



SHEPHERD+ WEDDERBURN

Licensing (Scotland) Act 2005 -
Transition Day approaches

May 2009



Licensing Scotland Act 2005 -- Transition Day approaches

With the end of the current 1976 Act Licensing regime fast approaching, now is the time to consider any further preparation required before 1 September 2009.

Here are some points to have a think about and take action as appropriate:

Personal Licences

Be aware that in many Licensing Board areas, a Personal Licence holder is expected to be on the premises at all times. There is some doubt as to whether this is a correct interpretation of the law, however it is certainly required for any premises opening after 1am. Even where this is not required, businesses need to make sure that enough members of staff have Personal Licences to ensure cover for holidays, sickness, shift patterns and staff turnover. Note also that when recruiting new staff, these will need to be either Personal Licence holders already or be trained by a Personal Licence holder before they can start work.

You should note that, even though an employee already has a Scottish Certificate for Personal Licence Holders or similar, unlike under the old Act a separate application still needs to be made to the relevant Board for a Personal Licence. Timescales for grant of these vary so you should ensure it is done in advance. Boards may well get an influx of Personal Licence applications as 1 September approaches.

A Personal Licence is also necessary for any employee who is to be appointed as Premises Manager (see below).

Be aware that Personal Licence holders are required to produce the original licence at any time when they are working and when requested to do so by the police or a Licensing Standards Officer. In theory, this could require Personal Licence holders to have their licence on their person at all times whilst they are working. It is to be hoped that Boards will take a slightly more pragmatic approach and be content with the Personal Licence being kept somewhere on the Premises, however it is not yet clear how individual Boards will view this requirement and it is therefore worth contacting your local Board for advice.

A Personal Licence lasts for 10 years but there is a requirement for re-training after 5 years.

Premises Manager

Other than Registered Clubs which do not require a Premises Manager, Premises will not be able to trade from 1 September if they do not have a Premises Manager named on the Premises Licence, and please note that the Premises Manager must have a Personal Licence. If no Premises Manager is named on the Premises Licence by 1 December 2009, the licence will lapse altogether.

In some cases, Premises Licences have been granted without details of the Premises Manager or without details of his or her Personal Licence. Do ensure that this information is with the Board in good time. Check with the Board as to how they wish to receive this information – some simply require notification by way of a letter, whilst others are requiring a minor variation application, in which case a fee may be payable. Do also remember to have the details updated if these have changed.

Going forward, you should be aware that there is now a statutory requirement to notify the Board within 7 days of a Premises Manager changing or leaving for whatever reason. An application to vary the licence must then be made within 6 weeks. There is also a statutory duty on licence holders to notify Boards of any change of name/address of the Premises Manager within one month.



Training

All persons who are to deal with the sale of alcohol or serving alcohol for consumption on the premises (including Registered Clubs) need to receive at least two hours of training from a Personal Licence Holder or an accredited person before 1 September. The training has to cover a number of topics including operating plans, Premises Licence conditions, licensed hours, test purchasing etc.

Strict records of such training need to be kept in the statutory form, which includes a requirement for both the trainer and the person who has been trained to sign the record. This record must be kept on the premises in which the individual works.

When recruiting new staff, be aware that if they are not already a PLH, they will need training before selling/serving alcohol.

Premises Licences

You should conduct a review of your Premises Licence, in particular the Operating Plan, to ensure that it still meets your needs and that you are, or will be by 1 September, complying with both the statutory conditions (known as Mandatory Conditions) and any local conditions the Board may have imposed.

Mandatory Conditions include the requirements for Personal Licences and training outlined above, as well as requirements for on-sales premises to provide potable drinking water free of charge on request, special conditions if children under the age of 5 are to be admitted to the premises and restrictions on irresponsible drinks promotions such as multi-buy offers or other promotions which are seen to encourage people to buy more alcohol than they would otherwise have purchased (whether this relates to the number of drinks or simply larger measures). Some of these restrictions on drinks promotions are only applicable to on-sales at present but recent Scottish Government proposals suggest that they will be extended to include off-sales premises as well. As Mandatory Conditions can be changed by further legislation, make sure that you have an up to date copy of these.

Mandatory Conditions cannot be varied (except as mentioned above) but local conditions (such the requirement for CCTV up to a certain standard in some Board areas) could be reviewed in light of your operation. However, it is with regard to the contents of your Operating Plan that you could now, having reviewed the same, consider submitting a variation application if appropriate. This can take a few months, so time is of the essence if the variation is required to be in place by 1 September.

Your Premises Licence, or a certified copy of it, must be kept at the premises. The summary of it should be displayed so that it is visible to members of the public (see section 7 below).

Note that the Premise Licence holder has a duty to notify the Board of a change of name or address within one month.

Layout Plans

Do not forget to review the layout plans attached to your Premises Licence. Unlike under the 1976 Act, these are now a condition of your Licence and you cannot make changes to the layout of your premises without going through the formal variation process. This includes any changes which you might think are only cosmetic, such as moving shelving in the case of off-sales premises.



Alcohol Displays (off sales)

Be aware that any displays of alcohol must only be within the area(s) shown on the layout plans going forward. This means that promotional displays at store entrances or on the ends of aisles outside that area are no longer permitted.

In addition, the only things that can now appear in the alcohol display areas are alcohol or non-alcoholic drinks. Other products that are packaged with, and can only be purchased along with, alcohol are also permitted, such as port and stilton sets at Christmas.

Notices

All licensed premises have the duty to display the following:

- The summary of the Premises Licence produced by the Board, or a certified copy of it.
- A notice of at least A4 size in terms of s.110 of the Act stating that “It is an offence for a person under the age of 18 to buy or attempt to buy alcohol on these premises. It is also an offence for any other person to buy or attempt to buy alcohol on these premises for a person under the age of 18. Where there is doubt as to whether a person attempting to buy alcohol on these premises is 18 or over, alcohol will not be sold except on production of evidence showing the person to be 18 or over.”

On-sales premises must also display a notice of at least A4 size stating that either persons under 18 are not permitted on the premises, or that persons under 18 are permitted on the premises or on specified parts of it.

Notices are to be displayed at all times and therefore duplicates should be kept so that any damaged, defaced or lost notices can be replaced immediately. It is not clear whether more than one notice will be required where premises are particularly large or have more than one entrance and therefore it may be worth contacting your Board or local Licensing Standards Officers to discuss this if you have concerns.

Please note that the duty to display notices often falls on the Premises Licence holder rather than, or in addition to, the Premises Manager and therefore where the Premises Licence holder operates more than one premises they should make sure their staff are well aware of these requirements to avoid running into problems.

Extended hours

Licensing Boards may grant extended hours without applications made by Licence Holders if they consider it appropriate in relation to an event of local or national significance. This can be done on a blanket basis or only in relation to certain types of premises. Licence holders do not have to open for the extended period.

Premises Licence Holders can also apply for extended hours in connection with special events to be catered for on the premises or special events of local or national significance.

Annual Fees

Remember there are now annual fees with the first such fee payable by 1 October 2009. Boards are to issue reminders no later than 30 days before the fee is due but we would recommend diarising ahead particularly as some Boards may already have reminded you of the first annual fee in previous correspondence regarding your Premises Licence.



More to come

The Scottish Government have recently announced a number of further changes to the alcohol licensing laws, to be introduced later this year. Plans include restrictions on promotions for off-sales premises, restrictions on advertising of alcohol, social responsibility fees and minimum pricing for alcohol. There is also the possibility of relaxation of display requirements in relation to Visitor Centres.

The above is not intended to be an exhaustive list or a substitute for appropriate individual legal advice. Please get in touch with one of us using the details below if you have any points of concern or wish to discuss any aspect of this note.

Contact Us



Hugh D I Smith, Partner,
Property & Infrastructure
E hugh.smith@shepwedd.co.uk
T +44(0)131-473-5293



Julia Taylor, Solicitor,
Property & Infrastructure
E julia.taylor@shepwedd.co.uk
T +44(0) 131-473-5707

Laura Dunnett, Solicitor,
Property & Infrastructure
E laura.dunnett@shepwedd.co.uk
T +44(0) 131-473-5378

This Briefing Note is intended only a general guide to transition to the Licensing (Scotland) Act 2005 regime as it applies in Scotland. The information and expressions of opinions in this Note are not intended to be a comprehensive study, nor to provide legal advice and should not be treated as a substitute for specific advice concerning individual situation.

Edinburgh
1 Exchange Crescent
Conference Square
Edinburgh EH3 8UL
T +44 (0)131 228 9900
F +44 (0)131 228 1222

Glasgow
155 St. Vincent Street
Glasgow
G2 5NR
T +44 (0)141 566 9900
F +44 (0)141 565 1222

London
Condor House
10 St. Paul's Churchyard
London EC4M 8AL
T +44 (0)20 7429 4900
F +44 (0)20 7329 5939

Aberdeen
9 Golden Square
Aberdeen
AB10 1RB
T +44 (0)1224 343 555
F +44 (0)1224 343 545

email: info@shepwedd.co.uk

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