



## Licensing (Scotland) Act 2005

## BRIEFING

The Licensing (Scotland) Act 2005 came into effect on 1 September 2009. Winckworth Sherwood conducted research to determine how prepared the Scottish authorities were in relation to the new provisions relating to the variation of a premises manager.

### The New Law

If an event occurs which causes the premises manager to leave, such as ceasing to work at the premises or having their personal licence revoked, the premises licence holder must give notice to the appropriate Licensing Board within seven days of the event.

The premises licence holder must also make a premises licence variation application to appoint a new premises manager within six weeks of the event. The application must be accompanied by the premises licence or a statement giving reasons why it was not practicable to submit the premises licence.

If these procedures are not followed and alcohol is sold on the premises without a premises manager, the conditions of the premises licence will be breached. It is an offence to sell alcohol to the public except in accordance with the conditions of the premises licence. The consequences could include a fine of up to £20,000 and up to six months' imprisonment.

When a new premises manager is appointed, the Licensing Board will update the premises licence. If the Licensing Board requires that the premises licence is submitted for updating, it is an offence to fail to comply without reasonable excuse. The consequences of failing to comply could include a fine of up to £500.

### Results of Research

The various Scottish Licensing Boards provided inconsistent advice as to how they intended to implement the procedures under the Licensing (Scotland) Act 2005. Some Licensing Boards were more prepared than others but the general response was that they would decide what to do when the situation arose.

Most Licensing Boards asked for the personal licence of the proposed premises manager to be submitted with the variation application, although this is not required under the new legislation. Few Boards seemed to be aware that a premises licence needed to be submitted.

The variation application forms differed depending on the Licensing Board. Most were available on the website of the relevant Licensing Board, although in some cases it will be necessary to arrange for a form to be posted out.

Some Licensing Boards asked that a letter with specific wording is submitted when serving notice that a premises manager was leaving. Others said



that simply serving the variation application would be sufficient notice. However, most of the Licensing Boards questioned had not yet decided what would constitute serving notice under the new legislation.

Most Licensing Boards had not yet decided what documents would be issued when the new premises manager replaced the previous premises manager.

### **Implications**

The new legislation is intended to tackle alcohol misuse in Scotland. The increase in alcohol misuse is already having serious implications for healthcare providers and those involved in the prevention of anti-social behaviour.

Unfortunately the lack of preparedness on the part of the Scottish Licensing Boards suggests that there will be confusion and delays in dealing with licensing applications under the new legislation.

Delays in processing applications could lead to premises being left without a premises manager. Businesses without a premises manager could be forced to temporarily close shop as if they continue to sell illegally they will risk the consequences of a fine and/or imprisonment. This will be difficult for businesses still recovering from the effect of the smoking ban and trying to attract customers in a period of recession.

The legislation is complex. However, the problem could be eased if the Licensing Boards were

provided with a simple, standard set of practical guidelines to ensure that each Board is able to fulfil its duties under the new legislation without delays or error. A standard application form, rather than forms tailored to each Licensing Board, would make the process easier and clearer for businesses with stores in more than one area. A standard form would also mean that the form was accessible from more than one source, which would be useful if, for example, a council's website malfunctioned.

### **Conclusion**

The new legislation could potentially reform the way that alcohol is consumed by the Scottish public. But the changes will be difficult for both businesses and consumers alike and the licensing authorities need to act quickly to rectify the current state of confusion.

Premises licence holders need to be aware of the potential consequences of continuing to sell alcohol to the public without a premises manager, and the fact that there may be delays in dealing with applications especially over the next few months.

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