



# Licensing (Scotland) Act 1976 (repealed)

## 1976 CHAPTER 66

### PART II

#### THE GENERAL LICENSING SYSTEM

#### **9 Grant of licences by licensing boards.**

- (1) A licensing board may, in accordance with the provisions of this Part of this Act, grant a licence to any person for the sale by retail or supply of alcoholic liquor by that person.
- (2) A licence so granted by a licensing board shall be in respect of premises specified therein, being premises situated within the area of the board.
- (3) The types of licence which may be so granted by a licensing board are those specified in Schedule 1 to this Act.
- (4) A licence granted by a licensing board shall be in such form as the board may decide.
- (5) A licence granted otherwise than at a properly constituted meeting of a licensing board or otherwise than in accordance with the provisions of this Act shall be void.

#### **10 Application for licence.**

- (1) An application to a licensing board of any kind mentioned in subsection (6) below in respect of any premises shall be in such form as may be prescribed, shall be completed and signed by the applicant or his agent, and shall be lodged with the clerk of the licensing board within whose area the premises are situated not later than five weeks before the first day of the meeting of the board at which the application is to be considered.
- (2) In the case of an application for the grant of a new licence, the applicant shall—
  - (a) along with his application, lodge with the clerk of the board a plan of the premises in respect of which the application is made; and
  - (b) arrange for the display at the premises, in a place and at a height where it can conveniently be read by the public, of a notice in the prescribed form

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intimating his application and the type of licence for which he applies, for a period of at least 21 days before the first day of the meeting as aforesaid.

Paragraph (a) of this subsection shall not apply to an application for the grant of an off-sale licence.

- (3) In the case of an application for the provisional grant of a new licence, the applicant shall—
- (a) along with his application, lodge with the clerk of the board a plan of the premises in respect of which the application is made; and
  - (b) arrange for the display at the site of the premises of a notice all as mentioned in subsection (2)(b) above.

[<sup>F1</sup>(3A) In the case of an application for the grant, the provisional grant or the renewal of a public house licence or a refreshment licence, the application shall state whether the applicant intends the premises to be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday]

- (4) An applicant shall not be treated as having failed to comply with subsection (2)(b) or (3)(b) above if the notice is, without any fault or intention of his, removed, obscured or defaced before the first day of the meeting of the board at which the application is to be considered, so long as he has taken reasonable steps for its protection and, if need be, replacement.

- (5) In the case of an application for the grant or provisional grant of a new licence, the applicant shall, not later than three weeks before the first day of the meeting of the board at which the application is to be considered, give notice in writing of the application to every occupier of premises situated in the same building as the premises to which the application relates.

- (6) The applications referred to in subsection (1) above are as follows—
- (a) an application for the grant or renewal of a licence;
  - (b) an application for the provisional grant of a new licence;
  - (c) an application for a permanent transfer of a licence;
  - (d) an application for a regular extension of permitted hours.

- (7) On receipt of an application of a kind referred to in subsection (6) above, and until the first day of the meeting of the board at which the application is to be considered, the clerk of a licensing board shall make the application, together with the documents lodged therewith, available for inspection by members of the public during normal office hours.

- [<sup>F2</sup>(8) A notice as mentioned in subsection (2) above and notice under subsection (5) above shall include a statement as to whether the applicant intends the premises to be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday.]

#### Textual Amendments

**F1** S. 10(3A) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), s. 46(2)(a)

**F2** S. 10(8) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), s. 46(2)(b)

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## **11 Special provisions for applications made other than by individual natural persons.**

- (1) Where an application is made for a new licence, or for the renewal or permanent transfer of a licence, by an applicant who is not an individual natural person, the following provisions of this section shall apply.
- (2) The application shall name both the applicant and the employee or agent of the applicant whom the applicant intends should have the responsibility for the day to day running of the premises to which the application relates.
- (3) Where an application is granted, the licensing board shall grant the licence or transfer in the names of both persons mentioned in subsection (2) above, and any reference in this Act to the holder of a licence includes a reference to both of those persons.
- (4) Unless a licence is transferred to another employee or agent within 8 weeks from the time when the employee or agent named in a licence ceases to be responsible for the day to day running of the premises to which the licence relates, the licence shall cease to have effect.

## **12 Publication of list of applications.**

- (1) The clerk of a licensing board shall, in accordance with the provisions of this section, not later than three weeks before the first day of the meeting of the board at which the applications are to be considered, cause to be published in one or more newspapers circulating in the area of the board a list of all competent applications made to the board for—
  - (a) the grant, including the provisional grant, of a new licence;
  - (b) the regular extension of permitted hours.
- (2) In relation to each application for a new licence, the list mentioned in subsection (1) above shall specify—
  - (a) the name, designation and address of the applicant;
  - (b) in the case of an application to which section 11 of this Act applies, the names, designations and addresses of both persons named in the application;
  - (c) the address of the premises in respect of which the licence is desired;
  - (d) the type of licence for which application is made;
  - (e) the first day of the meeting of the licensing board at which the application is to be considered.
  - [<sup>F3</sup>(f) in the case of an application for a public house licence or a refreshment licence, whether the applicant intends the premises to be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday.]
- (3) In relation to each application for the regular extension of permitted hours, the list mentioned in subsection (1) above shall specify—
  - (a) the name, designation and address of the applicant;
  - (b) the address of the premises in respect of which the application is made and the type of licence held in respect of those premises;
  - (c) the nature of the extension of hours for which application is made;
  - (d) the first day of the meeting of the licensing board at which the application is to be considered.

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### Textual Amendments

- F3** S. 12(2)(f) added by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. 46(3)

## 13 Consideration of applications.

- (1) A licensing board shall not at any meeting hear the cases of applicants for new licences until all the other cases have been disposed of:  
Provided that where more than one application for a licence has been made in respect of any premises, the licensing board may hear and consider such applications together.
- (2) Where an applicant for the grant of a licence or an objector thereto—
  - (a) has, through inadvertence or misadventure, failed to comply with any of the preliminary requirements of this Act; or
  - (b) having duly lodged his application or objection, has died before the meeting of the board at which such application or objection was to have been heard;the board may, if it thinks fit, and upon such terms as the board thinks proper, postpone the consideration of the application or objection to an adjourned meeting.
- (3) At such adjourned meeting the licensing board may, if it is satisfied that the terms specified by the board have been complied with—
  - (a) proceed to grant the licence to the applicant or, as the case may be, to his executors, representatives or disponees (being possessed of the premises in respect of which the application has been made);
  - (b) proceed to consider the objection, whether on the part of the objector or, in the case of a deceased objector, on the part of his representatives; as if the preliminary requirements of this Act had been complied with.

## 14 Further application for new licence where previous application refused.

Where a licensing board has refused an application for a new licence in respect of any premises, the board shall not, within two years of its refusal, entertain a subsequent application for a new licence in respect of the same premises unless the board, at the time of refusing the first-mentioned application, makes a direction to the contrary.

## 15 Attendance at meeting of licensing board by applicant or his representative.

- (1) A licensing board may decline to consider an application if the applicant or his representative does not attend the meeting at which the application is to be considered: Provided that an applicant for the renewal of a licence or for the permanent transfer of a licence need not attend or be represented unless the applicant has been cited by the board to attend the meeting.
- (2) A licensing board shall not refuse an application for the renewal or permanent transfer of a licence without hearing the applicant or his representative:  
Provided that the board may refuse such an application if the applicant, having been cited by the board to attend the meeting at which his application is to be considered, fails to attend such a meeting.

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## 16 Objections in relation to applications.

- (1) It shall be competent for any of the following persons to object in relation to any application to a licensing board for the grant (including the provisional grant) renewal or permanent transfer of a licence, namely,—
- (a) any person owning or occupying property situated in the neighbourhood of the premises to which the application relates or any organisation which in the opinion of the board represents such persons;
  - (b) a community council, which has been established in accordance with the provisions of the <sup>M1</sup>Local Government (Scotland) Act 1973, for the area in which the premises are situated;
  - (c) any organised church which, in the opinion of the licensing board, represents a significant body of opinion among persons residing in the neighbourhood of the premises;
  - (d) the chief constable.
  - [<sup>F4</sup>(e) the fire authority for the area in which the premises are situated;
  - (f) a local authority for the area in which the premises are situated.]
- (2) Where a competent objector desires to object in relation to any application, he shall, not later than seven days before the meeting of the licensing board at which the application is to be considered—
- (a) lodge with the clerk of the board a written notice of objection which shall be signed by the objector or his agent and shall specify the grounds of his objection and
  - (b) intimate his objection to the applicant in the manner provided by subsection (3) below,
- and an objection shall not be entertained by the licensing board unless it is proved or admitted that such objection was intimated to the applicant as aforesaid.
- (3) An objection shall, for the purposes of paragraph (b) of subsection (2) above, be intimated to the applicant—
- (a) by delivering to him a copy of the notice of objection lodged with the licensing board under paragraph (a) of that subsection; or
  - (b) by sending a copy of the said notice by registered post or by recorded delivery in a letter addressed to him at his proper address; or
  - (c) by leaving a copy of the said notice for him at his proper address;
- and, for the purposes of paragraphs (b) and (c) of this subsection, the proper address in the case of an applicant being an individual natural person shall be his place of abode as specified in his application or, in the case of such an applicant applying for the renewal of a licence, the premises in respect of which the application is made, [<sup>F5</sup>or, in the case of the agent of an applicant, shall be his place of business,] and, in the case of an applicant other than an individual natural person, shall be the address specified in the application.
- (4) Notwithstanding anything in the foregoing provisions of this section, it shall be competent for a licensing board to entertain objections from the chief constable, lodged at any time before the hearing of an application, if the board is satisfied that there is sufficient reason why due notice and intimation of the objection could not be given, and in such a case the chief constable shall cause his objections to be intimated to the applicant before the hearing.

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- (5) The licensing board may only entertain an objection under this section if the objection is relevant to one or more of the grounds on which, by virtue of section 17 of this Act, an application may be refused, and shall [<sup>F6</sup>, whether or not the objector appears, consider] any competent objection before arriving at its decision.
- (6) The licensing board, if in its opinion any objection to the renewal of a licence is frivolous or vexatious, may find the objector liable in the expenses caused by such objection to such extent as the board thinks fit, or, if in its opinion any such objection is unauthorised, may find the agent of the objector liable in the expenses as aforesaid; and the amount of any expenses so found due may be recovered in the sheriff court having jurisdiction, and a certified copy of the finding of the licensing board shall be sufficient evidence and authority for decerning for the said amount with expenses.

#### Textual Amendments

- F4** S. 16(1)(e)(f) added (31.12.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), s. 74, **Sch. 8 para. 5(a)**; S.I. 1991/2862, art. 3, **Schedule**.
- F5** Words in s. 16(3) inserted (31.12.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), s. 74, **Sch. 8 para. 5(b)**; S.I. 1991/2862, **art. 3, Schedule**.
- F6** Words in s. 16(5) substituted (31.12.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), s. 74, **Sch. 8 para. 5(c)**; S.I. 1991/2862, **art. 3, Schedule**.

#### Marginal Citations

- M1** 1973 c. 65(81:2).

### [<sup>F7</sup>16A Observations by chief constable in relation to applications.

- (1) Without prejudice to section 16 of this Act, in considering an application—
- (a) for the grant (including the provisional grant), renewal or permanent transfer of a licence;
  - (b) the regular extension of permitted hours under section 64 of this Act; or
  - (c) the grant of a children’s certificate under section 49 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
- a licensing board shall have regard to any observations on the application submitted by the chief constable in accordance with the following provisions of this section.
- (2) Where the chief constable intends to submit observations in relation to any application, he shall, not later than seven days before the meeting of the licensing board at which the application is to be considered—
- (a) lodge with the clerk of the board a written notice of his observations; and
  - (b) intimate his observations to the applicant in the manner provided by subsection (3) below,
- and observations shall not be entertained by the licensing board unless it is proved or admitted that such observations were intimated to the applicant as aforesaid.
- (3) Observations shall, for the purposes of paragraph (b) of subsection (2) above, be intimated to the applicant—
- (a) by delivering to him a copy of the observations lodged with the licensing board under paragraph (a) of that subsection; or

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- (b) by sending him a copy of the said observations by registered post or by recorded delivery in a letter addressed to him at his proper address; or
  - (c) by leaving a copy of the said observations for him at his proper address;
- and, for the purposes of paragraphs (b) and (c) of this subsection, the proper address of an applicant shall be as provided for in subsection (3) of section 16 of this Act.
- (4) Notwithstanding anything in the foregoing provisions of this section, it shall be competent for the licensing board to entertain observations from the chief constable, lodged at any time before the hearing of an application, if the board is satisfied that there is sufficient reason why due notice and intimation of the observations could not be given, and in such a case the chief constable shall cause his observations to be intimated to the applicant before the hearing.
- (5) The licensing board shall have regard to any observations submitted by the chief constable in accordance with this section whether or not they are relevant to one or more grounds on which, by virtue of section 17 of this Act, an application may be refused.]

#### Textual Amendments

- F7** S. 16A inserted (1.1.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), s. 53(1)

## 17 Grounds for refusal of application.

- (1) A licensing board shall refuse an application of the type described in subsection (2) below if it finds that one or more of the following grounds for refusal, being competent grounds, applies to it—
- (a) that the applicant, or the person on whose behalf or for whose benefit the applicant will manage the premises or, in the case of an application to which section 11 of this Act applies, the applicant or the employee or agent named in the application is not a fit and proper person to be the holder of a licence;
  - (b) that the premises to which an application relates are not suitable or convenient for the sale of alcoholic liquor, having regard to their location, their character and condition, the nature and extent of the proposed use of the premises, and the persons likely to resort to the premises;
  - (c) that the use of the premises for the sale of alcoholic liquor is likely to cause undue public nuisance, or a threat to public order and safety;
  - [<sup>F8</sup>(d) that, 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 over provision of licensed premises in the locality,]
- and otherwise shall grant the application.
- (2) The grounds on which different types of application may competently be refused by a licensing board are those mentioned opposite the respective types of application set out below—

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<i>Typ e of application</i>	<i>Compete n t grounds</i>
new licence, including the provisional grant of such a licence	those set out in subsection (1) above.
renewal of licence	those set out in paragraphs (a) to (c) of subsection (1) above.
permanent transfer of a licence	that set out in paragraph (a) of subsection (1) above.

[<sup>F9</sup>(2A) A licensing board shall refuse to grant or renew a public house or a refreshment licence in respect of the permitted hours on a Sunday if it finds that the opening and use on a Sunday of the premises to which the application relates would cause undue disturbance or public nuisance in the locality, but the refusal of an application on that ground alone shall not prevent the licensing board from granting the application in respect of days other than Sundays.]

- (3) In considering the grounds for refusal mentioned in paragraph (a) of subsection (1) above, the licensing board may have regard to any misconduct on the part of any person mentioned in that paragraph, whether or not constituting a breach of this Act or any byelaw made thereunder, which in the opinion of the board has a bearing on his fitness to hold a licence.
- (4) An applicant for the grant of a new licence, including the provisional grant of such a licence, or for the renewal or permanent transfer of a licence may appeal to the sheriff against a refusal of a licensing board to grant, renew or transfer the licence [<sup>F10</sup>or to grant the licence in respect of the permitted hours on a Sunday], as the case may be.
- (5) Any competent objector who appeared at the hearing of any application mentioned in subsection (4) above may appeal to the sheriff against the decision of the licensing board to grant, renew or transfer a licence, as the case may be.
- (6) Any person entitled under this section to appeal to the sheriff against the grant or refusal of a licence may appeal to the sheriff against a decision of a licensing board to attach or not to attach a condition to a licence, being a condition mentioned in section 38(3) or 101(2) of this Act.

#### Textual Amendments

- F8** S. 17(1)(d) substituted (31.12.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), s. 74, **Sch. 8 para. 6**; S.I. 1991/2862, art. 3, **Schedule**.
- F9** S. 17(2A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), **s. 46(4)(a)**
- F10** Words in s. 17(4) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), **s. 46(4)(b)**

## 18 Giving of reasons for decisions of a licensing board.

- (1) A licensing board shall [<sup>F11</sup>, within 21 days of being required to do so under subsection (2) below,] give reasons for arriving at any decisions mentioned in section 5(2) of this Act <sup>F12</sup>. . . .



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- (2) Reasons for decisions referred to in subsection (1) above may be required to be given by the board in writing on a request being made to the clerk of the board, not more than 48 hours after the decision is made, by the applicant or, as the case may be, by the holder of the licence, or by any objector, or by any complainer who appeared at the hearing.
- (3) Where a licensing board gives reasons in writing at the request of a party to the hearing, the board shall give copies of those reasons to all other parties to the hearing.
- (4) [<sup>F13</sup>The period of 21 days referred to in subsection (1) above and] the period of 48 hours referred to in subsection (2) above shall not include a day which is a Sunday, Christmas Day, New Year's Day, Good Friday, a bank holiday, or a public holiday, or a day appointed for public thanksgiving or mourning.

#### Textual Amendments

- F11** Words in s. 18(1) inserted (31.12.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. 74, [Sch. 8 para. 7\(a\)](#); S.I. 1991/2862, [art. 3](#), Schedule.
- F12** Words in s. 18(1) repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), ss. 74, 75(2), [Sch. 8 para. 7\(a\)](#), [Sch. 9](#) (Sch. 8 Pt. I of that Act, by virtue of which the specified words ceased to have effect, was brought into force on 31.12.1991 by S.I. 1991/2862, [art. 3](#), Sch.; the repeal of the specified words by Sch. 9 of that Act was expressed to be brought into force so far as not already in force on 17.3.1993 by S.I. 1993/641, [art. 3](#), Sch.).
- F13** Words in s. 18(4) inserted (31.12.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. 74, [Sch. 8 para. 7\(b\)](#); S.I. 1991/2862, [art. 3](#), Schedule

VALID FROM 21/10/1996

#### [<sup>F14</sup>18A Licensing conditions for certain events.

- (1) In granting—
  - (a) a licence under section 17 of this Act;
  - (b) an occasional licence under section 33 of this Act; or
  - (c) an occasional permission under section 34 of this Act,
 in respect of premises on or a place at which it appears to the licensing board that any event to which this section applies may be held, the licensing board shall attach to the licence or permission the prescribed conditions and such other conditions as the board considers necessary for the purpose of safeguarding the health and safety of persons attending any such event.
- (2) The duty of a licensing board under subsection (1) above to attach conditions to a licence or permission is without prejudice to any power of the board under this Act to attach or impose conditions to or in respect of a licence or permission.
- (3) This section applies to any event—
  - (a) at which music is played or relayed;
  - (b) which consists of or includes the opportunity for persons attending the event to engage in dancing; and

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- (c) at which it appears to the board that offences may be committed in relation to controlled drugs within the meaning of section 2 of the <sup>M2</sup>Misuse of Drugs Act 1971.
- (4) The Secretary of State may, by order, prescribe the conditions which are to be attached to a licence or permission under this section, and an order made under this subsection may prescribe—
- (a) the terms of any such condition; or
  - (b) the description of any such condition, the terms of which shall be specified by the licensing board,
- and such an order shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Without prejudice to the generality of subsection (1) above or to the power of the Secretary of State to prescribe terms or descriptions of conditions under subsection (4) above, the conditions may provide that no event to which this section applies, or no such description of such events as may be determined by the board, shall be held without the consent of the board.
- (6) The holder of a licence may appeal to the sheriff against—
- (a) the terms of any condition (other than the terms of any condition prescribed under subsection (4) above) imposed under subsection (1) above; and
  - (b) the refusal of consent under subsection (5) above.
- (7) The holder of a licence or his employee or agent shall be guilty of an offence if he contravenes any condition attached to the licence or permission under subsection (1) above.
- (8) It shall be a defence for a person charged with an offence under subsection (7) above to prove that he took all reasonable steps to comply with the condition.
- (9) In this section—
- “holder of a licence” includes a person to whom an occasional permission has been granted under section 34 of this Act;
- “dancing” includes any movement apparently to the accompaniment of music;
- “music” includes sounds wholly or predominantly characterised by the emission of a succession of repetitive beats; and
- “prescribed conditions” means the conditions prescribed by the Secretary of State under subsection (4) above.
- (10) In the application of section 67(1)(a) and (c) and (2) to an offence under subsection (7) above, “licence-holder” includes a person to whom an occasional permission has been granted.]

#### Textual Amendments

**F14** Ss. 18A, 18B inserted (21.10.1996) by 1996 c. 36, s. 1(1); S.I. 1996/2670, art. 2

#### Marginal Citations

**M2** 1971 c. 38.

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**F15 18B Conditions for existing licences.**

- (1) This section applies to premises in respect of which a licence has been granted, whether before or after the coming into force of this section, under section 17 of this Act where no conditions have been attached to the licence in pursuance of section 18A of this Act.
- (2) Where it appears to a licensing board that an event to which section 18A of this Act applies may be held on premises to which this section applies, the board shall convene a meeting for the purpose of attaching to the licence the conditions specified in subsection (1) of that section.
- (3) The clerk to the licensing board shall, not later than 21 days before the date of the meeting to be held under subsection (2) above, serve on the holder of the licence and send to the chief constable a notice of—
  - (a) the meeting;
  - (b) where the Secretary of State has prescribed the terms of any prescribed conditions, such terms;
  - (c) in the case of any other prescribed conditions, the terms proposed by the board; and
  - (d) where the board proposes to attach any other conditions to the licence, the terms of such conditions.
- (4) At the meeting held under subsection (2) above, unless the holder of the licence satisfies the board that no event to which section 18A of this Act applies will be held on the premises, the board shall attach to the licence the prescribed conditions and such other conditions as it considers necessary in the terms determined in accordance with subsection (5) below.
- (5) In determining—
  - (a) whether the board is satisfied as mentioned in subsection (4) above; or
  - (b) what conditions (other than prescribed conditions) to attach to a licence or the terms (other than such terms as are prescribed) of such conditions,the board shall have regard to any observations submitted by the chief constable and any other person or body mentioned in section 16(1) of this Act.
- (6) Subsections (2) to (4) of section 16 of this Act shall apply in relation to any observations made under subsection (5) above as they apply in relation to any objection made under that section; and for the purposes of such application any reference in the said subsections (2) to (4)—
  - (a) to an application shall be construed as a reference to conditions proposed to be attached to the licence;
  - (b) to the applicant shall be construed as a reference to the holder of the licence;
  - (c) to an objection shall be construed as a reference to an observation;
  - (d) to the proper address of the applicant shall be construed as a reference to the address at which notice is served on the holder of the licence under subsection (3) above,and cognate expressions shall be construed accordingly.

*Status: Point in time view as at 31/12/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Licensing (Scotland) Act 1976 (repealed), Part II. (See end of Document for details)*

- (7) The terms of conditions to be attached to the licence in pursuance of subsection (4) above are—
- (a) in the case of the prescribed conditions—
    - (i) where the terms of any condition have been prescribed, such terms;
    - (ii) where the description of any condition has been prescribed, such terms as the board considers appropriate;
  - (b) in the case of any other condition notified under subsection (3)(d) above, such terms as the board consider appropriate; and
  - (c) in the case of any condition not so notified, such terms as are agreed with the holder of the licence.
- (8) Subsections (5) to (10) of section 18A of this Act shall apply to conditions attached to a licence under subsection (4) above as they apply to conditions attached to a licence under section 18A(1) of this Act.
- (9) The clerk to the licensing board shall forthwith intimate to the holder of the licence—
- (a) where the board is satisfied that no event to which section 18A of this Act will be held on the premises, that fact; and
  - (b) where the board attaches conditions to the licence, such conditions by sending to the holder of the licence a copy of the licence with the conditions attached.
- (10) In this section “prescribed conditions” has the same meaning as in section 18A of this Act.

#### Textual Amendments

**F15** Ss. 18A, 18B inserted (21.10.1996) by 1996 c. 36, s. 1(1); S.I. 1996/2670, art. 2

## 19 Canvassing.

- (1) If any applicant for the grant, renewal, or permanent transfer of a licence or for a regular extension of permitted hours, either by himself or by another person at the instigation of the applicant, attempts to influence a member of a licensing board to support his application at any time before its consideration by the board, he shall be guilty of an offence.
- (2) If proceedings are pending under subsection (1) above, the licensing board may adjourn consideration of an application to which the proceedings relate until the proceedings are concluded.
- (3) If an applicant is convicted of an offence under subsection (1) above in relation to an application before the board, the board may refuse to consider the application.

## 20 Register of applications and decisions.

The clerk of each licensing board shall keep a register of applications for licences and shall, at the end of each day’s meeting of the board, enter in the register the decisions taken on the applications.

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This register shall be available to any member of the public at times and places to be determined by the clerk.

## 21 Issue of licences.

- (1) The clerk of each licensing board shall make out and deliver a licence to every person to whom a licence is granted by the board [<sup>F16</sup>and shall do so within 28 days of the grant of the licence].
- (2) The clerk of a licensing board shall, [<sup>F17</sup>on application], make out a duplicate of any licence issued by him under this section and shall certify such duplicate to be a true copy of the original licence, and any such duplicate, duly certified as aforesaid, shall be sufficient evidence of the facts therein contained and of the terms of the original licence.
- [<sup>F18</sup>(3) The period of 28 days referred to in subsection (1) above shall not include a day which is a Sunday, Christmas Day, New Year's Day, Good Friday, a bank holiday, or a public holiday, or a day appointed for public thanksgiving or mourning.]

### Textual Amendments

- F16** Words in s. 21(1) added (31.12.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. 74, **Sch. 8 para. 8(a)**; S.I. 1991/2862, **art. 3**, Schedule.
- F17** Words in s. 21(2) substituted (31.12.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. 74, **Sch. 8 para. 8(b)**; S.I. 1991/2862, **art. 3**, **Schedule**.
- F18** S. 21(3) added (31.12.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. 74, **Sch. 8 para. 8(c)**; S.I. 1991/2862, **art. 3**, **Schedule**.

## 22 ..... <sup>F19</sup>

### Textual Amendments

- F19** S. 22 repealed by [Finance Act 1982 \(c. 28, SIF 40:1\)](#), **Sch. 10 Pt. I**

## 23 Special provisions relating to applications for new licence.

- (1) Subject to subsection (6) of this section, an application for the grant or provisional grant of a new licence (other than an off-sale licence) shall not be entertained by a licensing board unless there are produced to the board, in accordance with the provisions of this section, certificates from the appropriate authority as to the suitability of the premises for which the licence is sought in relation to planning, building control and food hygiene.
- (2) In relation to planning, the certificate from the appropriate authority should state that the applicant has obtained in respect of the premises planning permission under the <sup>M3</sup>Town and Country Planning (Scotland) Act 1972 or, in the case of an application for the provisional grant of a licence, outline planning permission under sections 39 and 40 of that Act, or, in either case, a determination under section 51 of that Act that planning permission is not required.

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- (3) In relation to building control, the certificate from the appropriate authority—
- (a) in the case of an application for a new licence, should state—
    - (i) either that a warrant for the construction of the premises has been granted under section 6 of the <sup>M4</sup>Building (Scotland) Act 1959 and a certificate of completion has been granted under section 9 of that Act, or that no warrant for construction of the premises is required; and
    - (ii) either that a warrant for the change of use of the premises has been granted under the said section 6 or that no such warrant is required; and
  - (b) in the case of an application for the provisional grant of a licence, should state—
    - (i) that a warrant for the construction of the premises has been granted under section 6 of the said Act of 1959; and
    - (ii) either that a warrant for the change of use of the premises has been granted under the said section 6, or that on completion of the construction of the premises in accordance with the warrant a warrant for the change of use will be granted, or that no such warrant is required.

Expressions used in this subsection and in the said Act of 1959 have the same meanings in this subsection as they have in that Act.

- (4) In relation to food hygiene, the certificate from the appropriate authority should, in the case of an application for a new licence, state that the premises to which the application relates comply, or, in the case of an application for the provisional grant of a licence, would comply, with the requirements of regulations made under [<sup>F20</sup>section 16 of the <sup>M5</sup>Food Safety Act 1990] relating to construction, layout, drainage, ventilation, lighting and water supply or concerned with the provision of sanitary and washing facilities.
- (5) Before granting or making the provisional grant of a new licence, the licensing board shall consult the fire authority for the area.
- (6) In relation to building control, food hygiene and consultation with the fire authority, subsections (1), (3), (4) and (5) of this section shall not apply to the application for or the making of a provisional grant of a licence under section 26(2) of this Act but shall apply to the application for affirmation and to the affirmation of such a grant.
- (7) In this section, in relation to planning and building control, the appropriate authority in the case of the Highland, Borders and Dumfries and Galloway Regions is the regional council and, in any other case, is the district or islands council, and in relation to food hygiene, the appropriate authority is the district or islands council.

#### Textual Amendments

**F20** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), ss. 54, 59\(1\), Sch. 3 para. 19](#)

#### Marginal Citations

**M3** [1972 c. 52\(123:2\)](#).

**M4** [1959 c. 24\(15\)](#).

**M5** [1990 c. 16](#).

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## **24 Special provisions relating to applications for renewal of a licence.**

- (1) Before granting the renewal of a licence, the licensing board shall consult the fire authority for the area.
- (2) On any application for the renewal of a licence, the licensing board may require a plan of the premises to which the application relates to be produced to it and lodged with the clerk.

## **25 Transfer of licences.**

- (1) A licensing board may, on an application made to the board in that behalf, [<sup>F21</sup>temporarily] transfer to a new tenant or [<sup>F22</sup>to a new or existing] occupant of any licensed premises the licence then subsisting in respect of those premises.
- [<sup>F23</sup>(1A) Subject to subsection (1C) below, a temporary transfer made under subsection (1) above shall have effect until the appropriate meeting of the licensing board which shall be—
  - (a) the next meeting of the board; or
  - (b) in the case of a temporary transfer made within the period of six weeks before the first day of the next meeting of the board, the next following meeting of the board.
- (1B) At an appropriate meeting of the licensing board, within the meaning of subsection (1A) above, and on an application being made for the permanent transfer of the licence, the board shall make a decision on the permanent transfer of the licence.
- (1C) If the licensing board refuses to make a permanent transfer of a licence under subsection (1B) above, the person to whom the licence had been transferred temporarily may appeal to the sheriff against that refusal and the licence shall have effect until the time within which an appeal may be made has elapsed or, if an appeal has been lodged, until the appeal has been abandoned or determined.]
- (2) A licensing board may, on an application made to it in that behalf by—
  - (a) the executors, representatives or disponees of any person who held a licence in respect of premises situated within the area of the board and who has died before the expiry of the licence; or
  - (b) the trustee, judicial factor or curator bonis of any person holding such a licence who has become bankrupt, insolvent or incapable before the expiry of the licence;transfer the licence to the applicant if the applicant is in possession of the premises.
- (3) A licensing board may, on an application made to it in that behalf by a person other than an individual natural person, substitute another employee or agent of the applicant for the employee or agent mentioned in section 11 or 26 of this Act.
- [<sup>F24</sup>(4) A licence transferred by virtue of subsection (2) or (3) above shall have effect until the next meeting of the licensing board, which, on an application for confirmation of the transfer of the licence, shall consider whether it is satisfied that the person to whom the licence has been transferred is a fit and proper person to be the holder of a licence and—
  - (a) if it is so satisfied, it shall confirm the transfer of the licence; and;
  - (b) if it is not so satisfied, it shall refuse to confirm the transfer.



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- (4A) In considering the fitness of the person to whom the licence has been transferred, the licensing board may have regard to any misconduct on his part, whether or not constituting a breach of this Act or any byelaw made thereunder, which in its opinion has a bearing on his fitness to hold a licence.
- (4B) If the transfer of a licence has been confirmed under subsection (4) above, the licence shall have effect, in accordance with subsections (4) and (5) of section 30 of this Act, until the quarterly meeting of the licensing board three years after the meeting at which the licence was originally granted or renewed by a licensing board.
- (4C) If a licensing board refuses to confirm the transfer of a licence under subsection (4) above, the person to whom the licence had been transferred may appeal to the sheriff against that refusal and the licence shall have effect until the time within which an appeal may be made has elapsed or, if an appeal has been lodged, until the appeal has been abandoned or determined.]
- (5) Where a licence is transferred under this section to any person, the clerk of the licensing board shall, on payment of the appropriate fee, endorse on the licence a note of the transfer.
- (6) Any licence transferred under this section shall be held subject to the conditions on which it was originally granted.
- (7) A transfer of a licence under subsection (1) above is in this Act referred to as a permanent transfer.

#### Textual Amendments

- F21** Word inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. **51(2)(a)**
- F22** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. **51(2)(b)**
- F23** S. 25(1A)–(1C) added by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. **51(3)**
- F24** S. 25(4)–(4C) substituted for s. 25(4) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. **51(4)**

## 26 Provisional grant of licence.

- (1) A licensing board may, on an application in that behalf made to the board by any person interested in premises about to be constructed or in course of construction for use as licensed premises, make a provisional grant of a licence in respect of those premises if the board is satisfied—
- that the premises will be fit and convenient for their purpose, and
  - that, if the premises had been completed in accordance with the plan thereof lodged with the board in pursuance of section 10 of this Act, the board would on application have granted such a licence in respect thereof.
- (2) If on an application under this section the applicant lodges with the board, instead of the plan mentioned in paragraph (b) of subsection (1) above, a plan sufficient to identify the site of the premises, together with such description of the premises as will give a general indication of their proposed size and character (with reference in particular to the sale of alcoholic liquor), then—



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- (a) the licensing board shall deal with the application as if made under subsection (1) above; but
  - (b) any provisional grant of a licence made on an application under this subsection shall become ineffective unless affirmed by the licensing board on application made to the board to that effect within 12 months of the provisional grant of the licence, any such application being accompanied by a plan of the premises.
- (3) A licensing board may consider any application made to it under paragraph (b) of subsection (2) above at any meeting of the board held not earlier than 14 days after the making of the application and shall affirm the provisional grant if the board is satisfied that the premises, if completed in accordance with the plan mentioned in that paragraph, will be fit and convenient for their purpose and that the said plan does not deviate materially from the site plan and description of the premises lodged under the said subsection (2).
- (4) A licence of which a provisional grant has been made as aforesaid shall not come into force until such grant is declared final by the licensing board, and subject to subsection (6) below, the board shall, on being so requested, declare the grant final if it is satisfied either—
  - (a) that the premises in respect of which the grant was made have been completed in accordance with the plan thereof lodged with the board, or
  - (b) that the premises have been completed and that such deviations from the said plan as exist are of minor importance and have not materially altered the character of the premises or the facilities for the supply of alcoholic liquor thereat.
- (5) A licensing board shall not entertain a request to declare the provisional grant of a licence final unless the person to whom the grant was made has given to the board such notice of his intention to make the request as may be prescribed.
- (6) In the case of a request by a person other than an individual natural person that the licensing board shall declare the provisional grant of a licence final, that person shall include in the notice mentioned in subsection (5) above the name of the employee or agent whom it is intended should have the day to day running of the premises, and the board shall not declare the provisional grant final if it finds that the employee or agent so named in the notice is not a fit and proper person to be the holder of a licence.
- (7) Where a licensing board declares a provisional grant final in such a case as is described in subsection (6) above, the licence shall be in the names of both persons mentioned in that subsection, and any reference in this Act to the holder of a licence includes a reference to both of those persons.
- (8) Until the date of the first renewal of licences provisionally granted under subsection (1) or (2) above after those licences have been declared final, subsections (2) to (5) of section 30 of this Act shall have effect in relation to those licences with the substitution in subsection (3) of section 30 of a reference to one year instead of the reference to three years.
- (9) A licensing board may refuse to renew a licence provisionally granted under subsection (1) or (2) above if the board considers that there has been unreasonable delay on the part of the applicant in completing the premises.
- (10) An applicant may appeal to the sheriff against a decision of a licensing board to refuse to affirm a licence under subsection (2) above or to refuse to declare a provisional grant of a licence final under subsection (4) above.

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## 27 Grant of provisional licence.

A licensing board may grant a provisional licence to the holder of any licence to enable him to carry on business in temporary premises during the reconstruction of his premises.

## 28 Licence not to be granted for premises on special roads.

- (1) Premises shall be disqualified for receiving a licence if they are situated on land acquired or appropriated by a special road authority, and 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).
- (2) For the purposes of this section—
  - (a) “special road” and “special road authority” have the same meanings as in the [F25M6 Roads (Scotland) Act 1984], and
  - (b) “class 1” means class 1 in Schedule [F263 to that Act, as varied from time to time by any 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.

### Textual Amendments

**F25** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), ss. 128(1), 156(1), [Sch. 9 para. 77\(2\)\(a\)](#)

**F26** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), ss. 128(1), 156(1), [Sch. 9 para. 77\(2\)\(b\)](#)

### Marginal Citations

**M6** [1984 c. 54.](#)

## 29 Alcoholic liquor which may be sold under licence.

- (1) A licence granted under this Act by a licensing board shall authorise the holder thereof to sell by retail spirits, wine, made-wine, porter, ale, beer, cider, perry, and any other alcoholic liquor:  
Provided that the licensing board may, when granting a licence or an application for an extension of the permitted hours, restrict the alcoholic liquor which may be sold thereunder to wine, made-wine, porter, ale, beer, cider and perry.
- (2) Where by virtue of a decision of a licensing board under the proviso to subsection (1) above only alcoholic liquor other than spirits may be sold, it shall be an offence for the licence-holder or his employee or agent to sell spirits.

## 30 Currency of licence.

- (1) A new licence shall come into effect on being granted by a licensing board, except that where there were objections at the hearing the licence shall not come into effect until—
  - (a) the time within which an appeal may be made has elapsed, or
  - (b) where an appeal has been lodged, the appeal has been abandoned or determined in favour of the applicant for the licence.

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- (2) A renewed licence shall come into effect on being renewed by a licensing board.
- (3) A licence shall have effect in accordance with the following provisions of this section until the quarterly meeting of the licensing board three years after the meeting at which the licence was granted or renewed by a licensing board.
- (4) Subject to section 13(2) of this Act, if no application is made for the renewal of a licence at the quarterly meeting mentioned in subsection (3) above, the licence shall expire on the first day of that meeting.
- (5) If an application is made for the renewal of a licence, the licence in respect of which the application is made shall continue to have effect—
  - (a) until the application for renewal is granted by the board;
  - (b) if the application for renewal is refused, until the time within which an appeal may be made has elapsed or, if an appeal has been lodged, until the appeal has been abandoned or determined.

### **31 Suspension of licence on receipt of complaint.**

- (1) Where on a complaint being made to a licensing board by any person or body mentioned in section 16(1) of this Act the board is satisfied that it is in the public interest to do so, it may, in accordance with the provisions of this section, suspend a licence.
- (2) A licensing board may order the suspension of a licence on one or both of the following grounds—
  - (a) that the licence-holder is no longer a fit and proper person to be the holder of a licence;
  - (b) that the use of the premises in respect of which the licence is held has caused undue public nuisance or a threat to public order or safety.
- (3) In considering a complaint under this section, the licensing board may have regard to—
  - (a) any misconduct on the part of the holder of the licence, whether or not constituting a breach of this Act or any byelaw made thereunder, which in the opinion of the board has a bearing on his fitness to hold a licence;
  - (b) any misconduct on the part of persons frequenting licensed premises occurring in those premises or any misconduct in the immediate vicinity of licensed premises which is attributable to persons frequenting those premises.
- (4) On receipt of a complaint under this section, the licensing board shall decide whether or not to hold a hearing on the issue and shall inform the complainer of the board's decision in the matter.
- (5) Where the licensing board decides to hold a hearing as mentioned in subsection (4) above—
  - (a) the clerk of the board shall serve on the holder of the licence, not less than 21 days before the hearing, a notice that the board proposes to hold a hearing, specifying the complaint and the grounds upon which suspension of the licence is sought;
  - (b) the clerk of the board shall give notice of the hearing to the complainer;
  - (c) any person or body mentioned in section 16(1) of this Act may, not less than 7 days before the hearing, lodge notice with the clerk of the board that he or

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it wishes to be heard in support of suspension of the licence specifying the grounds on which he or it seeks such suspension, and any such notice shall be intimated by such person to the holder of the licence;

- (d) the board shall not order suspension of a licence without hearing the holder thereof unless after receiving due notice of the hearing the holder fails to appear.

[<sup>F27</sup>(5A) Where the licensing board decides to hold a hearing as mentioned in subsection (4) above in respect of a complaint under this section which was made by a person or body other than the chief constable, the chief constable may, not less than 7 days before the hearing, lodge with the clerk of the board observations in respect of the proposed suspension of the licence, and any such observations shall be intimated by the chief constable to the holder of the licence.]

- (6) Where a licensing board decides to order the suspension of a licence, the suspension shall not take effect until the expiry of the time within which the holder of the licence may appeal to the sheriff, or, if the holder appeals to the sheriff or thereafter to the Court of Session, until the appeal has been determined in favour of the suspension or has been abandoned.
- (7) The period of the suspension of a licence under this section shall be a fixed period not exceeding one year or the unexpired portion of the duration of the licence, whichever is the less, and the effect of the suspension is that the licence shall cease to have effect during the period of the suspension.
- (8) The holder of the licence may appeal to the sheriff against any order of a licensing board under this section, including the period of suspension mentioned in the order.

#### Textual Amendments

**F27** S. 31(5A) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\), s. 53\(2\)](#)

### 32 Other power to suspend licence.

- (1) Where a licensing board considers that licensed premises are no longer suitable or convenient for the sale of alcoholic liquor, having regard to their character and condition, and the nature and extent of the use of the premises, the board may decide to hold a hearing with a view to making a closure order under this section, and the effect of a closure order is that the licence held in respect of the premises shall cease to have effect while the closure order is in force.
- (2) Where the licensing board decides to hold a hearing as mentioned in subsection (1) above—
- (a) the clerk of the board shall serve on the holder of the licence, not less than 21 days before the hearing, a notice that the board proposes to hold the hearing specifying the grounds on which the board proposes to hold the hearing;
- (b) the board shall not make a closure order without hearing the holder of the licence unless, after receiving due notice of the hearing, the holder fails to appear.
- (3) Where after a hearing under this section a licensing board is satisfied as to any one or more of the matters mentioned in subsection (1) above, the board may order the

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closure of the licensed premises and any such order shall specify the matters on which the order is based.

- (4) The closure order shall remain in force until such time as the board is satisfied that the matters which led to the closure order have been satisfactorily remedied.
- (5) The licence-holder may apply to the board for the cancellation of the closure order on the ground that the matters which led to the closure order have been satisfactorily remedied.
- (6) Where a licensing board decides to make a closure order under this section, the order shall not take effect until the expiry of the time within which the holder of the licence may appeal to the sheriff, or, if the holder appeals to the sheriff or thereafter to the Court of Session, until the appeal has been determined in favour of the closure order or has been abandoned.
- (7) The holder of the licence may appeal to the sheriff against the closure order or against a refusal of a licensing board to cancel a closure order.

### **33 Occasional licence for premises other than licensed premises or clubs.**

- (1) A licensing board may grant an occasional licence to the holder of a licence authorising him to sell alcoholic liquor, during such hours and [F<sup>28</sup>for such period of not more than 14 days] as the board may determine, in the course of catering for an event taking place outwith the licensed premises in respect of which he is the holder of a licence.
- (2) A licensing board may grant an occasional licence to a registered club authorising the club to sell alcoholic liquor, during such hours and [F<sup>28</sup>for such period of not more than 14 days] as the board may determine, at an event held outwith the premises of the club if the event arises from or relates to the functions of the club.
- (3) In granting an occasional licence under this section, which shall be in writing, the licensing board may impose such conditions as it thinks fit including a condition as to the type of alcoholic liquor which may be sold under the licence, and an occasional licence granted to the holder of a restricted hotel licence or a restaurant licence shall be subject to a condition that the sale of alcoholic liquor under the authority of the licence shall be ancillary to the provision of substantial refreshment.
- (4) If the holder of the licence or his employee or agent contravenes a condition attached to an occasional licence, he shall be guilty of an offence.
- (5) If a condition attached to an occasional licence is contravened as regards any club, every person [F<sup>29</sup>whose name is, at the time of the contravention, contained in the list lodged under subsection (3)(b) of section 103 of this Act, or as the case may be in the new list last lodged under subsection (5) or (5A) of that section, in respect of that club] shall be guilty of an offence:  
Provided that a person shall not be convicted of such an offence if he proves that the contravention in question took place without his knowledge or consent.
- (6) The provisions of this Act and of any byelaws or regulations made thereunder, other than provisions relating to permitted hours, shall apply to the sale of alcoholic liquor under subsection (1) above as if the sale took place on licensed premises and to the sale of alcoholic liquor under subsection (2) above as if the sale took place in the registered club.

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- (7) An application for an occasional licence under this section shall be made in writing to the clerk of the licensing board and shall specify the name and address of the applicant, the premises or place and occasion for which the licence is required, and the hours and period for which the licence is requested.
- (8) At the same time as the application is made under subsection (7) above, the applicant shall send a copy of the application to the chief constable, and if an occasional licence is granted under this section the clerk of the licensing board shall send a copy of the licence to the chief constable not less than 24 hours before the beginning of the event to which it relates.
- (9) A licensing board shall make such arrangements as it thinks fit as respects the consideration of applications under this section or any objection made thereto [<sup>F30</sup>but the board shall not cause to be published the address of the applicant if the applicant provides the name and address of an agent through whom he may have intimated to him any objections.]
- (10) In subsection (1) above, “the holder of a licence” includes the holder of an off-sale licence but does not include the holder of a refreshment licence or of an entertainment licence.

#### Textual Amendments

- F28** Words in s. 33(1)(2) substituted (31.12.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. 74, **Sch. 8 para. 9(a)**; S.I. 1991/2862, **art. 3**, Schedule.
- F29** Words in s. 33(5) substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), **s. 21(2)**.
- F30** Words in s. 33(9) added (31.12.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. 74, **Sch. 8 para. 9(b)**; S.I. 1991/2862, **art. 3**, **Schedule**

### 34 Occasional permissions.

- (1) A licensing board may grant an occasional permission to a person representing a voluntary organisation or a branch of a voluntary organisation authorising him to sell alcoholic liquor during such hours and [<sup>F31</sup>for such period of not more than 14 days] as the board may determine, in the course of catering for an event, arising from or related to the activities of the organisation, taking place outwith licensed premises.
- (2) Not more than four occasional permissions may be granted by a licensing board in any one year on behalf of the same voluntary organisation or the same branch of a voluntary organisation.
- (3) In granting an occasional permission under this section, which shall be in writing, the licensing board may impose such conditions as it thinks fit including a condition as to the type of alcoholic liquor which may be sold under the permission, and if the person to whom the permission is granted contravenes such a condition he shall be guilty of an offence.
- (4) The provisions of section 68 of this Act shall apply to any premises or place in respect of which an occasional permission is granted as they apply to licensed premises, with the substitution of references to the holder of the permission for the references to the holder of a licence.

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- (5) The provisions of section 85 of this Act shall apply to any premises or place in respect of which an occasional permission is granted as they apply to premises in respect of which a licence (other than an off-sale licence) is in force.
- (6) The person to whom an occasional permission is granted shall ensure that the provisions of this Act or any byelaws or regulations made thereunder relating to the conduct of licensed premises are observed in the premises or place in respect of which the permission was granted as if he were the holder of a public house licence, and if he contravenes this subsection he shall be guilty of an offence:  
Provided that it shall be a defence for any person charged with an offence under this subsection if he proves that he used due diligence to prevent the occurrence of the offence.
- (7) Subsections (7) to (9) of section 33 of this Act shall apply in relation to applications for occasional permissions as they apply in relation to applications for occasional licences.

#### Textual Amendments

**F31** Words in s. 34(1) substituted (31.12.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 68A:2\)](#), s. 74, [Sch. 8 para. 10](#); S.I. 1991/2862, art. 3, [Schedule](#).

### 35 Consent of licensing board required for reconstruction, etc. of certain licensed premises.

- (1) No reconstruction or extension of or alteration in any premises in respect of which a licence (other than an off-sale licence) is in force, being a reconstruction, extension or alteration which will affect a public or common part of such premises or any communication with such part, shall be made unless the licensing board within whose area such premises are situated has consented to such reconstruction, extension or alteration at a quarterly meeting of the board or at such other time as may be appointed by the board, or unless such reconstruction, extension or alteration is required by order of some lawful authority.
- (2) A licensing board shall not give its consent under this section to any reconstruction, extension or alteration which will materially alter the character of the premises in question or materially alter the external appearance, shape or size of the premises and may, before considering an application for the board's consent under this section, require plans of the proposed reconstruction, extension or alteration to be lodged with the clerk of the board at such time as the board may appoint.
- (3) Before giving its consent under this section, the licensing board shall consult the fire authority for the area.
- (4) If subsection (1) above is contravened, the sheriff may on a complaint at the instance of the licensing board, by order declare the licence which is in force for the premises in respect of which the contravention took place to be forfeited, or may direct that, within a time fixed by the order, the premises shall be restored to their original condition.
- (5) For the purposes of this section—
  - (a) “public part” means a part open to customers who are not residents or guests of residents; and
  - (b) “common part” means a part open generally to all residents or to a particular class of them.

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### **36 Power of licensing board to order structural alterations on renewal of certain licences.**

- (1) On any application for the renewal of a licence in respect of any premises (other than off-sale premises), a licensing board may require a plan of the licensed premises to be produced to the board and lodged with the clerk, and on renewing such licence the board may order that, within a time fixed by the order, such structural alterations as the board thinks reasonably necessary to secure the proper conduct of the business shall be made in that part of the licensed premises in which alcoholic liquor is sold or consumed.
- (2) Where an order made under this section is complied with, the licensing board shall not make a further order in respect of those premises within the 6 years following the date of the first-mentioned order unless during that time the board has refused to renew the licence in force in respect of the premises.
- (3) If the holder of a licence makes default in complying with an order made under this section, he shall be guilty of an offence, and he shall be guilty of a further offence for every day on which the default continues after the expiry of the time fixed by the order.
- (4) If the holder of a licence makes default in complying with an order made under this section, the licensing board may order the suspension of his licence and any such order shall specify the matters on which the order is based.
- (5) An order under subsection (4) above shall remain in force until such time as the board is satisfied that the matters which led to the order have been satisfactorily remedied.
- (6) The licence-holder may apply to the board for the cancellation of the order on the ground that the matters which led to the order have been satisfactorily remedied.
- (7) Where a licensing board decides to order the suspension of a licence the suspension shall not take effect until the expiry of the time within which the holder of the licence may appeal to the sheriff, or, if the holder appeals to the sheriff or thereafter to the Court of Session, until the appeal has been determined in favour of the suspension or has been abandoned.
- (8) The holder of the licence may appeal to the sheriff against an order made under subsection (4) above or against a refusal of a licensing board to cancel such an order.

### **37 Power of licensing board to make regulations.**

A licensing board may make regulations with respect to the making of applications for licences (including occasional licences and occasional permissions), extension of permitted hours and restriction of the terminal permitted hours and the procedure following thereon, and such regulations may include provisions designed to assist the board in determining the fitness of applicants to hold licences and the expediency of granting licences for the premises in respect of which application is made; and the board may also make regulations with respect to the procedure to be followed in transferring licences under this Act and with respect to any matters which, by virtue of this Act, may be prescribed.

### **38 Power of licensing board to make byelaws.**

- (1) Without prejudice to its other powers under this Act, a licensing board may make byelaws for any of the following purposes—



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- (a) for closing licensed premises wholly or partially on New Year's Day, and on such other days not being more than four in any one year as the board may think expedient for special reasons;
- (b) or prohibiting holders of licenses from residing in their licensed premises, or for requiring the dwellinghouses of holders of licences to be separate from their licensed premises;
- (c) for requiring all wines, made-wines and spirits sold by the holder of an off-sale licence to be sold in corked, stoppered or sealed vessels, cans, jars or casks;
- (d) for requiring every holder of a hotel or public house licence to keep in his licensed premises and to renew from day to day a sufficient supply of drinking water, and such eatables as may be specified in the byelaw, and to display, offer and supply the same as may be required by the byelaw;
- (e) for printing a list of all applications coming before any meeting of the licensing board, with such other information as may be considered necessary by the board;
- (f) for the setting out of conditions which may be attached to licences for the improvement of standards of, and conduct in, licensed premises;
- (g) for the granting of a licence of a type other than that applied for;

Provided that a byelaw made under paragraph (c) above shall not apply to licensed premises where no groceries are kept or sold and where a bona fide wholesale business in alcoholic liquor is carried on.

- (2) Byelaws made under subsection (1) above shall not have effect until they are confirmed by the Secretary of State, and the provisions of subsections (4) to (12) and (15) of section 202 of the <sup>M7</sup>Local Government (Scotland) Act 1973 and of section 204 of that Act shall, with any necessary modifications, apply in relation to byelaws to be made or made under this section as they apply in relation to byelaws to be made or made under that Act.
- (3) When granting a licence, a licensing board may attach to the licence any condition set out in a byelaw by virtue of paragraph (f) of subsection (1) above.
- (4) The holder of any licence or any employee or agent of his shall be guilty of an offence if he commits a breach of any byelaw or any condition attached to a licence by virtue of a byelaw.

#### Marginal Citations

M7 1973 c. 65(81:2).

### 39 Appeals to sheriff.

- (1) An appeal which may be made by virtue of any provision of this Act against any decision of a licensing board shall be to the sheriff, and the decision of the sheriff on any such appeal may include such order as to the expenses of the appeal as he thinks proper.
- (2) An appeal under this section shall be lodged with the sheriff clerk within 14 days from the date of the decision appealed against or in a case where reasons for a decision have been given under section 18(2) of this Act, within 14 days from the date of receipt of those reasons, which shall be presumed to have been received on the day after the date

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on which they were posted, except that in the case of reasons posted on a Friday or Saturday, they shall be presumed to have been received on the Monday next following.

[<sup>F32</sup>(2A) A licensing board may be a party to any appeal under this section.]

- (3) On good cause being shown, the sheriff may hear an appeal under this section notwithstanding that it was not lodged within the time mentioned in subsection (2) above.
- (4) The sheriff may uphold an appeal under this section only if he considers that the licensing board in arriving at its decision—
  - (a) erred in law;
  - (b) based its decision on any incorrect material fact;
  - (c) acted contrary to natural justice; or
  - (d) exercised its discretion in an unreasonable manner.
- (5) In considering an appeal [<sup>F33</sup>under this section], the sheriff may hear evidence by or on behalf of any party to the appeal.
- (6) On upholding an appeal under this section the sheriff may—
  - (a) remit the case with the reason for his decision to the licensing board for reconsideration of its decision; or
  - (b) reverse or modify the decision of the licensing board.
- (7) On remitting a case to a licensing board under subsection (6) above, the sheriff may—
  - (a) specify a date by which the rehearing by the board must take place;
  - (b) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment;
 and any decision of a licensing board on any such case shall be valid as if reached at a quarterly meeting as mentioned in section 4(1)(a) of this Act.
- (8) If any party to an appeal to the sheriff under any provision of this Act (other than Part VII) is dissatisfied in point of law with a decision of the sheriff, he may appeal therefrom to the Court of Session within 28 days from the date of that decision.
- (9) The Court of Session may, by act of sederunt, make rules for the conduct of proceedings under this section.

#### Textual Amendments

**F32** S. 39(2A) inserted (31.12.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), s. 74, **Sch. 8 para. 11(2)**; S.I. 1991/2862, art. 3, **Schedule**

**F33** Words in s. 39(5) substituted (31.12.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 68A:2), s. 74, **Sch. 8 para. 11(3)**; S.I. 1991/2862, art. 3, **Schedule**.

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