

## Air Weapons and Licensing (Scotland) Bill – Stage 2

### After section 42

**Dr Richard Simpson**

**85** After section 42, insert—

*<Community involvement in licensing decisions*

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

- (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”.>

### After section 52

**Dr Richard Simpson**

**86** After section 52, insert—

*<Restrictions on advertising of alcohol*

## **Restrictions of advertising of alcohol**

- (1) The 2005 Act is amended as follows.
- (2) After section 122 insert—

### **“PART 8A**

#### RESTRICTIONS ON ADVERTISING OF ALCOHOL

##### *Advertising near premises used by children*

### **122A 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,

“alcohol advertisement” means an advertisement promoting alcohol,

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

“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).

### **122B 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—
  - (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.
- (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 122A merely because the advertisement is also visible from outside the premises.

*Advertising within licensed premises*

**122C Advertising within licensed premises**

- (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—
  - “advertisement”, “alcohol advertisement” and “the display of an advertisement” have the meanings given in section 122A(3),
  - “off-sales premises” means premises licensed to sell alcohol only for consumption off the premises,
  - “responsible person” means—
    - (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*

**122D 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 122A(3) and also includes an advertisement displayed on clothing,
  - “alcohol advertisement” and “the display of an advertisement” have the meanings given in section 122A(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*

**122E Penalties**

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

**122F Offences by bodies corporate, etc.**

- (1) Where—
  - (a) an offence under this Part 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 Part is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995.

**122G Fixed penalties**

- (1) Schedule 4A (which makes provision as to fixed penalties for offences under this Part) has effect.

- (2) Schedule 4A does not have effect in relation to an offence committed by a local authority.”.
- (3) After Schedule 4 insert—

“SCHEDULE 4A  
(introduced by section 122G)

FIXED PENALTY FOR ALCOHOL ADVERTISING OFFENCES

*Power to give fixed penalty notices*

- 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 Part 8A 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 Part 8A, give that person a fixed penalty notice 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*

- 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,
  - (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.
- (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,
  - (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 Part 8A is £200.

- (2) The period for payment of the fixed penalty is the period of 29 days beginning with the 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.
  - (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.
  - (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.
  - (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.
  - (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—
    - (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*

- 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.

- (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.

*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,

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.
- (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.
- (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.
- (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.”.>

**Section 55**

**John Wilson**

**87** In section 55, page 31, line 25, at end insert—

<9B **Annual report on exercise of functions**

- (1) Each Licensing Board must prepare and publish a report on the exercise of their functions not later than 3 months after the end of each financial year.
- (2) The Scottish Ministers may by regulations vary the period of time for the time being specified in subsection (1) within which each Licensing Board must prepare and publish their annual report under this section.
- (3) A report under this section must include—
  - (a) a summary of the decisions taken by the Licensing Board in the exercise of their functions under this Act, including any decisions taken by any person to whom functions have been delegated by the Board under paragraph 10 of Schedule 1, during the financial year,
  - (b) a summary of the provision of licensed premises and the number of occasional licences granted in the Board’s area, including in particular localities within their area,
  - (c) a statement setting out how, in exercising their functions under this Act during the financial year, the Licensing Board—
    - (i) have sought to give effect to their licensing policy statement and any supplementary licensing policy statement published under section 6,
    - (ii) have taken account of any assessment they have made under section 7 of overprovision in any locality within their area,
    - (iii) consider how the exercise of their functions has contributed to the licensing objectives.
- (4) A report under this section may also include such other information about the exercise of the Licensing Board’s functions as the Board consider appropriate.
- (5) The Scottish Ministers may by regulations make further provision about reports under this section including provision—
  - (a) about the form and content of reports including, in particular—
    - (i) the information on decisions that is to be included in a summary under subsection (3)(a),
    - (ii) how a summary is to be reported for the purposes of subsection (3)(b), and
    - (iii) the information to be kept for the purposes of providing a statement required under subsection (3)(c) and how such a statement is to be set out, and
  - (b) the publication of reports.
- (6) Regulations under subsection (5)(a) may modify subsection (3).
- (7) In this section, “financial year” means a yearly period ending on 31 March.”.>

**John Wilson**

**88** In section 55, page 31, line 27, after <9A(6)> insert <or 9B(5)>

**John Wilson**

**89** In section 55, page 31, line 29, after <9A(6)> insert <or 9B(5)>



**John Wilson**

**90** In section 55, page 31, line 30, leave out <that> and insert <the relevant>