces a new civil procedure for a premises licence holder to apply through the civil courts for an exclusion order.

187. Subsection (2) provides a power for the criminal court, when convicting the person of the violent offence, to make an exclusion order against the person.

188. Further to the powers provided for criminal courts in subsection (2), subsection (3) provides an additional power under which the holder of the premises licence for the premises concerned may, by summary application to the sheriff made within 6 weeks of the conviction, seek an exclusion order against the person. Subsections (4) and (5) set out the conditions that must be considered by the sheriff and if he is satisfied that they are met then he may grant the exclusion order.

189. An exclusion order prohibits the person convicted from entering the licensed premises concerned without the consent of the premises licence holder or someone authorised by the licence holder to give consent. An exclusion order made by the criminal courts can also exclude the person from other licensed premises.

190. Subsection (7) provides that an exclusion order may have effect for a maximum of 2 years.
Section 86 – Breach of exclusion order

191. This section provides that it would be an offence for a person subject to an exclusion order to breach that order and sets out in subsection (2) what sanctions may be taken against them.

192. Subsection (3) provides a discretionary power for the court to vary or terminate the exclusion order.

193. Subsections (4) and (5) provide a power for an authorised persons (defined in subsection (6)), or a constable to remove the person breaching the exclusion order from the licensed premises.

Section 87 – Exclusion orders: supplementary provision

194. This section provides that an exclusion order may still be made where an absolute discharge is given under section 246(3) of the Criminal Procedure (Scotland) Act 1995.

195. Subsection (3) places a duty on the clerk of the court or the sheriff clerk to send a copy of the exclusion order to the premises licence holder.

Section 88 – Closure orders

196. Subsection (1) provides a power for Licensing Boards, on application from a senior police officer, by order to close any licensed premises if disorder is imminent and closure is necessary for public safety.

197. Subsection (2) provides a power for a senior police officer to make an order to authorise immediate closure of licensed premises under the same conditions but only if the risk to public safety is such that immediate closure is necessary. An order made by senior police officer is referred to as an “emergency closure order” and has effect for no more than 24 hours.

Section 89 – Termination of closure orders

198. This section places a duty on the appropriate senior police office to terminate any closure order, whether made by them or a Licensing Board, where it is no longer necessary for public safety. The premises licence holder can also apply to the Licensing Board for termination of a closure order.

Section 90 – Extension of emergency closure order

199. This section provides a power for a senior police officer to extend the duration of emergency exclusion orders if the conditions set out in subsection (2) are met.

200. Subsection (3) provides that extensions to closure orders made under this section cannot come into force unless the appropriate constable has notified a responsible person in relation to the premises.
Section 91 – Regulations as to closure orders

201. This section gives the Scottish Ministers a power by regulation to make further provision as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders.

PART 8 – OFFENCES

Section 93 – Sale of alcohol to a child or young person.

202. This section makes it an offence for anyone to sell alcohol to children or young people anywhere. This is a widening of the existing offence provided for in section 68 of the Licensing (Scotland) Act 1976, which is restricted to the licence holder, his employee or agent in licensed premises.

203. Subsection (2) provides a defence if the seller believed that the purchaser was 18 or over and either he took all reasonable steps to establish the purchaser’s age or nobody could reasonably have suspected from the purchaser’s appearance that he was under 18.

204. Subsection (3) further provides what “reasonable steps” are. The seller would be deemed to have taken all reasonable steps if they had seen evidence of that person’s age and that evidence would have convinced a reasonable person. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it (for example if the proof of age was either an obvious forgery or clearly belonged to another person), the defence would fail.

Section 94 – Allowing the sale of alcohol to a child or young person

205. This section deals separately with “allowing” the sale of alcohol to children or young people. It applies only to sales on “relevant premises” by “responsible persons”. “Relevant premises” is defined in section 114 and means basically any premises on which alcohol is lawfully sold. “Responsible person” is also defined in section 114 of the Bill. It has different meanings in relation to different types of premises and covers basically those with some responsibility for sales of alcohol. It also includes anyone over 18 who works on the premises and who has authority to prevent the sale.

Section 95 – Sale of liqueur confectionery to a child

206. This section makes it an offence to sell liqueur confectionery to a child under 16. Subsection (2) provides a defence if the seller believed that the purchaser was 16 or over and if either he took all reasonable steps to establish the purchaser’s age or if nobody could reasonably have suspected from the purchaser’s appearance that he was under 16.

207. Subsection (3) provides that the accused would be deemed to have taken “all reasonable steps” if he was shown evidence of the individual’s age and that evidence was such that it would have convinced a reasonable person.
Section 96 – Purchase of alcohol by or for a child or young person

208. Subsection (1) makes it an offence for a child or young person to buy or attempt to buy alcohol whether or not on licensed premises.

209. Subsection (2) makes it an offence for an adult to act as an agent for a child or young person in purchasing or attempting to purchase alcohol (for example, if a child gives money to an adult to buy alcohol on their behalf). It is also an offence to buy alcohol for a child or young person to consume on relevant premises. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so.

210. Subsection (3) provides that it would not be an offence to buy beer, wine, cider or perry for a person aged 16 or 17 to consume with a table meal on relevant premises.

Section 97 – Consumption of alcohol by a child or young person

211. Subsection (1) makes it an offence for a child or young person knowingly to consume alcohol on relevant premises.

212. Subsection (2) also makes it an offence for a responsible person knowingly to allow the consumption of alcohol by a child or young person on relevant premises.

213. Subsection (3) provides that the offences in this section will not be committed where a 16 or 17-year-old consumes beer, wine, cider or perry with a meal.

Section 98 – Unsupervised sale of alcohol by a child or young person

214. This section provides that it would be an offence for a responsible person to knowingly allow a child or young person to sell, supply or serve alcohol, unless the alcohol is for consumption off the premises or is for consumption with a meal and (in either case) the sale is specifically authorised by someone aged 18 or over.

Section 99 – Delivery of alcohol by or to a child or young person

215. This section relates to off-sales. Subsections (2) and (3) make it an offence for any responsible person to allow someone under the age of 18 to deliver alcohol from such a premises or to deliver alcohol, or allow it to be delivered to someone under 18.

216. Subsection (4) provides for an exemption. The offence would not apply where the child or young person delivering or taking delivery works at the relevant premises, or at the place of delivery, in a capacity which includes the delivery of alcohol. An example of this would be where a young person is helping out in a family business, or works at a reception desk at the place of delivery.

217. Subsection (4A) establishes a defence to the offences in subsections (2) and (3)(a) i.e. deliveries to a child. It is a defence to show that the person making or allowing the delivery had been shown documents bearing to be proof of age of the child or young person. Those types of
documents which are acceptable for this purpose are set out in subsection (4C). Subsection (4D) establishes a defence of due diligence for the offence in subsection (3)(b) of allowing deliveries to a child.

**Section 100 – Sending a child or young person to obtain alcohol**

218. This section provides that it would be an offence to send a child or young person to obtain alcohol which is sold for consumption off the premises. This offence would cover, for example, circumstances where a parent sends their child to an off-licence to collect some alcohol which had been bought over the telephone.

219. Subsection (2) provides that the offence will be committed regardless of whether the child or young person is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent.

220. Subsection (3) provides that the offence will not be committed where the child or young person works at the premises in question and his job involves taking deliveries of alcohol.

**Section 101 – Duty to display notice**

221. This section provides that it would be a statutory requirement that there must be displayed on all relevant premises (defined in section 114) in a prominent place at all times a notice stating that it is an offence for a person under the age of 18 to buy or attempt to buy alcohol on the premises or for a person to buy alcohol on their behalf. The notice must also contain a statement as to the “no proof – no sale” requirement.

222. The form and size of the notice will be set out in regulations.

223. Subsection (4) provides that it would be an offence for anyone specified in subsection (5) relating to the premises in question, not to display such a notice.

**Section 102 – Drunk persons entering or in premises on which alcohol is sold**

224. This section provides that it would be an offence for a drunk person to attempt to enter any relevant premises (defined in section 114 – basically any premises on which alcohol is lawfully sold). It also makes it an offence for a person, whilst on relevant premises, to be drunk and incapable of taking care of himself or herself. A person committing an offence under this section can be arrested without warrant by the police.

**Section 103 – Obtaining of alcohol by or for a drunk person**

225. This section provides that it would be an offence for any person to buy or attempt to buy alcohol for someone who is drunk or to help a drunk person to obtain or consume alcohol. The offences only apply where the alcohol is to be consumed on relevant premises.
This document relates to the Licensing (Scotland) Bill as amended at Stage 2 (SP Bill 37A)

Section 104 – Sale of alcohol to a drunk person

226. This section provides that it would be an offence for any responsible person working on relevant premises to sell alcohol to someone who is drunk.

Section 105 – Premises manager, staff etc. not to be drunk

227. This section provides that it would be an offence for any responsible person (ie the premises manager and anyone else who works on relevant premises) to be drunk on the premises.

Section 106 – Disorderly conduct

228. Subsection (1) provides that it would be an offence for any person to behave in a disorderly manner or to annoy others with offensive language on relevant premises.

229. Subsection (2) provides that it would be an offence for any responsible person in relation to relevant premises to allow disorderly conduct on the premises. Subsection (3) provides a “due diligence” defence for a person charged with an offence under subsection (2).

230. Subsections (4) and (5) confirm the penalties for offences committed under this section.

Section 107 – Refusal to leave premises

231. This section makes it an offence for a disorderly person to refuse to leave relevant premises when asked or for any person to refuse to leave licensed premises at closing time when asked. Subsection (2A) allows certain authorised persons to use reasonable force to remove from any premises on which alcohol is sold a person who is behaving in a disorderly manner but refuses to leave when asked. “authorised persons” is defined in subsection (5)

Section 108 – Offences relating to sale of alcohol to trade

232. This section provides that it would be an offence for a person to sell alcohol to trade otherwise than from premises not used exclusively for the purpose of selling to trade (whether such sale is solely of alcohol or not).

Section 109 – Prohibition of unauthorised sale of alcohol on moving vehicles

233. This section deals with for example “party buses” and “stretch limousines” that currently provide alcohol. It makes it an offence for any person to knowingly sell alcohol on any vehicle whilst it is moving unless authorised to do so. “Vehicle” is defined in section 137 and basically means any road vehicle.

Section 110 – Delivery of alcohol from vehicles etc.

234. This deals with deliveries of alcohol and would provide that all such deliveries and carrying of alcohol in vehicles is properly and clearly recorded.
Section 112 – Prohibition of late-night deliveries of alcohol

235. This section deals with off-sales and provides that it would be an offence for anyone who works on these licensed premises to deliver alcohol between 12 midnight and 6 am and also an offence for any responsible person to allow such a delivery.

Section 113 – Keeping of smuggled goods

236. This section provides that it would be an offence knowingly to keep or allow to be kept on any licensed premises any illegally imported goods.

237. Subsection (3) provides a power for the courts to order the forfeiture or destruction of goods kept in breach of subsection (1).

PART 9 – MISCELLANEOUS AND GENERAL

Section 115 – Excluded premises

238. This section provides that those premises described in subsection (2) would be excluded from the new licensing regime, and consequently the sale of alcohol would not be permitted on these premises. Paragraph (a) is intended to cover motorway service areas and paragraph (b) covers petrol stations and garages.

239. Subsection (4A) provides that garage premises which are a principal local source of fuel or groceries are not excluded premises and can therefore apply for a licence to sell alcohol

240. Subsection (5) provides a power for the Scottish Ministers to amend the list of excluded premises by way of regulations.

Section 116 – Exempt premises

241. This sets out those premises which are to be exempt from the requirement to hold a licence under the Bill. An “examination station” at any airport is basically the area beyond the security check-in.

242. Subsection (1)(d)(ii) provides a specific exemption for ferries while engaged on a domestic journey. ‘Ferry service’ is defined in subsection (4).

Section 117 – Special provisions for certain clubs

243. This section deals with clubs. At present clubs are regulated under Part VII of the Licensing (Scotland) 1976 Act by virtue of registration granted by a sheriff. This system was first introduced by the Licensing (Scotland) Act 1903. That system is repealed by the Bill. Instead, the general licensing regime will apply to clubs as it applies to other premises, subject to the provisions in this section.
This document relates to the Licensing (Scotland) Bill as amended at Stage 2 (SP Bill 37A)

244. Subsection (1) provides a power for the Scottish Ministers to prescribe categories of clubs that would be exempt from the application of those provisions of the Bill listed in subsection (2). The general effect is that such clubs would not need to have a premises manager and the overprovision ground of refusal would not apply. Subsection (3) permits the Scottish Ministers to prescribe different descriptions of clubs for the purposes of different provisions set out in subsection (2).

245. Subsections (4) confers power on the Scottish Ministers to provide for further modifications of the Bill as it applies to such categories of clubs as they may specify.

Section 118 – Vessels, vehicles and moveable structures

246. “Premises” for the purposes of the Bill includes vessels, vehicles and other moveable structures. In the case of vessels, this section effectively provides for the “home port” of the vessel to be treated as the place where it is situated. That means, for example, that it would be the Licensing Board for that port that would have jurisdiction to grant a licence for the vessel.

247. In the case of vehicles and other moveable structures, the effect of this section is that, where alcohol is to be sold on or from the vehicle etc. while it is parked somewhere, a separate licence will be needed for each such place.

248. This section also makes special provision for the licensing of moving vehicles and other moveable structures. Subsection (5) sets out which Licensing Board will be responsible for licensing such premises. Subsection (6) exempts moving premises from certain requirements of the Bill which are only necessary for buildings; notification to neighbours, the community council and the fire authority, requirement to provide certificates relating to planning, building control and food hygiene.

249. In addition, vessels are exempted from the requirements to notify neighbours and the fire authority, and to provide certificates relating to planning, building control and food hygiene.

Section 119 – Power to prohibit sale of alcohol on trains

250. Subsections (1) and (2) provide for the prohibition of the sale of alcohol at specified stations or on any train travelling between specified stations for a specified period. An order made under this section may be made by a sheriff on application by a senior police officer, if the sheriff is satisfied that the order is necessary for the prevention of disorder.

251. Subsection (3) requires the senior police officer who applied for the order to serve a copy of the order on the train operator or operators concerned.

252. Subsection (4) provides that it would be an offence for anyone knowingly to sell alcohol, or to permit its sale, in contravention of such an order.
Section 119A – Power to prohibit sale of alcohol on ferries

253. This section creates a power for the Police, on application to a sheriff, to prohibit the sale of alcohol on specified vessels which are part of a ferry service. This mirrors the power in section 119 of the Bill in relation to trains. This power can be used to prevent the sale of alcohol on either a particular journey or a particular route.

Section 120 – Relevant offences and foreign offences

254. This section provides a definition of the term “foreign offence” for the purposes of this Bill and provides a power for the Scottish Ministers to set out by way of regulations a list of “relevant offences” for the purposes of this Bill.

255. Subsection (2A) allows the persistent commission of a lower level offence - which would not by itself be sufficiently serious - to amount to a “relevant offence”. Convictions for a “relevant offence” may result in refusal by the Board to grant a licence or the review of a licence. One of the uses to which this regulation making power is intended to be put is to make additional links between the Licensing Bill and the Smoking, Health and Social Care (Scotland) Act 2005.

Section 121 – Effect of appeal against conviction for relevant or foreign offence

256. This section provides that the duties placed on Licensing Boards under this Bill 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 their action.

257. Subsection (3) provides that the Board’s actions will have no effect if the conviction is overturned on appeal.

Section 122 – Appeals

258. This section provides that any decision of a Licensing Board specified in schedule 4A of this Bill may be appealed against by way of stated case to either the sheriff or the sheriff principal, as appropriate.

259. Subsection (3) sets out the circumstances in which cases will be determined by either the sheriff or the sheriff principal

260. Subsection (5) establishes the grounds on which appeals could be made.

261. Subsection (7) sets out the powers of the sheriff or sheriff principal where an appeal made under this section is upheld.

Section 123 – Appeals: supplementary provisions

262. This section sets out those procedural matters relating to appeals made under section 122 and provides that any further procedural matters that might be required would be prescribed by Act of Sederunt.
Subsection (7A) allows the sheriff principal to recall (pending the outcome of the appeal,) any decision of the Licensing Board which has resulted in the suspension or revocation of a premises licence, if he considers it appropriate to do so on the balance of convenience.

Section 124 – Hearings

This section provides that any hearing held under the provisions of this Bill must be held at a meeting of the Licensing Board. It also provides a power for the Scottish Ministers to make regulations that would set out all other procedural matters relating to any hearing held under the provisions of this Bill including those matters set out in subsection (3).

Section 125 – Form etc. of applications, proposals and notices

This section provides a power for the Scottish Ministers to make regulations that would set out the form and content of applications and notices made or given under the Bill and the manner in which they are to be made or given.

Section 126 – Power to relieve failure to comply with rules and other requirements

This section provides a power for Licensing Boards to overlook any procedural failing and thus enable them to deal with applications etc. despite procedural requirements not having been met.

Section 127 – Fees

This section provides a power for the Scottish Ministers to make regulations that would enable fees to be charged by Licensing Boards. Subsection (3) places a duty on the Scottish Ministers to consult with those persons listed in paragraphs (a) and (b) before making any such regulations under this section. Subsection (4) establishes that a Licensing Board need not carry out any of its functions relating to the application for which fees are payable until they are paid. Subsections (5) and (6) set out who fees should be payable to. Ultimately, fee income will be paid over to the councils.

Section 128 – Inspection of premises before grant of licence etc.

This section provides a power for Licensing Standards Officers and the police to enter premises at any time in those circumstances linked to a relevant application or review, provided for in subsection (1), and if needed to use reasonable force to do so. This is for the purposes of assessing the likely effect on the promotion of the licensing objectives of the grant of the application or the effect of the sale of alcohol under the licence. It also provides that anyone preventing those persons from undertaking this task would be guilty of an offence.
Section 129 – Police powers of entry

271. This section provides that a constable would have a lawful right of entry to any licensed premises and to any other premises where he has reason to believe alcohol is being sold in breach of section 1(1) of the Bill.

272. Subsection (4) establishes the conditions under which a police officer below the rank of inspector may enter the premises.

273. Subsection (5) provides that it would be an offence for anyone to obstruct the police in the carrying out of their functions under this section.

Section 130 – Remote sales of alcohol

274. This section deals with situations where alcohol is delivered from a different place from that where order for the alcohol is placed. Subsection (1) and (2) provide that where the place of despatch is in Scotland, the sale is treated as having happened at that place. For example, when alcohol is bought via mail order or a telephone call centre and sent out for delivery from a separate warehouse, the sale would, for the purposes of this Bill, be treated as having taken place at the warehouse and not the call centre. The requirement for a premises licence would, therefore, apply to the warehouse rather than the call centre.

275. Subsections (3) and (4) provide a power for the Scottish Ministers to provide for the regulation of the converse scenario ie where the alcohol is ordered in Scotland but delivered from a warehouse outside Scotland.

Section 131 – Presumption as to liquid contents of containers

276. This section establishes a presumption relating to the contents of a container. This basically means that, for the purposes of a trial for an offence under the Bill, any liquid found in a container is to be presumed to be the liquid that the label on the container suggests it is. This section replicates what was previously provided for in the Licensing (Scotland) Act 1976 relating to such matters.

277. Under subsection (4) the presumption can be rebutted, but notice of intention to lead evidence to rebut the presumption must be given. The prosecution or defence may wish to rebut the presumption. For example, the defence may want to prove that the contents of what appears to be a bottle of alcohol was not in fact alcohol and the prosecution may want to prove that the contents of what appears to be a bottle of coca cola was in fact alcohol.

Section 132 – Offences by bodies corporate etc.

278. This section deals with offence committed by companies, partnerships and other bodies. It effectively provides for certain persons responsible for the management or control of these bodies to share criminal responsibility for offences committed with their consent or connivance or due to their neglect.
Section 133 – Guidance

279. This section provides a power for the Scottish Ministers to issue guidance to Licensing Boards. It also allows the Scottish Ministers to modify any guidance given by them. Subsection (5) places a duty on the Scottish Ministers to lay a draft of the first set of guidance to Licensing Boards before the Parliament and confirms that the guidance would be subject to the affirmative resolution parliamentary procedure. Subsection (6) provides that any subsequent guidance issued must be laid before the Parliament.

Section 134 – Crown application

280. This section makes it clear that the provisions of the Bill apply to Crown bodies as they apply to everyone else. So, for example, a licence is required for the sale of alcohol on any properties managed by Historic Scotland.

Section 134A – Modification of enactments

281. This section introduces schedule 4B of the Bill which contains modifications of enactments.

Section 135 – Ancillary provision

282. This section allows the Scottish Ministers to make ancillary provision in statutory instruments in consequence of this Bill. This power will, for example, be used to make transitional provision and further consequential modifications.

Section 136 – Orders and regulations

283. This section sets out the parliamentary procedure in relation to orders and regulations made by the Scottish Ministers under the provisions of the Bill.

Section 137 – Interpretation

284. This section defines certain terms used throughout this Bill.

Section 138 – Index of defined expressions

285. This section provides an index indicating where definitions of specific terms used throughout the Bill can be found.

Section 139 – Repeals

286. This section introduces schedule 5 to the Bill which contains repeals of enactments.

Section 140 – Short title and commencement

287. This section provides for commencement by order.
This document relates to the Licensing (Scotland) Bill as amended at Stage 2 (SP Bill 37A)

SCHEDULE 1

288. This schedule sets out procedural matters relating to the membership and other administrative matters for Licensing Boards provided for by section 5 of the Bill.

289. Paragraph 1 provides for the maximum and minimum numbers of members of Licensing Boards and that they should be councillors and provides for the membership of Boards for Licensing Divisions.

290. Paragraph 2 sets out the arrangements for the election of Licensing Boards by local councils and includes provision on elections to fill vacancies.

291. Paragraph 3 provides the circumstances in which councillors would be disqualified from membership of Licensing Boards.

292. Paragraph 4 establishes the duration for membership of Licensing Boards and also provides that a member may seek re-election, or resign at any time, and also sets out the circumstances when a member would cease to hold office. Paragraph 5 provides for the removal of members.

293. Paragraph 6 makes provision for the election of a convener for each Licensing Board. It establishes the duration of office of the convener, including their eligibility for re-election. It provides that the convener may resign at any time and also provides when they would cease to hold office. Paragraph 7 makes provision for the removal of the convener.

294. Paragraph 8 requires the local councils to appoint clerks for the Licensing Boards and to provide other staff, property and services that would be required to enable the Boards to carry out their functions. Paragraph 9 enables the Board to establish committees.

295. Paragraph 10 provides a power for Licensing Boards to delegate their functions under this Bill, apart from those functions set out paragraph 10(2), to any of those persons listed in paragraph 10(1).

296. Paragraph 11 provides that it would be mandatory under this Bill for all members of Licensing Boards to undertake the required training within 3 months of appointment and that they could not take part in any Board proceedings until they had undertaken the required training. Failure to do so would result in the member of the Board having to leave office. It also provides a power for the Scottish Ministers to make regulations prescribing the training requirements.

297. Paragraph 12 establishes the procedure that Licensing Boards would have to operate when conducting meetings of the Boards including the required quorums for meetings. A power is provided for the Scottish Ministers to make regulations that would set out further provisions relating to proceedings of Licensing Boards. Any other matters not so provided for would be determined by Licensing Boards themselves by way of rules.
298. **Paragraph 14** makes transitional provision. It provides that existing members of Licensing Boards elected under the provisions of the Licensing (Scotland) Act 1976 would continue to hold office until the new elections are held. This would ensure continuity of membership until such time as this Bill comes into force and new members are elected following the first local government elections held whilst this Bill is in force.

**SCHEDULE 2**

299. This schedule sets out the membership, administration and other procedural matters relating to Local Licensing Forums established under section 10 of this Bill.

300. **Paragraph 2** makes provision as to the membership of the Forums and seeks to ensure that the membership is as representative as possible of the interests of those persons listed in paragraph 2(5)(a) to (e). It also provides that the relevant local authority may determine the terms and conditions for membership of Local Licensing Forums.

301. **Paragraph 3** establishes the procedure for the election of conveners for Local Licensing Forums.

302. **Paragraph 4** places a duty on local authorities to provide the Local Licensing Forums with administrative support.

303. **Paragraph 5** sets out that the Forums must hold at least 4 meetings per year and that they must be held in public.

**SCHEDULE 3**

304. This schedule establishes the national mandatory licence conditions for premises licences issued under the Bill, ensuring national consistency on those issues provided for.

305. **Paragraphs 2 and 3** ensure compliance with the operating plan which accompanies the premises licence application under section 19(2) of this Bill.

306. **Paragraphs 4** ensure that each licensed premises has a premises manager who holds a valid personal licence. **Paragraph 5** ensures that sales of alcohol are overseen by the premises manager or someone else holding a personal licence.

307. **Paragraph 6** establishes that it would be a mandatory requirement for all persons who are involved in the sale or serving of alcohol to undertake the required training. This paragraph also provides a power for the Scottish Ministers to make regulations prescribing the mandatory training.

308. **Paragraph 7** applies to both on-sales and off-sales and provides that it would be a mandatory requirement that the prices of alcohol would have to be fixed for at least 72 hours. This precludes “happy hours”. 

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This document relates to the Licensing (Scotland) Bill as amended at Stage 2 (SP Bill 37A)

309. **Paragraph 8** establishes national licence conditions prohibiting irresponsible drinks promotions for licensed premises. Sub-paragraphs (b) to (d) do not apply to off sales. These conditions are aimed at reducing the problems of binge drinking and under-age drinking. A power is provided for the Scottish Ministers to add to or modify the list of proscribed promotions.

310. **Paragraph 9** applies only to on-sales and requires non-alcoholic drinks to be made available.

311. **Paragraph 10** ensures that annual fees are paid. Non-payment of fees will accordingly be a breach of licence conditions.

**SCHEDULE 4**

312. This schedule establishes the national mandatory licence conditions for occasional licences issued under the Bill, ensuring national consistency on those issues provided for. The conditions are similar to those for premises licences.

313. **Paragraphs 2 and 3** ensure compliance with the terms of the occasional licence issued under section 53 of this Bill.

314. **Paragraph 4** applies only to occasional licences issued to persons who a premises or personal licence and requires sales of alcohol to be supervised by someone who holds a personal licence.

315. **Paragraph 5** applies only to occasional licences issued to voluntary organisations and ensures that alcohol may only be sold at events run in connection with the organisations’ activities.

316. **Paragraph 6** requires the price of alcohol to be fixed for at least 72 hours. This prohibits “happy hours”.

317. **Paragraph 7** establishes national licence conditions relating to irresponsible promotions. Sub-paragraphs (b) to (d) do not apply to circumstances where alcohol is consumed off the premises. These conditions are aimed at reducing the problems of binge drinking and under-age drinking. A power is provided for the Scottish Ministers to add to or modify the list of proscribed promotions.

**SCHEDULE 4A**

318. This schedule sets out who may appeal against what decision. This includes: the personal licence holder (or applicant for a personal licence) who can appeal against the refusal of a personal licence or other order in relation to a personal licence; and both the applicant for and the objector to an occasional licence who can appeal against the grant or refusal (as appropriate) of occasional licence.
319. Only the decisions listed in the schedule can be appealed. Therefore there can be no appeal against a decision by a Licensing Board to reject an objection or representation on the basis that it is frivolous or vexatious.

320. There is a difference of approach between premises licence applications and occasional licence applications, in that those objecting to premises licence applications have no right to appeal against the Board’s decision to grant the initial application. However, there is a review process available for premises licences, once they are up and running, which is not available in respect of occasional licences. As occasional licences will be for short periods, there is a need to allow objectors to appeal against decisions by Boards at the stage at which the occasional licence is granted.

SCHEDULE 5

321. This schedule sets out those enactments, sections of enactments and Parts of enactments that are to be repealed by the Bill.
LICENSING (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. This memorandum has been prepared by the Scottish Executive to update the Financial Memorandum concerning the changes made to the Licensing (Scotland) Bill at stage 2.

COSTS ON BUSINESS

Fees

2. Section 127(1)(c) introduced to the fee regime within the Bill an ability for Licensing Boards to recover any increased costs for providing public services from a particular licence holder which are directly attributable to their premises either in relation to activities carried out on or in the vicinity of the premises, or to customers or staff.

3. At present all businesses contribute to public service costs though their Business Rates. These new charges may relate not only to activities on the premises but also to the behaviour of staff and customers in the neighbourhood as they enter or leave the premises. This new provision could place additional costs on the licence holder who may find they are charged, for example, for additional street cleaning or policing in the vicinity of their premises.

4. The detail of how this cost recovery regime will be implemented is still to be decided and would be set out in regulations.

Alcohol Promotions

5. The Bill as introduced proposed restrictions on the use of alcohol promotions for on-sales premises to curb binge drinking and some on-sales businesses may therefore face a change in costs related to how they market or promote themselves. They may also, in some cases, face a reduction in profits. Amendments at stage 2 extended some promotion controls to off sales as well as on sales premises. This means that the same additional costs/reduction in profits may apply. In addition, prices must be maintained (in both on and off sales) for a minimum of 72 hours (rather than 48). So, lower prices must be maintained for a longer period and this too may impact on profit margins or marketing costs.
Transport

6. The Bill originally proposed that all Passenger ships or boats which ply their trade between ports in Scotland or on Scotland’s lakes and waterways would be obliged to have a premises licence and to have a designated personal licence holder. Previously such craft have been excluded from the licensing regime if they only served alcohol when the craft had left its berth. Stage 2 amendments provided that those vessels providing a ferry service will be exempt from the need for a premises or personal licence. However, pleasure boat operators would still be faced with the additional costs of obtaining a premises licence and in ensuring each vessel has a designated a personal licence.

COSTS ON THE POLICE

7. Police responsibility will generally remain the same with responsibility for conducting checks on licence holders, enforcement and offering views on complaints. We already stated that the Police would require to make checks on applications for both premises and personal licences but this would be specifically linked in future to whether or not relevant criminal convictions exist rather than, as at present, a check on other intelligence in order to decide whether someone is a ‘fit and proper person’. This latter concept is considered to be outdated and has already been abolished in England and Wales. Section 20(3)(b) places a new duty on the Police, when they are notified of a new premises application, to submit a report to the Licensing Board regarding antisocial behaviour which has taken place on or in the vicinity of the premises and all complaints about such behaviour.

8. In the absence of a specified timeframe, it is not possible to quantify exactly how much of a burden this would place on the Police although it could be considerable. In providing this information it may be necessary for the Police to engage the services of an analyst to collate figures for all crimes of violence and all breaches of the peace. It would also be necessary to collate figures narrating all such calls made to the Police, whether a crime had been recorded or not. This would involve interrogation of computer systems to obtain the raw data, then generating a report in which the data could be presented in a comprehensible manner. Raw figures can be misleading and it is likely that a written narrative by the analyst would be required, to explain the relevance or otherwise of the data to the application under consideration.

ADDITIONAL FINANCIAL INFORMATION

9. The Executive commissioned an independent report investigating the existing and proposed new licensing system in Scotland which makes recommendations as to the method for allocating licensing fees and the size of the fees that will be paid by the licensed trade under the new system. This report was published on 4 November 2005 and copies are available in Spice. Ministers will consider the report when developing the new fee structure.

10. A fundamental objective of the Scottish Executive in commissioning this analysis is that the new licensing fees should fully cover the costs of the Licensing Boards. A second objective is that the fees should be standardised across Licensing Board areas to ensure equity and fairness in their allocation. At the same time, it is recognised that the fees must not be set so high that they will be injurious to any part of the licensed trade.
11. In this regard, small and medium sized licensed premises would be disproportionately affected by the introduction of a flat rate fee. The proposal for fee charging options therefore proposes a system of progressive fees that is based on graduated non-domestic rateable value bands.

12. In proposing the fees to be paid under the new system, allowance is made for the fact that, at the present time, Licensing Boards are only covering 63% of their costs from licensing fees. The proposed new system is designed to correct this and to ensure that full cost recovery is achieved.

13. The analysis of this report estimates the total costs of operating the new system of liquor licences and apportions those costs to each of the new licences.

14. The basis for calculating the fee to be paid under the personal licence is the administrative time and resource that will be used up in processing the licence. This has been calculated at £42.

15. The premises licence fee includes the costs of administration, inspection and enforcement. To each licence is also apportioned the average costs of hearings and appeals. Taking these components into account, the premises licence fee has been calculated at an average of £460 per licensed premises in the transition year and £303 in subsequent years.

16. Basing the premises licence on the higher average fee in the transition year will bring in additional income to the Licensing Boards, which will mean that the costs of transition are fully covered as well as other extraordinary costs that the Boards may incur in affecting the changeover to the new system. There is also a strong possibility that the new system will lead to greater efficiency in the operation of Licensing Boards and concomitant productivity gains. Accordingly, this report includes the recommendation that licensing fees should be reviewed after a suitable period of time has elapsed.

17. An important consideration in the context of full-cost recovery is that the premises licence is a one-off licence and is non-renewable. An annual fee is therefore also proposed to cover the recurrent (annual) costs of the Licensing Boards.

18. The annual fee is based on the requirement to meet the ongoing administrative, inspection and enforcement costs of the Licensing Boards. The average fee in respect of these costs is approximately £155. In apportioning this fee across the system of graduated rateable value bands it has been possible to ensure that the annual fee is lower than this for more than 80 percent of licensed premises that fall into the category of small and medium sized enterprises.

19. In summary, the fees proposed in this report arise from a thorough investigation of the costs of the Licensing Boards. The fees, as proposed will cover the costs of providing the licensing service and in many cases will benefit the licensed trade. The allocation of the fees according to graduated non-domestic rateable value bands meets the objective of equity and fairness and the scale of the proposed fees meets the objective that they should not be injurious to the licensed trade.
Dear Bristow

LICENSING (SCOTLAND) BILL – NATIONAL LICENSING FORUM

During Stage 2 of the Bill I gave a commitment to write to the Committee with a progress report on the work of the Forum.

I can confirm that the Forum is currently consulting with its corresponding members, which includes all the licensed trade association on its proposals for Licensing Standards Officers. The Committee were provided with the Forum’s proposals on LSOs at Stage 2.

The Forum has now launched a further two consultations on its proposals for draft guidance on overprovision and its draft framework on training. I am happy to enclose a copy of these with this letter. These are:

- A consultation, launched on 13 October, on its proposals for draft guidance for licensing Boards on overprovision set out at Annex A;
- A consultation launched on 21 October, on its initial draft framework for training for Licensing Boards and staff serving alcohol set out at Annex B.

The consultation on the draft framework for training closes on Friday 18 November 2005. The consultations on LSOs and the draft guidance on overprovision are due to close on Wednesday 30 November 2005. The Committee will continue be kept fully up to date with progress.

Kind Regards

George

GEORGE LYON
OVERPROVISION GUIDANCE: DRAFT

Overprovision: the previous law

1.01 In terms of Section 17(1)(d) of the Licensing (Scotland) Act 1976, a Licensing Board must refuse an application for a new licence if, having regard to:

"(i) the number of licensed premises in the locality at the time the application is considered; and

(ii) the number of premises in respect of which the provisional grant of a new licence is in force,

the Board is satisfied that the grant of the application would result in the overprovision of licensed premises in the locality."

1.02 The Nicholson Committee's Report concluded that this approach to overprovision results in a "largely arithmetical exercise" which is "imprecise and unworkable in any meaningful sense". As interpreted by the Court, it requires Licensing Boards to examine the facilities which the holders of licences in the locality are authorised to provide in terms of Schedule 1 to the 1976 Act. That authorisation is expressed in general or economical terms, particularly in relation to public house, hotels and off-sales. For example, the holder of a public house licence is simply "authorised to sell by retail alcoholic liquor for consumption on or off the premises". Subject to the provision of a minimum number of letting bedrooms, a similar authority is conferred on the holder of a hotel licence. An off-sale licence authorises the holder "to sell by retail alcoholic liquor for consumption off the premises only".

1.03 The Court has also said that the Licensing Board is not entitled to take account of the particular way in which each licence holder is in fact operating the premises or the facilities which an applicant proposes to provide.

This rough-and-ready approach has produced undesirable results:

- the Licensing Board is disabled from drawing distinctions between different proposals, for example:
  - premises operating in the style of a high quality restaurant with a limited bar facility and a so-called "vertical drinking establishment" would both require to be the subject of a public house licence, although the latter is exclusively or predominantly used for the consumption of alcohol;
• A small delicatessen offering a limited range of wines and spirits complimentary to specialist groceries or a florist's shop with a limited range of luxury alcoholic products cannot be distinguished from a large off-sale warehouse.

• No account may be taken of the capacity of licensed premises. A "superpub" capable of accommodating 500 customers cannot be distinguished from a small, traditional public house. The grant of a licence for a "superpub" could have considerable consequences in terms of the licensing objectives. Yet, the introduction of a much more modest facility may, in certain localities, serve an important local function.

The new approach to licensing and overprovision

1.04 The Act:

• ends the seven fixed categories of licences;

• introduces a single premises licence based an operating plan giving a clear view of an applicant's intentions and which may be modified and/or subjected to conditions;

• requires Licensing Boards to take a pro-active position on overprovision and identify those localities in which it would not propose to grant new licences or licences for premises of a particular description;

• allows Licensing Boards to take account of the "particular description" of premises (that is to say, their styles of operation) when assessing overprovision; and

• directs Licensing Boards to have regard not only to the number, but also the capacity, of licensed premises in localities.

1.05 This approach:

• allows Licensing Boards to take account of changing market trends, such as the development of so-called "hybrid" premises;

• provides potential entrants to the market with a clear signal that they may incur abortive costs in the planning process if they intend to apply for a licence in a locality which the Licensing Board has declared to have reached overprovision;

• improves public and licensed trade confidence in a system which currently requires Licensing Boards to decide whether the grant of a new licence in a locality already served by, say, 30 licensed premises would result in overprovision; and

• recognises that halting the growth of licensed premises in localities is not intended to restrain trade but rather may be required to preserve public order, protect the amenity of
local communities and mitigate the adverse health effects of increased alcohol consumption resulting from growing outlet density.

A policy on overprovision

1.06 Section 7 of the Act requires each Licensing Board to include in its policy statement:

"a statement as to the extent to which it considers there to be an overprovision of -

(a) licensed premises, or

(b) licensed premises of a particular description,

in any locality within the Board’s area."

The Licensing Board must have regard to (a) "the number and capacity of licensed premises in the locality"; and (b) consult the persons specified in Section 7(4) of the Act, that is to say:

"(a) the appropriate chief constable.

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

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

   (ii) persons resident in the locality, and

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

(Transitional regulations will provide that consultation prior to the publication of the first policy statement will take place will the holders of licences under the 1976 Act.)

1.07 This duty to consult is subject to the over-arching obligation set out in Section 6(3)(b) of the Act. This means that the Licensing Board is also required to take the views of the Local Licensing Forum established for the whole of the Board’s area and, where not represented on the Forum, those who appear to be representative of the interests in that area of:

- the holders of personal licences;
- persons having functions relating to health, education, education or social work;
- young people;
- persons resident in the Forum’s area.

1.08 Members’ clubs require to be discounted for the purposes of overprovision assessments carried out by Licensing Boards because (a) they are not “licensed premises” for the purposes of the 1976 Act; and (b) while they will require to be the subject of premises licences, they will be exempted from such assessments in terms of regulations made under Section 117 of the new Act.
1.09 Section 7 provides that references to “licensed premises” do not include references to premises which are the subject of an occasional licence.

Determining localities

1.10 An assessment of overprovision for the purposes of the 1976 Act has normally resulted in Licensing Boards selecting localities by reference to the town or city centre in which the premises will be situated or by taking a radius from the application premises or site.

1.11 The Act inverts this approach. The Licensing Board should determine the localities which it proposes to examine as the first step in the formulation of its overprovision assessments. It is not necessary to divide the whole of the Board’s area into separate localities.

1.12 The manner in which the selection exercise is carried out is entirely a matter for the Licensing Board and will no doubt involve the use of its own local knowledge. A locality could, for example, consist of a town or city centre, a street, a collection of streets or the whole of a council ward.

1.13 The Licensing Board may however consider that information which the chief constable is capable of providing is a solid starting point. The chief constable will be able to:

- identify “hotspot” areas within the Licensing Board’s area where it can demonstrated that crime, disorder and nuisance are caused by customers of a concentrated number of licensed premises;
- suggest other areas in which the number of licensed premises or premises of a particular description is moving closely towards overprovision; and
- provide the Licensing Board with the geographical boundaries of those areas.

1.14 The Licensing Board should then identify the number of licensed premises or premises of a particular description in those localities and their capacities and fulfil its consultation obligation.

A duty to consult and gather evidence

1.15 The Licensing Board’s duty to carry out wide-ranging consultation prior to the formulation of overprovision assessments (see para 1.06) illustrates the importance of partnership working in the achievement of the licensing objectives.

1.16 It need not only consult with representative bodies and organisations and may, for example, wish to hold well-publicised open meetings in localities at which members of the community are afforded an opportunity to express their views on the formulation of the policy.
1.17 The results of the consultation exercise should be evaluated to identify evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a reliable causal link can be forged between that evidence and the operation of licensed premises in a locality. Factors which the Licensing Board may take into account include:

- the statistical information provided by the chief constable;
- subject to the constraints of data protection legislation, closed circuit television footage supplied by the chief constable or another source which illustrates dispersal problems in any locations;
- evidence from the licensed trade that the density of licensed premises in the locality has resulted in levels of competition which have applied downward pressure on the price of alcohol;
- evidence gathered from local residents of anti-social behaviour associated with licensed premises;
- information from the council’s Environmental Health Department of noise complaints which can be attributed to the operation of licensed premises in the locality;
- data supplied by local accident and emergency departments or Alcohol Action Teams.

1.18 The Licensing Board should not take into account:

- the manner in which individual premises in a locality are managed, since it is perfectly possible that well-conducted premises may act as a magnet for anti-social behaviour, or disgorge a substantial number of customers who, in aggregate, produce disorder and nuisance to a degree which is unacceptable;
- any concerns as to the quality of management of individual premises, which should separately be addressed through other statutory mechanisms;
- the need or demand for licensed premises in the locality: commercial considerations are irrelevant to a policy which is designed to protect the wider public interest; or
- the hours during which licensed premises in the locality trade, since these will be controlled through operating plans.

1.19 The Licensing Board’s policy should be expressed in a such a way that interested parties are left in no doubt as to the reasons for its adoption and the material considerations which were taken into account.

Licensed premises or premises of a particular description?
1.20 The consultation carried out by the Licensing Board may disclose that communities are placed under stress only by licensed premises sharing certain characteristics: for example, a concentration of off-sales in a residential area or the density of "vertical drinking establishments" in a town centre. It should therefore consider carefully whether it wishes to decide that overprovision exists in any locality simply having regard to the number of licensed premises and their capacities. Such an approach should only be adopted in exceptional circumstances. Proper regard should be given to the contrasting styles of operation of different licensed operations and the differing impact they are likely to have on the promotion of the licensing objectives. A policy which discourages premises where the primary activity is the consumption of alcohol may leave room for the introduction of licensed premises which are likely to produce positive benefits for the locality or which will have a neutral impact on the those objectives.

1.21 It must decide how it wishes to categorise premises by description. While the single premises licence introduced by the Act removes the present seven fixed categories, it is still possible to differentiate premises according to the facilities which they provide for the sale and/or consumption of alcohol. For example:

- "vertical drinking establishments" are distinguishable from those catering predominantly or exclusively for persons taking meals;
- nightclubs are likely to have a more significant impact on town centres, city centres and communities than concert halls and theatres, although all may have a large capacity and provide entertainment;
- the Licensing Board would entitled to decide that premises specialising in adult entertainment such as lapdancing and pole dancing were entirely distinct from other entertainment venues;
- in recent years, "chameleon" premises have developed in which the facilities offered during the day are markedly different from those provided in the evening, with, for example, a switch from a food-led to nightclub style of operation;
- a town or city centre hotel may have little or no impact on the licensing objectives and produce benefits for tourism and the local economy, while a hotel in a residential area with few letting bedrooms and extensive bar facilities may have a negative impact on the amenity of local residents;
- in rural areas a hotel whose trade is mainly derived from bar sales may provide a valuable local function;
- large supermarkets serving catchment areas larger than the localities in which they are situated and delicatessens selling speciality foods with a limited range of wines and spirits
for consumption off the premises can be distinguished from shops devoted to off-sales and local convenience stores selling a general range of groceries;

- convenience stores may provide an essential local service in some communities, particularly those with an elderly population, where transport considerations make it difficult for residents to take advantage of more extensive shopping facilities available at large supermarkets in adjoining localities.

Summary

1.22 The formulation of the statement required by Section 7 of the Act involves the following process:

- the selection of appropriate localities;
- the identification of the number of licensed premises or premises of a particular description in those localities and their capacities;
- consultation with the relevant persons;
- an assessment of the information gathered from those persons, taking into account only relevant considerations and material which has a proper evidential base; and
- reaching a decision as to whether it can be demonstrated that, having regard to the number and capacity of licensed premises or licensed premises of a particular description in a locality, it is undesirable to grant further licences or further licences for premises of a particular description on the ground of overprovision;
- producing a statement in its published policy which meets the requirements set out in para 1.20.

The effect of the overprovision assessment

1.23 Where a Licensing Board's policy statement has concluded that in a particular locality there is an overprovision of licensed premises, or licensed premises of a particular description, an application for a new premises licence or for the variation of an existing licence in that locality should normally be refused on the ground provided by Section 22(5)(d) of the Act, either:

- because it would simply add to the number of licensed premises, or
- because it would increase the number of premises of the relevant description, depending on the approach which the Licensing Board has taken in the policy statement.
1.24 The application need not be the subject of an objection.

1.25 The effect of the policy is to create a rebuttable presumption against the grant of an application. Each application still requires to be determined on its own merits and there may be exceptional cases in which an applicant is able to demonstrate that grant of the application would not undermine the licensing objectives or those objectives would not be undermined if the applicant's operating plan were to be modified or the grant of the licence made subject to appropriate conditions.

1.26 Because the application of the policy must leave room for exceptions, the policy statement should not set a numerical quota of licensed premises or premises of a particular description for any locality.
Framework for training in Licensing
Draft for comment

1. Introduction
The Licensing (Scotland) Bill demonstrates a clear expectation that the new legislative framework forms part of the policy drive to address Scotland’s alcohol problems as laid out in the Plan for Action on Alcohol problems.

The five licensing objectives;
- Preventing crime and disorder;
- Securing public safety;
- Preventing public nuisance;
- Protecting and improving public health;
- Protecting children from harm;
make the links between the legislative framework and the strategy to reduce alcohol related harm and tackle Scotland’s drinking culture. Along with the new powers in the Antisocial Behaviour (Scotland) Act 2004, we now have in Scotland an important legislative foundation with the potential to reinforce and support the policy intentions underpinning the Plan for Action on Alcohol Problems which refers to, amongst other issues the need to secure the links between addressing Scotland’s drinking culture and effective legislation.

The provision of training is a key element of the new Legislation, and differentiates Scotland from England, for example, in that it is mandatory for a wide range of participants, from licensing board members through to those serving alcohol. However it is consistent with developments in other European countries which require professional training for those responsible for serving/selling alcohol, and indeed is likely to be consistent with the impending EU alcohol strategy which is likely to require training.

Training assists in minimising the risks of alcohol related harm, by
- helping associated professions develop policies,
- assisting staff more fully understand how to serve responsibly,
- improving job skills,
- reducing staff turnover, and
- influencing drinking styles.

In other words, training promotes the use of regulations, initiates and reinforces an environment of social responsibility, and promotes safe and social alcohol consumption which in turn has a positive influence in cultural attitudes. The aim of training is to improve decision making processes and introduce better business practices in all premises serving or selling alcohol with the aim of reducing alcohol misuse, particularly disturbance, crime and accidents resulting from drunkenness, and under age drinking and to reduce the health cost associated with excessive or binge drinking.

Furthermore, training
- should add value to the quality and standards of the trade,
- should be supportive of businesses in Scotland
- should inform and educate the regulators, the trade, and related interests
• should relate to conditions faced by the servers in their day-to-day roles.
• should be applicable and relevant to the day-to-day activities of the business.
• should provide opportunities for careers or career development.

Scotland has an opportunity, quite unique in Europe, to create a training regime which will ensure consistent and achievable training standards against which training providers will develop and deliver their training programmes. The National Licensing Forum should set the framework within which training programmes should be designed. This is proposed for a number of reasons:
1. the National Forum’s role is to ensure that there is consistency between the intentions behind the legislation and the training framework;
2. the National Forum is the only national body which is in the position to arrive at an objective assessment of legislative intentions, desired policy outcomes, the reality of businesses’ ability to deliver, and best practice;
3. variations in training requirements, which will inevitably occur over time, can be considered strategically by the Forum against the new training framework, which could be amended accordingly.

This paper suggests that what is developed is a National Training Framework on Liquor Licensing which would be a guide to awarding bodies, training providers, and which would allow the National Licensing Forum to fulfill its role of making recommendations to the Minister on training provision.

With this understanding, training in Scotland should be developed to enhance the skills and knowledge of the target audience to contribute to reducing alcohol related harm at decision making and distribution levels. The desired outcome of training should be to make premises serving or selling alcohol and their surroundings more pleasant and safe for customers, staff and the community.

Such training should cover the key competencies, as appropriate for the particular job role such as licensing board member, licence holder or staff member, from a core list of licensing responsibility competencies. In all cases it is important that the relevant information is covered in a manner appropriate to the role and should be related to the ‘real-life’ circumstances faced by such people in their day-to-day roles. It follows therefore that any competency may be covered differently, or to a different level, depending on what is appropriate for the particular role, but for each role this should be consistent.

2. The training framework

Training should cover:
  a) the legislation;
  b) the social/health impact;
  c) social and business responsibility

  a) Legislation
This section should cover the legal framework for liquor licensing, the key legal responsibilities relevant for the role as well as the common problems, penalties and best practice

  i. Licensing Law
     - System of licensing (overview of key principles of the Licensing Act)
- Key roles – outline of who does what and key responsibilities including licensing boards (clerk, chair, member), LSOs, police, licence holders and staff
- The operating plan and interrelationship between legislation and opening hours etc
- Licensing policy and conditions
- Age related issues
- Main offences under licensing legislation
- Common problems, penalties and best practice
- Links between legal and social/community responsibilities

ii. Associated Law
- Health & Safety eg risk assessments, especially with relation to issues of drunken persons in licensed premises
- Smoking legislation – complying with the requirements
- Other appropriate legislation/regulation such as those regulated by Environmental Health – Trading Standards - Planning Departments

b) Social/Health Impact

   i. Alcohol
   - Units of alcohol and strengths of alcoholic drinks
   - Physical effects of alcohol
   - Psychological effects of alcohol
   - Myths about alcohol
   - Difference between blood alcohol level and drunkenness
   - Consequences to the individual, to the business and to society of excessive drinking

   ii. Smoking
   - the effects of smoking on health

   iii. Illegal Drugs
   - Signs to look for
   - What to do

c) Social and business responsibility

   i. People Skills
   - The importance of setting and maintaining good standards of service
   - Common causes of conflict, how to prevent conflict and how to manage conflict situations

   ii. Duty of care to staff and customers
   - Creating the right environment and promoting sensible drinking
   - Avoiding the irresponsible promotion of alcohol
   - Staff and House policies
   - Preventing/tackling common problems
   - Safe home

   iii. Community links
   - Best practice initiatives eg Pub Watch
   - Licensing and other Forums
   - Community Safety partnerships, policies and programmes
Dear Bristow

LICENSING (SCOTLAND) BILL 2005

In the Committee’s stage 2 report on the Licensing Bill I agreed to provide further information on the matter of licence conditions prior to stage 3. I am now in a position to respond.

Licence Conditions

Schedule 3 of the Licensing (Scotland) Bill lists a set of mandatory conditions which premises licence holders must comply with. These conditions are intended to ensure a nationally consistent approach on those matters which are central to the delivery of the policy underlying the Bill (such as training and irresponsible drinks promotions).

Section 25(2) of the Bill enables Ministers to add to this list and to extend the application of any condition specified in the schedule. This power would allow Ministers in future to modify these conditions or to prescribe additional conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum. It is very likely, as new practices develop within the trade or as new public order issues arise, that there may be a need to add additional licence conditions.

The Expert Reference Group on liquor licensing considered what mandatory and discretionary licence conditions should be imposed by the Scottish Ministers and Ministers have reviewed the conclusions of the Group. Attached at Annex A are draft versions of those mandatory conditions which we intend to implement covering:

• Provision of adult entertainment on any licensed premises;

• Access by children to on-sale licensed premises.

The power to amend the schedule to modify the application of mandatory licence conditions would allow the Scottish Ministers, if this becomes desirable, to further extend the application of the listed (or other) conditions on irresponsible promotions to off-sales. We intend to consider further how we
might gather evidence relating to any links between binge drinking and its consequences and the purchase of alcohol from off sales.

Section 25(3) of the Bill enables Ministers to prescribe discretionary conditions which Boards may draw on as required within their locality. This allows Ministers to prescribe a ‘pool’ of conditions that Boards must have regard to. Again this power would allow Ministers to prescribe and modify conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum.

The use of a pool approach, especially when looking at the demands of a busy city centre premises compared to a rural premises was supported by the Expert Reference Group when considering suitable licence conditions for ‘late opening premises’ which supply on-sales. It is our intention to issue guidance which will be appropriate for different circumstances, e.g. that for busy city centre locations will be different to that for rural premises.

The draft conditions proposed are attached at Annex B. These have been reviewed by Ministers and it is intend to include them in regulations. In addition Annex B sets out a proposed discretionary condition to be applied to off-sales.

I hope this is helpful.

Kwesi Regards

George

GEORGE LYON
ANNEX A
LICENSING (SCOTLAND) BILL
DRAFT MANDATORY LICENCE CONDITIONS

ADULT ENTERTAINMENT

Entry Age Limit: over 18

External Doors: doors should be closed except to allow entry to customers. Performances should not be visible from outside the premises

Touching: there shall be no physical contact between performers and patrons before, during or after performances subject to some exemptions which require further work eg exchange of payment for the dance and a handshake at the beginning and/or end of a performance.

CCTV: CCTV shall be installed and maintained in good working order to the satisfaction of the Board and in consultation with the (local) Police. CCTV should be provided in public areas and also in some 'private areas' such as booths and corridors. It would be for the Board to specify the number of cameras.

Signage: promotional and advertising material may be distributed provided the content has been approved by the Licensing Board. Signs outside the club agreed with the Board may be displayed as long as the content is not of a suggestive nature and women or men are fully clothed. A price list should be displayed inside the club. The rules of behaviour by staff and customers within the club should also be made available.

Health and Welfare of Dancers: changing facilities and showers should be provided for the dancers.

Trained Door Stewards: trained door stewards should be provided.

Adult entertainment should be given only by performers and patrons may not participate.

Private Booths: should not be allowed.

CHILDREN AND YOUNG PERSONS

Changing Facilities: where children under 5 are to be admitted baby changing facilities accessible to both sexes should be provided. Provision of such facilities in unisex disabled toilets would also be acceptable.

Signage: Each premises is to visibly display a sign at the entrance (minimum A4 size) stating either:

• No children allowed; or
• Children welcome.

This should be supplemented with a note of the relevant hours during which children are allowed access, whether young persons (16 and 17 year olds) may enter accompanied or
unaccompanied and a statement reminding accompanying adults of their responsibilities in
the general control and welfare of their children.

ANNEX B
LICENSING (SCOTLAND) BILL
DRAFT DISCRETIONARY LICENCE CONDITIONS

LATE OPENING PREMISES
It was agreed that late opening premises would be defined as any licensed premises opening
later than 12 midnight. The Board would have discretion to choose to apply any appropriate
conditions from a pool of standard conditions.

Noise: steps should be in place to ensure that there is no noise leakage from the
premises.

CCTV: CCTV shall be installed and maintained in good working order to the satisfaction of
the Board and in consultation with the (local) Police. CCTV should cover the entrance to the
premises and other public areas. It would be for the Board to specify the number of cameras.

First Aid: someone with first aid training should be on the premises at all times after
12 midnight.

Minimum Entrance Fee: a minimum entrance fee should be charged.

Door stewards: trained door stewards should be provided.

Radio link and Pubwatch Schemes: where a local scheme based on a radio link to
the Police or Pubwatch or a scheme with similar principles exists, the licensee must
be a member.

Disposal of glassware: disposal of glassware should be made at a reasonable time to
be agreed by the Board. There should be secure bins provided for the disposal of
glass.

Glass: “non-glass receptacles” (eg plastic) required to be used throughout trading
hours.

Toilet supervisors: toilet supervisors should be provided.

Drugs policy: a drugs policy should be implemented.

Curfews: a curfew may be imposed on entrance (i.e. by a time agreed by the Board).

OFF-SALES

Display areas: the provision of separate display areas for alcohol for those premises where
that would be appropriate.
Subordinate Legislation Committee

40th Report, 2005 (Session 2)

Licensing (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 14 November 2005
Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

   (a) any-

      (i) subordinate legislation laid before the Parliament;

      (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter,

      and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

   (c) general questions relating to powers to make subordinate legislation; and

   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

   (Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Dr Sylvia Jackson (Convener)
Mr Adam Ingram
Gordon Jackson (Deputy Convener)
Mr Kenneth Macintosh
Mr Stewart Maxwell
Murray Tosh
Committee Clerking Team:

Clerk to the Committee
Ruth Cooper

Senior Assistant Clerk
David McLaren

Assistant Clerk
Jake Thomas

Committee Support Manager
Catherine Fergusson
Introduction

1. At its meeting on 8 November 2005, the Committee considered the inserted or substantially amended delegated powers provisions in the Licensing (Scotland) Bill as amended at stage 2. The Committee reports to the Parliament on such provisions under Rule 9.7.9 of Standing Orders.

2. Under Rule 9.7.10, the Executive provided a supplementary delegated powers memorandum (“DPM”) to the Committee, which is published at Annex A to this report.

Delegated powers

3. The Bill, which makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold, has now completed Stage 2. The Committee noted that amendments and additions have been made to the subordinate powers conferred by the Bill.

4. The Committee considered and is content with the amendments made as set out in the DPM. The Committee, in particular, welcomed the Executive’s response to its concerns in relation to the provisions at section 25(2), section 115(5) and section 130(3) and was pleased to note that the Executive has made the provisions subject to affirmative rather than negative procedure.
ANNEX A

SUPPLEMENTARY MEMORANDUM ON DELEGATED POWERS

LICENSING (SCOTLAND) BILL

Provisions Conferring Power to Make Subordinate Legislation

1. This memorandum has been prepared by the Scottish Executives for the Subordinate Legislation Committee to update the Subordinate Legislation Committee on the changes made to the Licensing (Scotland) Bill at stage 2.

Delegated powers

Choice of procedure

2. Regulations and orders under the powers described below are generally subject to negative resolution procedure in the Scottish Parliament. The Executive has chosen this procedure as the matters that they deal with are overwhelmingly of a technical or procedural nature and do not engage important or substantive provisions of the Bill. We do not believe affirmative resolution procedure will be necessary for this as it is not sufficiently important to merit a debate in the Scottish Parliament. However, the paragraph below notes those occasions where the Executive has amended regulations during stage 2 of the Bill to affirmative procedure.

Section 136(4) and (5) – Orders and regulations

3. The Subordinate Legislation Committee report at Stage 1 (paragraphs 5, paragraphs 18 to 20 and paragraphs 21 to 23) noted that certain of the powers taken would allow subordinate legislation to be used to amend primary legislation, and therefore considered that the affirmative procedure would be more appropriate to such provisions. In response the Executive agreed with the Committee’s findings and brought forward amendments to section 136 to make the following provisions subject to an affirmative procedure:

- Section 25(2) Conditions of a premises licence;
- Section 115(5) Excluded Premises;
- Section 130(3) Remote sale of alcohol.

PART 2: LICENSING BODIES & OFFICERS

Section 15A(1) – Training of Licensing Standards Officers

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

4. This power allows Ministers to prescribe training requirements with which Licensing Standards Officers must comply. In particular, Ministers will have the power to accredit both course content and course providers.


Reasons for taking this power

5. Section 13(4) of the Bill already enabled Scottish Ministers to prescribe the qualifications a Licensing Standards Officer would need, but did not allow Scottish Ministers to prescribe the training a Licensing Standards Officer should undertake. The National Licensing Forum agreed, when giving consideration to Licensing Standards Officers, that any training regarded as mandatory should be prescribed in order to ensure consistency across the country. Such training is considered likely to change as the Licensing Standards Officer’s role develops and was therefore considered to be best suited to being set out in regulations. As these regulations will be mainly procedural and technical and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.

PART 3: PREMISES LICENCES

Section 48A(4) – Notification of determination

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

6. This provision confers on Scottish Ministers the power to set out the form, manner and timescales in which a Licensing Board must notify the relevant people of the reasons for the grant or refusal of a premises licence.

Reasons for taking this power

7. This power enables Scottish Ministers to ensure the notification process is consistent across the country. It is considered appropriate for this level of detail to be contained in regulations rather than on the face of the Bill. As these regulations will be of a procedural, technical nature and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.

PART 4: OCCASIONAL LICENCES

Section 57A(4) – Notification of determination

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

8. This provision confers on Scottish Ministers the power to set out the form, manner and timescales in which a Licensing Board must notify the relevant people of the reasons for the grant or refusal of an occasional licence.

Reasons for taking this power

9. This power enables Scottish Ministers to ensure the notification process is consistent across the country. It is considered appropriate for this level of detail to be contained in regulations rather than on the face of the Bill. As these regulations will be of a procedural, technical nature and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.
PART 6: PERSONAL LICENCES

Section 70(2C) – Notification of determination

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

10. This provision confers on Scottish Ministers the power to set out the form, manner and timescales in which a Licensing Board must notify the relevant people of the reasons for the grant or refusal of a personal licence.

Reasons for taking this power

11. This power enables the Scottish Ministers to ensure the notification process is consistent across the country. It is considered appropriate for this level of detail to be contained in regulations rather than on the face of the Bill. As these regulations will be of a procedural, technical nature and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.

PART 8: OFFENCES

Section 99(4C)(c) – Delivery of alcohol by or to a child or young person

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

12. This provision mirrors section 93(4) and confers on the Scottish Ministers a power by regulation to specify what documents, in addition to a passport and a European Union photocard driving licence, would be acceptable in establishing a child or young person’s age with regard to the delivery of alcohol.

Reasons for taking this power

13. There is already a plethora of different schemes and a continuing problem of fake ID and such a power would ensure that those delivering alcohol have a measure of reassurance of what is acceptable proof. However, it is considered likely to be too detailed for the Bill to set out a complete list of the types of documents that are acceptable. As these regulations will not change the application of Bill policy and again are primarily technical and specific, it was felt the use of negative procedure was the most appropriate.
PART 9: MISCELLANEOUS AND GENERAL

Section 118(10) – Vessels, vehicles and moveable structures

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

14. This provision confers the power on Scottish Ministers to modify as they consider necessary the application of the Bill to vessels, vehicles and moveable structures.

Reasons for taking this power

15. There are several provisions within the Bill that are primarily designed to apply to buildings (e.g. fire certificates, layout plans, neighbour notification). To provide alternative provisions for vehicles and other structures in the Bill would lead to over-complicated provisions. In addition the regulation-making power would enable a more flexible response to new innovations in this area of the market. Although this power would have the effect of amending primary legislation and would therefore usually be by affirmative procedure, it is considered that these regulations would be of a highly technical and highly delimited nature, designed only to ensure that necessary adaptations can be made to the provisions of the Bill in the case of vessels, vehicles and other moveable structures. As these regulations will not change the application of Bill policy - and in fact will ensure that that policy is successfully applied to vessels, vehicles and other moveable structures, it was felt the use of negative procedure was more appropriate than requiring a debate of the Scottish Parliament.

Section 120(2A) – Relevant offences and foreign offences

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

16. This amendment enables Scottish Ministers, in addition to specifying “relevant offences” as under section 120(1) (which trigger a review of the licence), to specify offences which would amount to ‘relevant offences’ only if they were committed on a number of occasions.

Reasons for taking this power

17. Since a licence review procedure could have a serious consequence for the licence holder, it would be disproportionate if certain offences where to trigger such a review on a single conviction. However a number of such convictions would demonstrate an unwillingness to tackle a problem or a disregard for the law which we believe should enable the licensing Board to consider whether further action is needed against the licence holder. It is expected that this would be the case with some offences under Part 1 of the Smoking, Health and Social Care (Scotland) Act 2005. It is considered that setting out the offences in regulations rather than on the face of the Bill is both neater and will provide the flexibility required to respond to any
changes in what types of offence or repeated offences are considered in the context of alcohol licensing. As these regulations will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate. Furthermore, as the relevant offences are to be set out in regulations (see section 120(1)), it is considered that those offences which must be committed on a number of occasions to amount to a ‘relevant offence’ should also be contained in regulations.

Section 127(1)(c) – Fees

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

18. Section 127(1)(c) confers on the Scottish Ministers the power to make regulations which allow the recovery of increased costs of public services, including Police costs associated with a licensed premises to be made through the fee system.

Reasons for taking this power

19. Scottish Ministers had previously taken a power to make regulations setting out what fees are to be applied under the provisions of the Bill. This was amended by a non Executive amendment which would enable the recovery of extra public service costs carried by the community from the relevant licensed premises. It is considered that further guidance would be required through regulations. As the fee regime in its entirety is to be contained in the regulations, it is necessary for this aspect of the fees regime also to be contained in regulations. It is therefore considered appropriate for the level of detail required to be contained in regulations rather than on the face of the Bill. In addition, secondary legislation provides the flexibility to change the level and structure of the recovered charges regularly. As these regulations will be of a technical and procedural nature and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.

SCHEDULE 2: LOCAL LICENSING FORUMS

Schedule 2, paragraph 2 (1A) – Membership

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

20. This provision confers the power on Scottish Ministers to change the minimum or maximum number of members of the Local Licensing Forum.

Reasons for taking this power

21. The Bill states members should be not fewer than 5 and not more than 10. This power allows Scottish Ministers to change these numbers if necessary following the experience of Local Licensing Forums in operation. Although this power in effect allows subordinate legislation to be used to amend primary legislation, it is considered that the modification possible here is highly delimited and specific and is not sufficiently important to merit a debate in the Scottish Parliament. As these
regulations will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.
Licensing (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 140  Schedules 1 to 5
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 15

George Lyon

7 In section 15, page 8, line 22, leave out from beginning to <objectives>

Section 19

George Lyon

8 In section 19, page 11, line 12, at end insert—

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

(a) the sale of alcohol for consumption on the premises, and
(b) the sale of alcohol for consumption off the premises.>

Section 20

George Lyon

9 In section 20, page 11, line 28, leave out <by police officers in the police area> and insert <within
the relevant period by constables>

George Lyon

10 In section 20, page 11, line 30, leave out <to police officers in the police area> and insert <within
the relevant period to constables>

George Lyon

11 In section 20, page 12, line 14, at end insert <, and

“relevant period” means the period of one year ending with the date on which the
appropriate chief constable receives notice under subsection (1)(d).>
Section 21

Bruce Crawford
Supported by: Fergus Ewing

58 In section 21, page 12, line 16, after <any> insert <interested>

Bruce Crawford
Supported by: Fergus Ewing

59 In section 21, page 12, line 25, at end insert—

<(  ) For the purposes of this section, a person is an interested person if the person is the appropriate chief constable or, in the opinion of the Licensing Board, the person—

(a) may be affected by the carrying on of the activities described in the operating plan for the premises to which the application relates,

(b) has community or business interests that may be affected by the carrying on of those activities, or

(c) represents persons who fall within paragraph (a) or (b).> 

Section 22

George Lyon

12 In section 22, page 13, line 27, at end insert—

<(  ) that the application must be refused under section 23(2) or 60(2),>

Bristow Muldoon

12A As an amendment to amendment 12, line 2, leave out <or 60(2)> and insert <, 60(2) or (Licensed hours: off-sales)(3)>

After section 22

George Lyon

13 After section 22, insert—

<Applicant’s duty to notify Licensing Board of convictions>

(1) This section applies where any of the persons specified in subsection (2) is convicted of a relevant or foreign offence during the period beginning with the making of a premises licence application and ending with determination of the application.

(2) Those persons are—

(a) the applicant, and

(b) where—

(i) the applicant is neither an individual nor a council, or

(ii) the premises in respect of which the licence is sought are used wholly or mainly for the purposes of a club,
any connected person.

(3) The applicant must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board to which the application was made.

(4) A notice under subsection (3) must specify—
   (a) the nature of the offence, and
   (b) the date of the conviction.

(5) Where the Licensing Board receives a notice under subsection (3) at any time before they have determined the application, the Board must—
   (a) suspend consideration of the application, and
   (b) give notice of the conviction to the appropriate chief constable.

(6) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (5)(b), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (7).

(7) Those notices are—
   (a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant offence or foreign offence, or
   (b) a notice confirming the existence of the conviction and that it relates to a relevant offence or foreign offence.

(8) Where the chief constable—
   (a) proposes to give a notice under subsection (7)(b), and
   (b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the application be refused,

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

(9) On receipt of the chief constable’s notice under subsection (7), the Licensing Board must resume consideration of the application and determine it in accordance with section 22.

(10) For that purpose, that section has effect as if—
   (a) references in it to a notice under section 20(4)(b) included references to a notice under subsection (7)(b) of this section, and
   (b) references in it to a recommendation under section 20(5) included references to a recommendation under subsection (8) of this section.

(11) A person who, without reasonable excuse, fails to comply with subsection (3) commits an offence.

(12) A person guilty of an offence under subsection (11) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Section 25

Pauline McNeill

In section 25, page 15, line 27, at end insert—
<(2A) The Scottish Ministers must by regulations prescribe further conditions which Licensing Boards must impose on the granting by them of premises licences falling within subsection (2B).

(2B) A premises licence falls within this subsection if the operating plan for the premises to which the licence relates specifies that the premises will, on any occasion, be open for a continuous period beginning on one day and ending after 1 am on the following day.>

Pauline McNeill

60 In section 25, page 15, line 33, after <(1)> insert <or (2A)>

Section 28

George Lyon

14 In section 28, page 18, line 25, at end insert <, the Board must consider whether any of the grounds for refusal applies and>

George Lyon

15 In section 28, page 18, line 26, leave out <the grounds for refusal is established> and insert <them applies>

George Lyon

16 In section 28, page 18, line 28, leave out <the grounds for refusal is established> and insert <them applies>

George Lyon

17 In section 28, page 18, line 30, at end insert—

<( ) that the application must be refused under section 30(2) or 60(2).>

Bristow Muldoon

17A As an amendment to amendment 17, line 2, leave out <or 60(2)> and insert <, 60(2) or (Licensed hours: off-sales)(3)>

Section 41

George Lyon

18 In section 41, page 26, line 3, leave out from <offence> to <a> in line 4 and insert <or>

Section 53

George Lyon

19 In section 53, page 35, line 32, at end insert—
Where alcohol is to be sold both for consumption on and for consumption off the premises, the occasional licence for the premises may, under subsection (8)(e), state different times for—

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

Section 54

George Lyon

20 In section 54, page 35, line 36, at end insert <, and

(b) any Licensing Standards Officer for the area in which the subject premises are situated.>

George Lyon

21 In section 54, page 35, line 40, at end insert—

<(3) A Licensing Standards Officer may, within 21 days of receipt of a notice under subsection (1)(b), prepare and submit to the Licensing Board a report setting out the Officer’s comments on the application.>

Bruce Crawford

21A As an amendment to amendment 21, line 2, leave out <21> and insert <10>

Section 56

George Lyon

22 In section 56, page 36, line 32, after <54(2),> insert—

<(  ) report from a Licensing Standards Officer under section 54(3),>

George Lyon

23 In section 56, page 37, line 5, after <notice> insert <or report>

George Lyon

24 In section 56, page 37, line 7, at end insert—

<(  ) that the application must be refused under section 60(2),>

Bristow Muldoon

24A As an amendment to amendment 24, line 2, after <60(2)> insert <or (Licensed hours: off-sales)(3)>

George Lyon

25 In section 56, page 37, line 19, at end insert—
In determining any application which is to be determined in accordance with subsection (3), the Board must take into account any report from a Licensing Standards Officer under section 54(3).

Section 57A

George Lyon

26 In section 57A, page 38, line 15, after <constable,> insert—

<( ) any Licensing Standards Officer for the area in which the subject premises are situated,> 

Section 58

George Lyon

27 In section 58, page 39, line 5, at end insert—

<(1ZA)In this Act—

(a) in relation to any premises—

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

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

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

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

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

George Lyon

28 In section 58, page 39, line 6, leave out <section 61A(6)> and insert <sections 61A(6) and (Extended hours applications)(5)>

Bruce Crawford

61 In section 58, page 39, line 6, at end insert—

<( ) Nothing in this Act is to be taken as requiring any licensed premises to be open for the sale of alcohol for the full duration of licensed hours on all occasions.>

Section 60

George Lyon

29 In section 60, page 40, line 24, leave out from beginning to <premises> in line 27 and insert—
(a) an application of any of the following kinds is made to a Licensing Board in respect of the premises, namely—

(i) a premises licence application,
(ii) a premises licence variation application,
(iii) an occasional licence application, or
(iv) an extended hours application.

Bruce Crawford

62 In section 60, page 40, line 30, leave out <24> and insert <18>

Section 60A

Bruce Crawford

63 In section 60A, page 41, line 4, leave out <11> and insert <10>

Bristow Muldoon

64 Leave out section 60A and insert—

<Licensed hours: off-sales>

(1) This section applies where an application specified in subsection (2) is made to a Licensing Board in relation to any premises, but only so far as the application is for—

(a) a licence authorising the sale of alcohol for consumption off the premises, or
(b) an extension of off-sales hours in relation to the premises.

(2) That application is—

(a) a premises licence application,
(b) a premises licence variation application,
(c) an occasional licence application, or
(d) an extended hours application.

(3) If the off-sales hours proposed in the application are such that alcohol would be sold for consumption off the premises—

(a) before 3am,
(b) after 10pm, or
(c) both,

on any day, the Board must refuse the application.

(4) The Scottish Ministers may by order substitute other times for the times specified in subsection (3).

(5) Where subsection (3) does not apply, in considering whether the granting of the application would be inconsistent with any of the licensing objectives, the Board must, in particular, consider the effect (if any) which the off-sales hours proposed in the application would have on the occurrence of antisocial behaviour.
(6) In subsection (5), “antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

(7) This section is without prejudice to the generality of sections 22(3), 28(4), 56(3) and (Extended hours applications)(1).

Section 61A

George Lyon

30 In section 61A, page 41, line 26, leave out <relevant> and insert <licensed>

George Lyon

31 In section 61A, page 41, line 37, leave out <relevant> and insert <licensed>

George Lyon

32 In section 61A, page 42, leave out lines 5 to 7

After section 61A

George Lyon

33 After section 61A, insert—

<Extended hours applications>

(1) The appropriate Licensing Board may—

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

(b) if the Board consider it appropriate to do so in connection with—

(i) a special event or occasion to be catered for on the premises, or

(ii) a special event of local or national significance,

extend the licensed hours in respect of the premises by such period as is specified in the application or such other period as the Board consider appropriate.

(2) An extension of licensed hours under subsection (1) has effect for such period as is specified in the application or such other period as the Board consider appropriate; but in either case the period must not exceed one month.

(3) An application under subsection (1) is referred to in this Act as an “extended hours application”.

(4) A period of licensed hours which is extended under this section may not be further extended under this section.

(5) Except where the context requires otherwise, references in this Act to “licensed hours” are, in relation to any period of licensed hours extended under this section, to be taken as references to such hours as so extended.

(6) References in this section to “licensed premises” do not include premises in respect of which an occasional licence has effect.
After section 61A, insert—

<Notification of extended hours application>
(1) Where a Licensing Board receives an extended hours application, the Board must give notice of it, together with a copy of the application, to—
   (a) the appropriate chief constable, and
   (b) any Licensing Standards Officer for the area in which the subject premises are situated.
(2) The appropriate chief constable may, within 10 days of receipt of a notice under subsection (1)(a), by notice to the appropriate Licensing Board object to the application if the chief constable considers it necessary to do so for the purposes of the crime prevention objective.
(3) A Licensing Standards Officer must, within 10 days of receipt of a notice under subsection (1)(b), prepare and submit to the Licensing Board a report setting out the Officer’s comments on the application.>

After section 61A, insert—

<Determination of extended hours application>
(1) In determining an extended hours application, the Licensing Board must take into account—
   (a) any notice of objection given by the appropriate Chief Constable under section (Notification of extended hours application)(2), and
   (b) the Licensing Standards Officer’s report under section (Notification of extended hours application)(3).
(2) The Board may hold a hearing for the purpose of determining an extended hours application.
(3) Where the Board does not hold a hearing for that purpose, the Board must, before determining the application, ensure that the applicant is given an opportunity to comment on any such notice or report as is mentioned in subsection (1).
(4) Where a Licensing Board grants or refuses an extended hours application, the Board must give notice of the grant or refusal to—
   (a) the applicant,
   (b) the appropriate chief constable, and
   (c) any Licensing Standards Officer for the area in which the subject premises are situated.
(5) A person to whom notice is given under subsection (4) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.
(6) Where the clerk of a Licensing Board receives a notice under subsection (5), the Board must issue a statement of the reasons for the grant or refusal of the application to—
   (a) each person giving the notice, and
(b) each other person to whom the Board gave notice under subsection (4).

(7) A statement of reasons under subsection (6) must be issued—
(a) by such time, and
(b) in such form and manner,
as may be prescribed.>

Section 73

George Lyon

36 In section 73, page 47, line 22, leave out from <offence> to <a> in line 23 and insert <or>

Section 93

Paul Martin

1 In section 93, page 60, line 14, leave out from <a> to end of line 15 and insert <imprisonment for a term not exceeding 3 months>

Section 94

Paul Martin

2 In section 94, page 60, line 19, leave out from <a> to end of line 20 and insert <imprisonment for a term not exceeding 3 months>

Section 96

George Lyon

37 In section 96, page 60, line 38, at end insert—

<(1A) It is not an offence under subsection (1) for a child or young person to buy or attempt to buy alcohol if the child or young person is authorised to do so by the chief constable for the purpose of determining whether an offence is being committed under section 93.

(1B) A chief constable may authorise a child or young person to buy or attempt to buy alcohol as mentioned in subsection (1A) only if satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of the child or young person.>

Paul Martin

3 In section 96, page 61, line 10, leave out from <a> to end of line 11 and insert <imprisonment for a term not exceeding 3 months>
Section 97

Paul Martin

4 In section 97, page 61, line 21, leave out from <a> to end of line 22 and insert <imprisonment for a term not exceeding 3 months>

Section 100

Paul Martin

5 In section 100, page 63, line 4, leave out from <a> to end of line 5 and insert <imprisonment for a term not exceeding 3 months>

After section 117

Mr David Davidson

65 After section 117, insert—

<Sports grounds and sporting events

(1) The Scottish Ministers must, within two years of the date on which this Act received Royal Assent—

(a) carry out a pilot scheme to determine the likely impact of allowing alcohol to be sold at any or all of the sports grounds and sporting events listed in the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2004 (S.S.I. 2004/356), and

(b) report to the Scottish Parliament on—

(i) the results of the pilot scheme, and

(ii) what further action they consider appropriate in connection with the selling of alcohol at such grounds and events.

(2) If the Scottish Ministers report under subsection (1)(b) that it would be appropriate (subject to the granting of the necessary licences) for the selling of alcohol to be possible at all such grounds and events, they may by order make such amendments to Part II of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) as they consider necessary for that purpose.>

Section 127

Fergus Ewing
Supported by: Mr Andrew Arbuckle

38 In section 127, page 77, line 20, leave out from second <and> to end of line 24
Section 128

George Lyon

39 In section 128, page 78, leave out line 12 and insert—
   <(e) an occasional licence application, or
   (f) an extended hours application.>

George Lyon

40 In section 128, page 78, line 16, leave out <or (e)> and insert <, (e) or (f)>

Section 136

Bristow Muldoon

66 In section 136, page 81, line 35, after <section> insert <(Licensed hours: off-sales)(4),>

Bristow Muldoon

67 In section 136, page 82, line 2, after <section> insert <(Licensed hours: off-sales)(4) or>

Section 137

George Lyon

41 In section 137, page 82, line 22, after <premises> insert <(or any part of such premises)>

George Lyon

42 In section 137, page 82, line 23, leave out from <(including> to <premises)> in line 24 and insert <(or, as the case may be, that part)>

George Lyon

43 In section 137, page 82, line 25, after <premises> insert <(or, as the case may be, that part)>

George Lyon

44 In section 137, page 82, line 26, after <premises> insert <(or any part of such premises)>

George Lyon

45 In section 137, page 82, line 26, leave out <only>

George Lyon

46 In section 137, page 82, line 27, after first <premises> insert <(or, as the case may be, that part)>
George Lyon
47 In section 137, page 82, line 27, after second <premises> insert <(or, as the case may be, that part)>.

Section 138

George Lyon
48 In section 138, page 84, line 22, at end insert—
<extended hours application section (Extended hours applications)(3)>.

George Lyon
49 In section 138, page 85, line 9, at end insert—
<off-sales hours section 58(1ZA)(a)(ii) on-sales hours section 58(1ZA)(a)(i)>.

Schedule 2

George Lyon
50 In schedule 2, page 93, line 14, at end insert—
<( ) The quorum for a meeting of a Forum is one half of the number of members (but in any case not fewer than 3).>

Schedule 3

George Lyon
51 In schedule 3, page 93, line 28, at beginning insert—
<(1)>.

George Lyon
52 In schedule 3, page 93, line 29, at end insert—
<(2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 59(2).>

Mr David Davidson
68 In schedule 3, page 94, line 38, leave out paragraph 7.

Mr David Davidson
69 In schedule 3, page 95, leave out lines 19 and 20.
Schedule 4

George Lyon
53 In schedule 4, page 96, line 14, at beginning insert—

<(1)>

George Lyon
54 In schedule 4, page 96, line 14, at end insert—

<(2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 59(2).> 

Mr David Davidson
70 In schedule 4, page 96, line 28, leave out paragraph 6

Mr David Davidson
71 In schedule 4, page 97, leave out lines 14 and 15

Schedule 4A

George Lyon
55 In schedule 4A, page 99, line 3, at end insert—

<A decision to refuse an extended hours application The applicant>

Schedule 5

George Lyon
56 In schedule 5, page 102, line 31, at end insert—

<The Criminal Procedure (Consequential Provisions) Act 1995 (c.40)> Paragraph 29 of Schedule 4

The Powers of Criminal Courts (Sentencing) Act 2000 (c.6) Paragraph 60 of Schedule 9

The Licensing Act 2003 (c.17) Paragraph 74 of Schedule 6

The Courts Act 2003 (c.39) The unnumbered paragraph (which amends the Licensed Premises (Exclusion of Certain Persons) Act 1980) immediately following paragraph 200 of Schedule 8>
The following amendments were lodged as manuscript amendments under Rule 9.10.6. The Presiding Officer has agreed under that Rule that these amendments may be moved at the meeting of the Parliament on 16 November 2005. All of these amendments will be debated in group 13. Amendment 73 will be called immediately after amendment 1 (on page 10 of the Marshalled List of Amendments). Amendment 74 will be called immediately after amendment 2 (on page 10 of the Marshalled List of Amendments). Amendment 75 will be called immediately after amendment 3 (on page 10 of the Marshalled List of Amendments). Amendment 76 will be called immediately after amendment 4 (on page 11 of the Marshalled List of Amendments). Amendment 77 will be called immediately after amendment 5 (on page 11 of the Marshalled List of Amendments).

Section 93

Mr Andrew Arbuckle

73  In section 93, page 60, line 15, at end insert—

<( ) imprisonment for a term not exceeding 3 months, or
( ) both.>

Section 94

Mr Andrew Arbuckle

74  In section 94, page 60, line 20, at end insert—

<( ) imprisonment for a term not exceeding 3 months, or
( ) both.>

Section 96

Mr Andrew Arbuckle

75  In section 96, page 61, line 11, at end insert—

<( ) imprisonment for a term not exceeding 3 months, or
( ) both.>
Section 97

Mr Andrew Arbuckle

76 In section 97, page 61, line 22, at end insert—

<( ) imprisonment for a term not exceeding 3 months, or
( ) both.>

Section 100

Mr Andrew Arbuckle

77 In section 100, page 63, line 5, at end insert—

<( ) imprisonment for a term not exceeding 3 months, or
( ) both.>
The following amendment was lodged as a manuscript amendment under Rule 9.10.6. The Presiding Officer has agreed under that Rule that the amendment may be moved at the meeting of the Parliament on 16 November 2005. The amendment will be debated in group 5 and will be called immediately after amendment 64 (on page 7 of the Marshalled List of Amendments) and disposed of before the question on amendment 64 is put.

Section 60A

Mr Frank McAveety

64A As an amendment to amendment 64, line 14, leave out <3am> and insert <10am>
Licensing (Scotland) Bill

3rd Supplement to the Marshalled List of Amendments selected for Stage 3

The following amendment was lodged as a manuscript amendment under Rule 9.10.6. The Presiding Officer has agreed under that Rule that amendment 83 may be moved at the meeting of the Parliament on 16 November 2005.

Section 60A

Mr Andrew Arbuckle

83 Leave out section 60A
Licensing (Scotland) Bill

Groupings of Amendments for Stage 3

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Licensing Standards Officers – powers of entry and inspection
7

Group 2: Licensed hours – off-sales and on-sales
8, 19, 27, 49

Group 3: Premises licence applications – antisocial behaviour reports
9, 10, 11

Group 4: Premises licence applications – persons entitled to object
58, 59

Debate to end no later than 25 minutes after proceedings begin

Group 5: Off-sales hours and other grounds for refusal of licence
12, 12A, 17, 17A, 24, 24A, 63, 64, 66, 67

Group 6: Duty to notify Licensing Board of conviction
13, 18, 36

Group 7: Licence conditions for late-opening premises
6, 60

Group 8: Minor amendments
14, 15, 16, 30, 31, 32

Debate to end no later than 55 minutes after proceedings begin

Group 9: Occasional licence applications – reports by Licensing Standards Officers
20, 21, 21A, 22, 23, 25, 26

Group 10: Extended hours applications
28, 29, 33, 34, 35, 39, 40, 48, 55

Group 11: Sale of alcohol for full duration of licensed hours
61

Debate to end no later than 1 hour 15 minutes after proceedings begin

Group 12: Maximum length of licensed hours
62
Group 13: Offences relating to children – penalties
1, 73, 2, 74, 3, 75, 4, 76, 5, 77

Group 14: Test-purchasing of alcohol by children or young people
37

Group 15: Sports grounds and sporting events
65

**Debate to end no later than 2 hours after proceedings begin**

Group 16: Fees – ability to recover increased costs
38

Group 17: Definition of capacity
41, 42, 43, 44, 45, 46, 47

Group 18: Local licensing forums – quorum
50

Group 19: Licensing conditions – licensed hours
51, 52, 53, 54

**Debate to end no later than 2 hours 25 minutes after proceedings begin**

Group 20: Pricing of alcohol
68, 70

Group 21: Irresponsible drink promotions
69, 71

Group 22: Repeals
56, 57

**Debate to end no later than 2 hours 40 minutes after proceedings begin**
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 3, No. 33       Session 2

Meeting of the Parliament

Wednesday 16 November 2005

Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Ms Margaret Curran, on behalf of the Parliamentary Bureau, moved S2M-3583—That the Parliament agrees that, during Stage 3 of the Licensing (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended, other than a suspension following the first division in the Stage being called, or otherwise not in progress):

Groups 1 to 4 - 25 minutes
Groups 5 to 8 - 55 minutes
Groups 9 to 11 - 1 hour and 15 minutes
Groups 12 to 15 - 2 hours
Groups 16 to 19 - 2 hours and 25 minutes
Groups 20 to 22 - 2 hours and 40 minutes

The motion was agreed to.

Licensing (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to without division: 7, 8, 9, 10, 11, 12, 13, 6, 60, 14, 15, 16, 17A, 17, 18, 19, 20, 21, 22, 23, 24A, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 73, 74, 75, 76, 77, 38, 39, 40, 66, 67, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57

The following amendments were agreed to (by division)—

12A  (For 106, Against 12, Abstentions 0)
63   (For 72, Against 46, Abstentions 0)
64A  (For 97, Against 21, Abstentions 1)
64   (For 92, Against 27, Abstentions 0)
37   (For 99, Against 1, Abstentions 1)

The following amendments were disagreed to (by division)—

58   (For 45, Against 73, Abstentions 0)
62   (For 43, Against 76, Abstentions 0)
83   (For 23, Against 95, Abstentions 1)
65   (For 19, Against 98, Abstentions 0)
68   (For 13, Against 96, Abstentions 2)
The following amendments were moved and, with the agreement of the Parliament, withdrawn: 61 and 1

The following amendments were not moved: 59, 21A, 2, 3, 4, 5, 69, 70 and 71.

**Motion without Notice:** Ms Margaret Curran moved without notice that, under Rule 9.8.5A, the debate on Groups 5 to 8 be extended by 20 minutes.

The motion was agreed to.

**Motion without Notice:** George Lyon moved without notice that, under Rule 9.8.5A, the debate on Groups 5 to 8 be extended by a further 10 minutes.

The motion was agreed to.

**Licensing (Scotland) Bill - Stage 3:** The Deputy Minister for Finance and Public Service Reform and Parliamentary Business (George Lyon) moved S2M-3437—That the Parliament agrees that the Licensing (Scotland) Bill be passed.

The motion was agreed to ((DT) by division: For 71, Against 42, Abstentions 4).
Business Motions

The Deputy Presiding Officer (Murray Tosh): The next item of business is consideration of business motion S2M-3581, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, to move decision time today to 5.30 pm. I invite anyone who wishes to oppose the motion to press their request-to-speak button.

Motion moved,

That the Parliament agrees under Rule 11.2.4 of the Standing Orders that Decision Time on Wednesday 16 November 2005 shall begin at 5.30 pm.—[Ms Margaret Curran.]

The Deputy Presiding Officer: It appears from my screen that Donald Gorrie has asked to speak, but I am informed that it is a mistake—thank goodness for that.

Donald Gorrie (Central Scotland) (LD): I was trying to speak.

The Deputy Presiding Officer: I beg your pardon—your name came on to the screen and then went off.

14:06

Donald Gorrie (Central Scotland) (LD): There seems to be a lot of interest in the amendments to the Licensing (Scotland) Bill that are in group 5. I wonder whether the Parliament might agree to extend the time for that group by half an hour to enable adequate discussion of what I understand to be various amendments.

The Deputy Presiding Officer: It would not be appropriate to do that at this stage, but there is the potential for a motion to be moved at the relevant point in proceedings. The occupant of the chair will be alert to the pressure to speak and, if necessary, the power that you describe might be invoked.

Motion agreed to.

That the Parliament agrees under Rule 11.2.4 of the Standing Orders that Decision Time on Wednesday 16 November 2005 shall begin at 5.30 pm. followed by Members’ Business – Debate on the subject of S2M-3507 Colin Fox: Scotland’s Social Housing Provision and insert, 5.30 pm Decision Time followed by Members’ Business – Debate on the subject of S2M-3507 Colin Fox: Scotland’s Social Housing Provision.—[Ms Margaret Curran.]

Motion agreed to.

The Deputy Presiding Officer: The next item of business is consideration of business motion S2M-3583, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Licensing (Scotland) Bill.

Donald Gorrie: Would this be a more appropriate moment to propose that 30 minutes be added to the time for group 5 amendments?

The Deputy Presiding Officer: No. The guidance that I gave earlier was that we must wait until we are at that stage in proceedings. A motion without notice should be put to the occupant of the chair at that point. We would indicate at that stage whether such a proposal was necessary and what time period might be appropriate.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Licensing (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended, other than a suspension following the first division in the Stage being called, or otherwise not in progress):

Groups 1 to 4 - 25 minutes
Groups 5 to 8 - 55 minutes
Groups 9 to 11 - 1 hour and 15 minutes
Groups 12 to 15 - 2 hours
Groups 16 to 19 - 2 hours and 25 minutes
Groups 20 to 22 - 2 hours and 40 minutes.—[Ms Margaret Curran.]

Motion agreed to.

That the Parliament agrees the following revision to the programme of business for Wednesday 16 November 2005—

Wednesday 16 November 2005
delete,

5.00 pm Decision Time
Licensing (Scotland) Bill: Stage 3

14:08

The Deputy Presiding Officer (Murray Tosh): We now move to the stage 3 proceedings of the Licensing (Scotland) Bill. I begin with the standard announcements about the procedures to be followed. We will deal with the amendments and then move to the debate on the motion to pass the bill. For the amendments stage, members require to have the bill, the marshalled list—

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): On a point of order, Presiding Officer.

The Deputy Presiding Officer: Please allow me to finish, Mr Arbuckle.

Members should also have a supplementary sheet with amendments in the name of Andrew Arbuckle, a second supplement with an amendment in the name of Frank McAveety, a third supplement with an amendment in the name of Andrew Arbuckle, and the list of groupings. The amendments in the supplements are the manuscript amendments, which are in addition to those previously published together with the groupings.

Bruce Crawford (Mid Scotland and Fife) (SNP): On a point of order, Presiding Officer. I am certainly aware of the original manuscript amendments that Andrew Arbuckle lodged, because everyone received them by e-mail. I also have a copy of Frank McAveety’s manuscript amendment. However, I have not received a further piece of paper with another Andrew Arbuckle amendment on it. It will be interesting to see what further twists and turns will arise on this day of chaos.

The Deputy Presiding Officer: The other manuscript amendment in the name of Andrew Arbuckle is to “Leave out section 60A”. It is now available at the back of the chamber, so members will have a copy of it within seconds if they care to acquire it.

On Bruce Crawford’s point of order, members are aware that, under rule 9.10.6 of standing orders, the Presiding Officer has the power to select manuscript amendments. The Presiding Officers never discuss individual decisions, and I trust that members will appreciate that I am not going to change that rule now.

Mr John Swinney (North Tayside) (SNP): On a point of order, Presiding Officer. Although I have no desire to challenge your comments on the Presiding Officer’s power to select particular amendments and not to give his reasons for doing so, I wonder whether you will reflect on the amount of notice that it is appropriate for the Presiding Officer to give members of the Parliament so that they have the chance to determine what amendments they will have to face.

The Deputy Presiding Officer: As members are aware, the manuscript amendment provision arises in exceptional circumstances. Today, the chair’s judgment is that circumstances have been sufficiently exceptional to justify the acceptance of manuscript amendments. Beyond that comment we do not ever go.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): On a point of order, Presiding Officer. You have said that the manuscript amendment that we have not yet seen has been accepted because of exceptional circumstances. Given that all these matters have been debated by Parliament for months, will you give us further information on how these circumstances can conceivably be described as exceptional? Will Parliament get any guidance on the matter? If it is not entitled to any such guidance, is there not a risk that a refusal at the last hour to give it on this matter might bring this place into disrepute?

The Deputy Presiding Officer: No, Mr Ewing, that is not the case. I have now given the advice twice and I refer members to my two previous rulings. There is nothing more to be said on the matter, other than to point out that, as is our practice after every stage 3 debate, the Presiding Officers will of course reflect on today’s business in the light of its conclusion.

Bruce Crawford: On a different point of order, Presiding Officer. Will you please inform the chamber exactly which group this particular manuscript amendment from Andrew Arbuckle will appear in and which amendments it will appear between?

The Deputy Presiding Officer: It will appear in group 5 and will be taken immediately after amendment 64 is disposed of. That is a perfectly reasonable point to make and I am happy to give that information.

Tommy Sheridan (Glasgow) (SSP): On a point of order, Presiding Officer. In the Parliament’s six years, this is the most shambolic meeting that we have had on a very important piece of legislation. Given the rulings that you have just made on the manuscript amendments, is it in order for you to suspend the meeting for at least 15 minutes or so to allow members to get hold of them and get them in the order in which they are being discussed? This is supposed to be a serious legislative chamber, but it is shambolic. I should also say that it is a disgrace for the Executive to criticise others on their presentation of legislation when it is in such a shambles itself at the last minute.
The Deputy Presiding Officer: You will appreciate that it is not for me to rule on your latter point, which was political. It is in order to ask me to suspend the meeting, because that is within my power. However, as I have read this one-line manuscript amendment and have indicated when the vote will be taken to ensure that all principals involved in the debate are perfectly clear about that, I do not consider it necessary to suspend. As the clock is now ticking, I would like to get into the debate on the amendments. The next run of points of order will be on extending the time to accommodate the time that we are currently losing.

Mr Stewart Maxwell (West of Scotland) (SNP): On a point of order, Presiding Officer. Further to Mr Ewing’s point of order, I, unfortunately, missed the deadline for lodging stage 3 amendments to the bill. Given that the amendment that I wished to submit referred to an area that was debated by the Local Government and Transport Committee at stages 1 and 2, I felt that my own circumstances were not exceptional and that, therefore, my amendment would not be accepted as a manuscript amendment. Yet I see in front of me three amendments, two on paper and the other subsumed somewhere within the groupings, which are not in my view exceptional. How could you rule that those amendments were lodged in exceptional circumstances when you have denied the right to lodge amendments to other members who missed the deadline?

14:15
The Deputy Presiding Officer: Mr Maxwell, I did not deny you the right to lodge your amendment because, by your own admission, you did not lodge it. The judgment that your amendment was not sufficiently exceptional to merit being lodged as a manuscript amendment was yours and I support you in that judgment. The judgments on the amendments that have been accepted were taken by the Presiding Officer and I support his judgment as well.

Christine May (Central Fife) (Lab): For the purposes of clarity, Presiding Officer, could you indicate to the chamber exactly which pieces of paper we should now have?

Members: Hear, hear.

The Deputy Presiding Officer: You should have the marshalled list, the list of groupings, the bill itself, the supplement containing five Andrew Arbuckle amendments, a second supplement containing an amendment by Frank McAveety, and a third supplement—the supplement under discussion, which has been taken late in the day—containing the amendment in the name of Andrew Arbuckle that I read out earlier and which is available at the back of the chamber. All the necessary documentation is therefore present.

Iain Smith (North East Fife) (LD): I think that the five amendments in the name of Andrew Arbuckle that you mentioned are included in the marshalled list, at page 13.

The Deputy Presiding Officer: The clerk advises me that they are not. As we all have them—

Members: They have run out.

The Deputy Presiding Officer: The answer, Mr Smith, is that the five amendments are shown in the groupings. There is, as I have said—and this is now the third time that I have said it—a supplementary sheet in the chamber—

Bruce Crawford: On a point of order, Presiding Officer.

The Deputy Presiding Officer: I propose a five-minute suspension until the sheet in question is produced.

Meeting suspended.

On resuming—

The Deputy Presiding Officer: I understand that the text of the two manuscript amendments that were accepted today is now available at the back of the chamber. I think that one was already available, but the second one—the McAveety one—should now be in everyone’s possession. The text of the five amendments in the name of Andrew Arbuckle appeared in the Business Bulletin on Monday and they were approved yesterday, so members should have them. I believe that the text of all the amendments is now available.

Alasdair Morgan (South of Scotland) (SNP): On a point of order, Presiding Officer. Members will agree that in view of the bill’s importance to the people of Scotland and the Parliament, what has gone on so far today does a disservice to the people of Scotland. It has not been a good advertisement for the way in which we conduct our business. I ask that the Presiding Officers and the Executive reflect maturely on how we got to this state of affairs, so that we are never in this situation again.

The Deputy Presiding Officer: I have already indicated that the Presiding Officers will discuss these proceedings at our next routine meeting. I am sure that the Executive will reflect on what has happened in its time and in its own way. Other people may wish to reflect too.
Bruce Crawford: On a point of order, Presiding Officer. It is a serious point of order.

The Deputy Presiding Officer: I am grateful for that.

Bruce Crawford: I did not give you notice earlier—

The Deputy Presiding Officer: Just make the point of order, please, Mr Crawford.

Bruce Crawford: We are now half an hour behind. If we agree still to finish at half past five, we will be unable to adhere to the original timings. The timings motion is no longer applicable. We need another process to deal with the situation.

The Deputy Presiding Officer: I have discussed with the lead member—who, I believe, discussed it with the Minister for Parliamentary Business—the fact that we will need to adjust the timings as the day goes on. You can safely leave that in our hands.

Section 15—Powers of entry and inspection

The Deputy Presiding Officer: The first group of amendments is on licensing standards officers’ powers of entry and inspection. Amendment 7, in the name of the minister, is the only amendment in the group.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): Concerns were raised by the national licensing forum about licensing standards officers’ access to information and documents under section 15. It felt that, as drafted, the powers are too great and might allow LSOs to access documents and other articles that are not directly relevant to the running of the licensed premises. We therefore agreed to consider further how LSO powers might be limited.

Currently, under section 15(1), LSOs could exercise their powers of entry and inspection for the purpose of determining whether the activities in a licensed premises in their area are being carried out in accordance with the premises licence, the licensing objectives and any other requirements of the act. Amendment 7 will limit that remit; it provides for the reference to the licensing objectives to be removed, which will effectively narrow the powers of LSOs and prevent them from requesting documents that have only a tenuous link to the running of the premises. That should give the national licensing forum and the licensed trade greater comfort that LSOs may not abuse their position to put unnecessary pressure on licensees.

I move amendment 7.

Amendment 7 agreed to.

Section 19—Application for premises licence

The Deputy Presiding Officer: Group 2 is on licensed hours for off-sales and on-sales. Amendment 8, in the name of the minister, is grouped with amendments 19, 27 and 49.

George Lyon: Executive amendments 8, 19, 27 and 49 are technical and provide clarification that hybrid premises that offer both on-sales and off-sales services could have different hours for the different services.

I move amendment 8.

Amendment 8 agreed to.

Section 20—Notification of application

The Deputy Presiding Officer: Group 3 is on antisocial behaviour reports in relation to premises licence applications. Amendment 9, in the name of the minister, is grouped with amendments 10 and 11.

George Lyon: At stage 2, the Local Government and Transport Committee accepted three amendments from Paul Martin that will place a mandatory duty on the police to submit to the licensing board a report on all premises that apply for a premises licence, detailing antisocial behaviour, or complaints about such behaviour, that has taken place on or in the vicinity of the premises. The Executive agreed to consider further whether the provision needed to be amended at stage 3. I confirm that, although we are broadly content with it, we now believe, as a result of consultation with the Association of Chief Police Officers in Scotland, that the police should be required to submit details of activity over only the previous 12 months, which is the period during which any relevant antisocial behaviour is likely to have taken place. An open-ended or longer period would place too great a burden on police resources. The one-year restriction will prevent the police from wasting time trawling through irrelevant historical records. Executive amendments 9, 10 and 11 will deliver that policy.

I move amendment 9.

Paul Martin (Glasgow Springburn) (Lab): I welcome amendments 9, 10 and 11 and the principle that every community will now be guaranteed that the police will be legally required to provide antisocial activity reports that relate to licensed premises in their community. The measure was introduced in response to concerns that the Ruchazie strategy group raised with me. I am sure that that group and many other community groups and representatives throughout Scotland will welcome the fact that the information will be provided. I commend the minister for the amendments.
Mr Arbuckle: I feel as if I should first apologise to you, Presiding Officer, for causing a stushie. However, when we come to my amendment, we will find that it will simplify life for everybody. I am sure that it will receive widespread support.

Section 20 is important, as it sets out the procedures for notifying local communities of applications for premises licences. However, I have concerns about the amendments that were made at stage 2 that will require chief constables to compile reports on antisocial behaviour that has occurred in or in the vicinity of premises. Antisocial behaviour is not a problem that applies equally or in the same way in all parts of the country. Some licence applications will be from premises where antisocial behaviour is a major problem, whereas, in many cases, that will not be an issue.

Given that about 19,000 applications will have to be dealt with in an 18-month period, I am concerned that the measure will lead to a significant burden on the police. I do not want police officers to spend more time in police stations writing antisocial behaviour reports and wading through paperwork when they should be on the streets tackling such behaviour. We must be careful not to undo the good work that has been done to free up police time through court reforms. I ask the minister to give the Parliament an assurance that that will not happen and that the police will have enough flexibility to avoid problems with workload and red tape.

Bill Aitken (Glasgow) (Con): I seek reassurance from the minister that directions will be given to the police and licensing boards to ensure that the standard of reporting is consistent. With some incidents that relate to pubs or other licensed premises, it is clear that the licensee carries some responsibility, but other incidents in the environs of pubs are reported on the basis that the pubs were not involved. I would be grateful for reassurance on the issue of consistency in reporting standards.

Karen Gillon (Clydesdale) (Lab): I support the amendments. I recently met the divisional commander in Hamilton, who told me that the reforms are exactly what he needs to ensure that the action that the police take on the ground impacts on those who sell drink to the people, particularly young people, who are involved in antisocial behaviour. I hope that we can learn from the good practice in Q division and spread it across the country.

Tommy Sheridan: One of the core principles of the bill is supposed to be that it empowers communities. If communities are to be empowered and given the opportunity to oppose applications for premises licences, they should have the evidence base when an application goes to a board. They will have that evidence base only if they have the police reports, which are an independent verification of any problems. That is why the amendments must be supported. The 12-month limit is a sensible suggestion and I disagree with what Andrew Arbuckle said about the danger of an administrative dog’s breakfast. I hope that the provisions lead to genuine empowerment of communities to be able properly to object to the granting of licences in areas where they should not be granted.

George Lyon: I welcome Tommy Sheridan’s support for the amendments that were made at stage 2 and for our proposal to reduce the period to 12 months. Advice from police is that antisocial behaviour can sometimes move on; it is therefore appropriate to look back over 12 months only.

Mr Arbuckle should take some comfort from the fact that the Executive does not envisage the proposals imposing too much of a bureaucratic burden on police. We would expect the police to put forward a consistent report to licensing boards when antisocial behaviour is identified as being associated with individual premises. Where such behaviour has not been identified, we would expect the police to develop a tick-box system that would allow them to have a consistent approach in reporting that back, too.

The focus of the amendments is to ensure that, when the police deliver reports of evidence of antisocial behaviour, they do so consistently and fully, so that the board is made fully aware of the views of the police on those matters. That feeds in to any objections that the community might have, because the community will at least be able to point to the police’s view in regard to those matters.

I would be only too willing to support Karen Gillon’s notion that we should spread best practice, as identified in her constituency. I would be pleased to discuss further with her how we might do that.

Amendment 9 agreed to.

Amendments 10 and 11 moved—[George Lyon] and agreed to.

Section 21—Objections and representations

The Deputy Presiding Officer: Group 4 is on persons entitled to object to premises licence applications. Amendment 58, in the name of Bruce Crawford, is grouped with amendment 59.

Bruce Crawford: The Scottish Executive’s policy memorandum states that one of the bill’s aims is to establish a more inclusive system for all those who have an interest. The Scottish National Party supports that aim, as do amendments 58 and 59. However, the bill seems to open the door to all and sundry and does not meet the
Executive’s stated aim of a more inclusive system for those who have an interest.

When the Local Government and Transport Committee took oral evidence on the matter, only one source supported the Executive’s position. However, we received evidence from seven sources that thought that the bill had been drawn too widely. I signed up to the committee’s report but, having considered the evidence more closely, I think that that was the wrong thing to do in that respect.

The views contrary to the Executive’s came from the Scottish Licensed Trade Association, the licensing boards of West Lothian Council and Glasgow City Council, the Law Society of Scotland, the Convention of Scottish Local Authorities and the Scottish Beer and Pub Association. A contrary view was also expressed by Sheriff Principal Nicholson, who said:

‘I have to say that I have considerable reservations about the wisdom of opening the door to potential objectors to such an extent. Suppose, for example, that there were to be an application for a premises licence in, say, Edinburgh or Glasgow. Suppose then that there is a Free Church minister in Stornoway who is a fervent and committed prohibitionist in relation to the sale and consumption of alcohol, and he decides to object to the application in question. Because of his genuinely held views it cannot really be said that his objection is frivolous or vexatious. But, is it really sensible that he should be heard in opposition to an application for a grant of a licence in Glasgow or Edinburgh?’

I am sure that other members were copied into correspondence from Gordon Millar, who was a member of the Nicholson committee. He, too, said that he did not support the Executive on the widely drawn nature of the bill.

I hope that, in drawing up my amendments, I have dealt successfully with the concerns that were raised at stage 2 by some of my colleagues on the Local Government and Transport Committee. I submit that amendments 58 and 59 fit the aims that are outlined in the policy memorandum better than does the bill as it stands.

I move amendment 58.

14:45

The Minister for Finance and Public Service Reform (Mr Tom McCabe): Amendments 58 and 59 in the name of Bruce Crawford seek to narrow the definition of those who can object to and make representations on applications for premises licences by reintroducing similar restrictions to those that were imposed under the Licensing (Scotland) Act 1976. That would be a major step backwards.

Bruce Crawford would leave it to boards to determine which people would be sufficiently affected by a licence application and so entitled to object. However, the requirement to determine that in each case would put considerable resource pressures on boards. Crucially, also, the amendments would introduce considerable uncertainty into the process for the licensed trade and local communities, which could never be completely clear in advance about their right to object.

The Local Government and Transport Committee recognises the benefit of the Executive’s approach in its stage 1 report. We do not believe that the administrative inconvenience of handling more objections can be set against the benefits to communities of being able to make their views known. The Executive’s proposals will allow any person to object. That is coupled with a power to reject frivolous and vexatious objections—the example that Mr Crawford gave would indeed be a frivolous and vexatious objection. Our proposals will implement a system in relation to licensing that has been running successfully for more than 20 years under the Civic Government (Scotland) Act 1982.

Our proposals put our communities first; they require systems that encourage people to put their views forward on issues that are of great concern to them. I ask Bruce Crawford also to put communities in Scotland first and to withdraw amendment 58.

The Deputy Presiding Officer: Mr Davidson, you were very late in pressing your button. Ordinarily, members are expected to press their buttons before the minister responds to the debate. However, I will allow you a brief comment.

Mr David Davidson (North East Scotland) (Con): Thank you. I support Bruce Crawford’s amendments, because they would apply to those communities “that may be affected”; they would not limit decisions to boards. The minister is leaving the matter open to interpretation in pursuing his line. What does he mean by “frivolous”, for example? We need clarity in our laws and Mr Crawford’s amendments provide for clear and understandable definitions.

Bruce Crawford: I would like to respond to the minister’s accusation that I want to put additional work on the system. Gordon Millar—a former member of the Nicholson committee—says:

‘However, I believe that the current wording is simply too broad and will add unnecessary expense and bureaucracy to the licensing system for no appreciable benefit. This has been recognised by the Executive itself which gives Boards the powers to rule out objections they feel are ‘frivolous or vexatious’. I believe the Executive’s position in allowing a large number of objections which it knows will be ruled incompetent is tantamount to fastening the stable door after it has allowed the horse to bolt’.

I could not have put it better myself. I will press the amendment.
The Deputy Presiding Officer: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As members are aware, in accordance with standing orders, we must now have a five-minute suspension while the division bell is rung.

14:49

Meeting suspended.

14:54

On resuming—

The Deputy Presiding Officer: We will now proceed with the division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Altken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Martin, Campbell (West of Scotland) (Ind)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eddie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Macleay, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatfield, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy ( Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinburne, John (Central Scotland) (SSCUP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Wilson, Allan (Cunninghame North) (Lab)
The Deputy Presiding Officer: The result of the division is: For 45, Against 73, Abstentions 0.

Amendment 58 disagreed to.
Amendment 59 not moved.

Section 22—Determination of premises licence application

The Deputy Presiding Officer: Group 5 is on off-sales hours and other grounds for refusal of licence. Amendment 12, in the name of the minister, is grouped with amendments 12A, 17, 17A, 24, 24A, 63, 64, 64A, 83 and 67. Amendment 64A is a manuscript amendment and is being accepted under rule 9.10.6, as was established earlier. The text is in the second supplement to the marshalled list of amendments.

Mr McCabe: Bristow Muldoon’s amendments 12A, 17A, 24A, 64, 66 and 67 will introduce a new package in relation to licence applications for off-sales. They will, in effect, prevent boards from granting premises licences that would allow off-sales between 10 pm and 3 am. Boards will also be required to take into account the effect that the off-sales hours that are proposed in the application might have on antisocial behaviour. Frank McAveety’s amendment 64A would amend the proposals by further restricting off-sales hours by preventing off-sales premises from opening between 10 pm and 10 am.

Bruce Crawford’s amendment 63 seeks to amend section 60A of the bill, which was inserted at stage 2 and reintroduces statutorily permitted opening hours for off-sales of 8 am until 11 pm. The amendment would require off-sales to close at 10 pm. Andrew Arbuckle seeks to rely on the provisions of the bill as it was introduced.

Opening hours in Scotland must be decided in the best interests of our communities. There has to be a balance between a strong national framework and local decisions that can reflect the realities on the ground. The bill will create a new framework and a new kind of licensing board that will have to work to a comprehensive set of obligations. The issue is complex, so the bill creates new protections and will involve the public far more comprehensively than has been the case at any time in the past.

There will be a statutory duty on boards to assess every application against the five tests of the national licensing objectives. It is worth hearing what those five tests are. An application will be judged against its capacity to create crime and disorder; against its capacity in relation to public safety; against its capacity in relation to public nuisance; against how it might affect, protect or improve public health; and against how it would protect children from harm. A further test will be the statutory duty on boards to consider the effects of off-sales hours on antisocial behaviour. There will be an obligation on the police to produce a report on their view of how any application would impact on antisocial behaviour. In addition, there will for the first time be a power that licensing boards have asked for for many years: they will have the capacity to refuse an off-sales licence on the grounds of over-provision or of premises simply not being suitable.

A crucial part of the bill is that communities will have a clear say, which they never had before. Anyone will be able to object to a licence application and if a licence is granted and problems arise, they will be able to seek a licence review in short order.

For the first time, local licensing forums will be involved in drawing up the local licensing standards, which will be the guiding principles against which any local board will have to consider an application.

As part of the implementation of the bill, the Executive will produce regulations that will require boards to complete a standard form that will document their findings against each of the five tests. When they have documented their findings, they will be required to publish them, and the general public throughout Scotland will be able immediately to judge the criteria and the way in which the board assessed the criteria before it passed any application. Therefore, communities will know the rationale behind decisions and will immediately be able to comment on them.

15:00

The bill contains numerous comprehensive safeguards, procedures and penalties that will deal with the problems that are caused by alcohol. Dealing with those problems has always been at the heart of our policy and it remains so to this day. Comments about large numbers of off-sales shops opening at 3am and the resultant increased disorder in the streets are misleading and distorting. People who make such comments have not thought about the package of reforms in its totality, but for objective consideration of the bill they must do so—members must consider the entire package of reforms before they make a decision on any concerns that they have.

I said earlier and I say again that I am a Lanarkshire member and am proud to represent the Executive. I would not stand here—indeed, the Executive would not allow me to do so—advocating proposals that would cause the deterioration of situations in communities in which people are challenged by the behaviour that results from alcohol consumption. The bill will offer new protections and communities will be better for it.
That said, it is of course Parliament’s right to consider the position and to decide whether additional safeguards are required. Members have a number of options; for example, they could disagree to all the amendments and leave the bill as it stands, including Bruce Crawford’s amendments that were passed at stage 2. As I said, statutorily permitted opening hours between 8 am and 11 pm for off-sales would therefore be reintroduced.

Alternatively, members could choose Bristow Muldoon’s proposal, which would require off-sales to close between 10 pm and 3 am. They could support what he has proposed with the additional safeguard that Frank McAveety has proposed, which would require closure between 10 pm and 10 am. That would be a move from the current position and would surprise the licensed trade. However, I hope that the trade would understand the concerns that members have expressed about the difficulties that communities face as a result of the behaviour that is exhibited when people consume excess alcohol.

I want to make it absolutely clear that if members wish to introduce closure from 10 pm to 10 am—which Frank McAveety has proposed—they must vote for Bristow Muldoon’s amendment 64 and for Frank McAveety’s amendment 64A. As I said, Andrew Arbuckle has also lodged an amendment, which relies on the existing provisions of the bill to provide the protections that we seek.

Mr Swinney: Will the minister give way?

Mr McCabe: No, I will not. I am about to wind up.

We believe that the strength of the bill—taken in its totality, with all the protections that I have outlined—offers new and comprehensive protections to communities, which will address situations that many communities are simply sick of. The bill will create a new type of licensing board and it will mean that people in Scotland will have a greater say than ever in licence applications.

Mr Swinney: Will the minister give way?

Mr McCabe: I have already said that I will not.

Executive amendments 12, 17 and 24 are technical amendments that will clarify the relationships between different provisions in the bill that relate to the grounds for refusal of an application by the licensing board.

I move amendment 12.

Bristow Muldoon (Livingston) (Lab): When I lodged amendment 12A, I did not expect it to attract the attention that it has generated. [Laughter.]

The Deputy Presiding Officer: Order.

Bristow Muldoon: Some parliamentarians must take a look at how they behave. The queue of Scottish National Party members who stood up to disrupt the start of the meeting will bring the Parliament into disrepute. Members who continually seek to disrupt the Parliament should realise that the news clippings will show only one member, not five.

First, I want to deal with amendments 12A, 17A and 24A, which are technical amendments that will merely link section 60A to other aspects of the bill. They are consequential to the main amendment, which is amendment 64.

Amendment 64 has been subject to mischievous misrepresentation by Mr Crawford and some of the media, as Mr McCabe said. If amendment 64 were agreed to without being amended by Frank McAveety’s amendment 64A, there is no question but that few—if any—licensed premises would open for off-sales purposes at 3 o’clock in the morning. The purpose of amendment 64 is to enable some flexibility for licensing boards to allow some shops that already open at 6 o’clock in the morning to sell alcohol products to shift workers at the same time as they buy the rest of their messages. That is the perfectly reasonable suggestion that has been put forward.

The question of whether the time should have been 3 o’clock or some other time is a matter for debate; however, the vast majority of on-licence premises would be closed at the time when amendment 64 would allow on-sales to start again. Therefore, even if an application were granted, its impact on antisocial behaviour would be minimal. In fact, amendment 64 places a requirement on any licensing board to take full cognisance of the potential impact on antisocial behaviour before it grants such a licence. If there is the prospect of antisocial behaviour, the licence should be declined.

It is clear that colleagues in different parties have concerns about the degree of flexibility that amendment 64 would allow. Frank McAveety’s amendment 64A tinkers slightly with amendment 64: it is an amendment that I will support. I hope that members will vote first for amendment 64A and secondly for amendment 64, as amended.

Bruce Crawford: On a point of order, Presiding Officer.

The Deputy Presiding Officer (Trish Godman): A serious point of order, Mr Crawford.

Bruce Crawford: Bristow Muldoon rightly mentions the voting process, to which we will come shortly. Can you confirm for us exactly what the voting procedure will be with regard to the amendments?
The Deputy Presiding Officer: Amendment 64 will be moved, then amendment 64A will be moved and voted on. We will then vote on amendment 64.

Bristow Muldoon: That was a perfectly fair question for Mr Crawford to ask, but he timed it deliberately to interrupt me. He could quite easily have asked that question at the end of the debate.

In the passage of the bill, the members who have strengthened the bill and who have taken cognisance of what people are saying to us about the consequences of antisocial behaviour on our communities and the link with alcohol have been Labour members. Several members moved amendments at stage 2, including Paul Martin and Michael McMahon, which were opposed or criticised by the SNP. The SNP is merely posturing in order to be seen to have a stance against antisocial behaviour that its actions prove it does not have.

Mr Swinney: Will Bristow Muldoon tell Parliament about the demand from communities in his constituency for off-sales premises to be opened at 3 o’clock in the morning?

Bristow Muldoon: Mr Swinney obviously did not listen to the opening part of my speech, when I said that if amendment 64 were agreed to, very few off-licences in Scotland would open at that time of the morning. Mr Swinney should pay attention to the whole of a member’s speech before intervening.

I turn, finally, to our colleagues in the coalition: the Liberal Democrats. The Liberal Democrats’ position of wanting no opening hours for off-licences specified in the bill is perplexing, given that only a couple of days ago I received through the excellent “Gallery News” service a press release by the Liberal Democrats’ home affairs spokesman at Westminster, Mark Oaten, which said:

“The tide of public opinion has turned against 24-hour drinking.

Judges, doctors and many senior police have repeatedly warned the Government against this course of action. Even the Home Office have launched an advertising campaign to crack down on drunk and disorderly conduct.”

That exposes opportunism on the Liberal Democrats’ part. [ Interruption.]

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Will the member give way?

The Deputy Presiding Officer: Order.

Bristow Muldoon: It is clear that the only party that stands up for communities that are under siege from antisocial behaviour is the Labour Party.

I move amendment 12A.

The Deputy Presiding Officer: I call Bruce Crawford to speak to amendment 63 and the other amendments in the group and I ask the rest of you to be quiet, please.

Bruce Crawford: One of my colleagues just said as an aside that entertainment like this cannot be bought. I was thinking more of ferrets and sacks.

Bristow Muldoon’s speech was astonishing; I will deal with some of the detail in a minute. When I consider that some of his colleagues on the Local Government and Transport Committee, such as Michael McMahon and Paul Martin, were critical of my attempt to restrict off-licences at stage 2, some of the arguments that Bristow Muldoon makes are astonishingly puerile.

Paul Martin: Will the member give way?

Bruce Crawford: Let me make some room first.

I wish that somebody would tell me the Executive’s position, because I have heard no comment about an Executive line.

I congratulate my colleagues on the Local Government and Transport Committee, who supported my successful amendment 5 at stage 2 to prevent off-licence premises from opening between 11 pm and 8 am the following morning. On reflection, I should have taken a more cautious approach and recognised the situation on the ground. That is why I have lodged amendment 63, which would require off-licences to close at 10 pm.

I guess that we have some agreement with Bristow Muldoon on that, because our proposed closing times are the same, but we have a long way to go on opening times in the morning. We disagree on the time at which to prevent sales of alcohol from off-licences in the morning and we cannot support Bristow Muldoon’s proposed time of 3 am. That would create problems in some of our communities.

It is simply not credible or sustainable for Bristow Muldoon to argue the position that he took at the Local Government and Transport Committee and then to come along today and argue his current position. In taking his current position, he has shattered any coalition of good will towards the bill. Surely he must realise that amendment 64 does not match his rhetoric or the criteria that he set for himself at stage 2. I will remind him of what he said:

“It would concern me if people who have already consumed an amount of alcohol were to come out of a nightclub at two or three o’clock in the morning and have the opportunity to purchase more alcohol to consume in the

Bristow Muldoon: Will the member give way?

Bruce Crawford: I do so with pleasure.

Bristow Muldoon: Has Bruce Crawford reached the end of amendment 64? Subsection (5) says:

"in considering whether the granting of the application would be inconsistent with any of the licensing objectives, the Board must … consider the effect … which the off-sales hours proposed … would have on the occurrence of antisocial behaviour."

If a nightclub were adjacent to off-sales premises, the application would be refused.

Bruce Crawford: Why create the possibility that that situation will arise?

I congratulate Bristow Muldoon on some of his proposed provisions. Some of the stuff on antisocial behaviour orders is quite imaginative; it represents good use of an amendment and it will strengthen the bill. I do not support the opening of off-licences at 3 o’clock in the morning, although I support some of what Bristow Muldoon proposes. That is my view, if it is any consolation to him. I know that his own arguments have returned to undermine fatally his position. It is not credible for the member to support a cogent amendment at stage 2, as he did, and to move a completely contradictory amendment today that flies in the face of his own logic.

15:15

My views on the issue have strengthened since stage 2. The evidence that we are gathering from England, which is a bit ahead of us on the issue, shows that 80 to 90 per cent of bars and clubs that already open until 2 am have been granted licences to extend their operating hours for anything between one and five hours. That means that in some places they close their doors at 7 am. According to Tuesday’s edition of The Times,

"Nine out of ten late-night clubs and bars will be able to stay open until dawn”.

That is the prospect that faces us if Andrew Arbuckle gets his way today. He is, in effect, trying to reintroduce 24-hour opening.

When people spill out on to the streets of our towns and cities, those who want to will be able to purchase more alcohol from an off-licence, to add to their already inebriated state. You can be absolutely certain that, if one supermarket gets its nose in the door, others will seek to do the same and will start to claim that there is unfair competition. I cannot believe that Parliament is allowing supermarkets to decide its position and policy. That cannot be the way forward.

The Scottish Grocers Federation, which represents many small operators of off-licences in Scotland, stated:

“We have argued from day one that we do not want (a) 24 hour licensing, (b) variations in licensing hours from board to board, and (c) a system which could allow out-of-town superstores to open 24 hours but at the same time inhibit local shops from opening beyond the specified time”.

Jeremy Purvis rose—

George Lyon: As the member is aware, there is a presumption against 24-hour opening in the bill, which is completely different from the Westminster legislation. Unlike the Westminster legislation, the bill makes provision for licensing standards officers. It also requires local licensing boards, when they set hours, to take into account antisocial behaviour reports from the police. Is the member saying that he does not trust local elected members to decide what is appropriate for their communities? That is what he is arguing.

Bruce Crawford: The whole purpose of Parliament is to set parameters and frameworks for people to implement in our communities. That is the job that we are doing and that the minister is doing. However, the minister has not followed the example of his colleagues at Westminster, who voted against 24-hour opening.

George Lyon: As the member is aware, there is a presumption against 24-hour opening in the bill, which is completely different from the Westminster legislation. Unlike the Westminster legislation, the bill makes provision for licensing standards officers. It also requires local licensing boards, when they set hours, to take into account antisocial behaviour reports from the police. Is the member saying that he does not trust local elected members to decide what is appropriate for their communities? That is what he is arguing.

Bruce Crawford: I am afraid that many of George Lyon’s Labour colleagues in the Scottish Executive are arguing that. I am arguing that we in Parliament should set the framework and conditions that would protect Scotland from antisocial behaviour and the difficult health situations that alcohol brings. That is our job. If the minister gets his way, we will open a Pandora’s box and there will be even more problems on Scotland’s streets and towns.

Bristow Muldoon is right to say that we must do all that we can to protect Scotland’s communities from the antisocial behaviour that results from too much alcohol. I support some of the provisions in amendment 64, but much of it is just additional warm words. As the minister said, the licensing principles already establish much of what is contained in the amendment.
We do not need to look far to find the real problem that is associated with alcohol in Scotland. This week the statistics for alcohol-related conditions and discharges from Parliament were published. [Laughter.] I meant to say discharges from hospitals—although we may need a few glasses once the debate is finished. In 1997-98, there were 36,221 discharges, but in 2004-05, there were 51,000. There has been an increase in alcohol-related discharges of 15,000—an uplift of 41 per cent. That is the background to the debate.

My main concern about today’s debate is that Parliament is in danger of sending out mixed messages. The Executive says, “We’ve been consistent all along, unlike SNP members.” On the one hand, the Executive and Parliament say, “We’ve got to get tough on crime and deal with the booze culture”, but on the other, the Executive proposes 24-hour opening.

As far as the shenanigans of earlier today are concerned, I cannot understand why the Executive has allowed itself to get into such a situation at this late juncture—it is chaos. To people outside, it must look like panic and that can only be embarrassing for the Executive. Unfortunately, it is also embarrassing for Parliament, which the Executive has brought into disrepute because of how it has handled proceedings this afternoon. It has been a boorach. Parliament is built on a foundation of respect and it is a tale of shame.

Mr Frank McAveety (Glasgow Shettleston) (Lab): I am reminded of a line from “Macbeth”:

“it is a tale
Told by an idiot, full of sound and fury,
Signifying nothing.”

I thank Bruce Crawford who reached Shakespearian proportions in his contribution this afternoon. However, he is more of a Shakespearian clown than a tragedy.

Those of us who represent parts of Glasgow that are affected by the effects of alcohol do not underestimate the personal tragedies that are caused by alcohol misuse. Many of us, and probably some of us in this chamber, can testify from family circumstances to the impact on families and individuals of misuse of alcohol. One need only look to my constituency and the statistics that relate to levels of Wernicke-Korsakoff syndrome in young children as well as the levels of violence connected with consumption of alcohol, primarily by young males.

I recognise the contribution by the Executive and members of the Local Government and Transport Committee to grappling with the difficult issue of how to find a more modern approach to licensing, but at the same time to respond to the difficulties that are thrown up by misunderstandings about the misuse of alcohol, or access to alcohol that could be used inappropriately. Those difficulties are reflected differently depending on whether one is in Glasgow city centre or other parts of Glasgow.

My constituency has such problems in substantial quantities. It also borders Glasgow city centre and is therefore affected by the clubbing culture. People must reflect on that impact. I attend a meeting in my constituency every month at the Alcoholics Anonymous office in the Saltmarket. One need only step out into the Saltmarket to see how misuse of alcohol can affect individuals and communities. The principles in that AA meeting are that people should maintain awareness and consider available information to try to make rational decisions about what they do with their lives. That strikes me as a metaphor for what the Parliament needs to do this afternoon. I am not particularly bothered about who said what in committee meetings. I am not bothered about the nuances of debate that members have grappled with—those are the difficulties that members face at stages 1 and 2. Today we are at stage 3, so central to our consideration must be this question: What is in the interests of the wider public?

Having listened to the debate and seen developments in the past 48 hours, I believe that my amendment 64A will deliver the best of both worlds. The amendment reflects the need for stronger and more modern licensing legislation. More important, we need to ensure that we do not make it easier to create loopholes for people to exploit.

As far as I understand it, the former licensing situation was that no opening hours were defined. Licensing boards had to reflect that in their observations about access to alcohol sales. Bruce Crawford stated in committee and through lodging amendment 63 that specific hours must be determined. However, I am not prepared—neither should any member, irrespective of his or her position—to be held to a Dutch auction when it comes to opening times. An essential part of an auction is the setting of a reserve price—the reserve price here is what is in the best interests of the communities that we serve.

My proposal in amendment 64A will set licensed hours for off-sales not at 11 in the evening until 10 in the evening, as has been suggested, but at 10 in the morning until 10 in the evening. That should strike a reasonable balance with the new guidelines for, and principles of, this reform of licensing.
Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Frank McAveety said that there should be no Dutch auction on licensing hours. Is he therefore minded to support Andrew Arbuckle’s amendment 83, which seeks to leave the matter up to local licensing authorities? This is about devolution and about letting people make local decisions instead of the national Parliament making those decisions for them.

Mr McAveety: We can get too caught up in the debate over local and national decision making. My principal objective is to find an approach that best reflects the consensus in the wider public. We, as parliamentarians, are asked to make such decisions; indeed, when the National Union of Miners criticised Nye Bevan for taking a different position from it on an issue, he said, “I owe you my judgment.” This afternoon, we are giving the people our judgment on the most appropriate approach to licensing.

It is important to point out that the issue raises difficulties for members of all political parties and none. However, I end by quoting from an Official Report of the Local Government and Transport Committee’s stage 2 consideration of the bill. One committee member said:

“Do we allow flexibility to impact on the greater good? The core hours of closing that I suggest are for the greater good, even though people will be denied some flexibility. We must make the decision. We must close down on one side of the fence or the other.” —[Official Report, Local Government and Transport Committee, 27 September 2005; c 2911.]

That comment was made not by a Labour committee member, but by Bruce Crawford. He is right to say that

“We must come down on one side of the fence or the other.”

I think that amendment 64A will do so appropriately.

The Deputy Presiding Officer: I am minded to accept a motion without notice to extend the time limit for the debate on groups 5 to 8.

Motion agreed to.

The Deputy Presiding Officer: Given that 12—now 13—members want to speak in the debate on group 5, I cannot call all of them. I shall call one member from each party who has pressed their request-to-speak button. I warn them that they will get a very tight two minutes.

Mr Arbuckle: Amendment 83 seeks to delete section 60A. I do not intend to speak to the technical amendments in the group, as I agree with them.

One very strong Liberal principle that runs through the bill is that, on certain matters, the centre does not know best; ministers do not know best; and members of this Parliament do not know best. The Liberal Democrats contend that the important principle behind the bill is that communities and locally elected councillors know best.

Paul Martin: I have evidence that suggests that some local boards do not want this flexibility or window of opportunity. Does the member acknowledge that some boards want the 10 am to 10 pm period for licensing hours to be mandatory?

Mr Arbuckle: I assure Paul Martin that the licensing board members in my area to whom I have spoken are all in favour of the bill and want to take over responsibility for dealing with the issue.

Scotland is a diverse country and a one-size-fits-all policy on licensing is not appropriate. Issues about alcohol sales in Glasgow are not the same as those, for example, in Newburgh in Fife or in Aberdeenshire. I say to Frank McAveety that it is not correct to impose the Glasgow solution on the rest of the country.

The bill follows the principle that local people know best.

Karen Gillon: Does the member accept that people the length and breadth of Scotland struggle with alcoholism and alcohol abuse? Giving them access to alcohol during his suggested hours would be simply irresponsible and would increase and exacerbate people’s problems.

15:30

Mr Arbuckle: I refer the member to the minister’s comments that strengthening the bill’s provisions will prevent certain problems. I think that everyone in the chamber accepts that drink is linked to health problems; however, the bill addresses all those issues.

It is perverse to say that although local people appear to know best for on-sales, they need to be told what to do for off-sales. That is why the Liberal Democrats lodged amendment 83, to return the principle of local decision making for off-sales to the bill. Members have referred to the fact that the safeguard of of-f-sales licence decisions will still apply to on-sales and that antisocial behaviour must be taken into account by the new licensing boards. Local views must be sought; objections must be heard and considered; local licensing forums will be able to hold boards to account for their decisions; licensing standards officers will have powers to inspect and to enforce licences; and I can confirm to Bruce Crawford that there is a statutory presumption against 24-hour
drinking. The minister has, rightly, pointed to all those additional safeguards in the bill.

**Bruce Crawford:** Will Mr Arbuckle give way?

**Mr Arbuckle:** No.

The only thing that the minister has stopped short of saying is, “I support Andrew Arbuckle’s amendment,” but perhaps that will come. I hope so.

In considering any off-sales applications, boards must have regard to all the safeguards and must consider whether accepting such an application would be detrimental to the bill’s objectives regarding crime and disorder, securing public safety, preventing public nuisance, protecting and improving public health and protecting children from harm.

**Christine May:** Will Mr Arbuckle give way?

**Mr Arbuckle:** No.

It is simply scaremongering to suggest that, in the face of those safeguards and conditions, communities, represented by democratically elected members, would take decisions to open off-sales at all hours throughout the country.

**The Deputy Presiding Officer:** Mr Arbuckle, you should sum up now.

**Mr Arbuckle:** I lodged amendment 83, for no restrictive hours to be set by legislation, because that was the original intention of the Scottish Executive.

**Mike Rumbles:** It should still be.

**Mr Arbuckle:** Indeed, it is the current position of the Scottish Executive. Amendment 83 is in stark contrast to the amendments in the names of Frank McAveety, Bruce Crawford and Bristow Muldoon, whose message to their councillor colleagues is to look them in the eye and tell them when they go back to their constituencies, “We don’t trust you.”

I point out to Bristow Muldoon—

**The Deputy Presiding Officer:** Mr Arbuckle, you need to finish now.

**Mr Arbuckle:** Right. Just one minute.

**The Deputy Presiding Officer:** No, Mr Arbuckle. I am speaking English. You will finish now.

Of the 13 members who wish to speak, I intend to call five: Bill Aitken, Stewart Maxwell, Tommy Sheridan, Wendy Alexander and Jeremy Purvis. I shall give them one minute each.

**Bill Aitken:** Let me make it quite clear what the debate is about. In Scotland, we have serious problems of drink abuse and serious problems of violence and disorder, yet the Executive has introduced a bill to extend the availability of drink. We have witnessed the ludicrous situation of Bristow Muldoon lodging amendment 12A in an effort to extend that availability even further and, at the end of the day, we have found ourselves in an even more shambolic situation, with Frank McAveety having been persuaded to lodge yet another amendment. The only part of the cabaret that is missing is Jack McConnell getting up on his feet to say that all that is to be forgotten about and that we are going back to stage 1.

**The Deputy Presiding Officer:** You have 50 seconds, Mr Aitken.

**Bill Aitken:** I beg your pardon?

**Members:** Keep going.

**Bill Aitken:** Let me make it quite clear what my party’s intentions are. We simply cannot have a situation in which we extend the availability of drink from the pub to the club to the off-sales, leading to disorder in the streets. We will not support the Executive’s motion to accept the bill as it stands. We will have to accept Bristow Muldoon’s ludicrous amendment, because it will then be tempered by amendment 64A in the name of Frank McAveety, so that is what we shall do.

**The Deputy Presiding Officer:** Thank you, Mr Aitken. I call Mr Maxwell.

**George Lyon:** On a point of order, Presiding Officer. Given the level of interest in this group of amendments, surely the Parliament should be entitled to some extra time to have a proper debate on the matter.

**The Deputy Presiding Officer:** We already have an extra 20 minutes.

**George Lyon:** I am suggesting that a motion be moved to extend the time further for a proper debate.

**Tommy Sheridan:** I am prepared to move a motion to extend for another 20 minutes.

**The Deputy Presiding Officer:** Members are entitled to move such a motion, but the maximum time that I have to spare is 10 minutes, for the rest of the whole debate, up to the end of group 8.

Be very careful what you are doing, Mr Lyon. If you wish to move to extend by those 10 minutes, you have the right to do that and I shall put the question on that. However, I have already extended the debate by 20 minutes and we are now using part of that time to have this dialogue. I appreciate what you are doing, but the timing is extremely tight. I have done the best that I can.

**George Lyon:** I think that the Parliament would like to have some extra time.

*Motion moved,*
That, under Rule 9.8.5A, the debate on Groups 5 to 8 be extended by a further 10 minutes.—[George Lyon.]

Motion agreed to.

Mr Maxwell: Do I have one minute or two?

Members: Two.

Mr Maxwell: I welcome all the safeguards that the minister mentioned at the beginning. For example, he spoke about how communities’ views could be taken into account but, frankly, that is not the point. The fundamental point, in my view, is that there would still be a presumption—not against 24-hour opening, but in favour of extended opening. The best safeguard against that is to specify the hours in the bill. If the establishments in question were not open, there would be no problem and, if there were no problem, there would be no need to create ways in which to police it. It seems nonsensical to create a problem and then to create rules about how to police it.

Since 1980, there has been a 25 per cent increase in the number of off-sales licences in this country. Is it true that the people of East Renfrewshire are happy that in the past eight years there has been a 28 per cent increase in the number of off-sales in their area? Perhaps Andrew Arbuckle can answer that. In Inverclyde, there has been a 22 per cent increase and, in Renfrewshire, the figure has increased by 12.5 per cent.

The Deputy Presiding Officer: You should be winding up.

Mr Maxwell: The people do not want those off-sales. Even though they fight them all the time, local licensing boards are allowing them; they are allowing more drink to be available. Frankly, Andrew Arbuckle’s idea of 24-hour extended opening is nonsense.

I say to Bristow Muldoon that allowing alcohol to be sold at 3 o’clock in the morning is ludicrous. That is the proposal that is made in amendment 64 and it is complete and utter nonsense. Does Bristow Muldoon want the Asda in his community to be able to sell alcohol from 3 am? If he does, he should stand up and tell—

The Deputy Presiding Officer: You need to finish now.

Mr Maxwell: The only problem that I have with Frank McAveety’s amendment 64A is that it was lodged so late that we did not have a proper opportunity to consider it. I will support amendment 64A because I think that it is the proper way to go. My only problem is that subsection (4) of the section that amendment 64 seeks to insert means that Scottish ministers would have the power to amend those times at a later date. I do not support the times being amended in regulations at some later date.

Tommy Sheridan: This is a mess, which the Labour Party has created. It would be helpful if Paul Martin and Michael McMahon were to admit—because it seems that Bristow Muldoon is getting pushed into the breach—that they were wrong to oppose Bruce Crawford’s amendment at stage 2.

Paul Martin: Will Tommy Sheridan confirm that the hours that he proposed for off-sales—a closing time of 11 pm and an opening time of 8 am—were the hours that Bruce Crawford proposed?

Tommy Sheridan: If Paul Martin has lost his memory, that is fine, but Bruce Crawford will confirm that I suggested to him that he should propose a 9 pm closing time. However, given that the amendment that Bruce Crawford had lodged was better than the Executive’s open-ended proposal, I supported his amendment.

The Deputy Presiding Officer: One minute.

Tommy Sheridan: I will now support the proposal for a 10 pm closing time, because it is better than the original proposal. I will support Frank McAveety’s amendment for a 10 am opening time, because I think that that is better than 8 am opening time.

Paul Martin and Michael McMahon talked a good game about sticking up for communities on the availability of alcohol and off-licence opening hours, but when it came to the committee’s consideration of the bill, they voted with the Executive and against the communities. That is the reality of the situation. Now we are in a mess because Bristow Muldoon has obviously been leaned on to back the Executive. If Paul Martin and Michael McMahon had been consistent from the start, we would have been able to provide communities with some safeguards as far as the consumption of alcohol was concerned. That is why I hope that, at the end of the day, regardless of the route that we have to follow, we end up with a 10 pm closing time and a 10 am opening time. That would be the best defence for our communities.

Ms Wendy Alexander (Paisley North) (Lab): I support Frank McAveety’s amendment 64A.

I doubt that any one of my 50,000 constituents in Paisley will care about the media feeding frenzy tomorrow or the media’s momentary spasm of excitement. They will care about what the Parliament has done. The truth is that the Executive has unquestionably taken a lead on antisocial behaviour.

The first issue that was raised with the Executive was that underaged youngsters are being sold drink; that issue has been dealt with. The next issue was the problem of oversupply; that issue has also been dealt with. The amendments in
group 5 tackle the third issue, which is the potential availability of alcohol at all hours.

Tommy Sheridan is one of those fashionable people who say that the Scottish Parliament is overwhipped, too partisan and without any independent thinking. I say to him that today’s debate demonstrates that the Scottish Parliament listens to its communities. We also have an Executive that listens to its members—they are a Parliament and an Executive of which the nation can be proud. I say to Opposition members, whether they are the bluest Tory or the deepest Green, that the people of Scotland are asking them to examine the issues in conscience and without regard to partisanship. Opposition members diminish themselves when they play politics.

Tommy Sheridan should not be puzzled by Labour’s decision today. He should know that Keir Hardie stood in North Lanarkshire on a platform that promised three things. He said that we should bring in home rule—we have done that—and proportional representation, which is being brought about. The third part of his platform was temperance and therein lies the issue. The responsible licensed trade in Scotland will have no difficulty with the amendments in group 5; only the irresponsible licensed trade will face difficulty.

Jeremy Purvis: We have had Nye Bevan and now Keir Hardie has been mentioned. Nye Bevan may well have said that he owed people his judgment. I say to the communities that I represent that they will not only have my view, but that I will fight in this place for them to have power.

Members have misrepresented my Liberal Democrat colleagues in England. They are campaigning for the bill at Westminster to be more like the bill in Scotland. Why is the bill that the Executive introduced, on which we have been working for three years, so good? Because it responds to the concerns of local communities about the weaknesses of the present licensing boards. The bill strengthens not only the boards, but the voice of the communities that are represented on them. It strengthens communities’ ability to police the decisions of the licensing boards.

I do not support the attempt to reduce the discretion of licensing boards. Does Bruce Crawford believe in local government—in devolution from this place to local communities? He does not. When I asked him whether he believes that any boards will be responsible, his reply showed that he believes that none of them will be responsible. We believe that they will be.

I ask all members of the Executive—ministers and back benchers—to support the Executive position. That position has been consistent, not only during the passage of the bill but over the past three years. The bill will be a good act, but only if we respect local communities, their elected representatives, their voice and their power.

The Deputy Presiding Officer: The minister has two minutes.

Mr McCabe: I will assist you in that regard, Presiding Officer.

Many members have expressed sincerely held views. Not for the first time, Mr Aitken enjoyed distorting the position but that has come to be expected. I have explained the bill’s provisions, what protections it offers to our local communities and the way in which we are creating new licensing boards that will have far more substantial powers.

The provisions offer substantial protection to our communities. However, I accept that Parliament may wish to adopt another route. The debate has reflected very real concerns, which, in my view, were articulated in a way that reflects well on the chamber. It is for the Parliament to consider the various options that have been placed before it; members will vote accordingly when the time comes.

Bristow Muldoon: Much of the debate has misrepresented the bill. It is a good bill and many of its measures will achieve the aims that are set out in the explanatory notes to the bill.

The Local Government and Transport Committee took cognisance of the degree of liberalisation that was proposed for the off-trade and agreed that the measure did not sit well with the concerns of the communities that we represent. As a result, Bruce Crawford lodged his amendment 186. All committee members should note that the amendment in my name, with its proposal for a maximum period of 19 hours, is closer to the committee’s unanimously agreed recommendation for a maximum period of 18 hours. The members who are criticising my position endorsed it at an earlier stage.

However, at this stage, Mr McAveety’s amendment 64A makes perfect sense. I will press amendment 12A, but I do so on the basis that I will also support Mr McAveety’s amendment 64A.
FOR
Adam, Brian (Aberdeen North) (SNP)
Alten, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (LD)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (LD)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Henry, Hugh (Paisley South) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
Macaskil, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAteer,Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McCone, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Mr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peatle, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicola (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Allan (Cunninghame North) (Lab)
AGAINST
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Fox, Colin (Lothians) (SSP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Leckie, Carolyn (Central Scotland) (SSP)
Russell, Sir Andrew (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Swinburne, John (Central Scotland) (SSCUP)

The Deputy Presiding Officer: The result of the division is: For 106, Against 12, Abstentions 0.
Amendment 12A agreed to.
Amendment 12, as amended, agreed to.

After section 22
The Deputy Presiding Officer: Group 6 is on the duty to notify the licensing board of conviction.
Amendment 13, in the name of the minister, is grouped with amendments 18 and 36.

George Lyon: Amendment 13 seeks to correct an inconsistency in the procedures for applying for personal and premises licences. It replicates for premises licence applicants the
Amendment 6 does not specify them—they would be for discussion at a later date.

I believe that the mandatory conditions should relate to violence-reduction measures, drugs policies and public safety. The provision of closed-circuit television systems, staff who have the know-how to operate them and stewards who are first-aid trained are essential mandatory conditions. The later that licensed premises sell drink, the more the need for public safety measures. If a person collapses in a pub, whether through excessive alcohol consumption or simply because they are ill, staff should be trained to respond to the emergency. Pubs and clubs that want to profit from the sale of alcohol early in the morning should be prepared to invest in such measures, under the principles that I mentioned. That would be a great contribution to a safer Scotland.

I put on record my support for the best bar none awards, which took place yesterday in my constituency and which are about raising public safety standards in pubs and clubs. In the interests of cross-party co-operation, I thank Bruce Crawford and Paul Martin for their support for amendment 6. I look forward to hearing a positive response from George Lyon.

I move amendment 6.

Mr Davidson: We all agree with Pauline McNeill about the need for standards, security and first-aid training. However, for amendment 6 to have any real purpose—and given that we are at stage 3—she should have ensured that it contained a fuller explanation of the conditions that she talked about.

Bruce Crawford: Does David Davidson accept that, if Pauline McNeill had provided a list of potential mandatory conditions, members from all parties would have been enabled to pick holes in the amendment? Does he accept that it is better to go through the process of consultation on what the mandatory conditions should be to allow us to reach a measure of agreement, rather than find that the amendment is sunk today?

Mr Davidson: The licensing boards, in considering working standards and licence conditions, can use their discretion to deal with the matter. I am happy for boards to have that discretion, given the overall guidance that will come through the bill. We all accept the principles that Pauline McNeill talked about, but exactly what amendment 6 attempts to achieve is not clear. Frankly, we cannot support it, because of the lack of detail. We have already had a lot of arguments about fine-print details and we cannot just skirt past this one.

Fergus Ewing: We have no hesitation in supporting amendment 6, but with the proviso that...
there will be detailed and comprehensive consultation about the type and range of conditions that are proposed before any new measures are introduced and that the proposals will come to Parliament for further full debate and discussion. I invite the minister to state explicitly that that will be the case. I understand that amendment 6 will apply only to premises that are open after 1 am. The purpose is to seek to ensure as far as possible that order and safety are preserved. Training of stewards, first-aid training and CCTV cameras are examples of measures that we may consider appropriate.

I point out to the Tories that the SLTA supports the measure, perhaps because it does not want licensing boards throughout Scotland to set different standards. People will want to know what the standards are throughout Scotland. That is why the SNP supports amendment 6, which will further protect the public against the dangers and excesses of alcohol.

George Lyon: It has always been the Executive’s intention to provide in regulations a set of discretionary licensing conditions for late-opening premises that licensing boards can draw on as appropriate. The conditions that were proposed by a majority of members of the expert reference group, which have been published, were supported by the Executive. We consider that discretionary conditions are more appropriate given the range of premises that may open late in the evening and given the need to avoid placing unnecessary burdens on smaller establishments.

Amendments 6 and 60, in the name of Pauline McNeill, would require ministers to introduce by regulations a set of mandatory licence conditions that would apply to all premises that open after 1 o’clock in the morning. Pauline McNeill emphasised the importance of maintaining a minimum standard for the purposes of protecting individuals and the community and reducing risks of crime and nuisance. That is also the Executive’s approach to regulation of the late-night economy.

We believe that it is right to focus on the need to ensure public safety rather than on arguments that seek to impose artificial and unnecessary distinctions between the pub and nightclub sectors. We will support Pauline McNeill’s amendments on the basis that the mandatory conditions that are to be introduced should focus on public safety. The conditions should also be proportionate and avoid the imposition of burdens on smaller businesses that have no public order problems.

I assure Parliament that we will consult the industry fully and seek agreement on draft regulations before the instrument is laid before Parliament.

The Deputy Presiding Officer: Minister, you must finish now.

George Lyon: It is important that we take a light touch. We will put in place mandatory conditions that are appropriate and proportionate and which meet the needs of public safety and tackling crime.

The Deputy Presiding Officer: I cannot give Pauline McNeill any time to respond to the debate.

Amendment 6 agreed to.

Amendment 60 moved—[Pauline McNeill]—and agreed to.

Section 28—Determination of application for variation

The Deputy Presiding Officer: Group 8 is minor amendments. Amendment 14, in the name of the minister, is grouped with amendments 15, 16, 30, 31 and 32.

George Lyon: Executive amendments 14, 15, 16, 30, 31 and 32 are technical amendments.

I move amendment 14.

Amendment 14 agreed to.

Amendments 15 and 16 moved—[George Lyon]—and agreed to.

Amendment 17 moved—[George Lyon].

Amendment 17A moved—[Bristow Muldoon]—and agreed to.

Amendment 17, as amended, agreed to.

Section 41—Licence holder’s duty to notify Licensing Board of convictions

Amendment 18 moved—[George Lyon]—and agreed to.

Section 53—Occasional licence

Amendment 19 moved—[George Lyon]—and agreed to.

Section 54—Notification of application to chief constable

The Deputy Presiding Officer: Before we move to group 9, I remind members that we must stick to our timetable from now on as we have no further scope to extend the debate on amendments. Members should know that, in addition to the amendments in groups 9 and 11 that we are about to debate, we need to vote on a number of amendments that have already been debated. We have 20 minutes in total to get from group 9 to the end of group 11.

Group 9 is on reports by licensing standards officers in relation to occasional licence applications. Amendment 20, in the name of the
George Lyon: This debate should be relatively short.

The bill sets out a short procedure for the determination and grant of occasional licences that allow events to take place outwith licensed premises. This is the first time that a procedure for occasional licence has been set out, and as such licences may be requested at short notice we wish to keep the procedure as uncomplicated as possible. However, since the police will be asked for their comments, it also makes sense to require applications for occasional licences to be notified to the licensing standards officer to give that officer the opportunity to submit a report to the licensing board. A report to the board is not mandatory from either the police or LSOs, but it could be made as and when necessary. LSOs may have local knowledge that would be entirely relevant to the application.

Amendment 20 requires applications to be notified to an LSO. Amendment 21 gives an LSO power to make reports within 21 days of receipt of notice. Amendment 25 requires licensing boards to have regard to any report submitted by an LSO in respect of an application for an occasional licence when considering whether any of the grounds for refusal applies. Amendment 26 ensures that notification of the determination of the application is given to an LSO. Amendments 22 and 23 are consequential.

Bruce Crawford’s amendment 21A seeks to reduce the time within which an LSO may submit a report to a board from 21 days to 10 days. It is important that an LSO is given sufficient time to collate all the information relevant to the applicant. Ten days, as proposed by Bruce Crawford, seems to be an unnecessary restriction on an LSO. A 21-day timescale is more reasonable—and, more important—it is in line with the time given to the police to respond on the matter.

Given those assurances, I ask Bruce Crawford to consider not moving his amendment.

I move amendment 20.

Bruce Crawford: I find it difficult to withdraw from the position in the amendment. Why? Because occasional licences by their nature are sought by a licensed premises owner in a very short time. Usually, an event or function will come along that requires an owner to get a licence as soon as possible. To allow businesses in those circumstances to operate within the occasional licence framework, we need to ensure that the licensee can get the go-ahead—or otherwise—from the licensing board.

Twenty-one days will add almost a month to the process of informing the licensing standards officer of the issue and of replying to the licensing board. All I seek is to help the licensed trade. It does have to apply for occasional licences, but it requires a quick turnaround, and 21 days is too long.

The minister is right to say that the police should be asked for their comments. However, a report would come from the police only if they had particular concerns, whereas the LSO has a right on every occasion, and that gives me concern.

Mr Davidson: I have some sympathy with the minister’s position on this one, because we have yet to see how the roll-out of the LSOs will work and what resources they will have. Also, the police rules say 21 days; if an LSO responds in 10 days without the police having made their comments, no decision will be made. The two response times should be parallel.

George Lyon: I wish to clarify the matter for Bruce Crawford. LSOs are in exactly the same position as the police: they do not necessarily have to respond. Therefore, his argument on turnaround is equally applicable to the police. I suggest that the right approach is to put the police and the LSO response times on the same footing—21 days. I hope that Bruce Crawford will not move his amendment.

Amendment 20 agreed to.

Amendment 21 moved—[George Lyon].

Amendment 21A not moved.

Amendment 21 agreed to.

Section 56—Determination of application

Amendments 22 and 23 moved—[George Lyon]—and agreed to.

Amendment 24 moved—[George Lyon].

Amendment 24A moved—[Bristow Muldoon]—and agreed to.

Amendment 24, as amended, agreed to.

Amendment 25 moved—[George Lyon]—and agreed to.

Section 57A—Notification of determinations

Amendment 26 moved—[George Lyon]—and agreed to.

Section 58—Licensed hours

Amendment 27 moved—[George Lyon]—and agreed to.
The Deputy Presiding Officer: Group 10 is on extended hours applications. Amendment 28, in the name of the minister, is grouped with amendments 29, 33 to 35, 39, 40, 48 and 55.

Mr McCabe: Further to discussions with the licensed trade, we gave a commitment at stage 2 to lodge an amendment to provide a procedure for occasional licence extensions to be made to licensed hours for one-off and special events. Such events are, by their nature, unpredictable and cannot therefore be included in operating plans. Amendments 33 to 35 introduce such a procedure. They add to the power that was introduced at stage 2, as set out in section 61A, that allows boards to grant general extensions of hours to all premises, or to a particular category of premises, in response to a special local or national event.

The procedure as we have set it out has been tailored to suit the unpredictable and transitory nature of the need for extended hours. Any application must relate to a special event or occasion to be catered for on the premises, or to a special event of local or national significance. Licensing standards officers and the police will be notified of applications. There will be a requirement for licensing standards officers to submit a report, and the police will have the power to object. A board will have complete discretion as to whether to grant an application, subject to its taking into account any police objections and the licensing standards officer’s report, and having regard to the licensing objectives. I consider that our proposals meet the concerns of the licensed trade, and that they ensure that there is no unnecessary bureaucracy involved.

Amendments 29, 39 and 55 are ancillary, and bring the treatment of extended hours applications into line with the treatment of occasional licence applications. Amendments 28, 40 and 48 are consequential.

I move amendment 28.

Amendment 28 agreed to.

The Deputy Presiding Officer: Group 11 is on the sale of alcohol for the full duration of licensed hours. Amendment 61, in the name of Bruce Crawford, is the only amendment in the group.

Bruce Crawford: The purpose of amendment 61 is to ensure that licence holders are not required to operate under a regime that does not reflect the reality of operating a business. I hope that everyone will accept the principle that no one would expect every licensee to open for every hour as detailed in their agreed operating plan. We must allow licensees, particularly those in smaller and rural communities to be able to close, on occasions, at an earlier time than is stated in their operating plan.

Imagine the scene. A publican in a small village pub has been opening on Tuesday evenings for a long time, but no one usually turns up after 10 pm on that day. Is it really sensible that we suggest to that person that they continue operating their business until 12 o’clock, as the operating plan says? They would need to absorb greater energy and staffing costs to do that. We should take the side of flexibility in such situations, and allow the publican to deal with the reality that faces him or her. They can stay open and face unnecessary costs, or they can close a bit earlier and stay in business.

I hope that the minister can show me that my amendment is not required, and that other provisions in the bill cover its intention. I hope that it proves to be unnecessary. As far as I can see, the bill is a bit too prescriptive—in this particular regard—and it will force the licensee into an unnecessary straitjacket. Will the minister deal with the matter by issuing guidelines from the national licensing forum?

I move amendment 61.

Mr Davidson: I support Bruce Crawford on amendment 61. There are such things as road works, as we have seen around the Parliament, which mean that people cannot get access to some licensed premises. There might also be illness in premises. There are terrible fogs, natural disasters and so on. The amendment allows flexibility to deal with such circumstances. It would also allow the licensing board to conduct a review of the arrangements.

George Lyon: I am gobsmacked by Bruce Crawford’s call to make the bill less prescriptive. I am sure that we will see whether he wishes it to be less prescriptive when it comes to the vote on certain matters later on.

Amendment 61 is not needed. It seeks to remove the requirement to trade during all the hours specified in an operating plan. I made it clear during stage 2 that it is not in our interest to allow the licensed trade to apply to boards to open their premises for the maximum hours that they think the board will agree to, rather than the hours for which they intend to open. That is what has happened down south, because the provision is not in the equivalent bill there.

We do not want to encourage the submission by lawyers of standardised operating plans, which will have been given little thought by applicants; nor do we wish to allow licensees to attempt to block the market to competitors, which could happen.

Bruce Crawford seeks to ensure that licensees are not breaching their operating plan if they fail to open due to unforeseen circumstances, such as illness. I support that. During stage 2 I made a statement for the record to clarify the flexibility
inherent in our policy. I reiterate what I said, which underlines the fact that Bruce Crawford’s amendment 61 is unnecessary. Operating plans have been introduced to provide a flexible licensing regime. They are there to give the board as clear an idea as possible of how the premises are to be run. They should not, however, be read prescriptively like a conveyancing document, but like a business plan.

In deciding whether there has been a breach, the board must ask whether the licensee is abiding by the business plan. The board must take a commonsense approach and make allowances for holidays, sickness, bereavement and other such normal business factors before calling any breach of the operating plan.

I hope that that clarifies the position for Mr Crawford. On the basis of the assurances that I am giving him, I ask him to consider withdrawing amendment 61, which is unnecessary, given the Executive’s intentions on the matter.

Bruce Crawford: I will make this as painless as I can. Some of the assurances that the minister gave on this occasion were not delivered as strongly at stage 2. The trade will be much more satisfied with what it has heard today.

Amendment 61, by agreement, withdrawn.

Section 60—24 hour licences to be granted only in exceptional circumstances

Amendment 29 moved—[George Lyon]—and agreed to.

The Deputy Presiding Officer (Murray Tosh): Group 12 is on the maximum length of licensed hours. Amendment 62, in the name of Bruce Crawford, is the only amendment in the group.

Bruce Crawford: Amendment 62 brings us to a point on which we have serious concerns about the Scottish Executive’s proposals for modernising Scotland’s licensing laws. We must ask ourselves whether Scotland is ready for the ushering in of an era of 24-hour opening.

At stage 2, when I lodged a similar amendment, George Lyon said:

“...and 59 minutes will not be considered to be exceptional and that there is a danger of that number of hours becoming the norm. The same applies to 19, 20, 21, 22 or 23 hours. To all intents and purposes, there is the prospect of 24-hour opening—or opening for 23 hours and 59 minutes, if members want to be pedantic. Such opening could become the norm, because it has not been defined as being the exception.

We do not believe that Scotland is ready for 24-hour opening. Whether we like it or not, we have a bevvy culture, which is extremely unfortunate. Report after report and statistic after statistic shows a depressing picture of how Scotland is failing to get to grips with alcohol abuse. Binge drinking and alcohol abuse by younger people are increasing. Drink-fuelled crime is on the up and ill health that is related to alcohol abuse is getting worse. Media report after media report paints a picture of public policy failure on alcohol abuse.

I realise that I am speaking about a long-term issue. The Scotsman of Tuesday 6 September contained the headline, “Drunken weekend violence hitting frontline policing”. The paper quotes the deputy chief constable of Lothian and Borders police force, Malcolm Dickson, as saying:

“...too many police officers are being diverted to deal with evening binge drinking in city centres instead of dealing with ordinary crime.”

The paper stated that Mr Dickson also criticised “government plans to introduce 24-hour drinking, claiming this will add to the stretching of police resources.”

It is not only the deputy chief constable who is opposed to 24-hour opening; the Local Government and Transport Committee also opposes it. Paragraph 310 of its stage 1 report states:
“The Committee is not yet convinced that 24 hour drinking is required in Scotland, even in exceptional circumstances ... As things stand, the Committee considers that 18 hours is a more appropriate cut-off point than the 24 hour limit set out in the Bill.”

The committee took that view simply because the evidence against 24-hour opening—even in exceptional circumstances—was overwhelming. The trade does not want it: the Scottish Licensed Trade Association and the Scottish Grocers Federation, which represent the trade, are against it. Alcohol Focus Scotland is opposed to it and—perhaps tellingly—so is Sheriff Principal Gordon Nicholson. In written evidence to the committee, he said that the provisions in section 60 “would not be triggered at all if an applicant were to stipulate an opening period of 23 hours and 59 minutes; but such a period would be likely to be seen as being just as objectionable as a period of precisely 24 hours. Consequently, if this provision is to remain, I would respectfully suggest that the trigger point should be a number of hours just beyond what might normally be regarded as acceptable—say, 18 hours”.

as per my amendment 62.

From the First Minister down, the Executive has told us that it is determined to tackle Scotland’s booze culture, but the reality is before us. The Executive is prepared to usher in a process to allow 24-hour opening instead of taking a more reasonable and sensible approach. The mixed message that the Executive is sending out can only create greater confusion. On the one hand, it talks tough on antisocial behaviour and binge drinking; on the other hand, it says that people will be able to buy alcohol even more freely in future.

I know that there is widespread concern among members of all parties about 24-hour opening, and that that concern is shared by the country. Today, the Parliament has the opportunity to take a more reasonable and sensible route, and I invite members to support amendment 62.

I move amendment 62.

Mr Maxwell: The Justice 2 Committee was the second committee to consider the Licensing (Scotland) Bill. We interviewed community police officers, and our report states:

“Community police officers expressed concern to the Committee about the possible operational impacts of any extension to the current licensed hours. Many rural areas do not have 24 hour cover, and in urban areas, shifts are based around the busiest hours. In general terms, increased flexibility in opening hours was seen as having potential to make policing more difficult.”

It is clear from that statement that the possibility of 24-hour opening is not welcomed by the police. As Bruce Crawford has said, it is not welcomed by the trade, and I do not believe that it is welcomed by individuals and communities across Scotland.

The point that the minister made about exceptional circumstances is, frankly, incorrect.

When we last liberalised our laws, people said that the only time when extended opening hours would be allowed would be in exceptional circumstances. In the beginning, that was the case—it was the odd game, event or festival. However, currently 90 per cent of premises have extended opening hours; the norm has become to creep towards the maximum. If we pass the bill unamended, the creep towards the 24-hour maximum will be the norm.

The statistics are clear on what happens when licensing hours are extended. In Scotland, in 1999, 15,500 prescriptions were dispensed in the community, excluding in hospitals, for drugs to treat alcohol dependence. By 2003, that figure had grown to 28,500 prescriptions—an increase of 82 per cent in four years. In 2004-05, there were 9,057 discharges from hospital with a diagnosis of alcohol-induced liver disease. That represents an increase of 48 per cent since 2000-01. As we are all aware, in 2002-03, the total annual cost to Scotland of alcohol misuse was £1.125 billion.

As Bruce Crawford said, Scotland is nowhere near ready for 24-hour opening. Nobody wants it. We do not want it. I do not want it, and I will not support it, in all conscience, because of what it will lead to in our communities.

Fergus Ewing: If members study carefully Bruce Crawford’s amendment and the section that it seeks to amend, they will see that the effect would be to allow a pub or club to remain open for 18 continuous hours, from 11 am to 5 am the following morning. Why would anybody or any premises wish to open for longer than that? No one yet has mentioned the staff—the people who would have to work outwith those hours, from 5 am onward. There is surely a gross contradiction in the Executive being prepared to permit 24-hour continuous opening, on the one hand, and banning smoking in public places, on the other hand. That is a complete contradiction that, I suspect, the public will wholly fail to understand.

I agreed with the sentiment that Wendy Alexander expressed about our reflecting the mood of the people who sent us here. I hope that we will all try to do that today. There is no desire for this. There is no appetite or, might I say it, thirst for it. The trade does not want it; the experts do not want it; the public do not want it.

Iain Smith: Will the member give way?

Fergus Ewing: Obviously, I have not got time.

What conceivable reason would there be for the Executive whipping the bill through, as drafted, except the desire to follow Mr Blair and what the Government in England is doing? This is a test of whether Executive members will practise devolution or will follow orders from London and London Labour.
The Deputy Presiding Officer: I can give Brian Monteith about a minute.

Mr Brian Monteith (Mid Scotland and Fife) (Ind): Having heard all three SNP members, I believe that Bruce Crawford is tilting at windmills. In England, there are some 140,000 licensees. We hear accusations that no one wants 24-hour licensing—neither the trade, nor publicans. Well, let us consider what is happening in England.

How many of the 140,000 licensees in England have applied? Where is the scare story? Where is the rush for licences? Of the 140,000 licensees, 1,000 have applied for 24-hour licences, and even they say that that does not mean that they will open for 24 hours. Bruce Crawford is talking about a restriction on trade. It should be left to licensees to apply for what they want and to local authorities to consult and make decisions. The proposal is about devolution to local authorities instead of a restriction on trade. I suggest that we oppose Bruce Crawford’s amendment.

Mr McCabe: Bruce Crawford is right about one thing: we talk tough on antisocial behaviour and we act tough on it, too, unlike the SNP, given its voting record.

I will restate what I and other ministers have said many times. The Executive is firmly against the practice of routine 24-hour opening. Misinterpretation by various people of the proposals for the new system has led to fears that it would somehow promote 24-hour opening. That is certainly not the case. To add reassurance and to help lay fears to rest, we agreed to put a presumption against 24-hour opening in the bill, and we have done that.

I will clarify the phrase “exceptional circumstances”, which is intended to mean only special events and not applications for routine 24-hour opening. We should remind ourselves that the Licensing (Scotland) Act 1976 also has such a provision. We can assess how often that provision has been used since 1976.

Mr Crawford’s view that the provision should cover applications to open premises for more than 18 hours is based on some groups’ evidence to the Local Government and Transport Committee. The arguments were based partly on the assumption that supermarkets would want to sell alcohol for 24 hours and—importantly—on an incomplete understanding of the differences between the position in Scotland and that in England and Wales. In England and Wales, a presumption in favour of 24-hour opening is considered acceptable, but it is not considered acceptable in Scotland.

I ask members to resist the temptation to consider the issue in isolation. As I have said, the bill is a complete package. When the measure in section 60 is set beside the national conditions, it is clear that no routine 24-hour opening will take place in Scotland. Yes, national opening hours are largely being abolished, but that is intended to allow shorter and longer opening hours, which are founded on a board’s local circumstances.

I will make three final points: anyone—including the police—can complain that opening hours for a premises are a problem, which will result in a review; reducing opening hours is one sanction that is open to a board when reviewing a licence; and, ultimately, a licence can be revoked.

Fixing a lower and arbitrary limit on the maximum trading day is simply not the answer. Therefore, I ask Mr Crawford to withdraw his amendment.

The Deputy Presiding Officer: I call Mr Crawford to make a brief response.

Bruce Crawford: Well, well, well. The Executive tells us that it is in favour of measures to stop antisocial behaviour, but it has been dragged—kicking and squabbling—into accepting Frank McAveety’s amendment to allow for 12-hour opening of off-licence premises. The message from the Executive is contradictory and hypocritical.

Tom McCabe could at least have been honest enough to admit that the framework of the existing law is entirely different. It is based on a core set of hours, from 11 am to 11 pm, with extensions thereafter. That is not the same as what is in the bill.

Tom McCabe said that no routine 24-hour opening would take place, because the provision applies to exceptional circumstances. I accepted that at the start of my speech. However, opening for 23 hours and 59 minutes will not be exceptional. What do we call such circumstances? Are they exceptional or normal? They would be the opposite of the current situation. It could become normal to grant licences to open for 23 hours and 59 minutes. In my book, that would be 24-hour opening, which we must resist.

16:30

The Deputy Presiding Officer: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)

Against
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway andUpper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrier, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanetete (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasiow) (SSCUP)
Sturgeon, Nicola (Glasiow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasiow) (SNP)

AGAINST
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballantyne, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasiow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Cragie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Edie, Helen (Dunfermline East) (Lab)
Fergusson, Patricia (Glasiow Maryhill) (SNP)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasiow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hughes, Janis (Glasiow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasiow Govan) (Lab)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Leckie, Carolyn (Central Scotland) (SSP)
Livingstone, Marlyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (West of Scotland) (Ind)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Ind)
Morris, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatle, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinburne, John (Central Scotland) (SSCUP)
Wallace, Mr Jim (Orkney) (LD)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 43, Against 76, Abstentions 0.

Amendment 62 disagreed to.

Section 60A—Licensed hours: off-sales
Amendment 63 moved—[Bruce Crawford].

The Deputy Presiding Officer: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
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<td>Macmillan, Maureen (Highlands and Islands) (Lab)</td>
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**Against**

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<td>Labour (Lab)</td>
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<td>Baird, Shiona (North East Scotland) (Green)</td>
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The Deputy Presiding Officer: The result of the division is: For 72, Against 46, Abstentions 0.

**Amendment 63 agreed to.**

**Amendment 64 moved—[Bristow Muldoon].**

**Amendment 64A moved—[Mr Frank McAveety].**

The Deputy Presiding Officer: The question is, that amendment 64A be agreed to. Are we agreed?

**Members:** No.

The Deputy Presiding Officer: There will be a division.

**For**

Adam, Brian (Aberdeen North) (SNP)

Aitken, Bill (Glasgow) (Con)

Alexander, Ms Wendy ( Paisley North) (Lab)

Bailie, Jackie (Dumbarton) (Lab)

Baird, Shiona (North East Scotland) (Green)

Baker, Richard (North East Scotland) (Lab)

Balhance, Chris (South of Scotland) (Green)

Ballard, Mark (Lothians) (Green)

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

Brown, Robert (Glasgow) (LD)

Brownlee, Derek (South of Scotland) (Con)

Canavan, Dennis (Falkirk West) (Ind)

Davidson, Mr David (North East Scotland) (Con)

Deacon, Susan (Edinburgh East and Musselburgh) (Lab)

Douglas-Hamilton, Lord James (Lothians) (Con)

Ferguson, Alex (Galloway and Upper Nithsdale) (Con)

Finnie, Ross (West of Scotland) (LD)

Fox, Colin (Lothians) (SSP)

Fraser, Murdo (Mid Scotland and Fife) (Con)

Gallie, Phil (South of Scotland) (Con)

Goldie, Miss Annabel (West of Scotland) (Con)

Gorrie, Donald (Central Scotland) (LD)

Harper, Robin (Lothians) (Green)

Harvie, Patrick (Glasgow) (Green)

Johnstone, Alex (North East Scotland) (Con)

Leckie, Carolyn (Central Scotland) (SSP)

Lyon, George (Argyll and Bute) (LD)

McGrigor, Mr Jamie (Highlands and Islands) (Con)

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)

McNulty, Des (Clydesdale) (Lab)

Milne, Mrs Nanette (North East Scotland) (Con)

Mitchell, Margaret (Central Scotland) (Con)

Monteilh, Mr Brian (Mid Scotland and Fife) (Ind)

Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

Pringle, Mike (Edinburgh South) (LD)

Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

Radcliffe, Nora (Gordon) (LD)

Robson, Euan ( Roxburgh and Berwickshire) (LD)

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

Scanlon, Mary (Highlands and Islands) (Con)

Scott, Eleanor (Highlands and Islands) (Green)

Scott, John (Ayr) (Con)

Scott, Tavish (Shetland) (LD)

Smith, Iain (North East Fife) (LD)

Smith, Margaret (Edinburgh West) (LD)

Stephen, Nicol (Aberdeen South) (LD)

Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

Swinburne, John (Central Scotland) (SSCUP)

Wallace, Mr Jim (Orkney) (LD)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (West of Scotland) (Ind)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McColl, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McGivney, John (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Robison, Shona (Dundee East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Brown, Robert (Glasgow) (LD)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gorrie, Donald (Central Scotland) (LD)
Leckie, Carolyn (Central Scotland) (SSP)
Lyon, George (Argyll and Bute) (LD)
Monteilh, Mr Brian (Mid Scotland and Fife) (Ind)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)

Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)

ABSTENTIONS
Byrne, Ms Rosemary (South of Scotland) (SSP)

The Deputy Presiding Officer: The result of the division is: For 97, Against 21, Abstentions 1.

Amendment 64A agreed to.

The Deputy Presiding Officer: The question is, that amendment 64, as amended, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
The Deputy Presiding Officer: The result of the division is: For 92, Against 27, Abstentions 0.

Amendment 64, as amended, agreed to.

Amendment 83 moved—[Mr Andrew Arbuckle].

The Deputy Presiding Officer: The question is, that amendment 83 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Brown, Robert (Gloucester) (LD)
Canavan, Dennis (Falkirk West) (Ind)
Deacon, Susan (Aberdeen South and North Kincardine) (LD)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Gloucester) (Green)
Leckie, Carolyn (Central Scotland) (LD)
Lyon, George (Argyll and Bute) (LD)
Monteith, Mr Brian (Mid Scotland and Fife) (Ind)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Ayrshire and Inverclyde) (LD)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)

Against

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Brown, Robert (Gloucester) (LD)
Canavan, Dennis (Falkirk West) (Ind)
Deacon, Susan (Aberdeen South and North Kincardine) (LD)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Gloucester) (Green)
Leckie, Carolyn (Central Scotland) (LD)
Lyon, George (Argyll and Bute) (LD)
Monteith, Mr Brian (Mid Scotland and Fife) (Ind)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Ayrshire and Inverclyde) (LD)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)

The Deputy Presiding Officer: The result of the division is: For 92, Against 27, Abstentions 0.

Amendment 64, as amended, agreed to.

Amendment 83 moved—[Mr Andrew Arbuckle].

The Deputy Presiding Officer: The question is, that amendment 83 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
Robson, Euan ( Roxburgh and Berwickshire ) (LD)
Rumbles, Mike ( West Aberdeenshire and Kincardine ) (LD)
Scott, Eleanor ( Highlands and Islands ) (Green)
Scott, Tavish ( Shetland ) (LD)
Smith, Iain ( North East Fife ) (LD)
Smith, Margaret ( Edinburgh West ) (LD)
Stephen, Nicol ( Aberdeen South ) (LD)
Stone, Mr Jamie ( Caithness, Sutherland and Easter Ross ) (LD)
Wallace, Mr Jim ( Orkney ) (LD)

AGAINST
Adam, Brian ( Aberdeen North ) (SNP)
Aitken, Bill ( Glasgow ) (Con)
Alexander, Ms Wendy ( Paisley North ) (Lab)
Bailie, Jackie ( Dunbarton ) (Lab)
Baker, Richard ( North East Scotland ) (Lab)
Barrie, Scott ( Dunfermline West ) (Lab)
Boyack, Sarah ( Edinburgh Central ) (Lab)
Brankin, Rhona ( Midlothian ) (Lab)
Brocklebank, Mr Ted ( Mid Scotland and Fife ) (Con)
Brownlee, Derek ( South of Scotland ) (Con)
Butler, Bill ( Glasgow Anniesland ) (Lab)
Byrne, Ms Rosemary ( South of Scotland ) (SSP)
Canavan, Dennis ( Falkirk West ) (Ind)
Chisholm, Malcolm ( Edinburgh North and Leith ) (Lab)
Craige, Cathie ( Cumbernauld and Kilsyth ) (Lab)
Crawford, Bruce ( Mid Scotland and Fife ) (SNP)
Cunningham, Roseanna ( Perth ) (SNP)
Curran, Ms Margaret ( Glasgow Baillieston ) (Lab)
Davidson, Mr David ( North East Scotland ) (Con)
Douglas-Hamilton, Lord James ( Lothians ) (Con)
Eadie, Helen ( Dunfermline East ) (Lab)
Ewing, Fergus ( Inverness East, Nairn and Lochaber ) (SNP)
Ewing, Mrs Margaret ( Moray ) (SNP)
Fabian, Linda ( Central Scotland ) (SNP)
Ferguson, Patricia ( Glasgow Maryhill ) (Lab)
Ferguson, Alex ( Galloway and Upper Nithsdale ) (Con)
Fox, Colin ( Lothians ) (SSP)
Fraser, Murdo ( Mid Scotland and Fife ) (Con)
Gallie, Phil ( South of Scotland ) (Con)
Gibson, Rob ( Highlands and Islands ) (SNP)
Gillon, Karen ( Clydesdale ) (Lab)
Glen, Marilyn ( North East Scotland ) (Lab)
Godman, Trish ( West Renfrewshire ) (Lab)
Goldie, Miss Annabel ( West of Scotland ) (Con)
Gordon, Mr Charlie ( Glasgow Cathcart ) (Lab)
Grahame, Christine ( South of Scotland ) (SNP)
Henry, Hugh ( Paisley South ) (Lab)
Hughes, Janis ( Glasgow Rutherglen ) (SNP)
Hyslop, Fiona ( Lothians ) (SNP)
Ingram, Mr Adam ( South of Scotland ) (SNP)
Jackson, Dr Sylvia ( Stirling ) (Lab)
Jackson, Gordon ( Glasgow Govan ) (Lab)
Jamieson, Cathy ( Carrick, Cumnock and Doon Valley ) (Lab)
Jamieson, Margaret ( Kilmarnock and Loudoun ) (Lab)
Johnstone, Alex ( North East Scotland ) (Con)
Kerr, Mr Andy ( East Kilbride ) (Lab)
Lamont, Johann ( Glasgow Pollok ) (Lab)
Leckie, Carolyn ( Central Scotland ) (SSP)
Livingstone, Marilyn ( Kircaldy ) (Lab)
Lochhead, Richard ( North East Scotland ) (SNP)
MacAskill, Mr Kenny ( Lothians ) (SNP)
Macdonald, Lewis ( Aberdeen Central ) (Lab)
Macintosh, Mr Kenneth ( Eastwood ) (Lab)
Maclean, Kate ( Dundee West ) (Lab)
Macmillan, Maureen ( Highlands and Islands ) (Lab)
Martin, Campbell ( West of Scotland ) (Ind)
Martin, Paul ( Glasgow Springfield ) (Lab)
Marwick, Tricia ( Mid Scotland and Fife ) (SNP)
Mather, Jim ( Highlands and Islands ) (SNP)
Matheson, Michael ( Central Scotland ) (SNP)
Maxwell, Mr Stewart ( West of Scotland ) (SNP)
May, Christine ( Central Fife ) (Lab)
McAveety, Mr Frank ( Glasgow Shettleston ) (Lab)
McCabe, Mr Tom ( Hamilton South ) (Lab)
McConnell, Mr Jack ( Motherwell and Wishaw ) (Lab)
McFee, Mr Bruce ( West of Scotland ) (SNP)
McGrigor, Mr Jamie ( Highlands and Islands ) (Con)
McMahon, Michael ( Hamilton North and Bellshill ) (Lab)
McNeil, Mr Duncan ( Greenock and Inverclyde ) (Lab)
McNeill, Pauline ( Glasgow Kelvin ) (Lab)
McNulty, Des ( Clydebank and Milngavie ) (Lab)
Milne, Mrs Nanette ( North East Scotland ) (Con)
Mitchell, Margaret ( Central Scotland ) (Con)
Monteith, Mr Brian ( Mid Scotland and Fife ) (Ind)
Morgan, Alasdair ( South of Scotland ) (SNP)
Morrison, Mr Alasdair ( Western Isles ) (Lab)
Muldoon, Bristow ( Livingston ) (Lab)
Mulligan, Mrs Mary ( Linlithgow ) (Lab)
Murray, Dr Elaine ( Dumfries ) (Lab)
Neil, Alex ( Central Scotland ) (SNP)
Peacock, Peter ( Highlands and Islands ) (Lab)
Peattie, Cathy ( Falkirk East ) (Lab)
Robison, Shona ( Dundee East ) (SNP)
Scanlon, Mary ( Highlands and Islands ) (Con)
Scott, John (Ayr) (Con)
Sheridan, Tommy ( Glasgow ) (SSP)
Smith, Elaine ( Coatbridge and Chryston ) (Lab)
Stevenson, Stewart ( Barff and Buchan ) (SNP)
Sturgeon, Nicola ( Glasgow ) (SNP)
Swinburne, John ( Central Scotland ) (SSCUP)
Swinney, Mr John ( North Tayside ) (SNP)
Turner, Dr Jean ( Strathkelvin and Bearsden ) (Ind)
Welsh, Mr Andrew ( Angus ) (SNP)
White, Ms Sandra ( Glasgow ) (SNP)
Wilson, Allan ( Cunninghame North ) (Lab)

ABSTENTIONS
Deacon, Susan ( Edinburgh East and Musselburgh ) (Lab)

The Deputy Presiding Officer: The result of the division is: For 23, Against 95, Abstentions 1.

Amendment 83 disagreed to.

Section 61A—Power for Licensing Board to grant general extensions of licensed hours
Amendments 30 to 32 moved—[George Lyon]—and agreed to.

After section 61A
Amendments 33 to 35 moved—[George Lyon]—and agreed to.

Section 73—Licence holder's duty to notify Licensing Board of convictions
Amendment 36 moved—[George Lyon]—and agreed to.

Section 93—Sale of alcohol to a child or young person
The Deputy Presiding Officer: Amendment 1, in the name of Paul Martin, is grouped with amendments 73, 2, 74, 3, 75, 4, 76, 5 and 77. Members should please note that amendments 73 to 77 are manuscript amendments and will be
moved under rule 9.10.6 of standing orders. The
text of those amendments is now available.

Paul Martin: It is a most appalling act for an
adult to sell alcohol to someone under the age of
18 for that adult’s financial or alcohol gain. Not
only does it endanger the life of the young person,
but it presents dangers to the local community in
the possibility of antisocial behaviour.

I lodged my amendments in the group with the
intention of providing the courts with the option of
imposing a sentence of up to three months’
imprisonment. That would send out a serious
message that such an appalling act is most
unwelcome in our communities and is antisocial
behaviour of the highest calibre. The sentencing
option I propose is in line with the sentencing
option for the sale of fireworks to under-18s—an
offence that carries the possibility of a six-month
prison sentence. It is also similar to the possible
sentence for someone who sells knives to
someone under the age of 18.

In partnership with me and the Executive,
Andrew Arbuckle has kindly lodged manuscript
amendments that seek to clarify whether a sheriff
could impose a level 5 fine of up to £5,000 or a
sentence of up to three months. I welcome those
amendments and if they are agreed to, I will not
press my amendments.

I move amendment 1.

Mr Arbuckle: As Paul Martin said, we are
talking about serious offences and my
amendments propose to fill gaps in the Licensing
(Scotland) Act 1976. The sentences provided for
in the bill at present are too prescriptive and
narrow and my amendments would allow the
correct leeway to provide courts with options.

Mr Davidson: Paul Martin’s amendment 1
would prescribe to the courts. We are minded to
support Andrew Arbuckle’s manuscript
amendments because they would allow courts to
have a choice between imposing a fine or a
custodial sentence.

Mr McCabe: Andrew Arbuckle has lodged
alternative amendments that would increase the
options available to the courts—a prison sentence
of up to three months would be an alternative to or
in addition to a fine. That is a preferable approach
and one with which Paul Martin has said he
agrees. That is an important point because Paul
has championed the cause of coming down hard
on those who exploit our young people.

The availability of a possible three-month
sentence will sharpen the minds of those who
continue to take a cavalier attitude to selling or
supplying alcohol to our children. The Executive
intends to support Andrew Arbuckle’s
amendments, which will go hand in hand with
other measures.

Mr Jim Wallace (Orkney) (LD): Given that we
say that we are all in favour of rehabilitation and
reducing reoffending, will the minister indicate the
rehabilitative measures that he expects those who
serve a three-month sentence to be able to take to
prevent them from reoffending once they are
released?

Mr McCabe: As the member knows, a range of
disposals is available to the courts. Indeed, the
Executive is determined to expand that range to
ensure that genuine rehabilitation takes place and
I am sure that my colleague, the Minister for
Justice, will provide further information in that
respect. Indeed, the member himself has
considerable previous experience of efforts to
expand the range of disposals.

The amendments go hand in hand with other
measures such as the no-proof, no-sale provisions
that the Executive is introducing to tackle
underage drinking. These important provisions will
send a strong signal to those who try to exploit our
young people.

The Deputy Presiding Officer: I call Paul
Martin to wind up on this group of amendments.
Unless he has changed his mind, he will need to
ask permission to withdraw amendment 1.

Paul Martin: I welcome the fact that the minister
has reached this conclusion on group 13 and
believe that Andrew Arbuckle’s manuscript
amendments achieve my aim when I lodged the
original amendments on this matter at stage 2. I
also welcome clarification that the options for
sentencing include imprisonment and the
possibility of a level 5 fine of up to £5,000. On that
basis, I seek the chamber’s agreement to
withdraw amendment 1.

Amendment 1, by agreement, withdrawn.

The Deputy Presiding Officer: I invite Andrew
Arbuckle to move amendment 73.

Mr Arbuckle: May I, in the spirit of co-operation,
ask Paul Martin to move my manuscript
amendments?

The Deputy Presiding Officer: If you wish to
do it that way, and if Mr Martin is happy to move
the amendments, it is perfectly in order.

Amendment 73 moved—[Paul Martin]—and
agreed to.

Section 94—Allowing the sale of alcohol to a
child or young person

Amendment 2 not moved.

Amendment 74 moved—[Paul Martin]—and
agreed to.
Section 96—Purchase of alcohol by or for a child or young person

The Deputy Presiding Officer: Group 14 relates to test purchasing of alcohol by children or young people. Amendment 37, in the name of the minister, is the only amendment in the group.

George Lyon: During stage 2, the Lord Advocate announced that he is now prepared to allow test purchasing of alcohol. The Executive very much welcomes that announcement, which I am sure also enjoys the chamber’s support. It provides the police and many others with an essential tool in the fight against underage sales and drinking.

Amendment 37 seeks to give a child or young person immunity from committing an offence where test purchasing is authorised by a chief constable and to put an obligation on the chief constable to avoid any risk to the test purchaser’s welfare. The amendment also allows the commencement of the provisions for a proposed pilot exercise that will be undertaken to ensure that the procedures afford adequate protection to everyone involved before test purchasing is rolled out throughout the country.

The provision in amendment 37 will underpin the bill’s no-proof, no-sale provisions, which represent an important tool in tackling the underage drinking that bedevils many communities. I hope that the chamber will support the amendment.

I move amendment 37.

Bruce Crawford: I am happy to say that the SNP will support amendment 37. I am very pleased with the Executive’s approach to the issue. When I lodged a probing amendment on the issue at stage 2, the minister said that he would address it constructively at stage 3. That is what has happened, and the amendment provides a good way forward.

My only slight caveat is that we must ensure that young individuals involved in test purchasing are given all the protection and counselling that they need to deal with every circumstance. That said, I am glad that the chamber will support the amendment.

I move amendment 37.

Mr Davidson: We have great sympathy for amendment 37. However, I believe that, in a recent case in Linlithgow, a drugs conviction was overturned on appeal on the ground of entrapment. I hope that the minister can assure us that that case has been thoroughly investigated. More important, can he assure us that the Lord Advocate will issue strict guidelines on the implementation of the provision?

Mr Monteith: It really does say something about how far Labour has travelled when the Executive seeks to introduce clandestine operations and entrapment—such abhorrent operations were used to entrap people who were starting up trade unions in the 19th century, in order to show that they were conspiring against their employers. It was wrong then and it is wrong now. Entrapment is entrapment, whether it is advocated by the Labour Party or by Lord Liverpool. Members should vote against amendment 37.

George Lyon: I thank Bruce Crawford for his support. He was quite right to state that he lodged a probing amendment at stage 2, which brought the issue to the fore. Since I took over my portfolio, I have been keen to ensure that test purchasing is put in place.

I would like to respond to a couple of the points that have been raised. Protection of the interests of the child is absolutely at the heart of our approach, and guidance will be issued to chief constables, who will have responsibility for test purchasing and for the welfare of the children involved in the pilot exercise. The pilot will commence soon, because we intend test purchasing to go ahead before the full range of the bill’s other measures comes into force. I can assure members that the Lord Advocate will consult chief constables and will ensure that appropriate guidance is drawn up to put protecting the interests of the child at the heart of our approach to the matter.

Mr Davidson: Having spoken to the Lord Advocate, is Mr Lyon in a position to comment on entrapment? Has the Lord Advocate cleared what is going on?

George Lyon: Far be it from me to speak on behalf of the Lord Advocate. I intend to write to Mr Davidson and other members to explain the situation, if that would be suitable.

The Deputy Presiding Officer: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LP)
Baird, Richard (South Scotland) (LD)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Amendment 37 agreed to.

Amendment 75 moved—[Paul Martin]—and agreed to.

The Deputy Presiding Officer: The result of the division is: For 99, Against 1, Abstentions 1.

Amendment 4 not moved.

Amendment 76 moved—[Paul Martin]—and agreed to.

Section 97—Consumption of alcohol by a child or young person

Amendment 5 not moved.

Amendment 77 moved—[Paul Martin]—and agreed to.

After section 117

The Deputy Presiding Officer: Group 15 relates to sports grounds and sporting events. Amendment 65, in the name of David Davidson, is the only amendment in the group.

Mr Davidson: Amendment 65 proposes that the Executive should carry out a pilot scheme on the reintroduction of the sale of alcohol at sports grounds in Scotland and should report on the results of that scheme to the Scottish Parliament.

The current ban is damaging our economy. The Scottish Rugby Union believes that the ban contributed to Murrayfield not being given last year's Powergen rugby league challenge cup final, which is estimated cost the Edinburgh economy...
£2 million. The ban has served its purpose and it is now time to allow over-18s to purchase alcohol in plastic containers in certain sports grounds. I believe that if we treat people with trust and respect, they will start to behave accordingly.

Sports fans still drink even though they cannot drink at the ground. For example, Murrayfield has a beer tent, which is located just outside the stadium. We acknowledge all the hard work that the police have done to make Scottish football as family friendly as it is, but we do not feel that allowing alcohol to be sold in grounds would harm that work.

A spokesman from Northumbria police said that its policy of allowing the sale of alcohol at St James’s Park, which has been in place for the past five to 10 years, is going well and, in fact, has made the control of crowds easier. That is because the police can keep rival fans apart while they are drinking—which they have no control over outside the stadium—and ensure that the drinking environment encourages the fans to relax and enjoy themselves. Sales are restricted to a period that extends from 10 minutes before half time until 10 minutes after half time. If anyone should get drunk, they are removed from the ground, but the high price of season tickets means that fans are careful to ensure that that does not happen to them. It is time for the Executive to move on from a position whereby it allows the people in expensive hospitality boxes to drink while treating the majority of fans like children. Agreement to amendment 65 would be the first step in that direction. Surely an arrangement that is good enough for Newcastle is good enough for Tynecastle.

I move amendment 65.

**Tommy Sheridan:** I must declare an interest as someone who was involved in the 1980 pitch invasion that led to the banning of alcohol at sports grounds. I suppose that I am partly responsible for the ban, although I only wanted to give my scarf to Davie Provan, which I never quite got round to doing.

Amendment 65 is not acceptable. As has been said, in Scotland we have a culture that is not enviable. Getting pissed seems to be part of that culture. We do not seem to have won the battle of ideas or to have defeated the notion that someone who is drinking is more of a man than someone who is not drinking. Sport is an area in which we are trying to promote a form of recreation that does not involve the consumption of alcohol. Why would we want to reintroduce alcohol into sport when we have managed to separate alcohol and sport since 1980? I think that that separation should continue. There is nothing cool about drinking and there is nothing sporting about consuming alcohol. I hope that the minister will be prepared to resist amendment 65 on behalf of those people in Scotland who believe that alcohol and sport should be kept separate.

**Donald Gorrie (Central Scotland) (LD):** The proposition of having a pilot scheme is worth considering. There are obviously some matches at which it would not be appropriate to have alcohol at the ground, but there are others—both football and rugby football—at which allowing alcohol to be consumed at the ground could represent a better way of controlling the drinking. Instead of simply allowing people to get drunk in pubs both on the way to and on the way back from the ground, drinking could be well policed within the ground.

I think that it would be worth trying out a pilot at the grounds of football clubs whose fans have a record of being well behaved and, perhaps, at Murrayfield. If the idea does not work, we will know, but if it works, we could introduce it more generally. A pilot scheme is worth considering on the basis that if it was well run, it could reduce the total amount of drunkenness.

**Mr Monteith:** Although I think that amendment 65 is rather weak and could have gone further, I will support it.

I was astonished to hear that Tommy Sheridan thinks that somehow drink has been separated from sport. Clearly, he is not getting into enough directors’ boxes, whether at Murrayfield or any of the football grounds. Alcohol is there—it is just that the punters cannot get it, and I thought that he represented the punters.

The truth is that sport and drink go together; people get tanked up before they go into a ground. Let us have some responsible drinking. We should encourage it in the grounds—with families and with food—where it would be policed. That is what the proposed pilot is about. Members cannot tell me that punters in Newcastle, Carlisle or anywhere else in England are different from punters in Scotland. Let us give punters in Scotland a chance to have a responsible drink. That will change the culture. Members should support amendment 65.

**The Deputy Presiding Officer:** I call John Swinburne, who will be the last speaker before I go to the minister.

**John Swinburne (Central Scotland) (SSCUP):** As one who remembers what the situation in football grounds was like before the passing of the Criminal Justice (Scotland) Act 1980, I recommend to members that they should ignore completely the pilot. We should not bring back those dark days. If we are to have a pilot scheme, however, let us make it at an old firm game.

**Mr McCabe:** As members know, controls at certain sporting events were introduced in the
1980s for the good reason of public order and safety. Among other things, the controls prevent drink from being consumed in any shape or fashion at designated sports grounds for designated events. The designation of both the sports ground and the event is made by Scottish ministers.

Phil Gallie (South of Scotland) (Con): From John Swinburne’s contribution, the minister will know that, as a director of Motherwell Football Club, John Swinburne has open access to alcohol at any matches that Motherwell play. Surely the point is one of discrimination.

Mr McCabe: Even with the peculiar behaviour that exudes at times from the boardrooms of Scottish football grounds, board members are not yet guilty of fighting one another on the streets.

A decision was taken by ministers in May 2004 to retain the controls, on the grounds that the current arrangements have worked well and that they would continue to play an essential part in reducing drink-related disorder and maintaining public safety in and around designated events and grounds. Any relaxation would be entirely inconsistent with other key Executive policies.

Although the Nicholson committee suggested that a pilot scheme be set up, the suggestion was rejected following Scottish ministers’ careful consideration of the arguments for and against the retention of controls. The decision took into account our policies on alcohol misuse, health improvement, combating antisocial behaviour and maintaining public order and safety. We also took regard of the views that were expressed to and by the Nicholson committee and we consulted the police.

I remind members that the controls are very limited and very specific. The alcohol controls that were imposed under the 1980 act do not apply to non-designated events at a designated ground. For example, they do not apply to rugby league and non-international rugby union matches at Murrayfield or to American football at Hampden. As the Heineken cup final is a European rugby union club competition, it is not a designated event.

Local licensing boards also have the discretion to allow the sale of alcohol inside designated sports grounds for non-designated events. Advice from the police to licensing boards now routinely includes an assessment of the risk to public order and safety for each event or category of event. An example of that approach was the decision to allow the sale of alcohol at Murrayfield on last year’s BT cup final day.

In light of all that information, the obvious dangers and the very good reasons that lay behind the original introduction of the controls, I ask David Davidson to withdraw amendment 65.

The Deputy Presiding Officer: I call David Davidson to wind up and ask him to do so quickly.

Mr Davidson: I am grateful to those who see some merit in a pilot. If the minister were to look at the situation down south at rugby matches, club matches and so on, he would see that very few problems arise. The culture has been changed; at certain sporting events, people have shown that they can be responsible.

Perhaps the minister will acknowledge the fact that no difficulty has arisen at some of the non-designated games at which alcohol was available. I accept that real and practical research has to be done on the subject, but that is the reason why I call for a pilot. The issue is not simply one of moving a problem from the pub down the road into the ground; the measure would dilute the existing problem of people coming straight from a public house to a football match, for example. The minister’s blanket approach fails to recognise the fact that in parts of the United Kingdom the problem does not exist. Can we not have a pilot to examine it here?

17:00

The Deputy Presiding Officer: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Canavan, Dennis (Falkirk West) (Ind)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Leckie, Carolyn (Central Scotland) (SSP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilh, Mr Brian (Mid Scotland and Fife) (Ind)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Balancie, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Amendment 38, in the name of Fergus Ewing, is the only amendment in the group.

Fergus Ewing: Amendment 38 seeks to delete the fees provisions in section 127(1)(c), which were inserted following an amendment in the name of Paul Martin at stage 2 that was supported by all the Labour members of the Local Government and Transport Committee. That amendment stated that licensing boards would be able to charge fees "in respect of the recovery from particular licence holders of sums not exceeding any increase in the cost of providing public services (including policing) which is directly attributable to activities in, or in the vicinity of, or by customers of, or staff employed in, the premises in respect of which the licence is held."

There are two reasons why I opposed the amendment in committee and continue to oppose the measure now.

First, the measure is unenforceable, because it is impossible to interpret and implement. I understand Paul Martin’s motivation in lodging the amendment and I do not criticise him for doing so, but the scheme that he has devised would not work. How would one calculate the increase in the cost of providing public services? For example, on policing in the city centre, how would one calculate the increased number of police officers or ambulance staff required? On refuse collection, would one have to compute the additional volume of garbage that was left as a result of antisocial behaviour? After doing that calculation, one would have to decide whether it
related to one particular pub or to more than one and where the behaviour occurred, because the bill states "in the vicinity"—-[Interruption.] I hear a member's watch going off—one would have to set one's watch accordingly to do that computation. One would have to apply the total extra cost across an unspecified number of public houses or clubs in an area. A finance department that performed that task would require hundreds of staff, and there would have to be such a department for each licensing board. I submit that the measure is unenforceable. I know that Paul Martin received the same letter that I received from the Law Society of Scotland, in which it states views broadly to that effect.

Secondly, I argue against the measure because it is punitive, as public house premises and clubs pay the Exchequer substantial amounts of money through general taxation and, in particular, through non-domestic rates. Licensed premises pay high levels of non-domestic rates, and it is right that they should make that contribution, but if this extra cost is levied, premises will have to pay an extra tax—a Martin tax—which is a tax too far.

I therefore hope that, by my advocacy, I will successfully persuade members of the Executive parties to vote for amendment 38, in my name. I hope that they will take pleasure in that act.

I move amendment 38.

Paul Martin: Amendment 38 seeks to delete an amendment in my name that was agreed to at stage 2 in relation to the recovery of public service costs. I make no apology for that amendment. Fergus Ewing is concerned about business tax payers—I, too, am concerned about them, but I am also concerned about council tax payers, who, indirectly and directly, have to meet increased policing and other public service costs. I make no apologies for raising the issue, which I believe we must tackle soon.

I accept that the recovery of costs would present difficulties. However, under section 127, the ministers must enable the fees process, so they would have the opportunity to devise a recovery process. I do not seek to lay out exactly how the measure would work in practice, but I want members to accept the principle that local residents and business tax payers who are not a burden on policing costs should not have to pick up increased policing costs. In my stage 2 amendment, the approach that I proposed was not a blanket one, but one that would deal with premises that encourage antisocial behaviour in local communities. Let them, not law-abiding citizens and businesses in local communities, pay for the policing and other service costs.

Mr Arbuckle: Good law is law that can be enforced, but section 127(1)(c) would be difficult to enforce. As Fergus Ewing said, there are myriad complexities that would make the measure difficult to implement. Local businesses already pay taxes and, rightly, expect to benefit from public services. I have a degree of sympathy with Paul Martin's thoughts, in so far as he suggests that, as with planning gain, people can benefit from what is really licensing gain. However, I support Fergus Ewing's proposal.

Mr McCabe: Fergus Ewing's amendment 38, which Andrew Arbuckle supports, would remove a provision that was inserted at stage 2 to give ministers the power to make regulations to allow boards to recoup increased public service costs from licensees through fees. As we said at stage 2, we have sympathy with the concerns that have been expressed about the increased costs relating to licensed premises that are placed on our public services. I know that Paul Martin made his proposal with the best of intentions. However, it is important to stress that the amendment that he inserted at stage 2 would be difficult to implement in practice, as it would be difficult to assess any directly attributable increase in costs to specific licensed premises or to quantify the public service costs that would be recouped.

Aside from the practical difficulties of implementing the measure, it would not sit well with the bill's overall objectives of, first and foremost, preventing undesirable activities that result in an additional load on our public services. The bill will tackle directly the problems that cause crime and nuisance and which are therefore a burden on our public services. The new monitoring and enforcement regime will require licensees to take early action to address problems that are associated with their premises. Where such action is not taken, boards may decide to review the licence and apply a wide range of sanctions. Ultimately, the licence can be revoked. Licensees of problem premises are far more likely to be pressed into action to help to resolve problems by the threat of long-term curtailment or removal of their licence than they are by a one-off charge.

In addition, Pauline McNeill's amendment 6, which will require late-opening premises to be subject to mandatory national licence conditions, is likely to mean the imposition of increased costs on licensees, through the provision of door staff and CCTV systems, both of which will offer support for local police.

With that said—and firmly on the basis that one should never say never in this life—I propose to support Fergus Ewing's amendment 38.

The Deputy Presiding Officer: I am sure that that calls for a wind-up by Fergus Ewing.

Fergus Ewing: I must admit that I thought that, latterly, the minister was at his most persuasive.
I will briefly point out that there is an argument—it was drawn to my attention by Gordon Millar, although I should perhaps have thought of it myself—that premises that are not operated responsibly should not be allowed to continue.

Paul Martin: Will the member give way on that point?

Fergus Ewing: If I may finish the argument, I will certainly give way if I am permitted to do so.

If premises are not operated responsibly, they should not be allowed to continue. If we agree that premises may operate irresponsibly but must pay extra for doing so, we will be tolerating that irresponsibility. Surely all of us, including Paul Martin, can unite behind that principle.

Paul Martin: I use the analogy of the professional football clubs, many of which contribute to policing costs. Measures that aim to prevent antisocial behaviour—they do not necessarily need to deal with the results of antisocial behaviour—also have a cost.

Fergus Ewing: Paul Martin may use that analogy, but I do not believe that it is directly applicable. We are talking about people who are not enclosed in a football ground but roaming around city-centre areas where there are many different public house premises.

I am delighted that the Parliament will unite behind my amendment, and I look forward to many repeat occasions.

Amendment 38 agreed to.

Section 128—Inspection of premises before grant of licence etc

Amendments 39 and 40 moved—[George Lyon]—and agreed to.

Section 136—Orders and regulations

Amendments 66 and 67 moved—[Bristow Muldoon]—and agreed to.

Section 137—Interpretation

The Deputy Presiding Officer: Group 17 is on the definition of capacity. Amendment 41, in the name of the minister, is grouped with amendments 42 to 47.

George Lyon: Amendments 41 to 47 further refine the definition of capacity that was inserted into the bill at stage 2. Information about capacity is required to be included in operating plans and boards must take capacity into account in their assessments of overprovision.

The amendments in this group will ensure that if an operating plan delimits areas of hybrid premises as being exclusively for either on-sales or off-sales, the appropriate part of the definition of capacity will apply to each area of the premises. The amendments will remove the anomaly in the bill whereby hybrid premises would be judged only on their on-sales capacity. That would be inappropriate in some circumstances, such as for supermarkets that have a small cafe selling alcoholic beverages but also offer extensive off-sales.

I move amendment 41.

Amendment 41 agreed to.

Amendments 42 to 47 moved—[George Lyon]—and agreed to.

Section 138—Index of defined expressions

Amendments 48 and 49 moved—[George Lyon]—and agreed to.

Schedule 2

LOCAL LICENSING FORUMS

The Deputy Presiding Officer: Group 18 is on the quorum for local licensing forums. Amendment 50, in the name of the minister, is the only amendment in the group.

Mr McCabe: At stage 2, members of the Local Government and Transport Committee expressed concern that the bill sets a quorum for licensing boards but contains no similar provision for local licensing forums. The issue was also brought to our attention by the clerk to the city of Glasgow licensing board. Amendment 50 will address those concerns by establishing that “The quorum for a meeting of a Forum is one half of the number of members (but in any case not fewer than 3)”. I move amendment 50.

17:15

Mr Davidson: I support the amendment. Many of the committee’s concerns were about true representation across an area. It is important that the public knows that it has a largish forum with many members present and voting. That is very positive for local democracy.

Amendment 50 agreed to.

Schedule 3

PREMISES LICENCES: MANDATORY CONDITIONS

The Deputy Presiding Officer: Group 19 is on licensing conditions and licensed hours. Amendment 51, in the name of the minister, is grouped with amendments 52 to 54.

George Lyon: Amendments 51 to 54 are technical amendments to schedules 3 and 4. The operating plan or occasional licence must state the
times during which alcohol is to be sold on a premises. The amendments clarify the position to the effect that the mandatory condition that alcohol must be sold only in accordance with the times stated in the operating plan or licence, as the case may be, does not itself preclude the activities that are specified in section 59(2) relating to the sale, consumption, and taking away of alcohol outwith licensed hours. Amending the bill in this way makes clear the relationship between section 59(2) and the hours stated in the operating plan or licence. The amendments are not intended to affect the boards’ power in any particular case to impose an extra condition on a licence under section 25(4) to restrict any of the activities mentioned in section 59(2).

I move amendment 51.

Amendment 51 agreed to.

Amendment 52 moved—[George Lyon]—agreed to.

The Deputy Presiding Officer: Group 20 is on the pricing of alcohol. Amendment 68, in the name of David Davidson, is grouped with amendment 70.

Mr Davidson: Amendment 68 seeks to remove the provisions on non-differential pricing that keep the price of alcohol at a certain level for 72 hours. The Executive said that such a scheme has been piloted in Glasgow and that it works. However, we have not seen much evidence of that. Moreover, Glasgow operates only a 24-hour limit on pricing.

The provisions in the bill unfairly restrict trade and unfairly penalise responsible drinkers such as old age pensioners, who may lose their nip and a half of an afternoon. In evidence to the Local Government and Transport Committee, the National Union of Students Scotland said:

"we do not wish to see new laws that unfairly penalise student associations in favour of big pub chains or nightclubs. For example, for a nightclub that opens only between 10pm and 2am, the 48-hour rule represents a short period of time ... A nightclub can afford to have a two-day promotion and target the student market because it will make up the money at the weekend, whereas a student association cannot afford to do that."—[Official Report, Local Government and Transport Committee, 12 April 2005; c 2306.]

Therefore, there is concern that the policy will be completely ineffective in stopping binge drinking, because it will encourage off-sales—and it is the off-sales sector that causes the major problem, particularly among our young people.

I move amendment 68.

Mr McCabe: Amendments 68 and 70, in the name of David Davidson, seek to remove the mandatory licence conditions for premises and occasional licences that establish a non-differential pricing policy requiring licensees to adopt the same price for alcohol for a minimum of 72 hours.

I strongly oppose the amendments and hope that the Parliament shares my view. The need to tackle irresponsible promotions and the problems that are associated with them is central to the policy objectives of the new licensing system. That was supported by the Local Government and Transport Committee and by many of those who gave evidence. I am shocked that the Conservatives would even consider such amendments, particularly in the light of the information that alcohol-related deaths have risen exponentially. Our society is suffering from a real problem with binge drinking.

We recognise that not all alcohol promotions are irresponsible and that most licensees act responsibly in running their businesses. However, the undesirable consequences for health and society of the binge and underage drinking that can be encouraged by irresponsible promotions are widely recognised. We need to take firm action to stop the terrible effects that they are having on individuals and on our communities. That is why we oppose amendment 68.

Mr Davidson: In effect, the minister has gone down my line of argument about forcing people away from licensed premises, where they may drink socially and responsibly under the care and guidance of responsible property owners, staff and management, to off-sales. That is what will happen. If a new product is promoted in a way that is responsible and that the landlord is happy with, I do not understand how that will encourage binge drinking. The landlord is not going to encourage binge drinking, because that would affect his licence. There will be a responsibility on the premises owner to manage any such promotions on a reasonable basis while retaining some competitive edge.

In the case of bad premises that are not managed correctly, I would support the minister totally in ensuring that the people concerned have difficulty in getting their licence extended or even holding on to it. However, the Executive is tarring everybody with the same brush. It is taking the vast majority of the people concerned down a road that they probably do not want to go down. If licensees had such promotions, they would not cause any more problems. The problems can often start in the off-sales sector.

The Deputy Presiding Officer: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
Motion moved, That the Parliament agrees that decision time be taken at 6.15 pm.

Motion agreed.

The Deputy Presiding Officer: Group 21 is on irresponsible drink promotions. Amendment 69, in the name of David Davidson, is grouped with amendment 71.

Mr Davidson: Given what has been going on in the Parliament, I will not press the matter.

Amendment 69 not moved.
Schedule 4

OCCASIONAL LICENCES: MANDATORY CONDITIONS

Amendments 53 and 54 moved—[George Lyon]—and agreed to.

Amendments 70 and 71 not moved.

Schedule 4A

APPEALS

Amendment 55 moved—[George Lyon]—and agreed to.

Schedule 5

REPEALS

The Deputy Presiding Officer: Group 22 is on repeals. Amendment 56, in the name of the minister, is grouped with amendment 57.

George Lyon: Executive amendments 56 and 57 are technical amendments. As a consequence of the repeal, for Scotland, of the Licensed Premises (Exclusion of Certain Persons) Act 1980, we have had to make some consequential repeals for Scotland. The equivalent repeals for England and Wales will be made under the Violent Crime Reduction Bill, which provides for the repeal of the 1980 act for England and Wales.

I move amendment 56.

Amendment 56 agreed to.

Amendment 57 moved—[George Lyon]—and agreed to.

Licensing (Scotland) Bill

The Deputy Presiding Officer (Murray Tosh):

The next item of business is a debate on motion S2M-3437, in the name of George Lyon, that the Parliament agrees that the Licensing (Scotland) Bill be passed.

Bill Aitken (Glasgow) (Con): On a point of order, Presiding Officer. I seek your guidance. At the conclusion of the debate, will the division bell be rung or will we proceed straight to the vote?

The Deputy Presiding Officer: I understand that it has been agreed by the business managers that it will not be necessary to ring the division bell. Therefore, it will not happen.

17:25

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): I thank all those who have contributed to the development of the bill. I thank my predecessor Tavish Scott, who led the bill on introduction and through a successful stage 2, and the Local Government and Transport Committee for its thorough scrutiny of the bill, culminating in its detailed stage 1 report. I hope that the committee will recognise that we have worked hard to address its concerns and comments. We responded with a number of amendments and I hope that everyone will agree that we have worked together to try to strengthen the bill.

Although there have been disagreements—notably today—I am confident that there is a strong consensus throughout most of the parties in favour of what we are trying to achieve through the bill. I thank all those who responded to the consultations that were undertaken by the Scottish Executive and the Parliament, particularly members of the licensed trade organisations and others who have offered their time freely and consistently over the past three years, with the aim of ensuring a better end product for us all. I certainly enjoyed some hospitality and interesting experiences as I engaged with the various trade organisations. I listened to the concerns that they had about various matters, because when the bill is voted through, the trade, customers and communities have to live with the consequences of what we decide.

I advise the Parliament that Her Majesty, having been informed of the purport of the Licensing (Scotland) Bill has consented to place her prerogative and interests so far as they are affected by the bill at the disposal of the Parliament for the purposes of the bill.

Mr John Swinney (North Tayside) (SNP): Hear, hear.
George Lyon: I thought that would please some members.

In the short period for which I have been responsible for licensing, I have been committed to taking forward this reform and I remain so. I believe that Scotland deserves a licensing system that meets both the needs and the expectations of our society today. I am sure that everyone here agrees.

The new licensing system that we are proposing will contribute to a safer and stronger Scotland for all of us, by helping to break the link between excessive drinking and crime, and will lay a foundation for and support our wider agenda of tackling the problems that are associated with under-age and binge drinking.

The bill introduces a system that will support and protect responsible traders and their communities. Licensing boards and the police will be empowered to deal with those who abuse the system. That will provide strong protection for those who are affected by the problems that are associated with alcohol misuse, whether local residents, police or the licensed trade.

The bill sets a foundation for what we want to achieve. It will not tackle all the problems in isolation and it would be unrealistic to expect that. It is just one part of the devolved Government's commitment to tackling the problems that are caused by the Scottish attitude to alcohol.

We are also working on much wider fronts, through the plan for action on alcohol and the measures that we have taken against antisocial behaviour. Of course, successful outcomes will be dependent on licensing boards exercising their powers in an appropriate way. As part of the implementation of the new regime, boards will be provided with guidance to ensure they act in a strong and consistent manner.

I was disappointed that the Parliament was not willing to trust boards in the entirety of the decision making that we had intended for them. Boards will be able to deal with problems as and when they arise and, importantly, for the first time, they will be able to take swift and effective action against anyone who breaches their licence conditions or fails to act in accordance with the five overarching licence objectives that are set out in the bill. Restating those objectives—which are at the very heart of the system—is worth while, and I am sure that my colleague Tom McCabe will dwell on them in his winding-up speech. The licensing objectives are to prevent crime and disorder, to secure public safety, to prevent public nuisance, to protect and improve public health, and to protect children from harm. I hope that all members have signed up to those principles.

The local discretion that boards will be given will be balanced by two things—a clear and effective mandatory national framework and local communities' empowerment to comment on policies and to object to licences. Communities being firmly involved in the process of granting licences and boards having to take account of local communities are important principles. Even after a licence has been granted, communities will still have the power to ask boards to review it if there are unforeseen problems.

Enforcement is important. Of course, a system can be successful only if it includes an effective and robust monitoring and enforcement system that encourages those who manage it, and such a system is provided for in the bill.

The bill sets out important new powers to tackle binge drinking and irresponsible promotions. All of us have seen and recognise the problems that result from binge drinking in our constituencies and the potentially harmful effects of such irresponsible behaviour on the health of individuals are well documented.

The bill also focuses on protecting children and tackling under-age drinking. Most of us understand that it is preferable for young people to be introduced to alcohol by their parents in a responsible and gradual way, but the availability of alcohol to children and the growing amount of evidence that children who are sometimes as young as 12 or 13 are drinking regularly and often to excess is a concern.

I sincerely hope that everyone shares the Executive's commitment and ambition to tackle the problems that I have described. I am confident that the bill will make a considerable difference to ordinary people's lives and that it will put in place a licensing system in which all of us can have confidence.

I move,

That the Parliament agrees that the Licensing (Scotland) Bill be passed.

17:32

Bruce Crawford (Mid Scotland and Fife) (SNP): I say to the minister and to the Executive that the exchanges in the Local Government and Transport Committee during the bill's progress led to many valuable lessons being learned on both sides, and that the bill was improved as a result of those discussions. However, there are issues that I want to raise to ensure that they are recorded in the Official Report.

First, I want to consider the national licensing forum and the way in which it was established and people appointed to it. No one can doubt that the forum has created considerable difficulties for the trade, particularly the on-licence trade. People do not feel that they are adequately represented on
the forum, so I hope that the minister will re-examine the matter at some stage. There is an opportunity to make the forum more inclusive.

George Lyon: I accept Mr Crawford’s point, but I also hope that he acknowledges the undertakings that I gave him during stage 2. Appointees to the national licensing forum are there to provide their personal knowledge in order that the forum can develop policy. I stated that once the two-year period is complete, ministers will decide on the forum’s continuation and new members will be appointed. Issues that Mr Crawford has raised to do with representation can be addressed then.

Bruce Crawford: I fully accept what the minister says about what he told me at stage 2, but the real issue now for the trade is that it needs to be in the door and able to influence the process when the new information, guidance and material are issued to the licensing boards. However, the trade does not feel that it is part of the process in the way that it should be. That matter needs to be re-examined.

There are also issues to do with licensing standards officers that must be considered in the future. How much will licensing standards officers cost the trade? At the end of the day, all the costs will be passed on to the trade. We have not worked up as good a position on that as we might. Licensing standards officers will be involved in mediation and enforcement, where required, but how many will we have per local authority; what will be their job description—what are they actually going to do—and what will be the real costs that the industry will have to bear? We must find ways to ensure that those costs are kept to a minimum.

There are several issues that I would like to touch on, but I have only five minutes. I will, therefore, return to some of the fundamentals in the bill, which are of real concern. As far as the Scottish National Party is concerned, those concerns relate to the off-licence trade. We saw what happened earlier as the Executive tried to dig itself out of one hole but appeared to fall into another. We have a workable solution, however, in amendment 64A, which was lodged by Frank McAveety. I am pleased to say that the Executive has adopted the position of the SNP in that regard and will be a lot more restrictive in respect of the operation of off-licences.

Brian Montelth spoke about what is happening in England; however, the information that he has is not the same as the information that I have. I am told that about 700 premises, including supermarkets, have been granted 24-hour licences and that the figure will soon be 900 premises. The real issue is the culture that is created through extension of licensing hours. About 200,000 premises have applied for extensions because of that culture.

Tommy Sheridan (Glasgow) (SSP): Will the member give way?

The Deputy Presiding Officer: The member is in his last minute.

Tommy Sheridan: Does Bruce Crawford agree that 1,000 premises in England getting 24-hour licenses would be the equivalent of 100 premises in Scotland getting those licences, which is unacceptable and would create an unacceptable culture?

The Deputy Presiding Officer: Very quickly.

Bruce Crawford: I accept the member’s point.

The issue of 24-hour opening is a fundamental stumbling block to the SNP’s being able to support the bill. We had hoped to persuade the Executive of the error of its ways on 24-hour opening: all the statistics prove that it is not the right direction in which to go. We are fundamentally opposed to 24-hour opening—or opening for 23 hours and 59 minutes, to be pedantic. The SNP cannot support the bill, even though it has some good bits, because of the Executive’s intransigence on that matter.

The Deputy Presiding Officer: It might be helpful if I say before I call the next member that the debate is heavily oversubscribed. We will not be able to call everyone who wants to do so to speak, and those who are called should make their comments as brief as possible in the interests of other members.

17:37

Mr David Davidson (North East Scotland) (Con): I thank the clerks and the committees for their work in dealing with the bill on its way through the committee stages. However, we have problems with the bill, the trade has problems with the bill and many genuinely responsible people in Scotland have problems with the bill. Most important is that the bill does not sufficiently address the problems of underage drinking and the youth overindulgence that leads to antisocial behaviour. The ministers have produced what appears to be a bit of a guddle. The Labour party is split, there is a split between the Liberal Democrats and the Labour Party and so on. That was not a good start for the final stage of any bill.

I am not convinced that the bill will deal with the problem of underage drinking, which is an enormous problem in Scotland. I will not repeat the statistics.

Bristow Muldoon (Livingston) (Lab): I ask Mr Davidson to expand on the measures that he thinks should have been in the bill to deal with underage drinking.

Mr Davidson: I tried to have a responsible discussion when I joined the Local Government
and Transport Committee. The fundamental issue is that we do not support the principle of making alcohol available 24 hours a day in the way that has been discussed and which could occur under the bill.

The bill does not address the problems of the trade. It presumes that the on-sales trade is where all the problems must be solved, but does nothing much about off-sales, although the police and social workers tell us that that is where the bulk of the problem lies. We supported Frank McAveety’s sensible amendment 64A. We have to take a responsible stance.

We must draw a line in the sand and say that enough is enough. We must deal with the problems in society, which do not all arise from on-sales premises. Stiffening up the rules for on-sales premises is fine to a point, but it is almost restrictive of trade and does not offer choice. However, the bill does not deal with the fundamental issue of how young people in our society get their hands on alcohol. I will not go through all sorts of statistics because I do not see much in the bill that will do anything about changing that culture.

My proposition for sports grounds was based on the arguments that have been used in other parts of the United Kingdom. Some problem matches occur; I have no difficulty with their being dealt with through agreements between chief constables, licensing boards and the owners and managers of grounds. I tried to persuade the Local Government and Transport Committee to accept an amendment to that effect, but it chose not to accept it. I thank the Deputy Minister for Finance, Public Service Reform and Parliamentary Business for accepting my amendment to increase the size of local licensing forums, because that will improve democracy and accountability.

The licensing standards officers issues are unclear. Their role is not spelled out in the bill; it does not define clearly what they will do. That is policy being made on the hoof.

The bill contains some good measures, but we cannot support it. The Executive could have done better.

17:41

Bristow Muldoon (Livingston) (Lab): The response of the two Opposition parties to the bill is disappointing, because the Executive and Parliament have taken on board at stage 3 most of the issues that the Local Government and Transport Committee and other members raised.

The bill will establish a licensing system that is fit for the 21st century. That system will be built on five basic principles: preventing crime and disorder; securing public safety; preventing public nuisance; protecting and improving public health; and protecting children from harm. It is unfortunate that much of the debate today has concentrated on the small number of remaining contentious issues, but the bill has many positive aspects that most parties can unite behind.

First, everybody acknowledges that the licensed trade plays an important role in many people’s social lives. Responsible drinking can be part of a healthy and enjoyable social life. Alcohol production is a major employment sector and one of our largest export industries. However, we must also acknowledge the undoubtedly negative role that alcohol plays in our society in relation to crime and disorder and Scotland’s overall poor health record.

The bill tries to achieve the right balance between people’s ability and right to consume a legal product and the industry’s right to pursue its business, and the societal problems to which I referred. Among the measures that will achieve that balance are the enhanced rights for individuals and community groups to make representations to licensing boards about decisions on licences, the improvement to how licensing boards can define and deal with overprovision, and the introduction of licensing standards officers, who will ensure compliance with licence conditions. The bill will enhance the quality of licensed premises throughout Scotland and will require licensees who intend to allow children in their premises to meet higher standards in their facilities.

The bill seeks to address binge drinking through new controls on irresponsible promotions and will introduce a considerable number of tighter measures to tackle underage sales. I was particularly disappointed that David Davidson criticised that aspect of the bill, but came up with no alternative ideas.

I commend my colleagues Paul Martin and Michael McMahon for lodging several important amendments that addressed concerns about antisocial behaviour and which closed loopholes in the existing legislation.

I will talk finally about opening hours for off-licences, which took up much of today’s debate. Some of the misrepresentation on that issue damaged the concept of the new consensual politics in which Parliament was envisaged to engage. Without reopening that debate, I give due credit to my colleague Frank McAveety, who managed in a short speech to engage the support of his old sparring partner, Tommy Sheridan, as well as that of the Tories and the SNP, for the position that Labour advanced. Perhaps the new politics is not dead.
The bill as amended strikes a sensible balance between competing priorities and objectives and gives Scotland a licensing system that will be fit for the 21st century.

17:45

Donald Gorrie (Central Scotland) (LD): We have made a lot of progress as a result of the bill. When I asked questions about licensing during the first year of Parliament, I was told that there was no intention to do anything about it. The pressure that a number of people within and outwith Parliament brought to bear persuaded the Executive to set up the Nicholson committee, which produced a good report that was the foundation of the bill.

The fundamental point is that there should be local democratic decision making. I accept that we are placing a lot of weight on licensing boards. We must really stiffen their sinews and improve their intelligence and so on so that they can respond to local opinion and so control licensing.

We must change the culture. A bill cannot do that, but it may contribute. In particular, we must get a firm grip on underage drinking. There are one or two measures in the bill that will help, but we must probably do more about the problem.

There was discussion of 24-hour and 18-hour licensing. A person who asked any decent licensing board for a licence for 23 hours and 59 minutes would promptly be shown the door.

The way amendments appeared, how the debate proceeded and the time limits to which we were subject showed that we need to take a very serious look at our procedures prior to and during stage 3. I hope that members will co-operate in re-examining that subject.

The Deputy Presiding Officer: I would like to clarify the position regarding the division bell. The bell will be rung at 5 past 6 and at 10 past 6, in advance of decision time, which has been moved. Business will not be suspended during that period.

17:49

Mr Stewart Maxwell (West of Scotland) (SNP): I agree that the bill should be a balancing act between the right of the law-abiding majority to enjoy a peaceful, quiet drink and the right of the same law-abiding majority to be protected from the minority who abuse alcohol and behave in an antisocial manner. That is why I am especially pleased by the changes that have been made to the restrictions that have been placed on off-sales’ opening hours. That was the right way to go. However, I am equally disappointed by the decision that the Executive and others took to vote down restrictions on on-sales. Effectively, it will be possible for pubs and other places to open for 24 hours.

My view is that we have gone far enough in liberalising our laws on access to alcohol and I would prefer us to go no further. I have a simple and clear reason for holding that view, and that is the international evidence on what happens when alcohol is made more widely available. The amount of alcohol abuse increases, as does the suffering that individuals, families, communities and society have to endure. Alcohol abuse drains
the resources of our health service and our justice system. Members who do not believe me should visit a city centre on a Saturday night or visit a hospital ward and ask the staff what happens.

Exceptional circumstances were mentioned several times, but is the Celtic Connections festival an exceptional circumstance, given that it is on for three weeks? The world cup is on for four weeks. Is that an exceptional circumstance? The number of premises open for extended hours has crept up. In 1980, there were 358 deaths in which an alcohol-related condition was recorded as the underlying cause of death. In 2003, there were 1,353 such deaths. That represents a 278 per cent increase in a generation. That is what happens when we liberalise licensing laws.

In 2004, the World Health Organisation published a document called “What are the most effective and cost-effective interventions in alcohol control?”. It states:

“There is substantial evidence showing that an increase in alcohol prices reduces consumption and the level of alcohol-related problems ... In addition, stricter controls on the availability of alcohol, especially via a minimum legal purchasing age, government monopoly of retail sales, restrictions on sales times and regulations of the number of distribution outlets are effective interventions:’

The Deputy Presiding Officer (Trish Godman): You must finish now, Mr Maxwell.

Mr Maxwell: Evidence from around the world shows what works, but we are too cowardly to accept it.

I will not and, in conscience, I cannot vote for the liberalisation of drinking in Scotland. Drinking causes misery throughout the country. The changes will cause more misery and I will not support them.

17:51

Patrick Harvie (Glasgow) (Green): It has been an interesting afternoon. There is a lot that I can support in the bill and a lot that I am comfortable with. We all acknowledge that alcohol causes significant problems in Scotland, but our debate had an uncomfortably puritanical tone. Journalists who are keen to fill the Sunday supplements recently described the Greens as the new puritans, although personally I would be far more comfortable to recast ourselves as the new hedonists. Many MSPs—I will not say most—will spend part of the evening in a licensed premises. They will be in a pub or a bar or at a reception. I wonder how many of them will discuss, over a glass of wine or beer, the need to protect the public from alcohol.

We should address the issues of responsibility. People use the term “responsible drinking”, but I prefer to place responsibility firmly and squarely with the corporate sphere. When our drinking culture began its transition towards chain pubs and mega-pubs, global companies gained a huge amount of power. Jeremy Purvis was the first to mention power and the desire to empower local communities, but it is the corporate giants who have the power at the moment. The popularity of lager is a direct result of heavy marketing. Lager is quicker and easier to drink and the corporate giants decided that promoting lager would enable them to sell more alcohol.

Responsible selling should be a priority as well as responsible drinking. I regret that the bill does not go down that route and I also regret that it does not place power firmly with local communities, as Andrew Arbuckle wanted. I would have supported that. On balance, the bill contains enough good stuff for the Greens to support it tonight.

17:53

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I have long supported the reform of our licensing laws and I support most of the bill that is before us today. However, I want to put on the record my considerable concerns about the tone of much of today’s debate and about some of the outcomes.

For about five years we have been having, on the whole, a considered and informed debate about our licensing laws. However, it will not go unnoticed that, in the last few minutes of the decision-making process, key decisions were governed not by the rational and measured approach of much of the debate that has led up to today, but by an eleventh hour bidding war that was governed more by raw party-politicking on all sides than by evidence or thoughtful and mature reflection. We will be judged accordingly on that.

We must address certain procedural issues. In that respect, I wholly support Donald Gorrie’s comment that we have to look again at how we deal with decision making at stage 3. Moreover, we need to consider various political issues. The combination of poor procedures, poor politicking and indeed poor politics is a recipe for poor law.

We have made a substantial shift on opening hours at the 11th hour. The minister said earlier that that will come as a surprise to the licensed trade; I suspect that the changes will also come as a surprise to the public. I wonder whether, in his closing remarks, the minister will tell us how many licensed premises will be affected by the change and how he will find out—retrospectively, as it might well be—what impact it will have.

I share some members’ concerns that changing the culture is a much more complex process than has been suggested and I worry that we have
detected from what could be a considered debate. If we are to earn the public’s respect, I hope that in future we will work to do better.

The Deputy Presiding Officer: We move to wind-up speeches. I call Andrew Arbuckle. Mr Arbuckle, you have a tight four minutes.

17:56

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): The mark of any new legislation is whether it improves our society, and I am confident that the Licensing (Scotland) Bill will achieve that aim.

The bill will allow local flexibility in dealing with licensing, with locally elected boards bearing the responsibility for delivering appropriate licensing decisions. Devolving such decision making is a courageous and correct step, although I am sorry that the Parliament felt unable to support fully the devolution of decisions on off-sales premises.

There is no denying that Scotland has had a troubled relationship with alcohol. For centuries, it has featured highly in our society and, as members have acknowledged, it has cost many millions of pounds in dealing with health problems and untold sums in human misery.

Today, the important issues are how we live and deal with alcohol and how we improve our society and our country’s health, which is why it has been necessary to move away from the old Licensing (Scotland) Act 1976. With this new legislation, the public will get a far more professional approach to dealing with local licensing issues.

Unfortunately, a few members today have tried to get headlines out of the possibility of 24-hour licensed drinking hot spots and the accompanying problems of people drinking too much alcohol. I say to those members that they should read the legislation and not try to write headlines. The bill says:

“The Licensing Board must refuse the application unless ... there are exceptional circumstances.”

I am happy that the locally elected licensing board will determine the opening hours of on-sales premises. It is not right for the Government to issue a diktat on what are or are not the most appropriate licensing hours for premises. After all, we do not know local circumstances, local work patterns or the many social factors that will contribute to the licensing boards’ decisions. As a result, our legislation should not be prescriptive.

I particularly welcome the establishment of local licensing forums, which will play a significant role in local democracy by keeping members in contact with local views.

My views on the bill were shaped, initially, by observing how my local councillor colleagues were coping with the inadequacies of the 1976 act and, subsequently, by the many positive and constructive comments that I have heard in my short time on the Local Government and Transport Committee. I have found the largely consensual approach to bringing forward this bill very helpful.

I am sure that Scotland now has legislation that is suitable for the 21st century; that exercises the correct degree of control over alcohol sales; that contains safeguards for wider society; and that does not infringe the freedom of the individual.

17:59

Bill Aitken (Glasgow) (Con): This has not been the Parliament’s finest hour. Indeed, the Evening Times headline writer showed a remarkable prescience in writing, “Licensing Shambles As MSPs In Disarray Over 3am Opening”. Quite frankly, what happened at the start of this afternoon’s stage 3 proceedings was little short of a disgrace. If the Executive cannot get its house in order prior to a stage 3 debate, and if it gets itself into all sorts of chaos and mayhem, that is a matter for the Executive, but when it starts inflicting mayhem and chaos on the rest of us, I reserve the right to complain.

George Lyon: Talking of mayhem and chaos, what has been happening over the past couple of weeks in the party to which Mr Aitken belongs?

Bill Aitken: That is a typical cheap shot from George Lyon, the man who was in charge of the bill and who has reduced this afternoon’s parliamentary procedure to a laughing stock—a man who must start looking over his shoulder if his ministerial career is not to come to an abrupt end.

Returning to stage 3, there are some things in the bill with which we agree. In fact, there are quite a number of aspects of it that we regard as totally acceptable and progressive. However, there are a number of things that are not in the bill that should be there.

We all know that underage drinking is a major issue in Scotland. I know from experience and observation that the issue is not about a 17-year-old going into a pub for half a pint, or even a pint of lager. The real problem arises in off-sales, where a small minority of irresponsible shopkeepers are prepared to sell drink to youngsters well below the age of 18, and we see the consequences that befall some of those kids in the streets.

Although I welcome the fact that those committing such an act are now liable to custodial disposal, I do not anticipate that such a sentence is likely to be imposed all that often. Should we not have included in the legislation—I put the idea forward as a constructive
suggestion—ways in which there could be an immediate suspension of the licence where someone is found to have sold drink in such a situation? What concentrates the minds of those involved is the prospect of immediate closure and loss of revenue, so that is what we should be doing.

However, our principal objection is to 24-hour opening and the uncertainties that surround that. How do we define an exceptional circumstance? Is it the world cup final, a local festival or George Lyon’s birthday? There is nothing in the bill that enables licensing boards to make a proper, reasoned interpretation. We recognise that we have a problem with the general attitude to drink in Scotland, but the prospect of 24-hour opening will fill many people living in Glasgow with some degree of horror. That is why we were enthusiastic about getting the Executive’s coals out of the fire by voting for the two amendments that sought some mitigation of the damage that 24-hour opening could cause.

At the end of the day, however, it has been a total, utter and complete shambles. The Executive failed to introduce a proper bill, it failed in its business management and the minister responsible, George Lyon, should be considering his position.

18:03

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): It is undoubtedly the case that the majority of disorder and violent crime in Scotland is related to the excessive consumption of alcohol, and it is salutary to remind ourselves that, between 1980 and 2003, 3,000 licensed premises—an increase of a fifth—were created in Scotland. As Stewart Maxwell has said, consumption of drink is increasing, and the rise in violent crime concerns the police and concerns us all.

The Scottish National Party’s position, as exemplified by what we have said and done, has been entirely consistent throughout. We have argued from the simple standpoint that if we make it possible to have even longer opening hours than our already very long opening hours, that will lead to one of two outcomes: the possibility of more crime or the probability of less crime. I think that it will lead to the former. It must be the former. All the evidence shows that that will be the case. That is why we pursued a consistent position, and that is why the Local Government and Transport Committee’s stage 1 report stated:

“As an alternative, the Committee was attracted by the suggestion made by Sheriff Principal Nicholson that 18 hours might be a more appropriate cut-off point.”

That was the provenance of the 18-hour provision. It was not something that we picked arbitrarily; it came from the years of work of Sheriff Principal Nicholson and his committee. Members of the Local Government and Transport Committee put in hundreds of hours of work and came to a consensus, but over the past 72 hours the Executive has vacillated and moved from one position to another, to the extent that the minister was not even able to tell us what his position was—he could not tell us of which particular hole he was temporarily the occupant.

The disservice that has been done today has not been done by Parliament or by MSPs; frankly, it has been done because there was a split among those who are in charge of the two components of the Executive. That is the reality, and I contend that the impact that that has had on Parliament is such that, as Bruce Crawford said, there has been a boorach. To put that a different way, as Susan Deacon perhaps implied, we have been denied the opportunity of giving proper, full, thorough and lengthy consideration to the various options that were available today. Those options should have been put to the Local Government and Transport Committee.

As the Scottish Licensed Trade News stated, the industry made huge attempts to persuade the civil servants who advise the ministers of the soundness of its case with regard to 20-hour opening. The civil servants said, “No chance”—but there was a chance, so the advice that was given was wrong. That, of course, is the responsibility of the ministers.

In conclusion, there is total conflict, paradox and contradiction in, on the one hand, the Executive’s apparent concern for health, which has meant that smoking in public places has been subject to a total ban, and, on the other hand, its passing of legislation that will permit the extension of drinking hours. It is by no means to make a pedantic or a legal point to identify what section 60 says. I am afraid that Mr Arbuckle is wrong, because section 60 makes it clear that any applicant can go for a licence for 22 or 23 hours and the proviso about exceptional circumstances will not apply—it will apply only if the application is for a 24-hour licence. The law will provide no protection against the issuing of such licences. In passing a law that will allow more and more drinking and will create the possibility of more crime being committed, the Executive is making a grievous error. That is why the SNP will be consistent with the position that it has adopted from day one and will vote against the bill.

18:08

The Minister for Finance and Public Service Reform (Mr Tom McCabe): We have had an in-depth debate on a highly sensitive and important subject, which has touched a raw nerve with many
people. Many members have reflected genuine concerns that the communities that they represent have expressed to them. That is one of the reasons why the debate has been a good one. Many of the points that have been made have shown the Parliament in its best light.

However, a number of things have been said as part of an attempt to scaremonger or to cut out political space for political parties. I repeat that the bill will mean that under no circumstances will 24-hour opening be routinely accepted in Scotland. Under no circumstances would I as an individual or on behalf of the Scottish Executive promote a bill that would result in 24-hour opening in Scotland. No matter how much Bruce Crawford and his colleagues try to pretend otherwise, we will continue to make that case. The bill will mean that we are able to point out to people that there is a statute that prevents 24-hour opening in Scotland. It will do that through the regulation and guidance that we will produce. If members want to express a view that one-off events such as the world cup should be outwith the exceptional circumstances, as the minister, I am prepared to listen to that view. However, I want to put it firmly on the record that I will not advance through regulation any possibility that 24-hour opening will become the norm in our society in Scotland.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Will the minister tell the chamber what the Executive’s position was—or is—on the issue of devolving to licensing boards the power to make the decision on opening hours?

Mr McCabe: When I spoke to the member today, I said that the provisions of the bill give ample opportunity for people at the local level to reflect the circumstances in which they find themselves and that the five national conditions are ample safeguards. I entirely respect the right of members of the Parliament to disagree with that; I understand that members may feel that the provisions need to go further.

We have created an entirely new licensing situation in which an entirely new type of licensing board will have to make reference to those five important national licensing conditions. We have created licensing boards that will be obliged to take account of the potential for antisocial behaviour problems in the decisions that they take.

In his speech, David Davidson questioned whether the bill would promote a change in culture. I question how he could possibly ask that, given that he advocated a move away from differential pricing but also advocated the irresponsible promotions that lead to intoxicated people—young and not so young—in our streets, engaging in unacceptable behaviour. How can he say that the bill does not promote a change in culture when, at the same time, he says that he wants such behaviour to continue? Those positions are entirely contradictory.

Susan Deacon asked how many licences would be affected by the change in opening hours. We do not have a national database that shows the differences in the way in which licences are applied at the local level. Clearly, the point is valid; we will get information on the subject.

I cannot stress strongly enough how much of a difference in the licensing regime in Scotland the bill will create or how much more powerful the licensing boards will be at the local level. More important, the bill gives local people a say in a way that has never been the case in the past. We are determined to ensure that the decisions that are taken at the local level reflect the views and concerns of local people. That is a basic tenet of the bill.

I commend the bill to the Parliament. I also commend much of the debate that we have had today. I absolutely respect the right of members to seek further reassurance whenever they feel that is necessary.
18:15

The Deputy Presiding Officer (Trish Godman): There are two questions to be put as a result of today’s business. The first question is, that motion S2M-3437, in the name of George Lyon, that the Parliament agrees that the Licensing (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Bailance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Macleod, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (West of Scotland) (Ind)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
The Deputy Presiding Officer: The result of the division is: For 71, Against 42, Abstentions 4.

Motion agreed to.

That the Parliament agrees that the Licensing (Scotland) Bill be passed.

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilh, Mr Brian (Mid Scotland and Fife) (Ind)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

ABSTENTIONS

Byrne, Ms Rosemary (South of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
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Licensing (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold; and for connected purposes.

PART 1

CORE PROVISIONS

1 Prohibition of unlicensed sale of alcohol

(1) Alcohol is not to be sold on any premises except under and in accordance with—
   (a) a premises licence, or
   (b) an occasional licence,
   granted under this Act in respect of the premises.

(2) Subsection (1) does not apply to the selling of alcohol—
   (a) on exempt premises, or
   (b) to trade.

(3) A person who—
   (a) sells alcohol, or
   (b) knowingly allows alcohol to be sold,
   in breach of subsection (1) commits an offence.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to—
   (a) a fine not exceeding £20,000,
   (b) imprisonment for a term not exceeding 6 months, or
   (c) both.

2 Meaning of “alcohol”

(1) In this Act, “alcohol”—
Part 1—Core provisions

(a) means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but
(b) does not include—
   (i) alcohol which is of a strength of 0.5% or less at the time of its sale,
   (ii) perfume,
   (iii) any flavouring essence recognised by the Commissioners of Customs and Excise as not being intended for consumption as or with dutiable alcoholic liquor,
   (iv) the aromatic flavouring essence commonly known as angostura bitters,
   (v) alcohol which is, or is included in, a medicinal product,
   (vi) denatured alcohol,
   (vii) methyl alcohol,
   (viii) naphtha, or
   (ix) alcohol contained in liqueur confectionery.

In this section—
“beer”, “cider”, “denatured alcohol”, “dutiable alcoholic liquor” and “wine” have the same meanings as in the Alcoholic Liquor Duties Act 1979 (c.4), and “medicinal product” has the same meaning as in section 130 of the Medicines Act 1968 (c.67).

3 Certain supplies of alcohol to be treated as sales

(1) A supply of alcohol which is not otherwise a sale of the alcohol is, in the circumstances described in subsection (2) or (3), to be treated for the purposes of this Act as if it were a sale of the alcohol.

(2) The first set of circumstances is where the supply is by or on behalf of a club to, or to the order of, a member of the club.

(3) The second set of circumstances is where the supply is made to, or to the order of, a person pursuant to a right acquired by the person under a contract.

4 The licensing objectives

(1) For the purposes of this Act, the licensing objectives are—
   (a) preventing crime and disorder,
   (b) securing public safety,
   (c) preventing public nuisance,
   (d) protecting and improving public health, and
   (e) protecting children from harm.

(2) In this Act, references to the “crime prevention objective” are references to the licensing objective mentioned in subsection (1)(a).
PART 2
LICENSING BODIES AND OFFICERS

5 Licensing Boards

(1) There is to continue to be a Licensing Board for—
(a) the area of each council whose area is not, at the time this section comes into force, divided into licensing divisions under section 46(1) of the Local Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”), and
(b) each licensing division of such an area which is so divided at that time.

(2) A council whose area is not so divided at that time may subsequently make a determination that their area is to be divided into divisions for the purposes of this Act.

(3) Where a council makes such a determination—
(a) there is to be a separate Licensing Board for each of the divisions,
(b) the Licensing Board for the council’s area is dissolved on the date on which those separate Licensing Boards are elected in accordance with schedule 1, and
(c) anything done by the Licensing Board for the council’s area before the Board is dissolved is, to the extent that it has effect at that time, to have effect after that time as if done by such of the separate Licensing Boards as the council may determine.

(4) A council which has made a determination (whether under subsection (2) or section 46(1) of the 1994 Act) that their area is to be divided into divisions may revoke the determination.

(5) Where a council revokes such a determination—
(a) there is to be a single Licensing Board for the whole of the council’s area,
(b) each of the Licensing Boards for the divisions is dissolved on the date on which the single Licensing Board is elected in accordance with schedule 1, and
(c) anything done by the Licensing Boards for the divisions before they are dissolved is, to the extent that it has effect at that time, to have effect after that time as if done by the single Licensing Board.

(6) Subsection (7) applies where a council—
(a) makes a determination under subsection (2), or
(b) revokes such a determination or a determination made under section 46(1) of the 1994 Act.

(7) The council must, no later than 7 days after the making of the determination or the revocation—
(a) notify the Scottish Ministers of the determination or revocation, and
(b) publicise it in such manner as the council sees fit.

(8) Schedule 1 makes further provision about the constitution of Licensing Boards, their procedure and other administrative matters relating to them.
6 Statements of licensing policy

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

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

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

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

(b) consult—

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

   (ii) if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(5) of schedule 2, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative, and

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

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

(5) At the request of a Licensing Board—

(a) the appropriate chief constable, or

(b) the relevant council,

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

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

(a) make copies of the statement available for public inspection free of charge, and

(b) publicise—

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

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

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

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

(b) each subsequent period of 3 years.
Duty to assess overprovision

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

(a) licensed premises, or

(b) licensed premises of a particular description,

in any locality within the Board’s area.

(2) It is for the Licensing Board to determine the “localities” within the Board’s area for the purposes of this Act.

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

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

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

(4) Those persons are—

(a) the appropriate chief constable,

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

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

(ii) persons resident in the locality, and

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

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

Applicants attempting to influence Board members

(1) If a person making an application under this Act to a Licensing Board attempts, at any time before the application is determined by the Board, to influence a member of the Board to support the application, the person commits an offence.

(2) If, in relation to any application made to, but not yet determined by, a Licensing Board under this Act, proceedings for an offence under subsection (1) are brought against the applicant—

(a) the Board must not determine the application until after the proceedings are concluded, and

(b) if the applicant is convicted of the offence, the Board may refuse to consider the application.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Licensing Board’s duty to keep a public register

(1) Each Licensing Board must keep a register (referred to in this Act as a “licensing register”) containing information relating to—

(a) premises licences, personal licences and occasional licences issued by the Board,
(b) the Board’s decisions in relation to applications made to the Board under this Act, and
(c) other decisions of the Board relating to the licences mentioned in paragraph (a).

(2) The Scottish Ministers may by regulations make provision as to—
(a) matters, in addition to those specified in paragraphs (a) to (c) of subsection (1), in relation to which licensing registers are to contain information,
(b) the information which such registers are to contain, and
(c) the form and manner in which the registers are to be kept.

(3) A Licensing Board must make the licensing register kept by the Board available for public inspection at all reasonable times.

Local Licensing Forums

10 Local Licensing Forums

(1) Each council must establish a Local Licensing Forum for their area.

(2) However, where the area of a council is divided into licensing divisions, the council may, instead of establishing a Local Licensing Forum for their area, establish separate such Forums for each division.

(3) Each Licensing Board must hold, at least once in each calendar year, a joint meeting with the Local Licensing Forum for the Board’s area.

(4) Schedule 2 makes further provision about Local Licensing Forums, including provision about their membership and procedural and other administrative matters in relation to them.

11 General functions of Local Licensing Forums

(1) Each Local Licensing Forum has the following general functions—
(a) keeping under review—
   (i) the operation of this Act in the Forum’s area, and,
   (ii) in particular, the exercise by the relevant Licensing Board or Boards of their functions, and
(b) giving such advice and making such recommendations to that or any of those Boards in relation to those matters as the Forum considers appropriate.

(2) Subsection (1) does not enable a Local Licensing Forum to—
(a) review, or
(b) give advice, or make recommendations, in relation to, the exercise by a Licensing Board of their functions in relation to a particular case.

(3) In this section, section 12 and schedule 2, “relevant Licensing Board”, in relation to a Local Licensing Forum, means—
(a) the Licensing Board for the Forum’s area, or
(b) in the case of a Local Licensing Forum for a council area which is divided into licensing divisions, each of the Licensing Boards for those divisions.
12 Licensing Boards’ duties in relation to Local Licensing Forums

(1) A Licensing Board must—
(a) in exercising any function, have regard to any advice given, or recommendation made, to them in relation to the function by a Local Licensing Forum, and
(b) where the Board decides not to follow the advice or recommendation, give the Forum reasons for the decision.

(2) At the request of a Local Licensing Forum, a relevant Licensing Board must provide to the Forum copies of such relevant statistical information as the Forum may reasonably require for the purposes of the Forum’s general functions.

(3) In this section, “relevant statistical information” means, in relation to a Licensing Board, such statistical information as the Board may have obtained under section 6(5).

Licensing Standards Officers

13 Licensing Standards Officers

(1) Each council must appoint for their area one or more officers to be known as Licensing Standards Officers.

(1A) A person may hold more than one appointment under subsection (1) (so as to be a Licensing Standards Officer for more than one council area).

(2) A Licensing Standards Officer is to exercise, in relation to the (or each) council area for which the Officer is appointed, the functions conferred on a Licensing Standards Officer by virtue of this Act.

(3) The number of Licensing Standards Officers for any council area is to be such as the council may determine.

(4) The Scottish Ministers may by regulations prescribe qualifications and experience required for appointment as a Licensing Standards Officer.

(5) Where the Scottish Ministers have made regulations under subsection (4), a council must not appoint an individual to be a Licensing Standards Officer unless the individual possesses the qualifications and experience prescribed in the regulations in relation to that appointment.

(6) Otherwise, the terms and conditions of appointment of a Licensing Standards Officer appointed by a council under this section are to be such as the council may determine.

14 General functions of Licensing Standards Officers

(1) A Licensing Standards Officer for a council area has the following general functions—
(a) providing to interested persons information and guidance concerning the operation of this Act in the area,
(b) supervising the compliance by the holders of—
(i) premises licences, or
(ii) occasional licences,
in respect of premises in the area with the conditions of their licences and other requirements of this Act,
(c) providing mediation services for the purpose of avoiding or resolving disputes or disagreements between—

(i) the holders of the licences referred to in paragraph (b), and

(ii) any other persons,

concerning any matter relating to compliance as referred to in that paragraph.

(2) The function under subsection (1)(b) includes, in particular, power—

(a) where a Licensing Standards Officer believes that any condition to which a premises licence or occasional licence is subject has been or is being breached—

(i) to issue a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and

(ii) if, in the case of a premises licence, such a notice is not complied with to the satisfaction of the Officer, to make a premises licence review application in respect of the licence,

(b) in relation to a premises licence, to make an application under that section for review of the licence on any other competent ground for review.

15 Powers of entry and inspection

(1) A Licensing Standards Officer for a council area may, for the purpose of determining whether the activities being carried on in any licensed premises in the area are being carried on in accordance with—

(a) the premises licence or, as the case may be, occasional licence in respect of the premises, and

(c) any other requirements of this Act,

exercise the powers specified in subsection (3).

(3) The powers referred to subsection (1) are—

(a) power to enter the premises at any time for the purpose of exercising the power specified in paragraph (b), and

(b) power to carry out such inspection of the premises and of any substances, articles or documents found there as the Officer thinks necessary.

(4) Where a Licensing Standards Officer exercises either of those powers in relation to any licensed premises, the persons specified in subsection (5) must—

(a) give the Officer such assistance,

(b) provide the Officer with such information, and

(c) produce to the Officer such documents,

as the Officer may reasonably require.

(5) The persons referred to in subsection (4) are—

(a) the holder of the premises licence or, as the case may be, occasional licence in respect of the premises,

(b) in the case of licensed premises in respect of which a premises licence has effect, the premises manager, and
(d) in any case, any person working on the premises at the time the Officer is exercising the power.

(6) A person who—

(a) intentionally obstructs a Licensing Standards Officer in the exercise of any power under subsection (3), or

(b) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (4),

commits an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

15A Training of Licensing Standards Officers

(1) A Licensing Standards Officer must comply with such requirements as to the training of Licensing Standards Officers as may be prescribed.

(2) If a Licensing Standards Officer fails to comply with subsection (1), the (or each) council which appointed the Officer must terminate the Officer’s appointment.

(3) Regulations under subsection (1) prescribing training requirements may, in particular—

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

(i) courses of training, and

(ii) persons providing such courses,

for the purposes of the regulations,

(b) prescribe different requirements in relation to different descriptions of Licensing Standards Officers, and

(c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.

PART 3
PREMISES LICENCES

Introductory

16 Premises licence

In this Act, “premises licence”, in relation to any premises, means a licence issued by a Licensing Board under section 24(1) or 45(2) authorising the sale of alcohol on the premises.

17 Meaning of “appropriate Licensing Board”

(1) In this Part, “the appropriate Licensing Board” means, in relation to any premises or premises licence issued in respect of any premises—

(a) the Licensing Board in whose area the premises are situated, or

(b) where the premises are situated in the area of more than one Licensing Board—
(i) the Board in whose area the greater or greatest part of the premises is situated, or
(ii) if neither or none of those Boards falls within sub-paragraph (i), such of the Boards as is nominated in accordance with subsection (2).

(2) In a case falling within subsection (1)(b)(ii), the applicant for a premises licence in respect of the premises must nominate one of the Licensing Boards to be the Licensing Board for the purposes of the application of this Part in relation to the premises.

18 Premises manager

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

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

Premises licence applications

19 Application for premises licence

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

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

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

(b) be accompanied by—

(i) an operating plan for the subject premises,

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

(iii) the certificates required by section 48(1).

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

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

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

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

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

(ca) a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises,
(cb) where alcohol is to be sold for consumption on the premises, a statement as to
whether children or young persons are to be allowed entry to the premises and, if
they are to be allowed entry, a statement of the terms on which they are allowed
entry including, in particular—

(i) the ages of children or young persons to be allowed entry,
(ii) the times at which they are to be allowed entry, and
(iii) the parts of the premises to which they are to be allowed entry,

(cc) information as to the proposed capacity of the premises,
(d) prescribed information about the individual who is to be the premises manager,
and
(e) such other information in relation to the premises and the activities to be carried
on there as may be prescribed.

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

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

20 Notification of application

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

(a) each person having a notifiable interest in neighbouring land,
(b) any community council within whose area the premises are situated,
(c) the council within whose area the premises are situated (except where the council
is the applicant),
(d) the appropriate chief constable, and
(e) the enforcing authority within the meaning of section 61 of the Fire (Scotland) Act
2005 (asp 5) in respect of the premises.

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

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

(a) one or other of the notices mentioned in subsection (4), and
(b) a report detailing—

(i) all cases of antisocial behaviour identified within the relevant period by
constables as having taken place on, or in the vicinity of, the premises, and
(ii) all complaints or other representations made within the relevant period to
constables concerning antisocial behaviour on, or in the vicinity of, the
premises.

(4) Those notices are—

(a) a notice stating that neither—

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

5  (b) a notice specifying any convictions of—

(i) the applicant, or

(ii) in any of the cases mentioned in paragraph (a)(ii), any connected person, for a relevant offence or a foreign offence.

(5) Where the appropriate chief constable—

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

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

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

(6) In this section—

“antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

“neighbouring land” and, in relation to that expression, “notifiable interest” have such meanings as may be prescribed for the purposes of this section, and

“relevant period” means the period of one year ending with the date on which the appropriate chief constable receives notice under subsection (1)(d).

21 Objections and representations

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

(a) object to the application on any ground relevant to one of the grounds for refusal specified in section 22(5), or

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

(i) in support of the application,

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

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

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

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

(i) the applicant, or

(ii) in the cases where the applicant is neither an individual nor a council or where the application is in respect of premises which are to be used wholly or mainly for the purposes of a club, any connected person,
(b) by reason of that involvement, the chief constable considers that it is necessary for the purposes of the crime prevention objective that the application be refused.

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

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

(b) have regard to the objection or representation in determining the application, unless the Board rejects the notice under subsection (3).

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

(4) Where a Licensing Board rejects a notice of objection or representation under subsection (3), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

(5) In any proceedings by a Licensing Board for the recovery of expenses under subsection (4), a copy of any minute of proceedings of the Licensing Board—

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

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

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

22 Determination of premises licence application

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

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

(2A) In considering and determining the application, the Board must take account of the documents accompanying the application under section 19(2)(b).

(3) 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,

(aa) that the application must be refused under section 23(2), 60(2) or 60A(3),

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

(c) that, having regard to—

(i) the nature of the activities 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,

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

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

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

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

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

(i) any conviction notice of which is given by the appropriate chief constable under subsection (4)(b) of section 20,

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

(b) with any licensing objective, the Licensing Board must take into account any report made by the appropriate chief constable under subsection (3)(b) of section 20.

(7) Where the Licensing Board considers that—

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

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

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

(8) Where the Licensing Board refuses the application—

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

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

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

22A Applicant’s duty to notify Licensing Board of convictions

(1) This section applies where any of the persons specified in subsection (2) is convicted of a relevant or foreign offence during the period beginning with the making of a premises licence application and ending with determination of the application.

(2) Those persons are—

(a) the applicant, and
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(b) where—

(i) the applicant is neither an individual nor a council, or

(ii) the premises in respect of which the licence is sought are used wholly or mainly for the purposes of a club,

any connected person.

(3) The applicant must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board to which the application was made.

(4) A notice under subsection (3) must specify—

(a) the nature of the offence, and

(b) the date of the conviction.

(5) Where the Licensing Board receives a notice under subsection (3) at any time before they have determined the application, the Board must—

(a) suspend consideration of the application, and

(b) give notice of the conviction to the appropriate chief constable.

(6) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (5)(b), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (7).

(7) Those notices are—

(a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant offence or foreign offence, or

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

(8) Where the chief constable—

(a) proposes to give a notice under subsection (7)(b), and

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

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

(9) On receipt of the chief constable’s notice under subsection (7), the Licensing Board must resume consideration of the application and determine it in accordance with section 22.

(10) For that purpose, that section has effect as if—

(a) references in it to a notice under section 20(4)(b) included references to a notice under subsection (7)(b) of this section, and

(b) references in it to a recommendation under section 20(5) included references to a recommendation under subsection (8) of this section.

(11) A person who, without reasonable excuse, fails to comply with subsection (3) commits an offence.

(12) A person guilty of an offence under subsection (11) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
23 Further application after refusal of premises licence application

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

(2) Subject to subsection (3), the Board must refuse any subsequent premises licence application in respect of the same premises made before the expiry of the period of one year beginning with the date of the earlier refusal.

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

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

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

24 Issue of licence and summary

(1) Where a Licensing Board grants a premises licence application, the Board must issue to the applicant—

(a) a premises licence—

(i) in the prescribed form, and

(ii) containing the information and documents specified in subsection (2), and

(b) a summary of the licence in the prescribed form.

(2) The information and documents referred to in subsection (1)(a)(ii) are—

(a) 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,

(b) a description of the premises in respect of which the licence is issued,

(c) the date on which the licence takes effect,

(d) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found,

(e) the operating plan and layout plan in respect of the premises to which the licence relates, and

(f) such other information as may be prescribed.

Conditions of premises licence

25 Conditions of premises licence

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

(2) The Scottish Ministers may by regulations modify schedule 3 so as—
(a) to add such further conditions as they consider necessary or expedient for the purposes of any of the licensing objectives, or

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

(2A) The Scottish Ministers must by regulations prescribe further conditions which Licensing Boards must impose on the granting by them of premises licences falling within subsection (2B).

(2B) A premises licence falls within this subsection if the operating plan for the premises to which the licence relates specifies that the premises will, on any occasion, be open for a continuous period beginning on one day and ending after 1am on the following day.

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

(4) Without prejudice to subsection (3), where a Licensing Board grants a premises licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of subsection (1) or (2A)) as they consider necessary or expedient for the purposes of any of the licensing objectives.

(5) A Licensing Board may not impose a condition under subsection (4) which—

(a) is inconsistent with any condition—

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

(ii) prescribed under subsection (3),

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

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

(6) The conditions which may be—

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

(b) prescribed under subsection (3), or

(c) imposed under subsection (4),

include, in particular, conditions of the kind described in subsection (7).

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

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

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

(8) Where, under any provision of this Act, a Licensing Board has power to make a variation of the conditions to which a premises licence is subject, the power may not be exercised so as to have the effect of imposing a condition which the Board could not have imposed under this section on the granting of the licence.
Duration of premises licence

26 Period of effect of premises licence

(1) A premises licence—

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

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

(2) However, a premises licence is not to be taken to have ceased to have effect under subsection (1)(b) by virtue of the occurrence of any of the events mentioned in paragraphs (c) to (e) of subsection (5) if, within 28 days of the occurrence of the event, an application for the transfer of the licence is made under section 32(1).

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

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

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

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

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

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

(i) dies, or

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

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

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

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

(6) That is a notice—

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

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

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

(a) an individual or partnership becomes insolvent on—

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

(ii) being adjudged bankrupt,

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

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

(v) granting a trust deed for creditors, and
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(b) a company becomes insolvent on—
   (i) the approval of a voluntary arrangement proposed by its creditors,
   (ii) the appointment of an administrator or administrative receiver in respect of it, or
   (iii) going into liquidation.

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

Variation of premises licence

27 Application to vary premises licence

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

(2) An application under subsection (1) must be accompanied by—
   (a) the premises licence to which the application relates, or
   (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

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

(4) Sections 20(1) and (2) and 21 apply in relation to a premises licence variation application (other than one in which the only variation sought is a minor variation) as they apply to a premises licence application.

(5) In this Act, “variation”, in relation to a premises licence, means any variation of—
   (a) any of the conditions to which the licence is subject (other than those to which the licence is subject by virtue of section 25(1)),
   (b) any of the information contained in the operating plan contained in the licence,
   (c) the layout plan contained in the licence, or
   (d) any other information contained or referred to in the licence,
   and includes an addition, deletion or other modification.

(6) In this Act, “minor variation” means—
   (a) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,
   (b) where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises,
   (c) any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and
   (d) any other variation of such description as may be prescribed for the purposes of this subsection.
28 Determination of application for variation

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

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

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

(4) Where a hearing is held under subsection (3), the Board must consider whether any of the grounds for refusal applies and—
   (a) if none of them applies, the Board must grant the application,
   (b) if any of them applies, the Board must refuse the application.

(5) The grounds for refusal are—
   (za) that the application must be refused under section 30(2), 60(2) or 60A(3),
   (a) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
   (b) that, having regard to—
      (i) the nature of the activities carried on or proposed to be carried on in the subject premises,
      (ii) the location, character and condition of the premises, and
      (iii) the persons likely to frequent the premises,
      the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation,
   (c) that, having regard to the number and capacity of—
      (i) licensed premises, or
      (ii) licensed premises of the same or similar description as the subject premises (taking account of the proposed variation),
      in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality.

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

(7) Where the Licensing Board refuses the application—
   (a) the Board must specify the ground for refusal, and
   (b) if the ground for refusal is that specified in subsection (5)(a), the Board must specify the licensing objective or objectives in question.

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

29 Variation to substitute new premises manager

(1) This section applies in relation to a premises licence variation application where—
(a) the variation sought is the substitution of another individual as the premises manager, and
(b) the applicant requests in the application that the variation should have immediate effect.

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

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

30 Further application after refusal of application for variation

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

(2) Subject to subsection (3), the Board must refuse any subsequent premises licence variation application—
(a) in respect of the same premises licence, and
(b) seeking the same variation,
made before the expiry of the period of one year beginning with the date of the earlier refusal.

(3) Subsection (2) does not apply in relation to any subsequent application made during that period if—
(a) at the time of the earlier refusal, the Board directed that the subsection would not apply to any subsequent application, or
(b) the Board is satisfied that there has been a material change of circumstances since the earlier refusal.

Transfer of premises licence

31 Transfer on application of licence holder

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

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

(3) An application under subsection (1) must be accompanied by—
(a) the premises licence to which the application relates, or
(b) if that is not practicable, a statement of the reasons for failure to produce the licence.
(4) Where a Licensing Board receives an application under subsection (1), the Board must give notice of it, together with a copy of the application, to the appropriate chief constable.

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

(6) Those notices are—

(a) a notice stating that neither—
   (i) the transferee, nor
   (ii) where the transferee is neither an individual nor a council, any connected person,

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

(b) a notice specifying any convictions of—
   (i) the transferee, and
   (ii) where the transferee is neither an individual nor a council, any connected person,

   for a relevant offence or a foreign offence.

(7) Where the appropriate chief constable—

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

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

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

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

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

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

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

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

### Transfer on application of person other than licence holder

(1) A person other than—

(a) the holder of a premises licence, or

(b) an individual under the age of 18,

(being a person of a prescribed description) may, within 28 days of the occurrence of any of the events specified in subsection (3), apply to the appropriate Licensing Board for the transfer to that person of the licence.
(2) An application under subsection (1) must be accompanied by—
   (a) the premises licence to which the application relates, or
   (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

(3) The events referred to in subsection (1) are—
   (a) the premises licence holder, being an individual—
      (i) dies, or
      (ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4),
   (b) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,
   (c) the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and
   (d) the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person.

(4) Subsections (4) to (10) of section 31 apply for the purposes of an application under subsection (1) of this section as they apply for the purposes of an application under subsection (1) of that section, but as if references in them to the transferee were references to the applicant in relation to the application under subsection (1) of this section.

(5) Subsections (7) and (8) of section 26 apply for the purposes of subsection (3)(b) of this section as they apply for the purposes of subsection (5)(d) of that section.

### 33 Variation on transfer

(1) A person making an application to a Licensing Board under section 31(1) or 32(1) for transfer of a premises licence may also make an application to the Board for a variation of the licence.

(2) Sections 27 and 28 apply in relation to an application under subsection (1) for a variation as they apply to a premises licence variation application.

(3) Where—
   (a) an application is made under subsection (1), and
   (b) the applicant intimates to the Licensing Board that the application under section 31(1) or 32(1) for transfer of the premises licence is contingent on the grant of the application under subsection (1),

the Licensing Board must determine the application under subsection (1) before determining the application for the transfer of the licence.

(4) In such a case, if the Licensing Board refuses the application under subsection (1), the application for the transfer of the licence falls.

(5) In any other case where an application under subsection (1) is made—
   (a) the Licensing Board must first determine the application for transfer of the licence before determining the application under subsection (1), and
(b) if the application for the transfer of the licence is refused, the application under subsection (1) falls.

Review of premises licence

34 Application for review of premises licence

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

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

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

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

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

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

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

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

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

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

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

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

(a) is vexatious or frivolous, or

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

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

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

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

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

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

(b) certified by the clerk of the Board to be a true copy,
is sufficient evidence of the rejection and of the establishment of the grounds for rejection.

35 Review of premises licence on Licensing Board’s initiative

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

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

(3) The grounds for review referred to in subsection (1) are those specified in subsection 34(3).

(4) A premises licence review proposal must specify the alleged ground for review, including in particular—
   (a) where the ground is that specified in subsection 34(3)(a), the condition or conditions alleged to have been breached,
   (b) where the ground is that specified in subsection 34(3)(b), the licensing objective or objectives to which the alleged ground of review relates.

36 Review hearing

(1) Where a Licensing Board—
   (a) makes a premises licence review proposal, or
   (b) receives a premises licence review application,
the Board must hold a hearing for the purposes of considering and determining the proposal or application unless, in the case of a premises licence review application, the Board has rejected the application under subsection 34(6).

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

(3) Where a review hearing is to be held, the Licensing Board must—
   (a) in the case of a premises licence review application, give notice of the hearing to the applicant, and
   (b) give notice of the hearing and a copy of the premises licence review proposal or application to—
      (i) the licence holder, and
      (ii) any Licensing Standards Officer for the area in which the premises concerned are situated, unless, in the case of a premises licence review application, the applicant is such an Officer.

(4) Where a Licensing Standards Officer receives under subsection (3)(b)(ii) a copy of a premises licence review proposal or application—
   (a) the Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the proposal or application, and
   (b) the Licensing Board must take the report into account at the hearing.

(5) The Licensing Board may, for the purposes of the review hearing—
(a) obtain further information from such persons, and in such manner, as the Board thinks fit, and
(b) take the information into account.

(6) In particular, the Board may—

(a) request—
   (i) the attendance at the review hearing of any person for the purpose of providing information, and
   (ii) the production at the review hearing by any person of any documents in that person’s possession or under that person’s control, and
(b) take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review proposal or application under consideration.

37 Licensing Board’s powers on review

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

(2) Those steps are—

(a) to issue a written warning to the licence holder,
(b) to make a variation of the licence,
(c) to suspend the licence for such period as the Board may determine,
(d) to revoke the licence.

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

38 Review of Licensing Board’s decision to vary or suspend licence

Where a Licensing Board has made a variation under subsection (2)(b) of section 37 or suspended the licence under subsection (2)(c) of that section, the Board may—

(a) on the application of the licence holder, and
(b) if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary, revoke the variation or suspension.

Conviction of licence holder etc. for relevant or foreign offence

39 Duty to notify court of premises licence

(1) Subsection (2) applies where—

(a) a person who holds a premises licence is charged with a relevant offence, or
(b) a person charged with a relevant offence is granted a premises licence after the person’s first appearance in court in connection with the offence but before—
(i) conviction and sentencing for the offence or acquittal, or
(ii) where an appeal is brought against conviction, sentence or acquittal, the
disposal of the appeal.

(2) The person must, not later than the person’s first appearance or, as the case may be, next
appearance in court in connection with the offence—
(a) produce to the court the premises licence, or
(b) if that is not practicable, notify the court of—
(i) the existence of the premises licence,
(ii) the identity of the Licensing Board which issued it, and
(iii) the reasons why it is not practicable to produce the licence.

(3) A person who, without reasonable excuse, fails to comply with subsection (2) commits
an offence.

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

40 Court’s duty to notify Licensing Board of convictions

(1) This section applies where the clerk of a court in Scotland by or before which a person
is convicted of a relevant offence is aware that the person holds a premises licence.

(2) The clerk of the court must, as soon as reasonably practicable after the conviction, give
notice of the conviction to the Licensing Board which issued the premises licence held
by the person convicted.

41 Licence holder’s duty to notify Licensing Board of convictions

(1) This section applies where any of the persons specified in subsection (2) is convicted of
a relevant or foreign offence.

(2) Those persons are—
(a) the holder of a premises licence, and
(b) where—
(i) the holder of such a licence is neither an individual nor a council, or
(ii) the premises in respect of which such a licence is held are used wholly or
mainly for the purposes of a club,
25
any connected person.

(3) The holder of the premises licence must, no later than one month after the date of the
conviction, give notice of the conviction to the Licensing Board which issued the
premises licence held by the licence holder.

(4) A notice of conviction under subsection (3) must—
(a) specify—
(i) the nature of the offence, and
(ii) the date of conviction, and
(b) be accompanied by—
(i) the premises licence held by the licence holder, or
(ii) if that is not practicable, a statement of the reasons for failure to produce the licence.

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

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

42 Procedure where Licensing Board receives notice of conviction

(1) This section applies where the Licensing Board which issued a premises licence receives a notice of conviction relating to—

(a) the holder of the licence, or
(b) where—

(i) the holder of the licence is neither an individual nor a council, or
(ii) the premises in respect of which the licence is held are used wholly or mainly for the purposes of a club,

a connected person.

(2) The Licensing Board must give notice of the conviction to the appropriate chief constable.

(3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (2), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (4).

(4) Those notices are—

(a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or foreign offence, or
(b) a notice confirming the existence of the conviction and that it relates to a relevant or foreign offence.

(5) Where the chief constable—

(a) proposes to give a notice under subsection (4)(b), and
(b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the premises licence should be varied, suspended or revoked,

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

(6) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(a), the Licensing Board may not take any further action in relation to the conviction.

(7) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(b), the Licensing Board must make a premises licence review proposal in respect of the premises licence.

(8) In this section, “notice of conviction” means a notice under section 40(2) or 41(3).
Premises under construction or conversion

Provisional premises licence

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

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

(3) A premises licence issued in respect of any such premises does not take effect unless and until it is confirmed by the Licensing Board which issued it in accordance with section 44.

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

(5) A premises licence—

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

(b) which has not been confirmed in accordance with section 44,

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

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

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

(8) That matter is that—

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

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

(9) Where the provisional period in relation to any provisional premises licence has been extended under subsection (7), references in this section and section 44 to the provisional period are to that period as so extended.

(10) Section 19 has effect in relation to a provisional premises licence application as if—

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

“(iii) the certificate required by section 48(2),”;

and

(b) in subsection (4), paragraph (d) were omitted.

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

Confirmation of provisional premises licence

(1) The holder of a provisional premises licence may, at any time before the expiry of the provisional period in relation to the licence, apply to the Licensing Board which issued the licence for confirmation of the licence.
(2) An application under subsection (1) must be accompanied by—
   (a) the provisional premises licence,
   (b) the operating plan for the premises to which the licence relates,
   (c) the layout plan for the premises, and
   (d) the certificates required by section 48(3).

(3) The operating plan referred to in subsection (2)(b) must, in particular and without prejudice to subsection (4) of section 19, contain a statement of the information specified in paragraph (d) of subsection (4) of that section.

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

(5) Those matters are that—
   (a) since the provisional premises licence was issued, or
   (b) if, since that time, an application for a variation of the licence has been granted under section 28, since the last such application was granted,
   there has been no variation (other than a minor variation) made to the operating plan or layout plan for the premises to which the licence relates.

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

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

45 Temporary premises licence

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

(2) The appropriate Licensing Board in relation to the principal premises may—
   (a) on the application of the holder of the premises licence in respect of the premises, and
   (b) if satisfied as to the matters mentioned in subsection (3),
issue to the applicant a premises licence in respect of such other premises within the Licensing Board’s area as are specified in the application (such premises being referred to in this section as the “temporary premises”).

(3) The matters referred to in subsection (2)(b) are—
   (a) that the temporary premises are suitable for use for the sale of alcohol, and
   (b) that it is necessary to grant the application to enable the applicant to carry on business pending reconstruction or conversion of the principal premises.

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

(5) A temporary premises licence—
(a) has effect for such period of not more than 2 years beginning with the date of its issue as the Licensing Board may determine, and
(b) is subject to the same conditions as those to which the premises licence in respect of the principal premises is subject at the time the temporary premises licence is issued, with such exceptions or variations (if any) as the Licensing Board considers appropriate.

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

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

### Updating of licence

#### 46 Notification of change of name or address

(1) A premises licence holder must, not later than one month after the occurrence of any change in—
(a) the licence holder’s name or address, or
(b) the name or address of the premises manager specified in the licence,
give the appropriate Licensing Board notice of the change.

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

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

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

#### 47 Licensing Board’s duty to update premises licence

(1) Subsection (2) applies where a Licensing Board—
(a) receives a notice under section 46(1) in relation to a premises licence,
(b) grants a premises licence variation application or otherwise makes a variation of a premises licence,
(c) grants an application under section 31(1) or 32(1) for the transfer of a premises licence,
(d) in relation to a provisional premises licence, grants—
(i) an application under section 43(7) for an extension of the provisional period, or
(ii) an application under section 44(1) for confirmation of the licence,
(e) in relation to a temporary premises licence, grants an application under section 45(6) for an extension of the period during which the licence has effect, or
(f) on reviewing a premises licence, takes any of the steps referred to in section 37(1).

(2) The Board must make any necessary amendments to the licence and, if necessary, issue a new summary of the licence.

(3) Where a Licensing Board is not in possession of a premises licence and—
   (a) the licence has ceased to have effect under any provision of this Act, or
   (b) the Board requires the licence for the purpose of complying with the duty under subsection (2),

the Board may require the licence holder to produce the licence to the Board within 14 days from the date on which the requirement is notified.

(4) A licence holder who, without reasonable excuse, fails to comply with a requirement made under subsection (3), commits an offence.

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

Miscellaneous

48 Certificates as to planning, building standards and food hygiene

(1) A premises licence application (other than a provisional premises licence application) must be accompanied by—
   (a) a planning certificate,
   (b) a building standards certificate, and
   (c) if food is to be supplied on the premises, a food hygiene certificate,
in respect of the subject premises.

(2) A provisional premises licence application must be accompanied by a provisional planning certificate in respect of the subject premises.

(3) An application under section 44(1) in respect of any premises must be accompanied by—
   (a) if the provisional planning certificate which accompanied the provisional premises licence application in respect of the subject premises consisted of outline planning permission, a planning certificate,
   (b) a building standards certificate, and
   (c) if food is to be supplied on the premises, a food hygiene certificate,
in respect of the subject premises.

(4) A planning certificate is a certificate signed on behalf of the appropriate authority and stating—
   (a) that planning permission under the Town and Country Planning (Scotland) Act 1997 (c.8) (referred to in this section as “the 1997 Act”) in respect of any development of the subject premises in connection with their proposed use as licensed premises has been obtained, or
   (b) that no such planning permission is required.
(5) A provisional planning certificate is a certificate signed on behalf of the appropriate authority and stating—

(a) that planning permission or outline planning permission under the 1997 Act has been obtained in respect of the construction or conversion of the subject premises, or

(b) that no such planning permission is required.

(6) A building standards certificate is a certificate signed on behalf of the appropriate authority and stating—

(a) that a completion certificate has been accepted under section 18 of the Building (Scotland) Act 2003 (asp 8) (referred to in this section as “the 2003 Act”) in respect of any construction or conversion of the subject premises in connection with their proposed use as licensed premises,

(b) that permission for the temporary occupation or use of the premises has been granted under section 21(3) of the 2003 Act, or

(c) that no such completion certificate or permission is required.

(7) A food hygiene certificate is a certificate signed on behalf of the appropriate authority and stating that the subject premises comply with the requirements of regulations made under section 16 of the Food Safety Act 1990 (c.16) (referred to in this section as “the 1990 Act”) relating to construction, layout, drainage, ventilation, lighting and water supply or concerned with the provision of sanitary and washing facilities.

(8) In this section—

“appropriate authority” means—

(a) in relation to a planning certificate or provisional planning certificate, the planning authority (within the meaning of the 1997 Act) for the area in which the subject premises are situated,

(b) in relation to a building standards certificate, the council for that area,

(c) in relation to a food hygiene certificate, the food authority (within the meaning of the 1990 Act) for that area,

“construction” and “conversion” have the same meanings as they have in the 2003 Act,

“development” has the same meaning as it has in the 1997 Act.

48A Notification of determinations

(1) Where a Licensing Board grants or refuses an application under this Part, the Board must give notice of the grant or refusal to—

(a) the applicant,

(b) the appropriate chief constable, and

(c) in the case of the grant or refusal of a premises licence application, any person who gave a notice of objection or representation under section 21(1) in respect of the application.

(2) A person to whom notice is given under subsection (1) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.
(3) Where the clerk of a Licensing Board receives a notice under subsection (2), the Board must issue a statement of the reasons for the grant or refusal of the application to—
   (a) the person giving the notice, and
   (b) each other person to whom the Board gave notice under subsection (1).

(4) A statement of reasons under subsection (3) must be issued—
   (a) by such time, and
   (b) in such form and manner,
   as may be prescribed.

49 Duty to keep, display and produce premises licence

(1) A premises licence holder must secure that the premises licence, or a certified copy of it, is kept at the premises in respect of which it is issued in the custody or under the control of—
   (a) the licence holder, or
   (b) the premises manager.

(2) A premises licence holder must secure that the summary of the licence, or a certified copy of the summary, is prominently displayed on the premises so as to be capable of being read by anyone frequenting the premises.

(3) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1) or (2) commits an offence.

(4) Any of the persons specified in subsection (5) may require the person in whose custody or under whose control a premises licence (or a certified copy of it) is kept by virtue of subsection (1) to produce the licence (or certified copy) for inspection.

(5) The persons referred to in subsection (4) are—
   (a) a constable, and
   (b) a Licensing Standards Officer for the council area in which the premises are situated.

(6) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (4) commits an offence.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

50 Theft, loss etc. of premises licence or summary

(1) This section applies where the appropriate Licensing Board receives from a premises licence holder an application for a replacement premises licence or a replacement summary.

(2) If satisfied that—
   (a) the premises licence held by the licence holder or, as the case may be, the summary of it has been lost, stolen, damaged or destroyed, and
   (b) where it has been lost or stolen, the licence holder has reported the loss or theft to the police,
the Licensing Board must issue to the licence holder a replacement licence or, as the case may be, a replacement summary.

(3) A replacement licence or a replacement summary is a copy of the licence or summary—

(a) in the form in which it existed immediately before it was lost, stolen, damaged or destroyed, and

(b) certified by the Board to be a true copy.

(4) In this Act, references to—

(a) a premises licence include references to a replacement premises licence,

(b) a summary of a premises licence include references to a replacement summary,

issued under this section.

51 Dismissal, resignation, death etc. of premises manager

(1) This section applies where any of the events specified in subsection (2) occurs in relation to any licensed premises in respect of which a premises licence has effect.

(2) Those events are—

(a) the premises manager ceases to work at the premises,

(aa) the premises manager becomes incapable for any reason of acting as premises manager,

(b) the premises manager dies, or

(c) the personal licence held by the premises manager is revoked or suspended.

(3) The premises licence holder must, not later than 7 days after the occurrence of the event, give notice of it to the appropriate Licensing Board.

(4) Subsection (5) applies if—

(a) subsection (3) is complied with, and

(b) within the period of 6 weeks beginning with the day on which the event occurs, a premises licence variation application is made seeking a variation of the premises licence in respect of the premises so as to substitute another individual as the premises manager.

(5) Any breach of the conditions specified in paragraphs 4 and 5 of schedule 3 in the period beginning with the occurrence of the event and ending with the receipt by the Licensing Board of the application referred to in subsection (4)(b) is, so far as it is attributable to the occurrence of the event, to be disregarded.

(6) If no such application as is mentioned in paragraph (b) of subsection (4) is made within the period mentioned in that paragraph, then, at the end of that period, the Licensing Board must vary the premises licence so that there is no longer any premises manager specified in it.

52 Certified copies

Any reference in this Part to a certified copy of a premises licence or of a summary of such a licence is a reference to a copy of the licence or summary certified to be a true copy by—

(a) the Licensing Board,
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(b) a solicitor or notary public, or
(c) a person of a prescribed description.

Part 4

Occasional licences

53 Occasional licence

(1) A Licensing Board may, on the application of any of the persons mentioned in subsection (2) made in relation to any premises (other than licensed premises) within the Board’s area, issue to the applicant a licence (referred to in this Act as an “occasional licence”) authorising the sale of alcohol on the premises.

(2) Those persons are—
(a) the holder of a premises licence,
(b) the holder of a personal licence, and
(c) a representative of any voluntary organisation.

(3) An application under subsection (1) must contain details of the information which the applicant proposes should be included in the licence under subsection (7)(b).

(4) An application under subsection (1) which complies with subsection (3) is referred to in this Act as an “occasional licence application”.

(5) An occasional licence has effect for such period of not more than 14 days as the Licensing Board may determine.

(6) A Licensing Board may issue under subsection (1) in respect of any one voluntary organisation in any period of 12 months—
(a) not more than 4 occasional licences each having effect for a period of 4 days or more, and
(b) not more than 12 occasional licences each having effect for a period of less than 4 days,

provided that, in any period of 12 months, the total number of days on which occasional licences issued in respect of the organisation have effect does not exceed 56.

(7) An occasional licence issued by a Licensing Board under subsection (1) must—
(a) be in the prescribed form, and
(b) contain the information specified in subsection (8).

(8) That information is—
(a) the name and address of the holder of the licence,
(b) a description of the premises in respect of which it is issued,
(c) a description of the activities to be carried on in the premises,
(d) a statement of the period during which the licence has effect,
(e) a statement of the times during which alcohol may be sold on the premises,
(f) a statement as to whether alcohol may be sold for consumption on the premises, off the premises or both,
(fa) a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises,

(fb) where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including, in particular—

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

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

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

(g) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found, and

(h) such other information as may be prescribed.

(9) Where alcohol is to be sold both for consumption on and for consumption off the premises, the occasional licence for the premises may, under subsection (8)(e), state different times for—

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

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

54 Notification of application to chief constable and Licensing Standards Officer

(1) Where a Licensing Board receives an occasional licence application, the Board must give notice of it, together with a copy of the application, to—

(a) the appropriate chief constable, and

(b) any Licensing Standards Officer for the area in which the subject premises are situated.

(2) If the chief constable considers that it is necessary for the purposes of the crime prevention objective that the application be refused, the chief constable may, by notice to the Licensing Board given within 21 days of the date of receipt of the notice under subsection (1), make a recommendation to that effect.

(3) A Licensing Standards Officer may, within 21 days of receipt of a notice under subsection (1)(b), prepare and submit to the Licensing Board a report setting out the Officer’s comments on the application.

55 Objections and representations

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

(a) object to the application on any ground relevant to one of the grounds for refusal specified in section 56(6), or

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

(i) in support of the application, or

(ii) as to conditions which the person considers should be imposed.
(2) Where a Licensing Board receives a notice of objection or representation under subsection (1) relating to any occasional licence application made to the Board, the Board must—

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

(b) have regard to the objection or representation in determining the application, unless the Board rejects the notice under subsection (3).

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

(4) Where a Licensing Board rejects a notice of objection or representation under subsection (3), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

(5) In any proceedings by a Licensing Board for the recovery of expenses under subsection (4), a copy of any minute of proceedings of the Licensing Board—

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

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

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

56 Determination of application

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

(2) If the Board has not received any—

(a) notice from the appropriate chief constable under section 54(2),

(aa) report from a Licensing Standards Officer under section 54(3), or

(b) notice of objection or representation under section 55(1),

relating to the application, the Board must grant the application.

(3) In any other case, the Board must consider whether any of the grounds for refusal applies and—

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

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

(4) The Board may hold a hearing for the purposes of determining any application which is to be determined in accordance with subsection (3).

(5) Where the Board does not hold a hearing for that purpose, the Board must ensure that, before determining the application, the applicant is given an opportunity to comment on any such notice or report as is referred to in subsection (2).

(6) The grounds for refusal are—

(a) that the premises to which the application relates are excluded premises,

(aa) that the application must be refused under section 60(2) or 60A(3),

(b) that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,
(c) that, having regard to—

(i) the nature of the activities proposed to be carried on in the premises to which the application relates,

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

(iii) the persons likely to frequent the premises,

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

(7) In considering, for the purposes of the ground for refusal specified in subsection (6)(b), whether the granting of the application would be inconsistent with the crime prevention objective, the Licensing Board must, in particular, take into account any notice given by the appropriate chief constable under section 54(2).

(7A) In determining any application which is to be determined in accordance with subsection (3), the Board must take into account any report from a Licensing Standards Officer under section 54(3).

57 Conditions of occasional licence

(1) Except to the extent that schedule 4 provides otherwise, every occasional licence is subject to the conditions specified in that schedule.

(2) The Scottish Ministers may by regulations modify schedule 4 so as—

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

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

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

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

(5) A Licensing Board may not impose a condition under subsection (4) which—

(a) is inconsistent with any condition—

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

(ii) prescribed under subsection (3),

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

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

(6) The conditions which may be—

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

(b) prescribed under subsection (3), or

(c) imposed under subsection (4),

include, in particular, conditions of the kind described in subsection (7).
(7) Those are conditions requiring anything to be done, or prohibiting or restricting the
doing of anything, in connection with—
   (a) the sale of alcohol on the premises in respect of which an occasional licence has
effect, or
   (b) any other activity carried on in such premises.

57A Notification of determinations

(1) Where a Licensing Board grants or refuses an occasional licence application, the Board
must give notice of the grant or refusal to—
   (a) the applicant,
   (b) the appropriate chief constable,
   (ba) any Licensing Standards Officer for the area in which the subject premises are
situated, and
   (c) any person who gave a notice of objection or representation under section 55(1) in
respect of the application.

(2) A person to whom notice is given under subsection (1) may, by notice to the clerk of the
Board, require the Board to give a statement of reasons for the grant or refusal of the
application.

(3) Where the clerk of a Licensing Board receives a notice under subsection (2), the Board
must issue a statement of the reasons for the grant or refusal of the application to—
   (a) the person giving the notice, and
   (b) each other person to whom the Board gave notice under subsection (1).

(4) A statement of reasons under subsection (3) must be issued—
   (a) by such time, and
   (b) in such form and manner,
   as may be prescribed.

PART 5
LICENSED HOURS

General

58 Licensed hours

(1) In this Act, “licensed hours” means, in relation to licensed premises—
   (a) in the case of licensed premises in respect of which a premises licence has effect,
the period or periods of time specified for the time being in the operating plan
contained in the premises licence as those during which alcohol is to be sold on
the premises, and
   (b) in the case of licensed premises in respect of which an occasional licence has
effect, the period or periods of time specified in the licence as those during which
alcohol may be sold on the premises,
and a reference to a period of licensed hours is a reference to any of those periods of time.

(1ZA) In this Act—

(a) in relation to any premises—

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

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

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

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

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

(1A) Subsection (1) is subject to sections 61A(6) and 61B(5).

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

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

(a) sells alcohol, or allows alcohol to be sold, on licensed premises,

(b) allows alcohol to be consumed on licensed premises, or

(c) allows alcohol to be taken from licensed premises.

(2) It is not an offence under subsection (1) for a person to—

(a) allow alcohol to be consumed on licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol was sold during that period,

(b) allow alcohol to be taken from licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol—

(i) was sold during that period, and

(ii) is not taken from the premises in an open container,

(c) allow alcohol to be consumed on or taken from licensed premises outwith licensed hours if the person consuming or taking the alcohol—

(i) resides on the premises, or

(ii) is a guest of a person who resides there,

(d) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to a person who resides on the premises,

(e) allow alcohol to be consumed on licensed premises at a meal at any time within 30 minutes of the end of any period of licensed hours if the alcohol was sold—

(i) during that period,

(ii) at the same time as the meal, and
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(iii) for consumption at the meal,

(f) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to—

(i) a person who is a trader for the purposes of the person’s trade, or

(ii) a person for supply to or on any premises which are occupied for the purposes of the armed forces of the Crown.

(3) It is a defence for a person (“the accused”) charged with an offence under subsection (1) of allowing alcohol to be consumed on or taken from any licensed premises outwith licensed hours to prove—

(a) that the accused, or an employee or agent of the accused, took all reasonable precautions and exercised all due diligence not to commit the offence, or

(b) that there were no lawful and reasonably practicable means by which the accused could prevent the person consuming or taking the alcohol on or from the premises from doing.

(4) A person commits an offence if, having been requested by a responsible person not to do so, the person consumes alcohol on, or takes alcohol from, licensed premises outwith licensed hours.

(5) In subsection (4), “responsible person” means—

(a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,

(b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,

(c) in either case, any person who works on the premises in a capacity (whether paid or unpaid) which authorises the person to make the request mentioned in subsection (4).

(6) Nothing in this section prevents or restricts—

(a) the ordering of alcohol for consumption off licensed premises, or

(b) the despatch of alcohol so ordered by the person selling it.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

60 24 hour licences to be granted only in exceptional circumstances

(1) Subsection (2) applies where, in relation to any premises—

(a) an application of any of the following kinds is made to a Licensing Board in respect of the premises, namely—

(i) a premises licence application,

(ii) a premises licence variation application,

(iii) an occasional licence application, or

(iv) an extended hours application, and

(b) if the application were to be granted, the licensed hours in relation to the premises would be such as to allow alcohol to be sold on the premises during a continuous period of 24 hours or more.
(2) The Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.

60A Licensed hours: off-sales

(1) This section applies where an application specified in subsection (2) is made to a Licensing Board in relation to any premises, but only so far as the application is for—

(a) a licence authorising the sale of alcohol for consumption off the premises, or
(b) an extension of off-sales hours in relation to the premises.

(2) That application is—

(a) a premises licence application,
(b) a premises licence variation application,
(c) an occasional licence application, or
(d) an extended hours application.

(3) If the off-sales hours proposed in the application are such that alcohol would be sold for consumption off the premises—

(a) before 10am,
(b) after 10pm, or
(c) both,

on any day, the Board must refuse the application.

(4) The Scottish Ministers may by order substitute other times for the times specified in subsection (3).

(5) Where subsection (3) does not apply, in considering whether the granting of the application would be inconsistent with any of the licensing objectives, the Board must, in particular, consider the effect (if any) which the off-sales hours proposed in the application would have on the occurrence of antisocial behaviour.

(6) In subsection (5), “antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

(7) This section is without prejudice to the generality of sections 22(3), 28(4), 56(3) and 61B(1).

61 Effect of start and end of British Summer Time

(1) Subsection (2) applies in relation to any period of licensed hours—

(a) during which, or
(b) at the end of which,

British Summer Time is due to begin or end.

(2) The beginning or, as the case may be, ending of British Summer Time is to be disregarded for the purpose of determining the time at which that period of licensed hours ends and, accordingly, the period ends at the time it would have ended had British Summer Time not begun or ended.
(3) In this section, “British Summer Time” means the period of summer time for the purposes of the Summer Time Act 1972 (c.6).

Occasional extensions

61A Power for Licensing Board to grant general extensions of licensed hours

(1) A Licensing Board may, if they consider it appropriate to do so in connection with a special event of local or national significance, make a determination extending licensed hours by such period as the Board may specify in the determination.

(2) A determination under subsection (1) may apply to—
   (a) the whole of the Licensing Board’s area or only to specified parts of the area,
   (b) licensed hours generally or only to specified descriptions of licensed hours, and
   (c) all licensed premises in the Board’s area or only to specified descriptions of such premises.

(3) A determination under subsection (1) has effect for such period as the Board may specify in it.

(4) Where a Licensing Board makes a determination under subsection (1), the Board must—
   (a) give notice of the determination to—
       (i) the appropriate chief constable, and
       (ii) the holders of premises licences and occasional licences in respect of premises to which the determination applies, and
   (b) publicise it in such manner as the Board sees fit.

(5) Nothing in this section is to be taken as requiring any licensed premises to be open for the sale of alcohol during the period of any extension of licensed hours specified in a determination under subsection (1).

(6) Except where the context requires otherwise, references in this Act to “licensed hours” are, in relation to any relevant premises to which a determination under subsection (1) applies, to be taken as references to such hours as extended by the determination.

(7) In this section, “specified” means specified in a determination under subsection (1).

61B Extended hours applications

(1) The appropriate Licensing Board may—
   (a) on the application of the holder of the premises licence in respect of any licensed premises, and
   (b) if the Board consider it appropriate to do so in connection with—
       (i) a special event or occasion to be catered for on the premises, or
       (ii) a special event of local or national significance,
   extend the licensed hours in respect of the premises by such period as is specified in the application or such other period as the Board consider appropriate.
(2) An extension of licensed hours under subsection (1) has effect for such period as is specified in the application or such other period as the Board consider appropriate; but in either case the period must not exceed one month.

(3) An application under subsection (1) is referred to in this Act as an “extended hours application”.

(4) A period of licensed hours which is extended under this section may not be further extended under this section.

(5) Except where the context requires otherwise, references in this Act to “licensed hours” are, in relation to any period of licensed hours extended under this section, to be taken as references to such hours as so extended.

(6) References in this section to “licensed premises” do not include premises in respect of which an occasional licence has effect.

61C Notification of extended hours application

(1) Where a Licensing Board receives an extended hours application, the Board must give notice of it, together with a copy of the application, to—

(a) the appropriate chief constable, and

(b) any Licensing Standards Officer for the area in which the subject premises are situated.

(2) The appropriate chief constable may, within 10 days of receipt of a notice under subsection (1)(a), by notice to the appropriate Licensing Board object to the application if the chief constable considers it necessary to do so for the purposes of the crime prevention objective.

(3) A Licensing Standards Officer must, within 10 days of receipt of a notice under subsection (1)(b), prepare and submit to the Licensing Board a report setting out the Officer’s comments on the application.

61D Determination of extended hours application

(1) In determining an extended hours application, the Licensing Board must take into account—

(a) any notice of objection given by the appropriate Chief Constable under section 61C(2), and

(b) the Licensing Standards Officer’s report under section 61C(3).

(2) The Board may hold a hearing for the purpose of determining an extended hours application.

(3) Where the Board does not hold a hearing for that purpose, the Board must, before determining the application, ensure that the applicant is given an opportunity to comment on any such notice or report as is mentioned in subsection (1).

(4) Where a Licensing Board grants or refuses an extended hours application, the Board must give notice of the grant or refusal to—

(a) the applicant,

(b) the appropriate chief constable,
(c) any Licensing Standards Officer for the area in which the subject premises are situated.

(5) A person to whom notice is given under subsection (4) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

(6) Where the clerk of a Licensing Board receives a notice under subsection (5), the Board must issue a statement of the reasons for the grant or refusal of the application to—

(a) each person giving the notice, and

(b) each other person to whom the Board gave notice under subsection (4).

(7) A statement of reasons under subsection (6) must be issued—

(a) by such time, and

(b) in such form and manner,

as may be prescribed.

PART 6
PERSONAL LICENCES

62 Personal licence

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

(a) issued to the individual by a Licensing Board under section 67(1) of this Act, and

(b) authorising the individual to supervise or authorise the sale of alcohol.

63 Application for personal licence

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

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

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

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

64 Notification of application to chief constable

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

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

(3) Those notices are—
(a) a notice stating that, as far as the chief constable is aware, the applicant has not been convicted of any relevant offence or foreign offence, or
(b) a notice specifying any convictions of the applicant for any such offence.

(4) Where the chief constable—

(a) proposes to give a notice under subsection (3)(b), and
(b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the personal licence application be refused,

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

**Determination of personal licence application**

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

(2) If—

(a) all of the conditions specified in subsection (3) are met in relation to the applicant, and
(b) the Board has received from the appropriate chief constable a notice under section 64(3)(a),

the Board must grant the application.

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

(a) the applicant is aged 18 or over,
(b) the applicant possesses a licensing qualification, and
(c) no personal licence previously held by the applicant has been revoked within the period of 5 years ending with the day on which the application was received.

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

(5) If—

(a) all of those conditions are met in relation to the applicant, and
(b) the Board has received from the appropriate chief constable a notice under section 64(3)(b),

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

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

(a) if satisfied that it is necessary to do so for the purposes of the crime prevention objective, refuse the application, or
(b) if not so satisfied, grant the application.
Applicant's duty to notify Licensing Board of convictions

(1) This section applies where, during the period beginning with the making of a personal licence application and ending with determination of the application, the applicant is convicted of a relevant offence or a foreign offence.

(2) The applicant must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board to which the personal licence application was made.

(3) A notice under subsection (2) must specify—
   (a) the nature of the offence, and
   (b) the date of the conviction.

(4) Where the Licensing Board receives a notice under subsection (2) at any time before they have determined the personal licence application, the Board must—
   (a) suspend consideration of the application, and
   (b) give notice of the conviction to the appropriate chief constable.

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

(6) Those notices are—
   (a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant offence or foreign offence, or
   (b) a notice confirming the existence of the conviction and that it relates to a relevant offence or foreign offence.

(7) Where the chief constable—
   (a) proposes to give a notice under subsection (6)(b), and
   (b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the personal licence application be refused,

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

(8) On receipt of the chief constable’s notice under subsection (6), the Licensing Board must resume consideration of the personal licence application and determine it in accordance with section 65.

(9) For that purpose, that section has effect as if—
   (a) references in it to a notice under section 64(3)(a) included references to a notice under subsection (6)(a) of this section, and
   (b) references in it to a notice under section 64(3)(b) included references to a notice under subsection (6)(b) of this section.

(10) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

(11) A person guilty of an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
67 Issue of licence

(1) Where a Licensing Board grants a personal licence application, the Board must issue a personal licence, in the prescribed form, to the applicant.

(2) A personal licence issued under subsection (1) must specify—

(a) the name and address of the individual to whom it is issued,

(b) the Licensing Board issuing the licence,

(c) the expiry date of the licence,

(d) any relevant offence or foreign offence of which the applicant has been convicted, and

(e) such other matters as may be prescribed.

(3) A personal licence is void if, at the time it is issued under subsection (1), the individual to whom it is issued already holds a personal licence.

68 Period of effect of personal licence

(1) A personal licence has effect, subject to the following provisions of this section, during the period of 10 years beginning with the date on which it is issued.

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

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

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

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

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

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

(6) That is a notice—

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

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

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

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

69 Renewal of personal licence

(1) The holder of a personal licence may, within the period specified in subsection (2), apply to the Licensing Board which issued the licence for renewal of the licence.
(2) The period referred to in subsection (1) is the period of 2 months beginning 3 months before the expiry date of the licence.

(3) An application under subsection (1) must be accompanied by—
   (a) the personal licence to which it relates, or
   (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

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

(5) Sections 64 and 65 apply to a personal licence renewal application as they apply to a personal licence application.

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

70 Notification of determinations

(1) This section applies where a Licensing Board grants or refuses—
   (a) a personal licence application, or
   (b) a personal licence renewal application.

(2) The Board must give—
   (a) the applicant, and
   (b) the appropriate chief constable,

   notice of the grant or refusal of the application.

(2A) A person to whom notice is given under subsection (2) may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the grant or refusal of the application.

(2B) Where the clerk of a Licensing Board receives a notice under subsection (2A), the Board must issue a statement of the reasons for the grant or refusal of the application to—
   (a) the person giving the notice, and
   (b) each other person to whom the Board gave notice under subsection (2).

(2C) A statement of reasons under subsection (2B) must be issued—
   (a) by such time, and
   (b) in such form and manner,

   as may be prescribed.

Conviction of licence holder for relevant or foreign offence

71 Duty to notify court of personal licence

(1) Subsection (2) applies where—
   (a) a person who holds a personal licence is charged with a relevant offence, or
   (b) a person charged with a relevant offence is granted a personal licence after the person’s first appearance in court in connection with the offence but before—
(i) conviction and sentencing for the offence or acquittal, or
(ii) where an appeal is brought against conviction, sentence or acquittal, the disposal of the appeal.

(2) The person must, no later than the person’s first or, as the case may be, next appearance in court in connection with the offence—

(a) produce to the court the personal licence, or

(b) if that is not practicable, notify the court of—

(i) the existence of the personal licence,

(ii) the identity of the Licensing Board which issued the licence, and

(iii) the reasons why it is not practicable to produce the licence.

(3) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

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

72 Court’s duty to notify Licensing Board of convictions

(1) This section applies where the clerk of a court in Scotland by or before which a person is convicted of a relevant offence is aware that the person holds a personal licence.

(2) The clerk of the court must, as soon as reasonably practicable after the conviction, give notice of the conviction to the Licensing Board which issued the personal licence held by the licence holder.

(3) Where—

(a) a Licensing Board receives a notice under subsection (2) (“the receiving Board”), and

(b) that Board has reason to believe that the personal licence holder in respect of whom the notice is given is working in licensed premises situated in the area of another Licensing Board (“the other Board”),

the receiving Board must give notice of the conviction to the other Board.

73 Licence holder’s duty to notify Licensing Board of convictions

(1) This section applies where a personal licence holder is convicted of a relevant or foreign offence.

(2) The licence holder must, no later than one month after the date of the conviction, give notice of the conviction to—

(a) the Licensing Board which issued the personal licence held by the licence holder, and

(b) if different, the Licensing Board for the area in which are situated any licensed premises in which the licence holder is working.

(3) A notice of conviction under subsection (2) must—

(a) specify—

(i) the nature of the offence, and
(ii) the date of the conviction, and

(b) be accompanied by—

(i) the personal licence held by the licence holder, or

(ii) if that is not practicable, a statement of the reasons for failure to produce

the licence.

(4) Where—

(a) a Licensing Board receives a notice under subsection (2) ("the receiving Board"),

and

(b) that Board has reason to believe that the personal licence holder in respect of

whom the notice is given is working in licensed premises situated in the area of

another Licensing Board ("the other Board"),

the receiving Board must give notice of the conviction to the other Board.

(5) A licence holder who fails, without reasonable excuse, to comply with subsection (2)

commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a

fine not exceeding level 4 on the standard scale.

74 Procedure where Licensing Board receives notice of conviction

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

(a) receives a notice of conviction relating to a personal licence holder, or

(b) becomes aware that a personal licence holder was, during the application period,

convicted of a relevant offence or a foreign offence.

(2) The Licensing Board must give notice of the conviction to the appropriate chief

constable.

(3) The appropriate chief constable must, within 21 days of the date of receipt of a notice

under subsection (2), respond to the notice by giving the Licensing Board one or other

of the notices mentioned in subsection (4).

(4) Those notices are—

(a) a notice stating that the chief constable is unable to confirm the existence of the

conviction or that the conviction does not relate to a relevant or a foreign offence,

or

(b) a notice confirming the existence of the conviction and that it relates to a relevant

or a foreign offence.

(5) Where the appropriate chief constable—

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

(b) considers that, having regard to the conviction specified in the notice, it is

necessary for the purposes of the crime prevention objective that the licence

holder’s personal licence should be revoked, suspended or endorsed,

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

(6) If the Licensing Board receives from the appropriate chief constable a notice under

subsection (4)(a), the Licensing Board may not take any further action in relation to the

conviction.
(7) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(b), the Licensing Board must hold a hearing.

(8) At the hearing, the Licensing Board may—
   (a) having regard to—
      (i) the conviction, and
      (ii) any recommendation contained in the chief constable’s notice under subsection (5),
   (b) after giving—
      (i) the licence holder concerned, and
      (ii) the appropriate chief constable,
   an opportunity to be heard, and
   (c) if satisfied that it is necessary to do so for the purposes of the crime prevention objective,
       make an order under subsection (9).

(9) That order is an order—
   (a) revoking,
   (b) suspending for such period, not exceeding 6 months, as the Board considers appropriate, or
   (c) endorsing,
       the personal licence held by the licence holder concerned.

(10) Where the Licensing Board makes an order under subsection (9), the Board must give—
   (a) the licence holder concerned,
   (b) the appropriate chief constable, and
   (c) if different, the Licensing Board which issued the personal licence,
       notice of the order and of the reasons for making it.

(11) In this section—
   “the application period” means, in relation to a personal licence holder, the period—
   (a) beginning with the date on which the application for the personal licence held by that licence holder was made, and
   (b) ending with the date on which that application was granted,
   “notice of conviction” means a notice under section 72(2) or 73(2), and
   “relevant Licensing Board” means, in relation to a personal licence holder—
   (a) if the personal licence holder is working as a premises manager at any licensed premises, the Licensing Board for the area in which those premises are situated, and
   (b) in any other case, the Licensing Board which issued the personal licence held by the licence holder.
Conduct inconsistent with licensing objectives

75 Conduct inconsistent with the licensing objectives

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

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

(3) The Licensing Board making the finding must—

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

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

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

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

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

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

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

(a) after giving—

(i) the licence holder concerned, and

(ii) such other persons as they consider appropriate,

an opportunity to be heard, and

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

make an order under subsection (7).

(7) That is an order—

(a) revoking,

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

(c) endorsing,

the personal licence held by the licence holder concerned.

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

(a) the licence holder concerned,
(b) where the hearing was held in pursuance of a notice given under subsection (3)(b),
the Licensing Board which gave the notice, and
(c) if different, the Licensing Board which issued the personal licence,
notice of the order and of the reasons for making it.

5

Endorsements

76 Expiry of endorsements

(1) In this section and section 77, “endorsement” means an endorsement made in a personal
licence by virtue of an order under—
(a) section 74(9)(c), or
(b) section 75(7)(c).

(2) An endorsement expires at the end of the period of 5 years beginning with the date on
which the endorsement was made.

(3) The holder of a personal licence containing an endorsement which has expired under
subsection (2) may apply to the Licensing Board which issued the licence for removal of
the endorsement.

(4) An application under subsection (3) must be accompanied by the personal licence to
which it relates.

(5) Where a Licensing Board receives an application under subsection (3) in relation to any
personal licence, the Board must amend the licence so as to remove the endorsement
from it.

(6) For the purposes of this Act, any endorsement which has expired under subsection (2) is
to be disregarded (whether or not the endorsement has been removed under subsection
(5)).

77 Suspension of licence after multiple endorsements

(1) Where 3 endorsements have been made in any personal licence, the Licensing Board
which issued the licence must hold a hearing.

(2) At the hearing, the Licensing Board may—
(a) after giving—
(i) the holder of the licence, and
(ii) such other persons as the Board considers appropriate,
an opportunity to be heard, and
(b) if they consider it necessary to do so for the purposes of any of the licensing
objectives,
make an order under subsection (3).

(3) That is an order—
(a) suspending the licence for such period, not exceeding 6 months, as the Board
considers appropriate, or
(b) revoking the licence.
Where the Licensing Board makes an order under subsection (3), the Board must give the licence holder notice of the order and of the reasons for making it.

**Licence holder’s duty to undertake training**

78 **Licence holder’s duty to undertake training**

5 (1) The holder of a personal licence must, no later than 3 months after the expiry of—

(a) the period of 5 years beginning with the date on which the licence holder’s licence was issued, and

(b) each subsequent period of 5 years during which the licence has effect,

produce to the Licensing Board which issued the licence evidence in the prescribed form of the licence holder’s having complied, during that period, with such requirements as to the training of personal licence holders as may be prescribed.

(2) A Licensing Board must—

(a) in relation to each personal licence issued by it, and

(b) no later than 3 months before the expiry of each period mentioned in subsection (1),

give to the holder of the licence notice of the requirement imposed by that subsection.

(3) If a personal licence holder fails to comply with subsection (1), the Licensing Board which issued the licence held by the licence holder must revoke the licence.

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

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

(i) courses of training, and

(ii) persons providing such courses,

for the purposes of the regulations,

(b) prescribe different requirements in relation to different descriptions of personal licence holder, and

(c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.

**Update of licence**

79 **Notification of change of name or address**

30 (1) A personal licence holder must, no later than one month after any change in the licence holder’s name or address, give the Licensing Board which issued the licence notice of the change.

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

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

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
80 **Licensing Board’s duty to update licence**

(1) In this section, the “issuing Licensing Board” means, in relation to a personal licence, the Licensing Board which issued the licence.

(2) Where the issuing Licensing Board grants a personal licence renewal application made in respect of any personal licence, the Board must make the necessary amendment to the expiry date specified in the licence.

(3) Where a personal licence is suspended by virtue of any provision in this Act, the issuing Licensing Board must amend the licence so as to specify in it—

(a) the date, and

(b) period,

of the suspension.

(4) Where the issuing Licensing Board receives a notice of conviction in relation to any personal licence holder, the Board must amend the personal licence held by the licence holder so as to specify in it—

(a) the date of the conviction, and

(b) the nature of the offence,

unless the Board has already done so by virtue of any previous such notice.

(5) Where the issuing Licensing Board—

(a) makes an order under section 74(9)(c) or 75(7)(c) in relation to any personal licence holder, or

(b) receives notice under section 74(10)(c) or 75(8)(c) of such an order made by another Licensing Board,

the Board must amend the personal licence held by the licence holder so as to include in it a statement that it is endorsed together with the details of the conviction or conduct giving rise to the making of the order.

(6) Where the issuing Licensing Board receives a notice under section 79(1) from a personal licence holder, the Board must amend the personal licence of the licence holder so that it specifies the licence holder’s new name or address.

(7) Where the issuing Licensing Board receives evidence of training produced by a personal licence holder in accordance with section 78(1), the Board must amend the personal licence held by the licence holder so as to include in it the prescribed details of the training.

(8) Where the issuing Licensing Board is not in possession of a personal licence and—

(a) the licence has been revoked under any provision of this Act, or

(b) the Board requires the licence for the purpose of complying with any duty under this section in relation to the licence,

the Board may require the holder of the licence to produce it to the Board within 14 days from the date on which the requirement is notified.

(9) A personal licence holder who fails, without reasonable excuse, to comply with a requirement made under subsection (8) commits an offence.
(10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(11) In this section, “notice of conviction” means a notice under section 72(2) or 73(2).

Miscellaneous

81 Power to specify which Licensing Board is to exercise functions under this Part

(1) The Scottish Ministers may by order provide for any function exercisable under this Part by a Licensing Board of a particular description to be exercisable instead by a Licensing Board of such other description as may be specified in the order.

(2) An order under subsection (1) may—
   (a) modify this Act, and
   (b) make different provision in relation to different functions.

82 Power to prescribe licensing qualifications

(1) In this Act, “licensing qualification” means—
   (a) such qualification, or
   (b) a qualification of such description,
   as may be prescribed.

(2) Regulations under subsection (1) may, in particular—
   (a) prescribe qualifications or descriptions of qualifications by reference to whether they are—
      (i) accredited, or
      (ii) awarded by a person who is accredited,
      for the purposes of this section by the Scottish Ministers in accordance with the regulations,
   (b) prescribe qualifications or descriptions of qualifications awarded outwith Scotland (as well as qualifications awarded within Scotland),
   (c) prescribe different qualifications in relation to different licensed premises or licensed premises of different descriptions, and
   (d) prescribe such qualifications as the appropriate licensing qualifications in relation to those descriptions of licensed premises for the purposes of paragraph 4(2) of schedule 3.

83 Theft, loss etc. of personal licence

(1) This section applies where the Licensing Board which issued a personal licence receives from the holder of the licence an application for a replacement personal licence.

(2) If satisfied that—
   (a) the personal licence held by the applicant has been lost, stolen, damaged or destroyed, and
(b) where it has been lost or stolen, the applicant has reported the loss or theft to the police,

the Licensing Board must issue to the applicant a replacement personal licence.

(3) A replacement personal licence is a copy of the personal licence held by the applicant—

(a) in the form in which it existed immediately before it was lost, stolen, damaged or destroyed, and

(b) certified by the Board to be a true copy.

(4) In this Act, references to a personal licence include references to a replacement personal licence issued under this section.

84 Licence holder’s duty to produce licence

(1) This section applies where the holder of a personal licence is working at any licensed premises.

(2) A constable or Licensing Standards Officer may, at any time when the licence holder is on the licensed premises, require the licence holder to produce the licence for examination.

(3) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (2) commits an offence.

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

PART 7

CONTROL OF ORDER

Exclusion of violent offenders

85 Exclusion orders

(1) This section applies where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises in respect of which a premises licence has effect (referred to in this section and section 87 as “the licensed premises concerned”).

(2) The court by or before which the person is convicted of the offence may, in addition to any sentence imposed or other disposal in respect of the offence, make an order prohibiting the person from entering—

(a) the licensed premises concerned, and

(b) such other licensed premises (if any) as the court may specify in the order, except with the appropriate consent.

(3) The holder of the premises licence in respect of the licensed premises concerned may, by summary application to the sheriff of the appropriate sheriffdom made no later than 6 weeks after the date of the conviction, seek an order prohibiting the person convicted from entering the licensed premises concerned except with the appropriate consent.

(4) On such an application, the sheriff, if satisfied that—
(a) there is a substantial risk that the person convicted will commit a further violent
offence on, or in the immediate vicinity of, the licensed premises concerned, and
(b) an order has not been made under subsection (2) in relation to the person in
respect of the same conviction,
may grant the order sought.

(5) For the purposes of an application under subsection (3), where the sheriff is satisfied
that the person to whom the application relates has been convicted as mentioned in
subsection (1), it is to be presumed, unless the contrary is proved, that the risk referred
to in subsection (4)(a) exists.

(6) An order under subsection (2) or (4) is referred to in this Act as an “exclusion order”.

(7) An exclusion order has effect, subject to section 86(3), for such period, being not less
than 3 months and not more than 2 years, as is specified in the order.

(8) In this section—

“the appropriate consent” means, in relation to any licensed premises, the express
consent of—

(a) the premises licence holder in respect of the premises, or
(b) a person authorised by the premises licence holder to give consent for the
purposes of this section,

“the appropriate sheriffdom” means the sheriffdom in which the licensed premises
concerned are situated,

“violent offence” means any offence involving violence or the threat of violence.
(b) the constable reasonably suspects the person to be removed of having entered the premises in breach of an exclusion order, provide the assistance asked for.

(6) In this section, “authorised person” means, in relation to licensed premises, any of the following persons, namely—

(a) the premises licence holder,
(b) the premises manager, and
(c) any other person who—
   (i) works on the premises, and
   (ii) is authorised by the premises licence holder or the premises manager for the purposes of this section.

87 Exclusion orders: supplementary provision

(1) References in section 85 to a person’s being convicted of an offence are, in the case mentioned in subsection (2), to be read as references to the court’s being satisfied that the person committed the offence.

(2) That case is the case where—
   (a) the person is charged with the offence before a court of summary jurisdiction, and
   (b) the court, without proceeding to conviction, discharges the person absolutely under section 246(3) of the Criminal Procedure (Scotland) Act 1995 (c.46).

(3) Where—
   (a) a court or the sheriff makes an exclusion order, or
   (b) a court makes an order terminating or varying an exclusion order,
the clerk of the court or, as the case may be, the sheriff clerk must send a copy of the order to the premises licence holder in respect of the licensed premises concerned.

Closure of premises

88 Closure orders

(1) A Licensing Board may—
   (a) on the application of a senior police officer relating to any licensed premises situated within the Board’s area, and
   (b) if satisfied that, by reason of the likelihood of disorder on, or in the vicinity of the premises, closure of the premises is necessary in the interests of public safety, make a closure order in relation to the premises.

(2) A senior police officer may, if the officer reasonably believes that—
   (a) there is, or is likely imminently to be, disorder on, or in the vicinity of, any licensed premises,
   (b) closure of the premises is necessary in the interests of public safety, and
   (c) the risk to public safety is such that it is necessary to do so immediately and without making an application under subsection (1),
make a closure order in relation to the premises.

(3) A closure order is an order requiring the licensed premises to which it relates to be closed for such period, beginning with the coming into force of the order, as may be specified in the order.

(4) A closure order made by a senior police officer under subsection (2) is referred to as an “emergency closure order”.

(5) The period of closure specified in an emergency closure order must not exceed 24 hours.

(6) A closure order comes into force in relation to any licensed premises to which it relates when a constable gives notice of it to a responsible person.

(7) Any responsible person who allows any licensed premises to be open in breach of a closure order commits an offence.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to—
   (a) a fine not exceeding £20,000,
   (b) imprisonment for a term not exceeding 3 months, or
   (c) both.

89 Termination of closure orders

(1) A senior police officer must terminate a closure order (whether or not an emergency closure order) relating to any licensed premises if the officer is satisfied that it is no longer necessary in the interests of public safety for the premises to be closed.

(2) Where a senior police officer terminates a closure order relating to any licensed premises, the officer must ensure that notice of the termination is given by a constable to—
   (a) a responsible person, and
   (b) in the case of a closure order made by a Licensing Board, the Board.

(3) A Licensing Board may—
   (a) on the application of the holder of the premises licence or, as the case may be, occasional licence in respect of any licensed premises to which a closure order made by the Board relates, and
   (b) if satisfied that it is no longer necessary in the interests of public safety for the premises to be closed,
   terminate the closure order.

90 Extension of emergency closure order

(1) Where an emergency closure order is in effect in respect of any licensed premises, a senior police officer may—
   (a) before the expiry of the period during which the order has effect (referred to in this section as the “original closure period”), and
   (b) if the officer reasonably believes that the conditions mentioned in subsection (2) are met in relation to the premises,
   extend the original closure period for a further period not exceeding 24 hours.
(2) The conditions referred to in subsection (1)(b) are—
   (a) that there continues to be, or is likely to continue to be, disorder on, or in the vicinity of, the premises,
   (b) that extending the original closure period is necessary in the interests of public safety, and
   (c) the risk to public safety continues to be such that it is necessary to extend the original closure period immediately and without making an application under section 88(1).

(3) An extension under subsection (1) has no effect in relation to any licensed premises unless a constable has, before expiry of the original closure period, given notice of the extension to a responsible person.

91 Regulations as to closure orders
The Scottish Ministers may by regulations make further provision as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders including, in particular, provision—

(a) as to the form and manner in which—
   (i) any application under section 88(1)(a) or 89(3)(a) is to be made,
   (ii) any notice under section 88(6), 89(2) or 90(3) is to be given,

(b) as to the form of closure orders,

(c) for the holding of hearings by Licensing Boards before making closure orders or extensions to them.

92 Interpretation of sections 88 to 91
In sections 88 to 91 “responsible person” means—

(a) in the case of premises in respect of which a premises licence has effect—
   (i) the premises licence holder, or
   (ii) the premises manager,

(b) in the case of premises in respect of which an occasional licence has effect, the person who holds the occasional licence, and

(c) in either case, any person working at the premises in a capacity (whether paid or unpaid) which authorises the person to close the premises.

PART 8
OFFENCES

93 Sale of alcohol to a child or young person

(1) A person who sells alcohol to a child or a young person commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—
(a) the accused believed the child or young person to be aged 18 or over, and
(b) either—
   (i) the accused had taken reasonable steps to establish the child’s or young person’s age, or
   (ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.

(3) For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—
(a) the accused was shown any of the documents mentioned in subsection (4), and
(b) that document would have convinced a reasonable person.

(4) The documents referred to in subsection (3)(a) are any document bearing to be—
(a) a passport,
(b) a European Union photocard driving licence, or
(c) such other document, or a document of such other description, as may be prescribed.

(5) A person guilty of an offence under subsection (1) is liable on summary conviction to—
(a) a fine not exceeding level 5 on the standard scale,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.

94 Allowing the sale of alcohol to a child or young person

(1) Any responsible person who knowingly allows alcohol to be sold to a child or a young person on any relevant premises commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
(a) a fine not exceeding level 5 on the standard scale,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.

95 Sale of liqueur confectionery to a child

(1) A person who sells liqueur confectionery to a child commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—
(a) the accused believed the child to be aged 16 or over, and
(b) either—
   (i) the accused had taken reasonable steps to establish the child’s age, or
   (ii) no reasonable person could have suspected from the child’s appearance that the child was aged under 16.

(3) For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s age if and only if—
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(a) the accused was shown evidence of the child’s age, and
(b) that evidence would have convinced a reasonable person.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

96 Purchase of alcohol by or for a child or young person

(1) A child or young person who buys or attempts to buy alcohol (whether for himself or herself or another person) commits an offence.

(1A) It is not an offence under subsection (1) for a child or young person to buy or attempt to buy alcohol if the child or young person is authorised to do so by the chief constable for the purpose of determining whether an offence is being committed under section 93.

(1B) A chief constable may authorise a child or young person to buy or attempt to buy alcohol as mentioned in subsection (1A) only if satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of the child or young person.

(2) A person other than a child or young person who knowingly buys or attempts to buy alcohol—

(a) on behalf of a child or young person, or
(b) for consumption on relevant premises by a child or young person, commits an offence.

(3) Subsection (2)(b) does not apply to the buying of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.

(4) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(5) A person guilty of an offence under subsection (2) is liable on summary conviction to—

(a) a fine not exceeding level 5 on the standard scale,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.

97 Consumption of alcohol by a child or young person

(1) A child or young person who knowingly consumes alcohol on any relevant premises commits an offence.

(2) Any responsible person who knowingly allows a child or young person to consume alcohol on any relevant premises commits an offence.

(3) Subsections (1) and (2) do not apply to the consumption of beer, wine, cider or perry by a young person along with a meal supplied on relevant premises.

(4) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) A person guilty of an offence under subsection (2) is liable on summary conviction to—

(a) a fine not exceeding level 5 on the standard scale,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.
Unsupervised sale of alcohol by a child or young person

(1) Any responsible person who knowingly allows alcohol to be sold, supplied or served by a child or young person on any relevant premises commits an offence.

(2) Subsection (1) does not apply to—
(a) any sale by a child or young person of alcohol for consumption off the premises,
(b) any supply or service by a child or young person of alcohol for consumption on the premises along with a meal supplied on relevant premises,
if the condition in subsection (3) is satisfied.

(3) That condition is that the sale, supply or service is specifically authorised by—
(a) a responsible person, or
(b) any other person of or over 18 years of age who is authorised by a responsible person for the purposes of this section.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Delivery of alcohol by or to a child or young person

(1) This section applies where alcohol is sold on any relevant premises for consumption off the premises.

(2) Any responsible person who allows the alcohol to be delivered by a child or young person commits an offence.

(3) Any responsible person who—
(a) delivers the alcohol, or
(b) allows it to be delivered,
to a child or young person commits an offence.

(4) Subsections (2) and (3) do not apply to the delivery of the alcohol by or to a child or young person who works on the relevant premises or at the place where the delivery is made in a capacity (whether paid or unpaid) which involves the delivery of alcohol.

(4A) It is a defence for a person charged with an offence under subsection (2) or (3)(a) (referred to in this subsection and subsection (4B) as “the accused”) to show that—
(a) the accused believed the child or young person to be aged 18 or over, and
(b) either—
(i) the accused had taken reasonable steps to establish the child’s or young person’s age, or
(ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.

(4B) For the purposes of subsection (4A)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—
(a) the accused was shown any of the documents mentioned in subsection (4C), and
(b) that document would have convinced a reasonable person.
(4C) The documents referred to in subsection (4B)(a) are any document bearing to be—
   (a) a passport,
   (b) a European Union photocard driving licence, or
   (c) such other document, or a document of such other description, as may be prescribed.

(4D) It is a defence for a person charged with an offence under subsection (3)(b) (“the accused”) to prove that the accused took all reasonable precautions and exercised due diligence not to commit the offence.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

100 Sending a child or young person to obtain alcohol

(1) Any person who knowingly sends a child or young person to obtain alcohol sold or to be sold on any relevant premises for consumption off the premises commits an offence.

(2) It is immaterial for the purposes of subsection (1) whether the child or young person is sent to obtain the alcohol from the relevant premises where it is sold or from some other place from which it is to be delivered.

(3) Subsection (1) does not apply where the child or young person works on the relevant premises or at the place where the alcohol is to be delivered in a capacity (whether paid or unpaid) which involves the delivery of alcohol.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction to—
   (a) a fine not exceeding level 5 on the standard scale,
   (b) imprisonment for a term not exceeding 3 months, or
   (c) both.

101 Duty to display notice

(1) This section applies in relation to any relevant premises.

(2) The notice mentioned in subsection (3) must be displayed—
   (a) at all times,
   (b) at each place on the premises where sales of alcohol are made, and
   (c) in a position where it is readily visible to any person seeking to buy alcohol.

(3) That is a notice in the prescribed form and of the prescribed dimensions containing the following statements, namely—
   “It is an offence for a person under the age of 18 to buy or attempt to buy alcohol on these premises.
   It is also an offence for any other person to buy or attempt to buy alcohol on these premises for a person under the age of 18.
   Where there is doubt as to whether a person attempting to buy alcohol on these premises is aged 18 or over, alcohol will not be sold to the person except on production of evidence showing the person to be 18 or over.”.
(4) If the requirement in subsection (2) is not met in relation to any premises, the person specified in subsection (5) commits an offence.

(5) That person is, in relation to any relevant premises—

(a) in the case of licensed premises—

(i) the premises licence holder, and

(ii) the premises manager,

(b) in the case of premises in respect of which an occasional licence has effect, the holder of the licence, and

(c) in the case of other relevant premises, the person having the management and control of the premises.

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

**Drunkenness and disorderly conduct**

102 **Drunk persons entering or in premises on which alcohol is sold**

(1) A person who, while drunk, attempts to enter any relevant premises (other than premises on which the person resides) commits an offence.

(2) A person commits an offence if the person, while drunk—

(a) is on any relevant premises, and

(b) is incapable of taking care of himself or herself.

(3) A constable may arrest without warrant any person committing an offence under this section.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

103 **Obtaining of alcohol by or for a drunk person**

(1) A person who, on any relevant premises, obtains or attempts to obtain alcohol for consumption on the premises by a person who is drunk commits an offence.

(2) A person who, on any relevant premises, helps a person who is drunk to obtain or consume alcohol on the premises commits an offence.

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

104 **Sale of alcohol to a drunk person**

(1) Any responsible person who, on any relevant premises, sells alcohol to a person who is drunk commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
105 **Premises manager, staff etc. not to be drunk**

(1) Any responsible person in relation to any relevant premises who is drunk while on the premises commits an offence.

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

106 **Disorderly conduct**

(1) A person on relevant premises who, while drunk—
   (a) behaves in a disorderly manner, or
   (b) uses obscene or indecent language to the annoyance of any person,
commits an offence.

(2) Any responsible person in relation any relevant premises who allows—
   (a) a breach of the peace,
   (b) drunkenness, or
   (c) other disorderly conduct,
to take place on the premises commits an offence.

(3) It is a defence for a person charged with an offence under subsection (2) (“the accused”) to prove—
   (a) that the accused, or an employee or agent of the accused, took all reasonable precautions and exercised due diligence not to commit the offence, or
   (b) that there were no lawful and reasonably practicable means by which the accused could prevent the conduct giving rise to the offence.

(4) A person guilty of an offence under subsection (1)(a) is liable on summary conviction to—
   (a) a fine not exceeding level 3 on the standard scale,
   (b) imprisonment for a term not exceeding 60 days, or
   (c) both.

(5) A person guilty of an offence under subsection (1)(b) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

107 **Refusal to leave premises**

(1) A person on any relevant premises who—
   (a) behaves in a disorderly manner, and
   (b) refuses or fails to leave the premises on being asked to do so by a responsible person or a constable,
commits an offence.

(2) A person on any relevant premises who, after the end of any period of licensed hours, refuses or fails to leave the premises on being asked to do so by a responsible person or a constable commits an offence.
Where a person refuses or fails to leave any relevant premises as mentioned in subsection (1) or (2), an authorised person may—
(a) remove the person from the premises, and
(b) if necessary for that purpose, use reasonable force.

A constable must, if—
(a) asked by an authorised person to assist in exercising a power conferred by subsection (2A), and
(b) the constable reasonably suspects the person to be removed of having refused or failed to leave as mentioned in subsection (1) or (2),
provide the assistance asked for.

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

In this section, “authorised person” means, in relation to any relevant premises, any of the following persons, namely—
(a) a responsible person, and
(b) any other person who—
(i) works on the premises, and
(ii) is authorised by a responsible person for the purposes of this section.

Miscellaneous offences

**108 Offences relating to sale of alcohol to trade**

(1) A person who sells alcohol to trade otherwise than from premises which are used exclusively for the purpose of the selling of goods (whether solely alcohol or not) to trade commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**109 Prohibition of unauthorised sale of alcohol on moving vehicles**

(1) A person who knowingly sells alcohol on or from a vehicle at a time when the vehicle is not parked (whether permanently or temporarily) commits an offence, unless the selling of alcohol on or from the vehicle at such a time is expressly authorised by a premises licence or occasional licence in respect of the vehicle.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
(a) a fine not exceeding £20,000,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.

**110 Delivery of alcohol from vehicles etc.**

(1) A person who, pursuant to a sale of alcohol by that person, delivers the alcohol from a vehicle or receptacle without the information mentioned in subsection (2) having been entered, before the despatch of the alcohol, in—
(a) a day book kept on the premises from which the alcohol is despatched, and
(b) a delivery book or invoice carried by the person delivering the alcohol,
commits an offence.

(2) The information referred to in subsection (1) is—
(a) the quantity, description and price of the alcohol, and
(b) the name and address of the person to whom it is to be delivered.

(3) A person who carries in a vehicle or receptacle in use for the delivery of alcohol
pursuant to a sale of the alcohol by that person any alcohol the quantity, description and
price of which was not entered as mentioned in subsection (1) commits an offence.

(4) A person who, pursuant to a sale of alcohol, delivers the alcohol to an address not
entered as mentioned in subsection (1) commits an offence.

(5) A person who refuses to allow a constable or a Licensing Standards Officer to
examine—
(a) any vehicle or receptacle in use for the delivery of alcohol, or
(b) any—
   (i) day book kept as mentioned in subsection (1)(a), or
   (ii) delivery book or invoice carried as mentioned in subsection (1)(b),
commits an offence.

(6) A person guilty of an offence under this section is liable on summary conviction to a
fine not exceeding level 3 on the standard scale.

(7) In this section, “alcohol” does not include any alcohol being delivered to a trader for the
purposes of that person’s trade.

112 Prohibition of late-night deliveries of alcohol

(1) This section applies where alcohol is sold on any relevant premises for consumption off
the premises.

(2) A responsible person commits an offence if the person knowingly delivers the alcohol to
any premises (other than licensed premises) between the hours of midnight and 6am.

(3) A responsible person who knowingly allows the alcohol to be so delivered commits an
offence.

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

113 Keeping of smuggled goods

(1) Any responsible person who knowingly keeps or allows to be kept on licensed premises
any goods which—
   (a) have been imported without any duty payable on their importation having been
       paid, or
   (b) have otherwise been unlawfully imported,
commits an offence.
A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

The court by or before which a person is convicted of an offence under subsection (1) may order the goods in question to be—

(a) forfeited, and
(b) destroyed or otherwise dealt with in such manner as the court may order.

Interpretation of Part

114 Interpretation of Part 8

(1) This section has effect for the purpose of the interpretation of this Part.

(2) “Relevant premises” means—

(a) any licensed premises,
(b) any exempt premises on which alcohol is sold, and
(c) any premises used for the selling of alcohol to trade.

(3) “Responsible person” means, in relation to relevant premises—

(a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,
(b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,
(c) in the case of other relevant premises, the person having management and control of the premises, and
(e) in any of those cases, any person aged 18 or over who works on the premises in a capacity (whether paid or unpaid) which—

(i) authorises the person to sell alcohol, or
(ii) in relation to any offence under this Part of allowing something to be done, authorises the person to prevent the doing of the thing.

115 Excluded premises

Excluded and exempt premises

(1) No premises licence or occasional licence has effect to authorise the sale of alcohol on excluded premises.

(2) For the purposes of this Act, “excluded premises” means—

(a) premises on land—

(i) acquired or appropriated by a special roads authority, and
(ii) for the time being used,

for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class 1 (with or without other classes), and
(b) subject to subsection (4A), premises used as a garage or which form part of premises which are so used.

(3) For the purposes of subsection (2)(a)—

(a) “special road” and “special roads authority” have the same meanings as in the Roads (Scotland) Act 1984 (c.54), and

(b) “class 1” means class 1 in Schedule 3 to that Act, as varied from time to time by an order under section 8 of that Act, but, if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in this section to traffic of class 1 so as to take account of the additional class.

(4) For the purposes of subsection (2)(b), premises are used as a garage if they are used for one or more of the following—

(a) the sale by retail of petrol or derv,

(b) the sale of motor vehicles, or

(c) the maintenance of motor vehicles.

(4A) Despite subsection (2)(b), premises used for the sale by retail of petrol or derv or which form part of premises so used are not excluded premises if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of—

(a) petrol or derv, or

(b) groceries (where the premises are, or are to be, used also for the sale by retail of groceries).

(5) The Scottish Ministers may by order amend the definition of “excluded premises” in subsection (2) so as to include or exclude premises of such description as may be specified in the order.

116 Exempt premises

(1) Each of the following are exempt premises for the purposes of this Act—

(a) an examination station at an airport designated for the purposes of this section in an order made by the Scottish Ministers,

(b) an approved wharf at a port or hoverport so designated,

(c) an aircraft, a hovercraft or a railway vehicle while engaged on a journey,

(d) a vessel while engaged on—

(i) an international journey, or

(ii) a journey (other than an international journey) forming part of a ferry service, and

(e) premises which are occupied (whether indefinitely or temporarily) for the purposes of the armed forces of the Crown, except while being used for other purposes.

(2) The Scottish Ministers may make an order under subsection (1) designating an airport, port or hoverport for the purposes of this section only if it appears to them to be one at which there is a substantial amount of international passenger traffic.
(3) For the purpose of subsection (1), the period during which an aircraft, hovercraft, railway vehicle or vessel is engaged in a journey includes—
(a) any period ending with its departure when preparations are being made for the journey, and
(b) any period after its arrival at its destination when it continues to be occupied by those (or any of those) who made the journey (or any part of it).

(4) In this section—
“approved wharf” has the meaning given in section 20A of the Customs and Excise Management Act 1979 (c.2),
“examination station” has the meaning given in section 22A of that Act,
“ferry service” means a service the principal purpose of which is the transport of passengers or goods over water,
“international journey” means a journey with—
(a) a point of departure,
(b) a destination, or
(c) at least one port of call,
outside the United Kingdom, and includes any part of such a journey.

117 Special provisions for certain clubs

(1) The provisions of this Act mentioned in subsection (2) do not apply in relation to premises which are used wholly or mainly for the purposes of any club of such description as may be prescribed.

(2) Those provisions are—
(a) section 7 (assessments of overprovision),
(b) section 19(4)(d) (requirement for operating plan to contain information as to the premises manager),
(c) section 22(5)(d) (ground of refusal of premises licence application relating to overprovision),
(d) section 24(2)(a)(ii) (requirement for name and address of premises manager to be specified in premises licence),
(e) section 28(5)(c) (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).
(3) Different descriptions of clubs may be prescribed under subsection (1) in relation to different provisions specified in subsection (2).

(4) The Scottish Ministers may by regulations provide for this Act to apply in relation to—

(a) clubs of such descriptions as may be prescribed in the regulations, or

(b) premises used wholly or mainly for the purposes of such clubs, subject to such further modifications as may be so prescribed.

(5) Regulations under subsection (1) or (4) may prescribe a description of club by reference to—

(a) requirements as to the constitution of the club, including, in particular,

(i) membership of the club, and

(ii) the rules of the club, and

(b) such other factors as the Scottish Ministers consider appropriate.

Vessels, vehicles and moveable structures

118 Vessels, vehicles and moveable structures

(1) A vessel which is not permanently moored or berthed is to be treated for the purposes of this Act as premises situated in the place where it is usually moored or berthed.

(2) Where a vehicle or moveable structure which is not permanently situated in any place is, or is to be, used for the sale of alcohol while parked at or set in any place—

(a) it is to be treated for the purposes of this Act as premises situated at that place, and

(b) each such place at which it is, or is to be, so used is to be treated as separate premises.

(3) The following provisions of Part 3 (which relate to the provision of certificates as to planning, building standards and food hygiene and to notifications of applications) do not apply in relation to premises (other than exempt premises) consisting of a vessel, namely—

(a) section 19(2)(b)(iii),
(b) section 20(1)(a) and (e),
(c) section 27(4) (so far as it applies section 20(1)(a) and (e)),
(d) section 43(10)(a),
(e) section 44(2)(d), and
(f) section 48.

(4) This Act applies in relation to premises consisting of a vehicle or other moveable structure which is, or is to be, used for the sale of alcohol while not parked or permanently situated in any place (referred to in this section as “moving premises”) subject to the modifications in subsections (5) to (9).

(5) Section 17 does not apply and instead, in Part 3 and this section, “appropriate Licensing Board” means in relation to moving premises or a premises licence or occasional licence issued in respect of such premises—
(a) the Licensing Board in whose area the premises are used or to be used for the sale of alcohol, or

(b) where the premises are used or to be used in the area of more than one Licensing Board—

(i) the Board in whose area they are used or to be used to the greater or greatest extent, or

(ii) if neither or none of those Boards falls within sub-paragraph (i), such of those Boards as is, in the application for a premises licence or, as the case may be, occasional licence in respect of the premises, nominated as the appropriate Licensing Board in respect of the premises.

(6) The following provisions of Part 3 do not apply in relation to moving premises, namely—

(a) section 19(2)(b)(iii),

(b) section 20(1)(a), (b), and (e)

(c) section 27(4) (so far as it applies section 20(1)(a), (b) and (e)),

(d) section 43(10)(a),

(e) section 44(2)(d), and

(f) section 48.

(7) Section 20(1) applies in relation to moving premises as if for paragraph (c) there were substituted—

“(c) the relevant council.”.

(8) References to the locality in which premises are situated are, in relation to moving premises, to be taken as references to the area of the appropriate Licensing Board.

(9) For the purposes of Part 4, moving premises are to be treated as premises situated within the area of the appropriate Licensing Board.

(10) The Scottish Ministers may by regulations provide for this Act to apply in relation to vessels, vehicles and moveable structures subject to such further modifications as they consider necessary or expedient.

119 Power to prohibit sale of alcohol on trains

(1) A sheriff may—

(a) on the application of a senior police officer, and

(b) if satisfied that it is necessary to do so to prevent disorder, make an order under subsection (2).

(2) That is an order prohibiting, during such period as may be specified in the order, the sale of alcohol on any railway vehicle—

(a) at such station or stations within the sheriff’s sheriffdom as may be so specified, or

(b) whilst travelling between such stations as may be so specified, at least one of which is in that sheriffdom.
(3) An order under subsection (2) has no effect in relation to any railway vehicle unless a copy of it has been given by a senior police officer to the train operator (or each train operator) responsible for the vehicle.

(4) A person who knowingly—
(a) sells or attempts to sell alcohol in breach of an order under subsection (2), or
(b) allows the sale of alcohol in breach of such an order,
commits an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to—
(a) a fine not exceeding £20,000,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.

(6) In this section—
“station” has the meaning given in section 83 of the Railways Act 1993, and
“train operator” means a person authorised by a licence under section 8 of that Act
to operate railway assets (within the meaning of section 6 of that Act).

119A Power to prohibit sale of alcohol on ferries
(1) This section applies to any vessel which is exempt premises by virtue of section 116(1)(d)(ii) (vessels engaged in ferry services).

(2) A sheriff may—
(a) on the application of a senior police officer, and
(b) if satisfied that it is necessary to do so to prevent disorder,
make an order under subsection (3).

(3) That is an order prohibiting, during such period as may be specified, the sale of alcohol on any vessel to which this section applies while engaged on—
(a) any journey to or from a specified place within the sheriff’s sheriffdom, or
(b) a specified journey to or from such a place.

(4) An order under subsection (3) has no effect in relation to any vessel unless a copy of it has been given by a senior police officer to the operator of the vessel.

(5) A person who knowingly—
(a) sells or attempts to sell alcohol in breach of an order under subsection (3), or
(b) allows the sale of alcohol in breach of such an order,
commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to—
(a) a fine not exceeding £20,000,
(b) imprisonment for a term not exceeding 3 months, or
(c) both.
(7) Subsection (3) of section 116, so far as applying to a vessel, applies for the purposes of subsection (3) of this section as it applies for the purpose of subsection (1) of that section.

(8) In this section, “specified” means, in relation to an order under subsection (3), specified in the order.

Relevant and foreign offences

120 Relevant offences and foreign offences

(1) In this Act, “relevant offence” means—
   (a) such offence, or
   (b) an offence of such description,
   as may be prescribed.

(2) In this Act, “foreign offence” means any offence—
   (a) under the law of any place other than Scotland, and
   (b) which is similar in nature to any relevant offence.

(2A) Regulations under subsection (1) may provide, in relation to any offence or description of offence prescribed in them, that a person is to be treated, for the purposes of such provisions of this Act as may be specified in the regulations, as having been convicted of the offence only if the person—
   (a) accumulates such number of separate convictions for the offence, or
   (b) is convicted of committing the offence on such number of separate occasions,
   as may be so specified.

(3) For the purposes of this Act, a conviction for a relevant offence or a foreign offence is to be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974 (c.53).

121 Effect of appeal against conviction for relevant or foreign offence

(1) The fact that any conviction of any person for a relevant offence or foreign offence is subject to appeal does not affect the taking of any action by a Licensing Board which the Board is entitled or required to take in connection with the conviction by virtue of any provision of this Act.

(2) The Licensing Board may, however, postpone the taking of the action for such period as the Board considers appropriate pending the appeal.

(3) Where the conviction is overturned on appeal—
   (a) any action taken by the Licensing Board in reliance on the conviction is to be treated as having no effect, and
   (b) accordingly, the Licensing Board must take such steps as are necessary to return any applicant or licence holder adversely affected by the action to the position the applicant or licence holder would have been in had the action not been taken.

(4) A conviction is subject to appeal for the purposes of subsection (1) if—
(a) the period during which an appeal may be taken against the conviction has not yet expired, or
(b) an appeal is taken against the conviction and the appeal has not yet been determined.

**Appeals**

122 **Appeals**

(1) A decision of a Licensing Board specified in the left-hand column of schedule 4A may be appealed by the person specified in the right-hand column of that schedule.

(3) An appeal under this section is to be made by way of stated case, at the instance of the appellant, to—

(a) where the decision appealed is specified in Part 1 of schedule 4A, the sheriff principal, or
(b) where the decision appealed is specified in Part 2 of that schedule, the sheriff, of the appropriate sheriffdom.

(5) The grounds on which a Licensing Board’s decision may be appealed under this section are—

(a) that, in reaching the decision, the Licensing Board—
   (i) erred in law,
   (ii) based their decision on an incorrect material fact,
   (iii) acted contrary to natural justice, or
   (iv) exercised their discretion in an unreasonable manner, or
(b) where the decision is to take any of the steps mentioned in subsection (6), that the step taken is disproportionate in all the circumstances.

(6) Those steps are—

(a) at a review hearing in respect of a premise licence—
   (i) issuing a written warning to the licence holder,
   (ii) revoking or suspending the licence, or
   (iii) making a variation of the licence, or
(b) making an order revoking, suspending or endorsing a personal licence.

(7) Where the sheriff principal or, as the case may be, sheriff upholds an appeal against a Licensing Board’s decision under this section, the sheriff principal or sheriff may—

(a) remit the case back to the Licensing Board for reconsideration of the decision,
(b) reverse the decision, or
(c) make, in substitution for the decision, such other decision as the sheriff principal or sheriff considers appropriate, being a decision of such nature as the Licensing Board could have made.

(8) In this section, “the appropriate sheriffdom” means the sheriffdom in which the principal office of the Licensing Board whose decision is being appealed is situated.
123 Appeals: supplementary provision

(1) A Licensing Board whose decision is appealed under section 122 may be a party to the appeal.

(2) In considering the appeal, the sheriff principal or, as the case may be, sheriff may hear evidence.

(3) On determining the appeal, the sheriff principal or sheriff may make such ancillary order (including an order as to the expenses of the appeal) as the sheriff principal or sheriff thinks fit.

(4) A sheriff principal may authorise, whether generally or specifically, any other sheriff of the sheriff principal’s sheriffdom to consider and determine an appeal made to the sheriff principal under section 122(3)(a).

(5) In this section and section 122, references to a sheriff principal include references to any sheriff authorised under subsection (4).

(6) Any party to an appeal under section 122 may appeal to the Court of Session on a point of law against the sheriff principal’s or sheriff’s decision on the appeal.

(7) A decision of a Licensing Board which is appealed under section 122 continues to have effect despite the appeal, subject to subsection (7A).

(7A) Where an appeal is taken against a decision of a Licensing Board to suspend or revoke a premises licence, the sheriff principal may—

(a) on the application of the appellant, and

(b) if satisfied on the balance of convenience that it is appropriate to do so, recall the suspension or revocation pending determination of the appeal.

(8) Further provision as to the procedure in any appeal under section 122, including in particular provision as to the times by which such an appeal is to be made or determined, may be prescribed by Act of Sederunt.

Procedures, forms etc.

124 Hearings

(1) Where a Licensing Board is to hold a hearing under any provision of this Act, the hearing must be held at a meeting of the Board.

(2) The Scottish Ministers may by regulations make provision as to the procedure to be followed at or in connection with any hearing to be held by a Licensing Board under this Act.

(3) Regulations under subsection (2) may, in particular, make provision—

(a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,

(b) about the rules of evidence which are to apply for the purposes of the hearing,

(c) about the representation of any party at the hearing,

(d) as to the times by which any step in the procedure must be taken, and

(e) as to liability for expenses.
Form etc. of applications, proposals, and notices

(1) The Scottish Ministers may by regulations prescribe—
(a) the form of any application, proposal or notice under this Act,
(b) the manner in which it is to be made or given,
(c) the time by which it is to be made or given,
(d) requirements as to the publicising of the making or giving of the application, proposal or notice,
(e) the information to be contained in it (in addition to any required to be contained in it by virtue of any other provision of this Act), and
(f) the documents which are to accompany it (in addition to any required to accompany it by virtue of any other provision this Act).

(2) Regulations under subsection (1) may provide that any application, proposal or notice made or given under this Act may be treated as not made or given if any requirement prescribed in the regulations in relation to it is not complied with.

Power to relieve failure to comply with rules and other requirements

(1) A Licensing Board may relieve any applicant or other party to proceedings before the Board of any failure to comply with any procedural provision if—
(a) the failure is due to mistake, oversight or other excusable cause, and
(b) the Board considers it appropriate in all the circumstance to relieve the failure.

(2) Where a Board exercises the power under subsection (1), the Board may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.

(3) In subsection (1), “procedural provision” means—
(a) any requirement of regulations under—
(i) section 124(2),
(ii) section 125(1), or
(iii) paragraph 12(4) of schedule 1,
(b) any requirement of rules under paragraph 12(5) of that schedule, and
(c) any other requirement imposed by virtue of this Act as respects the procedure to be followed in connection with applications made to, or other proceedings before, a Licensing Board.

Fees

(1) The Scottish Ministers may by regulations make provision for the charging of fees by Licensing Boards—
(a) in respect of applications under this Act, and
(b) otherwise in respect of the performance of functions by Licensing Boards, councils and Licensing Standards Officers under this Act.

(2) Regulations under subsection (1) may, in particular—
(a) specify fees or provide for them to be determined by reference to such factors as may be specified in or determined under the regulations,
(b) provide for annual or other recurring fees,
(c) provide for the remission or repayment of fees in such circumstances as may be specified in or determined under the regulations.

(3) Before making any regulations under subsection (1) (other than regulations consolidating other regulations), the Scottish Ministers must consult—

(a) such body or bodies as appear to them to be representative of the interests of—

(i) Licensing Boards,

(ii) councils, and

(iii) those likely to be affected by the regulations, and

(b) such other persons (if any) as they think appropriate.

(4) Where regulations under subsection (1) provide for a fee to be charged in respect of any application made to a Licensing Board under this Act, the Board need not consider the application unless and until the fee is paid.

(5) Any fee chargeable by a Licensing Board under any regulations made under subsection (1) is to be paid to the clerk of the Board.

(6) The clerk of a Licensing Board must pay any sums received under subsection (5) to the relevant council.

Miscellaneous

128 Inspection of premises before grant of licence etc.

(1) In this section, “relevant proposal or application” means—

(a) a premises licence application,

(b) a premises licence variation application,

(c) a premises licence review proposal or application,

(d) an application under section 45(2) for a temporary premises licence,

(e) an occasional licence application, or

(f) an extended hours application.

(2) Any of the persons specified in subsection (3) may, at any reasonable time before the determination of a relevant proposal or application, enter the premises to which the proposal or application relates for the purposes of assessing—

(a) in the case of an application such as is mentioned in paragraph (a), (b), (d), (e) or (f) of subsection (1), the likely effect of the grant of the application on the licensing objectives, or

(b) in the case of a proposal or application such as is mentioned in paragraph (c) of that subsection, the effect which the selling of alcohol in accordance with the premises licence is having on those objectives.

(3) The persons referred to in subsection (2) are—

(a) a constable, and
(b) a Licensing Standards Officer for the council area in which the premises are situated.

(4) A person exercising the power conferred by subsection (2) may if necessary use reasonable force.

(5) A person who intentionally obstructs a person exercising the power conferred by subsection (2) commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### 129 Police powers of entry

(1) A constable may at any time enter and inspect any licensed premises.

(2) A constable may—

   (a) if the condition in subsection (3) is satisfied, and

   (b) subject to subsection (4),

   at any time enter and inspect any premises (other than licensed premises) on which food or drink is sold for consumption on the premises.

(3) The condition referred to in subsection (2)(a) is that the constable has reasonable grounds for believing that alcohol is being sold on the premises in breach of section 1(1).

(4) A constable below the rank of inspector may exercise the power conferred by subsection (2) only—

   (a) if the constable has obtained written authority to do so from a justice of the peace or a constable of or above the rank of inspector,

   (b) within the period of 8 days beginning with the date on which such authority is obtained, and

   (c) at such time or times as is specified in the authority.

(5) A person who intentionally obstructs a constable exercising a power conferred by this section commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### 130 Remote sales of alcohol

(1) This section applies where, in connection with any sale of alcohol, the premises from which the alcohol is despatched for delivery in pursuance of the sale is not the same as those where the order for the alcohol is taken.

(2) Where the premises from which the alcohol is despatched are in Scotland, the sale of the alcohol is, for the purposes of this Act, to be treated as taking place on those premises.

(3) The Scottish Ministers may by regulations make such provision as they consider appropriate for the purpose of regulating the taking of orders in Scotland for sales of alcohol in circumstances where—

   (a) the premises from which the alcohol is despatched for delivery in pursuance of the sales are not in Scotland, but
(b) the place to which the alcohol is delivered is in Scotland.

(4) Regulations under subsection (3) may, in particular—
   (a) modify any provision of this Act,
   (b) apply any such provision with modifications, or
   (c) disapply any such provision.

### 131 Presumption as to liquid contents of containers

(1) This section applies for the purpose of any trial in proceedings for an alleged offence under any provision of this Act.

(2) Where—
   (a) liquid is found in a container (whether open or sealed), and
   (b) there is on the container a description of the liquid contents of the container,
   the liquid found is to be presumed to be liquid of that description.

(3) Where an open container is found which—
   (a) contains—
      (i) no liquid, or
      (ii) an amount of liquid insufficient to allow analysis of it,
   (b) was sealed at the time it was sold or supplied, and
   (c) has on it a description of the liquid contents of the container,
   the container is to be presumed to have contained, at the time it was sold or supplied,
   liquid of that description.

(4) At the trial, any party to the proceedings may rebut the presumption mentioned in subsection (2) or (3) by proving that, at the time of its sale or supply, the liquid in the container was not of the description on the container.

(5) However, a party may lead evidence for the purpose of rebutting the presumption only if the party has, not less than 7 days before the date of the trial, given notice of the intention to do so to the other parties.

### 132 Offences by bodies corporate etc.

(1) Where—
   (a) an offence under this Act has been committed by—
      (i) a body corporate,
      (ii) a Scottish partnership, or
      (iii) an unincorporated association other than a Scottish partnership, and
   (b) it is proved that the offence was committed with the consent or connivance of, or to be attributable to any neglect on the part of—
      (i) a relevant person, or
      (ii) a person purporting to act in the capacity of a relevant person,
that person, as well as the body corporate, partnership or, as the case may be, unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant person” means—

(a) in relation to a body corporate other than a council, a director, manager, secretary, member or other similar officer of the body,

(b) in relation to a council, an officer or member of the council,

(c) in relation to a Scottish partnership, a partner, and

(d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

General

133 Guidance

(1) The Scottish Ministers may issue guidance to Licensing Boards as to the exercise of their functions under this Act.

(2) The Scottish Ministers may modify any guidance issued by them under subsection (1).

(3) Each Licensing Board must, in the exercise of their functions under this Act, have regard to any guidance issued to them under subsection (1).

(4) Where a Licensing Board decides not to follow any guidance issued under subsection (1), the Board must give the Scottish Ministers notice of the decision together with a statement of the reasons for it.

(5) The first guidance to Licensing Boards under subsection (1) is not to be issued by the Scottish Ministers unless a draft of the guidance has been laid before, and approved by resolution of, the Scottish Parliament.

(6) The Scottish Ministers must lay any subsequent guidance issued by them under subsection (1) before the Parliament.

134 Crown application

(1) This Act binds the Crown.

(2) No contravention by the Crown of any provision made by virtue of this Act makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) However, any provision made by virtue of this Act applies to persons in the public service of the Crown as it applies to other persons.

134A Modification of enactments

Schedule 4B, which modifies enactments, has effect.
135 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.

136 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.

(2) Any such power includes power to make—

(a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,

(b) different provision for different purposes.

(3) An order under section 135 may modify any enactment (including this Act), instrument or document.

(4) A statutory instrument containing an order or regulations under this Act except—

(a) an order under section 60A(4), 115(5) or 140(2),

(b) regulations under section 25(2) or 130(3), and

(c) where subsection (5) applies, an order under section 135,

is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) No—

(a) order under section 60A(4) or 115(5),

(b) regulations under section 25(2) or 130(3), or

(c) order under section 135 containing provisions which add to, replace or omit any part of the text of an Act,

is to be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by resolution of the Parliament.

137 Interpretation

(1) In this Act—

“alcoholic drink” means a drink consisting of or containing alcohol,

“applicant”, in relation to any application under this Act, means the person making the application,

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

“area” means—

(a) in relation to a council, the local government area for which the council is constituted,

(b) in relation to a Licensing Board or Local Licensing Forum, the council area or, as the case may be, licensing division for which the Board or Forum is established,
“capacity”, in relation to licensed premises, means—
(a) in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption on the premises (or, as the case may be, that part), the maximum number of customers which can be accommodated in the premises (or, as the case may be, that part) at any one time, and
(b) in relation to licensed premises (or any part of such premises) on which alcohol is sold for consumption off the premises (or, as the case may be, that part), the amount of space in the premises (or, as the case may be, that part) given over to the display of alcohol for sale,

“child” means a person under the age of 16,

“community council” has the same meaning as in Part IV of the Local Government (Scotland) Act 1973 (c.65),

“council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“licensed premises” means premises in respect of which a premises licence or occasional licence has effect,

“liqueur confectionery” means confectionery which—
(a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kilogramme of the confectionery, and
(b) either consists of separate pieces weighing not more than 50 grammes or is designed to be broken into such pieces for the purposes of consumption,

“premises” means any place and includes a vehicle, vessel or moveable structure,

“prescribed” means prescribed by regulations made by the Scottish Ministers,

“railway vehicle” means a railway vehicle within the meaning of section 83 of the Railways Act 1993 (c.43) that is used in the provision of a railway service within the meaning of section 82 of that Act (excluding the wider meaning of “railway” given by section 81(2) of that Act),

“relevant council” means, in relation to a Licensing Board or Local Licensing Forum, the council—
(a) for whose area the Board or Forum is established, or
(b) in the case of a Board or Forum established for a licensing division, for the area of which the division forms part,

“sell”, in relation to alcohol, includes barter and expose to or offer for sale, and related expressions such as “sale” are to be construed accordingly,

“senior police officer” means a constable of or above the rank of superintendent,

“strength”, in relation to alcohol, is to be determined in accordance with section 2 of the Alcoholic Liquor Duties Act 1979 (c.4),

“subject premises” means, in relation to any application under this Act, the premises to which the application relates,

“vehicle” means a vehicle intended or adapted for use on roads,

“vessel” includes a ship, boat, raft or other apparatus constructed or adapted for floating on water,
“young person” means a person aged 16 or 17.

(1A) In this Act, references to selling alcohol or other goods to trade are references to selling the alcohol or goods to a person for the purposes of the person’s trade; and related expressions are to be construed accordingly.

(2) For the purposes of this Act, a person is, in relation to a partnership, a company, a club or other body (whether incorporated or unincorporated), a connected person if the person—

(a) in the case of a partnership, is a partner,

(b) in the case of a company—

(i) is a director, or

(ii) has control of the company,

(c) in the case of a club, is an office bearer of the club,

(d) in any other case, is concerned in the management or control of the body.

(3) For the purposes of subsection (2)(b)(ii) and this subsection, a person is taken to have control of a company if—

(a) any of the directors of the company, or of any other company having control of the company, is accustomed to act in accordance with the person’s directions or instructions, or

(b) the person is entitled to exercise, or to control the exercise of, at least one third of the voting power at any general meeting of the company or of any other company having control of the company.

138 Index of defined expressions

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### 139 Repeals

The enactments mentioned in the first column in schedule 5 are repealed to the extent specified in the second column.

### 140 Short title and commencement

1. This Act may be cited as the Licensing (Scotland) Act 2005.

2. This Act (other than this section and sections 135 to 138) comes into force on such day as the Scottish Ministers may by order appoint.
SCHEDULE 1
(introduced by section 5(8))

LICENSED BOARD

Membership

1 (1) A Licensing Board is to consist of such number (being not fewer than 5 and not more than 10) of members as may be determined by the relevant council.

(2) The members of a Licensing Board are to be elected by the relevant council from among their councillors.

(3) In the case of a Licensing Board for a licensing division, not less than one third of the total number of members of the Board must be councillors for wards within the division.

Election of members

2 (1) Each council must, at their first meeting after each ordinary election of the council, hold an election of members to—

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

(b) if that area is divided into licensing divisions, each of the Licensing Boards for those divisions.

(2) Where a council makes a determination under section 5(2) to divide their area into divisions, the council must—

(a) at the meeting at which that determination is made, or

(b) at the first meeting of the council after that meeting,

hold an election of members to the Licensing Board for each division.

(3) Where, under section 5(4), a council revokes a determination dividing their area into divisions, the council must—

(a) at the meeting at which the determination is revoked, or

(b) at the first meeting of the council after that meeting,

hold an election of members to the single Licensing Board for the council’s area.

(4) Where there is a vacancy in the membership of a Licensing Board, the relevant council must, at their first meeting after the vacancy arises, hold an election to fill the vacancy.

Disqualification from membership

3 (1) A councillor is disqualified from election as, and from being, a member of a Licensing Board if the councillor is—

(a) a premises licence holder,

(b) an employee of a premises licence holder and works as such in licensed premises,

(c) whether alone or in partnership with another person, engaged in the business of producing or selling alcohol,

(d) a director or other officer of a company so engaged, or

(e) an employee of any person so engaged and works as such in that business.
(2) A councillor who knowingly acts or purports to act as a member of a Licensing Board at a time when the councillor is disqualified from being such a member by virtue of sub-paragraph (1) commits an offence.

(3) A person guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Tenure of office etc.

4 (1) A member of a Licensing Board—

(a) holds office as such, subject to the following provisions of this paragraph and to paragraph 11(4), during the period—

(i) beginning on the day after the member’s election, and

(ii) ending on the day on which the next election of members of the Board is held in accordance with paragraph 2(1),

(b) is eligible for re-election as a member,

(c) may, at any time, resign by giving notice to the clerk of the Board, and

(d) ceases to hold office—

(i) on ceasing to be a councillor of the relevant council, or

(ii) on becoming disqualified from being a member of a Licensing Board.

(2) The clerk must give the relevant council a copy of any notice received under sub-paragraph (1)(c).

Removal of members from office

5 The relevant council may remove a member from office if the member is unfit by reason of mental or physical inability.

Convener

6 (1) A Licensing Board must, at their first meeting after each election of members of the Board held in accordance with paragraph 2(1), (2) or (3), elect one of their members as convener of the Board.

(2) Where there is a vacancy in the office of convener, the Board must, at their first meeting after the vacancy arises, elect one of their members to fill the vacancy.

(3) The convener of a Licensing Board—

(a) holds office as such for the period—

(i) beginning on the day after the convener’s election, and

(ii) ending with the day on which the next election of a convener is held in accordance with sub-paragraph (1),

(b) is eligible for re-election as convener of the Board,

(c) may, at any time, resign by giving notice to the clerk of the Board, and

(d) ceases to hold office on ceasing to be a member of the Board.
(4) The clerk must give the relevant council a copy of any notice received under sub-
paragraph (3)(c).

(5) If the convener is for any reason unable to chair any meeting of the Board, the Board
must, at the meeting, elect another of their members to chair that meeting.

(6) If, at any meeting of the Board, there is an equality in the votes of members on any
matter, the member chairing the meeting has a casting vote.

**Removal of convener**

7 (1) The convener of a Licensing Board may be removed from office by the Board.

(2) A decision of a Board to remove the convener is valid only if the number of members
voting in favour of the decision exceeds one half of the total number of members of the
Board.

**Administrative support**

8 (1) In relation to each Licensing Board, the relevant council must—

(a) appoint, on such terms and conditions as they may determine, a clerk of the
Board, and

(b) provide the Board and the clerk, or ensure they are provided, with such other staff,
property and services as are required for their purposes.

(2) A clerk appointed under sub-paragraph (1)(a) must be an advocate or solicitor.

**Committees**

9 A Licensing Board may establish committees for or in connection with the exercise of
any of their functions.

**Delegation of functions**

10 (1) A Licensing Board may authorise (whether generally or specifically)—

(a) any member of the Board,

(b) any committee established by the Board,

(c) the clerk of the Board, or

(d) any member of staff provided under paragraph 8(1)(b),

to exercise on behalf of the Board any of the Board’s functions under this Act, other
than the functions mentioned in sub-paragraph (2).

(2) Those functions are—

(a) determining the Board’s policy for the purposes of a licensing policy statement or
supplementary licensing policy statement,

(b) determining, for the purposes of any such statement, whether there is
overprovision of licensed premises, or licensed premises of any particular
description, in any locality,

(c) determining a premises licence application,
(d) determining a premises licence variation application where the variation sought is not a minor variation,

(e) determining an application for the transfer of a premises licence where the applicant has been convicted of a relevant offence or a foreign offence,

(f) determining—
   (i) a personal licence application, or
   (ii) a personal licence renewal application,

where the applicant has been convicted of a relevant offence or a foreign offence,

(g) conducting a hearing under this Act (including taking any of the steps mentioned in sub-paragraph (3) at, or as result of, the hearing),

(h) making a closure order,

(i) refusing an application for confirmation of a provisional premises licence.

(3) The steps referred in sub-paragraph (2)(g) are—
   (a) at a review hearing in respect of a premises licence—
      (i) issuing a written warning to the licence holder,
      (ii) revoking or suspending the licence, or
      (iii) making a variation of the licence, or
   (b) making an order revoking, suspending or endorsing a personal licence.

(4) A Licensing Board may, under sub-paragraph (1), delegate to the clerk of the Board the function of granting an occasional licence application only where there is no notice of objection or representations in relation to the application, or no notice from the appropriate chief constable recommending refusal of the application.

Training of members

11 (1) Each member of a Licensing Board must, no later than one month after the expiry of each 3 month period, produce to the clerk of the Board evidence that the member has, during the period, complied with such requirements as to the training of members of Licensing Boards as may be prescribed.

(2) In sub-paragraph (1), “3 month period” means, in relation to a member of a Licensing Board—
   (a) the period of 3 months beginning on the day on which the member is elected, and
   (b) if the member is re-elected, the period of 3 months beginning with the day on which the member is re-elected.

(3) A member of a Licensing Board must not take part in any proceedings of the Board until the member has produced the evidence required by sub-paragraph (1).

(4) If a member of a Licensing Board fails to comply with sub-paragraph (1), the member ceases to hold office as a member of the Board.

(5) Regulations under sub-paragraph (1) prescribing training requirements may, in particular—
   (a) provide for accreditation by the Scottish Ministers of—
(i) courses of training, and
(ii) persons providing such courses,
for the purposes of the regulations,
(b) prescribe different requirements in relation to different descriptions of members, and
(c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.

**Proceedings**

12 (1) The quorum for a meeting of a Licensing Board is one half of the number of members (but in any case not fewer than 3).

(2) Subject to sub-paragraph (3), meetings of a Licensing Board must be held in public.

(3) The members of a Licensing Board may, before the Board decides any matter, conduct their deliberations on the matter in private.

(4) The Scottish Ministers may by regulations make further provision about the proceedings of Licensing Boards including, in particular, provision as to—

(a) the times by which applications to a Board under this Act, and other business to be considered by a Board, are to be determined or considered,

(b) the publicising of meetings of a Board, and

(c) public access to any agenda and record of, and other information concerning, a meeting of a Board.

(5) Subject to—

(a) the other provisions of this paragraph, and

(b) any regulations made under sub-paragraph (4),

the arrangements for meetings of a Licensing Board, and other matters relating to proceedings of the Board, are to be such as the Board may by rules provide.

(6) A Licensing Board must ensure that any rules made by them under sub-paragraph (5) are published.

**Validity of proceedings**

13 The proceedings of a Licensing Board are not affected by—

(a) any vacancy in the membership of the Board,

(b) any defect in the election of any member of the Board, or

(c) the disqualification of any councillor from being a member of the Board.
Transitional and transitory provision

14 (1) Until the end of the day of the first election of members of a Licensing Board in accordance with paragraph 2(1), the members of the Board are to continue to be those who were, immediately before the coming into force of section 5, the members of the Board established under section 1 of the Licensing (Scotland) Act 1976 (c.66) for the same area or, as the case may be, division.

(2) Paragraph 4(1)(a) does not apply to a person who is a member of a Licensing Board by virtue of sub-paragraph (1) of this paragraph.

(3) In the application of paragraph 11 to such a person—

(a) sub-paragraph (1) has effect as if for “each 3 month period” there were substituted “such period as the Scottish Ministers may direct”, and

(b) sub-paragraph (2) is treated as if it were omitted.

SCHEDULE 2
(introduced by section 10(4))

LOCAL LICENSING FORUMS

Introductory

1 In this schedule, “Forum” means a Local Licensing Forum established under section 10.

Membership

2 (1) A Forum is to consist of such number (being not fewer than 5 and not more than 20) of members as the relevant council may determine.

(1A) The Scottish Ministers may by order substitute another number for the minimum or maximum number of members for the time being specified in sub-paragraph (1).

(2) At least one of the members must be a Licensing Standards Officer for the council’s area.

(3) The other members are to be individuals appointed by the relevant council on such terms and conditions as the relevant council may determine.

(4) In appointing members of a Forum, the relevant council must seek to ensure so far as possible that the membership of the Forum is representative of the interests of persons or descriptions of persons who have an interest which is relevant to the Forum’s general functions.

(5) Those persons include—

(a) holders of premises licences and personal licences,

(b) the chief constable for the police area in which the Forum’s area is situated,

(c) persons having functions relating to health, education or social work,

(d) young people,

(e) persons resident within the Forum’s area.
Convener

3 (1) At their first meeting in each calendar year, a Forum must elect one of the members of the Forum to be the convener of the Forum.

(2) The convener holds office, on such terms and conditions as the relevant council may determine, until the next election under sub-paragraph (1).

(3) Meetings of the Forum are to be chaired by the convener.

(4) If the office of convener is vacant or the convener is for any reason unable to act, a meeting of the Forum may be chaired by any other member present.

Administrative support

4 A council must provide each Forum established by them, or ensure each such Forum is provided, with such staff, property and services as the council considers are required for the Forum’s purposes.

Meetings and proceedings

5 (1) Each Forum must, in each calendar year, hold at least 4 meetings.

(1ZA) The quorum for a meeting of a Forum is one half of the number of members (but in any case not fewer than 3).

(1A) Meetings of a Forum must be held in public.

(2) Otherwise, the arrangements for meetings of a Forum and other matters relating to proceedings of the Forum, are to be such as the Forum may determine.

(3) The proceedings of a Forum are not affected by—

(a) any vacancy in the membership of the Forum, or

(b) any defect in the appointment of a member of the Forum.

SCHEDULE 3
(introduced by section 25(1))

PREMISES LICENCES: MANDATORY CONDITIONS

Interpretation

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

Compliance with the operating plan

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

(2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 59(2).

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

4 (1) Alcohol is not to be sold on the premises at any time when—
   (a) there is no premises manager in respect of the premises,
   (b) the premises manager does not hold a personal licence,
   (c) the personal licence held by the premises manager is suspended, or
   (d) the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises.

(2) In sub-paragraph (1), “appropriate licensing qualification” in relation to any licensed premises means any licensing qualification prescribed as such in relation to licensed premises of that description in regulations under section 82(2)(d).

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

Authorisation of sales of alcohol

5 Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by—
   (a) the premises manager, or
   (b) another person who holds a personal licence.

Training of staff

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

(2) That is a capacity (whether paid or unpaid) which involves the person—
   (a) making sales of alcohol, or
   (b) where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person.

(3) Regulations under sub-paragraph (1) prescribing training requirements may, in particular—
   (a) provide for the accreditation by the Scottish Ministers of—
      (i) courses of training, and
      (ii) persons providing such courses,
       for the purposes of the regulations,
   (b) prescribe different training requirements in relation to different descriptions of persons,
   (c) require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualification as may be prescribed in the regulations, and
   (d) require training to be undergone again at such intervals as may be prescribed in the regulations.
Pricing of alcohol

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

Irresponsible drinks promotions

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

   (3) Subject to sub-paragraph (3A), a drinks promotion is irresponsible if it—
      (a) relates specifically to an alcoholic drink likely to appeal largely to persons under
          the age of 18,
      (b) involves the supply of an alcoholic drink free of charge or at a reduced price on
          the purchase of one or more drinks (whether or not alcoholic drinks),
      (c) involves the supply free of charge or at a reduced price of one or more extra
          measures of an alcoholic drink on the purchase of one or more measures of the
          drink,
      (d) involves the supply of unlimited amounts of alcohol for a fixed charge (including
          any charge for entry to the premises),
      (da) encourages, or seeks to encourage, a person to buy or consume a larger measure
          of alcohol than the person had otherwise intended to buy or consume,
      (e) is based on the strength of any alcohol,
      (f) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly,
          or
      (g) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and
          consumed off the premises.

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

   (4) The Scottish Ministers may by regulations modify sub-paragraph (3) or (3A) so as to—
      (a) add further descriptions of drinks promotions,
      (b) modify any of the descriptions of drinks promotions for the time being listed in it,
          or
      (c) extend or restrict the application of any of those descriptions of drinks
          promotions.

   (5) In this paragraph, “drinks promotion” means, in relation to any premises, any activity
        which promotes, or seeks to promote, the buying or consumption of any alcohol on the
        premises.
Licensing (Scotland) Bill
Schedule 4—Occasional licences: mandatory conditions

Provision of non-alcoholic drinks

9 (1) The conditions specified in this paragraph apply only to the extent that the premises licence authorises the sale of alcohol for consumption on the premises.
(2) Tap water fit for drinking must be provided free of charge on request.
(3) Other non-alcoholic drinks must be available for purchase at a reasonable price.

Payment of annual or recurring fees

10 (1) The condition specified in sub-paragraph (2) applies only in relation to a premises licence in respect of which an annual or other recurring fee is to be paid by virtue of regulations under section 127(1).
(2) The fee must be paid as required by the regulations.

SCHEDULE 4
(introduced by section 57(1))

OCCASIONAL LICENCES: MANDATORY CONDITIONS

Interpretation

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

Compliance with licence

2 (1) Alcohol may be sold on the premises only in accordance with the terms of the licence.
(2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 59(2).
3 Any other activity to be carried on in the premises may be carried on only in accordance with the description of the activity contained in the licence.

Authorisation of sales of alcohol

4 (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to the holder of a premises licence or personal licence.
(2) Every sale of alcohol made on the premises to which the licence relates must be authorised (whether generally or specifically) by the holder of a personal licence.

Voluntary organisations

5 (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to a representative of a voluntary organisation.
(2) Alcohol may be sold on the premises only at an event taking place on the premises in connection with the voluntary organisation’s activities.

Pricing of alcohol

6 Where the price at which any alcohol sold on the premises is varied—
(a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and

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

Irresponsible drinks promotions

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

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

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

(b) involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks),

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

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

(da) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,

(e) is based on the strength of any alcohol,

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

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

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

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

(a) add further descriptions of drinks promotions,

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

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

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

 Provision of non-alcoholic drinks

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

(2) Tap water fit for drinking must be provided free of charge on request.
(3) Other non-alcoholic drinks must be available for purchase at a reasonable price.

**SCHEDULE 4A**  
*(introduced by section 122(1))*

**APPEALS**

**PART 1**

**APPEALS TO THE SHERIFF PRINCIPAL**

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Schedule 4B—Modification of enactments

### Decision Persons who can appeal

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<td>The applicant</td>
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<td>The personal licence holder</td>
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### SCHEDULE 4B
*(introduced by section 134A)*

**Modification of enactments**

**Children and Young Persons Act 1963 (c.37)**

1. In section 37(2)(b)(ii) (restriction on persons under 16 taking part in public performances within licensed premises) of the Children and Young Persons Act 1963, for “1976) or in respect of which a club is registered under that Act” substitute “2005 (asp 00))”.

**Countryside (Scotland) Act 1967 (c.86)**

2. In section 78(1) (interpretation) of the Countryside (Scotland) Act 1967, in the definition of “refreshments”, for “alcoholic liquor within the meaning of the Licensing (Scotland) Act 1976” substitute “alcohol within the meaning of section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

**New Towns (Scotland) Act 1968 (c.16)**

3. (1) The New Towns (Scotland) Act 1968 is amended as follows.

   (2) In section 18(2) (disposal of land by development corporations), in the proviso, for “alcoholic liquor” substitute “alcohol”.


(3) In section 47(1) (interpretation), for the definition of “alcoholic liquor”, substitute the following definition—

““alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

Water (Scotland) Act 1980 (c.45)

4 In section 50(1)(b) (power to require supply by meter to certain premises) of the Water (Scotland) Act 1980, for “1976” substitute “2005 (asp 00)”.

Local Government, Planning and Land Act 1980 (c.65)

5 In section 146 (disposal of land by urban development corporation) of the Local Government, Planning and Land Act 1980, for subsection (6) substitute—

“(6) In this section, “alcohol” has the meaning given by section 2 of the Licensing (Scotland) Act 2005 (asp 00).”.

Civic Government (Scotland) Act 1982 (c.45)

6 (1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 41(2)(f) (exclusion of licensed premises from definition of place of public entertainment)—

(a) for “1976” substitute “2005 (asp 00)”, and
(b) for “the permitted” substitute “licensed”.

(3) In section 42(4)(a) (late hours catering licence not required in respect of licensed premises), for “1976” substitute “2005 (asp 00)”.

Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

7 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

(2) In section 22 (presumption as to contents of container), for “Section 127 of the Licensing (Scotland) Act 1976 (presumption as to contents of container)” substitute “Section 131 of the Licensing (Scotland) Act 2005 (asp 00) (presumption as to liquid contents of containers)”.

(3) In section 23 (interpretation of Part II), for the definition of “alcohol”, substitute the following definition—

““alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00);”.

Crime and Punishment (Scotland) Act 1997 (c.48)

8 (1) Section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 is amended as follows.

(2) In subsection (1)—
(3) In subsection (2), for—
(a) “alcoholic liquor”, and
(b) “liquor” in each place where that word appears,
substitute “alcohol”.

(4) In subsection (6), for “1976” substitute “2005 (asp 00)”. 

(5) After subsection (6) insert—
“(7) In this section, “alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 00)”.

Scottish Public Services Ombudsman Act 2002 (asp 11)
9 In paragraph 10 of Part 1 of schedule 2 (authorities not amendable by Order in Council) to the Scottish Public Services Ombudsman Act 2002, for “within the meaning of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.

Freedom of Information (Scotland) Act 2002 (asp 13)
10 In paragraph 23 of Part 3 of schedule 1 (local government) to the Freedom of Information (Scotland) Act 2002, for “constituted in accordance with the provisions of section 1 of the Licensing (Scotland) Act 1976 (c.66)” substitute “continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 00)”.

SCHEDULE 5
(introduced by section 139)

REPEALS

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<td></td>
<td>The unnumbered paragraph (which amends the Licensed Premises (Exclusion of Certain Persons) Act 1980) immediately following paragraph 200 of Schedule 8</td>
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Licensing (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold; and for connected purposes.

Introduced by: Mr Tom McCabe
On: 28 February 2005
Supported by: Tavish Scott
Bill type: Executive Bill