

Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill

[AS INTRODUCED]

CONTENTS

Section

PART 1

LICENSING AND PUBLIC HEALTH

CHAPTER 1

ALCOHOL LICENSING

Restrictions on sale of alcohol

- 1 Minimum price of packages containing more than one alcoholic product
- 2 Alcoholic drinks containing caffeine
- 3 Age discrimination: off-sales
- 4 Container marking: off-sales

Community involvement in licensing decisions

- 5 Applications for, or to vary, premises licence: consultation and publicity

CHAPTER 2

RESTRICTIONS ON ADVERTISING OF ALCOHOL

Advertising near premises used by children

- 6 Ban on alcohol advertising near schools etc.
- 7 Exceptions

Advertising within licensed premises

- 8 Advertising within licensed premises

Advertising at sporting and cultural events

- 9 Advertising at sporting and cultural events

Penalties and enforcement

- 10 Penalties
- 11 Offences by bodies corporate, etc.
- 12 Fixed penalties

Supplementary

- 13 Interpretation of Chapter 2

CHAPTER 3

ALCOHOL EDUCATION

- 14 Alcohol education policy statements

PART 2

OFFENCES ETC. INVOLVING ALCOHOL

CHAPTER 1

DRINKING BANNING ORDERS

Introductory

- 15 Drinking banning orders
16 Duration of drinking banning orders

Orders made on application

- 17 Orders on application to sheriff
18 Interim orders
19 Variation or revocation of orders under section 17
20 Notification of making, variation and revocation of orders under section 17

Orders made on conviction

- 21 Orders on conviction in criminal proceedings
22 Orders on conviction: further provision
23 Variation or revocation of orders on conviction
24 Notification of making, variation and revocation of orders on conviction
25 Orders on conviction: appeals

Breach of drinking banning orders

- 26 Breach of drinking banning orders

Approved courses

- 27 Approved courses
28 Certificates of completion of approved courses

Supplementary

- 29 Interpretation of Chapter 1

CHAPTER 2

OFFENCES ETC. INVOLVING ALCOHOL: FURTHER PROVISIONS

- 30 Fixed penalty offences involving alcohol: alcohol awareness training as alternative to fixed penalty
31 Offences involving alcohol: notification of offender's GP

PART 3

GENERAL

- 32 Interpretation
33 Ancillary provision

- 34 Commencement
- 35 Short title

Schedule—Fixed penalty for alcohol advertising offences

ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 65-EN. A Policy Memorandum is printed separately as SP Bill 65-PM.

Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for reducing and dealing with the abuse of alcohol; to amend the legislation in relation to applications for, and to vary, licences for the sale of alcohol; and for connected purposes.

PART 1

LICENSING AND PUBLIC HEALTH

CHAPTER 1

ALCOHOL LICENSING

Restrictions on sale of alcohol

1 Minimum price of packages containing more than one alcoholic product

- (1) The Licensing (Scotland) Act 2005 (“the 2005 Act”) is amended as follows.
- (2) In schedule 3 (premises licences: mandatory conditions), after paragraph 6B insert—
- “6C(1) A package (“the principal package”) containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the appropriate multiple of the price at which any comparable smaller package is for sale on the premises.
- (2) For the purposes of sub-paragraph (1), a “comparable smaller package” is a package containing a smaller number of the same alcoholic products as the principal package and in the same proportions (where the principal package contains alcoholic products of different kinds).
- (3) In sub-paragraph (1) “the appropriate multiple” is the figure obtained by dividing the number of alcoholic products in the principal package by the number of alcoholic products in the comparable smaller package.
- (4) Sub-paragraph (1) does not apply where—
- (a) paragraph 6B applies to the package, or

(b) the package also contains any item which is not an alcoholic product.

(5) In this paragraph, “alcoholic product” means a product containing alcohol and includes the container in which alcohol is for sale.”.

(3) In schedule 4 (occasional licences: mandatory conditions), after paragraph 5B insert—

5 “5C(1) A package (“the principal package”) containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the appropriate multiple of the price at which any comparable smaller package is for sale on the premises.

10 (2) For the purposes of sub-paragraph (1), a “comparable smaller package” is a package containing a smaller number of the same alcoholic products as the principal package and in the same proportions (where the principal package contains alcoholic products of different kinds).

15 (3) In sub-paragraph (1) “the appropriate multiple” is the figure obtained by dividing the number of alcoholic products in the principal package by the number of alcoholic products in the comparable smaller package.

(4) Sub-paragraph (1) does not apply where—

(a) paragraph 5B applies to the package, or

(b) the package also contains any item which is not an alcoholic product.

20 (5) In this paragraph, “alcoholic product” means a product containing alcohol and includes the container in which alcohol is for sale.”.

2 **Alcoholic drinks containing caffeine**

(1) The 2005 Act is amended as follows.

(2) In section 146 (orders and regulations), in each of subsections (4)(b) and (5)(b), after “139(3),” insert “paragraph 8A(1) of schedule 3 or paragraph 7A(1) of schedule 4.”.

25 (3) In schedule 3 (premises licences: mandatory conditions), after paragraph 8 insert—

“Alcoholic drinks containing caffeine

8A(1) Ready-mixed alcoholic drinks containing caffeine at a level greater than such amount as may be prescribed must not be sold on the premises.

30 (2) For the purposes of sub-paragraph (1), a drink is ready-mixed if it is supplied to the premises in a sealed container in which the drink may be sold.

(3) Sub-paragraph (4) applies where—

(a) two or more sealed containers packaged together for sale as a single item are supplied to the premises, and

35 (b) the combined contents of the containers, if supplied in a single sealed container, would be a ready-mixed alcoholic drink for the purposes of sub-paragraph (1).

(4) The combined contents of the containers are to be treated as if supplied in a single sealed container.

(5) The Scottish Ministers must prescribe an amount for the purposes of sub-paragraph (1) no later than 12 months after the date on which the Bill for the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Act 2015 receives Royal Assent.”.

5 (4) In schedule 4 (occasional licences: mandatory conditions), after paragraph 7 insert—

“Alcoholic drinks containing caffeine

7A(1) Ready-mixed alcoholic drinks containing caffeine at a level greater than such amount as may be prescribed must not be sold on the premises.

10 (2) For the purposes of sub-paragraph (1), a drink is ready-mixed if it is supplied to the premises in a sealed container in which the drink may be sold.

(3) Sub-paragraph (4) applies where—

(a) two or more sealed containers packaged together for sale as a single item are supplied to the premises, and

15 (b) the combined contents of the containers, if supplied in a single sealed container, would be a ready-mixed alcoholic drink for the purposes of sub-paragraph (1).

(4) The combined contents of the containers are to be treated as if supplied in a single sealed container.

20 (5) The Scottish Ministers must prescribe an amount for the purposes of sub-paragraph (1) no later than 12 months after the date on which the Bill for the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Act 2015 receives Royal Assent.”.

3 Age discrimination: off-sales

(1) The 2005 Act is amended as follows.

25 (2) In section 6 (statements of licensing policy), in subsection (3A), for “21” substitute “a higher age”.

(3) In section 27 (conditions of premises licence), after subsection (9) insert—

“(9A) Subsections (8) and (9) are subject to subsection (9B).

(9B) The powers to—

30 (a) add a condition under subsection (2)(a),

(b) prescribe further conditions under subsection (5),

(c) impose other conditions under subsection (6),

35 do not include power to add, prescribe or impose any condition as to the age at which persons aged 18 or over may purchase alcohol for consumption off licensed premises.

(9C) The power to amend a condition under subsection (2)(a) does not include power to amend the condition so as to make provision as to the age at which persons aged 18 or over may purchase alcohol for consumption off licensed premises.”.

(4) In section 60 (conditions of occasional licence), after subsection (7) insert—

“(8) Subsections (6) and (7) are subject to subsection (9).

(9) The powers to—

(a) add a condition under subsection (2)(a),

(b) prescribe further conditions under subsection (3),

(c) impose other conditions under subsection (4),

do not include power to add, prescribe or impose any condition as to the age at which persons aged 18 or over may purchase alcohol for consumption off licensed premises.

(10) The power to amend a condition under subsection (2)(a) does not include power to amend the condition so as to make provision as to the age at which persons aged 18 or over may purchase alcohol for consumption off licensed premises.”.

4 Container marking: off-sales

After section 27A of the 2005 Act insert—

“27B Power of Board to impose container marking condition

(1) A Licensing Board may vary the conditions to which a premises licence in respect of off-sales premises in its area is subject by imposing a container marking condition.

(2) “Off-sales premises” are premises licensed to sell alcohol only for consumption off the premises.

(3) A container marking condition is a requirement that any container or package in which alcoholic drink (or such descriptions of alcoholic drink as the condition may specify) is sold is marked in a specified way for the purpose of enabling the identification of the premises selling the alcoholic drink.

(4) A variation under subsection (1) may apply to—

(a) all off-sales premises,

(b) particular off-sales premises,

(c) off-sales premises within particular parts of the Board’s area, or

(d) off-sales premises of a particular description.

(5) A variation under subsection (1) may be made only on a written request from the chief constable setting out—

(a) the premises or descriptions of premises to which the variation should apply,

(b) the alcoholic drink or descriptions of alcoholic drink to which it should apply,

(c) how the container mark should be applied, and

(d) any other information that the chief constable considers relevant.

(6) If the Board decides—

- (a) not to comply with a request under subsection (5), or
- (b) to make a variation under subsection (1) other than in accordance with the terms of the request,

it must give the chief constable written reasons for its decision.

5 (7) Subsections (4) to (10) of section 27A apply to a variation under subsection (1) of this section as they apply to a variation under subsection (1) of that section but with the following modifications—

(a) in subsection (6)—

(i) omit paragraph (a),

10 (ii) in paragraph (b), for “proposed variation” substitute “variation proposed by the Board (“the proposed variation”)”,

(iii) in paragraph (b)(i), for “21(1)(b), (c), (ca), (d) and (e)” substitute “21(1)(b), (c), (ca) and (d)”,

(b) after subsection (6) insert—

15 “(6A) A notice under subsection (6) must describe the proposed variation and the premises or descriptions of premises to which it would apply.”,

(c) in subsection (7)—

20 (i) for “any person” substitute “the person to whom the notice is given”,

(ii) for the words from “before such date” to the end substitute “within 21 days of the date of receipt of the notice”,

(d) in subsection (8), for “date specified” substitute “end of that period”.

25 (8) A Licensing Board may, after consulting the chief constable, revoke a variation under subsection (1) where it is satisfied that the variation is no longer necessary or expedient for the purposes of any of the licensing objectives.

(9) Section 27A(9) applies in relation to a revocation under subsection (8) as it applies in relation to a variation under subsection (1).

30 (10) In subsection (1), the power to vary the conditions to which a premises licence is subject includes power to vary (or revoke a variation of) the conditions to which a provisional premises licence is subject.”.

Community involvement in licensing decisions

5 Applications for, or to vary, premises licence: consultation and publicity

35 (1) The Licensing Procedure (Scotland) Regulations 2007 (SSI 2007/453) are amended as follows.

(2) In regulation 4 (meaning of “neighbouring land”)—

(a) the existing provision becomes paragraph (1),

(b) after that paragraph insert—

“(2) Where—

(a) there is no community council within whose area the premises are situated, or

(b) the Board reasonably believes that any community council within whose area the premises are situated is inactive,

paragraph (1) has effect with the substitution for the words “4 metres” of the words “50 metres”.”.

(3) In regulation 6 (publicity as to applications), in each of paragraphs (3) and (6), for “21 days” substitute “42 days”.

(4) In regulation 7 (display of notice)—

(a) in paragraph (3), for “21 days” substitute “42 days”,

(b) in paragraph (4), for “a further 21-day period” substitute “such further period as the Board considers necessary to ensure that the notice is displayed (or, as the case may be, displayed undamaged) for a total period of 42 days”,

(c) in paragraph (8), for “21-day period under paragraph (3) or (4)” substitute “42-day period under paragraph (3) or any further period under paragraph (4)”.

(5) In Schedule 3 (confirmation of site notice)—

(a) for “21 days” in the first place where those words occur substitute “42 days”,

(b) for “21 days” in the second and third places where those words occur substitute “period”,

(c) for “of not less than 21 days” in the second place where those words occur substitute “(or, where the Licensing Board has ordered the display of the notice for a further period, a total period) of not less than 42 days”.

CHAPTER 2

RESTRICTIONS ON ADVERTISING OF ALCOHOL

Advertising near premises used by children

6 Ban on alcohol advertising near schools etc.

(1) It is an offence knowingly to cause or permit the display of an alcohol advertisement in a prohibited place within a restricted area.

(2) A restricted area is the area within 200 metres in any direction of any boundary of—

(a) the premises of a school (“premises” and “school” having the meanings given in section 135(1) of the Education (Scotland) Act 1980),

(b) premises used principally as a nursery or crèche,

(c) outdoor premises designed or adapted for use by members of the public as a children’s play area.

(3) In this section—

“advertisement” means any word, letter, image, mark, light, model, placard, board, notice, screen, awning, blind, flag, device, representation, container or package in the nature of, and employed wholly or partly for the purpose of, advertisement or promotion,

5 “alcohol advertisement” means an advertisement promoting alcohol,

“the display of an advertisement” includes emitting, screening or exhibiting an advertisement,

10 “prohibited place” means any fixed place from which the advertisement may be seen by a person in a public place (other than a public place in any premises within which the prohibited place is situated).

7 **Exceptions**

(1) An advertisement is not an alcohol advertisement for the purposes of section 6 if it is an advertisement displayed on licensed premises that refers wholly to all or any of the following—

- 15 (a) a general description of the business carried on,
(b) a general description of the goods or services provided,
(c) the name of the business,
(d) the name or qualifications of the person carrying out the business or supplying the goods or services on those premises.

20 (2) An alcohol advertisement displayed on licensed premises and visible principally from within those premises is not displayed in a prohibited place for the purposes of section 6 merely because the advertisement is also visible from outside the premises.

Advertising within licensed premises

8 **Advertising within licensed premises**

25 (1) This section applies where off-sales premises form part of larger retail premises.

(2) It is an offence for a responsible person knowingly to cause or permit the display of an alcohol advertisement in any part of the larger premises other than the off-sales premises.

(3) In this section—

30 “advertisement”, “alcohol advertisement” and “the display of an advertisement” have the meanings given in section 6(3),

“off-sales premises” means premises licensed to sell alcohol only for consumption off the premises,

“responsible person” means—

- 35 (a) the holder of the licence of the off-sales premises, and
(b) any other person having management or control of the off-sales premises.

Advertising at sporting and cultural events

9 Advertising at sporting and cultural events

(1) It is an offence for a responsible person knowingly to cause or permit the display of an alcohol advertisement at any premises where a sporting event or a cultural event is being held if—

- (a) the majority of the participants in the event are under the age of 18, or
- (b) the intended audience for the event consists principally of persons under that age.

(2) If the premises mentioned in subsection (1) form part of larger premises, that subsection does not apply to any other part of those larger premises.

(3) In this section—

“advertisement” has the meaning given in section 6(3) and also includes an advertisement displayed on clothing,

“alcohol advertisement” and “the display of an advertisement” have the meanings given in section 6(3),

“cultural event” includes any form of public exhibition or performance other than a film exhibition within the meaning of section 21(1) of the Cinemas Act 1985,

“participants” means—

- (a) in relation to a cultural event, the performers (if any), and
- (b) in relation to a sporting event, those engaging in the sport,

“responsible person” means any person having management or control of the event,

“sporting event” means any contest, exhibition or display of any sport to which the public are invited as spectators (whether or not on payment).

Penalties and enforcement

10 Penalties

A person guilty of an offence under this Chapter is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

11 Offences by bodies corporate, etc.

(1) Where—

(a) an offence under this Chapter has been committed by—

- (i) a body corporate,
- (ii) a Scottish partnership, or
- (iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

- (i) a relevant individual, or
- (ii) an individual purporting to act in the capacity of a relevant individual,

that individual as well as the body, partnership or association is guilty of the offence and is liable to be proceeded against and punished accordingly.

- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate other than a local authority—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, the members,
 - (b) in relation to a local authority, an officer or member of the local authority,
 - (c) in relation to a Scottish partnership, a partner, and
 - (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.
- (3) Any penalty imposed on a body corporate, Scottish partnership or unincorporated association on conviction of an offence under this Chapter is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995.

12 Fixed penalties

- (1) The schedule (which makes provision as to fixed penalties for offences under this Chapter) has effect.
- (2) The schedule does not have effect in relation to an offence committed by a local authority.

Supplementary

13 Interpretation of Chapter 2

In this Chapter—

“alcohol” has the meaning given in section 2 of the 2005 Act,

“licensed premises” has the meaning given in section 147(1) of the 2005 Act,

“premises” (except in section 6(2)(a)) has the meaning given in section 147(1) of the 2005 Act.

CHAPTER 3

ALCOHOL EDUCATION

14 Alcohol education policy statements

- (1) The Scottish Ministers must—
- (a) lay before the Scottish Parliament, and
 - (b) publish (in such manner as they consider appropriate),
- statements setting out their policy on the provision of public information and education about the consumption of alcohol.

- (2) The first statement must be laid and published no later than 12 months after the day on which the Bill for this Act receives Royal Assent.
- (3) Each subsequent statement must be laid and published no later than 5 years after the date on which the previous statement was laid.
- 5 (4) Before laying a statement other than the first the Scottish Ministers must—
- (a) review the effectiveness of the policy set out in the previous statement and the steps taken to deliver it,
- (b) consider whether any changes should be made to the policy, and
- 10 (c) lay before the Parliament a report of the review and its conclusions (including any changes to the policy that the Scottish Ministers consider desirable in light of the review).
- (5) The report must be laid no later than 6 months before the expiry of the period of 5 years from the date on which the previous statement was laid.

PART 2

OFFENCES ETC. INVOLVING ALCOHOL

CHAPTER 1

DRINKING BANNING ORDERS

Introductory

15 **Drinking banning orders**

- 20 (1) A drinking banning order is an order that prohibits the individual against whom it is made (the “subject”) from doing the things described in the order for a period specified in the order (the “specified period”).
- 25 (2) A drinking banning order may impose any prohibition on the subject which is necessary for the purpose of protecting other persons from criminal or disorderly conduct by the subject while the subject is under the influence of alcohol.
- (3) The prohibitions imposed by a drinking banning order must include such prohibition as the court making it considers necessary, for that purpose, on the subject’s entering premises in respect of which there is a premises licence authorising the sale of alcohol for consumption on the premises.
- 30 (4) A prohibition under subsection (3) may be imposed in respect of—
- (a) all such premises,
- (b) particular such premises,
- (c) such premises within a particular area, or
- (d) such premises of a particular description.
- 35 (5) A drinking banning order may not impose a prohibition on the subject that prevents the subject from—
- (a) having access to a place where the subject resides,

- (b) attending at any place which the subject is required to attend for the purposes of any employment of the subject's or of any contract for services to which the subject is a party,
- (c) attending at any place which the subject is expected to attend for the purposes of education or training or for the purpose of receiving medical treatment, or
- (d) attending at any place which the subject is required to attend by any obligation imposed on the subject by or under an enactment or by the order of a court or tribunal.

- (6) Expressions used in subsections (3) and (4) and in the 2005 Act have the same meanings in those subsections as in that Act.

16 Duration of drinking banning orders

- (1) The specified period must be not less than two months and not more than two years.
- (2) A drinking banning order may provide that different prohibitions contained in the order have effect for different periods; but, in each case, the specified period must be not less than two months and not more than two years.
- (3) A drinking banning order may include provision for—
 - (a) the order, or
 - (b) a prohibition contained in it,to cease to have effect before the end of the specified period if the subject satisfactorily completes the approved course specified in the order.
- (4) Provision under subsection (3) must fix the time at which the order or prohibition will cease to have effect as whichever is the later of—
 - (a) the time specified in the order, which must be a time after at least half of the specified period has elapsed, and
 - (b) the time when the subject satisfactorily completes the specified approved course.
- (5) Provision under subsection (3) may be included in a drinking banning order only if—
 - (a) the court making the order is satisfied that a place on the specified approved course will be available for the subject, and
 - (b) the subject has agreed to the inclusion of the provision in question in the order.
- (6) Before seeking the subject's agreement under subsection (5)(b) the court must explain to the subject in ordinary language—
 - (a) the effect of including the provision in the order,
 - (b) what, in general terms, attendance on the course will involve if the subject undertakes it,
 - (c) what fees the subject will be required to pay for the course if the subject undertakes it, and
 - (d) when the subject will have to pay any such fees.
- (7) Where the subject is not present in court, the explanation under subsection (6) must be given by the clerk of court to the subject in writing.

- (8) Failure to comply with subsection (6) or (7) does not affect the validity of the drinking banning order or the provision made under subsection (3).
- (9) Where a court makes a drinking banning order which does not include provision under subsection (3), it must give its reasons for not including such provision in open court.
- 5 (10) Subsection (9) does not apply if, when the drinking banning order is made, there are no approved courses for the purposes of this section.
- (11) The Scottish Ministers may by regulations amend subsection (4)(a) so as to modify the earliest time (after the completion of the specified approved course) when by virtue of that subsection—
- 10 (a) a drinking banning order, or
- (b) a prohibition contained in such an order,
- may cease to have effect.

Orders made on application

17 Orders on application to sheriff

- 15 (1) A relevant authority may apply to the sheriff for the making of a drinking banning order against an individual if—
- (a) it appears to the authority that the conditions in subsection (2) are met, and
- (b) the individual is aged 16 or over.
- (2) The conditions are—
- 20 (a) that the individual has, after the commencement of this section, engaged in criminal or disorderly conduct while under the influence of alcohol, and
- (b) that a drinking banning order is necessary to protect other persons from further conduct by the individual of that kind while the individual is under the influence of alcohol.
- 25 (3) An application under subsection (1) is to be made by summary application to the sheriff within whose sheriffdom—
- (a) the criminal or disorderly conduct is alleged to have taken place, or
- (b) the individual normally resides.
- (4) Before making the application the relevant authority must consult such of the following
- 30 as is not a party to the application—
- (a) the chief constable of the Police Service of Scotland,
- (b) the local authority in whose area the criminal or disorderly conduct is alleged to have taken place, and
- (c) the local authority in whose area the individual to whose conduct the application
- 35 relates normally resides.
- (5) If, on an application under subsection (1) with respect to an individual, the sheriff is satisfied that the conditions in subsections (1)(b) and (2) are met, the sheriff may make a drinking banning order against the individual.

- (6) On making the order the sheriff must, where the individual is present in court, explain in ordinary language—
- (a) the effect of the order and the prohibitions included in it,
 - (b) the consequences of failing to comply with the order,
 - 5 (c) the sheriff's power to vary or revoke the order on an application under section 19, and
 - (d) the individual's right to appeal against the making of the order.
- (7) Where the individual is not present in court the clerk of court must, after the order is made, explain to the individual in writing in ordinary language the matters set out in
- 10 subsection (6)(a) to (d).
- (8) Failure to comply with subsection (6) or (7) does not affect the validity of the order.

18 Interim orders

- (1) This section applies where—
- 15 (a) an application is made under section 17(1) for a drinking banning order with respect to an individual, and
 - (b) the application has been intimated to the individual.
- (2) Before determining the application the sheriff may make an order under this section (“an interim order”) if the sheriff—
- 20 (a) is satisfied that the individual is aged 16 or over, and
 - (b) considers that it is just to do so.
- (3) An interim order—
- 25 (a) may contain any provision that may be contained in a drinking banning order other than provision under section 16(3),
 - (b) has effect until the application is determined.
- (4) On making an interim order the sheriff must, where the individual is present in court, explain in ordinary language—
- 30 (a) the effect of the order and the prohibitions included in it,
 - (b) the consequences of failing to comply with the order,
 - (c) the sheriff's power to recall the order, and
 - (d) the individual's right to appeal against the making of the order.
- (5) Where the individual is not present in court the clerk of court must, after the order is made, explain to the individual in writing in ordinary language the matters set out in subsection (4)(a) to (d).
- (6) Failure to comply with subsection (4) or (5) does not affect the validity of the order.
- 35 (7) A decision granting, refusing or recalling an interim order is appealable as if it were a decision granting, refusing or, as the case may be, recalling an interim interdict.

19 Variation or revocation of orders under section 17

- (1) The following persons may apply to the sheriff for the variation or revocation of a drinking banning order made under section 17—
- (a) the subject,
 - (b) the relevant authority on whose application the order was made.
- (2) An application under subsection (1) is to be made by summary application to—
- (a) the court which made the order, or
 - (b) the sheriff within whose sheriffdom the subject normally resides.
- (3) The order may not be varied so as to extend the specified period to more than two years.
- (4) The order may not be revoked unless—
- (a) at least half of the specified period (or, if the order provides for different specified periods, of the longest period) has elapsed, or
 - (b) the relevant authority on whose application the order was made has consented to its earlier revocation.
- (5) Where a person appeals against—
- (a) the making of a drinking banning order under section 17, or
 - (b) the variation or revocation of such an order under this section,

it is not competent for that person to make an application under this section for the variation or revocation of the order until the appeal has been disposed of or abandoned.

20 Notification of making, variation and revocation of orders under section 17

- (1) Subsection (2) applies where—
- (a) a drinking banning order is made under section 17 or varied under section 19, or
 - (b) an interim order is made under section 18.
- (2) The clerk of the court by which the order is made or varied must ensure that a copy of the order as made or varied is given to—
- (a) the subject, and
 - (b) the relevant authority on whose application the order was made.
- (3) Where a drinking banning order is revoked under section 19 the clerk of the court by which the order is revoked must notify—
- (a) the subject, and
 - (b) the relevant authority on whose application the order was made, of the revocation.

Orders made on conviction

21 Orders on conviction in criminal proceedings

- (1) This section applies where—
- (a) an individual aged 16 or over is convicted of an offence (“the offender”), and

(b) at the time the offence was committed, the offender was under the influence of alcohol.

(2) The court must consider whether the conditions in section 17(2) are met in relation to the offender.

5 (3) If the court decides that the conditions are met in relation to the offender, it may make a drinking banning order against the offender.

(4) On making the order the court must, where the offender is present in court, explain in ordinary language—

(a) the effect of the order and the prohibitions included in it,

10 (b) the consequences of failing to comply with the order,

(c) the court's power to vary or revoke the order on an application under section 23, and

(d) the offender's right to appeal against the making of the order.

15 (5) Where the offender is not present in court the clerk of court must, after the order is made, explain to the offender in writing in ordinary language the matters set out in subsection (4)(a) to (d).

(6) Failure to comply with subsection (4) or (5) does not affect the validity of the order.

(7) If the court—

(a) decides that the conditions in section 17(2) are met in relation to the offender, but

20 (b) does not make a drinking banning order,

it must give its reasons for not doing so in open court.

(8) If the court decides that the conditions are not met in relation to the offender, it must state that fact in open court and give its reasons.

22 Orders on conviction: further provision

25 (1) For the purpose of deciding whether to make a drinking banning order under section 21 the court may consider evidence led by the prosecution and evidence led by the defence.

(2) It is immaterial whether the evidence would have been admissible in the proceedings in which the offender was convicted.

30 (3) A drinking banning order under section 21 must not be made except in addition to a sentence imposed, or other disposal or order made, in respect of the offence.

(4) A drinking banning order under section 21 takes effect on—

(a) the day on which it is made, or

(b) if on that day the offender is detained in legal custody, the day on which the offender is released from that custody.

35 (5) In section 21 and this section “the court”, in relation to an offender, means—

(a) except where paragraph (b) applies, the court by which the offender is convicted of the offence,

- (b) if the offender is remitted to the High Court of Justiciary for sentence, the High Court of Justiciary.

23 Variation or revocation of orders on conviction

- (1) The subject and the prosecutor may each apply to the court which made a drinking banning order under section 21 for the variation or revocation of the order.
- (2) If the subject makes an application under subsection (1), the subject must send notice of the application to the prosecutor.
- (3) If the prosecutor makes an application under subsection (1), the prosecutor must send notice of the application to the subject.
- (4) An order under section 21 may not be varied so as to extend the specified period to more than two years.
- (5) No order under section 21 is to be revoked on an application under subsection (1) by the subject unless—
- (a) at least half of the specified period (or, if the order provides for different specified periods, of the longest period) has elapsed, or
- (b) the prosecutor has consented to its earlier revocation.

24 Notification of making, variation and revocation of orders on conviction

- (1) Where a drinking banning order is made under section 21 the clerk of the court by which the order is made must ensure that a copy of the order is given to the subject.
- (2) Where a drinking banning order is varied under section 23 the clerk of the court by which the order is varied must ensure that a copy of the order as varied is given to the subject and the prosecutor.
- (3) Where a drinking banning order is revoked under section 23 the clerk of the court by which the order is revoked must notify the subject and the prosecutor of the revocation.

25 Orders on conviction: appeals

- (1) The following are to be taken to be a sentence for the purpose of an appeal by the subject—
- (a) a drinking banning order made under section 21,
- (b) a variation of such an order under section 23.
- (2) In section 108 (Lord Advocate’s right of appeal in solemn proceedings) of the Criminal Procedure (Scotland) Act 1995—
- (a) in subsection (1), after paragraph (cc) insert—
- “(cd) a drinking banning order under section 21 of the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Act 2015;
- (ce) a decision under that section not to make a drinking banning order;”
- (b) in subsection (2)(b)—
- (i) in sub-paragraph (ii), for “or (cc)” substitute “, (cc) or (ce)”,
- (ii) after that sub-paragraph insert—

“(iia) paragraph (cd) of that subsection, that the terms of the order were inappropriate;”.

(3) In section 175 (right of appeal in summary proceedings) of that Act—

(a) in subsection (4), after paragraph (cc) insert—

“(cd) a drinking banning order under section 21 of the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Act 2015;

(ce) a decision under that section not to make a drinking banning order;”;

(b) in subsection (4A)(b)—

(i) in sub-paragraph (ii), for “or (cc)” substitute “, (cc) or (ce)”,

(ii) after that sub-paragraph insert—

“(iia) paragraph (cd) of that subsection, that the terms of the order were inappropriate;”.

(4) Where a person appeals against—

(a) a drinking banning order made under section 21, or

(b) the variation of such an order under section 23,

it is not competent for that person to make an application under section 23 for the variation or revocation of the order until the appeal has been disposed of or abandoned.

Breach of drinking banning orders

26 Breach of drinking banning orders

(1) If the subject of a drinking banning order or of an interim order does, without reasonable excuse, anything that the subject is prohibited from doing by the order, the subject commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) In proceedings for an offence under subsection (1)—

(a) the fact that the person was the subject of a drinking banning order or interim order, and

(b) the terms of the order,

are, unless challenged by preliminary objection before the person’s plea is recorded, to be held as admitted.

Approved courses

27 Approved courses

(1) If an application is made to the Scottish Ministers for the approval of a course for the purposes of section 16, they must decide whether to grant or refuse the application.

(2) In reaching that decision the Scottish Ministers—

(a) must have regard to the nature of the course and to whether the person providing it is an appropriate person both to provide it and efficiently and effectively to administer its provision, and

(b) may take into account any recommendations made by persons appointed by the Scottish Ministers to consider the application.

(3) A course may be approved subject to conditions specified by the Scottish Ministers.

(4) The approval of a course—

(a) is for the period specified by the Scottish Ministers (which must not exceed 7 years), and

(b) may be withdrawn by them at any time.

(5) Regulations made by the Scottish Ministers may make provision in relation to the approval of courses and may, in particular, include—

(a) provision about the making of applications for approval,

(b) provision for the payment of fees, of such amounts as are prescribed by the regulations, in respect of applications for approval, the giving of approvals, or both,

(c) provision specifying the maximum fees that a person may be required to pay for a course and about when fees for courses have to be paid,

(d) provision for the monitoring of courses and of persons providing courses,

(e) provision about the withdrawal of approvals, and

(f) provision authorising the Scottish Ministers (whether on payment of a fee or otherwise) to make available information about courses and about persons providing courses.

(6) The Scottish Ministers—

(a) may issue guidance about the conduct of approved courses, and

(b) in exercising the powers and duties conferred on them by or under subsections (1) to (5) must have regard to the guidance under this subsection that is for the time being in force.

(7) A court must have regard to that guidance in determining what for the purposes of section 28 constitutes reasonable instructions or reasonable requirements by a person providing an approved course.

28 Certificates of completion of approved courses

(1) For the purposes of section 16—

(a) the subject of a drinking banning order is to be regarded as having completed an approved course satisfactorily if, and only if, the person providing the course has given a certificate that the subject has done so, and

(b) the time at which the subject is to be regarded as having satisfactorily completed the course is the time when that certificate is received by the clerk of the court that made the order.

- (2) For the purposes of this section a certificate that a person has satisfactorily completed a course is to be in such form and contain such particulars as may be specified in, or determined under, regulations made by the Scottish Ministers.
- (3) The person providing an approved course must give the subject of a drinking banning order in which that course is specified a certificate for the purposes of this section unless that subject has failed—
- (a) to pay the fees for the course,
 - (b) to attend the course in accordance with the reasonable instructions of the person providing the course, or
 - (c) to comply with any other reasonable requirement of that person.
- (4) Where a person providing an approved course decides not to give the subject of a drinking banning order a certificate under subsection (1), the person must give the subject written notice of the decision setting out the grounds for the decision.
- (5) The obligation of the person providing an approved course to give, in the case of the subject of a drinking banning order in which that course is specified, either—
- (a) a certificate for the purposes of this section, or
 - (b) a notice under subsection (4),
- must be discharged before the end of 14 days beginning with the day on which any request to do so is made by that subject.
- (6) The subject of a drinking banning order who is given a notice under subsection (4) or who claims that a request for the purposes of subsection (5) has not been complied with may, within such period as may be prescribed by rules of court, apply—
- (a) in the case of an order made under section 17, to the court which made the order or the sheriff within whose sheriffdom the subject normally resides,
 - (b) in the case of an order made under section 21, to the court which made the order,
- for a declaration that there has been a contravention of subsection (3).
- (7) If the court grants the application, the applicant is to be treated for the purposes of section 16 as having satisfactorily completed the course at the time of the making of the declaration.
- (8) The Scottish Ministers may by regulations make provision as to—
- (a) the form of a notice under subsection (4), and
 - (b) the manner in which such a notice is given and the time at which such a notice is to be taken as having been given.

Supplementary

29 Interpretation of Chapter 1

- (1) In this Chapter—
- “approved course” means a course approved by the Scottish Ministers for the purposes of section 16,
- “drinking banning order” means an order under section 17 or 21,

“interim order” means an order under section 18,

“relevant authority” means—

- (a) the chief constable of the Police Service of Scotland,
- (b) a local authority,

“specified period”, in relation to a prohibition in a drinking banning order, means the period specified in the order as the period for which the prohibition is to have effect,

“subject”, in relation to an order, means the individual against whom it is made.

- (2) References in this Chapter to protecting persons from criminal or disorderly conduct include references to protecting their property from unlawful loss or damage.
- (3) The Scottish Ministers may by regulations provide that a person of a description specified in the regulations is to be regarded as a relevant authority for such purposes of the provisions of this Chapter as are specified in the regulations.
- (4) The Scottish Ministers may by regulations modify the list of persons specified in section 17(4).
- (5) A power of the Scottish Ministers to make regulations under this Chapter includes power—
 - (a) to make different provision for different cases,
 - (b) to make provision subject to exemptions and exceptions,
 - (c) to make incidental, supplemental, consequential and transitional provision.
- (6) Regulations under section 16(11) or subsection (4) of this section are subject to the affirmative procedure.
- (7) Regulations under section 27(5), section 28(2) or (8) or subsection (3) of this section are subject to the negative procedure.

CHAPTER 2

OFFENCES ETC. INVOLVING ALCOHOL: FURTHER PROVISIONS

30 Fixed penalty offences involving alcohol: alcohol awareness training as alternative to fixed penalty

- (1) Part 11 (fixed penalties) of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) is amended as follows.
- (2) After section 132 insert—

“Offences involving alcohol: alcohol awareness training

132A Offences involving alcohol: alcohol awareness training as alternative to fixed penalty

- (1) Subsection (2) applies where a person is given a fixed penalty notice in respect of a fixed penalty offence.
- (2) A constable who has reason to believe that the person was under the influence of alcohol when the offence was committed may offer to revoke the notice if the person undertakes alcohol awareness training.”.

- (3) In section 133 (revocation of fixed penalty notices), after subsection (2) insert—
- “**(2A)** A constable must revoke a fixed penalty notice given to a person under section 129 if the constable is satisfied that the person has completed alcohol awareness training in compliance with an offer to revoke the notice made by a constable.”.
- (4) The Scottish Ministers must, as soon as reasonably practicable after the Bill for this Act receives Royal Assent—
- (a) designate an urban area as the pilot area for the purpose of this section,
 - (b) specify a date (the “specified date”) from which alcohol awareness training for the purpose of section 132A of the 2004 Act is to be available as respects the pilot area,
 - (c) ensure that alcohol awareness training for the purpose of that section is available from that date as respects the pilot area, and
 - (d) appoint an independent person to carry out an evaluation of the operation of that section in relation to the pilot area from the specified date and to make recommendations to the Scottish Ministers as to whether alcohol awareness training for the purpose of that section should be made available throughout Scotland.
- (5) No later than 18 months after the specified date the Scottish Ministers must—
- (a) lay before the Scottish Parliament, and
 - (b) publish (in such manner as they consider appropriate),
- a report containing the evaluation and recommendations of the independent person.
- (6) If the independent person recommends that alcohol awareness training for the purpose of section 132A of the 2004 Act should be made available throughout Scotland the Scottish Ministers must ensure that the recommendation is implemented no later than 3 years after the date on which the report was laid before the Parliament.
- (7) In this section, “independent person” means a person other than—
- (a) a member of staff of the Scottish Administration,
 - (b) a constable,
 - (c) a member of police staff within the meaning of section 26(1) of the Police and Fire Reform (Scotland) Act 2012,
 - (d) a member or employee of any organisation involved in providing alcohol awareness training for the purpose of section 132A of the 2004 Act, or
 - (e) any other person who has provided such training for that purpose.

31 Offences involving alcohol: notification of offender’s GP

- (1) This section applies where—
- (a) an individual aged 16 or over is convicted of an offence (“the offender”),
 - (b) the offender is normally resident in Scotland, and
 - (c) the court considers that the conditions in subsection (2) are satisfied.

- (2) Those conditions are—
- (a) that the offender was, at the time the offence was committed, voluntarily under the influence of alcohol, and
 - (b) that the consumption of alcohol was a contributory factor in the commission of the offence.
- (3) If the court is aware that the offender is registered as a patient with a GP practice, the clerk of court must notify the GP practice in writing of the following matters—
- (a) the offender’s name and (if known) date of birth,
 - (b) the date of the conviction,
 - (c) the offence,
 - (d) that the court considers that the conditions in subsection (2) are satisfied,
 - (e) the sentence imposed, or other disposal or order made, in respect of the offence.
- (4) Notification under subsection (3) is not to be given until—
- (a) the time limit for appeal has expired without an appeal being made, or
 - (b) where an appeal is made, its withdrawal or final determination.
- (5) In this section—
- “GP practice” means a medical practice including one or more general practitioners practising as such,
 - “general practitioner” means a registered medical practitioner whose name is on the General Practitioner Register kept under section 34C of the Medical Act 1983.

PART 3

GENERAL

32 Interpretation

In this Act, “the 2005 Act” means the Licensing (Scotland) Act 2005.

33 Ancillary provision

- (1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) Regulations under subsection (1) may modify any enactment (other than this Act).
- (3) Regulations under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (4) Any other regulations under subsection (1) are subject to the negative procedure.

34 Commencement

- (1) The following provisions come into force on the day after Royal Assent—

section 2, but only for the purpose of making regulations under paragraph 8A(1) of schedule 3 or paragraph 7A(1) of schedule 4 to the 2005 Act,

section 3(1), (3) and (4) except so far as relating to the imposition of conditions by a Licensing Board under section 27(6) or 60(4) of the 2005 Act,

5 section 14,

section 16(11),

section 27(5) and (6),

section 28(2) and (8),

section 29,

10 section 30(4) to (7),

this Part,

in the schedule, paragraphs 8 and 9(1) and (3).

(2) The other provisions of this Act come into force at the end of the period of 12 months beginning with the day of Royal Assent or on such earlier day as the Scottish Ministers may by regulations appoint.

15

(3) Different days may be appointed for different purposes.

(4) Regulations under subsection (2) may include transitional, transitory or saving provision.

35 Short title

20

The short title of this Act is the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Act 2015.

SCHEDULE
(introduced by section 12)

FIXED PENALTY FOR ALCOHOL ADVERTISING OFFENCES

Power to give fixed penalty notices

- 5 1 (1) An authorised officer of a local authority may, if having reason to believe that a person is committing or has committed an offence under Chapter 2 of Part 1 within the area of the local authority, give that person a fixed penalty notice in relation to that offence.
- (2) A constable may, if having reason to believe that a person is committing or has committed an offence under Chapter 2 of Part 1, give that person a fixed penalty notice
 10 in relation to that offence.
- (3) In this schedule, “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for the offence in question by payment of a fixed penalty.

Contents of fixed penalty notice

- 15 2 (1) A fixed penalty notice must identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.
- (2) A fixed penalty notice must also state—
- (a) the amount of the penalty and the period within which it may be paid,
 (b) the discounted amount and the period within which it may be paid,
 20 (c) the person to whom and the address at which payment may be made,
 (d) the method by which payment may be made,
 (e) the person to whom and the address at which any representations relating to the notice may be made,
 (f) the consequences of not making a payment within the period for payment.
- 25 (3) The person specified under sub-paragraph (2)(c) must be the local authority in the area of which the offence is alleged to have been committed or a person acting on its behalf.
- (4) The person specified under sub-paragraph (2)(e) must be—
- (a) where the notice is issued by an authorised officer of a local authority, a person at such office of the local authority as is specified in the notice,
 30 (b) where the notice is issued by a constable, a person at such office of the Police Service of Scotland as is specified in the notice.

Amount of penalty and period for payment

- 3 (1) The fixed penalty for an offence under Chapter 2 of Part 1 is £200.
- (2) The period for payment of the fixed penalty is the period of 29 days beginning with the
 35 day on which the notice is given.

The discounted amount

- 4 (1) A discounted amount is payable instead of the amount of the fixed penalty if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.
- 5 (2) The discounted amount is 75% of the amount of the fixed penalty.
- (3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.
- 10 (4) In this paragraph, “working day” means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

Effect of notice and payment of penalty

- 5 (1) This paragraph applies where a person is given a fixed penalty notice under paragraph 1(1) or (2) in respect of an offence.
- 15 (2) No proceedings for the offence may be commenced—
- (a) if the penalty is paid before the end of the period for payment of the penalty, or
- (b) if the penalty is tendered after the end of that period and payment is accepted by the local authority.
- (3) Payment of the discounted amount counts for the purposes of sub-paragraph (2)(a) only if it is made before the end of the period for payment of the discounted amount.
- 20 (4) The local authority must not accept any payment tendered in respect of the fixed penalty after proceedings have been commenced.
- (5) In proceedings for the offence, a certificate which—
- 25 (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority, and
- (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,
- is sufficient evidence of the facts so stated.

Withdrawal of notices

- 30 6 (1) If the local authority considers (whether in light of representations made under paragraph 2(2)(e) or for any other reason) that a fixed penalty notice given by an authorised officer of the local authority ought not to have been given, it may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
- 35 (2) If a constable considers (whether in light of representations made under paragraph 2(2)(e) or for any other reason) that a fixed penalty notice given by a constable ought not to have been given, the constable may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
- (3) The constable must give a copy of the notice under sub-paragraph (2) to the local authority specified in the fixed penalty notice under paragraph 2(2)(c).

- (4) A notice under sub-paragraph (1) or (2) may be given only at a time when proceedings have not been commenced.
- (5) Where a notice of withdrawal is given to a person under sub-paragraph (1) or (2) no proceedings are to be commenced against that person for the offence in question.

5 *Repayment of fixed penalty*

7 Where—

- (a) a notice of withdrawal is given under paragraph 6(1) or (2), or
- (b) proceedings for an offence in respect of which a fixed penalty notice has been given are commenced,

10 any amount which has been paid by way of penalty in pursuance of the fixed penalty notice is to be repaid.

Duty to review fixed penalty

- 8 (1) The Scottish Ministers must annually review the fixed penalty for the time being specified in paragraph 3(1) to determine whether it should be modified to take account of changes in the value of money.
- 15 (2) The first review is to be no later than 12 months after the date on which the Bill for this Act receives Royal Assent.
- (3) Each subsequent review is to be no later than the next subsequent anniversary of Royal Assent.
- 20 (4) If, on a review, the Scottish Ministers determine that the fixed penalty should be modified, they must by regulations modify the fixed penalty.

Regulations

- 9 (1) The Scottish Ministers may make regulations about the method by which a fixed penalty may be paid.
- 25 (2) The Scottish Ministers may by regulations modify the periods for the time being specified in paragraphs 3(2) and 4(1) if they consider it desirable to do so having regard to other enactments making provision about fixed penalty notices.
- (3) Regulations under paragraph 8(4) or sub-paragraph (1) or (2) of this paragraph are subject to the negative procedure.

Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for reducing and dealing with the abuse of alcohol; to amend the legislation in relation to applications for, and to vary, licences for the sale of alcohol; and for connected purposes.

Introduced by: Dr Richard Simpson
On: 1 April 2015
Bill type: Member's Bill

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