



Licensing (Scotland) Act 1976

1976 CHAPTER 66

PART I

LICENSING BOARDS

1 Licensing boards

- (1) For the administration of licensing with respect to alcoholic liquor on and after 1st July 1977, Scotland shall have licensing boards constituted in accordance with the provisions of this section.
- (2) There shall be a separate licensing board for—
 - (a) each district and islands area which is not divided into licensing divisions under subsection (3) below, and
 - (b) each licensing division.
- (3) The council of any district or islands area may from time to time determine whether the district or area shall be divided into licensing divisions for the purposes of this Act, and such a council shall, on making a determination under this subsection, forthwith notify the Secretary of State of such determination and cause notice thereof to be published in two successive weeks in one or more newspapers circulating in the district or area.
- (4) Subject to subsection (9) and (13) below, a licensing board shall consist of not less than one-quarter of the total number of members of the district or islands council and in no case shall consist of less than five such members.
- (5) Where a district or islands area is divided into licensing divisions, then unless the Secretary of State otherwise directs, not less than one-third of the members of the licensing board for a licensing division shall be councillors for a ward or electoral division within the area of the licensing division.
- (6) The members of a licensing board for a district or licensing division of a district shall be elected at the first meeting of the district council held after the ordinary election of that council in 1977 and, in the case of subsequent elections, at the first meeting of the council held after each subsequent ordinary election of the council.

- (7) The members of a licensing board for an islands area or licensing division of an islands area shall be elected at a meeting of the council of the islands area to be held on a date between 16th May 1977 and 30th June 1977 to be determined by the council, and, in the case of subsequent elections, at the first meeting of the council held after each subsequent ordinary election of the council.
- (8) The term of office of members of a licensing board shall begin with the day of their election under subsections (6) and (7) above and shall end on the day of the next election of members of the licensing board, but any member of a board shall be eligible for re-election.
- (9) A member of a licensing board who has ceased to be a member of the authority by whom he was appointed by reason of an ordinary election to the council of that authority shall continue to be a member of the board until the first meeting of the council after the election.
- (10) Any casual vacancy arising in a licensing board from death, resignation, disqualification or other cause may be filled by the election of a duly qualified person at the first meeting of the appointing council following upon the vacancy, and members so elected shall hold office until the date of the next meeting for election to the board.
- (11) If a licensing board is not elected at the time at which it ought to be elected, or an insufficient number of members is elected for a board, the Secretary of State may by order provide for the holding of a fresh election or elections for supplying such fault or deficiency in election at such times and in such manner as he may think expedient.
- (12) No election held in pursuance of this Act shall be deemed to be vitiated in consequence of any technical defect in the proceedings which has not been prejudicial to the interests of any party concerned in such election.
- (13) For the purposes of any proceedings at the quarterly meeting in March in the final year of office of members of a licensing board which are not finally disposed of before the expiry in that year of the term of office of the members, the members of the licensing board in office at the date of the said meeting shall, notwithstanding such expiry, be deemed to constitute the licensing board.

2 Disqualification of interested persons

- (1) A person who is, or who is in partnership with any person as, a brewer, maltster, distiller, or dealer in or retailer of alcoholic liquor, shall not act as a member of a licensing board for any purpose under this Act.
- (2) A member of a licensing board who holds a disqualifying interest in a company shall not take part in any proceedings before the board in which that company is an applicant or an objector, and in this subsection " disqualifying interest" means a beneficial interest in shares or stock of a close company within the meaning of section 282 of the Income and Corporation Taxes Act 1970 which have a total nominal value exceeding £50 or which amount to more than one hundredth part of the nominal value of the issued share capital, or stock, as the case may be, of the company or any class of such capital or stock.
- (3) A person who is an employee of a holder of a licence under this Act and any other person engaged in a business which deals in alcoholic liquor, including directors, officers and employees of companies so engaged shall not act as a member of a licensing board for any purpose under this Act.

- (4) A member of a licensing board shall not act in the granting of a licence in respect of premises of which he is the proprietor, tenant or sub-tenant.
- (5) If any person knowingly and wilfully contravenes this section, he shall be guilty of an offence.
- (6) Anything done by any person in contravention of this section shall be void:

Provided that the grant of a new licence under this Act shall not be liable to objection on the ground that the members of the licensing board, or any of them, were not qualified to grant a licence.
- (7) A person shall not be disqualified from acting as a member of a licensing board in relation to any matter by reason only that as a member of a committee constituted under section 47 of this Act he was concerned with the matter in question.

3 Expenses of members of licensing boards

- (1) Sections 45 to 50 of the Local Government (Scotland) Act 1973 (which provide for payment of allowances to members of local authorities and other bodies) shall apply with any necessary modifications to members of licensing boards as if the licensing boards were local authorities.
- (2) Any amounts by way of allowance payable by virtue of subsection (1) above shall be payable by the council of the district or islands area whose area constitutes or includes the area of the licensing board.

4 Meetings of licensing boards

- (1) For the purposes of the discharge of its functions under this Act, every licensing board
 - (a) shall hold a meeting in January, March, June and October of each year beginning on a date in each such month fixed by the licensing board at least eight weeks prior to the meeting;
 - (b) may hold such other meetings as appear to the board to be appropriate.
- (2) A licensing board may adjourn any meeting held by virtue of subsection (1) above from time to time during the period of one month next following the first day of such meeting, but no longer.

5 Arrangements for discharge of functions of licensing boards

- (1) Subject to subsection (2) below, a licensing board may arrange for the discharge of any of its functions by a committee of the board, a member or members of the board, the clerk of the board or any other person appointed to assist the clerk.
- (2) A licensing board shall not make any arrangements under subsection (1) above for the discharge of any of the following functions—
 - (a) making a decision on the application for the grant, including the provisional grant, of a new licence ;
 - (b) making a decision on an application for the renewal of a licence where a competent objection has been lodged;
 - (c) making a decision to refuse to grant the renewal of a licence;
 - (d) making a decision on the permanent transfer of a licence;

Status: This is the original version (as it was originally enacted).

- (e) making a decision on an application for a regular extension of permitted hours;
 - (f) making a decision on the restriction of the terminal permitted hour;
 - (g) making a decision on an application for restoration of restricted hours;
 - (h) making a decision on an application for Sunday opening under Part I of Schedule 4 to this Act other than an application under paragraph 13 of that Schedule where no objection is made in relation to the application ;
 - (i) making a decision as regards a Sunday restriction order or the revocation of such an order under Part II of Schedule 4 to this Act;
 - (j) making a decision on the suspension of a licence ;
 - (k) making a decision on a closure order.
- (3) One half of the members of a licensing board (and in no case less than three members) shall be a quorum for any meeting of the board to discharge functions mentioned in subsection (2) above.
- (4) The chairman of a licensing board or, in his absence, the clerk of the board may, if a quorum is not present for any such meeting of the board, call a further meeting in place of the meeting not held.
- (5) A licensing board may, at any such meeting of the board, act notwithstanding any vacancy, if a quorum is present.
- (6) A licensing board may only deal with any proceedings relating to matters mentioned in paragraphs (a) to (i) of subsection (2) above at a quarterly meeting of the board held by virtue of section 4(1)(a) of this Act
- (7) Proceedings relating to matters mentioned in subsection (2) above, including voting in connection therewith, shall be held in public, but a licensing board may retire to consider its decision in any such matter and the clerk of the board shall accompany the board when it so retires unless the board otherwise directs.
- (8) The district or islands council concerned shall provide accommodation for the meetings, and otherwise defray any necessary expenses in respect of the proceedings of the licensing boards for their area.

6 Chairman

- (1) Every licensing board shall elect annually one of its number to be chairman of the board, and until a chairman is elected, or if the chairman is absent from any meeting, the board shall elect one of its number present at the meeting to be chairman of that meeting.
- (2) Where on the election of a chairman an equal number of votes is given for two or more persons, the meeting shall determine by lot which of those persons shall be the chairman.
- (3) Subject to subsection (2) above, at any meeting of a licensing board the chairman shall, in a case of equality in voting, have a second or casting vote:

Provided that at a meeting of a licensing board the chairman shall not have a second or casting vote on an application for the grant or provisional grant of a new licence, and such an application shall be granted by the board only by a majority of the members thereof present and voting.

7 Clerk of licensing boards

- (1) Every district and islands council shall appoint and employ, whether on a full-time or part-time basis—
 - (a) an officer to be the clerk of every licensing board having jurisdiction within their area, and
 - (b) such other persons as may be necessary to assist that officer or to act on his behalf as clerk or assistant clerk of those boardsand the clerk of a licensing board shall be an advocate or a solicitor.
- (2) Where under an agreement an officer of a regional council is placed at the disposal of a district council for the purposes of this section, that officer may perform the duties of clerk or assistant clerk of the aforementioned boards.
- (3) The clerk of a licensing board shall not, himself or by his partner or clerk, act as solicitor to, or agent for, any person in any proceedings before that board or in any appellate proceedings which may result therefrom and, if any person contravenes this subsection, he shall be guilty of an offence.

8 Fees payable

- (1) The Secretary of State may, by order made by statutory instrument, determine the fees payable by any applicant to a licensing board.
- (2) The fees mentioned in subsection (1) above shall not include fees payable under the provisions of the Betting, Gaming and Lotteries Acts 1963 to 1971 or of the Gaming Act 1968.
- (3) Fees determined by the Secretary of State under subsection (1) above shall, on being paid by any applicant to the board, be paid over by the clerk of that board to the council which defray the expenses of that board.