

ServeWise Training Event 23rd June 2009 - questions

- 1. If a member of staff aged under 18 delivered alcohol from a service point to a table would this count as “service”? i.e., do they need to complete training? Is there any occasion when the server would not need to be trained?**

3 Certain supplies of alcohol to be treated as sales

- (1) A supply of alcohol which is not otherwise a sale of the alcohol is, in the circumstances described in subsection (2) or (3), to be treated for the purposes of this Act as if it were a sale of the alcohol.
- (2) The first set of circumstances is where the supply is by or on behalf of a club to, or to the order of, a member of the club.
- (3) The second set of circumstances is where the supply is made to, or to the order of, a person pursuant to a right acquired by the person under a contract.

Training of staff – 2005 Act, schedule 3:

- 6 (1) No person (other than a person who holds a personal licence) is to work in the premises in the capacity mentioned in sub-paragraph (2) unless that person has complied with such requirements as to the training of staff as may be prescribed for the purposes of this paragraph.
- (2) That is a capacity (whether paid or unpaid) which involves the person—
 - (a) making sales of alcohol, or
 - (b) where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person.
- (3) Regulations under sub-paragraph (1) prescribing training requirements may, in particular—
 - (a) provide for the accreditation by the Scottish Ministers of—
 - (i) courses of training, and
 - (ii) persons providing such courses,for the purposes of the regulations,
 - (b) prescribe different training requirements in relation to different descriptions of persons,
 - (c) require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualification as may be prescribed in the regulations, and
 - (d) require training to be undergone again at such intervals as may be prescribed in the regulations.

2007 No. 397 - The Licensing (Training of Staff) (Scotland) Regulations 2007

Training requirement

- 2.** The training requirement prescribed for the purposes of paragraph 6 of schedule 3 to the Act is that any person working in the capacity mentioned in sub-paragraph (2) of that paragraph must have received relevant training from a person who at the time of providing the training holds—
 - (a) a personal licence; or
 - (b) a qualification accredited for the purposes of this regulation by the Scottish Qualifications Authority.

Relevant training

- 3.** In regulation 2, “relevant training” means training of at least 2 hours' duration which covers each of the matters specified in the Schedule.

2. Do salesmen need to be trained as they travel around and sell alcohol to licensed premises, which often includes tastings? They also often host sales events/ hospitality where they may pour drinks etc?

Salesman generally sell to licensed premises on behalf of a company. If the company is selling by retail, they will need a premises licence. This will depend on where they are selling from. In terms of Scottish legislation, the place from which the alcohol is delivered has to be licensed, not the place which takes the orders. If the deliveries come from furth of Scotland, including England, Wales etc, then the sale and delivery etc will come under their law – just like internet sales. Sale to trade replaces the 1976 Act sale to wholesale.

PART 1 CORE PROVISIONS

1 Prohibition of unlicensed sale of alcohol

(1) Alcohol is not to be sold on any premises except under and in accordance with—

- (a) a premises licence, or
- (b) an occasional licence,

granted under this Act in respect of the premises.

(2) Subsection (1) does not apply to the selling of alcohol—

- (a) on exempt premises, or
- (b) to trade.

Section 2 Meaning of “alcohol”

(1) In this Act, “alcohol”—

- (a) means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but
- (b) does not include—

(i) alcohol which is of a strength of 0.5% or less at the time of its sale,

(ii) perfume,

(iii) any flavouring essence recognised by the Commissioners of Customs and Excise as not being intended for consumption as or with dutiable alcoholic liquor,

(iv) the aromatic flavouring essence commonly known as angostura bitters,

(v) alcohol which is, or is included in, a medicinal product,

(vi) denatured alcohol,

(vii) methyl alcohol,

(viii) naphtha, or

(ix) alcohol contained in liqueur confectionery.

(2) In this section— “beer”, “cider”, “denatured alcohol”, “dutiable alcoholic liquor” and “wine” have the same meanings as in the Alcoholic Liquor Duties Act 1979 (c. 4), and “medicinal product” has the same meaning as in section 130 of the Medicines Act 1968 (c. 67).

Miscellaneous offences

117 Offences relating to sale of alcohol to trade

(1) A person who sells alcohol to trade otherwise than from premises which are used exclusively for the purpose of the selling of goods (whether solely alcohol or not) to trade commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

118 Prohibition of unauthorised sale of alcohol on moving vehicles

(1) A person who knowingly sells alcohol on or from a vehicle at a time when the vehicle is not parked (whether permanently or temporarily) commits an offence, unless the selling of alcohol on or from the vehicle at such a time is expressly authorised by a premises licence or occasional licence in respect of the vehicle.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—

- (a) a fine not exceeding £20,000,
- (b) imprisonment for a term not exceeding 3 months, or
- (c) both.

119 Delivery of alcohol from vehicles etc.

(1) A person who, pursuant to a sale of alcohol by that person, delivers the alcohol from a vehicle or receptacle without the information mentioned in subsection (2) having been entered, before the despatch of the alcohol, in—

- (a) a day book kept on the premises from which the alcohol is despatched, and
 - (b) a delivery book or invoice carried by the person delivering the alcohol,
- commits an offence.

(2) The information referred to in subsection (1) is—

- (a) the quantity, description and price of the alcohol, and
- (b) the name and address of the person to whom it is to be delivered.

(3) A person who carries in a vehicle or receptacle in use for the delivery of alcohol pursuant to a sale of the alcohol by that person any alcohol the quantity, description and price of which was not entered as mentioned in subsection (1) commits an offence.

(4) A person who, pursuant to a sale of alcohol, delivers the alcohol to an address not entered as mentioned in subsection (1) commits an offence.

(5) A person who refuses to allow a constable or a Licensing Standards Officer to examine—

- (a) any vehicle or receptacle in use for the delivery of alcohol, or
- (b) any—
 - (i) day book kept as mentioned in subsection (1)(a), or
 - (ii) delivery book or invoice carried as mentioned in subsection (1)(b),

commits an offence.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In this section, “alcohol” does not include any alcohol being delivered to a trader for the purposes of that person’s trade.

120 Prohibition of late-night deliveries of alcohol

- (1) This section applies where alcohol is sold on any relevant premises for consumption off the premises.
- (2) A responsible person commits an offence if the person knowingly delivers the alcohol to any premises (other than licensed premises) between the hours of midnight and 6am.
- (3) A responsible person who knowingly allows the alcohol to be so delivered commits an offence.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

122 Interpretation of Part 8

- (1) This section has effect for the purpose of the interpretation of this Part.
- (2) "Relevant premises" means—
 - (a) any licensed premises,
 - (b) any exempt premises on which alcohol is sold, and
 - (c) any premises used for the selling of alcohol to trade.
- (3) "Responsible person" means, in relation to relevant premises—
 - (a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,
 - (b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,
 - (c) in the case of other relevant premises, the person having management and control of the premises, and
 - (d) in any of those cases, any person aged 18 or over who works on the premises in a capacity (whether paid or unpaid) which—
 - (i) authorises the person to sell alcohol, or
 - (ii) in relation to any offence under this Part of allowing something to be done, authorises the person to prevent the doing of the thing.

- 3. A distillery may go to a hotel at the moment and hold a nosing and tasting event for a club (e.g., Round Table). If they are not charging it is looked on as a sample for tasting. At the end of the night someone may request to buy a bottle – can the bottle be sold? Whose licence are they working under?**

If the bottle is sold from the hotel premises then it is the hotel licence. Under the current legislation, this could raise trafficking issues unless the hotel allowed this as part of their charge to the Distillery for the room etc.. Under the 2005 Act, it does not matter who holds the licence – it does not have to be the person/company/entity taking the profits etc as at present. If the hotel for some reason was unlicensed then that would cause a problem, unless the Distillery had obtained a personal licence therefore could obtain an occasional licence.

PART 1 CORE PROVISIONS

1 Prohibition of unlicensed sale of alcohol

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- (a) a premises licence, or
- (b) an occasional licence,

granted under this Act in respect of the premises.

(2) Subsection (1) does not apply to the selling of alcohol—

- (a) on exempt premises, or
- (b) to trade.

Section 147 (2) In this Act, references to selling alcohol or other goods to trade are references to selling the alcohol or goods to a person for the purposes of the person's trade; and related expressions are to be construed accordingly. The sale of alcohol in any quantity to members of the public who are not traders will require to be authorised by a premises licence (or an occasional licence); and the sale of alcohol in any quantity to trade customers from premises used only for trade purchases (whether or not these are alcohol purchases) will not require to be licensed.

4. The law states that an LSO can enter a licensed premises at any time – what if an LSO wanted entry at a time when the premises was closed? E.g. at 4am

That really depends on what is going on in the premises at 4am! If there is a party and the premises do not have an extension which allows them to be open at that time, then there could be entry. Remember also that while 24 hour opening is restricted, hotels can be open all night and serving to residents so entry depends on the reasons for entry.

15 Powers of entry and inspection

(1) A Licensing Standards Officer for a council area may, for the purpose of determining whether the activities being carried on in any licensed premises in the area are being carried on in accordance with—

- (a) the premises licence or, as the case may be, occasional licence in respect of the premises, and
- (b) any other requirements of this Act,

exercise the powers specified in subsection (2).

(2) The powers referred to subsection (1) are—

(a) power to enter the premises at any time for the purpose of exercising the power specified in paragraph (b), and

(b) power to carry out such inspection of the premises and of any substances, articles or documents found there as the Officer thinks necessary.

(3) Where a Licensing Standards Officer exercises either of those powers in relation to any licensed premises, the persons specified in subsection (4) must—

- (a) give the Officer such assistance,
- (b) provide the Officer with such information, and
- (c) produce to the Officer such documents,

as the Officer may reasonably require.

(4) The persons referred to in subsection (3) are—

- (a) the holder of the premises licence or, as the case may be, occasional licence in respect of the premises,
- (b) in the case of licensed premises in respect of which a premises licence has effect, the premises manager, and
- (c) in any case, any person working on the premises at the time the Officer is exercising the power.

(5) A person who—

- (a) intentionally obstructs a Licensing Standards Officer in the exercise of any power under subsection (2), or
 - (b) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (3),
- commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

5. Duty to trade?

There is no duty to trade – in my view! There is an obligation to sell alcohol “only in accordance with the operating plan” (Schedule 3, paragraph 2). Some boards initially interpreted this as a duty to trade but North Aberdeenshire seems to be the only board who are insisting on this. Other boards will, however, want significant details of activities taking place out with the core hours – times etc. The duty to trade (duty to remain open to trade for the sale of alcohol during all the hours set out in the operating plan) is supported by the Scottish Executive but it seems less vehemently than at the outset of transition. The operating plan must contain: “a description of the activities to be carried on in the premises”; “a statement of the times during which it is proposed that alcohol be sold on the premises”; and “a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises”.

The operating plan governs how premises operate so the operating plan itself must be adhered to or an offence is committed. If for example, premises were a restaurant under the 1976 Act, the licensing board dealing with the conversion application may decide it wants a condition on the licence that alcohol will be served with a meal only. It may be that this is already offered in the operating plan and, as such, must be adhered to.

Only is used at paragraph 3 where it restricts the activities – therefore only the activities stated in the operating plan can go on at the licensed premises in question. If another activity not included in the operating plan is required, a variation must be applied for and granted. Again, as Jack Cummins refers to in his commentary on the 2005 Act, the use of the word “only” is “construed as a word of limitation, not compulsion”. Simply put, the word “only” limits when premises can have activities and what activities the premises can have. It does not require you to have those activities at certain times. Just because premises have included televised sport in their operating plan, does not mean they must show televised sport all day. If the board has asked for further information and been told the televised sport will normally be available from opening at 9am through to closing at midnight, there is no obligation or compulsion to have this on. It can be switched off and there is no offence. Otherwise the situation would be ridiculous.

6. PLH training needs to be renewed every 5 years – is it 5 years from the issue of the training certificate or 5 years from the issue of the personal licence? (If the latter, aren't all personal licence being dated 1st September 2009? Because that would mean a very big rush for training in 2014!)

Date of issue – see paragraph 87.

87 Licence holder's duty to undertake training

(1) The holder of a personal licence must, no later than 3 months after the expiry of—

- (a) the period of 5 years beginning with the date on which the licence holder's licence was issued, and
- (b) each subsequent period of 5 years during which the licence has effect,

produce to the Licensing Board which issued the licence evidence in the prescribed form of the licence holder's having complied, during that period, with such requirements as to the training of personal licence holders as may be prescribed.

(2) A Licensing Board must—

- (a) in relation to each personal licence issued by it, and
- (b) no later than 3 months before the expiry of each period mentioned in subsection (1),

give to the holder of the licence notice of the requirement imposed by that subsection.

(3) If a personal licence holder fails to comply with subsection (1), the Licensing Board which issued the licence held by the licence holder must revoke the licence.

(4) Regulations under subsection (1) prescribing training requirements may, in particular—

(a) provide for accreditation by the Scottish Ministers of—

(i) courses of training, and

(ii) persons providing such courses,

for the purposes of the regulations,

(b) prescribe different requirements in relation to different descriptions of personal licence holder, and

(c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.

7. If alcohol was sold to an adult acting as an agent, can the member of staff or the manager of the premises get charged with an offence?

The offence is committed by the person who buys alcohol for a minor or even attempts to buy alcohol for a minor.

105 Purchase of alcohol by or for a child or young person

(1) A child or young person who buys or attempts to buy alcohol (whether for himself or herself or another person) commits an offence.

(2) It is not an offence under subsection (1) for a child or young person to buy or attempt to buy alcohol if the child or young person is authorised to do so by the chief constable for the purpose of determining whether an offence is being committed under section 102.

(3) A chief constable may authorise a child or young person to buy or attempt to buy alcohol as mentioned in subsection (2) only if satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of the child or young person.

(4) A person other than a child or young person who knowingly buys or attempts to buy alcohol—

(a) on behalf of a child or young person, or

(b) for consumption on relevant premises by a child or young person,

commits an offence.

(5) Subsection (4)(b) does not apply to the buying of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.

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

(7) A person guilty of an offence under subsection (4) is liable on summary conviction to—

(a) a fine not exceeding level 5 on the standard scale,

(b) imprisonment for a term not exceeding 3 months, or

(c) both.

8. Should we be using the term ‘designated premises manager’? It seems to be a combination of the English ‘Designated Premises Supervisor’ and the Scottish ‘Premises Manager’.

It’s up to you what you call it but designated is not in the 2005 Act. Named premises manager, similar to section 11 of the 1976 Act is probably more accurate.

9. Where should the notice for underage sales be displayed and in how many places in one premises?

In terms of section 110, a notice must be displayed where it is “readily visible” to any person seeking to buy alcohol, While the reference to “a notice” may suggest just one is needed, the fact the section goes on to refer to “any person seeking to buy alcohol” means a notice should be displayed at all areas of the bar (or if there is no bar, any other area) where patrons may seek to purchase alcohol. If alcohol is by table service, consideration will have to be given to whether patrons will see the notice if placed at entry points to the premises, such as at the restaurant door, or whether the notice must be placed on each table or even in the menus. Possibly not ideal in an a la carte restaurant. If the bar in question is large or even divided in to lounge and public bar, multiple notices must be displayed.

Section 110 Duty to display notice

(1) This section applies in relation to any relevant premises.

(2) The notice mentioned in subsection (3) must be displayed—

(a) at all times,

(b) at each place on the premises where sales of alcohol are made, and

(c) in a position where it is readily visible to any person seeking to buy alcohol.

(3) That is a notice in the prescribed form and of the prescribed dimensions containing the following statements, namely—

“It is an offence for a person under the age of 18 to buy or attempt to buy alcohol on these premises.

It is also an offence for any other person to buy or attempt to buy alcohol on these premises for a person under the age of 18.

Where there is doubt as to whether a person attempting to buy alcohol on these premises is aged 18 or over, alcohol will not be sold to the person except on production of evidence showing the person to be 18 or over.”.

(4) If the requirement in subsection (2) is not met in relation to any premises, the person specified in subsection (5) commits an offence.

(5) That person is, in relation to any relevant premises—

(a) in the case of licensed premises—

(i) the premises licence holder, and

(ii) the premises manager,

(b) in the case of premises in respect of which an occasional licence has effect, the holder of the licence, and

(c) in the case of other relevant premises, the person having the management and control of the premises.

(6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**10. "Day-to-day responsibilities" – how long before you have replace the premises manager
CLARIFICATION NEEDED**

11. A wholesale business is determined by selling 12 bottles or more to the trade and therefore does not need a licence. If a trade customer decides to buy just 2 bottles from the wholesaler (which can happen) and put it on his account and buys it before 10am - can this be done as not the quantity for wholesale and really therefore an off sale and also out with the hours for off sales. Should this always be treated as an off sale from off sale part of the premises and not wholesale? I am getting bogged down- please clarify. ANSWERED ABOVE

12. Does a licence holder who lives above the premises count as a "resident"? (This question came from a discussion about only a resident can purchase alcohol outside of licensed hours.)

The 2005 Act allows alcohol to be consumed on or removed from premises out with the core hours if the person consuming or removing the alcohol is resident in the premises. The problem is the 1976 Act at section 139(3) stated that "For the purposes of this Act, a person shall be treated as residing in any premises, notwithstanding that he occupies sleeping accommodation in a separate building, if he is provided with that accommodation in the course of a business of providing board and lodging for reward at those premises and the building is habitually used for the purpose by way of annex or overflow in connection with those premises and is occupied and managed with those premises." There is no similar provision in the 2005 Act.

13. (related to question above) What is the situation with staff drinks? Can the licence holder offer his staff a free drink at the end of their shift? Does it have to be consumed within licensed hours and drinking-up time? If it's a 'free drink' should it be counted for tax purposes the way tips are?

Staff cannot be given drinks after the core hours or any extension thereto – sections 62 and 63 make that very clear. The options are to take the drink at the time either non alcoholic or on a break but being drunk is clearly unacceptable. Better then to have a policy that staff will not consume alcohol while on a shift and allow them to take soft drinks or take the drinks when in the premises socially and not working. Tax issues should be referred to HMRC.

62 Licensed hours

(1) In this Act, “licensed hours” means, in relation to licensed premises—

(a) in the case of licensed premises in respect of which a premises licence has effect, the period or periods of time specified for the time being in the operating plan contained in the premises licence as those during which alcohol is to be sold on the premises, and

(b) in the case of licensed premises in respect of which an occasional licence has effect, the period or periods of time specified in the licence as those during which alcohol may be sold on the premises,

and a reference to a period of licensed hours is a reference to any of those periods of time.

(2) In this Act—

(a) in relation to any premises—

(i) “on-sales hours” means licensed hours applying to the sale of alcohol for consumption on the premises,

(ii) “off-sales hours” means licensed hours applying to the sale of alcohol for consumption off the premises, and

(b) in relation to any licensed premises on which alcohol is sold both for consumption on the premises and for consumption off the premises, references to licensed hours are—

(i) in relation to alcohol sold for consumption on the premises, to be read as references to on-sales hours,

(ii) in relation to alcohol sold for consumption off the premises, to be read as references to off-sales hours.

(3) Subsection (1) is subject to sections 67(6) and 68(5).

63 Prohibition of sale, consumption and taking away of alcohol out with licensed hours

(1) Subject to subsection (2), a person commits an offence if, out with licensed hours, the person—

(a) sells alcohol, or allows alcohol to be sold, on licensed premises,

(b) allows alcohol to be consumed on licensed premises, or

(c) allows alcohol to be taken from licensed premises.

(2) It is not an offence under subsection (1) for a person to—

(a) allow alcohol to be consumed on licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol was sold during that period,

14. In an internet sales business do staff need to be trained as they don't handle the alcohol? (the alcohol is dispensed from another area)

Again this depends very much on what the staff at the internet sales business do. Schedule 3 says if they make sales of alcohol then they need training.. Do staff at the internet sales company do so? If yes, then they need training.

Training of staff – 2005 Act, schedule 3:

6 (1) No person (other than a person who holds a personal licence) is to work in the premises in the capacity mentioned in sub-paragraph (2) unless that person has complied with such requirements as to the training of staff as may be prescribed for the purposes of this paragraph.

(2) That is a capacity (whether paid or unpaid) which involves the person—

(a) making sales of alcohol, or

(b) where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person.

(3) Regulations under sub-paragraph (1) prescribing training requirements may, in particular—

(a) provide for the accreditation by the Scottish Ministers of—

(i) courses of training, and

(ii) persons providing such courses,

for the purposes of the regulations,

(b) prescribe different training requirements in relation to different descriptions of persons,

(c) require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualification as may be prescribed in the regulations, and

(d) require training to be undergone again at such intervals as may be prescribed in the regulations.

15. Proof of age

- **Can customers use and American (or Australian, etc) drivers licence – law states European Union photocard drivers licence?**
- **Can customers use National ID cards? (where their home country issues them)**

If a seller accepts an id from another country and it turns out to be fake, they will be in trouble for doing so against the prescribed regulations. Sale relates to over 18 only there depending on their internal policies, shops such as Spar who have a Challenge 25 policy could choose to accept these id cards to prove age if they are satisfied the person is over 18 but not satisfied they are over 25.

The Sale of Alcohol to Children and Young Persons (Scotland) Regulations 2007/93

The notes to this SSO state "Sections 102 and 108 of the Licensing (Scotland) Act 2005 create criminal offences in connection with the sale of alcohol to a person under 18 and the delivery of alcohol by or to such a person. Those sections provide a defence if the person charged with the offence has taken reasonable steps to establish the age of the person involved by looking at a passport or driving licence or another document prescribed for the purposes of those sections. Regulation 2 of these Regulations prescribes for those purposes a photographic identity card of a type approved by the British Retail Consortium for the purposes of its Proof of Age Standards Scheme"

16. The law states that a person commits an offence if they behave in a disorderly manner and refuse to leave when asked to do so by a responsible person. Surely servers have the right to refuse entry or service to anyone, and they can ask anyone to leave?

Realistically, anyone working in licensed premises who suspects someone of being drunk, under age etc should take appropriate action but different premises will have different policies depending on the size of the premises, shift numbers etc.