

**FALKIRK COUNCIL LICENSING BOARD**

**Subject:** Licensing (Scotland) Act 2005  
Air Weapons and Licensing Act 2015  
**Meeting:** Licensing Board  
**Date:** 12 August 2015  
**Author:** Consumer Protection Manager

**1. INTRODUCTION**

- 1.1 This report is to advise Members of the numerous and significant changes to the Licensing (Scotland) Act 2005 that will take effect following the enactment of the Air Weapons and Licensing Bill on 24 June 2015. Royal assent was granted on 4 August 2015.

**2. BACKGROUND**

- 2.1 On 14 May 2014, the former Justice Secretary, Kenny MacAskill, introduced a Government Bill to make provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; and to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982. In terms of liquor licensing, the main changes to the 2005 Act are in relation to:

- Statements of Policy and annual reports
- reintroduction of a “fit and proper person” test
- transfers of premises licences
- personal licences
- creation of new offences

- 2.2 The date(s) on which the amendments to the 2005 Act will come into force is as yet unknown as Scottish Ministers have not made any Commencement Orders. However, in relation to the removal of the requirement to refuse a personal licence application if the applicant has had a previous personal licence revoked in the last five years because of failure to adhere to refresher training requirement, this will come into effect on the day after Royal Assent.

**3. STATEMENTS OF POLICY AND ANNUAL REPORTS**

- 3.1 Section 6 of the 2005 Act states that a Licensing Board must publish a statement of their policy every 3 years. This timescale is amended to change the period for statements of licensing policy which will now will run from 18 months after the next Council election (which is in May 2017) to 18 months after the following Council election. Boards are permitted to decide that the currency of their next policy statement will begin earlier, so can stick with 1 December 2016 for introduction of the next one if so desired.

- 3.2 As Members are aware, an assessment of overprovision is contained within the Board's Statement of Licensing Policy. The current legislation states that it is for Boards to determine the "localities" within their area for the purposes of overprovision assessment. This is amended to allow the Board to treat the whole of its area as a "locality" and to allow (but not require) the Board to have regard not only to the number and capacity of licensed premises in the locality but also such other matters as the Board thinks fit including the licensed hours of premises in the locality.
- 3.3 The new Act introduces a requirement for Licensing Boards to prepare and publish an annual functions report by no later than 3 months after the end of each financial year. The report must:
- state how, in the exercise of their functions under the Act during the financial year, the Board has had regard to the licensing objectives and their licensing policy statement, including any supplementary policy statement and the Board's overprovision statement, and
  - summarise the decisions made by or on behalf of the Board during the financial year and state the number of licences held under the Act in the Board's area, including the number of occasional licences issued during the year.
- 3.4 The Board may include any other such information in the report about the exercise of their functions under the Act as it considers appropriate. Scottish Ministers may make regulations detailing the form and content of the report and the publication thereof.
- 3.5 In addition to the requirement detailed in section 3.3, the Board must prepare and publish an annual financial report within the same timescale. This report must include a statement of relevant income received by the Board during the financial year and the amount of relevant expenditure incurred in the year. An explanation of how the amounts were calculated must be included. Relevant income and relevant expenditure include fees brought in and costs incurred under the 2005 Act and also income received and costs incurred in relation to the social responsibility levy from premises licenceholders and occasional licenceholders. However, no regulations have as yet been made under s14 of the Alcohol etc Act 2010 bringing the social responsibility levy into play. Again, Scottish Ministers may make regulations detailing the form and content of the report and the publication thereof.

#### **4. FIT AND PROPER PERSON**

- 4.1 Members will be aware that the previous alcohol licensing regime, the Licensing (Scotland) Act 1976, included a "fit and proper" test to assess the suitability applicants, but that this was not carried through to the 2005 Act. There was a view, particularly from Police Scotland, that the lack of such a test limited the breadth of information that could be presented to Boards when considering applications. The test has now been reintroduced and will allow Boards to consider if an applicant, or those connected with an organisation, are "fit and proper" persons to hold an alcohol licence. The Bill's Policy Memorandum

envisaged that that would allow Boards to take into account a wider range of information about an applicant's character when reaching a decision, including police intelligence. It would also allow consideration of spent convictions.

- 4.2 Under the 2015 Act, there is now an additional ground of refusal in relation to determination of premises licence applications, personal licence applications and applications to transfer a premises licence where the Board "*consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence*". It is worth noting that no "fit and proper" test has been added for variations.
- 4.3 The "fit and proper test" has also been introduced as an additional ground of review both in relation to requests for reviews submitted by any person and on the Board's initiative. The Board must revoke the licence if, at the review hearing, they are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence. However, there is also a requirement for the Board to recall such a revocation if, within 28 days, either a transfer application is received and granted or a variation application is received which seeks a variation of the licence that the Board considers would remove the ground on which the licence was revoked, and the Board grants the application

## 5. TRANSFERS OF PREMISES LICENCES

- 5.1 Currently an application to transfer a premises licence can be made by the current licenceholder under section 33 of the 2005 Act or, in certain prescribed circumstances eg sale of the business or death of the licenceholder, by a person other than the premises licenceholder under section 34. These current provisions of section 34 are complex particularly where circumstances arise that are not provided for. An example of this is where the existing premises licenceholder is the tenant of the property and at the end of the lease he refuses to transfer the licence to the owner of the property.
- 5.2 The new Act repeals section 34 in its entirety. Section 33 is renamed "**Application for transfer of premises licence**" and becomes the only method of transfer of a premises licence. Its terms are amended as follows:
- The application must specify the date on which the transfer is to take effect and must be accompanied by the premises licence (or a statement of reasons for failure to produce the licence) and a written statement signed by the current premises licence holder consenting to the transfer of the licence to the transferee (the "consent statement") or a statement of reasons for failure to obtain the licence holder's signed consent.
  - The Board must refuse the application if it is not accompanied by the current premises licence holder's signed consent statement unless the Board dispenses with the requirement for a consent statement

- The Board must give notice of the application, and a copy of the application, to the Police (which is a requirement of the 2005 Act), unless refusing the application because of the lack of a consent statement.
- Within 21 days of receipt of the notice of application, the Police may, in addition to giving notice of whether or not the transferee or any connected person has been convicted of a relevant or foreign offence, give notice of any other information about the transferee, any connected person or any interested party which the Police consider relevant to consideration of the application.
- The Board must grant the application if the Police notice confirms no convictions, if no recommendation to refuse is made by them and if they provide no additional information about the transferee, connected persons interested parties. Otherwise the Board must hold a hearing.
- The grounds of refusal of transfers are changed from “*if satisfied that it is necessary to do so for the purposes of any of the licensing objectives*” to “*(a) having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence*” or “*(b) it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives*”.

5.3 The new Act introduces a new section 33A which contains further provisions on section 33 transfers as follows:

- The Board must take all reasonable steps to give notice of the s33 application to the current premises licence holder. This duty exists even where a signed consent statement from the licence holder has been submitted with the application.
- If the transferee has not submitted a consent statement from the licence holder, the Board may dispense with the requirement for a consent statement if satisfied that the transferee has taken all reasonable steps to contact the licence holder to obtain consent but has received no response. There is no power to dispense with the requirement for a consent statement if the current licence holder is simply refusing to consent to the transfer.
- If the Board dispenses with the requirement for a consent statement, the Board must hold a hearing before determining the application.
- If the Board decides not to dispense with the requirement for a consent statement, the Board must give notice of the decision to the transferee and give reasons for the decision.

5.4 The applicant for the transfer has the right to appeal a decision not to dispense with the requirement for a consent statement, as well as a right to appeal a decision to refuse the application. Similarly, a licenceholder from whom the licence is transferred has the right to appeal the decision to transfer the licence or a decision to refuse a transfer application.

## 6. **PERSONAL LICENCES**

- 6.1 Members are aware of the requirement for personal licenceholders to undertake mandatory refresher training and to advise the Board that they had complied with this requirement within the statutory timescales. The Board **must** revoke the personal licence should the licenceholder fail to comply with this requirement and the licenceholder cannot reapply for a new personal licence for 5 years. To date, 379 personal licences have been revoked by the Falkirk Board.
- 6.2 The Act has been amended so that revocation of a personal licence for failure to undertake training requirements does not result in a 5 year ban for applying for a personal licence. This will not be backdated to include those persons who have had their licence revoked since 1 December 2014. The statutory timescales for notifying licenceholders in relation to renewal are increased.
- 6.3 The 2005 Act is also amended to require personal licence applications to also be notified to Licensing Standards Officers, **who may comment on the application within 21 days of receipt** providing any information about the applicant they consider relevant. The provision of relevant information about the applicant is also extended to the Chief Constable who can now include it in his notice confirming convictions or lack of convictions. The determination of personal licence applications is amended accordingly.
- 6.4 The new legislation introduces power to the Licensing Standards Officer (LSO) to report to the Board any conduct by a personal licence holder which is inconsistent with the licensing objectives. Where an LSO makes a report to the Board under new section 84B, the Board may hold a hearing.

## 7. **CREATION OF NEW OFFENCES**

- 7.1 New sections are added creating offences of buying or attempting to buy alcohol on behalf of or for a child or young person or giving alcohol (or otherwise making it available) to a child or young person. In relation to young persons, the offence is qualified in that the person must have acted “knowingly” – which presumably means they acted in the knowledge that the young person was under 18. For both offences, exceptions are made for supply for consumption other than in a public place and for the purposes of religious worship. For young persons, a further exception is made if they are supplied beer, wine, cider or perry along with a table meal. The “agent sales” offence in the 2005 Act are to be repealed.

## 8. **MISCELLANEOUS CHANGES**

- 8.1 There are also a number of procedural changes to the 2005 Act. A duty is now placed on the Licensing Board to acknowledge certain applications. If an application does not meet the required standards, the Board must give notice to the applicant stating that they are treating the application as incomplete and not having been made and stating their reason for treating it so. The process currently in place in the Falkirk Licensing Section for all applications is to send written acknowledgement to the licenceholder where an application is competent.

In those cases where the application is incomplete, a letter detailing the omissions and errors is sent to the applicant with the application form. This amendment will therefore not be an additional burden to the Licensing Section.

8.2 In light of the new legislation, Licensing Boards must now determine relevant applications meeting prescribed requirements within 9 months. Failure to do so means the application is deemed granted (with no conditions permitted to be added).

8.3 Other changes to the 2005 Act include:

- extending the protecting children from harm licensing objective include reference to young persons;
- consideration can be given to spent convictions for relevant offence or foreign offences. However, before spent convictions can lawfully be taken into account, additional legislation to exclude the application of the Rehabilitation of Offenders Act 1974 in relation to proceedings in respect of liquor licensing applications will be required);
- inclusion of angostura bitters as alcoholic products;
- repeal of reference to 'interested parties'; and
- simplifying the wording of the ground of refusal for premises licence applications and variation applications relating to overprovision by removing the requirement to have regard to the number and capacity of premises in the locality

## **9. FINANCIAL IMPLICATIONS**

9.1 No material financial implications in relation to the implementation of the new Act have been identified to date as there are no proposed changes to any of the application fees; most of which are prescribed. It is not anticipated that the amendments will have an impact on the number of applications received.

## **10. RECOMMENDATION**

**10.1 For information.**

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**Clerk to the Licensing Board**

**Date:** 29 July 2015

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**LIST OF BACKGROUND PAPERS**

Nil