

POLICY NOTE

THE LICENSING (PERSONAL LICENCES: SUPPLEMENTAL AND TRANSITIONAL PROVISION) (SCOTLAND) ORDER 2019

SSI 2019/177

The above instrument was made in exercise of the powers conferred by section 145 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) and all other relevant enabling powers. The instrument is subject to negative procedure.

The purpose of this Order is to ease the administrative burden falling on Licensing Boards arising from the demands of processing applications from the first cohort of personal licence holders (i.e. all personal licence holders who have held a personal licence since the introduction of the current system on 1 September 2009) seeking to renew their licences ten years on from that introduction date. This is with a view to reducing the chance of a relevant licence (in respect of which a valid renewal application has been made) expiring before the Licensing Board has had a chance to determine whether or not the licence should be renewed.

Policy Objectives

Personal licences are issued under the 2005 Act and have effect for a period of 10 years, beginning with the date on which the licence is issued. Premises require to have at least one personal licence holder to supervise or authorise the sale of alcohol.

Prior to the 2005 Act coming fully into force on 1 September 2009, it was possible for personal licences to be issued during the “transitional period” (that is, 00:01 on 1 February 2009 until 05:00 on 1 September 2009). Personal licences issued during the transitional period are deemed to have been issued on 1 September 2009 (article 23 of the Licensing (Transitional and Saving Provisions) (Scotland) Order 2007 (S.S.I. 2007/454)). The effect of this transitional provision is that all licences issued during the transitional period, as well as those actually issued on 1 September 2009, all expire on 31 August 2019. This note refers to this cohort of personal licences as “relevant licences”.

A personal licence can be renewed, on application, for a further period of 10 years and it is the responsibility of Licensing Boards to consider and determine such applications. In respect of relevant licences, the deadline for submission of a renewal application is 31 May 2019. The cohort of relevant licences is the first cohort of licences to reach the ten year renewal point.

If a Licensing Board does not consider and determine a renewal application before 1 September 2019, the licence would not be renewed and it would cease to have effect. Following consultation with Licensing Boards it is estimated that there are up to 15,000 relevant licences which are still extant and which may be the subject of renewal applications. There is concern that Licensing Boards will be unable to process all such applications before those licences expire. This concern is due to the administrative burden on Licensing Boards of considering significant numbers of renewal applications (as well as business as usual work).

The Order seeks to achieve the policy goal of easing the administrative burden falling on Licensing Boards by modifying the expiry date of relevant licences, provided that a renewal application has been made in respect of a relevant licence by the statutory deadline of 31 May 2019. Rather than expire on 31 August 2019, a relevant licence will continue to have effect until the earlier of:

- the expiry of the period of 28 days beginning with the day after the day on which the Licensing Board determines the renewal application in respect of the licence, or
- 29 February 2020

A backstop date of 29 February 2020 has been included to ensure that the period of effect of a relevant licence cannot be extended indefinitely. It is considered that the date chosen (29 February 2020) provides sufficient time for Licensing Boards to process renewal applications in respect of relevant licences before the licence expires.

For consideration of renewal of any relevant licence, a Licensing Board will now have a minimum period of 8 months to process their application (this assumes an application being submitted on 31 May 2019 with the backstop date being 29 February 2020). This is 5 months longer than the minimum period of 3 months it otherwise would be and it is considered this should assist Licensing Boards in organising their consideration of renewal applications in respect of relevant licences, alongside business as usual work.

The effect of this Order is in relation to licences that have been held since the introduction of the current licensing system (1 September 2009). The process for renewals of licences issued on or after 2 September 2009 is unaffected.

The licencing system provided for in the 2005 Act is intended to be self-financing through the collection of fees levied in respect of various licensing requirements. A fee of £50 has been set for renewals in this regard. The Scottish Government does not provide nor has any authority to provide direct funding to Licensing Boards.

Consultation

A number of Licensing Boards and other key licensing interests have raised concerns about the administrative burden being placed on Licensing Boards through the initial tranche of renewal applications arising from the ten year renewal point being reached this year.

This Order is a policy response to those concerns.

Impact Assessments

The Scottish Government has considered the impact of the Order on particular groups of people (whatever their age, race, gender, sexual orientation, religion or whether they are disabled or not). There is no evidence to suggest that any of the equality strands will be affected by this Order.

Financial Effects

The Scottish Government does not consider there will be any financial costs arising from this Order. There may be some administrative savings for Licensing Boards as they will be able to decide whether to spread out consideration of renewal application over a longer period which may avoid the need for, say, additional staff to be employed.

Scottish Government
Justice Directorate
May 2019