

**ALCOHOL ETC. (SCOTLAND)
ACT 2010**

**GUIDANCE FOR LICENSING
BOARDS**

August 2011

ALCOHOL ETC. (SCOTLAND) ACT 2010

GUIDANCE FOR BOARDS AND LOCAL AUTHORITIES

CONTENTS LIST

1. Introduction

2. Pricing of alcohol

Minimum price of packages containing more than one alcoholic product
Off-sales: variation of pricing of alcoholic drinks

3. Drinks promotions

Off-sales: restriction on supply of alcoholic drinks free of charge or at reduced price
Off-sales: location of drinks promotions

4. Age verification policy

5. Licensing policy statement

Presumption against prohibition on off-sales to under 21s
Consultation of health boards

6. Chief Constables' Reports

1. INTRODUCTION

1.1 This Guidance has been prepared and issued in order to assist with the implementation of the Alcohol etc. (Scotland) Act 2010 (the “Alcohol Act”). Sections 2 to 13 of the Alcohol Act make amendments to the Licensing (Scotland) Act 2005 (the “2005 Act”). The guidance is issued under section 142(1) of the 2005 Act and has been laid before Parliament. The Alcohol Act can be viewed at the Legislation.gov.uk website at the following address:

<http://www.legislation.gov.uk/asp/2010/18/contents/enacted>

1.2 A list of the orders and regulations made under the Alcohol Act and related orders made under the 2005 Act is provided in Annex A to this Guidance.

1.3 Provisions in the Alcohol Act that are being commenced will commence on 1 October 2011, except for the provision in section 12 relating to the chief constables’ reports to Licensing Boards and Local Licensing Forums, which comes into force on 1 April 2012. This is because part of the obligation for the Report is to set out information relating to a full year preceding the end of a financial year. So the first year a report could realistically be produced would be from 1 April 2012 and would set out matters relating to the financial year 2011-12 (starting in April 2011).

1.4 This Guidance is provided for Licensing Boards, but we hope that local authorities, the Police, Local Licensing Forums, Licensing Standards Officers, and the licensed trade and their representatives may also find it useful.

2. PRICING OF ALCOHOL

Minimum price of packages containing more than one alcoholic product

2.1 Section 2 of the Alcohol Act makes provision in respect of the minimum price of a package containing two or more alcoholic products. Section 2 amends the 2005 Act to insert a mandatory licence condition into premises and occasional licences. The licence condition prevents retailers from selling alcoholic products packaged together at a lower price than the customer could buy the same products individually. The intention behind this is to ensure that customers are not encouraged to purchase alcoholic products packaged together because it is cheaper than purchasing the products individually.

2.2 **The provision only applies where each alcoholic product in the package is available for sale on the premises separately.** So if the retailer does not sell single cans of beer, then the price of an 8-pack of beer does not have to be double the price of a 4-pack of the same beer (with the cans being of the same size).

2.3 The provision also only applies to a package containing more than one alcoholic product. So if an alcoholic drink is packaged with a non-alcoholic product, cheese for instance, then this provision does not apply. For example, the provision does not apply to a bottle of wine packaged with cheese.

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Off-sales: variation of pricing of alcoholic drinks

2.5 Section 3 of the Alcohol Act amends the provision in the 2005 Act for premises and occasional licences (paragraph 7 of schedule 3 and paragraph 6 of schedule 4 respectively). The 2005 Act imposes a condition in premises licences and occasional licences that prohibits the price for alcohol being varied before the expiry of 72 hours since the price of any alcohol sold on the premises was last varied. Section 3 amends this so that for alcohol sold for consumption off the premises the 72 hour restriction on varying prices only applies in relation to the price of the particular product in relation to which the price has previously been varied, as opposed to in relation to all alcoholic products sold. This means that in relation to off-sales of alcohol retailers may vary the price of different products at different times provided that the price of each individual product is maintained for 72 hours and the price variation takes effect at the beginning of a period of licensed hours.

3. DRINKS PROMOTIONS

Off-sales: restriction on supply of alcoholic drinks free of charge or at reduced price

3.1 Premises licences and occasional licences contain a mandatory licence condition restricting irresponsible promotions. One of the ways in which a drinks promotion in respect of on-sales of alcohol can be irresponsible is if it “involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks).” (paragraph 8(2)(b) of schedule 3 and paragraph 7(2)(b) of schedule 4 to the 2005 Act). Section 4 of the Alcohol Act amends the 2005 Act to extend the application of paragraph 8(2)(b) of schedule 3 and paragraph 7(2)(b) of schedule 4 to the 2005 Act to off-sales of alcohol. Examples of such promotions to which these paragraphs apply include:

- buy one, get one free
- three for the price of two
- five for the price of four, cheapest free
- 3 bottles of wine for £10
- buy six, get 20% off.

3.2 Paragraph 8(2)(e) of schedule 3 to the 2005 Act provides a licence condition in premises licences that a drinks promotion is irresponsible if it “encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume.” This condition applies to on-sales and off-sales of alcohol. Section 4 of the Alcohol Act amends this so that it only applies to on-sales of alcohol. This means that drinks promotions encouraging persons to buy

or consume larger measures will be restricted in relation to on-sales of alcohol. The reasoning behind this is that the use of the word “measure” was causing some confusion in an off-sales context as it is more associated with an on-sales environment.

Off-sales: location of drinks promotions

3.3 Section 5 of the Alcohol Act imposes the mandatory licence condition in premises licences restricting the display of alcohol that is for sale for consumption off the premises. This licence condition is set out in paragraph 13 of schedule 3 to the 2005 Act (inserted by the Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007 (SSI 2007/546)). The 2005 Act requires that such alcohol can only be displayed in either or both of (1) a single area of the premises agreed between the Licensing Board and the holder of the licence and (2) a single area of the premises which is inaccessible to the public. These areas are known as “alcohol display areas”. Paragraph 13(3) of schedule 3 provides an exemption from this restrictions for visitor attractions forming part of a manufacturing site and for visitor attractions that principally provide information about and promote the history and attributes of a particular alcoholic drink or a particular category of alcoholic drink.

3.4 Section 5(3) of the Alcohol Act inserts new sub-paragraphs into paragraph 13 of schedule 3 of the 2005 Act restricting the location of drinks promotions on the premises and prohibiting certain drinks promotions from taking place in the vicinity of the premises. These restrictions only apply to premises which, to the extent that they are used for the sale of alcohol, are used only or primarily for the sale of alcohol for consumption off the premises. As amended, paragraph 13 provides that any drinks promotion undertaken in connection with alcohol sold on the premises for consumption off the premises may take place only in the alcohol display areas or in a tasting room. A tasting room “a room on the premises which is used for offering the tasting of any alcohol sold on the premises (for consumption off the premises) and the resulting tasting and is separate from those areas.” (paragraph 13(1B)(b)).

Section 5(3) also amends paragraph 13 to prohibit drinks promotions in the vicinity of the premises if such promotions are “in connection with the premises”. This means that a licence-holder will not breach the licence condition if there is a drinks promotion in the vicinity of the premises that is not in connection with the premises, for example, an advertisement for an alcoholic product over which the licensee had no control on a bus shelter outside the premises. The reasoning behind this is a recognition that not all drinks promotions within the vicinity of the licensed premises will be within the control of the premises licence-holder. The “vicinity” means the area extending 200 metres from the boundary of the premises as shown on the layout plan.

3.5 Section 5(4) and (5) of the Alcohol Act amends paragraph 13 to provide that the display of branded non-alcoholic products (products that bear a name or image of an alcoholic product such as football tops, slippers, tea towels etc.) which are not for sale may constitute a drinks promotion and, if so, may only be displayed in alcohol display areas or in a tasting room.

3.6 Newspapers, magazines and other publications which are not for sale may constitute a drinks promotion where they relate only or primarily to alcohol. In this instance, they must be in the alcohol display area. Where newspapers, magazines and other publications not for sale do not relate only or primarily to alcohol they may be displayed anywhere on the premises. Where branded non-alcoholic products and newspapers, magazines and other publications are for sale then they do not constitute a drinks promotion and so may be displayed anywhere in the premises and in the vicinity of the premises, including in alcohol display areas and any tasting room.

4. AGE VERIFICATION POLICY

4.1 Section 6 of the Alcohol Act amends the 2005 Act to impose a mandatory licence condition in relation to both premises and occasional licences that there must be an age verification policy in relation to the sale of alcohol. An age verification policy is a policy where steps are to be taken to establish the age of a person attempting to buy alcohol on the premises (the customer) if it appears to the person selling the alcohol that the customer may be less than 25 years of age (or such older age as may be specified in the policy). This condition does not apply to remote sales of alcohol. The minimum age that an age verification policy applies in relation to must be at least 25 years of age. It does not prescribe the details of the policy that must be in place, allowing flexibility for retailers to adopt the most appropriate procedures for them. Where current procedures are already in place and have a minimum age set at 25, it is envisaged that no further action will be required by the licence holder. This does not change the legal age at which alcohol may be purchased which remains at 18 years of age. A premises licence holder may wish to adopt a written document stating what the policy is. An example of a policy is attached as annex B

5. LICENSING POLICY STATEMENT

Presumption against prohibition on off-sales to under 21s

5.1 Licensing Boards are required by section 6 of the 2005 Act to publish a licensing policy statement every three years and they may also publish a supplementary licensing policy statement during the three year period. Section 9 of the Alcohol Act amends the 2005 to prohibit Licensing Boards from stating in their licensing policy statement, or supplementary licensing policy statement, that they intend to introduce a prohibition on the sale of alcohol for consumption off the premises to those over 18 but under 21, whether in relation to some or all premises in their area. Licensing Boards are not prevented from imposing licence conditions restricting off-sales of alcohol to persons aged under 21 but are prevented from including such a policy in their licensing policy statement or supplementary licensing policy statement. This provision will apply to licensing policy statements or supplementary licensing policy statements published on or after 1 October 2011.

Consultation of health boards

5.2 Licensing Boards are required by section 6 of the 2005 Act to publish a licensing policy statement every three years and they are required to consult with various bodies in compiling the statement. They may also publish a supplementary licensing policy statement during the three year period and if they do this they are required to consult various bodies on this. Section 11(2) of the Alcohol Act amends the 2005 Act to add the relevant health board to the bodies the Licensing Board is required to consult when preparing a licensing policy statement or supplementary policy statement. In addition, when preparing such a statement a Licensing Board may request certain statistical data or other information from the relevant health board and that health board is required to provide that information. Section 11(5) defines relevant health board as the health board for the Licensing Board's area or if there is more than one health board for the Licensing Board's area then each of those health boards.

5.4 Section 11(4) amends the 2005 Act to require Licensing Boards to notify the relevant health board of all premises licence applications. By virtue of section 29(4) of the Act, where an application for a variation to a premises licence is required (other than a minor variation), the Licensing Board has to notify the same people as it would be required to notify of a premises application which will now include the relevant health board. However, unlike the Police, the health board as a statutory consultee is not required to offer comment on every application.

5.5 Section 11 also amends the 2005 Act so that Licensing Boards are required to consult the relevant health board when considering whether there is overprovision of licensed premises within its area. Section 11(7) amends the 2005 Act to provide that at least one member of the Local Licensing Forum must be nominated by the health board in a Local Licensing Forum's area. If there is more than one health board in a Local Licensing Forum's area then at least one member of the Local Licensing Forum must be nominated by the health board which covers the larger or largest part of the Local Licensing Forum's area. The maximum number of members of a Local Licensing Forum has been increased from 20 to 21 to allow for an additional member of the Health Board to be appointed (The Licensing (Local Licensing Forum) (Scotland) Order 2011).

6. CHIEF CONSTABLES' REPORTS

Chief constables' reports to Licensing Boards and Local Licensing Forums

6.1 Section 12 of the Alcohol Act amends the 2005 Act to impose a duty on every chief constable to send a report to Licensing Boards in the chief constable's police area in respect of the policing of the 2005 Act in the Board's area and any police work in preventing the sale or supply of alcohol to those under 18. This report must be sent to the Licensing Board as soon as practical after the end of each financial year. The report should set out the Chief Constable's views about matters relating to policing in connection with the operation of the 2005 Act in the Board's area. in the previous year and the following year, and also set out any steps taken in the previous year, or to be taken in the following year, to prevent the sale or supply of alcohol to those under

18. The Chief Constable is also required to send a copy of the report to the Local Licensing Forum for the Board's area, and requires a police officer to attend a meeting of the Licensing Board or the Local Licensing Forum to discuss the report if the Licensing Board or the Forum requests it.

Annex A

List of regulations/orders made under the Alcohol etc. (Scotland) Act 2010 or related orders under the Licensing (Scotland) Act 2005

The Alcohol etc. (Scotland) Act 2010 (Commencement) Order 2011

This Order sets out the commencement date of the provisions in the Act. The commencement date for all provisions that are being commenced, except for section 12, is 1 October 2011. Section 12 will commence on 1 April 2012.

Section 9 (presumption against prohibition on off-sales to under 21s) is commenced for all purposes in respect of licensing policy statements or supplementary licensing policy statements published on or after 1 October 2011.

Section 11(2)(a) and 11(3) (consultation etc. of health boards) is commenced for all purposes in respect of licensing policy statements or supplementary licensing policy statements published on or after 1 October 2011.

Section 11(4) (consultation etc. of health boards) is commenced for all purposes in respect of premises licence applications received on or after 1 October 2011.

The Licensing (Local Licensing Forum) (Scotland) Order 2011

This Order increases the maximum number of members of a Local Licensing Forum from 20 to 21 in order to allow a member to be appointed from the Health Board for the Forum's area or if the Forum's area forms part of the area of more than one Health Board, the Health Board whose area contains the larger or the largest part of the Forum's area.